Justice and Healthcare: A Confucian Perspective

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Introduction

In healthcare ethics, there are different approaches about how public healthcare resources should be allocated can be regarded as justice, and they range from Engelhardt’s libertarian approach to Norman Daniels’ egalitarian one. From Engelhardt’s view, contemporary pluralist society can only be governed by the principle of permission. People are free to purchase the health care that they could afford and to provide the health care others wish to sell, but they have no obligation to exert their own resources in order to guarantee a certain level of healthcare for others, though they can do so for beneficence and with their permission. On the other hand, Daniels argues that healthcare resource should be regulated by the principle of fair equality of opportunity. People should be access to healthcare services in order to maintain, restore, or compensate for the loss of their normal species-typical functioning, which is crucial to their normal opportunity range, given their respective skills and talents.

In this paper, I try first to elaborate just health care from Confucian perspective. Confucian theory of just health care can be formulated according to the three features of Confucian conceptions of the inter-play of state, family and individual: the obligation to develop everyone’s capabilities, the different responsibilities of state and individual, and the specific duties of individuals to their families. First, individuals’ healthcare needs should be satisfied if these affect the development of their own capabilities seriously, however, to meet these needs are not only the responsibility of state but also the individual concerned. Hence, government has the responsibility to assist those who cannot afford to pay for their own basic healthcare needs. Moreover, individuals also have responsibility to satisfy the healthcare needs of their families.

Secondly, I try to evaluate Engelhardt’s and Daniels’ approaches to healthcare resources allocation from Confucian perspective. I argue against Engelhardt that he ignore the problems raised by unjust income structures developed in free market economy, which may seriously affect the accessibility to healthcare services for least
advantaged groups in society. I also argue against Daniels that healthcare allocation resulted from his principle of fair equality of opportunity may not meet the needs which are crucial to the development of one own capability.

Norman Daniels’ Conception of Just Health Care

Norman Daniels thinks that a theory of health-care needs should serve two central purposes. First, It should illuminate the sense that health care is special and should be created differently from other social goods. Second, It should provide a basis for distinguishing the more from the less important among the many kinds of things health care does for us.\(^1\)

Daniels invokes David Braybrooke’s distinction between course-of-life needs and adventitious needs to formulate his own theory of health-care needs. Course-of-life needs are those needs which people have all through their lives or at certain stages of life through which all must pass. Human course-of-life needs would include food, shelter, clothing, exercise, rest, etc, and at least some kinds of health care needs would also fall within this category. Adventitious needs are the things we need because of the particular contingent projects, which may be long-term ones, on which we embark. Course-of-life needs are important to the subject of need, since a deficiency with respect to them endangers his normal functioning considered as a member of a natural species, and the special importance of normal species functioning can be explained by the fact that its impairments reduce the range of opportunity open to an individual in which he may construct his plan of life or conception of good. Some of our goals, perhaps even those we feel are most important to us, are not necessarily undermined by the impairments of our normal species functioning. Moreover, we can often adjust our goals, and presumably our levels of satisfaction, to fit better with them. However, the range of opportunity open to us is thereby restricted. If we have a fundamental interest in preserving the opportunity to revise our conceptions of good through time, then we shall have a pressing interest in maintaining normal species functioning by establish institutions, such as health-care systems, which do just that. So the kinds of needs picked out by reference to normal species functioning are objectively important because they meet this fundamental interest persons have in maintaining a normal range of opportunities.\(^2\)

In order to specify the notion of health-care needs, Daniels defined notions of health and disease according to a narrow “biomedical” model: the basic idea is that

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2 Ibid., pp. 26-8.
health is the absence of disease, and diseases are deviations from the natural functional organization of a typical member of a species. The line between disease and the absence of disease is drawn through methods of biomedical sciences. It should be remain the same no matter what conception of disease different societies have. Hence, infertility should be counted as disease, though some individuals might prefer to be infertile and seek medical treatment to render themselves so. Similarly, since unwanted pregnancy is not a disease, non-therapeutic abortions should not be counted as health-care needs. If we seek public funding for abortions, the reason for this will be one other than meeting the health care needs of the poor, such as poor and well-off women can equally well control their bodies\(^3\).

Daniels explains further the relationship between species-typical functioning and opportunity through the notion of a normal opportunity range. The normal opportunity range for a given society is the array of life plans reasonable persons in it are likely to construct for themselves. The normal range is thus dependent on key features of the society, such as its stage of historical development, its level of material wealth and technological development, and even important cultural facts about it. This is why the notion of normal opportunity range is social relative. On the other hand, the share of the normal range open to an individual is also determined in a fundamental way by his talents and skills. Fair equality of opportunity does not require opportunity to be equal for all persons. It requires only that it be equal for persons with similar skills and talents. Thus, restoring normal functioning through health care has a particular and limited effect on an individual’s share of normal range. It lets him enjoy that portion of the range to which his full array of skills and talents would give him access. There is not presumption that we should eliminate individual differences: these act as a baseline constraint on the degree to which individuals enjoy the normal range\(^4\).

Furthermore, Daniels shows how to extend John Rawls’ theory of justice to health care through its fair equality of opportunity principle. Rawls is primarily concerned with the opportunity to pursue careers – jobs and offices – that have various benefits attached to them. He argues it is not enough simply to eliminate formal or legal barriers to persons seeking such jobs – for example, race, class, ethnic, or sex barriers. Rather, positive steps should be taken to enhance the opportunity of those disadvantaged by such social factors as family background. The point is that none of us deserves the advantages conferred by accidents of birth – either the genetic or social advantages. These advantages from the ‘natural lottery’ are morally arbitrary, because they are not deserved, and to let them determine individual opportunity – and

\(^3\) *Just Health Care*, pp. 28-32.
\(^4\) Ibid., pp. 33-4.
reward and success in life – is to confer arbitrariness on the outcomes. So positive steps, for example, through the educational system, are to be taken to provide fair equality of opportunity. But if it is important to use resources to counter the advantages in opportunity some get in the natural lottery, it is equally important to use resources to counter the natural disadvantages induced by disease⁵.

Hence, some institutions and services, for health care or others, are needed to prevent, correct or compensate for the departures from normal functioning in order to guaranteeing fair equality of opportunity. The first layer of institutions is the preventive, the second the curing of departures from the normal functioning, and the third is involved with more extended medical and social support services for the (moderately) chronically ill and disabled and the frail elderly. Finally, a fourth layer involves health care and related social services for those who can in no way be brought closer to normal functioning. Terminal care and care for the seriously mentally and physically disabled fit here, but Daniels thinks that they raise serious issues which may not just be issues of justice and we get to this layer moral virtue other than justice become prominent⁶.

Engelhardt’s view

Contrary to Daniels’ view, Engelhardt thinks that it is difficult to gain moral legitimacy for the thoroughgoing imposition on health care of one among the many views of beneficence and justice. There are as many accounts of beneficence, justice and fairness as there are major religions, and the secular moral authority for common action is derived from permission or consent, appeals to ideas of social justice in framing health care policy can be dishonest in suggesting a canonical agreement in secular moral reflection. Such agreement does not exist. They can be demagogic in inciting the coercive use of unjustified state force. Engelhardt also thinks that a basic human secular moral right to health care does not exist – not even to a “decent minimum of health care”. Rights to health care constitute claims on services and goods. Unlike rights to forbearance, which require others to refrain from interfering, rights to beneficence are rights grounded in particular theories or accounts of good. Without an appeal to the principle of permission, to advance such rights is to claim that one may press others into labor or confiscate their property⁷.

Their views about natural and social lottery are also different. For Engelhardt,

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⁵ Just Health Care, pp. 45-6.
⁶ Ibid., pp. 47-8.
losses in natural lottery are the deliverances of nature, for which no one is responsible. It may very well be unfeeling, unsympathetic, or uncharitable not to help those injured by nature. But it is another thing to show in general secular moral terms that individuals owe others such help in a way that would morally authorize state force to redistribute their private resources and energies or to constrain their free choices with others. The natural lottery creates inequalities and places individuals at disadvantage without creating a straightforward secular moral obligation on the part of others to aid those in need. On the other hand, some will be disadvantaged because of the malevolent and blameworthy actions and omissions of others. These are unfair circumstances resulted from social lottery, which just and beneficent states should try to prevent and to rectify through legitimate police protection, forced restitution, and charitable programs. However, restitution is owed by the injurer, not society or others, one will need an argument dependent on a particular sense of fairness to show that people other than the injurer should submit to the forcible redistribution of their resources to provide health care to those injured.

Engelhardt further draws a line between the unfortunate and the unfair according to this view about natural and social lottery. Injuries, disabilities, and diseases due to the forces of nature are unfortunate. Injuries, disabilities, and diseases due to the unconsented-to actions of others are unfair. Still, outcomes of the unfair actions of others are not necessarily society’s fault and are in this sense unfortunate. The pursuit of equality faces both moral and practical difficulties. The translation of unfortunate circumstances into unfair circumstances, other than with regard to violations of the principle of permission, requires the imposition of a particular vision of beneficence or justice. Moreover, attempts to restore health indefinitely can deplete societal resources in the pursuit of ever-more incremental extensions of life of marginal quality.

However, Engelhardt also thinks that within the constraints of secular moral authority, it will be proper to set some inequalities aside by using commonly owned resources to aid those in need. But this requires distinguishing between two forms of egalitarianism: an egalitarianism of envy and an egalitarianism of altruism. An egalitarianism of envy holds that a second world is worse than a first if, all else being equal, the second world differs from the first in some person’s being better off in the second world without anyone being worse off. From this perspective the good fortune of someone can be regarded as unfair in itself or to all others. First, the good fortune of having more than others may be held to be unfair if it simply happens and is thus

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8 The Foundations of Bioethics, pp. 379-81.
9 Ibid., pp. 382-4.
not deserved. According to Rawls’ view, good fortune is fair if it redounds to the benefit of the least-well-off class. Otherwise, good fortune exists without justification, and is in that sense unfair. Second, good fortune may be seen simply as robustly unfair in disturbing equality. By giving a prior morally canonical status to all being equal, this form of egalitarianism legitimates taking from those who have by good fortune received more. In its strongest form it legitimates making all worse off if this realize equality. With respect to health care, this kind of egalitarianism can lead to the illegitimate use of state force in forbidding the rich from purchasing better care or in slowing technological development to ensure that it would be available only when it can be provided for all.\textsuperscript{10}

In contrast, an egalitarianism of altruism appeals to the sympathy of others to help those suffering. It holds that a second world is worse than the first if one of the inhabitants of the second world experiences pain, deformity, disability, or an unwelcome earlier death that is not experienced in the first world. This kind of egalitarianism is not concerned whether some have more, only whether some suffer. Inequalities are not in themselves disvalued. What is disvalued is suffering or that some lack an important good. Such as egalitarianism can legitimately, within the constraints set by the principle of permission, motivate choices regarding the use of commonly owned resources.\textsuperscript{11}

Remarks on Daniels’ and Engelhardt’s conception of just health care from Confucian point of view

For Confucian, it is our moral obligation to concern with others’ suffering, and we should try our best to relieve their pain. If we are indifferent to others’ suffering, we do not deserve to be human, whatever our religious views or our conceptions of good we have. As Mencius said,

All men have a sense of compassion which cannot bear to see the sufferings of others. Such a sense of compassion was possessed by the Former Kings, and for this reason they practiced compassionate government...The reason why I say that all men have a sense of compassion which cannot bear to see the sufferings of others is this: Suppose a man, all of a sudden, saw child falling into a well. He would invariably be moved to compassion, not because he wished to make friends with the parents, nor because he wished to win the praise of fellow-villagers and friends, nor yet because he disliked the cry of the child.

\textsuperscript{10} The Foundations of Bioethics, pp. 386-7.
\textsuperscript{11} Ibid.
From this it can be seen that those who have not feeling of compassion are not human…(Mencius, 2A: 6)

This kind of moral feelings can be served as the basis of common morality. To help those suffering is not only a kind of matter we can do if we please, as if there is a choice for us not to do so, but a moral duty we have to realize. Indeed, based on this feeling of compassion, we have a more intact relationship with the members of our society than that of Engelhardt described, no matter which religious view and conception of good they have.

Within our moral duties to the members of our society, the most stringent one should be to take care of the most needy persons, such as those single old men, old women and orphans. Mencius cited the Sage King Wen as an example of a Confucian policy maker in that King Wen took priority in caring of them (Mencius, 1B: 5). It means that it is the responsibility of the state, but it also implies that it is also the responsibility of all members of the society through taxation or other means. Persons suffered from diseases and cannot afford their own medical expenses can be seen as the similar cases which we should concern firstly. According to Confucianism, all human should fully develop their moral capacities and other talents. If it is hampered by natural or social lotteries, such as suffered from diseases, which is not due to the person own fault, we have a moral duty to assist them to overcome these kinds of obstruction. The person who fulfills this duty is participating the creative process of Tao and is praised as the sage. This principle of participating the way of Tao is stated in The Doctrine of Means as follows:

It is only those who are most sincere could develop to the full their mandate/nature; those who could develop to the full their mandate/nature, are those who could extend to the full the mandate of other’s mandate/nature; and it is those who could extend to the full the mandate/nature of others are those who could extend to the full the mandate/nature of all things; those who could extend to the full the mandate/nature of all things are those who participate the flourishing process of Tao, and those who participate the flourishing process of Tao stands as part of the trinity with Heaven and Earth. (Chapter 22)

This duty derives from our moral feelings to others’ suffering. A society assists all its members to realize their moral capacities and talents can be viewed as just, otherwise it can be viewed as unjust. This principle of justice falls within the doctrine of Yi in Confucianism, which can be seen as an appropriate way all persons should be treated, though Yi has a richer meaning regarding to moral appropriateness.
Hence, Engelhardt’s conception of justice, which only counts injuries, disabilities, and diseases due to others actions without consent as unfair, may be too restricted on retributive justice from Confucian point of view. Moreover, Engelhardt emphasizes on the freedom to purchase one own health care services may be pointless to those whose income cannot pay for their urgent health care needs. Viewed in this way, his conception may also overstate the negative aspect of freedom, that is, freedom from refrain by others to purchase its own health care services, but his concern to its positive aspect, the ability to meet one own health care needs, is not enough.

Moreover, we can also find some problems involved in Daniels’ opportunity approach with reference to Confucian conception of just health care. Within the four layers of institutions Daniels suggested to prevent, correct or compensate for the departures from normal functioning, the fourth layers serve for the irreversible terminal ill people. Since they have no more chance to restore their normal functioning, Daniels thinks that the issues involved here may be other than the issues of justice. In contrast, according to Confucianism, it will be seriously unjust if the state does not provide proper care for such persons and their basic needs are not met owing to their inabilitys to pay for. Though they have no chance to function normally, they also have their own nature or mandate to develop. Palliative care or other services may be needed to let their remaining lives meaningful, and the state should responsible for the expenses if they cannot pay for them. Hence, to assist one to fulfill his own nature or mandate in Confucianism has much richer meaning than just to restore his normal functioning.

An Outline of Confucian conception of Just Health Care

As we have seen before, it is the responsibilities of the state to take care those most needy. It is an extension of moral feelings on others sufferings to political domain. However, it does not mean that the state have to provide all goods and services to meet all the needs of its people. Rather, they should pay by themselves if they can do so. As Mencius said,

…A wise ruler will decide on such a plan for the people’s means of support as to make sure that they can support their parents as well as their wives and children, and that they have enough food in good years, and are saved from starvation in bad (Mencius, 1A: 7).

The passage cited means that the state should not interrupt its people to earn their
livings and should take some positive steps to make sure their earnings is sufficient to support their families. However, it also implies that the people should do these by themselves, with the help of their state. Referring to our health care needs, it means that the people have a duty to pay for them if they can afford those expenses. In Confucianism, since our own bodies are gifts from our parents, it is a duty of filial piety to keep our bodies as healthy as possible, and should not let them hurt without good moral reason. Our bodies can also be seen as vehicles to realize our morality. If we have a duty to be moral, we also have a duty to keep our bodies healthy. Moreover, since we have a duty to support our families, we should also have a duty to pay for their health care costs. Hence, the state should suggest its people to establish their own health saving accounts, which are responsible by themselves, in order to make sure that they can support the health care expenses of themselves and their families now and in the future. This health saving scheme can be viewed as one of the state’s plans for its people’s means of support.

However, it does not mean that our moral duty of beneficence is limited to our families only. In Confucianism, the sense of compassion cannot bear to see the sufferings of others is equal to the virtue of ren (beneficence), which is the highest among all virtues, and filial piety is a starting point of practicing ren, since this sense of compassion manifest most directly through our attitudes towards our parents, but it should also extend to other humans and even other beings. As Mencius said,

Do reverence to the elders in your own family and extend it to those in other families, showing loving care to the young in your own family and extend it to those in other families (Mencius, 1A: 7).

Hence, we should support the policy of our state in assisting those who cannot afford to pay the health care expenses of themselves and their families, provided that it will not undermine our ability to meet our basic needs. Since most people have to responsible for their own health care expenses through health saving accounts if they can do so, the burden of public subsidies to the needy persons will be greatly relieved.