

Health Capabilities, Outcomes, and the Political Ends of Justice

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Ruger's (2010) approach to justice in health policy is built upon the capabilities accounts of justice developed most prominently by philosophers such as Martha Nussbaum and especially Amartya Sen. Her approach thus inherits many of the most persuasive and most contested features of the theories on which she relies.

We approach Ruger's work as sympathetic critics. Ours is also at its core a teleological theory, broadly Aristotelian in its roots, in so far as it frames the aim of justice in relation to an underlying conception of human well-being (Powers and Faden, 2006). Our theory, as well as hers, begins with the assumption that health matters to justice in and of itself, and not merely indirectly; for example, through the instrumental role that health plays in achieving fair equality of opportunity.

Unlike Ruger, however, we do not endorse capabilities as the preferred metric for use by teleological theories of justice. Also unlike Ruger, our theory operates with a pluralist conception of the irreducible, core elements of well-being that, taken together, identify the demands of justice in any sphere of public policy and the design of its implementing institutions. This pluralist conception is something we share with other teleological theories, but from which Ruger appears to depart. Instead, her deliberate emphasis is upon the single focal value of health, and in particular, an account of what she calls the 'central health capabilities.'

In this essay, we take on some of the main lines of argument that Ruger and her intellectual predecessors employ in the defense of capabilities as the appropriate metric of a teleological conception of justice, drawing in part on the strengths of pluralistic teleological theory. We argue that the move to capabilities is not necessary for meeting certain types of objection to teleological accounts and that a wholesale displacement of outcomes is incongruent with the best justificatory arguments a teleological theorist has available. Finally, we argue that, specific to health, the capabilities metric is insufficient in a theory of justice concerned with health over the

full life-course and insufficient in its application to the diverse range of threats to health other than ones posed by individual choices.

What is the distinctive point in following the lead of Sen and others who understand the relevant ends of justice in the idiom of 'capabilities'? Ruger quotes, with approval, Martha Nussbaum's oft-stated explication of the political goal as 'the capability to function well if one so chooses' (2010, p. 45), noting that this formulation distinguishes between achievement and the freedom to achieve. (p. 51). In similar fashion, Sen emphasizes that the focus of his theory is on 'the actual freedom of choice a person has over alternative lives that he or she can lead' (Sen, 1990, p. 114). In their recent work, both Sen and Nussbaum routinely explicate the notion of capability as an opportunity to achieve valuable functionings, rather than in terms of actual achievement (Sen, 1999, p. 73; Sen, 2009, pp. 235-238, 253 and 287-288; Nussbaum, 2011, pp. 18-22 and 25-26).

To illustrate the point of difference, Ruger references the nutrition example used by Sen and Nussbaum. Making the option or opportunity for good nutrition, rather than being well nourished, the appropriate target of political concern preserves what is morally important about the difference between choosing to fast and thereby forgoing health functioning (2010, pp. 45 and 53) and failing to achieve nutritional functioning because of food insecurity.

By contrast, we adopt an outcome-oriented approach, one that emphasizes the ultimate ends that a theory of justice should have in its sights. We conceptualize these ends as states of well-being that persons are presumed to have sufficient reason to value for themselves, including personal security, being respected, attachment, self-determination, reasoning and health.

Although Ruger relies on measures of actual health functioning to provide useful evidential information about health capabilities, capabilities and not functionings remain the focus of her account. A major, if not the major, reason she puts forward for preferring capabilities over health outcomes is to 'throw light on the distinction between achieving a given health outcome ... through coercion versus voluntary action' (2010, p. 82). Sen's view of capabilities-as-freedom is clearly central to Ruger's view of public policy: 'expanding freedom is both the primary end and principle [*sic*] means of public policy; consequently public policy should focus on removing barriers to freedom that leave people with little choice to exercise their reasoned agency' (p. 2).

Ruger here is mirroring a family of arguments that are prominent in Nussbaum and Sen's defenses of a capabilities metric over outcomes. As Nussbaum points out, theories that have as their end the securing of human well-being are open to the criticism that they invite or at least cannot rule out dogmatic, excessively paternalistic, or morally imperialistic political responses in the pursuit of well-being related outcomes (Nussbaum, 2011, pp. 89-93 and 101-112). In similar fashion, Sen expresses the general worry that the theoretical focus on achievement of valuable states of well-being will cause us to ignore the moral importance of an agent's own judgments and for whatever

reasons, be tempted to override them (Sen, 2009, p. 288). However, if a theory's metric of justice is exclusively the creation of opportunities to achieve the desired outcomes, and not the outcomes themselves, the theory is insulated from concerns about the use of morally unacceptable means.

While we, too, are concerned about inappropriate means to the securing of well-being, shifting the political end from successful functioning to capabilities is not a concession necessary to ward off such worries. There are two closely related reasons why this concession is unnecessary, especially within a theory such as our own that proceeds with a pluralist, non-maximizing conception of well-being that includes as essential states respect and self-determination as well as health.

One reason that the concession is unnecessary arises from the way that all pluralist, non-maximizing teleological theories are structured and conceived. Here we join theorists who do not conceive of their theoretical ends, either singly or in aggregate, as something to be maximized. Theories of this kind do not set up one end such as health as an aim that has more central significance than others, nor do they assume that there is internal theoretical pressure to sacrifice other elements of well-being for more of a preferentially defined good. Indeed, the plural, irreducible, unranked schema of human good pre-empts just this sort of move. Moreover, theories such as ours that frame the aim of justice in terms achieving sufficiency in all aspects of human well-being do not even demand maximization of a single element of the good, even if under some circumstances its maximal pursuit occasions no associated sacrifice of another good on the list.

A second and related reason is that the charges are easily avoidable by way of other theoretical resources. Theories can build into the list of distinct elements of well-being some inherent limitations on the pursuit of these goods by others who claim to be acting on the individual's behalf. In our own teleological account, both the demands of respect for each as a moral equal and the robust moral protections provided by our outcome-oriented conception of self-determination are co-equal ends of justice with that of health and the other essential dimensions of well-being. As such, they set significant limits on the kinds of interferences these complaints envision.

We treat the end of living a self-determining life as involving some considerable, although not perfect, control over the major aspects of one's own life such that individuals are free from the external domination and control by others. While the particulars of that account are beyond our task or space limitations here, the point is that a pluralistic conception of the ends of justice, which Ruger resists, rejects the notion of separate spheres of justice in which a single kind of good reigns supreme. A pluralistic normative theory, by contrast, that includes, as part of its inventory of the valuable outcomes, commitments to equal social standing or status, as well as the end of

each person in leading a self-determining life, offers built-in constraints on external compulsion.

Specific to health policy, a theoretical strategy that rejects the idea of separate spheres of justice in favor of a plurality of ends of well-being allows for the retention of health outcomes as the defined political end without permitting the imposition of means that run afoul of the theory's other co-equal ends. Moreover, the pluralist strategy has the advantage of offering a more direct route to protecting against unjustified undermining of choice. Living a self-directed, self-determining life is itself a core element of well-being in the same way that health is valuable for its own sake, rather than for the sake of some further end.

Moreover, any theoretical strategy that obscures the presumed importance of actually achieving well-being runs into a fundamental problem of coherence with one of the most powerful kinds of justificatory strategies that a teleological theory can call upon. Specifically, the capability approach has to start with some account of valuable outcomes, and one Aristotelian way to proceed is on the assumption that the successful exercise of some capability is a good that anyone would, on reflection, want for themselves, whatever else they want (Nussbaum, 2000, p. 88; Powers and Faden, 2006, pp. 41–42). What we want and what we value, on such a justificatory approach, is a certain kind of valuable outcome, not merely an opportunity to get such an outcome if we happen to find such a thing attractive. The assumption is that its successful exercise is valuable for anyone, and, accordingly, there is some reason to suppose that an aim of justice involves its promotion as a good for all. But as we have argued, nothing in that assumption commits its defender to any particular account of the morally acceptable means, and other elements of an overall theory can address questions of that sort.

We have argued thus far that teleological theories can successfully block the criticism that they permit institutions to secure health or other desirable ends through morally unacceptable means without having to make capabilities the metric of justice. In addition, downgrading the theoretical status of health achievements is not consonant with the justificatory structure that supports health as a direct end of justice. An additional set of objections, to which we now turn, is that a capabilities metric is not sufficient for a theory of justice that aspires to theoretical relevance over the full life course and that takes adequate account of the full range of threats to health.

A subsidiary point that Ruger makes as part of her list of arguments for the focus on capabilities is that this focus incorporates within the account of the ends of political action a prominent role for individual responsibility (2010, p. 82; cf. Sen, 2009, p. 19). Although her theoretical point about responsibility is not well developed, its policy implications are suggested in her emphasis on health agency, the ability of individuals to make better health choices for themselves, and the opportunity to have both the resources and supporting social conditions for maintaining commitment and adherence to those choices.

While it is important for institutions charged with securing and promoting health to give prominent attention to the range of options and opportunities people have for informed choices that can, in turn, lead to better health, individual choice is by no means the bulk of the story when it comes to justice and health. Simply offering more and better options for choice cannot be the dominant job of justice within health policy.

Consider first what we owe children, as well as the critical role of childhood in a life course approach to justice in health. To the extent that the theory holds that the design of public health policies and interventions should be tightly linked to the goal of accountability for individual choices, the health needs of children find no place within such a schema. Respecting choice and insisting on responsibility simply do not figure centrally in the overall nexus of obligations in justice to the health of children, although ensuring that children secure sufficient health to allow for the development of reasoning and self-determination as they mature does.

One might of course reply, as Nussbaum does, that the case of children provides an exception to the general appropriateness of a capabilities metric (Nussbaum, 2011, p. 26; 2006, p. 172; 2000, p. 76). Making this move in a theory intended for health policy and public health, however, necessarily cedes a prominent role to health outcomes, not only because of what is morally relevant about childhood but also because of the implications of what is secured or lost in childhood for prospects for well-being later in life. To the extent that some well-known and well-documented empirical assumptions about the importance of early childhood health for health outcomes over the whole life-course hold true, then outcomes and not capabilities in childhood must be the express political ends of any account that aspires to serve not only as a theory of justice for children, but also as theory of justice in health applicable across the full human life span.

We go further, however. The more fundamental aim embodied in the ideal of pursuing positive health outcome highlights the fact that we want to remove barriers of all sorts that keep people from experiencing sufficient health, not merely the barriers that impede choices or limit options of autonomous, morally accountable adults or that fail to hold adults accountable for their health-affecting actions. An account of justice in health that makes central the demand for a tight linkage between policy prescriptions and considerations of responsibility for health-affecting choices, as important as these considerations are for competent adults, is insufficient not only as an account of the institutional requirements of justice with respect to children but also with respect to reasonable concerns that we have about securing sufficient health for adults.

Adults, no less than children, cannot on their own protect themselves from harmful environmental exposures and from many health threats in our food, water, and pharmaceuticals, in the healthcare system, in the workplace, on the road and in the skies. These are threats that require management through collective action and that can be mitigated only minimally by education or expansion of individual choices intended to enable their avoidance.

In some instances, a combination of the seriousness of the health threat and the informational and practical impediments to informed individual action favor bans or strict regulation as the appropriate institutional response.

A somewhat different but overlapping concern is that some of the most important impediments to health are a product of structural injustice. Health and other aspects of well-being can be profoundly and pervasively undermined through a complex, interactive set of causal pathways across the entire social structure. In their totality, these interactions combine to create, perpetuate, and magnify harmful effects on well-being that are difficult to escape but for extraordinary hard work, rare good fortune, or both (Powers and Faden, 2006, pp. 50 - 79). While considerations of individual accountability for choices are important moral concerns, the focus on capabilities, at least as long as they hew closely to policies designed to improve decision-making capacity, is insufficient to address these deeper sources of ill-health. When poor health and other deprivations of well-being are causally attributable to complex social forces over which even mature adults have limited control or power, public policies that prioritize enhancing individual choice are themselves morally suspect. Norms of personal responsibility have diminished force in contexts characterized by social structural patterns of systematic disadvantage. Unless one denies the existence of such patterns, making health capabilities, with its strong norms of personal responsibility, the metric for public health ignores some of the most egregious injustices in health and obscures the public policies necessary to address them.

References

- Nussbaum, M. (2000) *Women and Human Development: The Capabilities Approach*, Cambridge University Press, Cambridge.
- Nussbaum, M. (2006) *Frontiers of Justice*, Harvard University Press, Cambridge, MA.
- Nussbaum, M. (2011) *Creating Capabilities*, Belknap Harvard, Cambridge, MA.
- Powers, M. and Faden, R. (2006) *Social Justice: The Moral Foundations of Public Health and Health Policy*, Oxford University Press, Oxford.
- Ruger, J. (2010) *Health and Social Justice*, Oxford University Press, Oxford.
- Sen, A. K. (1990) "Justice: Means versus freedoms", *Philosophy and Public Affairs*, 19, pp. 111-121.
- Sen, A. K. (1999) *Development as Freedom*, Anchor Books, New York.
- Sen, A. K. (2009) *The Idea of Justice*, Oxford University Press, Oxford.