

Health (care) and human rights: a fundamental conditions approach

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Abstract Many international declarations state that human beings have a human right to health care. However, is there a human right to health care? What grounds this right, and who has the corresponding duties to promote this right? Elsewhere, I have argued that human beings have human rights to the fundamental conditions for pursuing a good life. Drawing on this fundamental conditions approach of human rights, I offer a novel way of grounding a human right to health care.

Keywords Right to health · Right to health care · Human rights · Social determinants of health · Christopher Boorse · Norman Daniels

Introduction

The idea of a human right to health care can be found in many international declarations. For example, Article 25 of the UN Declaration of Human Rights (1948) states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care” [1]. Likewise, Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” and proclaims that States should take necessary steps for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases” and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness” [2]. However, is there a human right to health care? If so, what grounds this right? Who has the corresponding duties? Elsewhere, I have argued that human beings have human rights to the fundamental conditions for pursuing a good

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life [3]. I called this the *fundamental conditions approach*. Drawing on this approach, I shall, in this article, offer a novel way of grounding a human right to health care. In particular, my argument is as follows:

- (1) Human beings have human rights to the fundamental conditions for pursuing a good life.
- (2) Basic health is a fundamental condition for pursuing a good life.
- (3) Therefore, human beings have a human right to basic health.
- (4) A human right to basic health implies a human right to those essential resources for maintaining and promoting basic health.
- (5) Basic health care is an essential resource for maintaining and promoting basic health.
- (6) Therefore, there is a human right to basic health care.

I begin by sketching the fundamental conditions approach.

The fundamental conditions approach

Human rights are grounded in what I call the fundamental conditions for pursuing a good life, where a good life is one spent in pursuing certain valuable, basic activities. By “basic” activities, I mean activities that are important to human beings *qua human beings’* life as a whole. Sunbathing, for example, is an activity, but is not a basic activity, because a human being *qua human being’s* life as a whole is not affected if a human being did not go sunbathing. In addition, activities that are very important to an individual human being’s life as a whole may nevertheless not be basic activities, because these activities may not be important to human beings *qua human beings’* life as a whole. In other words, it is important to distinguish between activities that are important to human beings *qua individuals’* life as a whole and activities that are important to human beings *qua human beings’* life as a whole. Only activities that are important to human beings *qua human beings’* life as a whole qualify as basic activities. For instance, being a professional philosopher is very important to my life as a whole. But being a professional philosopher is not a basic activity because it is not an activity that is important to human beings *qua human beings’* life as a whole. Similarly, an individual may devote her entire life to the betterment of those in need. This is without a doubt a very moral activity and may also be very important to this individual’s life as a whole. But it is not a basic activity, as I understand it, because, again, it is not an activity that is important to human beings *qua human beings’* life as a whole. Finally, basic activities are ones that if a human life did not involve the pursuit of any of them, then that life could not be a good life. In other words, a human being can have a good life by pursuing just some, and not all, of the basic activities. Some of the basic activities are as follows: deep personal relationships with, for instance, one’s partner, friends, parents, children; knowledge of, for example, the workings of the world, of oneself, of others; active pleasures such as creative work and play; and passive pleasures such as appreciating beauty.

It may be helpful to note here that a good life, as I understand it, is not the same thing as an excellent life. An excellent life may require one to have certain accomplishments such as discovering a cure for cancer or having climbed Mount Everest, whereas a good life, as I understand it, does not. My understanding of a good life is closer to what might be called a “minimally decent life.” But whereas the idea of a “minimally decent life” is often not explicated, I explicitly understand a good life in terms of pursuing the basic activities and I detail what some of these basic activities are.

The contents of the fundamental conditions for pursuing a good life can be derived from the basic activities. The fundamental conditions are various goods, capacities, and options that human beings qua human beings need, whatever else they qua individuals might need, in order to pursue the basic activities. For example, the fundamental goods are resources that human beings qua human beings need in order to sustain themselves corporeally and include such items as food, water, and air. The fundamental capacities are powers and abilities that human beings qua human beings require in order to pursue the basic activities. These capacities include the capacity to think, to be motivated by facts, to know, to choose an act freely (liberty), to appreciate the worth of something, to develop interpersonal relationships, and to have control of the direction of one’s life (autonomy). The fundamental options are those social forms and institutions that human beings qua human beings require if they are to be able to exercise their essential capacities to engage in the basic activities. Some of these include the option to have social interaction, to acquire further knowledge, to evaluate and appreciate things, and to determine the direction of one’s life. The difference between the fundamental goods and the fundamental options is that the former focuses on the internal, physical conditions for pursuing a good life whereas the latter focuses on the external, environmental conditions for pursuing a good life.

Having the fundamental conditions for pursuing a good life, of course, cannot guarantee that an individual has a good life; no condition can guarantee this. Rather, these goods, capacities, and options enable human beings to *pursue* the basic activities. Also, these fundamental conditions are intended to provide human beings with an *adequate range* of fundamental goods, capacities, and options so that they can pursue those basic activities that are characteristic of a minimally decent human life. Now, many of the fundamental conditions are all-purpose conditions in that they are needed regardless of what basic activities one aims to pursue. For example, all human beings need food, water, the capacity to think, and the capacity to determine the direction of their lives, whatever basic activities they aim to pursue. But it is possible that some fundamental conditions are needed just for pursuing particular basic activities. For instance, it is possible that the capacity to develop deep personal relationships is needed only if one aims to pursue deep personal relationships. Suppose that this is the case. We can leave it open whether a particular individual will make use of all the fundamental conditions when pursuing a particular kind of good life. This individual’s having all the fundamental conditions means that this individual would still have access to an adequate range of goods, capacities, and options to pursue those basic activities that are characteristic of a minimally decent human life. This could become important if, for instance, this

individual changed his/her mind about pursuing a particular kind of good life. Finally, owing to space, I shall not be able to expound upon how much of the fundamental conditions human beings need in order to pursue the basic activities and what one should do when one can only promote some, but not all, of these conditions in a given society. All too briefly, my view is that human beings need enough of these fundamental conditions in order to pursue the basic activities; that when one can only promote some, but not all, of these conditions in a given society, what one should do will depend on the context but that there are likely to be determinate answers; and that the ultimate goal of a given society is to devise policies that would ensure that every person has enough of these conditions.¹

In my view, these fundamental conditions for pursuing a good life ground human rights because having these conditions is of fundamental importance to human beings, and because rights can offer powerful protection to those who possess them. The former is true because if anything is of fundamental importance to human beings, then pursuing a characteristically good human life is; pursuing a good life is the first and foremost aim of most human beings. It seems clear that if we attach a certain importance to an end, we must attach this importance to the (essential) means to this end. For example, if we care about making a cake, then we must care about the (essential) ingredients that would enter into making this cake, such as flour, water, sugar, eggs, and raising agents. Losing any of these essential ingredients is tantamount to losing the cake itself. Given this, since pursuing a good life is of fundamental importance to human beings, having the fundamental conditions for pursuing a good life must also be of fundamental importance to human beings.

¹ My notion of the fundamental conditions for pursuing a good life will prompt some to think of Martha Nussbaum's *central capabilities approach*. Elsewhere, I have explained in greater detail how the two views differ. See, e.g., [3, 4]. All too briefly, the hallmark of Nussbaum's approach is her emphasis on our opportunities to choose to do certain things, i.e., capabilities, rather than on what we actually choose to do, i.e., functionings. The problem is that a significant number of human rights cannot be adequately explained in terms of capabilities. For example, capabilities do not seem adequate for explaining what might be called status rights, which are rights that protect our moral status as persons. In the UDHR, the right to recognition everywhere as a person before the law (Article 6); the right to equal protection before the law (Article 7); the right against arbitrary arrest, detention, or exile (Article 9); the right to a fair and public hearing (Article 10); the right to be presumed innocent until proven guilty (Article 11) are all status rights, as they protect our moral status as persons. If Nussbaum's approach were able to explain these rights, it would imply that one can sometimes choose not to exercise these rights, since capabilities are concerned with our real opportunities to choose. But it does not seem that one can sometimes choose whether or not to exercise these rights. For instance, it does not seem that one can sometimes choose not to be recognized everywhere as a person before the law; choose not to have equal protection before the law; choose to be arrested arbitrarily; choose to have an unfair hearing; and choose to be presumed guilty. Hence, capabilities do not seem particularly well-suited to explain these rights. In contrast, the fundamental conditions approach can explain status rights. When we pursue the basic activities, conflicts with others are bound to arise. If and when such conflicts arise, we need guarantees that we would be treated fairly and equally. Fair trial, presumption of innocence, equal protection before the law, not arrested arbitrarily, and so on serve to ensure that we are treated fairly and equally. As such, they are things that human beings qua human beings need whatever they qua individuals might need in order to pursue the basic activities. As such, the fundamental conditions approach can explain why there are these human rights.

That rights can offer powerful protection to those who possess them is well known.² By their nature, rights secure the interests of the rightholders by requiring others, the duty-bearers, to perform certain services for the rightholders or not to interfere with the rightholders' pursuit of their essential interests. In addition, at least on certain structural accounts of rights, rights typically prevent the rightholders' interests that ground rights from being part of a first-order utilitarian calculus.³ This means that if a rightholder has a right to something, V, then typically no non-right considerations can override the rightholder's right to V. Finally, as some writers have pointed out, because the rightholders are entitled to these services as a matter of rights, this means that the rightholders can simply expect the services without requesting them [7]. Given the strong protection that rights can offer for the rightholders, and given the importance of having these fundamental conditions to human beings, it seems reasonable that human beings have rights to these fundamental conditions. If this is correct, this provides us with an argument for the idea that human beings have human rights to the fundamental conditions for pursuing a good life.

Basic health as a fundamental condition

Next, I shall argue that basic health is a fundamental condition for pursuing a good life. To do this, let me first define basic and non-basic health:

Basic health is the adequate functioning of the various parts of our organism that are needed for the development and exercise of the fundamental capacities.

Non-basic health pertains to any biological functioning that does not affect the various parts of our organism that are needed for the development and exercise of the fundamental capacities.

Recall that the fundamental capacities are powers and abilities that human beings qua human beings need in order to pursue the basic activities and include capacities such as the capacity to think, to be motivated by facts, to know, to choose an act freely (liberty), to appreciate the worth of something, to develop interpersonal relationships, and to have control of the direction of one's life (autonomy). Various parts of our organism are needed for the development and exercise of these fundamental capacities. For instance, various life processes (including respiration, digestion, absorption, metabolism, circulation) and various organ systems (including the nervous system, the skeletal system, the cardiovascular system, the digestive system, the immune system, and the reproductive system) make up, enable, and sustain these fundamental capacities. These parts of our organism need to be adequately functioning in order for the development and exercise of the fundamental capacities. Accordingly, an individual has basic health just in case the various life processes, organ systems, and so on that are needed for the

² Rights could also have non-instrumental importance in addition to having instrumental importance.

³ See, e.g., Ronald Dworkin [5] and Robert Nozick [6].

development and exercise of the fundamental capacities in the individual are adequately functioning. An individual does not have basic health just in case the life processes, organ systems, and so on that are needed for the development and exercise of the fundamental capacities in the individual are not adequately functioning.

Sometimes some parts of our organism can undergo certain development or experience certain events that do not affect in any way the adequate functioning of the parts of our organism that are needed for the development and exercise of the fundamental capacities. Such developments and events can be classified as non-basic health matters. For instance, one may develop a benign cyst that affects one's singing ability but nothing else. Or, one may experience a minor cut to one's skin. Suppose that the cyst and the minor cut do not affect in any way the adequate functioning of the parts of our organism that are needed for the development and exercise of the fundamental capacities. They would be considered non-basic health matters.

Here, it is worth mentioning some of the crucial factors that can affect basic health. I shall discuss six of them. The list is not intended to be exhaustive.

1. *Nutrition* Without adequate nutrition, the cells and tissues in our body would not receive sufficient nutrients and would cease to function properly as a result.
2. *Diseases* Pathogenic microorganisms such as bacteria and viruses can infect individuals and cause damage to their tissues, thereby resulting in the dysfunction of various parts of our organism that are needed for the development and exercise of the fundamental capacities. In addition, genetic mutations and defects can also disrupt the adequate functioning of various parts of our organism that are needed for the development and exercise of the fundamental capacities. For instance, certain genes are needed for the production of certain proteins or enzymes, which are in turn needed to convert certain chemicals in our body to some other chemicals or to carry certain substances in our body from one place to another. Genetic mutations and defects can cause these genes to stop producing these proteins or enzymes, thereby resulting in the abnormal build-ups of certain chemicals, which then become toxic to various tissues. For example, phenylketonuria, or PKU, one of the most common genetic causes of mental impairments, is the result of deficiency of an enzyme required to convert phenylalanine to tyrosine. With normal enzymatic activity, phenylalanine is converted to tyrosine, which is then utilized by the body. However, when the phenylalanine hydroxylase enzyme is absent or deficient, phenylalanine abnormally accumulates in the blood and is toxic to brain tissue. Without treatment, most infants with PKU develop mental impairments as phenylalanine accumulates. There is a whole cluster of about seven thousand kinds of single-gene disorders, including Tay-Sachs and Sandhoff Disease, that cause mental impairments this way [8].
3. *Injuries* Physical injuries can damage various tissues and organs in an individual's body. Mental injuries and traumas can lead to acute stress reaction and thereby increase the production of, for instance, cortisol, the excess of which can damage brain tissues.

4. *Disabilities* In my view, disability results when diseases and/or injuries cause an individual to lose one or more of the fundamental capacities. For instance, when an individual loses the use of all of her limbs as a result of a congenital defect such as muscular dystrophy or as a result of an injury, the individual can be said to have a disability as the individual has lost (at least a key portion of) the fundamental capacity to act.
5. *Behavior* Sometimes an individual may act without realizing that a particular action can damage her basic health. For instance, someone who is heterosexual and does not use intravenous drugs might mistakenly believe that he cannot get HIV and therefore does not need to use protection when having sex. Other people may deliberately engage in actions that are likely to endanger their basic health such as smoking and drinking and driving.
6. *Social, political, and economic environment* Lack of sanitation, clean water, clean air, and so on can lead to more diseases. Lack of housing can make an individual more prone to injuries. An individual's income level and the individual's political status, such as whether an individual is a citizen or not, can also affect his/her basic health. Indeed, there is evidence that immigrants in the United States tend to have higher rates of heart disease, high blood pressure, and diabetes [9].

To develop this account of basic health further, let me compare and contrast it with some other existing alternatives. For instance, drawing on Christopher Boorse's work, Norman Daniels has advanced a biostatistical account of health, according to which health is understood as "normal functioning for our species" [10, p. 37; 11]. In particular, Daniels argues that health is the absence of pathology, where pathology—which he takes to be an umbrella term that encompasses diseases, injuries, and disabilities—is "any deviation from the natural functional organization of a typical member of a species" [10, p. 37]. As Daniels elaborates,

a biological function can be defined as a causal contribution to a species-typical goal, such as survival or reproduction, and it is the task of the biomedical sciences, broadly conceived, to characterize these functions of organisms and their parts. A departure from normal functioning is then simply a statistical deviation from the causal contribution of the relevant part [10, p. 38].

A problem with Daniels's definition of health is that it seems to categorize certain health states incorrectly as pathology. For instance, consider homosexuality. Homosexuality interferes with statistically normal reproductive function of human species. Given this, on Daniels's definition of health, it would be classified as a pathology. Indeed, Boorse has acknowledged that his account of health implies that homosexuality is a pathology [11, p. 63].⁴ To make this implication more palatable, Boorse argues that classifying homosexuality as a pathology is a descriptive project and need not carry any normative/practical implications [11]. However, homosexuality does not seem to be a pathology. If so, this calls into question Daniels's

⁴ See Elseijn Kingma [12] for a discussion of Boorse regarding this issue.

definition of health. In contrast, on my account of basic health, homosexuality does not affect the adequate functioning of the various parts of our organism that are needed for the development and exercise of the fundamental capacities. As such, an individual whose sexual orientation is towards member of the same sex could still have basic health.

Let me also compare my account of basic health with the World Health Organization's definition of health, according to which health is "a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity." As many people have pointed out, on the surface of it, this definition seems too broad.⁵ Among other things, the World Health Organization's definition would seem to imply, for instance, that if an individual's complete well-being depended on her working at her dream job, then an individual who is not working at her dream job would thereby lack health. More charitably interpreted, the World Health Organization may have offered such a broad definition of health because it was motivated to incorporate what has come to be called the 'social determinants of health' into the definition of health itself.⁶ Researchers have found that health care is only one of many determinants of health; other determinants include nutrition, education, housing, a clean environment, and so on—akin to some of the crucial factors that can affect basic health, which I discussed earlier. Importantly, there is evidence that some of these other determinants of health, such as nutrition, education, housing, a clean environment, and so on, may have a greater impact on health than the goods and services that health care institutions provide. In defining health in such broad terms, the World Health Organization may have been trying to make explicit that health outcomes crucially depend on taking these social determinants of health into account. Indeed, in defense of the World Health Organization's definition of health, Stephen Marks writes,

It is certainly helpful for members of the Committee on Economic, Social and Cultural Rights (CESCR), for example, to receive data on infant mortality, maternal mortality, life expectancy, and all the other markers of healthy organisms. However, their determination of adequacy of government efforts to realize the right to health would be hampered considerably if all they were interested in were these biostatistical markers. The CESCR's guidelines focus primarily on measures taken to ensure health outcomes rather than the statistical data relating to those outcomes. Monitoring bodies also need to look at the health system, inequalities, and the various dimensions of the normative content of the right [15, p. 5].

In my view, we can accept that basic health crucially depends on these social determinants of health *and* that health care may be less important than some of these social determinants of health in promoting basic health *without* accepting that basic health should be defined or be analyzed in terms of these social determinants. Indeed, while I have also noted several crucial factors that could affect basic health, I do not define or analyze the notion of basic health in terms of these factors.

⁵ See, e.g., James Griffin [13, p. 101].

⁶ See, e.g., Richard Wilkinson and Michael Marmot [14].

The case for why basic health is a fundamental condition for pursuing a good life can now be stated. As I have said, fundamental conditions are fundamental goods, capacities, and options that human beings qua human beings need whatever else they qua individuals might need in order to pursue a good life. Basic health is something that human beings qua human beings need whatever else they qua individuals might need in order to pursue a good life. Indeed, without the adequate functioning of the various parts of our organism that are needed for the development and exercise of the fundamental capacities, human beings would not possess the requisite fundamental capacities; and without possessing the requisite fundamental capacities, human beings would not be able to pursue a good life. As such, basic health is a fundamental condition for pursuing a good life. Since human beings have human rights to the fundamental conditions for pursuing a good life, and since basic health is a fundamental condition for pursuing a good life, it follows that human beings have a human right to basic health.

Human right to health care

What does a human right to basic health entail? Among other things, it entails that we have a human right to the essential resources for promoting and maintaining basic health. This is true because if we have a right to X, and Y is an essential means to X, it seems that we should have a right to Y. For instance, suppose that human beings have a human right to acquire the knowledge necessary to be adequately functioning individuals in their circumstances. Suppose that free elementary education is an essential means to an individual's acquiring the knowledge necessary to be adequately functioning individuals in our society. This would entail that there is a human right to free elementary education in our society.

In a similar vein, I shall now argue that basic health care is an essential resource for promoting and maintaining basic health. As noted earlier, there are a number of crucial factors that can affect basic health. Among these factors are diseases, injuries, and disabilities—following Daniels, these can be called “pathologies.” To promote and maintain basic health, it is therefore essential to be able to diagnose, prevent, and treat these pathologies. Being able to screen for a pathology and diagnose its etiology is a crucial first step in combating the pathology. Once the etiology of a pathology has been determined, the next step is to see if individuals can be prevented from succumbing to the pathology through preventive measures. For example, in the case of heart disease, this may involve educating an individual about cholesterol levels and/or offering medications to the individual to lower the individual's cholesterol levels. Or in the case of an infectious virus, this may involve educating an individual about risky behaviors and/or providing vaccinations. Suppose that an individual does succumb to a pathology. An assessment of whether the pathology is treatable or not should be made. If the pathology is treatable, then curative measures should be provided. If the pathology is not treatable, ameliorative measures should be offered so as to allow the individual to come as close as possible to having the adequate functioning of the various parts of the organism that are needed for the development and exercise of the fundamental capacities. If

ameliorative measures are futile, measures that can alleviate an individual's suffering, for example, palliative care, should be provided.

In my view, the aim of an adequate system of basic health care is to provide such a system of goods and services for diagnosing, treating, and preventing these pathologies. If so, since, to promote and maintain basic health, it is essential to be able to diagnose, treat, and prevent these pathologies, and since the aim of basic health care is to provide such a system of goods and services for diagnosing, treating, and preventing these pathologies, it follows that to promote and maintain basic health, it is essential to have basic health care. In other words, basic health care is an essential resource for promoting and maintaining basic health. Since human beings have human rights to the essential resources for promoting and maintaining basic health, and since basic health care is an essential resource for promoting and maintaining basic health, it follows that human beings have a human right to basic health care. Among other things, this means that every human being has a right to an adequate system of goods and services for diagnosing, treating, and preventing pathologies.

Duties of health care

Suppose that every human being has a right to basic health care. Who has the duty to provide basic health care? On one view, human rights are rights against every able person in appropriate circumstances. For instance, Maurice Cranston says, "To speak of a universal right is to speak of a universal duty.... Indeed, if this universal duty were not imposed, what sense could be made of the concept of a universal human right?" [16, p. 69]. Similarly, Alan Gewirth says that "The universality of a positive [human] right is ... a matter of everyone's always having, as a matter of principle ... the duty to act in accord with the right when the circumstances arise that require such action and when he then has the ability to do so, this ability including consideration of the cost to himself" [17, p. 63]. On this view, a human right to basic health care implies that every able person in appropriate circumstances has a duty to provide basic health care. But can everyone have such a duty? On the surface of it, it might seem that the answer is no. After all, I do not have the resources to provide basic health care for everyone. In fact, I do not even have the resources to provide basic health care for myself. Nor is it clear that someone as wealthy as Bill Gates would have the means to provide basic health care for everyone in the world. For instance, the total national spending on healthcare in the United States alone was \$2.8 trillion in 2012. Even if we were to subtract non-basic health care cost from that figure, Bill Gates's net worth is currently 'only' eighty billion dollars. If so, how can the duty to provide health care belong to everyone?

Three points should make more plausible the idea that everyone has this duty. First, one can have partial duties. By a partial duty, I mean that even if a person cannot fulfill all that is required of a duty, as long as he is able to fulfill part of what is required, then he has a duty to do as much as he can. For example, suppose that X owes Y five dollars, X has five dollars, but X needs three dollars to survive. Because X is able to pay Y two dollars, it seems reasonable to expect X to pay Y two dollars,

that is, X still has a partial duty to pay Y. The idea of partial duties is applicable to the duty to provide basic health care. In particular, even if individuals, institutions, and even certain states do not have enough resources fully to provide an adequate system of basic health care by themselves, they may have some extra resources that they can use to fulfill this duty partially. If so, they can be obliged to do so, even if they do not have enough resources to fulfill this duty fully.

Second, everyone's having the duty to provide basic health care does not mean that everyone has to do the same thing. Suppose that someone, X, is drowning, and another person, Y, and I are present and we both have a duty to save X. The fact that we both have the same duty to save X does not mean that we both have to do the same thing, that is, to jump into the water and try to get X out. For example, suppose that Y is a lifeguard. He may try to fulfill this duty by swimming towards X and trying to bring X out of the water. I, on the other hand, am a bystander. Suppose further that I do not know how to swim. I may try to fulfill this duty by calling for additional help or just by being around to see if further help is needed. If so, even though we both have the same duty, that is, the duty to save X, we would fulfill the duty in different ways. With respect to the duty to provide basic health care, the fact that everyone has this duty does not mean that everyone has to provide basic health care for everyone directly. Each person's duty could instead be to pay taxes in order to support a system of basic health care.

Third, it is helpful to distinguish between primary and associate dutybearers of the duty to provide basic health care for everyone. The primary dutybearers of this duty have the ability to set up and maintain a system of basic health care directly. Large institutions such as the state and/or corporations are usually in the best position to do so, given the resources that they have. Hence, they should have the primary duty directly to provide basic health care. All other able persons would then have associate duties to help the primary dutybearers successfully discharge their duties. As noted earlier, the associate dutybearers can help, e.g., by paying taxes in order to support a system of basic health care.

Given the high cost of healthcare, it is worth asking how demanding the duty to provide basic health care should be. To answer this question, a theory of how demanding morality should be is needed. As readers will know, there is a large literature on this topic. I will not be able to offer a full theory here, but I shall say three things that should also have bearing on how demanding the duty to provide basic health care should be. First, it is generally thought that morality does not require us to sacrifice something of "substantial significance."⁷ It would be helpful though to have a clearer idea of what counts as substantial significance. I propose to give content and theoretical unity to the notion of substantial significance by drawing on the account of human rights I sketched above. In particular, I propose that what are of substantial significance are the fundamental conditions for pursuing a good life, that is, the fundamental goods, capacities, and options necessary for pursuing the basic activities. Since these are conditions that human beings qua human beings need whatever else they qua individuals might need in order to pursue the basic activities, and since human beings have human rights to these fundamental

⁷ See, e.g., Judith Jarvis Thomson [18] and John Arthur [19].

conditions, we should not be required to sacrifice these fundamental conditions for the sake of others, at least in normal circumstances.

To illustrate, consider life, which is a fundamental condition for pursuing a good life. Under normal circumstances, it would be too demanding to require one to sacrifice one's life for the sake of others. There may of course be times when one may be required to sacrifice one's life. For example, in times of war when an entire system of justice is under threat, or when the world is on the brink of a nuclear disaster that can only be prevented if one throws one's body against a de-activation button that will also kill one, one may have the duty to sacrifice even one's life in these circumstances. However, under normal circumstances, sacrificing one's life does not seem to be a moral requirement. Some may of course choose to do so, but their doing so would be heroic and supererogatory. Understanding substantial significance this way provides us with a theoretical framework for explaining why Peter Singer's idea that one is required to reduce oneself to very near the material circumstances of a Bengali refugee would be too demanding, namely, because this would require one to sacrifice much of one's fundamental goods, capacities, and options [20, p. 592]. Likewise, it can also support the common sense view that being required to sacrifice deep partiality, that is, being able to be deeply committed to one's personal relationships, goals, and projects, would also be too demanding, since being able to pursue deep personal relationships and being able to determine one's life course are also fundamental conditions for pursuing a good life.⁸

Second, it seems acceptable to require us to sacrifice what might be called "surplus conditions"—goods, capacities, and resources that are not necessary for pursuing the basic activities. To be as uncontroversial as possible, I shall make a generous assumption about how one determines what are necessary for a human being qua an individual to pursue the basic activities and allow a significant amount of subjectivity in determining what an individual would need in order to pursue the basic activities. For instance, suppose that Bill Gates has eighty billion dollars. Suppose that he needs (or that he judges that he needs) sixty billion dollars in order to pursue the basic activities. It seems acceptable to require him to sacrifice his surplus conditions, that is, twenty billion dollars. Or, suppose that Bill Gates needs (or he judges that he needs) only ten billion dollars in order to pursue the basic activities. It seems acceptable to require him to sacrifice his surplus conditions, that is, seventy billion dollars. While twenty or even seventy billion dollars may seem like a lot of money, since surplus conditions are by definition conditions that one qua an individual does not need in order to pursue the basic activities, even if one were required to sacrifice all of one's surplus conditions, this seems acceptable and not too demanding as it would not affect one's pursuit of the basic activities.

Third, in a non-ideal world, morality is more demanding than what common sense morality supposes, even if it is not as demanding as what Singer thinks. In particular, we may be required to sacrifice some of what we qua individuals need for pursuing a good life (but not the fundamental conditions, which are what we qua human beings need whatever else we qua individuals might need for pursuing a good life). Consider the following case:

⁸ The term "deep partiality" comes from James Griffin [21, p. 86].

Hermit Consider a hermit living in a very remote region of the world, five hundred miles away from civilization. He became a hermit because he wanted to leave the troubles of the world behind and lead a quiet, ascetic life. He has enough supplies for himself and another person. One day he finds a badly injured individual outside his door. He can (a) take in the person and try to treat the person; (b) travel five miles to the next town and find someone to treat the person; or (c) let the individual die.

What does morality require of him? It seems that it requires that he not let the individual die. That is, morality requires that he choose option (a) or (b). This is so, even if option (a) or (b) requires that he sacrifice some of what he qua an individual needs for pursuing a good life. For instance, suppose that it may take quite some time to treat the individual, and that helping the individual would require the hermit to give up the quiet, ascetic life that he has sought. It seems that morality would require him to give up that life, at least temporarily. Or, suppose that he opts to travel to the next town, and to do so, he would need to use his prized wagon, which took him several years to build and which will be destroyed upon the completion of the trip. He would be required to aid even if he were to lose his prized wagon in the process. Note that in either case, he would still not be required to sacrifice the fundamental conditions necessary for pursuing the basic activities. For example, suppose that he only has just enough food for himself and suppose that there is no way for him to get to the next town without jeopardizing his life. In such a case, it may be permissible for him to let the individual die. If all of this is right, the Hermit case suggests that in a non-ideal world, morality is more demanding than common sense morality supposes.

These points bear on how demanding the duty to provide basic health care should be. For one thing, the duty to provide basic health care should not be so demanding that it requires one to sacrifice one's fundamental conditions for pursuing a good life. Hence, if one would fall into destitution if one had to help provide basic health care, morality would permit one not to do so. In addition, it is acceptable to require one to sacrifice one's surplus conditions in order to see to it that basic health care is provided. Finally, in our non-ideal world, we are required to sacrifice more than what common sense morality supposes in order to fulfill the duty to provide basic health care. In particular, we may be required to sacrifice some of what we qua individuals need for pursuing a good life in order to see to it that basic health care is provided for everyone. Exactly how much each person is required to sacrifice will depend on a host of other factors such as how much priority we should give to this duty as opposed to other duties that we have.

As noted earlier, basic health care is not the only factor that affects basic health. Nutrition, education, a clean environment, and so on can also affect basic health and there are corresponding human rights to nutrition, education, a clean environment, and so on. Indeed, there is evidence that education, housing, a clean environment, and so on may have a greater impact on health than the services that health care institutions offer. Also, individuals have other rights such as the right to pursue their own goals and projects. Given this, how much priority should be given to the right to basic health care as opposed to, for example, the right to education or to other

rights that people have? Owing to space, I will not be able say much about this issue here, but let me offer a few remarks that may be important for when one develops public policies regarding how the right to basic health care should be prioritized.

Generally, my view is that society and political institutions should be structured in such a way that every right of every individual is respected and promoted. In a world in which this is not possible, a theory of distributive justice is needed to determine how resources can be allocated fairly and in such a way as to ensure that as many people's rights are respected and promoted as possible.

In a world in which resources are limited, and in light of the evidence that other social determinants of health such as education may have a greater impact on health than health care, it might be thought that the right to nutrition, education, a clean environment, and so on should be given greater priority since they seem more urgent than the right to basic health care. To support this idea, one might appeal, for instance, to Alan Gewirth's "criterion of degrees of needfulness for action," which is roughly the idea that when two rights-claims conflict, one should promote the right that is more needed for action [17]. Using this criterion, one might argue that since nutrition, education, a clean environment, and so on seem to be more necessary for an individual's action than basic health care, these other rights should therefore be given absolute priority over the right to basic health care.

First, even if it is granted that nutrition, education, a clean environment, and so on are more urgent than basic health care, basic health care is still very important. Indeed, basic health care is an essential resource for maintaining and promoting basic health. Given this, even if no greater priority is given to basic health care than to nutrition, education, and so on, basic health care should still be given a very high priority. Indeed, being fed is typically more urgent (in terms of necessity for action) than receiving basic education. Yet, few would question the importance of promoting a right to basic education. Second, it is worth pointing out that governments do not in fact give absolute priority to whatever is most necessary for action. To see this, consider the value of life. As a precondition for action, life is obviously very important. Still, governments do not always promote life above other values. For example, governments build schools and museums even though they could use that money to build even more hospitals to ensure that even more people's lives would be saved. This suggests that even though life is very important, it is not given an absolute priority over all other values. If so, even if one grants that nutrition, education, a clean environment, and so on are more urgent than basic health care, this does not mean that they should have absolute priority over basic health care, especially since all are essential resources for maintaining and promoting basic health.

Conclusion

Many international declarations have claimed that human beings have a human right to health care. Drawing on the fundamental conditions approach, I offered, in this article, a new way to justify this right. Human beings have a human right to basic health care because basic health care is an essential resource for maintaining and

promoting basic health and because human beings have a human right to basic health. Human beings have a human right to basic health because basic health is a fundamental condition for pursuing a good life and human beings have human rights to the fundamental conditions for pursuing a good life.

Since basic health care is a human right, the duty to provide basic health care belongs to every able person in appropriate circumstances. As I have explained, this does not mean that everyone has a duty to provide basic health care for everyone else directly, but it does mean that everyone has at least associate duties to help primary dutybearers, such as the State and/or other large institutions, carry out their duty to provide basic health care for everyone by, for instance, paying taxes that would support a system of basic health care. The duty to provide basic health care does not require that one sacrifice one's fundamental conditions for pursuing the basic activities, but it may require that one sacrifice more than what common sense morality supposes. Finally, even if it is true that basic health care is not the most important determinant of health, it is still an essential resource for maintaining and promoting basic health. As such, society and political institutions should be structured in such a way as to ensure that every individual's right to basic health care is respected and promoted.

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