A Theoretical Juxtaposition of Millsian and Rawlsian Moralities of Distributive Justice as Applied in Healthcare

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1. INTRODUCTION

Few topics command attention more immediately in contemporary biomedicine than those surrounding distributive justice. Indeed, as Karen Lebacqz notes, today “there may be no more urgent cry than that of ‘justice’ – and no more frequent accusation that that of ‘injustice’” in the messy arena of healthcare.\(^1\) It seems rather obvious, but by no means simplistic, that in order for healthcare delivery to be considered “just” there must exist within its foundations a larger ideology – a moral theory – with firm roots in truth. Unsurprisingly, however, the question of whether there exists a single unifying theory that is preferable or eminently efficient remains moot at best: theories are as diverse as the people who employ them and, not unlike mathematics, there are often multiple routes, each methodologically valid, to a “correct” answer.

The complex concern of distributive justice is not merely the calculus of who gets how much of what, but also the justification of who gets to decide and why.\(^2\) At current, these questions remain unresolved and parched for answers. While no single theory satisfies all tastes, much can be gleaned from a systematic exploration of two historical methods that remain at the forefront of the present debate. The first belongs to John Stuart Mill, the nineteenth century political philosopher and social theorist, best known for his utilitarian moral theory. For Mill, justice – and “rightness,” generally – is identified and defined as that which produces the greatest good (i.e., net happiness) for the greatest number of people. Contrarily, that which demotes – even if minutely – the overall good of others is, according to Mill’s principle of utility, morally impermissible. Followed closely, this theory entails the sacrifice of individual rights in order to serve the “greater good” of society.\(^3^4\)

The second method belongs to John Rawls, the twentieth century moral and political philosopher, best known for his contractarian moral theory. For Rawls, justice is that which achieves “fairness” through a rigorous process of weighing and balancing individual interests in the effort to attain reflective equilibrium. To secure fairness, justice uses procedural administrations of autonomous choice through the application of contractual principles to effect decisions considered to be the product of authentic, unbiased rationality. Contrary to Millsian justice, Rawls’ method does not sacrifice individual well-being for that of the greater good, no matter how (indirectly) well-served the greater good may be by this means.\(^5^6\)

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Juxtaposed with one another, these timeless methodologies comprise the analytical framework of this essay. It aims, in turn, to examine the (i) ordering of values, (ii) reasons and arguments, and (iii) current critiques inherent to the respective theories of justice possessed and presented by Mill and by Rawls with the intention of underscoring the idea that such an analysis paves way for the necessary reexamination of present moral theory and its indispensable value in the conversation over distributive justice in modern-day healthcare. An ever-deepening chasm between moral theory and just distribution means that revisiting the insights of Mill and of Rawls and drawing upon them is a task more timely than ever.

2. MILLSIAN JUSTICE

2.1 Justice and its Relationship to Other Values

As mentioned above, Millsian, or “classical,” utilitarianism holds that right actions are those that produce the most good. This notion is based on Mill’s understanding of law as not necessarily good in itself, and as therefore not the ultimate criterion of justice. "Utility," Mill writes, “or the ‘greatest happiness principle’ holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain.” Understood in this light, justice is the moral rubric that preserves and protects claims critical to social well-being – claims, for example, to remain faithful to promises, to be treated equally under the law, and the like. These claims, however, remain subject to the utilitarian schema; that is, they can be overridden when greater social good is at stake. In this vein of thought, justice is not only intertwined with utility, but is de facto dependant on it, in that common rules are only able to be adjudicated through appeal to happiness itself. For Mill, then, justice is subordinate to utility.

Mill recognizes justice as “vastly more important, and therefore more absolute and imperative,” than all other values. Hence, the role of justice is that of a guardian, protecting and informing the remaining features (values) of morality. Of those significant values, most notably present in Millsian thought is the place of individual rights supported by society, six of which are worthy of immediate attention. Here, Mill identifies injustices as negative forms of what justice requires. First, it is unjust, according to Mill, to deprive persons of their personal liberty, property, and anything else to which they possess a legal claim. Second, it is unjust to take from persons those things to which they have moral right. Third, it is unjust for persons to receive what they do not deserve, whether good or evil. Fourth, it is unjust for persons to break promises with one
another, to violate engagements, or to disappoint expectations, whether knowingly or voluntarily. Fifth, it is unjust to prefer one person to another, particularly in the social arena. Finally, it is unjust to treat people unequally.\textsuperscript{13} Mill concludes the delineation of these six rights with the addition of a notoriously utilitarian qualification: “Each person maintains that equality is the dictate of justice, except where he thinks that expediency requires inequality.”\textsuperscript{14} In other words, individual rights are critical to justice, and so must be respected accordingly, except where the utility of the greatest number is determined to be contrary to that respect.

2.2 Reasons and Arguments Underlying the Theory

Within Mill’s definition of utility – the theory upon which his notion of justice depends – are found two vital assumptions that ground the rationale of classical utilitarian justice. The first is the idea that the goal (telos) of life is happiness. Both Mill and his predecessor, Jeremy Bentham, posit this argument. Bentham fails to offer hard evidence for this conclusion, resting on the claim that questions of ultimate ends do not allow for direct proof. While Mill agrees with Bentham that direct proof is impossible, he forwards as an argument the universally accepted notion that people do in fact desire happiness. Hence, the end of human existence is taken to be happiness, and the “proof” is that doing so appears to be the most natural of human desires. Whereas Bentham simply describes happiness as the presence of pleasure and the absence of pain, Mill suggests the importance of distinguishing between types of pleasure and pain. For Mill, pleasures of the intellect reign supreme.\textsuperscript{15}

The second assumption, drawn from the first, is that the “rightness” of actions is necessarily determined by the contribution such actions make to the calculus of overall happiness. Ipso facto, this makes utilitarianism a form of teleology: the end or goal of an action determines what is right. The “right” is thus deciphered by quantifying the amount of good that is to result from it. In this sense, the “good” precedes the “right,” and the “right” is dependant on the “good.” This is presumably what Mill means when he suggests that actions are right in proportion as they tend to promote happiness. Here, the second assumption seems to indicate the necessity of a lengthy appraisal to determine “rightness.” However, Mill proposes that historical corollaries from the principle of utility render the individual able to act in accord with utility’s “secondary principle,” and thus take as its measure the product of the overall balance of pleasure and pain. Since this principle is shown to present the most accurate conception of overall utility, the idea of utilitarian theory –that the rightness or wrongness of actions is determined by the extent to which they promote happiness (utility) or good – becomes clearer.\textsuperscript{16}

3. RAWLSIAN JUSTICE

3.1 Justice and its Relationship to Other Values

\textsuperscript{13} Mill, “On the Connexion,” 159-61.
\textsuperscript{14} Lebacqz, \textit{Six Theories of Justice}, 21-22.
\textsuperscript{15} Lebacqz, \textit{Six Theories of Justice}, 16.
\textsuperscript{16} Lebacqz, \textit{Six Theories of Justice}, 16-17.
Proposed as an alternative to utilitarianism, Rawlsian justice endeavors to take individual persons seriously while simultaneously providing concrete instructions for making fundamental moral decisions regarding distributive justice. As mentioned above, the result is “justice as fairness.” For Rawls, principles of justice are not derived from quantifying the utility of particular actions, but by autonomous, rational choice in an unbiased setting. These principles are established to edify the elemental composition of society, not ready-made to respond to each action in every setting. In this sense, Rawls’ is a “macro” theory, as opposed to the “micro” approach of utilitarianism. Whereas Mill’s method leaves the individual vulnerable to the demands of the greater good, Rawls’ principles protect the least advantaged members of society. While income, social status, power, and overall privilege may be distributed unequally, such inequality can only exist on the condition that it renders the least advantaged better off than before.\textsuperscript{17}

For Rawls, “justice is the first virtue [value] of social institutions, as truth is of systems of thought.”\textsuperscript{18} Hence, regardless of how elegant and economical a particular theory may be, it must be rejected if it fails to meet the standard of truth. So, too, it must be abolished if it fails to recognize the “inviolability [of persons] founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others.”\textsuperscript{19} By this fact, the work of justice and its relationship to other values is understood by the role its principles play in attributing rights and duties and in determining the appropriate allocation of social advantages. Like Mill, Rawls recognizes that all other values depend heavily on justice, for “the way in which social institutions distribute [all] fundamental rights and duties and determine the division of advantages from social cooperation” is the primary commission of justice.\textsuperscript{20} However, unlike Millsian justice, which holds that justice must ultimately serve the interests of utility, Rawls contends that justice is sui generis.\textsuperscript{21}

### 3.2 Reasons and Arguments Underlying the Theory

Ultimately, Rawls’ theory of justice takes root in Locke and Rousseau’s respective social contracts, and in Kant’s deontology. The reasons and arguments to support the theory are surprisingly straightforward, though its movements are thoroughly complex. In essence, Rawls’ suggests that if principles of justice are to be fair, they must be chosen from a position of equality (the “original position”). No single person can make the choice, nor use it to create unfair advantages that affect social positions. Hence, the chosen principles will be the product of fair choosing – “justice as fairness.” The persons included in the deliberation over choice principles select from behind a “veil of ignorance.” This metaphorical veil, which with the “original position” serve as the nucleus of Rawls’ theory, signifies the idea that persons selecting principles do not possess the particular forms of knowledge that might make bargaining unfair, be they

\textsuperscript{17} Lebacqz, Six Theories of Justice, 33, 40.
\textsuperscript{18} Rawls, A Theory of Justice, 3.
\textsuperscript{19} Rawls, A Theory of Justice, 3.
\textsuperscript{20} Rawls, A Theory of Justice, 6.
\textsuperscript{21} Rawls, A Theory of Justice, 1-10.
positions in society, preferential life plans, or the like. However, what the parties do know is that they (i) will be subjected to the “circumstances of justice” (characterized by conflict and cooperation), and (ii) will possess the appropriate level of knowledge of economics, social organization, and human psychology that enables them to make predictions about which principles can be attended to without strain.22-23

Rawls argues that persons choosing from the original position would reasonably identify two operative principles of justice. The first would concern their desire to secure equal liberty: “Each person is to have an equal right to the most extensive scheme of basic equal liberties compatible with a similar scheme of liberties for others.”24 In other words, parties would sort out basic human liberties and ensure their equal division. Second, because the parties are concerned with their own interests, they would hesitate to risk lesser income for the benefit of others. Hence, they would be inclined to choose a differentiating principle: “Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”25 This “difference principle” becomes the centerpiece of Rawlsian distributive justice. As mentioned above, it allows unequal distribution, but only insofar as it benefits the least well off. Finally, Rawls contends that the twofold principles are justified on the condition that they pass the assessment of “reflective equilibrium.” This method tests the description of the original position against the chosen principles to determine whether they conform to common convictions about justice. If not, both the considered convictions and the circumstances of the original position may be nuanced accordingly to produce a better match. This to-and-fro movement ultimately results in “reasonable conditions and yields principles that match our considered judgments duly pruned and adjusted.”26-27

4. EVALUATION OF MILLSIAN AND OF RAWLSIAN JUSTICE

4.1 Critique and Assessment of Millsian Justice

A primary critique of Millsian justice, posited by Rawls himself, is that classical utilitarianism violates the precepts of justice by permitting the losses of some to become the gain of others. As Rawls comments, “it may be expedient but it is not just that some should have less in order that others may prosper.”28 Furthermore, Rawls argues, utilitarianism fails to distinguish between persons, and even between the quality of respective forms happiness after which people seek. Hence, the most utilitarian theory is capable of is identifying the way satisfaction affects total well-being.29 In a similar vein, W. D. Ross remarks that strict adherence to Mill’s utilitarian maxims would require an individual to break faith or even to harm someone if the overall good would be served by

22. Lebacqz, Six Theories of Justice, 33-35.
27. Lebacqz, Six Theories of Justice, 35-40.
such means. According to Ross, this is an explicit violation of what rational persons consider “right” to do. It is counterintuitive at best to believe that manufacturing the slightest balance of good, irrespective of who will reap its benefits, by breaking faith or inflicting harm frees persons from the moral responsibility to keep faith and protect others.\textsuperscript{30}

Despite these critiques, there are many aspects of the utilitarian theory that prove impressive. The issues of utilitarianism, however cryptically expressed, genuinely do, at heart, concern issues of justice. What may seem “unfair” in the narrow sense of sacrificing individual values may still be “just” in the wider sense of realizing the goals of the common good. However, in the context of healthcare, a theory of distributive justice whose sole focus is on the allocation of goods at the cost of recognizing the link allocation shares with production ultimately misses the mark. That which can be distributed is certainly affected by the method by which it is being distributed.\textsuperscript{31} By permitting some to have more than others when claims to individual rights remain equal, utilitarianism fails medicine – and, more critically still, the people who so desperately require access to it – at its most vulnerable state. Nonetheless, utilitarianism adds a critical value to the global theory of justice, issues serious challenges, and sets important tasks for all who desire just distribution in healthcare.

4.2 Critique and Assessment of Rawlsian Justice

A primary critique of Rawlsian justice concerns the epistemology inherent to its “veil of ignorance.” The veil exists to remove particular knowledge that may lend to bias, but persons in the original position are presumed to possess general knowledge about economics, sociology, psychology, and the like. Since it is unlikely that general knowledge is not derived from particular knowledge, the virginity of the veil seems implausible. Theories regarding economics, sociology, and psychology often have biases built into them, and thus it seems inescapable for persons in the original position to possess unbiased general knowledge, since all general knowledge, it can be argued, reveals particularities and biases. On a similar note, Michael Sandel contends that Rawls’ theory relies heavily on an underdeveloped understanding of the self. Under the veil of ignorance, individuals stand at a distance from their ends and goals. This inevitably creates the illusion of the “invulnerable self,” unchanged by experience and cooperation with others. Hence, such a limited notion of the “choosing self” fails to appreciate the important aspects of both communal and self-knowledge.\textsuperscript{32}

Despite these critiques, Rawls’ theory has undoubtedly left an indelible mark on the enterprise of political moral theory. The essential value of Rawls’ philosophical position lies in the breadth and depth to which it penetrates ethical questions, and the striking power – humble in its apparent simplicity – of its insight. Its two central elements include its contractarian method and its corresponding principles. Applied in the context of healthcare, and in particular to its just distribution, Rawls’ movement from method to

\textsuperscript{30} Lebacqz, Six Theories of Justice, 22.
\textsuperscript{31} Lebacqz, Six Theories of Justice, 30-32.
\textsuperscript{32} Lebacqz, Six Theories of Justice, 40-42.
principles works quite well. A proper adherence to Rawlsian justice would, if nothing else, result in the protection of the least advantaged members of society. In healthcare, nothing is more important, for the sickest and the most vulnerable are often one and the same. The requirements of equal rights, and the toleration of those social inequalities that only contribute to the bettering of the least advantaged, provide a measure by which social policy can be judged accurately. Rawlsian justice, then, maintains a strong appeal to many in the contemporary world, and is among the best theories availed to remedy the atrophies of modern healthcare distribution.\textsuperscript{33}

5. CONCLUSION

The respective methodologies of John Stuart Mill and John Rawls are but two of principle significance in the debate over which historical moral theory of just distribution reigns, or should reign, supreme. Through the lens of an analytical framework, the aim of this essay has been to examine the (i) ordering of values, (ii) reasons and arguments, and (iii) current critiques inherent to the theories of justice possessed and presented by Mill and by Rawls with the intention of underscoring the idea that such an analysis paves way for the necessary reexamination of present moral theory and its indispensable value in the conversation over distributive justice in modern-day healthcare. To that end it has been successful.

REFERENCES


\textsuperscript{33} Lebacqz, \textit{Six Theories of Justice}, 49-50.