

Lingering Problems of Currency and Scope in Daniels's Argument for a Societal Obligation to Meet Health Needs

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Norman Daniels's new book, Just Health, brings together his decades of work on the problem of justice and health. It improves on earlier writings by discussing how we can meet health needs fairly when we cannot meet them all and by attending to the implications of the socioeconomic determinants of health. In this article I return to the core idea around which the entire theory is built: that the principle of equality of opportunity grounds a societal obligation to meet health needs. I point, first, that nowhere does Daniels say just what version of that principle he accepts. I then proceed to construct a principle on his behalf, based on a faithful reading of Just Health. Once we actually nail down the principle, I argue, we will find that there are two problems: it is implausible in itself, and it fails to ground a societal obligation to meet health needs.

Keywords: Daniels, equality of opportunity, health, health care, justice

I. INTRODUCTION

In his new book, *Just Health*,¹ Norman Daniels brings together over two decades of his work on the societal obligation to meet individuals' health needs.² It seeks to improve over his original opus on the issue, *Just Health Care*,³ in two important ways. First, it addresses the question of how we can meet individuals' health needs fairly when we cannot meet them all—a question *Just Health Care* largely ignored. Second, it attends to the implications of the socioeconomic determinants of health. Daniels now recognizes that other things besides the health care and public health systems, such as

society's class structure, determine which health needs arise. He accepts, therefore, that an explication of the societal obligation to meet individuals' health needs has to say something not just about how the health care and public health systems should be used in discharging this obligation, but also about how broader features of the social structure can be manipulated in the service of this end. Daniels's goal in *Just Health* is to bring together his answers to these and other questions in a coherent way, so that they collectively constitute an "integrated theory of justice and population health."

In this article, I seek to return to the heart of Daniels's framework: his equality of opportunity-based argument for the existence of a societal obligation to meet individuals' health needs. This argument has changed in important ways over the years, and the publication of *Just Health* affords a welcome opportunity to reexamine it.⁴

Daniels's argument for the existence of a societal obligation to meet health needs runs roughly as follows. He defines health as the absence of disease, and disease as departure from species-typical functioning. He then invokes the idea of "society's normal opportunity range," which he defines as "the array of life plans reasonable persons are likely to develop for themselves" in a given society. The extent of this array is partly determined by the nature of typical functioning for a member of the human species. Daniels goes on to distinguish something called an "individual share" of the society's normal opportunity range, which he stipulates is that part of society's normal opportunity range open to an individual given her talents. Since the content of society's normal opportunity range is indexed to species-typical functioning, any individual's departure from species-typical functioning can be expected to reduce her share of the normal opportunity range. In other words, lack of health diminishes opportunity. Daniels then uses the principle of equality of opportunity to establish that these curtailments of opportunity are unjust and that therefore society is under an obligation to prevent them by meeting health needs when possible.

Unfortunately, at no point in *Just Health* is the principle of equality of opportunity written out. Naturally, this poses a challenge to anyone who wants to determine whether Daniels is right that equality of opportunity grounds a societal obligation to meet health needs. What I propose to do is construct a statement of Daniels's version of that principle based on the most faithful possible reading of *Just Health*.

I assume first that principles of equality of opportunity must conform to the following template:

Opportunity for _____ should be equal among _____,

and that such principles differ based simply on how they fill in the two variables.⁵ This being the case, we simply need to determine how Daniels intends for the two variables to be filled in. The first variable, what I will call the "currency" variable, identifies which opportunity we are concerned to

distribute equally. The “scope” variable, the second of the two, picks out some group (or groups), the members of which are to have equal levels of opportunity.

My contention will be that the resulting principle of equality of opportunity does not do the work Daniels needs it to do. Due to how he fills in the currency variable, his principle is implausible in itself. At the same time, Daniels’s choice of scope, while doing nothing to undermine the plausibility of his principle, renders the principle ineffective as a basis for a societal obligation to meet health needs.

II. CURRENCY

Daniels conceives of himself as carrying forward Rawls’s theory of justice to an issue on which Rawls says little—justice and population health. Rawls, like Daniels, endorses equality of opportunity, but whereas Rawls was concerned with opportunities to achieve (desirable) jobs and offices, Daniels construes opportunity in terms of the availability of a plan of life: the ability to develop, revise, and pursue a conception of the good (Daniels, 2008, 35). Daniels says more in *Just Health* than in *Just Health Care* about the motivation for the departure from Rawls. In *Just Health*, he claims that health is morally special not just because of its effect on one’s ability to secure (desirable) jobs and offices. Rather, health is special for its effect on all the different projects that constitute a plan of life. Therefore, the special moral importance of health is its influence on one’s ability to select and carry out a plan of life. Not only does the narrow focus on jobs and offices obscure much of what is important about health but it also has unacceptable implications for our treatment of the aged. If we are simply concerned with opportunities for jobs and offices, it is not clear that there is any reason of justice to provide health care to people whose productive years are behind them (Daniels, 2008, 60).⁶ Because of these concerns, a successful argument from equality of opportunity to a universal entitlement to health care is going to have to focus on some wider set of goods, as Daniels’s plan of life-based argument does.

Given that Daniels is concerned about the availability of reasonable plans, we are close to being able to answer the question of what exactly is the currency in his version of equality of opportunity. As I stated earlier, for Daniels the array of reasonable plans of life available to an individual is her share of the normal opportunity range. Therefore, equalizing the range of achievable plans of life is the same thing as equalizing individual shares of the normal opportunity range. And since Daniels says that we should equalize shares of the normal opportunity range (Daniels, 2008, 58–60), we can attribute to him the equivalent claim that we should equalize the range of available plans of life for each person. Now we stipulate that an individual’s opportunity for the achievement of a plan of life is the range of plans of life available to her.

With this stipulation in hand, we may accurately describe Daniels as advocating equality of opportunity for the achievement of a plan of life. We now have Daniels's currency.⁷

The problem with expanding our focus from opportunities for jobs and offices, which was Rawls's central concern, to opportunity for the achievement of a plan of life is that it removes the motivation for equalizing opportunity.⁸ The pursuit of opportunities for jobs and offices is competitive and zero-sum. Holding stable the number of jobs and offices, one person's increased opportunity to obtain jobs and offices is another person's reduced opportunity for the same. In competitive contexts, it seems fair to have the initial distribution of the good being competed for be an equal one. The pursuit of opportunity for the achievement a plan of life, on the other hand, is only partly competitive and not zero-sum. Some of the elements of a plan of life are in limited supply—jobs and offices, for instance—whereas others are not. For instance, one person's improving her opportunity to become a virtuoso pianist does not entail a corresponding reduction of anyone else's opportunity to do the same. Furthermore, one person's improved opportunity to become a virtuoso pianist could actually *boost* others' opportunity to achieve a plan of life, albeit not to the same extent as the virtuoso herself, if their plans include the enjoyment of well-played music. Therefore, in some cases the unequal distribution of opportunity to achieve plans of life might actually work out to everyone's advantage.

Any distributive principle that requires us to avoid this sort of synergistic inequality is open to the charge of being perverse. But this is exactly what the principle of equal opportunity for the achievement a plan of life would tell us to do.⁹ Intuitively, we should adopt a principle that instructs us to *pursue* such inequalities. Prioritarianism is the most obvious example. A principle of priority of opportunity would instruct us to maximize a weighted sum of opportunity, using a formula in which the opportunity of those who have the least opportunity counts for more. Such a principle provides no grounding for a societal obligation to meet health needs, *per se*. Instead, priority of opportunity would support a system that meets the health needs of those whose share of the normal opportunity range is on the smaller side—whether because of sickness or for other reasons—and those who, like the potential virtuoso pianist, might inadvertently expand others' shares of the normal opportunity range given the chance to expand his or her own. Therefore, Daniels would not want to make use of this priority of opportunity principle. At the very least, however, he ought to adopt an opportunity principle that instructs us not to *prevent* inequalities that benefit everyone, with sufficientarianism being the paradigm example. Sufficiency of opportunity instructs us to ensure that everyone's opportunity for the achievement of a plan of life not drop below a certain threshold. This principle should be more appealing to Daniels, since it grounds a societal obligation to meet health needs *per se* (on the assumption that anyone whose health needs go

unmet thereby drops below the threshold).¹⁰ Yet Daniels seems to want to shy away from sufficientarianism (Daniels, 2008, 93).

III. SCOPE

Daniels fills in the scope variable the same way Rawls does: opportunities should be equal among people equally favored in the natural lottery, where the natural lottery refers to contingencies in the distribution of inborn talents and other genetically determined traits such as innate willingness to put forth effort. This version of equality of opportunity is known as *fair equality of opportunity* (Rawls, 1971, 73).

Fair equality of opportunity has the implication that inequalities in opportunity that result from the natural lottery are legitimate (absent some other principle of justice that condemns them). Therefore, Daniels's argument for a societal obligation to meet health needs, based on equality of opportunity, succeeds if and only if he can establish that inequalities in health needs, which give rise to inequalities in opportunity, are not the rest of the natural lottery. In an earlier paper, I pointed out that nowhere in *Just Health Care* does Daniels endeavor to establish this (Sachs, 2008).¹¹ In fact, in that book Daniels labels the disadvantages induce by disease "natural disadvantages." (Daniels, 1985, 46).

Nevertheless, one might think that there is a rather straightforward argument that will do the job for Daniels. Premise 1: The natural lottery is the distribution of talents. Premise 2: Disease is not an absence of talent. Therefore, disease is not a result of the natural lottery. Therefore, inequalities in opportunity caused by disease are not results of the natural lottery. On my reading of *Just Health*, however, Daniels does not want to rely on this argument. On the interpretation I am about to present, Daniels seeks to present an argument for the illegitimacy of such inequalities that is much less direct and does not rely on anything like Premise 2. Although one might dispute my reading of Daniels, there can be little doubt that he needs an argument that does not rely on the distinction between disease and lack of talent, since the distinction itself is arbitrary. Daniels adopts Christopher Boorse's conception of disease as departure from species-typical functioning. Typicality is a statistical notion, and so it must employ a numerical cutoff between typical functioning and atypical functioning. In other words, we have to say that an individual's functioning is atypical just in case it is poorer (i.e., less adaptive) than that of some percentage of the other individuals in the species (or, more precisely, an age- and sex-relative subset of the individuals of that species). Boorse holds that there is no nonarbitrary way to choose a numerical cutoff. Therefore, as others have pointed out, the line that separates low-but-typical functioning—that is, lack of talent—from low-and-atypical functioning—that is, disease—is arbitrary (Jacobs, 1996, Hausman, forthcoming).

What Daniels needs, then, is an argument for meeting health needs that does not presume that ill health, as a matter of definition, is unnatural. In *Just Health*, he provides just such an argument. In fact, he devotes all of chapter 3 to the social determinants of health. In that chapter, he draws attention to social epidemiology, an area of research that has generated compelling evidence that socioeconomic status influences susceptibility to certain illnesses such as heart disease.¹² The fact that socioeconomic status is a determinant of health invites an analogy that Daniels repeatedly draws between health needs and educational needs (Daniels, 2008, 56, 57, and 61). Some children are fortunate enough to be born into a well-off family—a social circumstance of their birth—and they stand to receive an education superior to that of other children unless the state steps in and provides equal public education or subsidizes private education for all children. Similarly, some people are fortunate enough to belong to a high socioeconomic class and therefore, due to the socioeconomic determinants of health, stand to have better health unless the state intervenes by providing basic health care for everyone.¹³ If the existence of social determinants of health does indeed establish that inequalities in health needs, like inequalities in educational needs, are not caused by the natural lottery, then a societal obligation to protect health follows from the principle of fair equality of opportunity, as Daniels claims it does (Daniels, 2008, 58).

It does not, however, for two reasons. First, some illnesses and diseases do not have social determinants. Exceptions include genetic conditions, items distributed in the natural lottery, whose manifestation is not a function of environmental pressures. Therefore, even if fair equality of opportunity requires that we neutralize inequalities resulting from illnesses for which low socioeconomic status is a risk factor, we are left with an argument for constructing a health care system that covers treatment for some serious illnesses, such as heart disease, but not other, such as cystic fibrosis. But this seems terribly arbitrary.¹⁴ To avoid this conclusion, Daniels would have to fall back on an argument to the effect that cystic fibrosis is not a result of the natural lottery because it is not a lack of talent, but we have already seen how making this move itself requires the drawing of an arbitrary distinction.

Second, the existence of social determinants of health actually does *not* establish that inequalities in health needs are not caused by the natural lottery—even those health needs for which low socioeconomic status is a risk factor. In a society well ordered by Rawls's principles of justice, the socioeconomic status of adults is a result of the natural lottery. In such a society, there are systems in place to disrupt the kind of intergenerational accumulation and bequeathing of wealth that in our actual society hinders class mobility, which means that the socioeconomic status of an adult will be the result of her talents and willingness to put forth effort; that is, her place in the natural lottery. (It will also be the result of luck, which means Daniels might have more

success if he argued for a societal obligation to meet health needs based on a version of fair equality of opportunity that required the mitigation of the effects of luck, as some luck egalitarians do.¹⁵ But Daniels wants to distance himself from luck egalitarianism (Daniels, 2008, 64–9.) Fair equality of opportunity allows inequalities that are caused by the vicissitudes of the natural lottery, so given that low socioeconomic status among adults in a regime of fair equality of opportunity is a result of the natural lottery, fair equality of opportunity allows inequalities caused by low socioeconomic status among adults.

Therefore, in a just society Daniels's education analogy succeeds only for children and perhaps young adults—individuals whose socioeconomic status is not due to their own talents, abilities, effort, and choices—and therefore justifies providing basic health care only to those groups. Of course we should concede that in our *actual* society, the analogy succeeds much more broadly, because we have yet to break down the institutions that prevent socioeconomically disadvantaged children from having a fair opportunity to improve their station. Therefore, Daniels might claim, quite plausibly, that fair equality of opportunity in certain circumstances, including ours, requires state intervention to neutralize the effects of differences in socioeconomic status among adults. The point remains, however, that this would be non-ideal justice; it would fall short of what fair equality of opportunity actually requires.¹⁶ Fair equality of opportunity requires neutralizing these differences *before* adulthood. Therefore, Daniels's argument for universal health care rests on a principle of justice that, when it is realizable, lends no support at all to a policy of meeting adults' health needs.¹⁷

IV. OBJECTION, RESPONSE, AND CONCLUSION

At the beginning of this article, I set out to construct a version of a principle of equality of opportunity that is faithful to Daniels's writings in *Just Health*. Specifically, I set out to identify the currency and scope of Daniels's preferred version of equality of opportunity. Having done that, I am now in a position to offer a statement of that principle:

P₁: Opportunity for the achievement of a plan of life should be equal among people equally favored in the natural lottery.

The reason it was necessary to engage in this bit of exegesis, I said, was that Daniels never makes explicit in *Just Health* what version of equality of opportunity he accepts. Consider, however, the following passage:

The fair equality of opportunity account does not require us to level all differences among persons in their share of the normal opportunity range. Rather, opportunity is equal for the purposes of the account when certain impediments to opportunity are eliminated for all persons—most importantly, discrimination in job placement or impairments of normal functioning, where possible (Daniels, 2008, 60).

One might think that this passage, specifically its second sentence, constitutes an explicit statement of an equality of opportunity principle. If so, it is a negative statement of equality of opportunity—a claim that something is to be avoided. This is to be contrasted with a positive statement, which is a claim that something should be achieved. To make the contrast evident, compare the following two templates:

Positive Template: Opportunity for _____ should be equal among _____.

Negative Template: Opportunity for _____ should not be influenced by _____.

The positive template is the template I laid out at the beginning of the article. If, however, we were to allow principles of equality of opportunity to be expressed in accordance with the negative template, then we could straightforwardly extract a principle of equality of opportunity from *Just Health*, specifically from the passage quoted earlier in this section:

P₂: Opportunity for the achievement of a plan of life should not be influenced by discrimination in job placement or impairments of normal functioning, where possible.

And why should not we allow principles of equality of opportunity to be expressed either way? It could be pointed out that there is a tradition of doing so that goes back at least as far as Rawls.¹⁸ Consider the following passage from Rawls's *A Theory of Justice* in which he first introduces his favored conception of equality of opportunity:

... those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class (Rawls, 1971, 73).

Rawls starts out construing equality of opportunity in a way that conforms rather neatly to the positive template when he says that “those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success . . .”¹⁹ But by the end, he is construing the principle in a way that conforms to the negative template: “The expectations of those with the same abilities and aspirations should not be affected by their social class.” (These two expressions are not logically equivalent; see final endnote.)

Given that Daniels, like Rawls, explicitly offers a negative construal of equality of opportunity, how can I be justified in saddling Daniels with P₁, something that he never asserted? This is the objection. If it goes through—if the right construal of Daniels's principle is P₂—then both of my objections to Daniels are undermined.

Consider first the currency objection. My objection there is that if the opportunity we care about is the opportunity for the achievement of a plan

of life, then there is no clear motivation to equalize opportunity; in fact, there would appear to be a strong instrumental reason to promote a certain kind of *inequality* of opportunity. But P_2 does not tell us to equalize anything. Thus, perhaps I should have taken more seriously Daniels's protestation, which I quoted earlier, that equality of opportunity does not demand equal shares of the normal opportunity range (Segall, 2007, 351–2).²⁰ This might have been Daniels's way of insisting that he would not accept a positive construal of equality of opportunity.

Now consider the scope objection. I argued that impairments of normal functioning (i.e., health needs), when they occur in adults, are not a threat to society's ability to equalize opportunity among people equally blessed in the natural lottery. I said that we can and should achieve this goal by attending to children. But Daniels's construal of equality of opportunity, P_2 , tells us to eliminate impediments to opportunity arising from impairments of normal functioning, period. It makes no distinction between impairments in adulthood and impairments in childhood. It also makes no distinction between genetically and socially determined health needs, as P_1 does.

Thus, a requirement to provide for every citizen's health needs follows straightforwardly from P_2 . A little too straightforwardly actually. And this brings us to the problem with P_2 : it is, more or less, a statement of the conclusion and not an argument for it. Daniels wants to argue for a societal obligation to meet health needs when possible, and the principle that he explicitly asserts in support of this conclusion, P_2 , says that impairments to normal functioning should not be allowed to curtail anyone's share of the normal opportunity range. The logical distance between what is supposed to be the conclusion and what is supposed to be the premise is incredibly thin.

The point, as I understand it, of equality of opportunity-based arguments for social policies is that, if successful, they hold out the possibility of showing a certain kind of person (a person committed to the idea of liberalism, broadly construed) that something she already believes in entails some social policy she does not already believe in. I assume that this is what Daniels wants to do, which is why I saddled him with P_1 . Only a principle that conforms to the positive template can capture the fundamental idea that liberals generally take themselves to be committed to, since that fundamental idea is the idea of something to be achieved: the idea that everyone should have an equal chance of success and that the playing field should be even. If Daniels is happy to merely show us that something we might not already believe in implies something else we might not already believe in, then P_2 is the principle we should attribute to Daniels. But surely Daniels would not be satisfied with this. In fact, he is at pains in *Just Health* to demonstrate that there are other theories of justice—theories that do not include a principle of equality of opportunity—that also imply a societal obligation to meet health needs (Daniels, 2008, 63–77). Daniels wants to show us that most of us are

in a sense already committed to the existence of such an obligation, though we might not know it.²¹

All things considered, then, it is justifiable to interpret Daniels as advancing a principle of equality of opportunity that conforms to the positive template. And for reasons I gave in previous sections, P_1 is the construal best supported by Daniels's writing. It was this version of the principle of equality of opportunity that grounded the argument for a societal obligation to meet health needs; the argument to which my currency and scope objections applied. Therefore, the objections are vindicated.

V. CONCLUSION

I have maintained that Daniels's argument in *Just Health* from the principle of equality of opportunity to a societal obligation to meet health needs is unsound as it stands. Specifically, the argument faces two problems. First, the broad currency Daniels employs, opportunity for the achievement of a plan of life, does not seem like the kind of thing we should insist on distributing equally. Therefore, his principle of equality of opportunity is implausible in itself. Second, Daniels's scope claim—his claim that we should equalize opportunity among those equally talented—lends no support at all to a policy of meeting adults' health needs, at least in a society that is otherwise just. Consequently this argument, the scaffold around which all the other interlocking parts of Daniels's integrated theory of justice and population health is built, appears to be in danger of crumbling.

NOTES

1. Daniels (2008).
2. This includes: Daniels (1988), Daniels, Light, and Caplan (1996), Daniels, Kennedy, and Kawawchi (2000), and Daniels and Sabin (2002).
3. Daniels (1985).
4. Granted, such an undertaking may seem to violate the ecumenical spirit Daniels establishes in *Just Health*, in which he highlights other arguments for the existence of the societal obligation and is at pains to ensure that nothing weighty rests on our accepting his favored argument. But the fact remains that it is important whether Daniels's argument is sound. First, if it is not, then the most popular and well worked-out approach to justice and population health—the equality of opportunity approach—would be left on unsure footing, and it would then be very important to determine whether any of the other approaches, some of which Daniels mentions, withstand scrutiny. Second, the equality of opportunity argument has practical implications that may differ from the implications of other arguments. Daniels, of course, downplays this feature of his approach. He says that the ideal of equality of opportunity does not tell us how to meet health needs fairly when we cannot meet them all, and to fill this gap he puts forward his procedural framework for resource allocation, "Accountability for Reasonableness." Although Daniels's claim might hold, it is nevertheless true that we can answer certain higher level practical questions purely on the basis of broad principles. For instance, as Daniels says, if we adopted a luck egalitarian approach to justice and population health, we would have to adopt a much harder line on personal responsibility for health than we do on Daniels's preferred equality of opportunity approach (Daniels, 2008, 74–7).

5. Actually, there is at least one additional variable: a variable of timing. We need to be told whether opportunities should be equal at one time, all the time, or something else. For the sake of simplicity I focus on just these two variables.

6. The same concern applies to the severely, permanently disabled.

7. To forestall any charge that I have misinterpreted Daniels by portraying him as an egalitarian, I should say straight off that I am aware that Daniels explicitly rejects “leveling off” differences in shares of the normal opportunity range. Daniels agrees that “fair shares of the normal opportunity range will still not be equal shares” (Daniels, 2008, 60). All this means, however, is that Daniels’s principle of equality of opportunity has a scope. He believes, as I will explain in the next section, that *within certain groups* fair shares of the normal opportunity range will be equal shares. Daniels is a nonegalitarian only in the sense in which nearly everyone who believes in equality of opportunity is a nonegalitarian: he believes that differences in opportunity *across certain groups* are unobjectionable.

8. In addition, the problem of justifying health care for the very elderly may creep back in, as it is not clear that a reasonable plan of life includes plans for very old age (since most people fail to reach very old age). See Segall (2007, 347–9).

9. This is just the well-known “leveling down” objection to egalitarian principles of justice, albeit with two differences. First, the objection is standardly used against principles of equal outcome, as opposed to principles of equal opportunity. Second, those who raise the objection usually have zero-sum contexts in mind—contexts in which leveling down means shrinking the size of the pot as opposed to our situation in which it might also mean preventing the enlargement of the pot. Rawls is an exception. Though he did not explicitly raise the leveling down objection, he clearly considered the distribution of primary goods to be a nonzero-sum situation, and this motivated his move to the prioritarian difference principle. For a classic statement of the leveling down objection, see Raz (1986, 227).

10. There are several published sufficientarian defenses of a societal obligation to meet health needs. See, for instance, Anderson (1999), Nussbaum (2000), and President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (1983).

11. Lesley Jacobs offered the same criticism years ago—something I was unaware of when I lodged the criticism. See Jacobs (1996).

12. Daniels (2008, chap. 3; see also 45 and 58).

13. The socioeconomic determinants of health actually seem to be something of a double-edged sword for Daniels. although they appear to make it true that all inequalities in health needs are a threat to fair equality of opportunity (actually, they *don’t* make this true; I will explain why in the next two paragraphs), they also seem to make universal health care unnecessary and possibly insufficient as a tool for evening out these inequalities. See Segall (2007), Sreenivasan (2007), and Wilson (2009).

14. Thomas Pogge, a proponent of the fair equality of opportunity argument for a societal obligation to meet health needs, seems willing to bite the bullet. See Pogge (1989, 193).

15. See for instance Dworkin (2000, chapter 9; see also 435) and Segall (2009). Dworkin, it should be noted, believes that a principle of justice advocating the mitigation of the effects of luck is not a version of the principle of equality of opportunity. See Dworkin (2000, 13, 87, and 286).

16. It has been suggested to me that Daniels takes the socioeconomic determinants of health to constitute nonideal conditions and that therefore *Just Health* is intended to be a work in non-ideal theory. But I doubt that this is the case. Daniels never suggests that in a perfectly just world there would be no socioeconomic determinants of health. In fact, he seems to think that in a just world there would still be inequalities in wealth, power and status and that these inequalities would lead to health inequalities (Daniels, 2008, 97–9, esp. 99). This makes sense: Ideal theory can and should take account of facts of human biology, psychology, and sociology, and these facts alone guarantee that there will be socioeconomic determinants of health.

17. D. W. Haslett makes the same mistake—the mistake of producing an argument demonstrating that equality of opportunity requires that children have access to health care while drawing the much stronger conclusion that there is a *universal* entitlement to health care. See Haslett (1986, fn. 16).

18. This tradition includes Amartya Sen, who claims that one of the two standard ways of defining equality of opportunity is “with reference to equal applicability (or equal nonapplicability) of some specific barriers or constraints.” Sen (1992, 7), original italics removed.

19. The conformity with the positive template still holds if we include the rest of this sentence, “. . . irrespective of the income class into which they are born.” As a matter of logic, the same proposition is expressed regardless of whether this last clause is included. But I do not mean to simply ignore this last

clause. Rawls's concern with the effects of income class are well expressed in the last sentence of this quote, to which I will attend presently.

20. Segall levels a criticism similar to my currency objection. But Segall does not respond to Daniels's protestation.

21. For what it is worth, Rawls is also vulnerable to criticism for stating his version of equality of opportunity negatively. Since he is interested in using the principle of equality of opportunity to justify social policies (universal primary and secondary education and limits on inheritance are the two he mentions), he should limit himself to construals of equality of opportunity that are broad and reflect deep liberal commitments—that is, construals that conform to the positive template. His negative construal—that one's opportunity level should not be influenced by the social class of one's birth—may not capture such commitments, though it certainly comes closer to doing so than does P_2 . Still, I think it is too controversial to serve as an effective premise in arguments for social policies.

Unlike Daniels, Rawls does at least assert a positive construal of equality of opportunity. And his negative construal does follow from his positive construal (see earlier inset quote for both construals). From the fact that opportunity should be equal among people equally favored in the natural lottery, it follows that one's opportunity level should not be influenced by the social class into which one is born. (However, it does *not* follow, as Rawls seems to think it does, that one's opportunity level should not be influenced by one's social class, full stop. The reason for this should be familiar from my discussion of Daniels's scope problem: Under a regime of fair equality of opportunity, inequalities in social class among adults are caused by inequalities in the outcome of the natural lottery. Therefore, the inequalities in opportunity caused by inequalities in social class are indirectly caused by inequalities in the outcome of the natural lottery. And inequalities in opportunity that have this causal genesis are permitted by the positive construal of equality of opportunity.)

However, the two construals are not equivalent: the negative construal is much narrower than the positive construal and does not imply it. The positive construal says that opportunity should be equal among those equally favored in the natural lottery, and this means that all other potential causes of inequality of opportunity ought to be neutralized. Therefore, simply saying that the social lottery should not influence opportunity level, which is the negative construal, does not come close to implying the positive construal. That is, unless there are only two causes of inequality of opportunity—the natural and social lotteries. But this, clearly, is false. Luck—other kinds of luck besides the luck of the lotteries—can cause inequalities in opportunity. Interestingly, Rawls seems not to notice this, which could explain why he moved with ease between his positive and negative construals. His writings contain almost no mention at all of the claim some make that these other kinds of luck are a threat to justice.

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