Why Health Matters to Justice: A Capability Theory Perspective

Nielsen, Lasse

Published in:
Ethical Theory and Moral Practice

DOI:
10.1007/s10677-014-9526-8

Publication date:
2015

Document version:
Submitted manuscript

Citation for pulished version (APA):
Nielsen, L. (2015). Why Health Matters to Justice: A Capability Theory Perspective. *Ethical Theory and Moral Practice*, *18*(2), 403-415. https://doi.org/10.1007/s10677-014-9526-8

This is a late draft. A later version of this paper has been published in Ethical Theory and Moral Practice

The Capability View on Health Justice: Finding its Path

Abstract The capability approach, originated by Amartya Sen is among the most comprehensive and influential accounts of justice. However, although health is an important capability in Sen's works, he never gives a full account of health justice. This paper attempts to provide such an account. It does this by firstly laying out the general capability-based argument for health justice. It then discusses two recent attempts to justify *why* health is a distinctively valuable capability – these are Sridhar Venkatapuram's conception of health as the central human meta-capability and, respectively, Norman Daniels' embrace of the capability metric in his use of Rawls' principle of fair equality of opportunity. The paper argues that none of these accounts succeed in providing a plausible justification of why health is a valuable capability. Finally, the paper suggests an alternative more complex justification of the value of health, closely tied to different but central element of the capability view, that captures the core intuitions of both Venkatapuram and Daniels' accounts but without being vulnerable to the objections raised against each of them. This, the paper concludes, determines the path along which the capability view on health justice should proceed.

Keywords: Capabilities; health; justice; Daniels; Venkatapuram.

1. Introduction

Health and health care concerns have always been a central issue for capability theory. Indeed, intuitions about certain cases of health-related deficiencies and handicaps were initially what moved Amartya Sen towards rejecting Rawlsian justice in favor of what he called "the capability approach" (Sen 1979; 1990). The evident relation between basic health capacities and the capability view has laid the ground for new theoretical perspectives on justice in health, recently resulting in several very insightful and comprehensive capability-based theories of health justice. These include Jennifer Prah Ruger's "Health Capability Paradigm" (Ruger 2010, p. 112-116); Norman Daniels' embrace of the capability metric of justice in his Rawlsian theory of "Just Health" (Daniels 2008, p. 70; 2010); and, not least, Sridhar Venkatapuram's most recent theory of health justice, in which he introduces the conception of health as a "meta-capability" (Venkatapuram 2011; 2013). Although it seems obvious that each of these theories holds highly valuable contributions to the application of the capability view to health and health care issues, they provide quite contradictory answers to questions that any coherent view on health justice should respond to uniformly. Thus, it seems that there is still a need for exploring the true path of the capability view in health justice.

This paper sets out to determine this path. Section two introduces the common ground for the capability view and provides a general formulation of its argument for protecting people's health. Different proponents of the capability view agree about this general formulation but disagree about why health is a distinctive valuable capability. Section three discusses Sridhar Venkatapuram's conception of health as the central human meta-capability as a possible justification of why health is valuable. It raises two objections to Venkatapuram's view and concludes that it is thus unsuccessful in providing a plausible justification of the value of health. Section four addresses Daniels' capability-compatible

attempt to include health in a Rawlsian theory of just health. The section argues that in order to successfully include health, Daniels needs to full-heartedly replace the Rawlsian opportunity account with the capability metric by adopting something similar to Nussbaum's core human substance view. Finally, section five suggests an alternative justification of why health is distinctively valuable and concludes that this formulation is a stronger candidate than both Venkatapuram and Daniels' accounts for grounding the general capability-based argument for health justice.

2. Capability and health

The capability view of justice is basically a view about opportunities. Sen famously defines capabilities as "a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another" (Sen 1992, p. 40). According to Sen, the currency of capability defines the "evaluative space" of value relevant to justice, positioned between the enjoyment of welfare (or utility) and the possession of resources (Sen 1993). The capability measure thus captures people's actual opportunities in life – including one's ability to use resources to achieve valued goals.

Health is important on this account because, f or a human life to flourish, one would need at least some basic level of health. Thus, to be unhealthy, ill, or diseased is a typical way of being deprived of what are seen as required human life opportunities and, consequently, reflects a critical deficiency of capability. However, a wide range of different theories concerned with justice find themselves within the same "evaluative space" as Sen's capability view (e.g. Arneson 1989; Cohen 1993; Daniels 2010). We therefore need to address more thoroughly the question of how to determine the *content* of opportunities that the capability view is concerned with in order to see how the view differs from other theories about justice.

In taking up this challenge of specifying which capabilities are important, proponents of the capability view employ an objective criterion – inspired by Scanlon's distinction between needs and desires (Scanlon 1975) – arguing that the capabilities of importance to justice be based upon people's objective or fundamental interests, or what a person needs independent of their mere subjective preferences.

There are a number of reasons to adopt an objective criterion (Anderson 2010). In my view, the strongest reason is that subjective preferences are an unreliable source for specifying relevant objects of justice because of the individuality and adaptability of tastes. This remains a core problem for different versions of welfarism. On the one hand, strict equality of welfare counterintuitively implies that we should compensate people with very expensive tastes even when they are themselves responsible for cultivating them. On the other hand, equal opportunity for welfare implies that a person cannot have a just claim on additional resources to cover his preference-satisfaction when he is himself responsible for cultivating his preferences; *even if* they are still much cheaper than other people's preferences and thus this person still demands less than his fair share of resources. [1] Thus, it seems that justice theories based upon the subjective value of welfare end up either rewarding those with expensive tastes or punishing those with initially cheap tastes (Clayton and Williams 1999).

The problem of individuality and adaptability of taste admittedly does not suffice to reject subjectivist theories of justice altogether. There might be ways for subjectivists to defend against these objections, and many have attempted to do so ever since Dworkin initially raised them. I shall leave aside a discussion of these responses and simply note that it seems that the problems with individual and adaptive taste do in fact give us reasons to favor a theory of justice that determines which opportunities to be concerned about on an objective, instead of a subjective, basis.

[1] These arguments against welfarism are informed by Dworkin's well-known Louis and Jude cases (1981).

This leaves the capability view with the following concern: What role, if any, should personal preferences play with respect to justice? The answer to this question within an objective account of valuable functioning still seems rather unclear, and few proponents of the capability view attempt to answer it. Nonetheless, this is a question that must be answered. One prominent response is provided by Serena Olsaretti, who argues that "endorsement" is a core element of the capability view (Olsaretti 2005). According to Olsaretti, "it is necessary both that certain objects that are present in one's life be valuable (where their being valuable is not a function of the person's attitude), and that one deem them in some way valuable for oneself" (2005, p. 95). Thus, endorsement in this latter sense is a necessary but not sufficient condition for evaluating the value of functionings (in the sense relevant to justice).

To apply Olsaretti's endorsement, consider the case, borrowed from Williams (2002), of Eve and Eva: two women who are both infertile. While Eve utterly regrets her condition, Eva, on the other hand, never intended to have children in the first place and is not troubled by her incapacity. Intuition urges us to believe that Eve is worse off than Eva, so we want our account to be able to make that conclusion. Without any element of endorsement, we are unable to do that. Incorporating Olseratti's element of endorsement sensitivity, the capability view handles the case of Eve and Eva well. The view plausibly suggests that Eve regretting her disadvantage (while Eva does not) does in fact make Eve worse off than Eva in a justice-relevant sense. This is so, however, not because of her regret itself, but because her regret relates to an objectively important human need – the freedom to reproduction. Thus, through endorsement, personal preferences may play a key role for determining how strongly the lack of a specific justice-relevant capability affects a person's life and thus for evaluating the strength of the corresponding duty to provide this person with treatment or compensation.

However, in deciding which capabilities *are* relevant to justice, and thus in relation to which a deficit gives rise to justice-related entitlements, personal preference should play no

role at all. Here, the capability view ought to employ an objective criterion. This implies that the capability view is not similarly susceptible to the problem of adaptability of tastes. From the fact that it determines its value objects of justice without relying in any way on personal preferences, it follows that people cannot lose their entitlements to the relevant capabilities by not endorsing them. Thus to employ the example once more, although Eva does not care for treatment or compensation in relation to her infertility, and although this is relevant for what we should do in order to accommodate her specific needs, it will not disqualify her from entitlements.

Upon these reflections, we may summarize the capability view's general argument for protecting people's health in the following three statements:

(1) The aim of justice is to secure people an adequate level of valuable capabilities.

(2) Valuable capabilities are identified using an objective criterion independent of subjective preferences.

(3) According to this objective criterion, health is a valuable capability.

The two first statements are ambiguous about the notion of adequacy and the objective criterion used for identifying valuable capabilities. That is, it allows for different delimitations of valuable capabilities and for different interpretations of what it takes for a level of capabilities to be adequate. Some capability theorists adopt a minimal sufficientarian account of very specific central human capabilities such as Martha Nussbaum's (2000, p. 78; 2011, p. 33). Others follow Elizabeth Anderson (1999) in defending a relational egalitarian position interpreting adequacy and valuable capabilities in relations to the establishment and protection of respectful and equal social relations. Yet others concur with Sen in emphasizing the theoretical strength in leaving these questions open (Sen 1993). I shall not argue

decisively in favor of any one of these interpretations. Rather, my argument concerns the third statement. As a general statement, all capability theorists agree that health is a valuable capability and thus that justice should aim to secure adequacy in regards to health. However, different capability theorists hold contradictory views on the justification of this statement. In other words, they differ on *why* health is valuable. Below, I discuss, firstly, Venkatapuram's non-naturalistic account of health being the central meta-capability of human life and, secondly, Daniels' embrace of the capability metric into his fair equality of opportunity view. I argue against Venkatapuram's view that it fails because it expands our understanding of health excessively and, as a result, overestimates the importance of health for human life. Moreover, it relies too heavily on human essentialism in its definition of health. I then argue against Daniels' that in order to enable the fair equality of opportunity view to address health deficits in a plausible manner, Daniels needs to full-heartedly replace the Rawlsian opportunity account with the concepts of capabilities and embrace Nussbaum's core human substance view as the relevant objective criterion for identifying valuable capabilities. I then conclude by laying out what I see as the most promising justification of why health is a distinctively valuable capability.

3. Venkatapuram: non-naturalistic health and the meta-capability

Venkatapuram's account of health justice originates from a dispute about what it means conceptually to 'be healthy'. This dispute is a general one that largely divides people into *naturalists* or *non-naturalists* regarding health. Non-naturalists (such as Nordenfelt 1987; 2007; Engelhardt 1974) believe that an organism (or a part of an organism) is healthy if and only if the capacities of the organism (or part of the organism) are good for the organism (of

which it is a part) (Hausman 2012).[2] Naturalists, on the other hand, believe that judgments about the health of an organism (or part of an organism) are non-evaluative in the sense that they do not rely on whether or not the capacities of the organism (or part of the organism) are good for it. Rather, naturalists point to non-evaluative standards of reference, such as the statistical distribution of functionings in defining health (Boorse 1997). Thus, central to the distinction between naturalists and non-naturalists is the dispute about a *value-neutral* versus a *value-based* theory of health.

Naturalism about health is most famously seen in Boorse's well-known biostatistical theory of health (1997) but has more recently been adopted by Daniels in his very influential theory of just health (1981; 2008). Following Boorse, Daniels suggests that we understand health in contrast to "pathology," by which he means the departure from normal (species-typical) functioning (Daniels 2008, p. 37). Thus, *health* is equivalent to *species-typical functioning*, and to be *unhealthy* on this account is, consequently, to be below a sufficiently frequent functioning level for the species (or species subgroup). The term "pathology" therefore refers to the left-hand tail of a normal distribution (Boorse 1997, p. 8). This biostatistical understanding of health as the "absence of pathology" then provides the objective standard of human needs required to separate needs from desires in the way that is relevant to Daniels' approach. Consequently, by referring to "health needs," we can, according to Daniels, draw on our scientific knowledge from biomedicine and epidemiology to objectively outline what we as humans need to be healthy.

The biostatistical account of health has been widely criticized. Among the core problems facing this account is that of "common disease" (Schwartz 2007; Hausman 2012). The problem arises because the biostatistical requirement of the account does not allow a

[2] Although non-naturalists rarely focus on organisms other than human beings, I use the term "organism" here in both definitions in order to make them more closely related. This is not inconsistent, since human beings are organisms.

pathology to be (too) common. The "common disease" critique claims that it is implausible to build a definition of health on biostatistical normality since doing so implies that a population becomes *healthier* as a disease becomes more frequent among its citizens, which is illogical. This is simply not what "being healthy" means. Now, in addition to this general critique I shall raise a more theoretically specific point, namely, that if we imagine a population in which the distribution of functioning is such that the majority is at the same – but very low – level, the biostatistical theory of health seems to imply that *no one* within the population is unhealthy. This is so because the lowest level of functioning is also the most *common* level. Again, this is highly implausible.

As a response to the problems with the biostatistical account of health, Venkatapuram proposes a non-naturalist account of health. He suggests that the normative basis for the role played by "functionings" in the capabilities approach is remarkably compatible with Nordenfelt's *Holistic Theory of Health* (Nordenfelt 1987; 2007a). According to Nordenfelt, *health* is a normative concept because of its importance for a person's ability to realize vital goals; that is, states of affairs that are necessary for a person's minimal happiness in the long run or simply, and more generally, for reaching a person's "most essential goals in life" (Nordenfelt 2007a, p. 7). Venkatapuram believes that we should generally accept Nordenfelt's normative theory of health, although he thinks that Nordenfelt fails to articulate a universally shared list of human vital goals, instead relying merely on a socially relative "empty set" of such goals (Venkatapuram 2011, p. 60). However, Venkatapuram takes Nussbaum's informed list of central human capabilities, set forth as prerequisites for a human life of dignity, as a promising way to fill in this gap in Nordenfelt's theory. In fact, Nordenfelt sometimes provides examples of vital goals very similar to Nussbaum's central capabilities (e.g. having food, a sheltered home and economic security) (Nordenfelt 1987, p. 91).

Consequently, by merging Nordenfelt's normative conceptions of health with Nussbaum's capabilities, which define the relevant freedoms required to enjoy a dignified human life, Venkatapuram believes that we have reached the most plausible understanding of the distinctive value of health. As a result, Venkatapuram argues that we should accept a normative (non-naturalist) account of health, understanding health in the sense of having a sufficient level of central human capabilities commensurate with equal human dignity. Thus, according to Venkatapuram, health represents a meta-capability in the sense that it is a prerequisite for enjoying the (minimum necessary) capabilities that constitute a dignified life (Venkatapuram 2011, p. 164). Such an account of why health is valuable faces at least two serious problems. First, it seems to expand our understanding of health excessively and, as a result, overestimates the importance of health for human life. Second, it relies too heavily on human essentialism in its definition of health.

To address the first point, consider the story of Vasanti, a poor Indian woman who often shows up in the introductions to Nussbaum's works. The opening line of Venkatapuram's recent book indicates that he is skeptical of the usefulness of, as he says, "the usual graphic story describing the wretched life of some poor girl or woman in some poor country" (2011, p. 1). However, while I agree that Nussbaum's philosophy is undoubtedly superior to her vivid storytelling, her use of stories such as Vasanti's does serve a valid purpose. I will therefore briefly sketch the central aspects of Vasanti's story.

Vasanti is disadvantaged in various ways. Her short stature suggests that she was inadequately nourished in childhood, which is likely the result of both poverty and gender discrimination. She is unable to read and write, and as a result, her employment options are very limited. For several years, she was in an abusive marriage, and because of weak legal enforcement, her opportunities to receive help were restricted. Her understanding of the political system and her own rights is limited because of absence of schooling, and she is thus

unable to fully take part in the decision making of her community. In her most recent description of the implications of Vasanti's story, Nussbaum writes,

> The diverse aspects of Vasanti's situation interact with one another in complex ways, as we can already see, but each one is also a distinct issue that must be addressed in its own right if Vasanti is to live the life she deserves. A decent public policy can influence all aspects of her experience. It makes sense for an approach to "development," which means making things better, to focus on how Vasanti's opportunities and freedoms to choose and act are affected by the variety of policies available for consideration (Nussbaum 2011, p. 12).

As Nussbaum indicates, the purpose of stories such as Vasanti's is to give an idea of the great complexity of disadvantage and, consequently, the many different pieces that must fall into place in order for a person to live a life consistent with even the barest standards of success. Thus, the example serves as an immediate indicator of the pluralism that the capability view contains. A vital element of Nussbaum's approach is that a human life can be undignified in many different ways, and that although a deficit of one capability will often correlate with another, each must be addressed in its own right. That is, each capability on Nussbaum's list is in itself critically important for the dignity of a human life (Nussbaum 2000, p. 81; 2011, p. 37).

Similarly, Nordenfelt's conception of vital goals entails a value pluralism about the good life, and Venkatapuram explicitly acknowledges the capability view's wellbeing pluralism (Venkatapuram 2011, p. 164), and rightly so. But doing so renders his understanding of health-related deficits over-inclusive. If being healthy means having the capabilities for achieving the functionings included in Nussbaum's list, and if we agree that

Vasanti does not have these capabilities, it follows that every absence of capability that applies to Vasanti's situation is a case of the absence of *health*. This seems dubious, and thus appears to stretch the definition too far.

Following Nordenfelt, Venkatapuram might respond that not all Vasanti's deficits fall within their definition of health deficits, since being unhealthy means not having the *second-order* ability to acquire the first-order ability to achieve vital goals or, in Venkatapuram's work, central human functionings (Nordenfelt 1987, p. 148; Venkatapuram 2011, p. 59; 2013, p. 274). Thus, although one might not have the capabilities at present, the capacity to acquire them makes one healthy in the relevant sense. This makes sense in cases such as that of children, who are for example unable to nourish themselves presently, but will be in the future and are therefore not considered unhealthy. In Vasanti's case, however, we do not really expect her to acquire the abilities to deal with poverty, discrimination, illiteracy and so forth. Nonetheless, it still seems wrong to categorize all of these disadvantages as deficits in health. To be fair, some non-naturalists would not consider such disadvantages instances of health-*deficits* but rather external circumstances restricting a person's health (Nordenfelt 2000, p. 71-73). Venkatapuram might say something similar, but even this seems over-inclusive. We simply do not consider every capability-deficit a problem in a health-related sense. By doing so, we might lose sight of the critical importance of each of Nussbaum's capabilities in their *own* right. Venkatapuram' and Nordenfelt's accounts of health are thus cases of *healthinism*, by which I mean the confusing of our idea of the *healthy* life with that of the *good* life (or the life that justice requires that everyone is entitled to as a minimum standard).

The second problem in the non-naturalist account of health is that it overestimates the difference between human and non-human ways of being healthy. This is because of the human essentialism entailed in the concepts of vital goals and central human capabilities. More specifically, Venkatapuram thinks that we should in fact make a clear-cut distinction

between humans and other animals when it comes to health. "No other organism," he writes, "can intentionally change their baseline of functionings. The fact that human beings can is what makes it impossible to be value-neutral about the baseline, and what makes health a normative concept" (2011, p. 51). Admittedly, it is correct that human beings are able to change their baseline of functioning (in a way that no other organism can) and, therefore, that the actual functioning levels for the species vary across different cultural and historical contexts. Admittedly, this fact might be interpreted to mean that functioning levels are "normative" in a specific understanding of the word. But it does not mean that "health" is a normative concept in an "evaluative" sense; that is, that "being healthy" is related to what is good for the organism. Yet this is basically the kind of normativity that Venkatapuram needs when defining health on the basis of the capabilities for a dignified life.

For example, it is obviously true that what "being healthy" implies varies across different species. That is, being a healthy frog is not the same as being a healthy human being. But this fact does not justify that what "being healthy" means, *conceptually*, is different for humans and for frogs. Namely, being healthy is to be able to function as this particular organism is supposed to function in its specific environment and at this given point in evolutionary development. In other words, saying that a particular being is "healthy" is a factual claim. It provides information on how this being functions compared to how it is supposed to function and does not add anything evaluative, such as what makes such a being's life good, meaningful, minimally successful, and so on. We should understand the concept of "being healthy" much in the same way as we use the concept of "being young." It is merely a factual description of the state of the organism in question. Although human beings are able to increase life expectancy and thus expand the period of time during which one could be said to be young (presently, a forty-year-old may count as a youngster compared to a hundred years ago), what it means to "be young" has not changed; that is, it means to be

in an early stage of life. Even though the number of years that a human being can be said to be young has changed over the years, we do not consider "youth" to be an evaluative concept. Expressions such as "being young" and "being healthy" are normative in the sense that they are only contextually meaningful; but they are not normative in the evaluative sense. That is, they are not, in themselves, judgments about what is good for the organism in question. [3]

I conclude that although we have strong reasons to reject the biostatistical account of health, we have equally strong reasons to reject non-naturalist accounts such as those of Nordenfelt and Venkatapuram.[4] Thus, the non-naturalist conception of health as the central human meta-capability cannot plausibly account for why health is a valuable capability. This is so, firstly, because of the *healthinism* involved in overestimating the role played by health in the human life; and, secondly, because of the human essentialism entailed in the definition of health.

4. Daniels' view: Fair equality of capability

So far, I have argued that the capability view on health justice would reject both the biostatistical theory of health that Daniels adopts from Boorse, as well as Venkatapuram and Nordenfelt's normative account of health. However, the opportunities that the capability view defines as relevant to justice should respond to an objective criterion of human needs and not be based on mere personal preferences. Thus, despite the rejection of the Boorsean health theory, it seems that the capability view as I have presented it so far is compatible with the Rawlsian framework of fair equality of opportunity that Daniels suggests. Like the capability

[3] Nordenfelt does apply his holistic account to other species as well (2007b). However, since "vital goals" are still essentially different for humans than for other animals and plants, this does not avoid the essentialism that I criticize here.

[4] Since the topic of this paper is not how to *define* health but how to *justify* its value, I will not defend a specific theory of health. However, as is made clear by the discussion here, I believe we would do best by adopting a naturalist but non-statistical definition. As a personal note, I see much potential in Daniel Hausman's recently suggested "functional efficiency account" (2012).

view, Daniels' account is similarly focused on people's actual opportunities in life and, moreover, applies an objective criterion of needs in order to limit the relevant scope of justice. Daniels himself acknowledges the similarities and has recently stated that Amartya Sen's capabilities approach and his own account "walk the same, or a very similar, walk, but with a different talk" (Daniels 2010, p. 135). This stresses the point, which he also makes in *Just Health* (2008), that the differences between the two can be seen as merely a choice of terminology.

Elaborating the principle of fair equality of opportunity and its applicability to health, Daniels interprets opportunity as the access to life plans (or life prospects) that a person has. Daniels himself sees this as a way of, as he says, preserving key features of the Rawlsian conception of justice as fairness, since he finds the same type of terminology within Rawls' own writings. However, he needs to extend the account of opportunity beyond Rawls' own account – which takes opportunity to relate merely to people's chances of successful careers and possessing the powers and prerogatives of offices – to be able to make the theory fit his intuition of health needs. He therefore ends up farther away from the Rawlsian scheme than he cares to admit. To see this, consider what he says about infertility:

> For example, infertility is a departure from normal functioning that reduces an individual's fair share of the normal opportunity range and gives rise to claims for assistance on the fair equality of opportunity view […] Infertility, however, does not interfere with access to jobs or offices and the rewards associated with them, even if it interferes with other basic functions of free and equal citizens, such as reproducing themselves biologically, an aspect of plans of life that reasonable people commonly pursue. Broadening Rawls's equal opportunity principle means that we must broaden

> the grounds on which we justify the importance of opportunity. The claim here is that we can modify the theory with few negative consequences (Daniels 2008, p. 59).

The truth of the claim in this quote depends on what Daniels means by few negative consequences. In my view, there are at least two ways in which Daniels needs to abandon the Rawlsian framework in order make the theory include health in a sound and coherent way and in order to plausible explain why health is a valuable capability. First, although health on the one hand does give rise to valuable life opportunities – just like higher income expands a person's consumption options – it does on the other hand carry intrinsic value. This is so, firstly because of the central role that health plays for any human life. Health functionings are constitutive of human life in much the same way as social abilities and societal status, rational capacities, and emotional relations. Thus, any inadequacy in health is something to be concerned about.[5] Moreover, being infertile (to use Daniels' example) is not only a relevant disadvantage because it takes away people's opportunity to have children but also because it deprives them of the freedom to *choose* whether or not to follow this life plan. This point relies on Sen's insightful distinction between well-being freedom and agency-freedom (Sen 1992, p. 59; 1993). Revisiting the Eve and Eva case, mentioned earlier, we see that although endorsement explains why we think Eve is relevantly worse off than Eva, the lack of agency-freedom that they both suffer from shows why we should be worried about infertility regardless of how much people care about this opportunity. Health capabilities carry these valuable aspects of both functioning-achievement and of agency-freedom, which the Rawlsian framework that Daniels adopts is unable to take into account.

[5] This merely implies that some level of health functioning is important for any human life. It does not imply the much stronger claim, that health necessarily entails the freedom to what we value about life. Thus, my argument here against Daniels' view is compatible with my rejection of Venkatapuram's meta-capability conception.

Second, the expansion of the principle of fair equality of opportunity to also leveling the playing field in regards to peoples' levels of health functionings immediately invokes an arbitrary distinction between natural health and natural talent, making it unlikely that he can remain reliant upon the Rawlsian principle of opportunity. Recall that the veil of ignorance was not designed to level the playing field in regards to all natural abilities. Thus, for Daniels to make the move of also including health, he needs some justification of this new account of opportunity. As he himself points out, the Rawlsian framework of opportunity is unable to help him on this point, as it focuses too narrowly on career and office opportunities. Daniels can point to the importance of normal or species-typical functioning, as he does in the paragraph cited above, but as I have already argued, we have strong reasons to reject the biostatistical theory of health. Consequently, the baseline ideal of normal functioning does not qualify as a basis for the broadening of the opportunity principle to include health.

Capabilities reflect access to (or effective freedom to obtain) valuable functionings, among which health (or basic health) is one of the more central and important (Sen 2002; Nussbaum 2000, p. 78; 2011, p. 33). Thus, contrary to Rawlsian opportunities, the opportunity framework within the capability view does relate to life plans in the health-inclusive way that Daniels (but not Rawls) wants it to. As a consequence, it seems that Daniels is right to claim that his view is compatible with the capability view in that sense, and thus that his list of objective health needs is better understood as a specification of justice-relevant health capabilities than an expansion of Rawls' list of primary goods. However, as would any other proponent of the capability view, Daniels then needs to justify the relevance of his list of health needs within the framework of the capability theory since, as we have seen, Rawls' theory of justice is unable to do the job.

Here, I shall introduce two different strategies for justifying the capability view's objective account of valuable functioning. The first is the *core human substance view* most

effectively defended by Martha Nussbaum (2000), and the second is the *transcendental necessity of agency view* indebted to Alan Gewirth's writings, recently defended by Rutger Claassen and Marcus Düwell (2012). After a brief elaboration of the two, I shall argue that only the former is able to address health in a plausible way (and in a way compatible with Daniels).

Concurring with Aristotle's view about the existence of a specific core of human substance, Nussbaum explicitly lists ten central human functioning capabilities: *Life; Bodily Health; Bodily Integrity; Senses, Imagination, and Thought; Emotions; Practical Reason; Affiliation; Other Species; Play;* and *Control over One's Environment* (2000, p. 78; 2011, p. 33). The justification of these specific capabilities comes from them being core features of our common humanity and thus constitutive of the flourishing of human life itself (Nussbaum 2000, p. 81). Nussbaum's list has met serious critique, and many find the idea that human life can be mapped out in this way controversial and problematic. Recently, Claassen and Düwell argued that Nussbaum's account fails to sufficiently ground the importance of each capability on the list. As their example of the Humorless Warrior shows, aggression is a natural and common human capability. However, it does not appear on Nussbaum's list, which seems to them to make the justification of the account conveniently arbitrary (Claassen and Düwell 2013). The capability view, they believe, would do better in justifying an objective account of valuable functioning by rejecting Nussbaum's core human substance view and instead focusing on capabilities that are "dialectically necessary," meaning that an agent's claim on these capabilities relies upon "judgments that I have to accept because I am an agent."

According to Claassen and Düwell, this method of justification would apply to the capability view in a way that may provide valid justification even for many of Nussbaum's capabilities. However, when applied to matters of health capabilities, it becomes clear that the transcendental necessity of agency view does not do the job. As Daniels rightly notes,

capabilities such as being able to reproduce are critically important to the prospects of human life, so our account of valuable functioning should encompass such a capability. But it would be wrong and disrespectful (if not outright insulting) to suggest that being infertile is a way of not being an agent. Health capabilities, even when they are not preconditions for agency, are matters that we think justice should care about. Thus, it seems that we need a broader account of human life than just the tenet of mere agency.

Importantly, the capability view always acknowledges the value of agency. This is because it is basically focused on securing people's life opportunities, and thus what people are able to do and to be. This implies, ideally, that a person should always be free to choose to opt out of her entitled capabilities (assuming that she is doing so out of effective free will, is sufficiently aware of the consequences of doing so, and so on). This resonates with the discussion above about the role played by endorsement. Moreover, it also implies that people should be provided the necessary conditions for choosing rightly – that is, their decisions affecting their health should be guided by adequate knowledge about health. The capability view thus captures the importance of not only providing access to health care, but also enhancing people's "health agency" (Ruger 2010, p. 147). In sum, although individual agency plays a central role in the capability view, health capabilities are to be valued in their own right and not merely as preconditions for being an agent.

Rejecting the transcendental necessity of agency view when it comes to health, we might reconsider whether Nussbaum's objective list is really so unsuited to the task at hand. Indeed, the critique of Nussbaum given by Claassen and Düwell seems to miss the mark. The justification of the capabilities on the list is not based on the capabilities being common or natural. Nor is it based on them being morally likeable in a sense relative to different cultures and contexts. The capabilities on Nussbaum's list acquire their justification from being universally shared human freedoms. That is, they are actual opportunities that any human life

needs in order to flourish. This means that the capabilities that justice should care about should relate to functionings that are directly constitutive of the flourishing of human life. This is why Nussbaum herself is so happy to embrace the analogy with Rawls' political liberalism – her capabilities (just like Rawls' primary goods), she thinks, are what every human being wants, regardless of whatever else in life they desire (Nussbaum 2011, p. 79). Aggression does not seem to be the kind of capability directly constitutive of the flourishing of human life. Thus, although some of Nussbaum's ten capabilities can be questioned, the strategy of justifying them upon a core of human substance might have more merit than it has been given credit for. Ultimately, the capability view on health justice does best by applying this strategy to arrive at a fundamental justification of the objective account of valuable functionings that includes health in a plausible way. Consequently, Daniels' ought to adopt the core human substance view as the underlying objective criterion for identifying valuable capabilities in order to make his theory of just health compatible with the capability metric in a way that plausible explains *why* health is a valuable capability.

5. The capability view on health justice

I began this article by laying out the general capability-based argument for health justice. I claimed that capability theorists generally agree that health is a valuable capability from the point of view of justice but that they disagree about why this is so. I then considered Venkatapuram's conception of health as a meta-capability and Daniels' fair equality of opportunity view as possible justifications for this statement. I argued against Venkatapuram that the meta-capability conception expands our understanding of health excessively and, therefore, overestimates the importance of health on the one hand, and that it relies too heavily on human essentialism one the other. I criticized Daniels for being too narrowly focused on the instrumental importance of health and for being in need of a plausible

capability-based justification of the objective criterion used to identify valuable capabilities. I then argued that in order to provide such a justification, Daniels (and any other capability theorist) should adopt Nussbaum's core human substance view.

Upon these reflections, I am now able to lay out my own account of why health is a valuable capability. In my view, there are at least three aspects of health that is valuable and important to justice:

(i) *The health-functioning claim*: Some level of health is important to people's life, regardless of their own perception of the value of achieving this health-level.

(ii) *The fertile-functioning claim*: Some level of health is instrumentally valuable because it is a prerequisite for effective access to other valuable capabilities.

(iii) *The health-agency claim*: Freedom of choice in regards to decisions affecting one's health-level is intrinsically valuable.

The first claim involves both functioning-achievement and agency-freedom aspects. Health is important, according to the former, because of the role this functioning plays in life. Following Nussbaum's core human substance view, the importance of health relies on the fact that relevant deficiencies in health are threatening the human way of life itself. Thus, underlying this point is a moderately perfectionist assumption that health is one of the constitutive aspects of a dignified or flourishing human life. This perfectionism, however, sits well with the status we normally assign to health. As Hurley points out, "It is not just good for people to be healthy rather than unhealthy; it is also good in itself for there to be healthy people rather than unhealthy people" (Hurley, 2007). This intuition supports the distinctive importance of health-functioning. Moreover, health-functioning is also important because of the inevitable aspect of agency-freedom it entails. As was argued against Daniels' view,

protecting the fertility of Eva is important not because of its functioning-achievement (recall that she never intended to actually put it to use), but because it carries her freedom to *choose* whether or not to use this opportunity. This aspect is in itself important to justice.

The second claim captures the intuition that drives both Daniels' argument that health is important because it protects other opportunities (2008, p. 30) and Venkatapuram's conception of health as the central human meta-capability (2011, p. 164). The central point here is that health is not just a valuable functioning (due to the achievement and freedom it entails) but also gives rise to various other valuable capabilities. As Jonathan Wolff and Avner de-Shalit have shown, capabilities are intertwined in such a way that deficits are typically seen in clusters of disadvantage (Wolff and de-Shalit 2006, p. 125). In such interrelated capability systems, health plays a central role for giving access to other capabilities. This is not to say that health is the *only* capability that has this kind of key importance. As I have argued against Venkatapuram's view, this would be an overestimation of the role played by health in a human life. The weaker claim seems much more plausible and will still capture the intuition in play here. Part of what we value about health is that it is one of the capabilities that facilitate freedom in other areas of the human life.

Finally, justification of the third claim is deeply rooted in the capability view's protection of agency. Although capabilities relate to specific valuable functionings and thus are partially valuable through the potential achievement of these functioning, they are essentially *freedoms*. Hence, a person's effective freedom to choose whether or not to pursue a specific functioning-achievement is of central importance to the capability view. This is so also in regards to health and thus, the three claims above may be in conflict. In accordance with (iii), the capability view would find a person's autonomous and well-reflected decision against receiving donor-blood (however desperately she might need it) hugely important from the point of view of justice, even though (i) and (ii) gives us reason to overrule this decision.

This resonates perfectly with what I have said above in relation to Ruger's insightful point that we need carefully to protect and enhance people's ability to choose rightly in regards to health (2010, p. 147).

I conclude that the capability view on health justice that I have suggested here is superior to its competitors. First, it explains why health is intrinsically valuable without overestimating the role that health plays in a human life. Second, it explains why health is also instrumentally valuable because it facilitates other valuable capabilities without being ignorant of the value of health in itself. Finally, it explains why we care about people's personal choice in regards to decisions about their health and, consequently, why we are reluctant to coercively enforce health enhancements upon people, but also explains why we find it valuable that people are actually capable of taking the *right* decisions about their health. Taken together, this justification of the value of health as a capability can best inform the path along which the capability view on health justice should proceed.

References

Anderson E (1999) What is the point of equality? Ethics 109(2): 287-337.

Anderson E (2010) Justifying the capabilities approach to justice. In: Brighouse H and Robeyns I (eds) Measuring justice: Primary goods and capabilities. Cambridge University Press, Cambridge, pp. 81-100.

Arneson R (1989) Equality and equal opportunity for welfare. Philos Stud 56(1): 77-93

Boorse C (1997) A rebuttal on health. In: Humber JM and Almeder RF (eds) What is disease? Humana Press, Totowa, pp. 1-134.

Claassen C, Düwell M (2013) The foundations of capability theory: Comparing Nussbaum and Gewirth. Ethic Theory Moral Prac 16(3): 493-510.

Clayton M, Williams A (1999) Egalitarian justice and interpersonal comparisons. Eur J Polit Res 35: 445-4

Cohen GA (1993) Equality of what? On welfare, goods, and capabilities. In: Sen A and Nussbaum M (eds) The quality of life. Oxford University Press, Oxford, pp. 9-29.

Daniels N (1981) Health-care needs and distributive justice. Philos Publ Aff 10(2): 146-179

Daniels N (2008) Just health: Meeting health needs fairly. Cambridge University Press, New York

Daniels N (2010) Capabilities, opportunity, and health. In: Brighouse H and Robeyns I (eds) Measuring justice: Primary goods and capabilities. Cambridge University Press, Cambridge, pp. 131-149.

Dworkin R (1981) What is equality? Part 1: Equality of welfare. Philos Publ Aff 10(3): 185-246

Engelhardt HT Jr. (1974) The disease of masturbation: Values and the concept of disease. Bull Hist Med 48: 234-248

Hausman D (2012) Health, naturalism, and functional efficiency. Philos Sci 79(4): 519-541

Hurley S (2007) The 'what' and the 'how' of distributive justice and health. In: Holtug N and Lippert-Rasmussen K (eds) Egalitarianism: New essays on the nature and value of equality. Oxford University Press, Oxford, pp. 308-334.

Nordenfelt L (1987) On the nature of health: An action-theoretic approach. Dordrecht, Holland

Nordenfelt L (2000) Action, ability and health: Essays in the philosophy of action and welfare. Kluwer Academic Publishers, Dordrecht.

Nordenfelt L (2007a) The concepts of health and illness revisited. Med Healthc Philos 10: 5-10

Nordenfelt L (2007b) Holistic theories of health as applicable to non-human living beings. In Kincaid H and McKitrick J (eds) Establishing medical reality, pp. 23-34.

Nussbaum M (2000) Women and human development. Cambridge University Press, Cambridge

Nussbaum M (2011) Creating capabilities: The human development approach. The Belknap Press of Harvard University Press, Cambridge

Olsaretti S (2005) Endorsement and freedom in Amartya Sen's capability approach. Econ Philos 21: 89-108

Ruger JP (2010) Health and social justice. Oxford University Press, Oxford

Scanlon TM (1975) Preference and urgency. J Philos 72(1): 655-669

Schwartz P (2007) Defining dysfuntion: Natural selection, design, and drawing a line. Philos Sci 74: 364-385

Sen A (1979) Equality of what? The tanner lectures on human values. Stanford University, Palo Alto

Sen A (1992) Inequality reexamined. Oxford University Press, Oxford

Sen A (1993) Capability and well-being. In: Sen A and Nussbaum M (eds) The quality of life. Oxford University Press, Oxford, pp. 30-53.

Sen A (2002) Why health equity? Health Econ 11: 659-666

Venkatapuram S (2011) Health justice: An argument from the capabilities approach. Polity Press, Cambridge

Venkatapuram S (2013) Health, vital goals, and central human capabilities. Bioethics 27(5): 271-279

Williams A (2002) Dworkin on capability. Ethics 113: 23-39

Wolff J and de-Shalit A (2006) Disadvantage. Oxford University Press, Oxford.