Distributive Justice and Priority Setting in Health Care

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Resnik, MacDougall, and Smith (2018) defend accountability for reasonableness (AFR) for priority setting in both general and susceptible populations. Other theories of justice provide broad distributive principles, but Resnik, MacDougall, and Smith argue that these theories do not offer appropriate guidance for priority setting. The authors contend that AFR offers the appropriate guidance. Resnik, MacDougall, and Smith follow Daniels and Sabin in appealing to procedural justice to solve the problem of just allocation. Daniels and Sabin note that the problem of fair allocation becomes a problem of procedural justice because there is no consensus on which principles should govern fair deliberation, and that even if there were consensus on those principles, reasonable disagreement would remain regarding how to apply them (Daniels and Sabin 2002, 4, 30). Fairness of the outcome is thereby determined by the fairness of the procedure (Daniels and Sabin 2002, 4). The benefit of AFR for Daniels and Sabin and for Resnik, MacDougall, and Smith is that AFR promotes the principles of fairness and legitimacy. Although AFR would not necessarily yield a single answer in response to specific priority-setting scenarios, AFR “narrows the range of potential responses and suggests some practical approaches” (Daniels and Sabin 2002, 102).

There is much to be said about the appeal of AFR, and it may turn out to be the best procedure available. However, I will press an objection that Resnik, MacDougall, and Smith consider:

A more fundamental problem with AFR also arises in other procedural accounts of justice. Daniels (1994) has pointed out that because procedural accounts of justice focus on the fairness of the process of decision making, not the outcome itself, decision makers may make a choice that many—perhaps even most—would regard as unfair. (Resnik, MacDougall, and Smith 2018, 36)

Resnik, MacDougall, and Smith note that this problem is not unique to AFR, but is instead a worry about procedural accounts generally. They offer two possible replies to this objection. The first is that AFR could be iterative. That is, new information could form the basis for revising the decision-making process. The second reply, which Resnik, MacDougall, and Smith concede as biting the philosophical bullet, is that the outcomes produced by AFR are ipso facto fair, and that to assert otherwise is to misunderstand “the point of the AFR process” (Resnik, MacDougall, and Smith 2018, 37).

I concentrate my commentary on this second reply, that those who regard an outcome yielded by the AFR
process as unfair merely misunderstand the point of AFR. This reply does not adequately capture the worry expressed by those who may find a particular outcome unfair. I address two different kinds of tension that this reply highlights: (1) the tension between procedure and outcome and (2) the tension between ideal versus nonideal theory. Like Resnik, MacDougall, and Smith, I acknowledge that the tension between procedure and outcome is not unique to AFR but is a tension that would be apparent in any procedural account. For this reason alone, it is worth paying a bit more attention to how this specific tension manifests in criticisms of AFR.

Procedural-based justice deems an outcome just if the outcome results from a just process. Meanwhile, outcome-based justice deems an outcome just if the outcome yields some further outcome, such as a particular distribution of benefits and burdens or maximum utility (Resnik, MacDougall, and Smith 2018). In this sense, Resnik, MacDougall, and Smith are correct that those who complain about the unfairness of an AFR outcome may, in fact, be missing the point of AFR. However, in another important sense, the criticism may be an expression of the kinds of worries about justice that procedural justice is not equipped to satisfy. That is, many will not understand justice or fairness in this bifurcated way. Thus, one may believe in one sense that a procedure such as AFR is fair and may be legitimately implemented (from a moral or political standpoint) while in another sense worrying about what is actually being implemented. In this other sense, the worry about fairness does not go away. This objection likely rests on an equivocation of “justice” rather than a “misunderstanding” about the point of AFR.

I am not suggesting that there is anything inherently wrong with procedural accounts of justice. In fact, Daniels is correct to note that liberal political philosophy has historically relied on a procedural understanding of justice in order to justify unequal outcomes. Liberal political philosophy tolerates “winners and losers,” even when the distributive stakes are high, provided that the procedure is fair (Daniels 1985, 39). However, acknowledging that procedural justice is an important aspect of how liberal political philosophy has evolved is not to solve the question of “whether justice is a purely procedural notion” (Mason 2010, 665). Daniels, who developed AFR, does not seem to think so, and to the extent that Resnik, MacDougall, and Smith endorse AFR, it is important that this deep concern not be dismissed as a simple misunderstanding about the point of AFR.

The second source of tension that this objection highlights is the tension between ideal and nonideal theory. Ideal theory conceives of a set of distributive principles that govern a well-ordered society and understands injustice as a failure to properly implement those principles, whereas nonideal theory begins with the assumption of an unjust society and attempts to understand how to bring about justice in the actual world (Powers and Faden 2006, 195). Because AFR is fundamentally ideal theory, actual worries about actual world outcomes may be the result of how the procedure is actually implemented, or it may be a reflection of the procedure versus outcome tension I discussed earlier. Resnik, MacDougall, and Smith could simply reiterate their first reply. That is, the AFR process could be iterative in order to revise the procedure in light of new information, such as the kind of information that would come about when moving from ideal theory to actual world implementation.

The differing starting points and underlying assumptions of ideal versus nonideal theory will likely offer their own unique challenges in attempting to shift from ideal theory to actual world implementation. For example, that ideal theory begins with an underlying assumption of a reasonably just society that simply needs guidance from the appropriate principles likely creates a different sense of what justice requires than nonideal theory’s project of ameliorating injustice in an unjust society. Even if AFR is the best tool available to make decisions about priority setting, if one understands susceptible subpopulations as existing in a fundamentally unjust society, then implementation of AFR might look very different for them than for one who understands susceptible subpopulations the way that they would be understood in ideal theoretical accounts of AFR.

AFR offers important guidance for priority setting in health care, and Resnik, MacDougall, and Smith show how AFR can address priority setting in susceptible subpopulations. Nevertheless, it is precisely because of AFR’s plausibility that it is important to give full consideration to serious objections against it. I have elucidated the worries that motivate one plausible objection in the hopes that understanding the objection more clearly could help spur a deeper response.

REFERENCES