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Distributive Justice and Public Health: Examining Pandemic Obligations to the Global

Poor

by

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Abstract

Pandemics pose a unique set of health risks and ethical concerns. Increased global mobility, coupled with the fast moving nature of pandemics, ensures that these infectious diseases pose a serious health threat to all persons, regardless of geographical location. Some societies, however, are better equipped to combat pandemics as a result of a more developed public health infrastructure. This paper is an investigation whether a case can be made for considerations of justice between the affluent nations and the least affluent nations of the world when it comes to pandemic relief. Specifically, it examines whether liberal theories of distributive justice, as proposed by John Rawls, Norman Daniels and Thomas Pogge, are capable of supporting a duty to provide pandemic relief to the least affluent nations.

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Introduction

i. The Problem of Pandemics

A particularly important challenge that has emerged from the realm of public health is the question of how to effectively deal with pandemics. Pandemics are a unique and interesting health situation for a number of different reasons. When pathogens reach pandemic level stages, they have high rates of infection. Due to the fact the infectious diseases that cause pandemics tend to have animal origins, humans typically have no immunity to protect against contraction. This means that within a population of people, an infection may have an immense opportunity to spread quite easily between individuals. Since the infection is foreign to the human population, preventative measures and treatment therapies are initially unknown or undiscovered. In the case where an infection is highly transmissible within a population, the absence of a treatment or vaccination program may also facilitate its contraction. Moreover, the increased mobility technology and connectivity between nations creates a situation wherein infectious diseases are able to spread between populations rapidly. Thousands of people travel internationally each day. This means that not only are infections capable of spreading within a population rapidly, but also between populations in different nations. As a result, international cooperation is essential for the adequate containment of any pandemic. Since pandemics have the ability to infect large populations within multiple nations, it is necessary that national health officials are open to international collaboration. Typically collaboration comes in the form of information sharing, which is facilitated by the World Health Organization (hereafter

referred to as WHO), on such matters as treatment methods, preventative measures, and travelling precautions.

Unfortunately, many nations lack the resources necessary to treat the infected individuals within their population. Citizens of the least developed countries (hereafter referred to as LDCs) are at a severe disadvantage when it comes to preventing infectious disease contraction as their public organizational institutions or health care facilities are often incapable of providing adequate levels of assistance or education. Even in non-emergent situations, many LDCs struggle to provide basic medical services to their citizens, and lack the resources or skills required to deal with advanced levels of care. This inability puts the citizens of LDCs at a severe risk for exposure to pandemic outbreaks, as the systems in place that are responsible for preventing and treating infection are wholly inadequate. As a result, the citizens of these states rely heavily on aid provided by the developed world in order to receive medical services that are desperately required. This places a large burden upon the resources and facilities of the developed world, as they have a demonstrable monopoly on research corporations, equipment, technology, funding and accessible information.

The disparities that exist between affluent and developing nations in terms of their ability to deal with serious infectious diseases leads to a plurality of serious practical and ethical considerations. In terms of preventing a global pandemic, it is imperative that all regions have access to a basic level of surveillance measures that are able to quickly detect and track the spread of infectious diseases. The early detection of an infectious disease ensures that proper containment measures can be implemented in an effort to reduce the risk of spreading the infection, not just to other

peoples within a single population, but globally as well. Due to the rate of modern travel, it is far too easy for a pathogen to infect people of different nations in a very short amount of time. If the systems in place in LDCs lack the resources needed to reduce the risk of infection, then it is of critical importance that they receive assistance in this endeavor. However, it is not clear who is to provide this assistance.

My thesis is an investigation into the kinds of obligations that wealthy nations hold to these LDCs in regards to pandemic planning and containment measures. Liberal theories of distributive justice contain normative principles concerning socioeconomic wellbeing and the distribution of goods amongst people, and I will attempt to apply these principles to the realm of public health. Specifically, I am interested in examining what principles are at play in the global public health sphere and whether these principles are able to determine if the governments of affluent nations have obligations towards those who reside in LDCs. I want to make it clear that the object of my inquiry is the obligation that the governments of affluent nations may hold, and not the obligations that the individuals residing within these affluent nations. There are a few reasons for limiting the focus of my approach. First, governments are charged with the responsibility of protecting their citizens. This includes the responsibility to protect and maintain the health of their populations. Effective control of diseases, particularly of the ones capable of causing epidemics or pandemics, requires collective action as individuals are largely unable to protect themselves from the threat of infectious diseases. As such, the most appropriate means of ensuring the safety of a population from the threat of an infectious disease is through governmental initiatives. If those residing within the least affluent nations of the world are unable to receive

adequate protection from pandemics due to a lack of governmental infrastructure, then they will require this protection from an outside source. Furthermore, when talking about particular barriers to access to medicines and vaccines, it is clear the central issues of international development and trade laws are operating on a governmental level. There is a complex system of intergovernmental organizations and agreements that need to be taken into account when dealing with access to medicines on a global level.

ii. My Project

In Chapter One I will begin with a brief examination of the concept of public health, and the various national institutions involved in achieving public health goals. National public health agencies are the collective efforts of society to prevent disease and promote general health. The measures put in place by public health agencies work to serve the best interests of the population, and citizens typically approve these measures on the basis that they are their most effective means of protecting themselves from infectious diseases. Further, citizens agree to abide by necessary medical interventions, as it is in their best interests to ensure that infectious diseases are reported, treated, and contained as effectively as possible in order to protect the greatest number of the population from contraction.

I will then move to consider how well this notion of public health justified through national interests can shift into the international sphere. This account requires that if an affluent nation were to provide pandemic related assistance to a developing nation, it

would have to be in the affluent nation's best interest to do so. For example, in terms of surveillance measures, affluent public health systems should provide assistance to create more effective screening of areas in the developing world for infectious diseases, as many of these regions lack the capital required to sustain the infrastructure necessary to carry out public health surveillance. Providing these services may lead to faster detection of infectious diseases. Thus, on the surface it appears that a sophisticated argument based in rational self-interest may be able to justify a large amount of aid required by many LDCs to prevent or contain the threat of pandemics. I then investigate the limitations of the self-interest approach to global pandemic relief.

Since the provision of public health is a collective effort, I move on to consider how theories of distributive justice can further my inquiry. Chapter Two begins with an examination of John Rawls, and his theory of justice as fairness. His project seeks to explain the underlying principles upon which fundamental social institutions are created and maintained. The goal of the Rawlsian project is to conceptualize a society in which the institutions and distribution of goods is such that all citizens are able to compete for opportunities equally, regardless of social standing or natural endowment. Rawls's theory of justice is important to consider for the purposes of this project, as he makes a significant effort to illustrate how the distribution of social goods can significantly impact individual capabilities. John Rawls, however, provides very little insight into the relationship between health and social justice. As a result, I move on to consider the argument Norman Daniels presents in *Just Health*, which demonstrates that health is of critical importance to securing equality of opportunity and other matters of justice. Further, Daniels provides a clear conception of health on the basis of normal-species

functioning which is particularly useful when moving into the considerations of international aid in the next chapter.

In the Third Chapter I attempt to move the conversation away from domestic social institutions and into the global sphere. I examine the Rawlsian principles at work in the domestic paradigm, and attempt to see if these principles can be pushed into the global sphere. I rely on Rawls's *Law of Peoples*, to show how the Rawlsian project can move to this new level. Rawls argues that cooperation on the global level will look different than that of the domestic example. Further, he provides us with a framework in which he believes that the developed world (well-ordered societies as he refers to them) ought to be concerned with the world's "burdened societies". I will attempt to demonstrate how this global Rawlsian framework can be used in discussions surrounding global public health concerns.

Chapter four attempts to solidify the obligation of developed governments utilizing the argument presented by Thomas Pogge in *World Poverty and Human Rights*. It is important to note that Pogge is a "cosmopolitan" Rawlsian. Rather than siding with Rawls in his modest extension to the global sphere, Pogge argues that the fundamental principles of the domestic Rawlsian project can be modified to apply to global relationships, and importantly, that they can govern the international distribution of justice. Pogge argues that citizens of affluent nations are obligated to provide aid to ease radical inequality abroad as a result of a violation of negative duties.¹ Pogge argues that the most affluent nations enjoy the benefits of an economic system that directly exploits citizens within the least well-off nations. This is due to the fact that the

¹ Pogge, Thomas. *World Poverty and Human Rights*. Second Edition (Cambridge, UK: Polity Press, 2008), 204.

developed world has created a powerful global economic system which has rigged the game in such a way that those who are already at a disadvantage for opportunities or resources are unable to compete for them. As a result, citizens residing in affluent nations and participating in these systems are actively harming the globally poor. I then move on to consider the harmful effects that global trade systems have with respect to the access and availability of vaccines to citizens of the least well-off nations.

Ultimately, if the developed world operates within a system that prevents the already disadvantaged citizens of the world from acquiring necessary goods required to protect themselves from pandemic infections, then these nations are obligated to take steps to remedy this injustice. I close chapter four with the consideration of a few important practical solutions that the nations of the developed world could pursue in order to fulfill their obligations.

Chapter One: Pandemics and Public Health Agencies

i. What is Public Health?

The fundamental role of government is to protect its citizens from harm. This principal mandate is demonstrated in countless instances and is the very basis for all of our political institutions. A Criminal justice system protects citizens from each other. Military defense systems help to provide protection against international threats to domestic safety. Much the same way, public health systems have been created to protect citizens from the threat of infectious diseases.

The concept of public health has a plurality of differing connotations, ranging from the general health of a specific population of people, to intricate systems of governmental institutions or policies. For the purposes of this thesis, I will adopt the definition of public health as “the science and art of preventing disease, prolonging life and promoting health through organised efforts of society.”² This definition is particularly advantageous for two reasons. First, it recognizes the preventative nature of many public health measures.³ The most effective way to promote health is to take steps in order to slow or altogether prevent the spread of disease. This encompasses health care services, such as vaccinations to prevent the spread of disease, promoting healthy personal behaviors, such as healthy diets, exercise and non-smoking, as well as promoting public infrastructure, including access to clean water, sanitation, and

² Faculty of Public Health of the Royal Colleges of Physicians of the United Kingdom *What is Public Health?*, available at: http://www.fphm.org.uk/about_faculty/what_public_health/default.asp, as in Nuffield Council on Bioethics. “Introduction to Public Health,” in *Public Health: Ethical Issues*. Available at: <http://www.nuffieldbioethics.org/sites/default/files/files/Public%20health%20Chapter%201%20-%20Introduction.pdf>, Page 5.

³ Nuffield Council on Bioethics. “Introduction to Public Health,” 6.

education.⁴ Second, this definition recognizes that public health is a collective effort.⁵ This means that any society that has adopted a public health system has recognized that there is a specific advantage to ensuring a certain standard of health among its population. Namely, that the quality of health as experienced by a population is more easily elevated by the collective pursuit of health goals as opposed to reliance upon individual responsibility. While citizens can take ownership of their health in many important ways on an individual basis, such as a commitment to exercise and diet regimens, there are many factors that greatly affect the quality of health for an individual that cannot be effectively maintained on an individual basis, such as clean air, water, or proper waste management. Further, the likelihood of individual infection by a communicable disease can be reduced significantly if preventative measures are available to the population as a whole, rather than those who pursue these measures independently.

There are two primary means of examining health: at an individual level or at a population level. The individual lens focuses on the quality of health or treatment options that are available to a specific person, whereas the population lens refers “to the state of health of the members of a certain population.”⁶ In terms of public health practices, there is significant overlap between these two approaches. If we consider the example of immunizations as a common public health practice, it makes sense to use vaccines on an individual level as part of the responsible clinical care of a patient in order to protect the individual from disease. Further, on the population level, vaccines are advantageous tools insofar as they help to protect a large group of people from

⁴ Nuffield Council on Bioethics. “Introduction to Public Health,” 5.

⁵ Nuffield Council on Bioethics. “Introduction to Public Health,” 6.

⁶ Nuffield Council on Bioethics. “Introduction to Public Health,” 3.

more widespread infectious disease outbreaks. In fact, many factors affecting the health of specific individuals are more effectively achieved on a population level. The availability of clean water and education, for example, have a great impact on the health of populations, and making these determinants of health available to a whole population not only raises its standard of living, but also helps to reduce the spread of disease. In this way, public health measures can be seen as facilitating access to important public good to a population. A public health system, then, is a government agency that is solely concerned with protecting and preserving the health of the individuals who reside within its jurisdiction.

Due to the diverse nature of public health projects, the current systems operating within most affluent nations have a very broad scope of priorities. Domestic infrastructure in terms of clean air, water and sanitation remain at the forefront of public health obligations, as polluted environments have significant adverse effects upon the health of a population. Further, contaminated living conditions aid the spread of certain infectious diseases, such as cholera. These obligations are not necessarily the sole responsibility of public health agencies, but point towards a broader obligation of government to maintain certain standards for important infrastructure and how these obligations have a critical effect on the health of a population. However, preventing the spread of infectious diseases in itself is a chief responsibility for public health agencies. Infectious diseases have the potential to cause significant damage to public health, insofar as certain diseases may pose an immediate threat to the health and lives of an entire population due to their highly transmissible nature. Finally, many public health agencies are concerned with the effects of lifestyle induced health risks, including

obesity, diabetes and smoking. While lifestyle health risks are a relatively new priority for many public health agencies, the recent increase in the prevalence of these kinds of health threats is particularly concerning, primarily due to their largely preventable nature.

Recent threats to public health have motivated many public health agencies to reconsider the dangers of infectious diseases, especially in light of our modern globalized world. The possibility of an epidemic that has the ability to effect many populations as quickly as the Severe Acute Respiratory Syndrome (SARS) outbreak has reminded many public health agencies that infectious diseases remain a serious danger to population health. As a result, it is imperative that we remind ourselves of the critical importance of the role public health agencies have in preventing infectious diseases. Moving forward, the focus of this thesis will rely on public health agencies insofar as they are concerned with infectious diseases, and will set aside the broader public health concerns that deal with the more social determinants of health and lifestyle diseases.

The motivation for maintaining a strictly narrow focus of public health throughout this paper is twofold. Firstly, infectious diseases have the potential to infect a large number of individuals very quickly, regardless of age, location, or social status. Furthermore, the care necessary to treat persons suffering from an infectious disease is typically urgent in need. It is often the case that these treatments or preventative measures require a high level of technology in order to restore health, ranging from diagnostics for diagnosis, highly skilled technicians to deliver treatments, innovative pharmaceuticals for treatment or vaccines for preventative measures. Ultimately, limiting the scope of

inquiry will clarify the significance of a robust public health system that is capable of providing adequate immediate treatment or preventative measure for highly infectious diseases. Secondly, the broader focus of public health includes such diverse influence on levels of health as affected by the social determinants of health, such as education, access to basic nutrition or sanitary living conditions. The remedies required for social determinants of health are focused on eliminating more basic forms of socially distributed inequalities. For the purposes of this paper, this broader notion of public health, while a huge issue facing many individuals worldwide, is simply too large in scope to handle with proper care as it encompasses the treatment of diverse social influence on a population's level of health.

ii. Public Health Measures

Public health measures are implemented and monitored by specific government agencies with the goal of protecting the health of its citizens. In light of the refined narrow focus of public health, the goal of these government agencies is to protect citizens against the threat of highly infectious diseases and pandemics. Public health is organized on a few different levels. In Canada, there are both provincial and federal responsibilities to public health. In addition, the Government of Canada holds specific responsibilities to the WHO, which I will examine later on in this chapter. A primary obligation of public health authorities is surveillance, which is the “ongoing, systematic collection, analysis and interpretation of health-related data essential to the planning, implementation and evaluation of public health practice.”⁷ Surveillance is a particularly

⁷ “Public Health Surveillance” World Health Organization, last modified December 11, 2010, http://www.who.int/immunization_monitoring/burden/routine_surveillance/en/index.html.

important functioning of public health agencies as it serves as an early detection system for disease outbreaks, tracks the rate and path of infection, monitors success rates of intervention strategies, and serves as a guide for public health policies.⁸ Surveillance systems are constantly working to monitor population health in order to ensure the immediate detection and treatment of infectious diseases. Effective surveillance systems coordinate the detection and notification of health occurrences, collect data necessary to investigate or confirm particular health events of disease outbreaks, advise public health action, and report pertinent health data to other public health agencies.⁹ National surveillance networks are created by public health agencies, and work with other regional networks and the WHO through information sharing.

Gathering public health information can serve a number of important functions. The ongoing nature of public health surveillance indicates that agencies are constantly monitoring population health for significant abnormalities in transmission rates or particularly harmful infections. This is especially helpful in preventing the spread of infectious diseases, as their incidence can be immediately reported and flagged for further investigation. Public health surveillance is critical in gathering information regarding the prevalence of a disease and its rate of infection so that public health officials can then make decisions regarding containment strategies based on the threat a particular disease poses for population health. Often, with novel infectious or those which are highly contagious, public health officials try to respond quickly once these infections are reported to contain and isolate individuals or regions that have contracted the disease or those who have been at risk of being exposed to it. Isolation or

⁸ Ibid.

⁹ Ibid.

quarantine is a measure used by public health agencies in attempts to prevent populations from being exposed to certain infectious diseases. Notable instances in which isolation measures have been made use of include the SARS epidemic and individuals who have contracted Extremely Drug Resistant Tuberculosis (XDR-TB).

Given that the pattern of transmission of infectious diseases is changing due to increased interaction between societies, public health surveillance on a more global scale serves as an alert for domestic public health agencies when an infectious disease is detected abroad. Public health officials can implement border control measures to attempt to prevent the spread of infectious diseases through ports of entry. Not only can border security screen individual travelers for infections, but public health officials can also block travel from particular regions with known disease outbreaks. The effectiveness of these programs, however, have decreased significantly as a result of modern international travel trends. Previously, if a known pathogen threatened the domestic population, national public health agencies were able to implement border control measures in order to prevent the infectious disease from entering into the country. This was a much more feasible task historically, as there were far fewer travelers crossing international borders and fewer points of entry. Many nations were previously accessible only through sea travel, and as such could better manage border control measures. These domestic agencies were able to deny access to travelers from a particular nation or region due to disease outbreak and were largely assured that doing so would prevent the introduction of an infectious disease to the domestic population. However, landlocked countries or those with expansive unmonitored borders have always experienced problems with effective border control and monitoring

multiple high traffic points of entry. In much the same way, modern travel patterns resulting from the development of air travel have changed the game in border control measures and screening. Due to the sheer volume of people travelling between countries, international travel is largely unavoidable and unstoppable, except perhaps in the most extreme of cases. Further, blocking travel from a specific region is no longer an effective means to prevent the spread of disease as many travelers move through several ports in different nations between their departures and destinations. Moreover, doing so would require considerable international cooperation to ensure that travel to a particular region would be effectively cut off. This means that each day, millions of individuals traveling abroad may be exposed to infectious diseases unknowingly. Travelers will be potentially unaware of their exposure until well after they have reached their final destination. Since public health authorities cannot prevent all travel, a global surveillance network is critical. Surveillance information is simply no longer an effective means of population protection if it is only linked to a single nation.¹⁰ Thus, international cooperation in terms of information sharing is required by all responsible public health agencies in order to protect their own populations.

Due to the potential for a rapid rate of transmission of infectious diseases, however, international information sharing may not be enough to protect domestic populations from infection. Since the speed of international travel has the ability to expose numerous populations before the discovery of an infectious disease, further action is required. It requires that domestic public health agencies invest in better surveillance techniques and networks, not just within their own borders but globally as well. Since the

¹⁰ While a nation may undertake to create its own surveillance database unilaterally and without international cooperation, it is not likely to be as efficient, accurate or cost-effective as a shared global effort.

effectiveness of domestic measures is so heavily dependent on the information provided from international surveillance networks, domestic public health agencies need to invest in developing these global networks in order to enhance their own information. The cause for concern lies within the fact that many nations lack the resources required to implement the level of public health surveillance that occurs within many affluent nations. Since many people continue to travel to and from regions that lack significant health surveillance systems, investing in these networks are of critical importance to protecting domestic public health interests.

Further, vaccines are an important tool utilized by the public health agencies of the developed world. While vaccines are often developed and manufactured by private pharmaceutical companies, they are used by domestic public health agencies as a primary means of preventing the spread of an infectious disease. Where available, vaccines are known for being both a highly effective and relatively safe means of ensuring that populations are protected from the threat of infection. Public health agencies of the developed world have relied heavily on the use of vaccines to prevent and, in some cases, eradicate infectious diseases, such as small pox and polio. If public health agencies are unable to prevent the spread of infectious disease across domestic borders, then vaccines are typically the most effective means of ensuring that the population does not suffer an outbreak.

A problem arises, however, when vaccines are required for novel pathogens. Because new pathogens will often require new vaccines, a considerable amount of disease-based knowledge and research capabilities are necessary for the development of these new vaccines. There are two major kinds of research facilities: national

disease research programs and pharmaceutical corporations. National disease research centers not only collect and categorize data gained from population surveillance, but also conduct research critical to the understanding of many diseases. They serve as an important informational database for public health officials. These centers may even aid pharmaceutical corporations in the development of vaccines by sharing critical disease information. Yet private pharmaceutical companies develop most, if not all, vaccines used by public health agencies. Private drug companies have the resources, personnel and technology to develop vaccines in a largely efficient manner, and as a result, domestic public health agencies purchase vaccines or other necessary medicines from these private companies. While common practice, this relationship exposes some serious ethical tensions that will be examined later on in the thesis.

iii. What is a Pandemic?

Infectious diseases are categorized according to their prevalence and transmission rates. An endemic disease is one that is constantly present within a population or region, but one that typically maintains a specific prevalence rate amongst a within population.¹¹ For example, malaria is an infectious disease which is endemic to many populations across Africa. An epidemic is a “sudden increase in disease occurrence”.¹² This broad definition may include cases wherein a pathogen is introduced to a population or a “marked increase in the number of cases of a disease relative to the

¹¹ Boslaugh, Sarah. *Epidemics*, for Encyclopedia of Epidemiology (2008): available at: <http://srmo.sagepub.com/login.ezproxy.library.ualberta.ca/view/encyc-of-epidemiology/n134.xml>

¹² Ibid.

expected number of cases”¹³ that ordinarily occurs within a population.¹⁴ An epidemic can be used to describe variations in the regional occurrences of infectious disease, either at a national or local level.¹⁵ In 2003, the outbreak of SARS was considered to be an epidemic in both Toronto and Hong Kong. Finally, a pandemic is an epidemic that has crossed national borders.¹⁶ A pandemic is an infectious disease that is globally widespread and has the potential to infect a large amount of people.

In order for a pandemic to occur, there are a few biological and social conditions which must be met. Biologically, a pandemic requires “a pathogen that can live and be communicated in all climates.”¹⁷ A pathogen that is capable of causing a pandemic may be a newly discovered pathogen, or the reemergence of an already known infection.¹⁸ As a result, a pandemic is the product of one of the following scenarios:

- a) the ability of a known pathogen to overcome the constraints that presently keep it under control, be they (1) natural, or (2) medical, or (3) public health factors;
- b) the appearance of a new pathogen capable of living and infecting under most climates and to either (i) spread from person to person, or (ii) to find a worldwide spread vector.¹⁹

Due to the fact that pandemics are typically caused by novel or mutated pathogens, humans have no immunity to infection. The result is a situation wherein the rate of infection is primarily dependent on the speed or ease of transmitting the disease from one person to another. Blood borne diseases may have a slower rate of transmission

¹³ Ibid.

¹⁴ It is important to keep in mind that although some public officials have referred to certain behavior related health concerns such as obesity as an epidemic, these are not the kinds of population level health occurrences that this thesis is concerned with.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ De Grandis, Giovanni and Jasper Littmann. *Pandemics: Background Paper*, for Nuffield Council on Bioethics (2011): 2, available at:

http://www.nuffieldbioethics.org/sites/default/files/files/Pandemics_background_paper.pdf

¹⁸ De Grandis et al. 3.

¹⁹ Ibid.

as they require cross-contamination of blood, either through direct contact with another individual's blood or facilitated through a host. Respiratory diseases, on the other hand, tend to have higher rates of transmission as they merely require close proximity to an infected individual. In this respect, respiratory diseases have the capacity to affect a greater number of people in relatively short time frames.

Socially, a pandemic requires a dense human population that is well connected to others in order to facilitate the spread of disease.²⁰ The current growth and density of the human population is such that a newly introduced pathogen would have the opportunity to spread amongst people with ease. The “well established features of the contemporary world characterised by global trade and fast international mass transports” creates a social situation wherein there is tremendous potential for an infectious disease to grow into a pandemic.²¹ Now more than ever the accessibility of global transportation has made it so that people can travel between nations and continents safely, affordably, and quickly. Businesses have also been expanding across the globe and increasing the number of multinational corporations and rate of international trading. As a result, thousands of people now travel across borders for employment opportunities. These are optimal conditions for spreading disease infection, as an outbreak in one population can easily be carried to the opposite side of the world through a single exposed traveler. Thus, the optimal social conditions required for the quick spread of an infectious disease are considered to be the facts of our modern globalized world.

Further to these facts of modern society, the frequency and speed at which people

²⁰ De Grandis et al. 2.

²¹ De Grandis et al. 3.

are able to travel across the world have also revolutionized the way we need to think about public health practices. The introduction of a new pathogen to a society is often linked to the amount of interaction its members have with members of other societies. Unsurprisingly, a society that lives in isolation from others is less likely to pick up a novel infectious disease than one whose members frequently interact with people from other regions of the world. The rate of infection between societies is dependent on the speed of travel between them. Historically, the speed of international travel has been reasonably slow, and the high cost of international travel limited this endeavor to a smaller number of people. The length of time it took to take a boat across the ocean, or a train across the country, was typically substantial enough to allow medical professionals to discover and identify an infectious person. The slow speed of ship travel provided a good chance that diseases would manifest before reaching their port of arrival. This gave ship authorities the opportunity to identify infected individuals before arrival and report it to port authorities so as to prevent the spread of the infection within a new population. Travel by train, at the very least, allowed public health officials the ability to track the origins of infectious diseases. Yet the recent development of the airplane as a fast, safe, and inexpensive way to travel has transformed the face of global transportation. Today, millions of people travel by airplane to hundreds of countries each and every day. This development has had a tremendous impact on the spread of disease. The amount of people travelling, and thus exposed to different populations, has increased exponentially. Not only are people travelling to hundreds of destinations, but they often stop at several travel hubs in order to make connections to other flights. The duration of modern flight times is such that it is possible for a disease

to remain in incubation stages during travel. Therefore, it is entirely possible for a novel pathogen to spread to several regions of the world before it is even discovered. The current level of international travel signifies the critical need for public health cooperation on a global scale, as many national public health agencies may be faced with shared necessity to track and prevent the spread of a particular infection.

One case that best exemplifies these salient characteristics of an infectious disease that had the potential to become a pandemic is the 2003 outbreak of SARS. SARS was first reported by the WHO in its weekly newsletter as 305 cases of atypical pneumonia in China on February 14, 2003.²² Less than three weeks later, the first death in Canada from SARS occurred on March 5, 2003.²³ One week after that, on March 12, 2003, WHO issued a global SARS alert.²⁴ As a result of transnational travel, it took SARS only three weeks to spread half way across the world. It killed 800 people globally, including 44 people in Toronto, Canada's multicultural and tourism hub.²⁵ Canadian health care services were largely unprepared for the SARS outbreak, as no one was initially certain of what exactly the pathogen was and how contagious it could be.²⁶ The primary method of infection prevention, surgical masks, became a scarce resource, and hospitals became overwhelmed with individuals displaying the flu-like symptoms typical of SARS.²⁷ The SARS pathogen clearly illustrates a rapid infection rate, which was capable of spreading globally with speed and ease.

²² CBC News Online. *Indepth SARS: Timeline*, December 15, 2003, available at: <http://www.cbc.ca/news/background/sars/timeline.html>

²³ Ibid.

²⁴ Ibid.

²⁵ CBC News Online. *Indepth SARS: Severe Acute Respiratory Syndrome*, April 22, 2004, available at: <http://www.cbc.ca/news/background/sars/>

²⁶ Crowe, Kelly. "Indepth SARS: Was Canada Ready for SARS?" *CBC News Online*, April 30, 2003, available at: http://www.cbc.ca/news/background/sars/crowe_ready.html

²⁷ Ibid.

SARS has an incubation period of approximately 10 days, wherein the host individual can unknowingly spread infection to others.²⁸ During the incubation period, the individual shows no symptoms of disease, yet they are highly contagious. Therefore, any individual that does not exhibit symptoms would likely pass national border screening methods, and carry the disease into an unsuspecting population. As an initial response to the growing epidemic, passengers disembarking flights from Asia were visually screened at all Canadian airports for SARS symptoms.²⁹ All air travelers were provided information concerning the infection and warning signs to watch for. The SARS screening effort was expanded to all air passengers departing from Canadian airports. It was estimated that public health officials screened 6.5 million travelers, and 9,100 of these passengers required additional assessments from nurses or quarantine officers.³⁰ Despite these efforts, none of these travelers were infected with SARS.³¹

Due to the fact that the growing rate of multinational corporations has expanded global trade, it is unfeasible to prevent travel altogether. Preventing travel, and consequently global trade, would reap unreasonable economic penalties on a nation because our societies rely so heavily on the import and export of goods and services. One alternative is to block trade or travel from a particular region or nation that is experiencing an outbreak of an infectious disease. While this may help stall the spread of infection, this measure would unlikely prevent the epidemic from reaching domestic borders. Our societies are so interconnected that any measure to restrict travel would

²⁸ Public Health Agency of Canada. "Screening Measures and Provision of Health Information," *Naylor Report*. Last modified November 8, 2004, Available at: <http://www.phac-aspc.gc.ca/publicat/sars-sras/naylor/11-eng.php#s11e3>.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

be an insufficient means to prevent domestic infection. In the SARS example, the infection was first detected in Guangdong and Hong Kong.³² Three weeks after detection, “SARS had already spread to 30 countries on five continents.”³³ While officials may have been able to slow the transmission of SARS by blocking travel and trade to China, unless all other nations were willing to adopt a similar ban, it would simply be a matter of time before SARS found its way into Canada as a result of travel from another region. Thus, any national measure that could be taken to prevent disease contraction unilaterally is likely to be ineffective. Therefore, in order to adequately protect their citizens from infection, many national public health agencies must share information on a global scale to efficiently monitor, contain and treat their own populations for infectious disease.

iv. Public Health Agencies and Individual Freedom

Public health authorities have extensive access to sensitive individual information within their jurisdictions in order to prevent or contain the spread of disease. This access to information creates a considerable amount of tension between the protection of individual privacy and promotion of public health goals. Further, many of the measures used by public health agencies to prevent or contain infectious diseases raise serious moral concerns regarding the tradeoff of individual freedoms. All Canadian citizens are protected by a set of rights and freedoms that protect them from social or political infringements upon personal liberties. These same rights extend into the realm

³² Ibid.

³³ Ibid.

of medical care and protect individual rights to such things as privacy of information and medical autonomy. Public health legislation, however, outlines the terms and conditions wherein these individual rights may be infringed upon in order to protect the population from a public health emergency. Namely, the Canadian legislation outlines the steps that public health authorities are justified in pursuing in order to protect those within their jurisdictions. Reasonable citizens would largely agree to these infringements on individual liberty as sensible given the harm they could suffer as the result of contracting an infectious disease. The justification for imposing these limitations on individual liberty is commonly referred to as the Harm Principle, which was developed by J.S. Mill in his work On Liberty. Mill states:

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any other member of a civilized community, against his will, is to prevent harm to others.³⁴

These infringements are justified insofar as they serve the rational self-interest of a population. In terms of surveillance information, reasonable people would agree that the collection of sensitive medical information serves their best interests as their risk of contracting an infectious disease may be significantly reduced through this practice. Further, the use of mandatory vaccinations and imposed isolation are a reasonable and effective means of ensuring that an entire population is protected from a large scale outbreak as the result of exposure to a particular infected individual.

³⁴ Mill, John Stuart. *On Liberty and Other Essays* (Oxford, UK: Oxford University Press, 1991), 21-22.

If public health measures are failing to protect citizens at the national level of operation, then domestic public health agencies may be required to collaborate with other international health agencies in order to fulfill their obligations to their own citizens. This may entail the release of private medical information of citizens to global surveillance networks. The WHO has set up a system of International Health Regulations (hereafter referred to as IHR) in order to support national public health programs, as well as:

Further developing and maintaining an effective international system that is able to continuously assess the global context of public health risks and is prepared to respond rapidly to unexpected, internationally-spreading events and to contain specific public health threats.³⁵

The IHR is a set of legally binding guidelines which have been developed in order to create a stronger global health security network. These regulations are very broad in scope and require that nations report a wide range of health events to the WHO on the basis of whether these events may produce a public health emergency of international concern.³⁶ This broad definition “aims at detecting, early on, all public health events that could have serious and international consequences, and preventing or containing them at source through an adapted response before they spread across borders.”³⁷

The IHR provides four criteria to assist domestic public health agencies with the decision to report health events:

³⁵ World Health Organization. “Global Capacities, Alert and Response.” *Alert, response, and capacity building under the International Health Regulations (IHR)*. Available at: <http://www.who.int/ihr/en/>

³⁶ World Health Organization. “Brief No. 1” *The International Health Regulations (2005)*. Available at: <http://www.who.int/ihr/publications/ihrbrief1en.pdf>

³⁷ World Health Organization. “Brief No. 2,” *Notification and other reporting requirements under the IHR (2005)*. Available at: http://www.who.int/ihr/publications/ihr_brief_no_2_en.pdf

(1) the seriousness of the event's public health impact; (2) the unusual or unexpected nature of the event; (3) the risk of international disease spread; and (4) or the risk that travel or trade restrictions will be imposed by other countries.³⁸

When a health event meets any two of these criteria, it is necessary for national public health authorities to alert the WHO. These regulations also demand that domestic public health agencies report these atypical health events to the WHO within 24 hours of becoming aware of the occurrence, regardless of whether they occur within national borders.³⁹ This is an important distinction, as knowledge of an infection in other regions of the world shift into a domestic responsibility to report these occurrences to the WHO. This signifies the shift in thinking about public health from the national to the global level, and demonstrates the necessary interdependence of national public health agencies. The WHO sends out a weekly epidemiological report, noting any significant changes or findings to all of its member nations. It is important to keep in mind that these kinds of international regulations signify that it is imperative to have substantial national public health systems and screening measures in place in order to adequately detect infectious diseases within their borders and to potentially protect their citizens from the spread of infection. Further, that these measures must be in place before the outbreak of a pandemic, which requires ongoing collaboration and information sharing of national public health agencies.

³⁸ Ibid.

³⁹ Ibid.

v. Public Health Agencies and Pandemics

The benefits of participating in such a widespread surveillance network clearly serve the national best interests of a population in terms of early detection, and reducing the probability that an infection may reach domestic borders. A problem arises, however, due to the fact that not all national public health agencies are similarly able to handle the level of surveillance or preventative measures required by these regulations due to a lack of resources and infrastructure. The unique characteristics of pandemics not only threaten the health of a population, but also their economic capabilities. There is clearly a substantial amount of funding required to adequately contain, diagnose, treat, and study an infectious disease within a given society. These kinds of unforeseeable costs can put considerable pressure on the economies of even the most affluent nations, as the sufficient containment or treatment of an infectious disease requires many advanced resources. Medical research technologies and capabilities are often required to create vaccines in order to prevent the spread of infection. Further, public health agencies must implement public education campaigns to spread prevention information to the public. Medical care services need to be available to treat those who have contracted the infection, and most importantly, educated professionals are required to provide care to the public. It is not hard to see how even the most affluent nations, such as Canada, would struggle to meet the heavy demands that a pandemic would have on their (arguably) well organized and well-equipped public health systems.

In order to achieve their mandate of protecting domestic citizens from the threat of a pandemic, public health agencies of the developed world may need to invest in the

maintenance of public health infrastructure abroad. In fact, it is in a nation's best interest to provide health aid to foreign nations for the preventing pandemics, as the containment of disease abroad would decrease the likelihood that a pandemic would reach the domestic population. Quite simply, due to the fact that international transportation of individuals is unavoidable and necessary for most of today's economic growth, detecting and preventing the spread of infection amongst individuals abroad is often an essential practice for domestic public health agencies. The easiest way to ensure the safety of domestic citizens from contracting a communicable disease is to ensure that the pathogen does not reach domestic borders. Since national border control measures may be ineffective, then public health officials must work together in order to contain disease outbreaks abroad.

The major problem with global public health infrastructure lies within the fact that the world's least developed countries do not possess the means to adequately monitor and treat their populations for communicable diseases. Therefore, this puts immense pressure on world's more affluent nations who possess the necessary capital that is required to create better surveillance techniques and technologies, which allow them to detect and potentially contain an infectious disease more quickly and more effectively than any systems a LDC may have in place. As an extension of their own domestic public health agencies, affluent nations may invest in health surveillance infrastructures in LDCs in order to gather data regarding the spread of infections or emergence of new pathogens, and report it back to other public health agencies operating within the developed world. So-called symptom scanning allows public health agencies to identify and classify illnesses that are emerging globally more quickly than if they were to rely

on domestic data. The surveillance data that is collected abroad feeds into various organizations, including Canadian research facilities, in order to investigate the prominence of diseases and the emergence of new pathogens. The provision of assistance abroad fulfills domestic interests because an earlier detection of disease may translate to an earlier onset of containment measures, which ultimately could minimize or eliminate the risk that the infection could spread across borders and reach domestic citizens.

A sophisticated argument from the national interest point of view is capable of justifying a considerable amount of foreign health aid in pandemic situations. Early detection and containment clearly serve domestic interests by reducing the risk that a new pathogen would affect domestic citizens. Containment strategies often include medical interventions, typically in the form of vaccinations, for people residing within the “at-risk” of infection area. Moreover, national interest is even capable of justifying research efforts for vaccines or drugs that may be effective against these infections. However, an important tension arises when one thinks critically about the basis of a self-interested justification to international pandemic relief. The national interest argument fails to take into account an important intuition that many share in regards to health. Health, for many of us, is viewed as a fundamental good as it dictates an individual’s ability to pursue life projects. As a result of its critical influence on an individual’s abilities, the achievement and preservation of health is an issue that necessarily requires considerations of justice. In many affluent nations, the availability and distribution of health services reflects our intuitions regarding the moral importance of health, as many nations provide a comprehensive health care package to their

populations that go well beyond the justifications of rational self-interest. As further evidenced by our Canadian public health care system, access to health restoring systems is an important social good that is to be enjoyed by all citizens equally. This practice suggests that there may be some other important consideration for the protection of population health. Due to the fact that the inequality that people face across the world in terms of access to health care and the accessibility of health care resources is so extreme, it would appear that an argument rooted purely within national interest would be in stark contrast to these intuitions about health that concern social justice.

Conversely, there are many infectious diseases that plague the developing world exclusively, such as malaria or yellow fever, that have little chance of spreading to developed nations. Many epidemics or pandemics may be regionally bound by climate zones or vectors required to facilitate the spread of disease. If there is no risk to their domestic population, affluent nations may not be interested in providing international relief in these cases. However, it is important to consider whether a refusal to do so would violate fundamental principles of justice. Therefore, what follows is an examination of liberal social justice theories, and specifically, how theories of distributive justice can relate to international public health obligations.

Chapter 2: Distributive Justice and the Importance of Health

i. Distributive Justice

Distributive justice is concerned with the examination of how goods and services are spread amongst the individuals of a society. Theories that deal with distributive justice attempt to scrutinize social and political institutions as well as their guiding principles. Generally, these theories seek to understand the division of goods, particularly economic wealth, amongst a society, and how this division affects the quality of life for citizens of different social standings. Due to the strong effect that distribution of goods can have on individual wellbeing, many of these theories illustrate the importance of developing a just scheme for the sharing of social goods and advantages. The goal is to determine which fundamental principles ought to guide the development of institutions, and further, to justify the division or availability of social goods amongst citizens. Because distributive mechanisms are inextricably linked with social institutions, “principles of distributive justice are therefore best thought of as providing moral guidance for the political processes and structures that effect the distribution of economic benefits and burdens in societies.”⁴⁰ The distributive justice approach is a particularly useful framework for the purposes of this thesis, as we have seen in the previous Chapter that the delivery of public health is an important social good. Thus, it makes sense to investigate the principles underlying this institution.

Discussions concerning theories of distributive justice have resurged in popularity after John Rawls published *A Theory of Justice* in 1971, and his conception of justice

⁴⁰ Favor, Christi & Julian Lamont. “Distributive Justice” *Stanford Encyclopedia of Philosophy*. Last modified January 2, 2013, available at: <http://plato.stanford.edu/entries/justice-distributive/>

has had a critical influence on modern discussions of social justice. As such, I will begin my inquiry with John Rawls, and will be focusing my examination of Rawls on his later book, *Justice as Fairness: A Restatement*. The justification for focusing on his later work is due to the fact that *Justice as Fairness* was published in 2001 after receiving much criticism from his earlier projects, and allowed Rawls the opportunity to revise his project in order to refine his ideas and expand on them. As a result, the most accurate and fair description and criticism of Rawls's theory of distributional justice would necessarily be based upon the work that describes his own clarifications and expansions.

Rawls begins by stating that there are two fundamental principles of justice: liberty and equality. The first states "[e]ach person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all".⁴¹ These liberties are inalienable rights to which each member holds an absolute claim, and upon which the public sphere cannot infringe. Rawls provides an inclusive list of equal basic liberties, which are protected under this first principle:

freedom of thought and liberty of conscience; political liberties and [...] freedom of association as well as the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law.⁴²

Rawls formulated these specific liberties as the embodiment of liberty and equality within a politically just society as he believes that they best allow for the development

⁴¹ Rawls, John. *Justice As Fairness: A Restatement*. ed. Erin Kelly (Cambridge MA: Harvard University Press, 2003) 42.

⁴² *Justice As Fairness*, 44.

and exercise of the two moral powers.⁴³ Political liberties and freedom of thought are essential to individuals for judging the justice of basic institutions and social policies, and liberty of conscience and freedom of association are required to pursue individual conceptions of the good.⁴⁴ Thus, any just political structure, according to Rawls, will uphold and protect these basic political liberties.

The second principle of justice is the equality principle. Rawls states:

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (difference principle).⁴⁵

It is important to note that the first principle actually holds priority over the second. That is to say that the second principle is to be applied within a political structure of institutions that satisfy the conditions of the first principle.⁴⁶ Rawls explains that the order or priority is important to rule out “trade-offs” between basic rights and social/economic advantages.⁴⁷ The second principle of justice attempts to equalize naturally occurring advantages within a society. Rawls furthers his explanation of this principle with two others: the equal opportunity principle and the difference principle. Fair equality of opportunity states that any office or position must be equally available to each citizen within a society regardless of sex, ethnicity, social or financial status. This does not mean that each individual within a society ought to be given each position, but that reasonable candidates will be selected based on merit and qualification for the

⁴³ *Justice As Fairness*, 45. The two moral powers Rawls speaks of are a sense of justice and a conception of the good. I will set aside these concepts for the moment and return to them in Chapter Three when dealing with the Rawlsian Foundations of Justice.

⁴⁴ *Ibid.*

⁴⁵ *Justice As Fairness*, 42.

⁴⁶ *Justice As Fairness*, 46.

⁴⁷ *Justice As Fairness*, 47.

position, and that the means of achieving these qualifications are available to each individual.⁴⁸ Rawls asserts that regardless of economic class or social standing, “in all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed.”⁴⁹ This inclusion of liberal equality is intended to prevent excessive concentrations of property and wealth by any group or member of a society.⁵⁰

Equality of opportunity, although central to the Rawlsian project, is not an altogether clear concept. Rawls offers that equality of opportunity “is perhaps best gathered from why it is introduced: namely, to correct the defects of formal equality of opportunity – careers open to talents – in the system of natural liberty.”⁵¹ The critical idea behind equality of opportunity is that each member of society ought to be given a fair chance to attain public offices or social positions on the basis of their merits and not their social starting positions. This means that regardless of the distribution of talent across social classes, individuals who possess similar capabilities and a willingness to utilize these capabilities ought to have the same chances of success. In order to accomplish equality of opportunity Rawls identifies that it is necessary to have a free market system “set within a framework of political and legal institutions that adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth, especially those likely to lead to political domination.”⁵² Rawls stresses that

⁴⁸ *Justice As Fairness*, 43.

⁴⁹ *Justice As Fairness*, 44.

⁵⁰ *Ibid.*

⁵¹ *Justice As Fairness*, 43.

⁵² *Justice As Fairness*, 44.

the most important means of ensuring equality of opportunity is the provision of education for all.⁵³

The difference principle states that inequalities occurring in the distribution of goods are only permissible if it is to the advantage of those who are the least well-off.⁵⁴ The least advantaged persons, on Rawls's account, "are those belonging to the income class with the lowest expectations."⁵⁵ Because the least well-off persons are at a disadvantage when competing for social opportunities due to circumstantial restraints, their lack of income precluding them from pursuing educational training for example, public policies or institutions ought to provide advantages only to these individuals so that they are capable of competing equally within society. As a result, Rawls's difference principle attempts to promote equality of opportunity by seeking out the most optimal distribution of goods that would best benefit the least advantaged individuals of a society.

The goods that can typically be distributed amongst individuals are what Rawls refers to as his list of primary goods. Primary goods are general social conditions and all-purpose means that are necessary for ensuring that citizens are able to develop and pursue life goals.⁵⁶ They are the "things that every rational man is presumed to want."⁵⁷

Rawls's primary goods includes:

- i. Basic rights and liberties: freedom of thought and liberty of conscience, and the rest. These rights and liberties are essential institutional

⁵³ Ibid.

⁵⁴ *Justice As Fairness*, 64.

⁵⁵ *Justice As Fairness*, 59.

⁵⁶ *Justice As Fairness*, 57.

⁵⁷ Sen, Amartya. "Equality of What?" *Tanner Lecture on Human Values* (Stanford University, May 22, 1979) 214. Available at: <http://www.uv.es/~mperezs/intpoleco/Lecturcomp/Distribucion%20Crecimiento/Sen%20Equality%20of%20what.pdf>.

- conditions required for the adequate development and full and informed exercise of the two moral powers.
- i. Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.
 - ii. Powers and prerogatives of offices and positions of authority and responsibility.
 - iii. Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be
 - iv. The social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.⁵⁸

The first three goods are to be distributed equally amongst all persons, with the same priority of importance as given to the two principles of justice (liberties are prior to freedoms and equalities). This is because Rawls wants to curtail any potential trade-offs between liberties and equalities, which could leave groups of individuals at a severe disadvantage. More specifically, Rawls is attempting to avoid exchanges of civil rights for short-term financial gains. Wealth, on the other hand, can be distributed amongst individuals in any manner as governing institutions see fit, so long as it is consistent with the optimal distribution set out by the difference principle. Thus, with the protection of these five essential goods, Rawls believes he has provided a complete system which “enables [citizens] to be normal and fully cooperating members of society over a complete life.”⁵⁹

It is important to note that Rawls is strictly dealing with the fully functioning “normal range” members of a society. A fully functioning individual is one who is capable of

⁵⁸ *Justice As Fairness*, 58-59.

⁵⁹ *Justice As Fairness*, 169.

reasoning, inference and judgment.⁶⁰ On Rawls's account, this refers to "someone who can be a free and equal participant [in social cooperation] over a complete life."⁶¹ The normal opportunity range is the scope of available projects that any fully functioning individual is capable of achieving within a society. Rawls's project seeks to protect this opportunity range for each fully functioning member of society. He states that this scope is not to be taken as a normative conception of a human being, but rather a political conception of a citizen.⁶² However, this conception accurately depicts the kind of individuals that Rawls is capable of accounting for at this theoretical stage.

ii. Daniels and the Importance of Health

The primary concern of social justice on the Rawlsian account is achieving equality of opportunity. Rawls believes that this can be done through the distribution of primary goods. What is important for this inquiry is how equality of opportunity is affected by health, and how health may be affected by the distribution of primary goods. Rawls speaks very little as to the importance of health throughout his works. This is primarily due to the fact that Rawls is operating at a highly theoretical level, and is unable to deal with these kinds of matters at this level of abstraction. Rawls does acknowledge that those with chronic health conditions will need to be accounted for and protected through

⁶⁰ Daniels, Norman. *Just Health: Meeting Health Needs Fairly* (New York: Cambridge University Press, 2008), 42

⁶¹ *Justice As Fairness*, 24.

⁶² *Ibid.*

institutions, but that these are matters for legislative bodies of society to concern themselves with.⁶³

The case for the moral importance of health within a public framework is best made by Norman Daniels in his work *Just Health*. Daniels borrows the Rawlsian conception of justice, and focuses on the central importance of equality of opportunity. Early within his book, Daniels examines the relationship between health and the pursuit of one's life goals. His argument states that, "since health needs promotes health (or normal functioning), and since health helps to protect opportunity, then meeting health needs protects opportunity."⁶⁴ Furthermore, since Rawls's system of justice as fairness "requires protecting opportunity, [... then his account of justice should give] special importance to meeting health needs."⁶⁵ In order to establish these claims it is necessary to explore adequate definitions of both health "needs", and what exactly is meant by health.

The language of needs is often used to cover a diverse range of things, from life-sustaining requirements to personal preferences. It is important to distinguish between the two, as Daniels's project is attempting to capture an objectively ascribable scale of needs that is applicable to all persons.⁶⁶ Needs based upon preferences may be subjectively important, however, it would be unfeasible for a defensible conception of needs to be based upon such a diverse scale. For example, as an art lover one would need a ticket to go to an exhibit or a museum. While the need for a ticket would satisfy the immediate desire to attend such a function, this need is based upon an individual

⁶³ *Justice As Fairness*, 173.

⁶⁴ *Just Health: Meeting Health Needs Fairly*, 30.

⁶⁵ *Ibid.*

⁶⁶ *Just Health: Meeting Health Needs Fairly*, 34.

preference. All too often, subjective preferences enter into the language of needs. However, Daniels argues that an adequate conception of needs will have a connection to egalitarian concerns and encompass “a selective scale with a moral structure that gives weight to some kinds of deficits in well-being and not to others.”⁶⁷ We must focus on an objective set of criteria in order to assess how badly individuals suffer if they are without their needs. The scale of needs will vary according to context, but it is important to keep in mind that “some of the things we want and claim to need fall into special categories that give them a weightier moral claim in contexts involving the distribution of resources, depending, of course, on how well off we already are within those categories of need.”⁶⁸ We all make claims to needs regarding particular less essential things. But if we demand a favourable distribution of resources to make up for our deprivation of needs, then we must be sure that we are doing so on the basis of an objectively ascribable moral scale.

As a result of the vast scope of “needs” one could potentially possess, Daniels specifies that there are two important characteristics of health needs: objectivity and consensus regarding the importance of health needs. First, he defines health needs as “those required for normal species functioning.”⁶⁹ He states that this definition accurately “specifies the nature of ‘harm’ that results from a deficiency in a need.”⁷⁰ This account is based upon an objectively applicable conception of need, as it does not encompass any normative conception of the “good” or life plans that ought to be viewed

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid. Although he does find it important to note the differences in harm between a preference based “need” leading to disappointment and the kind of harm that would result from the loss of “normal functioning” that would result from the inability to receive mental counseling.

as worthwhile. Secondly, he argues that there ought to be “widespread public agreement that these needs should be met” as the deprivation of species functioning can be seen as basic need deprivation.⁷¹ Where there is an impairment of species functioning it works to “reduce the range of exercisable opportunities from which individuals may construct their ‘life-plans’ or ‘conceptions of the good.’”⁷² Quite simply, the range of opportunities is reduced because the abilities one can have power over are also reduced when normal species functioning cannot be achieved.⁷³ Thus, Daniels argues that it is clear that there is a direct relationship between the deprivation of needs as a loss of species functioning and the reduction of freedom enhancing opportunities.

In order to determine what can be considered a legitimate health need, a clear conception of health must be defined. Health is often determined simply as the absence of disease; however, Daniels believes this conception to be far too narrow in scope.⁷⁴ This is because the mere absence of disease fails to encapsulate a full conception of the many factors that cause human beings to suffer a loss of health. Health threatening conditions such as traumatic injuries or birth defects are not considered diseases but have a serious impact on the level of health one is able to achieve.⁷⁵ More controversially, “functional deficits, such as blindness or deafness or quadriplegia, as well as cognitive deficits” note a loss of normal species functioning, which may impact the kinds of life opportunities that are available to an individual, even though she may be “otherwise healthy.”⁷⁶ On the other hand, Daniels notes that the

⁷¹ Ibid.

⁷² *Just Health: Meeting Health Needs Fairly*, 35.

⁷³ Ibid.

⁷⁴ *Just Health: Meeting Health Needs Fairly*, 36.

⁷⁵ Ibid.

⁷⁶ Ibid.

definition of health offered by the WHO, that “health is a state of complete physical, mental and social well-being,” is much too broad to serve as a working conception.⁷⁷ The standard of “well-being” denotes a level of satisfaction of personal preferences, as well as the achievement of particular worthwhile projects. Daniels fears that the conception of health as defined by the WHO “risks turning all of social philosophy and social policy into health care.”⁷⁸ Thus, Daniels adopts a conception of health as an absence of pathology, which refers to any “departure from normal functioning”.⁷⁹ In doing so, Daniels’s conception is capable of including some broader notions that have a clear impact of an individual’s level of health outside the sphere of disease, without becoming overwhelmed with subjective concerns of well-being.⁸⁰ As a result of this shift in focus, health can be seen as the maintenance of a state of normal biological functioning.

Daniels’s conception of health fulfills the aforementioned requirement of ensuring that any need is objectively ascribable:

As we can ultimately rely on the [...] biomedical sciences to characterize pathology, as well as on our growing understanding of epidemiology, including social epidemiology, to clarify what we need to function normally.⁸¹

Due to its basis on the scientific method, Daniels’s account of health as rooted in pathology is objectively applicable as it focuses on harmful dysfunctions of the human condition that work to limit an individual’s abilities and not on subjective valuations of

⁷⁷ *Just Health: Meeting Health Needs Fairly*, 37.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.* “disrupted part function takes place at various levels (genetic, organelle, cell, tissue, organ, systematic)”

⁸¹ *Ibid.*

optimal conditions.⁸² Further, it views health as the normal functioning of species members, and thus any departure from health as an abnormal condition. Requirements for what is necessary to function normally, however, stem from a diverse range of sources. Therefore, our knowledge of pathology is often supplemented by the study of epidemiology, which examines particular health patterns or events that occur within specific groups of people. In particular, social epidemiology aids our knowledge of normal functioning caused by the broader factors that impact health, such as the social determinants of health. It examines the link between societal based conditions and the loss of pathology in order to determine what kinds of things humans need in order to function normally. As a result, Daniels believes that the extension of his narrow conception of health “draws a tight connection between course-of-life needs and their objectivity and health needs.”⁸³

If health is the absence of pathology, and needs are any objectively ascribable thing that is required to maintain normal species functioning, then “health needs are those things we need in order to maintain, restore, or provide functional equivalents (where possible) to normal species functioning.”⁸⁴ Ultimately, Daniels’s conception of health needs cover a very diverse range of factors that have an important impact on an individual’s level of health including adequate nutrition, safe, unpolluted living and

⁸² It should be noted that there is opposition to this conception of health based on the fact that individuals can have a species functioning deficiency and also live a happy healthy life. Particular opposition comes from those who are paraplegic, whom are still able to satisfy particular life goals and other basic needs (*Just Health: Meeting Health Needs Fairly*, 36). While their condition may not be terminally harmful, is it still a departure from normal species functioning and may prevent them from participating in specific opportunities that require full body mobility.

⁸³ Ibid. Daniels is referencing Braybrook’s conception of “course-of-life” needs as “ones we have throughout our lives or at stages of life through which we all must pass” (*Just Health: Meeting Health Needs Fairly*, 34).

⁸⁴ *Just Health: Meeting Health Needs Fairly*, 42.

working conditions, as well as medical services.⁸⁵ While health care specifically plays an important role in promoting health of individuals, Daniels's aim is broadening the notion of health needs such that it "points to a functional relationship between preserving health- maintaining normal functioning- and the many goods, services and institutions that bear on health and its distribution."⁸⁶

An individual's state of health can drastically alter her fair share of a society's normal opportunity range. A normal opportunity range is the collection of opportunities or life plans available to any given member within a specific society.⁸⁷ It is important to note that the normal opportunity range available to any given individual is relative to the society within which she is functioning. Quite simply, the range of opportunities available within a society is dependent on such factors as its development, material wealth, technological advancement, and important cultural practices.⁸⁸ An individual can only expect to be able to compete for opportunities as they exist within her society. For example, an individual living within a fairly impoverished developing nation that relies primarily upon agriculture as the basis for its economy would be unreasonable to pursue a career as an aeronautical engineer as the education, technology and wealth required to facilitate those kinds of opportunities would not exist within that state. That goal would be set outside of the normal opportunity range for that society. However, if the individual resided within a more developed nation which could sustain such opportunities, then the decision to pursue that career would be compatible with the

⁸⁵ *Just Health: Meeting Health Needs Fairly*, 42-43. Daniel's list includes a broad range of factors that impact health, many of which rely upon important social or lifestyle issues. Since this paper is focused on a narrow view of public health, these are the factors that I am primarily concerned with.

⁸⁶ *Just Health: Meeting Health Needs Fairly*, 43.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

range operating within that society. Thus, in order to determine when an individual is at a disadvantage for competing for a particular opportunity, it is necessary to determine whether the opportunity is available to that individual. If it is the case that it is not, then the individual is unreasonable for pursuing the opportunity in question.⁸⁹

Daniels believes that normal species functioning is the basis for understanding an individual's share of the normal opportunity range, insofar as that share is drastically affected by an individual's health needs. He states that:

The special importance we attribute to meeting health needs, then, can be explained by the weight we attach to protecting our shares of the normal opportunity range against departures from normal functioning.⁹⁰

In order to justify the importance of protecting an individual's share of the normal opportunity range, Daniels situates the relationship between health and opportunity within Rawls's larger conception of justice.

Daniels justifies the significance of protecting normal species functioning through the Rawlsian framework of equality of opportunity.⁹¹ While Rawls contributes little to the discussion of health care himself, Daniels believes that if we are to take seriously the idea that justice relies on fair equality of opportunity, then the same idea compels us to ensure that individuals are not disqualified from competing in social opportunities on the basis of health related deficiencies.⁹² Thus, if justice requires that governments are to ensure that equality opportunity is available to all citizens, then they ought to provide a system which can provide adequate health care in order to meet the needs of citizens.

⁸⁹ It may be argued that certain opportunities may not exist within a particular society until they are created by the individual or by a group of peoples. While many people do, in fact, create opportunities for themselves where they previously did not exist, their creation is possible due to other opportunities or factors relative to society. For example, many entrepreneurs create job opportunities for themselves with the aid of education available within the society and funding in order to start their project.

⁹⁰ *Just Health: Meeting Health Needs Fairly*, 44.

⁹¹ *Ibid.*

⁹² *Ibid.*

In order to achieve equality in the distribution of opportunity amongst the individuals of a society, Rawls relies on primary social goods, which as examined earlier, are distributed so as to benefit those who are the least well off. As Daniels points out, “health care is not a primary social good, but neither are food, clothing, shelter, or other basic needs.”⁹³ These kinds of basic needs are typically satisfied through adequate distribution of income, or publicly funded programs that provide welfare support for those who are unable to secure basic needs for themselves. Daniels believes that health needs function much like educational needs within a society, insofar as these needs are met by the provision of institutions which protect equality of opportunity. However, “opportunity, not health care or education, remains the primary social good.”⁹⁴ Daniels believes that this extension of equality of opportunity is compatible with the intentions of the Rawlsian theory. Since Rawls is primarily concerned with equality of opportunity surrounding various careers, the accessibility of health-need satisfaction, much like education, is a positive means to ensuring the removal of barriers which prevent individuals from pursuing particular jobs.⁹⁵ It would be insufficient to solely focus of the elimination of “formal or legal barriers to persons seeking [...] jobs- for example, race, class, ethnic, or sex barriers” without taking positive steps to ensure that disadvantages stemming from social or natural factors do not inhibit an individual’s opportunity.⁹⁶ As a result, Daniels argues in order to counter individual disadvantages that arise as a result of health related needs, naturally occurring or otherwise, equality of opportunity requires the provision of health

⁹³ *Just Health: Meeting Health Needs Fairly*, 57.

⁹⁴ *Ibid.*

⁹⁵ *Just Health: Meeting Health Needs Fairly*, 58.

⁹⁶ *Ibid.*

services. Thus, including health needs into the framework of justice as fairness requires an expansion of the scope of equality of opportunity in such a way that “concentrates on a specific class of obvious disadvantages and tries to eliminate them.”⁹⁷ This is not to say that the fair equality of opportunity principle attempts to equalize all variations that arise in functioning amongst a given society. It does, however, work to “keep people functioning normally and thus to assure them the range of opportunities they would have in the absence of disease or disability.”⁹⁸

iii. Important Considerations Moving Forward

To this point in my inquiry, much of the discussion surrounding distributive justice and health has been situated primarily within societal boundaries. The reason that I have intentionally focused on society specific discussions of justice and health distribution until this point is twofold. First, since public health is a social good, it is important to understand the underlying principles of justice and societal mechanisms at work within our own borders in order to realize where our intuitions regarding distribution come from. Primarily, Rawls begins by talking about the distributive mechanisms at work within society specific boundaries. Second, if we are unable to recognize that the distribution of health is of such critical importance that it requires considerations of justice from within a society, the project of applying these considerations to an international sphere is purposeless. Moving forward, Chapter 3 will attempt to shift the consideration of health and its distribution into the global sphere, as

⁹⁷ Ibid.

⁹⁸ Ibid.

the nature of infectious diseases and pandemics is such that they are not bound by societal constraints.

Chapter 3: Foundations of Justice and Its Boundaries

The shift in examining health inequalities from a societal based view to a global perspective is not an easy endeavor. This is primarily due to the fact that the study of global concepts of justice is a newly emerging field. Historically, discussions of justice have been situated within particular societies due to the relative homogeneity of conceptions of justice amongst citizens of a particular society, and the fact that societies used to be able to function with relative independence from others. These facts are no longer true of the modern world. Liberal theories of justice are increasingly broad in scope to be able to adequately account for the plurality of morals and ideals valued by individuals. Further, increased globalization and international connectivity has developed to the point where most nations are highly dependent on one another for economic success. The relatively recent emergence of a plurality of international political institutions, such as the World Health Organization, World Trade Organization, and United Nations, points to the fact that international cooperation is becoming an increasingly important undertaking for responsible nations. Further, the increase in international news and information reveals many of the harsh inequalities suffered by peoples abroad, which can no longer be easily ignored by citizens of the developed world.

The previous chapter established that health is a critically important component for wellbeing, and conceptions of justice must adequately take into account health inequalities. In order to proceed into the global sphere, we must examine the specific foundations these theories of distributive justice rely on in order to correct for the gross

inequalities experienced by citizens and test their applicability to the international paradigm.

i. Rawlsian Foundations of Justice

The Rawlsian theory of justice as fairness is founded on the idea that all persons are free and equal.⁹⁹ Rawls argues that this belief is the basis for the foundation of a liberal society, as all members must share this belief in order to give justification for any kind of social cooperation. Persons are deemed equal on the basis that they possess two important moral powers: a sense of justice and a conception of the good.¹⁰⁰ An individual's sense of justice refers to an acknowledgement of others as free and equal members of society and allows for basic social cooperation. This recognition allows individuals not only to understand, but to "apply and to act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social cooperation".¹⁰¹ The second moral power refers to an individual's ability to determine what it means to live a good life. Rawls states that "[s]uch a conception is an ordered family of final ends and aims which specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life."¹⁰² This can include such projects as religion, occupation, or family life. Individual interpretations of what it means to live a good life are typically guided by an individual's comprehensive doctrine, which is "an overall theory of value" for one's life, stemming from an ethical

⁹⁹ *Justice As Fairness*, 18.

¹⁰⁰ *Ibid.*

¹⁰¹ *Justice As Fairness*, 19.

¹⁰² *Justice As Fairness*, 19.

theory, epistemic view or religious philosophy.¹⁰³ As a result of the two moral powers, Rawls believes that all normally functioning individuals within a liberal society are free and equal persons, as they each possess the “essential minimum degree of the moral powers necessary to engage in social cooperation” and are all freely capable of choosing the degree of their cooperation or participation in social endeavors with other members of society.¹⁰⁴ It is in this way that the two moral powers ground the basis for equality within Rawls’s conception of political society.¹⁰⁵

Rawls conceives individuals as being free within this liberal democratic state on the basis that each person has the ability to freely decide on their own conception of what it means to lead a good life. Citizens of liberal societies have the ability to pursue any project they decide is worthwhile, so long as their doing so does not interfere with the ability of any other citizen’s pursuit of their own conception of the good. Individuals are also capable of revising life projects and pursuing alternate paths to achieve a good life. Rawls states that:

Given their moral power to form, to revise, and rationally to pursue a conception of the good, their public or legal identity as free persons is not affected by changes over time in their determinate conception of the good.¹⁰⁶

Citizens are freely able to join or leave certain communities that exist within a society as their life plans change, such as a religious community or educational institution.

¹⁰³ Courtland, Shane D. and Gaus, Gerald. “Liberalism,” *Stanford Encyclopedia of Philosophy*. Last modified September 16, 2010, available at: <http://plato.stanford.edu/entries/liberalism/#LibTheSocJus>

¹⁰⁴ *Justice As Fairness*, 20.

¹⁰⁵ It should be noted that Rawls uses persons and citizens interchangeably throughout this section within *Justice as fairness* (Sn.7). He is clearly referring to a conception of equality that exists amongst members of a liberal society for the purpose of justifying why we ought to be concerned with correcting disparities that arise between citizens of the same society. This conception of equality will be examined further within Chapter 3.

¹⁰⁶ *Justice As Fairness*, 21.

Moreover, citizens are viewed as free on Rawls' account on the basis that they are "self-authenticating sources of valid claims."¹⁰⁷ Citizens are entitled to ensure that their society's basic institutions act in such a way that advances their conception of the good, "provided these conceptions fall within the range permitted by the public conception of justice."¹⁰⁸ Citizens are able to do so on the basis that they owe certain duties and obligations to society as a result of a shared commitment to social cooperation. Because citizens are obligated to uphold political duties, they have a right to ensure that these obligations are consistent with their conception of the good. Rawls notes that as an extreme case, individuals who are slaves "are not counted as sources of claims, not even claims based on social duties or obligations, for slaves are not counted as capable of having duties or obligations."¹⁰⁹ Slaves are not given the freedom to advance their conceptions of the good, nor are they given the opportunity to exercise their capacity for justice. Because they are unable to exercise their two moral powers, they are not recognized as persons within a society.¹¹⁰

Since Rawls is focusing his project on the formulation of a well-ordered liberal society (as a result of his respect for each individual's conception of the good for human life), he necessarily must account for plurality in the valuable projects individuals choose to engage in. Due to the fact that comprehensive doctrines vary widely within a society, and that many of them are incompatible with each other, it would be impossible to achieve a consensus on a particular doctrine as the basis for society. However, he believes that it would be possible to achieve societal agreement on one particular part

¹⁰⁷ *Justice As Fairness*, 23.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Justice As Fairness*, 24.

of a doctrine. Specifically, Rawls believes that a society can come to a political consensus as to how social cooperation and governance ought to occur. In order to reach agreement on which institutions ought to regulate the political realm of society, they cannot be attached to any particular moral doctrine or conception of the good.¹¹¹ In other words, the institutions which are necessary to regulate all individuals within a society must be basic enough that they can both be compatible with varying conceptions of a good human life, and not particularly ascribable to any specific one.

Rawls states that:

The fact of reasonable pluralism implies that there is no such doctrine, whether fully or partially comprehensive, on which all citizens do or can agree to settle the fundamental questions of political justice. Rather, we say that in a well-ordered society the political conception is affirmed by what we refer to as a reasonable overlapping consensus.¹¹²

Each individual's comprehensive doctrine will be compatible with some set of public values that are fair and ascribable to everyone. This overlapping consensus is possible, Rawls believes, due to the fact that the fundamental concepts of the political conception of justice are also propositions of other comprehensive doctrines, while at the same time, require no presupposition of any particular comprehensive view.¹¹³

In order to decipher the fair terms of cooperation between citizens, Rawls devises a thought experiment to explain how these terms may be selected by free and equal citizens of a well-ordered society. Rawls refers to this thought experiment as the idea of the original position.¹¹⁴ In order to evaluate the legitimacy of the terms of social cooperation, Rawls argues that they must be the product of agreements between

¹¹¹ *Justice As Fairness*, 32.

¹¹² *Ibid.*

¹¹³ *Justice As Fairness*, 33.

¹¹⁴ *Justice As Fairness*, 14.

citizens for the mutual advantage of all.¹¹⁵ Due to the fact that Rawls is attempting to devise a liberal theory that is able to accommodate a diverse range of comprehensive doctrines, he states that the terms of cooperation for a well-ordered society cannot be specified by “an authority distinct from the persons cooperating, say, by God’s law” nor can they be derived from a “moral order of values” as they are inadequate doctrines to serve as the foundation for justice.¹¹⁶ In order to serve as a valid agreement between citizens, it is necessary that certain conditions are satisfied within the original position. Specifically, Rawls states that fair and valid agreements between citizens must be made free from coercion, deception, or threat of violence, and “must not permit some to have unfair bargaining advantages over others”.¹¹⁷ In order to extend this idea of a fair and valid agreement between citizens so far as to serve as the foundation for a political conception of justice, Rawls deems it necessary to determine a “point of view from which a fair agreement between free and equal persons can be reached”.¹¹⁸ This particular point of view is expressly captured within the Rawlsian conception of the original position behind a veil of ignorance. The Rawlsian veil of ignorance prohibits the contracting parties from knowing the relative social positions, comprehensive doctrines, or other contingent features of the persons they represent, such as race, ethnic group or gender. Since the veil of ignorance ensures that the contracting parties are unaware of these factors, they will not be tempted to make agreements that favor one party over the other and can focus on the task of identifying objective principles to serve as the foundations for societal cooperation.

¹¹⁵ *Justice As Fairness*, 15.

¹¹⁶ *Justice As Fairness*, 14-15.

¹¹⁷ *Justice As Fairness*, 15.

¹¹⁸ *Ibid.*

It is important to note that throughout his works Rawls is concerned with the operation of justice within a liberal democratic society. This is because only a liberal democratic society can adequately respect the two moral powers of each individual. Rawls acknowledges that his theory cannot accept 'unreasonable' individuals, those who are unwilling to accept the fact of reasonable pluralism or who force their own comprehensive doctrines on others. He states that his project is focused on "which principles are most appropriate for a democratic society that not only professes but wants to take seriously the idea that citizens are free and equal, and tries to realize that idea in its main institutions."¹¹⁹

ii. Rawls and International Justice

In his later work, *The Law of Peoples*, Rawls details the extension of his liberal theory of justice to the global sphere. In order to do so, he employs a similar methodology as in *Justice As Fairness*, namely, using an original position behind a veil of ignorance to determine what principles reasonable peoples would agree to within the global sphere. Rawls refers to this extension in methodology as his second original position. In shifting the thought experiment to the global level, however, the goal of *The Law of Peoples* is to determine which principles can serve as a basis for mutually advantageous cooperation for foreign policy.

At the domestic level, Rawls centers his project on the conception of the citizen as the predominant agent. On the international level, however, this conception is not going

¹¹⁹ *Justice As Fairness*, 39.

to be effective. Citizens are active agents of a society, and require the kind of organizational structure as provided within the well-ordered society to maintain the Rawlsian principles of justice. Further, if Rawls were to use his idea of citizenship as contemplated throughout his domestic theory as a basis for global cooperation, it may limit the scope of global cooperation to those who affirm the same definition of citizenship. Just as the domestic setting must take into account the fact of reasonable pluralism, the international sphere must also recognize “the diversity among reasonable peoples with their different cultures and traditions of thought, both religious and nonreligious.”¹²⁰ Rawls notes that “even when two or more peoples have liberal constitutional regimes, their conceptions of constitutionalism may diverge and express different variations of liberalism”¹²¹ such that any “(reasonable) Law of Peoples must be acceptable to reasonable peoples who are thus diverse; and it must be fair between them and effective in shaping the larger schemes of their cooperation.”¹²² Rawls argues that a starting position that is reliant upon his previous definition of citizens would fail to acknowledge the fundamental diversity of liberalism.

Many of the traditional discussions surrounding international justice or cooperation focus on states as the focal agents on this level. Rawls also believes that this would serve as a challenging starting position, since states inherently bring difficulties into the debate surrounding sovereignty issues. State sovereignty as traditionally conceived encompasses the power to “go to war in pursuit of state policies” as well as the right to a certain level of autonomy in dealing with its citizens.¹²³ Rawls argues that the

¹²⁰ Rawls, John. *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 11.

¹²¹ *The Law of Peoples*, 11.

¹²² *The Law of Peoples*, 11-12.

¹²³ *The Law of Peoples*, 25-26.

traditionally conceived state is perpetually concerned with its power, either over other states or peoples, which is a deeply problematic starting position for any liberal conception of international cooperation. He states that:

If a state's concern with power is predominant; and if its interests include such things as converting other societies to the state's religion, enlarging its empire and winning territory, gaining dynastic or imperial or national prestige and glory, and increasing its relative economic strength – then the difference between states and peoples is enormous.¹²⁴

Rawls believes that states are viewed as unreasonable in this regard, as states are often motivated by opportunistic power struggles and neglect the importance of reciprocity in dealing with other states.¹²⁵ Further, that these kinds of interests “tend to put a state at odds with other states [...] and to threaten their safety and security.”¹²⁶

Thus, Rawls introduces a new conception to avoid the problem inherent with the conception of citizens and states in the global realm. He argues that peoples, collectives of liberal democratic people, ought to be seen as the agents of discussions concerning global justice.¹²⁷ Liberal peoples have three important characteristics that distinguish themselves from states. First, they have a “reasonably just constitutional democratic government that serves their fundamental interests.”¹²⁸ Rawls explains that peoples conceived in this way are participants of a democratically run government that is effectively able to protect their constitutional interests, as opposed to a bureaucracy that is focused on pursuing its own deterministic ambitions.¹²⁹ He notes that this further entails that such a democratic government is not largely influenced by corporate

¹²⁴ *The Law of Peoples*, 28.

¹²⁵ *The Laws of Peoples*, 28.

¹²⁶ *The Laws of Peoples*, 29.

¹²⁷ *The Law of Peoples*, 23.

¹²⁸ *Ibid.*

¹²⁹ *The Law of Peoples*, 24.

corruption or private greed.¹³⁰ Namely, that this may be the kind of society that is the result of his domestic project, as he reiterates the importance of the:

truism that it is necessary to frame institutions in such a way as to motivate people sufficiently, both citizens and government officers, to honor them, and to remove the obvious temptations to corruption.¹³¹

Secondly, Rawls argues that liberal peoples are united by common sympathies, such as common culture, language, or shared histories. While the fact of reasonable pluralism promotes diversity between peoples as necessary and inevitable, Rawls argues that nonetheless, common sympathies, whatever their source may be, are important starting points for cooperation amongst peoples.¹³² In doing so, Rawls believes that his forthcoming Law of Peoples will be able to accommodate the diverse cultural interests, needs, and backgrounds as are prevalent within the global sphere.¹³³ Finally, Rawls articulates that peoples, unlike states, encompass a certain capacity for moral character. Just as citizens at the domestic level are constrained by their sense of what is reasonable and rational, liberal peoples are constrained in the same manner at the international level. Rawls states that “as reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples.”¹³⁴ Rawls believes that it is this capacity for moral character that leads to the principles of political justice on the domestic level, and the foundations for the Laws of Peoples on the international level.¹³⁵

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² *Laws of Peoples*, 24.

¹³³ *Laws of Peoples*, 25.

¹³⁴ Ibid.

¹³⁵ Ibid.

Since Rawls has identified his focal point for his international expansion of justice, namely the cooperation as between liberal peoples, he then moves on to examine how a Law of Peoples can be properly established. He again utilizes the veil of ignorance to determine the fair conditions of such a law.¹³⁶ His inquiry in this second original position is to examine the kind of conditions that the “rational representatives of liberal peoples” would agree to in international cooperation.¹³⁷ Rawls notes that the second original position has the following five features, namely, that peoples are:

(1) reasonably and fairly situated as free and equal, and peoples are (2) modeled as rational. Also their representatives are (3) deliberating about the correct subject, in this case the content of the Law of Peoples [...]. Moreover, (4) their deliberations proceed in terms of the right reasons (as restricted by a veil of ignorance). Finally, the selection of principles for the Law of Peoples is based (5) on a people’s fundamental interests, given in this case by a liberal conception of justice.¹³⁸

Rawls states that any reasonable Laws of Peoples must also be the product of his original position thought experiment, similar to the process of determining the constitutions of liberal democratic societies.¹³⁹ However, this second original position must accommodate other kinds of cooperation amongst peoples instead of a constitutionally based system, as Rawls believes that the affirmation of a world-state is likely to be undesirable. Rawls argues that “a unified political regime with the legal powers normally exercised by central governments – would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife”.¹⁴⁰ As a result, Rawls believes that it may turn out that there are many organizational systems within the global sphere that require the cooperation and collaboration of peoples for

¹³⁶ *Laws of Peoples*, 32.

¹³⁷ *Ibid.*

¹³⁸ *Laws of Peoples*, 33.

¹³⁹ *Laws of Peoples*, 35.

¹⁴⁰ *Laws of Peoples*, 36.

mutually beneficial ends, and as such, these organizations or undertakings will be subject to the Laws of Peoples. While the Laws of Peoples will ultimately be chosen and agreed to by the responsible representatives of each collective, Rawls presents eight preliminary principles to which he believes could serve as the basis for the Laws of Peoples:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no rights to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.¹⁴¹

While initially incomplete and subject to interpretation, Rawls argues that these fundamental principles are a highly plausible basis for cooperation on a global level.

The Charter of the Laws of People may not necessarily look exactly like this set of eight principles, as some may have to be expanded or clarified to address particular global issues. The eighth principle, for example, Rawls believes will be highly controversial, and as a result, will require further clarification.

In addition to creating the principles which guide the cooperation of all peoples, the representatives within the second original position must also create guidelines for cooperative organizations which will be mutually beneficial to all parties. Rawls details that there will be three necessary cooperative organizations founded by the parties of this second original position, one to oversee the terms of fair trade between peoples,

¹⁴¹ *The Laws of Peoples*, 37.

one to serve as a cooperative banking system, and one he names the “Confederation of Peoples” which will play a similar role to the United Nations.¹⁴² The parties within this second original position also work from behind a veil of ignorance, as they did in the domestic setting, to determine the fair terms of cooperation at the level of peoples.¹⁴³ It is similarly necessary that these fair terms are mutually advantageous for all peoples and that these agreements are made free from coercion or force.¹⁴⁴

This second original position as presented above is what Rawls refers to as an ideal theory. Namely, that this conception considers only the possibility that all global bodies on this level were comprised of well-ordered liberal societies who were capable of electing representatives in this manner and abiding by the Laws of Peoples. In short, this ideal theory is a utopian one, an ideal that Rawls believes the global community should be working towards realizing. The fact of reasonable pluralism, and a quick look at the current state of global affairs, denotes a need to conceptualize the global Rawlsian project in a manner that is able to deal with the existence of non-liberal societies. This further project is what Rawls refers to as his non-ideal theory. Since liberal theory at its core stresses the importance of toleration, especially with respect to conceptions of the good and domestic organization, any liberal theory that outright denies participation from nonliberal peoples would appear unreasonable by its own definition. Accordingly, Rawls argues that toleration entails that we must “recognize these nonliberal societies as equal participating members in good standing of the

¹⁴² *Laws of Peoples*, 42.

¹⁴³ *Ibid.*

¹⁴⁴ This is an important point to keep in mind for Chapter 4, when the discussion moves to Pogge’s examination of justice in the current global organizational structure.

Society of Peoples, with certain rights and obligations”.¹⁴⁵ Rawls allows that nonliberal peoples, who are classified as “decent” peoples, can be considered as equal participants within the Society of Peoples. Decent peoples are those whose society’s basic institutions, though nonliberal, meet certain political criteria. These institutions must “meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples”.¹⁴⁶ In this regard, Rawls believes that decent peoples are still able to participate in global cooperative affairs just as liberal peoples. However, in considering his global non-ideal theory, Rawls is faced with three further problems as present within the global landscape.¹⁴⁷ First, outlaw states, which are those who threaten global peace, are expansionist, or violate human rights. Second, is the problem of burdened societies, those are subjected to unfavorable socioeconomic conditions. And finally, societies that are benevolent absolutisms, which are those who honor human rights, but deny their citizens any meaningful participation in political affairs.¹⁴⁸ I am going to set aside the first and third of these problems as relevant to another project, and instead focus on the problem of burdened societies within the Rawlsian global project.

Burdened societies are those who suffer from chronic or severe social or economic hardships that make it difficult to create or sustain the kinds of liberal institutions required by a well-ordered society. These societies “lack the political and cultural traditions, the human capital and know-how, and, often, the material and

¹⁴⁵ *Laws of Peoples*, 59.

¹⁴⁶ *Laws of Peoples*, 59-60.

¹⁴⁷ *Laws of Peoples*, 63.

¹⁴⁸ *Ibid.*

technological resources needed to be well-ordered.”¹⁴⁹ As stated in the list of provisional Laws of Peoples, the eighth principle mandates that peoples of well-ordered societies are required to assist burdened societies until they can effectively manage their own affairs, or in other words, until these societies become well-ordered.¹⁵⁰ It is on these grounds that Rawls argues that “well-ordered peoples have *duty* to assist burdened societies.”¹⁵¹ This is a particularly important point, as this duty would require a different kind of assistance than is currently provided to respond to poverty-stricken societies. The aim of this assistance is to facilitate the creation and self-sustainability of basic institutions within these burdened societies. This is a considerable undertaking for the peoples of well-ordered societies, as it requires a considerable amount of assistance and attention to the chronic conditions which habitually plague burdened societies. While relief may still be required in specific occurrences of acute need or emergencies, Rawls is quite clear that the main objective of global assistance is to provide ongoing support such that these burdened societies may be able to adequately protect their own citizens.

It is important to take note of the fact that Rawls argues that the global duty of assistance is not necessarily best carried out by following a principle of distributive justice.¹⁵² The problem with global principles of distributive justice, Rawls claims, is that “most such principles do not have a defined goal, aim or cut-off point, beyond which aid may cease.”¹⁵³ It is a fact of the global socio-economic landscape that societies have differing resources, wealth, and capabilities. As such, the “levels of wealth and

¹⁴⁹ *Laws of Peoples*, 106.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

welfare among societies may vary, and presumably do so; but adjusting those levels is not the object of the duty of assistance.”¹⁵⁴ In a departure from his domestic project, wherein Rawls employs distributive justice to equalize competition between citizens, there is no distributive mechanism at work in the Rawlsian conception of global justice to equalize disparities in wealth between well-ordered societies. Thus, only burdened societies require assistance on the Rawlsian account. There may, however, be certain instances wherein the institutions of well-ordered societies are burdened with situational hardships, including natural disasters or pandemics, which cause these normally well-ordered societies to temporarily fall into the category of a burdened society.

Rawls proceeds to outline three important guidelines for the duty of assistance. Firstly, Rawls acknowledges that societies do not necessarily have to be wealthy in order to be considered well-ordered. In fact, even “a society with few natural resources and little wealth can be well-ordered”, and conversely, the accumulation of wealth by a society is not a sufficient condition for its classification as well-ordered.¹⁵⁵ This initial guideline emphasizes the fact that the Rawlsian duty of assistance does not have a narrow focus on the mere accumulation of wealth. In order to demonstrate this point, Rawls recalls the principle of just savings detailed within his *Theory of Justice*. He states that the role of the principle of just savings is to “establish (reasonably) just basic institutions for a free constitutional democratic society (or any well-ordered society).”¹⁵⁶ Specifically, this principle maintains that the accumulation of wealth of a society is only required such that the society is able to maintain certain standards of social operations for its citizens. Once the necessary basic institutions are established, and their

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ *Laws of Peoples*, 107.

operations are secured, Rawls allows that a society's accumulation of just savings may cease.¹⁵⁷ Further, Rawls proposes that great wealth is not required to establish these institutions, and is instead largely dependent on a "society's particular history as well as its conception of justice."¹⁵⁸

Rawls's second guideline of assistance is that both recognizing and understanding the uniqueness of the political culture of a particular burdened society is crucial to understanding the root causes of a chronically burdened society.¹⁵⁹ While the Rawlsian conception of toleration respects that there is no one way to conceive of the responsible political organization of a society, Rawls clearly states that he believes:

The causes of wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues.¹⁶⁰

Thus, the internal political organization and structure of a given society, rather than its accumulation of wealth, is solely responsible for perpetuating the unfavorable conditions which burden societies. Rawls adds that he "would further conjecture that there is no society anywhere in the world- except for marginal cases- with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered."¹⁶¹ As a result, Rawls suspects that simply providing monetary aid will not be sufficient to rectify these unfavorable social conditions. Instead, a more active assistance may be required of the peoples of well-ordered societies in order to fulfill their obligation to burdened societies.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ *Laws of Peoples*, 108.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Finally, in his third guideline of assistance Rawls states that the goal of the duty of assistance is to “help burdened societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the Society of well-ordered Peoples.”¹⁶² Once this goal is achieved, no further assistance is required. Since well-ordered societies are capable of handling their own domestic affairs in a responsible manner, once burdened societies are capable of doing the same the peoples of well-ordered societies have no further obligations to these previously burdened societies. It is important to note that the condition of being a well-ordered society is not a static one. Societies may cease to be well-ordered if their basic institutions are overwhelmed with unfavorable conditions such that they are incapable of maintaining the social settings required to care for their citizens. Natural disasters and pandemic diseases are prime examples of occurrences in which political institutions may be overwhelmed or incapable of protecting their citizens, even in societies which are normally well-ordered. Therefore, even the societies who are habitually well-off may require assistance periodically in order to revive or maintain their institutional effectiveness.

As in his previous works, Rawls does not discuss the issue of health or its place within the Law of Peoples. However, his provisional Charter of the Laws of Peoples leaves room to consider whether a principle surrounding the importance of securing a certain level of health would be possible. Specifically, the vagueness of his eighth principle leaves room to speculate that the Law of Peoples could be refined to include provisions concerning health. While the issue of health, and particularly of the emergency pandemic scenario, appears on the surface to be different from the kind of

¹⁶² *Laws of Peoples*, 111.

assistance that Rawls wants to address with his eighth principle, it is not altogether dissimilar. Public health infrastructure, an important social organization, is required to adequately protect peoples from pandemic outbreaks. Since proper pandemic response programs require a certain level of infrastructure, in terms of effective public health systems and their management, the outbreak of a pandemic could signify a break down in public health infrastructure, and one that deserves attention from the global community. It is also the case that if public health infrastructure is unable to function at the level required to adequately protect citizens from pandemics, then it is foreseeable that other important social or political institutions may be subsequently threatened or disabled. Further, it may not be a coincidence that the least well-off societies are the same ones whose members consistently struggle with endemic diseases which have long disappeared from the developed world, especially ones that are preventable with proper access to treatments and vaccines. While many pandemics may exist due to favorable geographical conditions, the inability of many of the least well-off societies to both establish and implement effective disease management programs points to a larger organizational issue. If the Rawlsian global project is to work towards the self-management of all societies, and to organize them in a well-ordered manner, then this project must necessarily take into account the public health infrastructure which is charged with protecting the health a population. It is in this way that we can continue the conversation of the Rawlsian global project into the discussion regarding pandemic assistance, as the long term goal of promoting sustainable well-ordered societies may require the peoples of well-off societies to be concerned with the short-term setbacks as a result of a society's lack of infrastructure.

iii. The Problem of International Justice and Health

As Norman Daniels's appropriately asks, "Are the glaring [...] international health inequalities also unjust?"¹⁶³ Social inequalities in access to health are unjust or unfair if they "result from an unjust distribution of the socially controllable factors that affect population health and its distribution."¹⁶⁴ On the domestic Rawlsian account, an acceptable distribution of access to health would likely include such distribution of the primary goods available to citizens in order to achieve equality of opportunity. Accordingly, Daniels states that the fair "distribution of the key determinants of population health would significantly flatten the socioeconomic gradient of health and would minimize various inequalities in health, including race and gender inequalities."¹⁶⁵ The problem with this particular definition of equitable health distribution is that it is able to "tell us what we as fellow citizens owe each other in promoting and protecting health, but not what other societies owe, if anything, in terms of improving population health in less healthy societies."¹⁶⁶ In order to further the argument that there is an obligation for the developed world to provide foreign aid during pandemics to the world's least-well off, Chapter 4 will examine whether the developed world is violating its negative duties to the global poor. This argument is best presented by Thomas Pogge, who states that:

¹⁶³ *Just Health: Meeting Health Needs Fairly*, 333.

¹⁶⁴ *Just Health: Meeting Health Needs Fairly*, 334.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

It is of some importance, therefore, to investigate whether existing global poverty involves our violating a negative duty. This is important for us, if we want to lead a moral life and important also for the poor, because it makes a great difference to them whether we affluent do or do not see global poverty as an injustice we help to maintain.¹⁶⁷

¹⁶⁷ Pogge, Thomas. *World Poverty and Human Rights*. Second Edition (Cambridge, UK: Polity Press, 2008), 204.

Chapter 4: Negative Duty and Institutional Injustice

At the core of the Rawlsian domestic theory is the central premise that all citizens are equal. Upon this premise, Rawls creates an intricate social system wherein citizens are not granted favorable socioeconomic advantages on the basis of certain contingent factors, such as race, gender, or social class. In doing so, Rawls attempts to even out the playing field for social competitions, such that they are won on the basis of merit instead of given to those who begin with already privileged starting positions. As we have seen, this equalization is directed by the Rawlsian difference principle, which orders that any social distribution of goods must be to the benefit of the least well off. Yet when Rawls pushes his theory of justice into the global setting, the notion of distribution of goods is notably left at the domestic level. The focus of the Rawlsian project at the global level is mutual cooperation between peoples, and the principles that guide this cooperation are ones that can be found within our current practice of international law. There is no principle at work in the global setting to distribute wealth or other social goods amongst peoples.¹⁶⁸

As a result of the lack of a distributive mechanism at the global level, some philosophers have criticized Rawls's *Laws of Peoples* as morally inconsistent with his domestic theory of justice.¹⁶⁹ These philosophers argue that if the goal of the Rawlsian project is to equalize the arbitrary factors that may impact an individual's ability to compete for social goods, or which may prevent an individual from realizing her

¹⁶⁸ As seen in the previous Chapter, the goal of assistance for the global Rawlsian project is to aid other societies in becoming "well-ordered". Once this is achieved, peoples are then able to cooperate with each other equally, but have no further obligations to provide any kind of equalization assistance to other societies once they have become well-ordered.

¹⁶⁹ Favor, Christi & Julian Lamont. "Distributive Justice" *Stanford Encyclopedia of Philosophy*. Last modified January 2, 2013, available at: <http://plato.stanford.edu/entries/justice-distributive/>.

conception of a good life, then surely nationality is akin to these kinds of morally arbitrary factors. As with social class, race or gender, individuals have no control over what society they are born into, and accordingly, ought not to suffer disadvantages in life prospects as a result. Philosophers who argue that the Rawlsian project is incoherent on these grounds are referred to as cosmopolitans. They view no justification for the limitations placed on equality at the domestic level, and argue that the inequalities experienced at the global level is, in fact, the proper focal point for discussions of justice.¹⁷⁰ Once such cosmopolitan, Thomas Pogge, argues:

Nationality is just one further deep contingency (like genetic endowment, race, gender, and social class), one more potential basis of institutional inequalities that are inescapable and present from birth. Within Rawls's conception, there is no reason to treat this case differently from the others. And so it would seem that we can justify our global institutional order only if we can show that the institutional inequalities it produces tend to optimize (against the backdrop of feasible alternative global regimes) the worst social position.¹⁷¹

Accordingly, within *World Poverty and Human Rights* Pogge sets out to examine whether the inequalities produced by the current global institutional framework can be justified, or whether these inequalities are the result of corrupt policies and neglected moral obligations.

i. Pogge and the Importance of Negative Duty

Thomas Pogge asserts that the relationship between global citizens is generated through past interactions between nations and the current global structure, which is

¹⁷⁰ Ibid.

¹⁷¹ Pogge 1989, 247. As in Favor, Christi & Julian Lamont. "Distributive Justice" *Stanford Encyclopedia of Philosophy*. Last modified January 2, 2013, available at: <http://plato.stanford.edu/entries/justice-distributive/>.

perpetuated by governments and their institutions. He argues that the most affluent nations are obligated to provide foreign aid to others because the current international system places an unfair burden on the citizens of the globally poor nations, and prevents them from competing for scarce resources on the same scale as the global super powers. The current global structure exploits the least well-off societies in order to benefit the already rich nations. In doing so, these institutions are actively harming these already impoverished individuals, and prevent the global poor from bettering their development. Thus, if the development of the global north impedes the development of others, and negatively impacts their progress, then the societies that enjoy the benefits of this relationship have a duty to correct the negative effect they cause.

In his book *World Poverty and Human Rights*, Thomas Pogge attempts to explain the level of global poverty in terms of radical inequality. With this term Pogge intends to encapsulate the central idea that the disparities in the quality of life experienced by the most and least affluent nations are profoundly unbalanced. He offers the following five conditions as indicators of radical inequality:

1. The worse-off are very badly off in absolute terms.
2. They are also very badly off in relative terms- very much worse off than many others.
3. The inequality is impervious: it is difficult or impossible for the worse-off substantially to improve their lot; and most of the better-off never experience life at the bottom for even a few months and have no vivid idea of what it is like to live in that way.
4. The inequality is pervasive: it concerns not merely some aspects of life, such as the climate or access to natural beauty or high culture, but most aspects or all.
5. The inequality is avoidable: the better off can improve the circumstances of the worse-off without becoming badly off themselves.¹⁷²

¹⁷² *World Poverty and Human Rights*, 204.

While Pogge recognizes that there are those who contend that the fact of radical inequality on this scale demonstrates that some kind of an obligation exists to alleviate these conditions of inequality, he argues that these conditions alone would merely continue to generate a supererogatory positive duty towards the global poor.¹⁷³ This is due to the fact that the conditions of radical inequality, while often ignored by the world's better-off, may not necessarily be the result of actions that are performed by the affluent. Pogge argues that a violation of a negative duty of justice must demonstrate how a particular moral agent is responsible for "contributing to the perpetuation of [...] misery."¹⁷⁴ Thus, in order to show that the world's affluent citizens have an obligation to correct for the fact of radical inequality that supersedes a positive duty of beneficence, it must be demonstrated that there is a clear line of responsibility stemming from developed nations to the least well-off nations, which illustrates how specific actions or decisions of these well-off societies perpetuate a cycle of radical inequality.¹⁷⁵

Since the mere fact of radical inequality is insufficient at generating the kinds of claims Pogge wants to make against the developed world, he suggests that "further conditions must be satisfied for radical inequality to manifest an injustice that involved violation of a negative duty by the better-off."¹⁷⁶ He provides three plausible grounds of injustice: the effects of shared social institutions, the uncompensated exclusion from the use of natural resources, and the effects of a common and violent history.¹⁷⁷ Pogge

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ *World Poverty and Human Rights*, 205.

states that these further injustices are important to further this discourse for two important reasons:

First, all three approaches classify the existing radical inequality as unjust and its coercive maintenance as a violation of negative duty. Second, all three approaches can agree on the same feasible reform of the status quo as a major step toward justice.¹⁷⁸

While Pogge argues that it is not necessary to choose between these three grounds of injustices, for the purposes of my thesis I will focus my inquiry on his first injustice, the effects of shared social institutions. Although his other proposed injustices are no less important for concerns of global poverty, I believe that the global inequalities that arise as a result of these shared institutions are particularly concerning for matters of health disparities.

In order to illustrate how the current global institutional order harms the global poor, Pogge provides a list of conditions which map out the injustices that are perpetuated through shared social institutions:

1. There is a shared institutional order that is shaped by the better off and imposed on the worse-off.
2. This institutional order is implicated in the reproduction of radical inequality in that there is a feasible institutional alternative under which such severe and extensive poverty would not exist.
3. The radical inequality cannot be traced to extra-social factors (such as genetic handicaps or natural disasters) which, as such, affect different human beings differently.¹⁷⁹

The central thesis running through each of these conditions is that global institutions cater to the needs of affluent and powerful nations and by in large disregard the needs of the least well-off nations. Pogge's first condition recognizes that although people are organized into worldwide states, we are increasingly connected through global trade

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

and political networks. The importance of the involvement of the developed world in these institutions “is shown by how dramatically we affect the circumstances of the global poor through investments, loans, trade, bribed, military aid [...] and much else.”¹⁸⁰ This is a particularly pressing issue, as the survival of the least well-off may often hinge upon the consumption choices of the developed world.¹⁸¹ The purchase power and rate of consumption of goods by the developed world typically dictate the employment opportunities and even the availability and price of food within the least well-off societies.¹⁸² This power demonstrates that the developed world is clearly involved in shaping the circumstances experienced within LDCs. Although we cannot and should not remove ourselves from these global systems, it is important for the developed world to be concerned with how the rules and regulations of these systems can foreseeably perpetuate conditions of extreme poverty.¹⁸³ Pogge argues that since “the developed countries, thanks to their vastly superior military and economic strength, control these rules and therefore share responsibility for their foreseeable effects.”¹⁸⁴

Pogge’s second condition of injustice further suggests that the level of extreme poverty experienced by certain individuals can be explained in terms of the structure of these shared institutions.¹⁸⁵ While the practice of evaluating domestic institutions on the basis of their ability to impoverish citizens is a common practice, this type of institutional evaluation is foreign to the international level. Unfortunately, Pogge notes that in an attempt to explain extreme poverty, many economists focus too heavily on local factors

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ *World Poverty and Human Rights*, 206.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

contributing to poverty and largely ignore the fact that these local factors may be unable to tell a complete story as to why particular societies are habitually impoverished.¹⁸⁶

Pogge argues that:

Yes, the world is diverse, and poverty is declining in some countries and worsening in others. But the larger pattern of increasing global inequality is quite stable, reaching far back to the colonial era. The affluent countries have been using their power to shape the rules of the world economy according to their own interests and thereby have deprived the poorest populations of a fair share of global economic growth.¹⁸⁷

Thus, while many of the least-well off nations are not absent of important internal factors which may contribute to the existence of extreme poverty within their borders, these factors are largely overshadowed by the scale on which many global institutions contribute to the existence of extreme poverty.

The final condition of institutional injustice argues that the essential difference between the citizens of the developed world and those who reside within the least well-off nations is the good fortune to have been born into an advantageous social circumstance.¹⁸⁸ Given the reverse, those who experience extreme poverty are no less capable of leading healthy lives. This argument echoes the one presented earlier by Norman Daniels, who suggests that the condition of being born into an affluent society is one purely based on luck. Thus, Pogge argues that “the root cause of their suffering is their abysmal social starting position which does not give them much of a chance to become anything but poor”¹⁸⁹.

These three conditions differ from the fact of mere inequality because “the worse-off are not merely poor and often starving, but are *being* impoverished and starved

¹⁸⁶ Ibid.

¹⁸⁷ *World Poverty and Human Rights*, 207.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

under our shared institutional arrangement, which inescapably shape their lives.”¹⁹⁰

They demonstrate that it is unfeasible to conceptualize a complete explanation of extreme poverty without consideration of the fairness global institutions. As a result, this approach calls for the examination of our global social institutions by virtue of their effects on individuals. Should there be no alternative institutions which would mitigate the suffering imposed upon the global poor through the current system, then, Pogge suggests, the suffering may be justified in order to benefit the greatest amount of people possible.¹⁹¹ However, since alternative institutions have not been considered, it would be mistaken to consider the suffering induced by poverty upon hundreds of millions of people worldwide as just.

ii. Global Health Institutions and Equality of Access

Returning focus to the issue of pandemics, the global organizational structure is fixed in such a way that prevents many people from gaining access to lifesaving technology. This is primarily due to the endorsement of the World Trade Organization (herein referred to as the WTO), and its treaty regarding intellectual property rights, by all of the world's affluent nations.

The WTO was born out of the initiative called the Trade-Related Aspects of Intellectual Property Rights (hereafter referred to as TRIPS), which was created by the governments of affluent countries in order to protect patent holders, and to allow them to hold creative monopolies on their products so that they are able to reap the financial gains of their inventions. Pogge states, “intellectual property rights can help ensure that

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

creative works of music, film, art, poetry and prose are protected from unauthorized modification and that their authors receive royalties or licensing income from the reproduction of their work.”¹⁹² TRIPS allows intellectual property patent holders of such inventions of software, technologies, medically useful molecules and pharmaceutical research tools substantial protection through strict copyright laws, which prohibit the unauthorized replication of their products for more than 20 years.¹⁹³ This allows inventors to hold global monopolies over their products until their patent expires. The problem arises when one surveys the nature of the goods that are protected by TRIPS patent laws. Creative works of art, music or books protected by intellectual property can be protected from reproduction without causing hardships to others. These authors can profit from the authorized reproduction of their intellectual creations, or choose to prevent their product from being replicated, but either decision from the patent holder would not drastically better or worsen the life of another.

When it comes to pharmaceuticals or other medical technologies, these intellectual creations are produced as remedies to human physical illnesses. Since patents are created to ensure that their holders are able to control the market on their products, and recoup the costs incurred through the creation process, they are free to charge high costs to their consumers. TRIPS is morally troubling in regards to medical technologies and medicines, as pharmaceutical and research companies tend to attach a high price tag to their medicines, which can range from up to 10 to 30 times more than the total cost of manufacturing for the pharmaceuticals, and which often far exceeds the

¹⁹² *World Poverty and Human Rights*, 225.

¹⁹³ *Ibid.*

ability of the global poor to obtain these products.¹⁹⁴ It makes sense that companies are allowed to do this, as they ought to be able to benefit from the product that they have researched, developed and manufactured. However, the fact of the matter is that these companies are profiting from a product that could mean the difference between life and death for an individual. There is, unfortunately, a disparity in access to these lifesaving medicines that arises between the individuals who live in affluent nations that can afford to provide these drugs through their medical systems, and those who cannot. As a result, when it comes to intellectual creations of medicines and medical technologies, the property right protections as set out in TRIPS often harms the global poor, as the protection of global monopolies “impede[s] access by the global poor to basic foodstuffs and essential medicines.”¹⁹⁵

According to the TRIPS initiative, there is no explicit scale which mandates that the global poor are to pay less for a product. Pogge states:

Its driving idea is that benefits derived from most such intellectual achievements, by any person, anywhere, must be paid for, and that any unpaid-for benefit constitutes theft, piracy, counterfeiting, or worse. Even though the additional ride is entirely cost-free, none are to have a free ride- no matter how desperately poor they may be and no matter how desperately they may need it.¹⁹⁶

In the case of pharmaceuticals, the manufacturing process of the drug is relatively cheap, primarily because the actual materials that are required for the making of each dose of the medicine is (in most cases) typically inexpensive. The majority of the costs associated with bringing a drug to market are generated through the research and testing of new pharmaceuticals, as well as the development of technologies that are

¹⁹⁴ *World Poverty and Human Rights*, 226.

¹⁹⁵ *World Poverty and Human Rights*, 225.

¹⁹⁶ *World Poverty and Human Rights*, 226.

required to produce the drug. The patent created on the pharmaceutical is intended to protect the investment made by the company funding the research and development of a particular drug, and allow them to make a profit on their invention before generic companies are able to mass distribute their product at a cheaper price. Unfortunately for the global poor, this patent process means that pharmaceutical companies can possess a monopoly on the manufacturing and distribution of their drugs, which may only be available to the public at prices that are far too costly for the poor to afford.

Until 2005, the intellectual property right laws in India separated patent restrictions from products, and only protected the process of drug manufacturing as unique to a particular company.¹⁹⁷ This allowed for the manufacturing of generic pharmaceuticals of branded medicines by inventing new production processes, and in turn, granted access to important lifesaving pharmaceuticals to many poor global nations. However, in order to join the WTO, India was required to begin enforcing patents on both the product and processes.¹⁹⁸ Pogge argues that for the global poor, this agreement was a “double-hit- cutting off the supply of affordable medicines and removing the generic competition that drives down the cost of brand-name drugs.”¹⁹⁹ Since the global poor are unable to afford the high cost of patented essential medicines or medical technologies, and generic companies are unable to distribute these much needed products at an affordable cost, many globally poor citizens are forced to go without access to these necessities as a result of our global regulation institutions. Moreover, it is in this way that the TRIPS agreement perpetuates unequal access to

¹⁹⁷ Ibid.

¹⁹⁸ *World Poverty and Human Rights*, 227. Pogge notes here that this requirement “had less to do with free trade and more to do with the lobbying power of the American and European pharmaceutical industries.

¹⁹⁹ Ibid.

basic life sustaining necessities, which in turn produces tremendous amounts of suffering, and even death, amongst the global poor.

iii. Current Strategies to Provide Access to Medicine

A commonly suggested strategy in order to increase access to pharmaceuticals in LDCs, is a differential pricing scheme. This is a marketing strategy that is currently in practice for many LDCs which allows them to obtain essential medicines that they would otherwise be unable to acquire due to financial limitations.²⁰⁰ Differential pricing is a strategy used by pharmaceutical companies to charge the global poor for medicines at cost, or for a slight profit margin, while continuing to charge affluent nations for a higher price for the same product. In allowing the sale of pharmaceuticals within a LDC, even at a lesser cost, pharmaceutical companies are opening up a new market for their products to be sold where they may not be overly saturated. As a result, differential pricing strategies widen the availability of drugs to the developing world by making them more affordable, and still allow the private pharmaceutical companies to profit from the invention of their product when sold to affluent states.

Yet while differential pricing may be an effective means that can help to increase the availability of essential medicines amongst the global poor, it is not a strategy that is

²⁰⁰ The World Health Organization defines essential medicines as “those that satisfy the priority health care needs of the population. They are selected with due regard to public health relevance, evidence on efficacy and safety, and comparative cost-effectiveness. Essential medicines are intended to be available within the context of functioning health systems at all times in adequate amounts, in the appropriate dosage forms, with assured quality and adequate information, and at a price the individual and the community can afford.” (http://www.who.int/topics/essential_medicines/en/)

useful for widening the availability of pharmaceuticals for the treatment or immunization of pandemic infections. The problem with differential pricing during a pandemic is that the vaccines or medicines associated with these infections can be extremely scarce in supply and high in demand, especially within the early stages of production. This is especially true in cases where a novel pathogen has emerged which requires a significant of research in order to develop a new treatment or vaccine to prevent the spread of infection. It simply does not make economic sense for a privately owned pharmaceutical company to charge a lesser price for a product that is in short supply, especially since that company could charge elevated prices for the same drug in an affluent nation. Although pharmaceutical companies utilize differential pricing to introduce their vaccines and medicines to new markets, relying solely on a marketing strategy places those within LDCs at a competitive disadvantage for acquiring limited resources in pandemic scenarios. While differential pricing may aid in making some essential medicines more widely available to the global poor, it appears, however, to be an inadequate strategy for dealing with nature of pandemic medical necessities.

Alternatively, in order to facilitate access to vaccinations or medicines during a pandemic, governments can invoke a particular strategy that enables them to avoid many of the intellectual property laws surrounding the manufacturing of pharmaceuticals. If public health officials have declared a public health emergency, they are able to issue a compulsory license for resources that are desperately required in order to protect its citizens from infection.²⁰¹ A compulsory license “enables a competent government authority to license the use of an invention to a third-party or

²⁰¹ *World Poverty and Human Rights*, 239.

government agency without the consent of the patent-holder.”²⁰² It allows for other manufacturers to start production of a patented pharmaceutical in order to widen availability, and decrease price (which may escalate during scarcity). It is a temporary solution that is subject to the duration of the public health emergency, and requires that the patent holder be compensated adequately for the use of the product.

While compulsory licensing is an available strategy to facilitate the distribution of vaccines and medicines, no country has yet to successfully invoke it.²⁰³ Pogge suggests that the aversion to compulsory licensing stems from a fear of “setting an international precedent [that could be] detrimental to [the US] pharmaceutical industry.”²⁰⁴ One major issue with compulsory licensing when it comes to its effectiveness in increasing access to medicine for the poor is that it is only available within countries that possess pharmaceutical manufacturing capabilities. The licensing strategy as currently expressed prohibits export, as “Article 31 of TRIPS limits compulsory licensing to uses which are predominantly for the supply of the domestic market.”²⁰⁵ This prohibits essentially all LDCs from being able to take advantage of compulsory licensing, as they lack the capacity to manufacture pharmaceuticals. The restrictive nature of compulsory licensing has been acknowledged by WTO members, most notably in the Doha Declaration, which states that:

²⁰² ‘T Hoen, Ellen F. M. *TRIPS, Pharmaceutical Patents and Access to Essential Medicines: Seattle, Doha and Beyond*. Last modified June 25, 2008, available at: <http://www.who.int/intellectualproperty/topics/ip/tHoen.pdf>, 46.

²⁰³ *World Poverty and Human Rights*, 239.

²⁰⁴ *Ibid.*

²⁰⁵ *TRIPS, Pharmaceutical Patents and Access to Essential Medicines: Seattle, Doha and Beyond*, 54.

We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.²⁰⁶

Yet no progress or solution has been reported on this issue to date.²⁰⁷ Thus even in regards to the measures created specifically to enable access to medicines in public health emergencies, LDCs and their citizens are prevented from utilizing these strategies. This is another example of the ways in which the global poor are prevented from acquiring access to medicines by the global superpowers.

iv. Possible Solutions

Pogge suggests that policy makers ought to create incentives that correct for the failures of the free market in order to entice pharmaceutical industries to develop and distribute drugs. He claims that the TRIPS agreement is a solution to correct for the oversaturation of a product in the market, in that it ensures that pharmaceutical innovators will be able to hold a monopoly on their product and recuperate the costs associated with the research and development stages of drug innovation. However, when it comes to pharmaceutical production and distribution, TRIPS is unconcerned with the ability of individuals to pay for these goods.²⁰⁸ In order to create incentive for pharmaceutical companies to continue to research and produce innovative medicines, TRIPS patents block market competition for a period of time in order to correct for the

²⁰⁶ Doha Declaration Paragraph 6, *TRIPS, Pharmaceutical Patents and Access to Essential Medicines: Seattle, Doha and Beyond*, 54.

²⁰⁷ *TRIPS, Pharmaceutical Patents and Access to Essential Medicines: Seattle, Doha and Beyond*, 54. As at 2003

²⁰⁸ *World Poverty and Human Rights*, 237.

oversaturation of product supply which may otherwise occur, which allows the innovator to profit from the new drug. In preventing competition of the manufacturing and distribution of a medicine, TRIPS is also preventing the market price of these innovative drugs from dropping as a result of competition and market saturation. The problem in the instance of innovative medicines is that when a patent monopoly maintains a high price for these drugs, many people are unable to afford them, particularly those residing in poorer nations.

Pogge presents a “public-good strategy” as a reform plan for overcoming other market failures when it comes to essential medicines. A public-good strategy for pharmaceuticals is significant for a few reasons. Firstly, a public good is one which is non-excludable, so that no one may be prevented from utilizing these goods. Secondly, a public good is non-competitive, so that one’s use of a good does not prohibit or restrict another individual’s enjoyment of the same. Pharmaceutical reform on this scale requires the satisfaction of three essential components: open access, alternative incentives, and funding.

Pogge argues that “the intellectual results of successful efforts to develop new essential medicines are to be provided as public goods that all pharmaceutical manufacturers anywhere may use without permission from or payment to the innovator.”²⁰⁹ This reform component is to be global in scope, as the TRIPS agreement currently operates on a global sphere, in order to avoid the similar problems generated by differential pricing schemes when markets offering different price points come into contact with each other.²¹⁰ Allowing the knowledge generated through the research

²⁰⁹ *World Poverty and Human Rights*, 241.

²¹⁰ *Ibid.*

results of new medicines to become public goods would eliminate the current market inadequacies that protect patent monopolies on essential medicines but prevent access to medicines due to escalated pricing. Moreover, the knowledge sharing forced through this strategy would allow competition to drive down the cost of manufacturing these drugs in order to make them more affordable for sale in LDCs.²¹¹ This strategy is not dissimilar from the pharmaceutical practices that took place in India prior to its association with the WTO in 2005. The research knowledge generated through pharmaceutical production was valued as a public good, it was only the methods of production that were protected in efforts to help companies retain profits from their innovations.

Similarly, a basic surveillance system is a public good. Since effective population screening measures are so fundamentally important for the early detection and containment of infectious diseases, it is crucial to have basic surveillance systems in place in order to screen for particular infectious diseases. However, due to the fact that many infectious diseases are widely diverse with respect to their symptoms and method of transmission, the resources and methods required to detect infectious diseases are also diverse. This becomes a serious issue for newly emerging pathogens, as substantial research may be required in order to create an accurate screening procedure for a particular disease. It is unfortunately the case that only sophisticated national surveillance systems have access to the resources required to produce this kind of knowledge. The knowledge generated from this kind of research must be treated as a public good, such that other national public health systems would be able

²¹¹ Ibid.

to participate in the same effective public health measures and reduce the likelihood of a pandemic.

In order to prevent pharmaceutical companies from losing incentives to participate in research, Pogge suggests that policy makers would have to set up “push” and “pull” programs to generate innovation. A push program works to “[select] and [fund] a particular innovator”, such as a pharmaceutical company or other health researcher, in order to “undertake a specific research effort.”²¹² Pogge proposes that the benefits of push programs are such that:

Given adequate funding, the selected innovator will develop the desired innovation, which can then be made freely available for production by competing pharmaceutical manufacturers so as to ensure wide availability at competitive market prices.²¹³

Alternatively, a pull program is one that calls out to all potential innovators, and offers a reward to the first one who is able to achieve the desired innovation.²¹⁴ Pull programs have specific advantages for policy makers over push programs, “they never pay for failed research efforts, and they generate strong financial incentives for innovators to work hard toward early success.”²¹⁵ However, because many companies may incur financial hardships if they are unable to successfully develop a product before one of their competitors, the financial reward must be large enough to risk failure in order to survive as a compelling incentive.²¹⁶ While both programs possess their own unique advantages and disadvantages, Pogge suggests that pull programs are superior for a reform proposal due to the fact that they are more likely to succeed as a result of

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

multiple innovators competing for a larger prize, and because the funding allotted for these programs does not have to pay for failed attempts at production.²¹⁷

In terms of pharmaceutical innovation for pandemic response, pull programs are more likely to be effective. Pull programs for pandemic infections are likely to have a high reward for the innovator who is able to successfully produce an effective product, such that many innovators would be interested in entering into the competition. When there are a lot of innovators working on similar research, the government can expect that a product will be generated much more quickly than if the investment was to be made to a singular research company. This is particularly advantageous during a pandemic when a pathogen is capable of spreading amongst and between populations very quickly. While the prize for the innovation may have to be particularly large to garner these kinds of quick results, revenue would not be spent on failed attempts. Moreover, these kinds of incentives need not be taken on necessarily by one nation. In fact, many governments could share the responsibility of contributing to pharmaceutical incentives as they would all benefit from the knowledge generated.

Whichever the solution, push or pull, Pogge has suggested a reasonable alternative to drug development and manufacturing which would allow for greater access to pharmaceuticals than the current market can provide. Pogge's "public-good strategy" allows current pharmaceutical innovators to operate in a market which offers open access to information, competitive incentives to drive innovation, and provides funding for research initiatives. Specifically, Pogge's strategy allows the governments of affluent nations to be involved in selecting and funding projects which are necessary for securing the health and well-being of individuals, and which allows governments to

²¹⁷ *World Poverty and Human Rights*, 242.

better meet their obligation of making these pharmaceuticals available to the globally poor.

Pogge's argument successfully identifies the relationship that exists between individuals in affluent nations and the global poor, and demonstrates how the world's better-off are responsible for perpetuating a cycle of inequality. This approach clearly identifies the kinds of inequalities from which the global poor are suffering, and demonstrates how they are systematically propagated through the global institutions endorsed by the world's most affluent nations. This injustice is not only demonstrated with medical care in terms of ongoing care or treatment of known diseases, but in emergency situations where the buying power of the global north places the citizens of the least well off countries at a demonstrable disadvantage because they are capable of paying for the abhorrent pharmaceutical prices to a level which is completely unattainable for the global poor. Since the emergency medicines created by pharmaceutical companies are allowed to be protected by TRIPS patent laws, these private companies have no motivation to lower the cost of their products for the developing world, especially if they are scarce in supply and high in demand, as they can fetch a much larger price tag to protect those within the developed world. It is in this way that Pogge is able to hold the world's better-off accountable for the inequalities imposed onto others, and as a result, illustrate why they have a strong moral obligation to work towards closing the gap on radical health inequalities in pandemic situations.

Conclusions

i. Conclusion

Throughout this paper I have demonstrated that the Rawlsian theory of justice is an interesting starting point for conversations of global justice, and in particular, concerns regarding just distribution of pandemic relief efforts. The argument that I have presented is by no means a full and complete account of this issue. The obligation to provide pandemic relief to the world's least well-off nations is a multi-faceted and complex topic that envelopes a wide range of important considerations in addition to my focus on the Rawlsian conception of justice. I chose to specifically focus my attention on the demands of justice for this paper, as I believe this approach can provide a basis for the most compelling argument to provide international pandemic relief given the limitations in scope of a Master's thesis.²¹⁸ If the opportunity arises to pursue this matter further in a more thorough examination, it will necessarily include an investigation of alternative approaches, including utilitarian and human rights based theories.

At the end of chapter one, I set aside the argument to provide international pandemic assistance on the basis of rational self-interest. For the reasons developed throughout the later chapters of this thesis, I do believe that it is important to recognize that there are other morally significant considerations at play in this issue. Namely, if we are concerned with justice, then it is going to require developed nations to take

²¹⁸ I also note that this issue brings up more practical concerns regarding resource allocation during pandemics. I also believe this further issue to be far too onerous for a Master's thesis, and so have only tried to demonstrate that an obligation to provide assistance to the least well-off nations exists. The level of contribution to these nations will vary depending on circumstance, and are best directed through policy or collective agreements.

action against preventable deaths from infectious diseases in the least-developed regions of the world. However, it is important to keep in mind that the obligation to provide pandemic relief to the world's least well-off nations does not exclude the fact that doing so may be considered within the scope of the best interests for a developed nation's public health program. Containing the spread of infection and preventing transmission outside of a particular region is an important step to take for any developed public health agency to take in order to prevent the disease from reaching domestic borders. Further, it may be within the best-interests of a public health agency to spend money on vaccines and donate them to the least well-off nations in order to contain diseases abroad. A program developed to oversee the proper administration of treatments and vaccines may also serve the best-interests of a developed nation, since the possibility of mutation entails that current strategies may no longer be effective against the spread of infection. A notable example is XDR-TB, wherein a largely treatable disease, tuberculosis, has mutated into a highly resistant strain for which there is no reliable cure. Events such as these threaten the health security of everyone, not just those within the least-well of regions. Therefore, the public health agencies of developed nations may be wise to invest their resources into eradicating diseases on a global scale, rather than a purely national focus.

Yet justice will often require us to go further than the boundaries of rational self-interest. Justice may require that public health agencies invest in eradicating diseases that do not pose a threat to the populations of affluent nations. Infectious diseases such as polio, yellow fever and malaria continue to ravage those within the least well-off regions of the world, despite the fact that they are preventable. Many infectious

diseases unique to the least developed regions of the world are neglected by the pharmaceutical research monopolized in the developed world. Astonishingly, of all of the new medicines approved between 1975 and 1999, only 13 of these were focused towards the treatment of tropical diseases.²¹⁹ Further, “of these 13, five were byproducts of veterinary research and two had been commissioned by the military.”²²⁰ These disturbing numbers point towards an unacceptable trend in pharmaceutical research, driven largely by private sector profits. Pharmaceutical companies may earn more profits selling different types of migraine medicines to the consumers of the developed world rather than a treatment for a tropical disease that only affects people within a particular poor region of the world. Nevertheless, this is a fundamental flaw within our current system of pharmaceutical innovation and research that ought to be counteracted by governmental initiatives.

Ultimately, I think that the argument which develops from considering the role of justice in the global distribution of pandemic relief measures adequately captures the fundamental nature of this issue. There is something uniquely important about health that sets it apart from other poverty related issues. And while health can have a broad range of connotations, including larger social implications, the significant threat to life posed by many pandemic diseases allows us to focus on the much more focused task of providing emergency services to international communities in order to reduce the occurrence of preventable deaths as a result of these particular diseases. To suffer a preventable death is an injustice. And as the frequency of infectious diseases changes over time, we must adapt our systems to adequately deal with their capabilities. Now

²¹⁹ *World Poverty and Human Rights*, 236.

²²⁰ *World Poverty and Human Rights*, 236-237.

more than ever, it is critical that the infectious diseases which have the ability to develop into pandemics receive a global response, largely due to the fact that modern societies are unavoidably interconnected. When a resource poor nation fails to prevent the death of its citizens as the result of pandemic diseases, then the obligation to protect these populations falls to the international community. As I have argued throughout this paper, justice mandates that this obligation falls to the governments of the developed world to step in and take reasonable efforts to avoid these deaths, not only because they are able to do so, but also because the developed world is primarily responsible for the global organization framework which prevents many LDCs from being able to adequately provide these services to their own citizens.

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