



## EQUALITY AND ITS IMPLICATIONS: A FOCUS ON ACCESS TO HEALTH SERVICES

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### ABSTRACT

In this article, we seek to discuss one of the principles that compose the prevailing ethical-political orthodoxy, which is equality among all human beings. The highlight is on the theory of philosopher Peter Singer. The aim was to analyze whether access to health services in Brazil respects the ethical principles of equality and equity. Equality is the desired consequence of equity, being the latera starting point for the former. That is, it is only through the recognition of the differences and the diverse needs of the social subjects that equality can be achieved. Equity is one of the themes that is very present in debates on the reforms of health systems in Brazil and worldwide. Several issues are part of these discussions, since they cover different aspects of the reality of the population's access to health services. One example is the judicialization of health, which will be also discussed in this article, verifying if this means violates the principle of equity proposed by the SUS.

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### INTRODUCTION

We must recognize that morality is something that has always been present in the midst of men and, despite our wishes, we are inserted in moral contexts (SANTOS; SARAIVA, 2011). Over the centuries, our society has undergone many changes in different aspects, including drastic changes in moral attitudes. Many moral questions are still controversial in their discussions. However, it is possible to defend each of the parties without jeopardizing our intellectual or social standing. In this article, we seek to discuss one of the principles that compose the prevailing ethical-political orthodoxy, which is equality among all human beings. The highlight is on the theory of philosopher Peter Singer. For him equality can not be defended on a factual basis, but it is a basic principle of ethics.

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Singer grounds the basic assertion of his moral theory on a golden rule upon which he will evaluate practical moral problems. Singer's golden rule states that if a person wants to lead a life ethically, he can not only consider his interests, but must also consider the interests of all others affected by their actions (OLIVEIRA, 2011). Singer (2002) considers it a minimum principle of equality in the sense that it does not impose equal treatment. Its application can foster inequality between two people in different circumstances, since unequal treatment results from the attempt to arrive at a more egalitarian final condition. The idea of equality derived from the application of this principle, therefore, is not a metaphysical entity or something uniform, but a prescription of the way of treating the members of the moral community. We turn now to the scenario of health services in Brazil, focusing on the access of users to the various public health services offered. We perceive from the consideration of the right to health as "moral value" in the bioethical paradigm in this context, established by the Federal Constitution and

strengthened by the Legislation of Unified Health System (SUS), the need for an equal and fair distribution of this right to the population of the country. In this perspective is inserted this slope of equal consideration of interests and the affirmative action of Singer with SUS principles, especially the principle of equity. Basically, equity means the willingness to equally recognize the right of each person based on their differences (BERLINGUER, 1996). In other words, it is about treating the "unequals" in an "unequal" way. In health, these inequalities refer to the conditions of sickness and pain to die; this principle is aimed at reducing these inequalities, in order to guarantee more equal conditions of life and health for all. Equality is the desired consequence of equity, being the later the starting point for the former. That is, it is only through the recognition of the differences and the diverse needs of the social subjects that equality can be achieved. Equality is no longer an ideological starting point that tend to nullify differences. Equality is the starting point of social justice, a reference of human rights and whose next step is the recognition of citizenship (GARRAFA; OSELKA; DINIZ, 1997). Equity is one of the themes that is very present in debates about reforms of health systems in Brazil and worldwide. Several issues are part of these discussions, since they cover different aspects of the reality of the population's access to health services. One example is the judicialization of health, which will be also discussed in this article, verifying if this means violates the principle of equity proposed by the SUS. Another is the provision of beds in High Complexity Hospitals, Transplants of organs and tissues, and assistance in emergency services. Given the relevance of this topic, this study aims to analyze whether access to health services in Brazil respects the ethical principles of equality and equity.

### **Peter Singer and the principle of equal consideration of interests**

Philosopher Peter Singer was born in Australia in 1946. In 1971, he began his academic career teaching at Oxford. Between 1977 and 1992, he was a professor at Monash University, Melbourne, where he founded and directed the Center for Human Bioethics. Since 1999, he has been Professor of Bioethics at the Human Values Center at Princeton University ("Ira W. De Camp Professor of Bioethics"), where he was named one of the leading intellectuals in his field, and is an excellent teacher and committed professional (BRAVO, 2007). Singer argues that we can, through the search for ethical grounds for a principle of equality, justify the claim that all human beings are equal. This philosopher suggests that the principle of equality is not based on intelligence, moral personality, or other similar concept. The different capabilities of people does not justify making a distinction when we consider the interests of individuals; equality is a basic ethical principle and not a factual assertion, that is, we must respect the principle of equality by extrapolating the contingencies of human action, taking into account the interest of those involved in a moral situation or impasse. Thus, by doing so we would reach a universal law capable of guiding us about right or wrong, which would not happen if we treated the principle of equality as only an assertion resulting from an observation of a fact (SARAIVA; SANTOS, 2011). This is the basis that supports the principle of equality: when we treat it as a basic ethical principle, we consider the interests of all involved. The interested are considered with basis on themselves, and not with basis on A or B. In this way, we have a basic principle of

equality: the principle of equal consideration of interests (SANTOS; SARAIVA, 2011). As Peter Singer states (2002, p. 30):

The essence of the principle of equal consideration of interests means that in our moral deliberations we attach the same weight to the similar interests of all those who are affected by our actions. This means that if only X and Y were to be affected by a possible act, and that if X is more subject to losses and Y more subject to advantages, it is better to stop practicing the act. If we accept the principle of equal consideration of interests, we can not say that it is better to practice the act, in spite of the facts described, because we are more concerned with Y than with X. This is what the principle really refers to: an interest is an interest, regardless of who has this interest.

A practical example that we can give of this principle is: two children need an urgent consultation with a hematologist, and their caregivers seek the public health service, but there is only one available consultation during the week. One of the children is poor, lives with the maternal grandmother and the other is middle class and the parents have the conditions to pay a private consultation. To whom should the available consultation be assigned? The answer to this question must take into account the consequences of the action. Based on the consequences is that I can judge whether the action was egalitarian or not. According to the principle of equal consideration of interests, this vacancy must be given to the poor child, because apart from this space in the public service, its family can not afford a consultation. If the other child has the possibility of obtaining the consultation through other means, the two will have their interests guaranteed.

Another example, somewhat more radical than the previous one, is the case of a traffic accident with multiple victims, whose number exceeds the number of first-aiders, with the number of victims almost twice as the number of professionals. These professionals would have to do a screening and choose which victims would receive care first, and this actions should be practical and fast, identifying the victims in terms of degrees seriousness of their health state. In that case, if the screening is aimed at ensuring the survival of the largest possible number of victims, priority is given to the victims with a greater chance of survival. That is, roughly speaking and according to "equal consideration of interests", losing a victim who already had smaller chances of surviving is considered to be worse than losing a victim who has a higher chance of survival.

However, this is not enough to provide the most correct response to the situation, from other perspectives. Equal consideration of interests in some specific circumstances may increase, rather than decrease, the differences between people in different levels of well-being. According to Singer (2002), it is for this reason that this principle is a minimum principle of equality, and not a perfect egalitarian and consummate principle. However, a more consummate form of egalitarianism would be difficult to justify. In an attempt to ensure that existing differences are not at the most disadvantaged, knowing that it is not possible to institute general equality, Singer brings the concept of "affirmative action" as a way of overcoming obstacles to equal opportunities and giving preferential treatment to members of disadvantaged groups. According to Peter Singer (2002),

perhaps there is the strongest hope of reducing permanent inequalities, although if that appears to violate the very principle of equality. To exemplify an affirmative action, we can mention the use of quotas in Universities and employment vacancies destined to disabled people. Equity is somehow related to these principles, although not so explicitly, but in the attempt to generate this equitable access to the whole population that needs health services. This is true although, in many cases, such a guarantee of access fails and it is necessary to use extreme measures such as judicialization. The effort to promote a fair and equal society is valid.

### Public Health and the principle of Equity

The fundamental principle that articulates the set of laws and norms that constitute the legal basis of the health policy and the process of organization of SUS in Brazil today is made explicit in article 196 of the Federal Constitution (1988), which states: "Health is the right of all and it is the duty of the State to provide it, which must be guaranteed through social and economic policies aimed at reducing the risk of disease and other health problems and aimed at equal access to actions and services for their promotion, protection and recovery" (TEXEIRA, 2011). Although the constitutional text attributed to the State the duty to promote health actions, it was necessary to create a law to ensure access to health for all in a universal and egalitarian way, aiming to provide quality of life for the citizens. The Organic Law of Health (OLH) 44 - Law n° 8.080/90 - amended by Laws 9,836/99, 10,424/02, 11,108/05 and 12,401/11, and by Complementary Law 141/12, aimed at making the constitutional achievements a reality (TEXEIRA, 2011; BRASIL, 1990). Treating the Right to Health as a Social Right implies that it should have immediate application, obliging the State to adopt social and economic policies aimed at reducing the risk of disease and other health problems. This right is especially consolidated in the articles 196 to 200 of the Constitution, which establish a complex and comprehensive political structure for the Brazilian health system, with the organization of the Unified Health System (SUS). The health policies of SUS must be fully guaranteed to Brazilian citizens, according to the principle of comprehensive care (BRASIL, 1988; BRASIL, 1990; MARQUES; DALLARI, 2007). Health is under strong influence of social factors, which is generally unfavorable to the less affluent population. Social determinants significantly influence the sickness and prolongation of the survival of individuals of different social groups, characterizing a differentiated demand for access to health services. This should be taken into account in the services offered so that a more equitable health system can be provided.

Evidence indicates that the worst health indicators are among the most vulnerable population groups. This inequality in sickness and death can be verified precisely by the living and health conditions of different social groups and between different geographic areas of the same country. There are many discussions aimed at solving or minimizing this issue through the administration of scarce health resources in Brazil. In our country, there is a shortage of health resources. The distribution of goods and services is limited and requires careful planning to select who are the beneficiaries of the health system and what services will be offered. This should be done fairly and measuring all the existing characteristics, since a good part of the population has no other means of access to health services, except those offered by the State.

According to Medeiros (1999), the consequences of an unfair allocation of resources are certainly more serious in the case where the population has no other option of access than in situations where access to health services does not depend exclusively on the State. The importance of the adequate distribution of resources grows to the extent the health system presents a series of deficiencies that limit the services provided and the public served. The expansion of the universe of beneficiaries and the improvement of quality and quantity of services are frequent goals. Despite the existence of many other applicable principles, equality and equity are always present in debates regarding public resources. Contrary to what may seem at first glance, this is not a matter of distinguishing rights between individuals. From the perspective of both principles, individuals have equal rights. The separation takes place, as it is intended to be demonstrated, in the form in which these rights are respected, which results in different perspectives in relation to distributive rules. The principle of equity recognizes that individuals are different from each other and therefore deserve differentiated treatment; this principle revokes (or weakens) the one of inequality. In this case, poor individuals, for example, need more public resources than rich individuals (MEDEIROS, 1999). Rawls (1995, p. 68) develops a criterion for justice in inequality that is assumed by equity: "unequal treatment is fair when it is beneficial to the most needy individual". Health equity aims to reduce the differences in access to services, which are generally unfair. For Viana et al. (2003), the central issue to be addressed by policies aiming at equity in health is the reduction or elimination of differences that arise from factors considered avoidable and unfair, thus creating equal health opportunities and reducing unfair differences as much as possible. Considering that due to the lack of health caused by the poor distribution of resources and limited access to services, individuals may lose opportunities to do or be something, this generates a reflection on social justice in the health context. In this sense, we must establish means to reduce these inequalities and to have more effective policies and health programs.

### Judicialization of health and Equity

Judicialization of the right to health is a very current topic, as indicated by the exponentially growing number of demands for effective health care provision in the judiciary branch. In this sense, the judicialization of health is characterized by the widening of possibilities of action involving the judiciary branch. In other words, the judiciary branch assumes a role of paramount importance for the effective respect for the fundamental right to health. There is an interpenetration of law in the political and health field which intrinsically permeates the guarantee of the social right to health. The question that arises is: may the phenomenon of judicialization be damaging the principle of equity consecrated in the Organic Law of Health (OLH) - Law 8.080/90, since in theory this would benefit individual demands to the detriment of the collective aspect (LESSA, 2014). This becomes a controversial question that, in order to be answered, must take into account the analysis of various aspects, including public power, public policies and citizens' rights. The judicialization of health arises in a scenario in the country where health is a right established by the Federal Constitution of 1988. Likewise, the duty of the State is established in the Constitution. However, this fundamental social right often runs counter to the lack of government will with respect to neglect of the implementation of public policies. Consequently, extreme cases arise in which

the judiciary branch is called upon to intervene. According to Lessa (2014), in cases where public institutions show a disregard for public health, it is necessary to devise a solution to the problems faced, and the judiciary branch assumes the role of enforcer of the right to health. It is unacceptable that judicialization violates the principle of equity; on the contrary, judicialization fosters the consecration of the principle of dignity of human beings. However, according to Medeiros and Castro (2014), the growing judicial demands indicate failures in public health systems and policies, especially in the dispensing of medicines because there is a predominance of non-standardized drugs by the public system in preliminary injunctions, but with therapeutic options in the reference lists. Individual needs are placed in the background to the detriment of collective needs. Obstacles for the consolidation of the National Policy of Medicines of the SUS and its goal of guaranteeing effective, safe and quality medicines for the population, through rational use, are also created.

However, it is important to notice the negative and positive perspectives of this process, also analyzing the profile of who performs this judicialization and which are the main causes and consequences so as to later, and with the arguments set forth, be possible to draw solid conclusions, even though not absolute. Let us see: according to the literature studied, there is a need for a better characterization of the people who seek the processes of judicialization of health, because accurate data on this profile is still unavailable. However, according to a study by Araújo (2013) conducted in Minas Gerais, 86% of people do not report monthly income and/or do not present receipts; 67% do not report educational level; 15% of those who report educational level have higher education; 62% are assisted by public defenders; and 43% undergo treatment with private physicians or in private clinics. According to the above data, we verified that individuals who resort to judiciary actions are not necessarily those with less social opportunities. The main causes and consequences of judicialization of health involve several difficulties, which claim several constitutional principles and values such as dignity of human beings (bringing the concept of the minimum existence), isonomy (citizens who come to justice are more benefited than those who only subject themselves to the SUS), equity (public policies stem from an ideal of distributive justice whose purpose is to ensure equal treatment of equal citizens and unequal to unequal ones), separation of powers (judiciary branch acting on public issues), federalism (responsibility of each state of the Federation), universality and comprehensiveness, and culminate and culminate in the principle of reserving as much as possible (in order to ensure that individual or collective lawsuits do not jeopardize existing public health policy) (BRASIL, 1990; VALLE; CAMARGO, 2010; PEREIRA, 2012).

Judicialization works as an attempt to remedy the flaws of the government itself. This interferes, in a certain way, in the management of the SUS because the judiciary branch views the cases in isolation and does not seek to analyze cases from a holistic perspective. Judicialization only aims to solve and ensure the right of access to services of the citizen who claimed it. This also generates an overload of the judiciary branch with demands that could be avoided by complying with current legislation. Another aspect that has to be stressed is the paradox that spending on particular cases (judicialization of health) is greater than investing in the basic health of the population. The simple proper and efficient use of the "scarce"

resources alone would solve or lessen a number of problems because the population would not have to use judicial means to have access to a service they are entitled to by law. Let us now analyze the positive and negative aspects of judicialization of the right to health. Among the positive points, we highlight the judicialization as a promotion of the principle of dignity of human beings because the State is not providing its citizens with minimum conditions of existence. In fact, inefficient access to health care is a reality. Another point is the social pressure on Public Management, which before the process is obliged to ensure this right and rethink in the future means to improve and make this access to health services work. Immediate efficacy and judicialization as the only way to guarantee this right in this particular case are also considered positive aspects. As for the negative aspects, the benefit of individual demands to the detriment of the collective ones stand out. The benefit is for a small (but growing) part of society that has access to information and the necessary means to appeal to Justice, to the detriment of other resources spent with all other people who use the SUS without awareness of judicial resources. It also disregards the principle of independence and harmony of powers. It is worth noting that the judicial disregard of social determinants is also a negative aspect when only one isolated case is analyzed (as previously mentioned). Likewise, inefficient provision of basic health services and judicialization appear, in increasing numbers, as means of remedying this deficiency.

To exemplify: in organ and tissue transplant queues, more educated families seek courts to advance their order in the queues; increasing number of requests for dispensing medicines that have not been approved by ANVISA (National Agency of Sanitary Surveillance); a family goes to court to get a bed for a very elderly relative with a serious health condition, and this raises the question as to whether it is better to give the bed to a terminally ill elderly person or to a younger person in less severe situation but greater chances of survival.

### Final Considerations

Singer affirms that the principle of equal consideration of interests is an ethical foundation of equality. He brings us to the idea that we should consider the interests of all involved in a moral situation, without distinction of race, sex or any form of discrimination. It also refers to affirmative actions in that equality appears as a way to overcome the obstacles to equal opportunities and to give a preferential treatment to members of less favored groups. In a sense, the principle of equity goes through these concepts, not intentionally and directly, but it recalls them in the sense of establishing equality in access to health services. This is needed because we live in a country where social inequalities are evident. Equity was founded as a means to reduce these discrepancies and to meet the interest of the population that needs public health care. Equity must be the ethical basis that drives the allocation of resources and services. Through it, and through the responsibility of the public power and of each citizen and of the justice, we will be able to guarantee the right to health. Cases of judicialization of health, which has presented an increasing demand, must be reduced and this resource must be used only in extreme cases, for their rights will be secured. This recognition of treating inequalities unequally in order to achieve equal rights is the way of practical ethics to achieve universal human rights. Equity allows to solve a reasonable part of the distortions in

health distribution by increasing the possibilities of life of important portions of the population.

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