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Just Health (Care)

Social Justice, Health and the Common Good*

CHRISTIAN ERK**

The answer to the question of how to deal with the widening gap between the growing costs of health (care) and necessarily limited health (care) resources in a just fashion, heavily depends on what we take the term 'just', to signify. This article is meant to offer a perspective on the topic of just health (care) which takes the idea of justice as virtue seriously by embedding it in the context of its original explication, namely an onto-teleological philosophy which takes (social) justice to be about claim-rights (as well as their corresponding duties) and the common good. This article is, however, not meant to provide ready-made answers or a discussion of the arguments featuring in the contemporary debate about health (care) prioritisation and/or rationing. It rather takes up the cudgels on behalf of the concept of the common good and reminds us of the fact that if we want to talk about (social) justice and just health (care) we cannot do so without also talking about the common good.

Keywords: Justice, Virtue, Social Justice, Health, Common Good, Rights, Duties

Just Health (Care): Soziale Gerechtigkeit, Gesundheit und Gemeinwohl

Unsere Gesundheitswesen stehen vor großen Herausforderungen, die sich nicht zuletzt aus der wachsenden Lücke zwischen den Kosten und den zur Deckung dieser zur Verfügung stehenden Ressourcen ergeben. In der resultierenden Debatte über Priorisierung und/oder Rationierung nimmt der Begriff der (sozialen) Gerechtigkeit eine Schlüsselrolle ein. Nicht zuletzt aus diesem Grunde lohnt sich eine vertiefte Auseinandersetzung mit der Frage, was unter (sozialer) Gerechtigkeit zu verstehen ist. Der vorliegende Artikel möchte einen Beitrag zu dieser Debatte leisten, indem er sich auf Basis der (im onto-teleologischen Sinne verstandenen) Tugendethik mit der Bedeutung und Rolle der (sozialen) Gerechtigkeit im Kontext von Gesundheit und dessen Implikationen auf das Gesundheitswesen auseinandersetzt. Wie argumentiert werden wird, hat (soziale) Gerechtigkeit aus einer solch onto-teleologischen Perspektive nicht primär mit Gleichheit, sondern vor allem mit Rechten und Pflichten sowie dem Gemeinwohl zu tun.

Schlagwörter: Gerechtigkeit, Tugend, Soziale Gerechtigkeit, Gesundheit, Gemeinwohl, Rechte, Pflichten

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"Remota itaque iustitia quid sunt regna nisi magna latrocinia?"
(St. Augustine, De Civitate Dei IV, 4)[1]

1. Introduction

The answer to the question of how to deal with the widening gap between the growing costs of health (care) and necessarily limited health (care) resources in a just fashion (and I think that we all agree that justice is a vision worthy of pursuit), heavily depends on what we take a combination of four letters, namely the word 'just', to signify. The meaning or concept we see in this word pre-determines our solution to the above-mentioned problem of scarce health (care) resources; it is, therefore, of the utmost importance to subject the concept of justice to minute scrutiny before applying it.

So, what do we mean when we speak of just health (care)? According to an influential contemporary thinker, justice is "the first virtue of social institutions, as truth is of systems of thought" (Rawls 1971: 3). The Rawlsian insight that justice is a virtue is, however, not new but has already been discovered in the earliest days of (moral) philosophy. The concept of 'virtue' – and along with it the notion of justice as a virtue – has first been explicated within the context of an onto-teleological philosophy by thinkers such as Aristotle and St. Thomas Aquinas (to name just the most prominent ones). As such, we should be careful to reflect on the virtue of justice without also considering its teleological philosophical underpinnings – for, we might run the risk of misunderstanding and thus misapplying the concept.

This article is meant to offer a perspective on the topic of just health (care) which takes the idea of justice as virtue seriously by embedding it in the context of its original explication. So, if we assume an Aristotelian-Thomistic perspective, what can we say about just health (care)? In order to answer this question, this article shall first introduce the Aristotelian-Thomistic understanding of virtue. The second and third chapter shall then enlarge upon the concept of justice and its kinds, namely general, particular, distributive, commutative and social justice. In a last chapter we shall apply the findings to the field of health (care) and in doing so take up the cudgels on behalf of the common good. The result of our endeavours shall be that our efforts to solve the above-mentioned problem should revolve around the concept of health as a particular common good and that the individual members of society can only be said to have a claim-right to society's scarce health (care) resources if they meet their health-related duty to further and sustain the particular common good health.

2. What is a Virtue?

According to the Aristotle and St. Thomas Aquinas, a virtue is a special kind of habit (cf. Iª-IIae q. 55 a. 1 co.; Latin: 'habitus', Greek: 'ἕξις'; German: 'Haltung' or 'Gewohnheit') whereas 'habit' is derived from the Latin word 'habere', which can mean 'to have something', but also 'to have oneself' in the sense of 'to behave'. In this latter sense, habitus – as Aristotle explains in his 'Categories' – is a 'quality', i.e. that accidence in virtue of which something is said to be such and such (cf. 8b 25-27). To be

[1] This translates as: And so, justice being taken away what are kingdoms but great robberies?

more precise, habitus is a "qualitas de difficili mobilis" (Iª-IIae q. 49 a. 1 s.c.), i.e. a quality which is difficult to change; it is deeply rooted, long lasting and hard to eradicate. A habit cannot and does not give the power to act (this power is a precondition for action), but allows a power or faculty to act in one of several ways.

Power → Habitus → Act

A habitus thus is a permanent disposition to use a power to produce certain acts, whereas the power has to be capable of being exercised in one way or another and must not be determined by its very nature to operate as it does.[2] Habit signifies "a durable characteristic of the agent inclining to certain kinds of actions and emotional reactions" (Kent 2002: 116) and is "quo quis agit cum voluerit" (Iª-IIae q. 49 a. 3 s.c.), i.e. whereby man acts if he wants and which is thereby voluntary. To conclude this short analysis of the concept of habitus (for a more detailed explanation cf. Erk 2011: 99-101): a habit is a steady disposition of the will, which has become settled, is hard to remove and inclines the agent to act and choose in a certain way; it is the durable quality whereby an agent is inclined to follow a particular line of action easily and readily at will. Given their habitual roots, the true possession of virtues not only requires the performance of certain acts; the performance of virtuous acts must also be deliberately chosen (as well as for its own sake) and spring from a firm and unchangeable character (cf. NE: 1105a 28-34).

As has been shown, a virtue is a special kind of habitus (Iª-IIae q. 55 a. 1 co.) – but in what way? As St. Thomas Aquinas writes, a virtue is a "habitus operativus" (Iª-IIae q. 55 a. 2 co.) which "importat perfectionem potentiae" (Iª-IIae q. 55 a. 3 co.), i.e. a habitus bearing on activity, which denotes the perfection (or the best use [cf. IIª-IIae q. 117 a. 3 s.c.]) of the power in which it is seated. The measure of this perfectioning best use of a power is the "natural finality of the power in question (and, by extension, the finality of the person of whom these powers are functional parts)" (Reichberg 2002: 132; also cf. Iª-IIae q. 55 a. 1 co.). Therefore, as a principle of operation (Iª-IIae q. 55 a. 2 ad 1), a virtue is a substance's permanent disposition to use a power to produce acts which are suitable to the substance's and the power's nature as well as end.[3]

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2 There is no habitus of digesting as one cannot influence the activity of one's digestive system; the question of how one's digestion works is not a matter of habituation but physiology or pathology.

3 In order to find out about man's end (which, in consequence, is striven for as it has the character of a good) one has to turn to the 'natural law'. The natural law is comprised of those precepts of the eternal law which govern the behaviour of beings endowed with reason and free will and are meant to keep man from acting against his nature and final ends. It, therefore, is a part of the eternal law, which is applicable and inherent to rational human beings. In this sense, natural law can be said to be the participation of the eternal law in the rational being: "participatio legis aeternae in rationali creatura lex naturalis dicitur" (Iª-IIae q. 91 a. 2 co.). Man partakes somewhat of the eternal law of God by its being imprinted (in the sense of stamping or coining) on him as "principia propriorum actuum" (Iª-IIae q. 93 a. 5 co.), i.e. as principles of its proper actions. As a result of the eternal law applicable to rational beings being imprinted on man, there arises a natural inclination in him to the proper acts and ends prescribed by that law – and this inclination is

As should have become clear, virtues are a special kind of habit insofar as they are good habits, i.e. stable dispositions to act in ways which are good (Iª-IIae q. 55 a. 1 ad 2). Although every virtue is a habit, not all habits are virtues, but only those, which incline our powers and faculties towards what is good. Accordingly, St. Thomas Aquinas states that virtue "est habitus operativus, est bonus habitus, et boni operativus" (Iª-IIae q. 55 a. 3 co.), i.e. that virtue is an operative habit, a good habit and productive of good works. It thus essentially belongs to virtue to incline man to good (IIª-IIae q. 141 a. 1 co.) and to use well the things that he can also use for ill (IIª-IIae q. 117 a. 1 co.). Therefore, the concept of virtue can be depicted as follows:

Virtue (Good Habitus) → Good Act
↗
Power
↘
Vice (Bad Habitus) → Bad Act

The virtues as understood by St. Thomas Aquinas and Aristotle are meant to perfect the powers that come with the very principle of our life, namely the powers of the soul (cf. Iª-IIae q. 55 a. 2 co.), whereas – strictly speaking – a single virtue cannot have more than one power as its principal subject (cf. Iª-IIae q. 55 a. 2). According to St. Thomas Aquinas, there are five genera of such powers: the vegetative, sensitive, appetitive, locomotive and intellectual (cf. Iª q. 78 a. 1 s.c.). However, not all of these powers can be subject to virtue in the sense of human virtue ('virtus propria hominis') but only the appetitive and the intellectual power. The reason for this restriction is that a truly human virtue is "solum virtus quae est ad opera rationis, quae sunt propria hominis" (Iª-IIae q. 55 a. 2 ad 2), i.e. only a virtue which is referred to works of reason which are proper to man: "human excellence (i.e. human virtue) is only that into which the activity of reason enters" (Reale 1990: 322).[4] The virtue of interest to us here, the virtue of justice, is meant to perfect man's rational appetite, i.e. the will.

A consequence of this understanding of virtue is that it is – contrary to the statement by Rawls cited above – not completely correct to speak of justice as a virtue of social

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the natural law. St. Thomas Aquinas sums this up when he writes that to the natural law belongs everything to which man is inclined according to his nature and form (cf. Iª-IIae q. 94 a. 3). By inclination St. Thomas Aquinas understands not a momentary feeling or passion but an inward principle of action which inclines man to what is in harmony with the eternal law (according to St. Thomas Aquinas there are five natural inclinations which give rise to the primary precepts of natural law [cf. Iª-IIae q. 94 a. 2]: for the good, for the preservation of life, for the preservation of the species (procreation), to know the truth, to live in society). However, man can also act against these inclinations because he has a free will and passions. This is why St. Thomas Aquinas can state that justice is a certain rectitude (i.e. a correct way of behaviour) regulated according to the rule of the divine law (cf. IIª-IIae q. 109 a. 3 ad 3).

4 For an explication of the concept of 'soul' and its powers cf. Erk (2011: 38-40 as well as 109-111).

institutions. As a perfectant of one of the powers of the human soul, namely the rational appetite or will, justice primarily is a virtue of the individual person; social institutions can have this virtue only in a derivative or metaphorical sense as they are comprised of several persons and as the human will determines their design and organisation.

3. The Virtue of Justice

Now that we have a basic understanding of the concept of virtue, we can have a closer look at the virtue of justice. The virtue of justice and its sub-virtues regulate man in his dealings with others (IIª-IIae, q. 57 a. 1 co.) and regard rectitude ('right' or 'ius') in his external relations. Justice is about the way human beings ought to live their lives and conduct themselves within a community. It has been common knowledge for thousands of years that man is a "φύσει πολιτικὸν ζῷον" (Politics, 1253a 2) and that "naturale autem est homini ut sit animal sociale et politicum" (De regno, lib. 1 cap. 1; cf. Iª-IIae q. 72 a. 4 co.), i.e. that man is a social and political animal by nature. Expressed differently, man requires some form of community for his very survival.

Though being an individual and a person (i.e. endowed with ontological dignity (cf. Erk 2011: 237-239) by nature, man is an individual person who is geared to other persons and some form of society or community. Considered as an individual, man is a deficient being ('Mängelwesen'), i.e. a being who is – by his very nature – not self-sufficient or independent of others but in need of others ("οὐκ αὐτάρκης, ἀλλὰ πολλῶν [ὢν] ἐνδεής" [Republic: 369b]) who become his fellows and helpers ("κοινωνούς τε καὶ βοηθούς" [Republic: 369c]). Given this anthropological truth, socialisation is an inevitable consequence of our nature as social individuals.[5] If it is natural for man to live in the society of many, there must necessarily exist something that underlies the organisation of society as well as the relationship and dealings of one man to another. These relationships or dealings can take the following two basic forms:[6]

Individual ↔ Individual
Individual ↔ Community/Society[7]

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5 Despite his nature as social being and the fact that persons are dependent upon and contributing to the social whole, St. Thomas Aquinas cautions us to exaggerate the weight of society as the person's reason for existence does not inhere in the body politic but is ordained to God (Iª-IIae q. 21 a. 4 ad 3).

6 The term 'individual' not only comprises single individuals, but also groups of individuals, which are considered as an individual, e.g. an organisation, a sports club, a company or a family ('Gliedgemeinschaften'). However, for the purposes of this article, the term 'individual' is used in its literal sense, as a single human being. Furthermore, the term 'community' not only applies to a society or state but also to communities such as families, the military, schools, etc. The characteristic of communities is that they exhibit some form of hierarchy ('Unterordnungsverhältnis').

7 In contrast to Ferdinand Tönnies (2005) who distinguished between society and community, I follow Utz (1964: 52; 1986: 171) as well as Messner (1955: 259) and use both concepts as indistinctive and synonymous. A society can, therefore, be understood as community of communities.

The ordering of these dealings is the job of justice: it is "qua societas hominum inter ipsos et vitae quasi communitas continetur" (De Officiis, Liber 1, 20), i.e. whereby the society of man amongst others as well as quasi the community of life is based on and contained. Justice is not concerned with man's own state (unlike the rest of the virtues), but requires him to carefully consider others in his dealings with them (external actions as well as external things by means of which men can communicate with one another [IIª-IIae q. 58 a. 8 co.]), including God ("iustitia sola videtur esse virtus per quam ordinamur ad alterum" [IIª-IIae q. 122 a. 1 s. c.]; justice "πρὸς ἕτερόν ἐστιν" (NE: 1130a 3), i.e. involves relationship with someone else).[8] But: how are we to consider other persons according to justice? What are the scales of justice?

3.1 The Scale of Justice: Justice as Equal Respect for the Rights of Others

According to the Aristotelian-Thomistic tradition, justice is the virtue which renders man apt to do just things, causes him to act justly and to wish what is just (cf. NE: 1129a 5ff as well as IIª-IIae q. 57 a. 1 s. c.). This definition, however, is only a step out of the frying pan and into the fire as we still do not know what it is we should wish for. Fortunately, St. Thomas Aquinas has explicated what is meant by 'just things' when he writes that "iustum dicitur [...] legale et aequale" (In Eth: lib. 5 l. 3 n. 9; NE: 1129a 30; also cf. NE: 1130b 5: "διώρισται [...] τὸ δὲ δίκαιον τό τε νόμιμον καὶ τὸ ἴσον."), i.e. that the just thing is called the legal (i.e. that which is according to or belonging to the law) and the equal. As it seems, justice has something to do with the law as well as equality. But in what sense? The Aristotelian-Thomistic answer is rather straightforward. Justice has something to do with the law as well as equality as it equally renders everybody their rights[9] (which are expressed by law). When St. Thomas Aquinas writes that justice denotes some kind of equality ("importat enim aequalitatem quandam" [IIª-IIae q. 57 a. 1 co.; also cf. IIª-IIae q. 58 a. 2 co.]) the context of this statement clearly shows that equality must not be understood as a definition of justice (i.e. that justice must not be equated with equality as egalitarians do) but that the equality he has in mind is the equal recognition of all persons' rights.[10] Insofar as everybody is rendered his rights everybody is treated equally: to say that "person A has a right vis-à-vis person B is to say that A has a kind of equality with B" (Finnis 1998: 136). The definition of justice which Aquinas explicitly calls complete is given in IIª-IIae q. 58 a. 1 of his *Summa Theologiae* and conveys a clear message: justice is a habit whereby a man renders everybody his right by a constant and perpetual will ("iustitia

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8 As a consequence, all virtues that are directed to another can be considered annexes to justice (cf. IIª-IIae q. 80 a. 1 co.). But even particular acts that are usually instances of other virtues can become acts of justice if they are done for the common good: "a particular act of fortitude may be referred to the common good as its object and thus become an act of justice as well" (Koritansky 2007).

9 For an overview of the concept of 'rights' and 'duties' cf. Erk (2011: Chapter III. 2 as well as 3).

10 That the frame of reference for the Aristotelian-Thomist understanding of the term 'equal' are, indeed, the norm of some law can be seen by St. Thomas Aquinas' statement that non-adherence to the law is an inequality insofar as man is not equal to the norm of the law ("inquantum homo non adaequatur regulae legis" (In Eth: lib. 5 l. 1 n. 15). An act which does not abide by the law is called unjust because it is illegal and not adequate to the norm of the law.

est habitus secundum quem aliquis constanti et perpetua voluntate ius suum unicuique tribuit" [IIª-IIae q. 58 a. 1 co.]).[11]

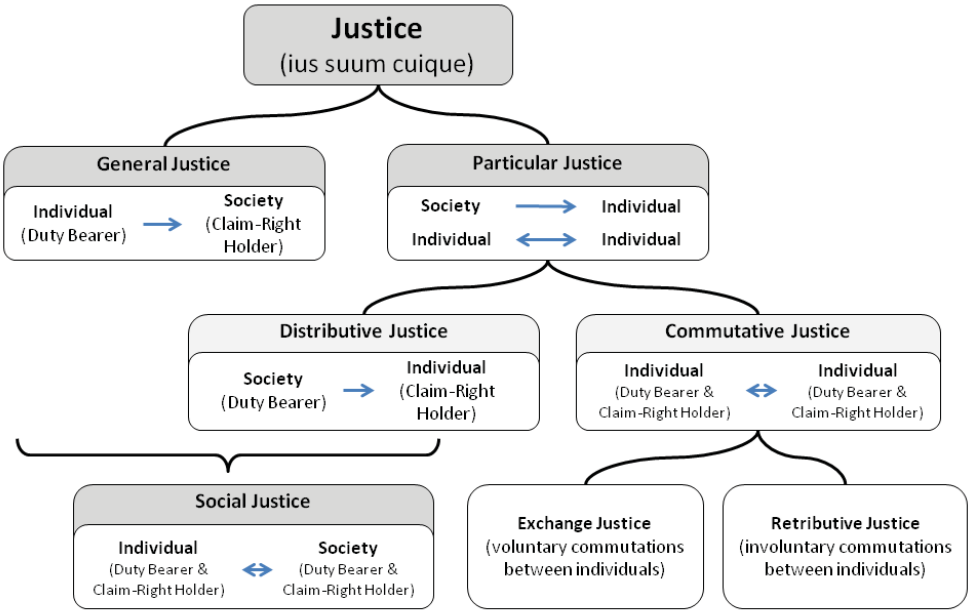

Figure 1: A Classificatory Tree of Justice (Own Illustration)

11 Doing so possesses the rationale of the good (IIª-IIae q. 81 a. 2) and, therefore, falls under the first precept of law, namely that good is to be done and pursued and bad to be avoided (Iª-IIae q. 94 a. 2). Although the phrase 'ius suum' is sometimes translated by 'his due', 'what is due to him' or 'what is his' we should stick to the literal meaning, namely 'his right'. That the Latin term 'ius' is, indeed, to be understood as 'right' (as opposed to duty and in the sense of 'that which is binding') and not just as some 'due' has been convincingly argued for by John Finnis (1998: 133-135). This understanding is supported by Porter who also translates 'ius' with 'right' (2002: 277) and states that it is the expression of justice is "to respect the legitimate claims of others" (2002: 283) as well as Rhonheimer who states that injustice has to do with denying one's fellows "that to which they are entitled" (2002: 287) and is "a violation of a right" (2002: 292). It can, however, also be seen by Aquinas' statement that "iustus dicitur quia ius custodit" (IIª-IIae q. 58 a. 1 co.; this can only be translated by 'a man is said to be just because he respects the rights of others'; a translation with 'due' would make no sense.) and by the fact that in defining justice St. Thomas Aquinas makes explicit reference to the Roman jurist Ulpian (ca. 170-223 AD) whose definition of justice is cited in the 'Corpus Iuris Civilis' ('Body of Civil Law'), a collection of fundamental works in jurisprudence, issued from 529 to 534 by order of the Eastern Roman Emperor Justinian I. The Ulpian definition of justice reads: "Iustitia est constans et perpetua voluntas ius suum cuique tribuendi" (Corpus Iuris Civilis, Digesta 1.1.10 pr. as well as Institutiones 1, Tit. 1). This translates as: Justice is the constant and perpetual will to render to each one his right.

At the heart of justice are thus duties and rights: the essence of justice even requires something that is owed ("ratio iustitiae debitum requirit" [De Veritate: q. 23 a. 6 ad 3]). The notion of justice is tied to the notions of rights and duties that, in return, are established by positive and/or natural law (cf. IIª-IIae q. 58 a. 2 co. as well as Porter 2002: 277). A person (or institution, society etc. for that matter) acts unjustly if and only if he violates someone else's right or his own duty; in return, as long as a person abides by the law and respects the rights of others as well as his duties he acts justly.[12] In the end, what justice is all about and what it secures is "the right of some other person or persons – what is due to them, what they are entitled to, what is rightfully theirs" (Finnis 1998: 133). Rights and duties are, therefore, a constitutive part and the object of justice (cf. IIª-IIae q. 57 a. 1 s. c.; Finnis 1998: 176); they are the language of justice and how justice does its work.

Understood like this, justice is the answer to a premise according to which something has been made somebody's right or duty: "actum iustitiae praecedit actus quo aliquid alicuius suum efficitur" (ScG, lib. 2 cap. 28 n. 3). So, justice is not something which establishes rights and duties, but what makes us respect and act in accordance with them.

To sum up: justice is a virtue that arises from the fact that we live in communities and depend on each other. If this were not the case, we would not have any duties and rights towards others and our community: "Nullus debet aliquid alteri nisi per hoc quod aliqualiter dependet ab ipso, vel aliquid accipit ab eo vel ab altero, ratione cuius alteri debet" (ScG, lib. 2 cap. 28 n. 4).[13] However, because it would be against our nature to live solitary lives, we cannot do without rights and duties – and consequently, justice, which is about compliance with our duties and others' rights. Generally speaking, just actions are actions that are according to law.

4. The Kinds of Justice

As has been said above, it belongs to the virtue of justice to order the relations between the persons who make up a community. Correspondingly, justice can be categorised by means of the basic forms of relations we can find in a community. Doing so yields several kinds of justice which can be graphically depicted (cf. Figure 1) and which will be dealt with and explicated in the following paragraphs.

4.1 General Justice

According to the Aristotelian-Thomistic understanding of justice, a first aspect of justice is about what the individual person owes to the community that he is a part of. This aspect is called 'general justice' and is that habit whereby the individual person

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12 It should be pointed out that it is necessary distinguish between an unjust act and an unjust person. A just person, i.e. a person who possesses the virtue of justice, can perform an unjust act without becoming an unjust person; in the same fashion, an unjust person, i.e. a person who does not possess the virtue of justice, can perform a just act without becoming an just person.

13 This translates as: nobody owes anything to another except inasmuch as he in some way depends on him, receives something from him or somebody else according to whose opinion he owes another.

renders the community their rights by a constant and perpetual will. General justice is thus meant to order the following relation:

Individual → Community

General justice orders an individual person to others in that they make up the many (cf. IIª-IIae q. 58 a. 7 arg. 2) and is about what is due to society from the individual (cf. IIª-IIae q. 79 a. 1 co.). The measure of the right of the community towards its individual members (and, in consequence, the individual members' duties towards his community) is the "bonum commune civitatis" (IIª-IIae q. 58 a. 7; also cf. IIª-IIae q. 79 a. 1 co. as well as IIª-IIae q. 64 a. 2 co.), i.e. the 'common good'. General justice takes seriously the above-mentioned insight that man depends on other human beings and that certain goods can only be brought about and sustained (as well as certain bads avoided and abolished) by the collaborative efforts of several people; it, therefore, is about the good, for the sake of which every community is formed ("πᾶσαν κοινωνίαν ἀγαθοῦ τινος ἕνεκεν συνεστηκυῖαν" [Politics, 1252a]) – the common good.[14]

But, what are we to understand by 'common good'? Although I am well aware that the following definition might not go uncontested[15], the common good – at least from a teleological point of view, i.e. the point of view taken by those who have developed the understanding of justice as virtue outlined above – is something common that several persons aspire to and that can only be achieved by their collaborative efforts (cf. Utz 1964: 131). This general definition can be improved by distinguishing between an external and an immanent common good (Utz 1964: 131-133). An external common good is any external good or value that is pursued by several individual members of a community, i.e. has the quality of being a shared common goal ("unus finis communis" [ScG, lib. 2 cap. 117 n. 2]). Whenever individual persons cooperate in order to produce a good or value that can only be produced by the cooperative efforts of several persons, we can speak of an external common good; examples of such goods can be tangible goods (houses, etc.) but also concerts, a football match and certain values. When taken under its external aspect, the common good is a single good but comprised of several particular external common goods.

However, the common good can not only reside outside persons (which is why the external common good is called 'external') but can also reside in them (cf. Utz 1964: 133). This kind of common good can also only be achieved by the collaborative (not only synchronous!) efforts of several individual persons; but, in contrast to the exter-

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14 Given its intricate connection to the common good, general justice can also be called 'justice of the common good' ('Gemeinwohlgerechtigkeit'). General justice is also called 'legal justice' (cf. IIª-IIae q. 58 a. 5 co.) because "the law, too, has the common good as its proper object" (Koritansky 2007; cf. Iª-IIae q. 90 a. 3) and because it "can only perform its assigned task of directing all virtues and external acts toward the common good, as required by practical reason, by making use of 'laws' (leges)" (Lutz-Bachmann 2000: 9).

15 By e.g. economists for whom the common good is often interpreted according to Mill's greatest happiness principle or as non-excludable and rivalrous goods. For an overview of differing interpretations of 'common good' cf. Sulmasy (2012).

nal common good, the immanent common good is and can only be actualised in the respective individual persons: it is the personal good of many persons insofar as this good can only be pursued and achieved by collaborative means (cf. Utz 1964: 136). Furthermore, it is characteristic of this aspect of the common good that it can only be actualised in a comprehensive fashion, if all members of the community aspire to it. Although the immanent common good can be said to be comprised of a variety of particular goods (e.g. culture), there is one overarching immanent common good: human perfection as common goal of a multeity of persons whereas this perfection comprises the perfection of the individual persons as parts (cf. Utz 1964: 136; 145; also cf. Catechism of the Catholic Church: Part 3, Section 1, Chapter 2, Article 2.II [Number 1906])

It is an important feature of the common good that it requires everybody to contribute to its achievement and does not just happen. In order for the common good to unfold, everybody has to contribute. The question now becomes what and how much? In order to find out about the duties of the individual members of society we have to turn to the 'natural law' that is directed to the common good as its end (cf. Iª-IIae q. 90 a. 2). Although there are different levels of precepts or commands entailed in the natural law, the natural law can be boiled down to one supreme and universal principle, from which are derived all our moral duties. This first principle or precept is based on the insights that all human actions must be for an end (Iª-IIae q. 1 a. 1 co.) and that "bonum habet rationem finis" (Iª-IIae q. 94 a. 2 co.), i.e. that good has the nature of an end. According to St. Thomas Aquinas, every agent acts for an end which has the character of a good while good is something that everything strives for (cf. Iª-IIae q. 94 a. 2 co.). Whatever the practical reason naturally (and without the negative influence of the passions and the will) apprehends as man's good belongs to the precepts of the natural law as something to be done – and to be avoided in case it is a bad. Therefore, all our actions must be for, i.e. aim at some good. Consequently, the first precept of law – which St. Thomas Aquinas takes as self-evident and indemonstrable ("per se nota" [Iª-IIae q. 94 a. 2 co.]) as the principle that the same thing cannot be affirmed and denied at the same time – commands that "bonum est faciendum et prosequendum, et malum vitandum" (Iª-IIae q. 94 a. 2 co.; also cf. IIª-IIae q. 79 a. 1), i.e. that good is to be done and pursued and that evil is to be avoided (where the goodness of a thing, as has been said above, consists in its being well disposed according to its nature).[16] These considerations can be summarised by a three-word formula, which captures the essence of natural law theory: good implies ought.

The duty the individual has towards society, therefore, is to preserve and further the common good in his actions, by e.g. a morally good private life as well as social acts

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16 According to St. Thomas Aquinas, there is one ultimate end or good to human life (Iª-IIae q. 1 a. 4 and 5), namely "beatitudo" (commonly translated as 'happiness'; Iª-IIae q. 1 a. 7). By this he understands knowing and loving God, who is the perfect good (Iª-IIae q. 1 a. 8). In contrast to Aristotle – for whom happiness consists in leading a virtuous life, i.e. man using the powers of his soul in perfect correspondence with the norm which his nature itself prescribes – for St. Thomas Aquinas a virtuous life is not the ultimate end and supreme good of man but only a proximate end and good that leads him to his ultimate end.

that aim at the bonum commune.[17] The virtue of general justice, therefore, is the "inner disposition of the human will by which those possessing it refer all their actions to the common good" (Koritansky 2007; also cf. Lutz-Bachmann 2000: 8). It is whereby man is in harmony with the law that directs his acts to the common good.

4.2 Particular Justice: Distributive and Commutative Justice

Besides this justice in a general sense, Aristotle and St. Thomas Aquinas also introduce the concept of particular justice which regulates man in his relations with other persons (II^a-IIae q. 58 a. 7 co.) and directs him immediately to the good of other persons (II^a-IIae q. 58 a. 7 ad 1 and ad 2).[18] Particular justice "always includes some person or group who owes some sort of identifiable debt to another" (Koritansky 2007) and is about external actions and things insofar as one man is related to another through them (II^a-IIae q. 58 a. 8 co.; In Eth: lib. 5 l. 3 n. 7). It can be broken down into two species which have been come to be known as 'distributive justice' and 'commutative justice' (II^a-IIae q. 61 a. 1 s. c.; 1130b.30).

Commutative justice is concerned with all mutual (both voluntary and involuntary [NE: 1131a.1]) dealings, agreements, contracts and exchanges between two individuals, especially in matters of trade (II^a-IIae q. 61 a. 1 co.; also cf. NE: 1131a.1); it requires the parties involved to respect the others' rights in these transactions. Distributive justice is concerned with the order of the whole towards its parts (II^a-IIae q. 61 a. 1 co.) and the distribution of what is "owed to a person by the community as a whole" (Koritansky 2007) among the members of the community. Commutative justice and distributive justice differ in regard to the perspective from which the individual is looked at: in commutative justice, the individual is standing vis-à-vis another individual; in distributive justice, the individual is not standing vis-à-vis another individual or a group of individuals, but the whole community. Particular justice, therefore, is concerned with the following social relations:

Distributive Justice: Individual ← Community
Commutative Justice: Individual ↔ Individual

Particular justice is the virtue which regulates those actions that involve the rights an individual may claim from his community and the duties the community owes to him as a part of this community as well as the rights an individual may claim from another individual when (voluntarily or involuntarily) dealing with him. So, what is it that we have a right to in these relations? Following Aristotle, St. Thomas Aquinas identifies

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17 Understood like this, general justice comprises all other virtues inasmuch as the use of the whole of virtue referring to our neighbour pertains to it (cf. In Eth: lib. 5 l. 3 n. 12) since these are perfections of the powers of the human soul and thus ordered to the good.

18 Cf. Floyd (2006): "Unlike general justice, particular justice directs us not to the good of the community but to the good of individual neighbors, colleagues, and other people with whom we interact regularly." This is, however, not to say that general justice (which directs man immediately to the common good) does not direct to the good of others; it does so, but only indirectly (II^a-IIae q. 58 a.7 ad 1) – via the common good.

the right of the individual in these relations as that which is owed to him according to equality of proportion ("quod ei secundum proportionis aequalitatem debetur" [IIª-IIae q. 58 a. 11 co.; also cf. NE: 1131a 20]).

The equality of proportion of *commutative justice* is an arithmetical proportion ("τὴν ἀναλογίαν ἐκείνην ἀλλὰ κατὰ τὴν ἀριθμητικήν" [NE: 1132a 1; also cf. IIª-IIae q. 61 a. 2 s. c. as well as In Eth: lib. 5 l. 6 n. 4]); what individuals have a right to in their mutual dealings is an equality of quantity where "the one person should pay back to the other just so much as he has become richer out of that which belonged to the other" (Floyd 2006). Put differently, A has the right to receive something of equal value (neither more nor less) to what A has given B or B taken from A[19]; the interesting thing to note is that A and B are both under a duty and have a claim-right towards the other: if A and B enter a contract, A has the duty to provide B with some good or service agreed upon and the claim-right to an equivalent (e.g. in form of money) whereas B has the claim-right to A's provision of the good or service and the duty to give A the equivalent. At its core, commutative justice is the virtue which makes individuals who are equal from a legal perspective (equal before the law) as well as in regard to ruling and being ruled render their opposite the right to arithmetic equality. The right is preserved as long as the arithmetical equality of the transaction, i.e. a quantitative balance between the gains/benefits respectively losses/burdens of one party and the gains/benefits respectively losses/burdens of its counterpart, is preserved.

The 'ius' of *distributive justice*, on the other hand, is calculated according to a geometrical proportion ("ἀναλογίαν γεωμετρικὴν" [NE: 1131b 10; also cf. IIª-IIae q. 61 a. 2 s. c.]). By this both Aristotle and St. Thomas Aquinas mean that "more should be given to those who deserve more and less to those who deserve less" (Koritansky 2007).[20] Distributive justice requires the community (or to be more precise: its administrators) to respect the right of the community's members in its dealing with them, i.e. their claim to be treated equally in comparison to all those other individuals who are equal in some specified respect and to be treated unequally in comparison to all those other individuals who are unequal in some specified respect. When it comes to distributive justice, all members of a community are equal insofar as they have the same right towards the community, i.e. the right to get what they deserve. And they have that right qua being a member of the community. But what do they deserve?

First if all, what they deserve qua being a member of the community depends on what it is that is being distributed. As St. Thomas Aquinas holds, it belongs to this species

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19 As should be obvious, all commodities exchanged must be able to be compared in some way. This is the job of money which serves as the measure of things. According to Aristotle, it is thus necessary that all commutable things are priced. The standard, however, by which to determine the monetary value of all commutable things are demand and reference to how man stands in need of them for his own use. For, if man were not in need of certain commodities, then there would be no mutual dealings and transactions (cf. NE: 1133a.19-21; also cf. In Eth: lib. 5 l. 9 n. 2 as well as 4).

20 In contrast to commutative justice which is about dealings between equals, distributive justice is characterised by a certain imbalance in power between the parties involved. The individual or part of the community is distributed something by the community or those in charge of the community. Distributive justice, therefore, is about justice in the exercise of power.

of particular justice to direct the common good to particular individuals by way of distribution (II^a-IIae q. 61 a. 1 ad 4; also cf. NE: 1130b.30). The object of distributive justice thus is the community's member's right to that share of the common good he deserves. Now, someone deserves something if there is some cause that renders him worthy of it (cf. II^a-IIae q. 63 a. 1 co.). What is it that renders a member of a community worthy of that community's common goods? St. Thomas Aquinas answers that it is the importance of the position of the respective individual in respect of the whole or the importance the respective individual has for the community (he uses the word 'principalitas' [II^a-IIae q. 61 a. 2 co.]) – by which he means that insofar as one person surpasses another, he has the right that what is distributed to him also surpasses that which is allotted to another. The frame of reference for this surpassing is the contribution to common good itself. One deserves and has a right to receive a share of the common good insofar as he has contributed to it and which is proportional to his contribution. Distributive justice concerns the obligations of the community to ensure that individuals and groups receive a share of the community's goods proportional to the individuals' and groups' contribution to the community. The more we contribute to the common good, i.e. the better we fulfil our duty towards the community, the more we deserve to partake in the fruits of the collaborative efforts of the community.

The individual's enjoyment of his right to some share of the common good qua being a member of the community is dependent on the fulfilment of his duty to further the common good qua being a member of the community. Or to be more precise: the individual has a right to some share of the common good only if and insofar as he has met his duty to further it.

4.3 Social Justice: General and Distributive Justice Combined

As should have become clear, distributive and general justice are not two categorically distinct concepts but, rather, two sides of one coin and connected by the common good. While the latter is concerned with the duty of the individual to further the common good, the former is concerned with the duty of the community to allot to the individual a share of the common good which is proportional to his contribution to the common good. Given their intricate relation, these two kinds of justice can be combined into what has come to be called 'social justice':

Social justice: Individual ↔ Community

Social justice reminds us that the rights of the individual towards society have to always be balanced by his duties towards society. It would thus be somewhat negligent to speak of distributive justice without also pointing out that there are rights and duties of general justice. And it would be, at least according to Aristotelian-Thomistic philosophy and its emphasis on the existence of a nature ('Wesen') of things, wrong to speak of both general and distributive justice without mentioning to concept of the common good.

5. Social Justice and Health (Care)

As has been established above, the virtue of justice is a habit whereby a man renders everybody their right(s) by a constant and perpetual will. The problem mentioned at the outset of this article (the widening gap between the growing costs of health [care] and necessarily limited health [care] resources) boils down to the simple fact that we can no longer afford the costs of our health care system. Put differently: we, at least on a societal level, do not have the necessary resources, i.e. the money, to satisfy the demand for health (care). The problematic consequence: given the just-mentioned gap, some individuals' demand can necessarily not be satisfied.

One strategy to tackle this problem (besides cutting the costs and increasing the amount of resources available) is to come up with ways of how to distribute the limited amount of available health (care) resources (i.e. money to pay for health [care] services) among all those individuals who demand health (care) services (i.e. cause the cost of health [care]). The question thus becomes: if we can satisfy the demand for health (care) only in a selective fashion, then whose demand should we meet and whose not?

The task of finding an answer to this problem of priority setting under the condition of scarcity is usually assigned to distributive justice. According to our account of justice, this is, however, only part of the picture. Firstly, distributive justice as virtue is not capable of solving the problem; it is only meant to render everybody their right(s). The problem has to be solved at a preceding stage, i.e. by a moral theory which is capable of grounding moral claim-rights (for an overview of such theories cf. Erk 2011: 211-213). Strictly speaking, distributive justice cannot solve the problem of scarcity; the only thing it can do is to make us stick to the solution, i.e. the claim-rights and duties identified by a tenable moral theory. The concept of distributive justice can be applied to the problem of scarce health (care) resources only after we have rephrased it as a problem of claim-rights and duties. Secondly, distributive justice must not and cannot be detached from the concept of the common good and the other part of social justice, namely general justice.

As has been said above, it belongs to distributive justice to direct the common good to particular individuals by way of distribution; if distributive justice is to play any part in the solution to the health (care) scarcity problem, health must qualify as a common good. So, can health be considered a common good? To cut a long story short: health qualifies as an aspect of the common (immanent) good as it pertains to the "personale Wohl vieler Einzelmenschen, sofern es nur mit gemeinsam angewandten Mitteln erstrebt werden kann" (Utz 1964: 136). As I have stated elsewhere (Erk 2011: 88-90), health is influenced by a variety of salutogens and pathogens some of which are (completely or at least partially) susceptible to our individual influence (behavioural salutogens/ pathogens) while others are not. Although – at least to a certain and considerable degree – health is subject to an individual's choices, actions and behaviour, it cannot be denied that when it comes to health we are dependent on others' choices, actions and behaviours, too. While being an individual good with respect to those aspects which can be influenced on an individual level, health also is a common good insofar as it can only be completely achieved and sustained by the collaborative efforts of several or all members of society. As far as the distinction between external and

immanent common goods is concerned, health can be classified as immanent common good as it is something that can only be actualised within persons; strictly speaking, only persons can be healthy. For the purposes of this article, the good of health is relevant because it is an aspect of the common (immanent) good. [21]

The goods to be distributed must necessarily come from somewhere; they do not fall from heaven like manna. This is what general justice is concerned about; it is about the claim-rights society has vis-à-vis its members. In combination with distributive justice, social justice reminds us that the rights of the individual towards society with respect to some part of the common good have to always be balanced by his duties towards society. When thinking about distributive justice we have to, therefore, widen our focus to social justice. So, which claim-rights and duties should the virtue of social justice make us respect? According to the above explanations, we can detect several if we consider the relation between the individual and society under the aspect of the common good:

- (P1) The individual members of society have the duty towards society to further and sustain the common good.
- (P2) The individual members of society have the claim-right towards society that the latter distributes the common good among its members in proportion to their contribution to it; society, therefore, has the corresponding duty towards the individual to distribute the common good accordingly.

We, furthermore, know that

- (P3) Health can be considered a particular common good, i.e. an aspect of the (immanent) common good.

Combining these premises allows us to draw the following conclusions:

- (C1) The individual members of society have the duty towards society to further and sustain the particular immanent common good health.[22]

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21 It should, however, be stressed that health is not the common but a common good. It is part of the overall common good, an important particular common good but not the highest good there is.

22 How can the individual fulfil his duty to further and sustain the particular common good health? On a basic level, the behavioural constraint this duty poses on the individual prescribes him only to engage in actions that have a health-supporting or at least health-neutral outcome – and in doing so, at least observe the set of simple prudent rules relating to sleep, exercise, diet, weight, drugs (e.g. alcohol and smoking), stress and regular medical examination. Being under such duty requires an individual to not engage in actions, which lead to health-damaging outcomes and is equal to the duty to avoid unhealth, i.e. to not get unhealthy or, in case he is already unhealthy, to become healthy again. As a duty must be realisable under normal circumstances (i.e. as ought implies can), the duty to stay healthy can only extend to that aspect of the individual's health status that he has actual control over, namely his health behaviour. Since he has no direct or indirect control over the salutogens and pathogens he cannot influence, the only duty he can perform is to adapt his health behaviour in such a way that preserves his health and does not harm it. A duty, furthermore, logically and always implies the negative claim-right on the part of the duty-bearer to do what is necessary to fulfil his duty. Now, if the individual person is under the duty to stay healthy or become healthy, this means that he has the negative claim-right to actually do so. This claim-right entails that others refrain from interfering with the performance of the individual's duty to health, i.e. those habits, behaviours and actions of the right-holder which better his health status (while, of course, not harming the health status of others).

- (C2) The individual members of society have the claim-right towards society that the latter distributes the particular immanent common good health among its members in proportion to their contribution to it; society, therefore, has the corresponding duty towards the individual to distribute the particular immanent common good health among its members in proportion to their contribution to it.

Therefore, if we are confronted with the difficult decision of how to deal with the lack of health (care) resources in a just fashion and are forced to ration them, justice tells us that the individual members of society are to be allotted a certain part of the particular common good health only insofar as they have fulfilled their duty towards society to further and sustain the particular immanent common good health by e.g. furthering their own health and not harming the health of others. This is the result we get if we want to consider the problem of the widening gap between the growing costs of health (care) and necessarily limited health (care) resources from the perspective of justice. If we want this problem to be solved in a just fashion we must do so by respecting the relevant claim-rights and corresponding duties of everybody involved as outlined above. Only if the individual members of society meet their health-related duties, they can be said to have a claim-right to society's scarce health (care) resources; the right established by C2 is dependent on C1.

This is the result we get if we look at the problem of a *just* handling of the widening gap between the growing costs of health (care) and necessarily limited health (care) resources from an Aristotelian-Thomistic perspective. The result might seem disappointing as it does not come up with readymade solutions of how to exactly distribute society's health (care) resources – at least not within the limited scope of this article. What it has offered, however, is much more valuable; it forced us to direct our attention to the real issue underlying the problem of a just distribution of societal health (care) resources: justice as virtue tells us that this problem is not solved by coming up with some distribution key (for, the distribution key is given by the rights and duties of those involved and therefore by a tenable moral theory) but by gaining clarity about what it is that keeps society together. The idea of the common good that is an integral part of the Aristotelian-Thomistic concept of justice as virtue is a powerful answer to this question. The common good is what society revolves around and serves as yardstick for both society's as well as its members' claim-rights and duties. If a society loses its focus on the common good, it tends to lose its coherence.

This might strike some as hard and socially cold-hearted as some persons might end up getting no or having not claim-right to a share of a society's scarce health (care) resources. However, this article's account of justice does by no means imply that we are not obliged to help the unhealthy and those in need if they cannot produce a claim-right in their favour. This wrong impression can be rectified if we remind ourselves of the fact that there is another virtue that has the common good as its object: the glue of society is not only the virtue of social justice but also the virtue 'social love' ('caritas socialis'), i.e. love of and for the sake of the common good (cf. Utz 1964: 167). Living in society is not only about rights and duties, but also and much more about the spirit in which the rights and duties are performed and whether its members are willing to rise above the minimalism that is expressed by rights and duties. Social love is a special act of charity ('caritas'), namely commitment to the social whole and

with it to one's fellow man (cf. Utz 1964: 166-167), and comprises the exercise and works of charity (especially towards the needy) out of a benevolence that is nurtured by an awareness of being part of a social whole (cf. von Nell-Breuning & Sacher 1958: 44).

When talking about the contemporary problems of our health (care) systems we should, therefore, distinguish between those acts that are required as acts of social justice and those acts that are required as acts of social love. The first hospitals have not been multi-billion dollar enterprises or institutions that were established because some persons had a claim-right to them; rather, they were founded as institutions of Christian charity (cf. Crislip 2005). The idea of health insurance was not a product offered by a profit seeking insurance company or something one had a claim-right to; rather, it has its roots in the mediaeval guild system and the mutual care of a guild's members (cf. Oberender et al. 2002: 20-21). Blurring the distinction between those acts that are required because someone has some claim-right and those acts that are imperfect duties of charity denies a society the chance to develop both a sensorium for charity and an awareness for the fact that there is more to society than rights-talk. The widening gap between the growing costs of health (care) and necessarily limited health (care) resources must not only be tackled on the level of rights and duties and a quantitative economical level – the gap can only be closed in a sustainable fashion if we also and complementary attempt to instil social love in those contributing to and benefitting from our health (care) systems.

This article set out to offer an answer to the question what can we say about just health (care) if we assume an Aristotelian-Thomistic perspective. In doing so, it has explicated the concept of justice as virtue and taken up the cudgels on behalf of the concept of the common good in general and health as a particular common good. It was, however, not meant to offer a ready-made answer to the problem but to remind us of the fact that if we want to talk about (social) justice and just health (care) we cannot do so without also talking about the concepts of the common good and social love. The common good is at the very heart of justice – and without a heart neither man nor the organism which is society can survive very long.

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