Prioritizing by the Roadside, at Bedside and in Health Policies: Luck Egalitarianism and the Role of Social and Personal Responsibility in Health
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PhD Dissertation

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Acknowledgements

Writing an acknowledgement should not be taken lightly. This is especially true if you are, like me, not quite the expert in communicating appraisal as we go along. According to Michael Waltzer, citations and acknowledgements are a matter of distributive justice. They are a way of recognizing and saluting those who have contributed to the work at hand. Justice should, as we know, not be taken lightly.

I have a long list of people to whom acknowledgment and gratitude are surely due. Some of my debts are academic in the sense that they are owed to those who have advised, facilitated or inspired my work. Others are owed to people who have made my time as a PhD memorable and enjoyable. Some people, unsurprisingly, belong in both categories.

I have been very grateful for the efforts of my supervisors Søren Flinch Middtgaard and Søren Serritzlew. They have offered valuable insights into life in academia, tirelessly discussed papers and given advice on the project as a whole. Their belief, attention and encouragement have influenced my project tremendously. I would also like to thank them for their admirable interest in my life outside the university.

Office mates are an important part of life as a PhD. For reasons not attributable to me I’ve had a quite large number of those. I would like to thank Jakob Tolstrup for taking the time, during the stressful last months of his PhD, to teach me the ropes of life as a PhD. From the section of Political Theory I’ve been spoiled by the office company of David V. Axelsen, Jens Damgaard Thaysen and Kristian Jensen. David is an inspirational character and an impressive philosopher. Always at hand when comments are needed or if there is a pressing need to discuss the relative merits of journals (and isn’t there always?). Kristian’s ability to juggle family, empirical research and all that jazz while being ever attentive to the needs of those around him is a true inspiration. Kristian is often the first man in our three person office (in fairness, this is an educated guess - I am usually an impressive third). Jens is a hard-working guy and furthermore a patient, careful and inspiring co-author. Highly productive and always fun to be around - Jens never fails to provide detailed, written and useful comments.

Doing a PhD in Political Theory is a privilege and a pleasure at this department. The Political Theory section provides comments an atmosphere of collaboration and company which is second to none. I’m grateful to Lasse Nielsen for numerous discussions and comments related to our mutual research topic of distributive justice in health. That we disagree about many academic things
never adversely affected this discussion. Per Mouritzen is always available for a chat and is a constant reminder that philosophy should address the larger social issues. Rasmus Sommer Hansen is gifted, fun, supportive and always able to supply a useful example and a luck egalitarian angle in a tight spot. Morten Brænder made me feel welcome from the very first day and always provides friendly atmosphere and good advice regarding life as a PhD. Tore Vincents Olsen have been a pleasure to work alongside. Always sharing his knowledge or providing advice regarding life in academia. It has been an inspiration to have Kasper Lippert-Rasmussen around while writing my thesis. His helpful suggestions and comments have improved and strengthened my way of reasoning. The section as a whole should also be applauded for giving me the opportunity to lecture in Philosophy of Social Sciences this autumn, something which I have enjoyed a lot.

The Department of Political Science and Government is, it must be admitted, much more than the section of Political Theory. For interesting talks by the coffee machine, Friday-breakfast, Friday beers, beers on other days, lunch debates and festive times I would like to thank the PhD group as a whole, but especially: Camilla Staniok, Helene Fisker, Martin Bisgaard Christiansen, Lasse Laustsen, Aasne Kalland, Kim Sass Mikkelsen, Poul Aaes Nielsen, Lasse Lykke Rørbæk, David Erbo Andersen, Marie Kjærgaard, Maria-Louise Clausen, Magnus Rasmussen, Merete Bech Seeberg, Michael Seeberg, Henrik Seeberg, Ekattherina Zhukova and Camilla Bjarnæe Jensen.

While a number of people are acknowledged in the articles constituting this thesis, some have contributed to different aspects of the project in a way which doesn’t really come across from those acknowledgements. Raffaele Rodogno, Tim Meijers and Martin Marchman Andersen have commented on and contributed to the development of my project several times.

As head of the PhD school Peter Munk Christiansen has been a great help on numerous occasions and should be credited for his efforts in upholding a great PhD School. Personally I would especially like to thank Peter for the flexibility and understanding shown when duty called and I served as a member of the local municipality for around 5 months.

But the department isn’t just scholars. It wouldn’t be the same, or perhaps it wouldn’t be at all without the administrative staff which makes everything tick. Gratitude is indeed also owed to Inge Rasmussen and Malene Poulsen for their effort in making it possible for me to visit conferences. I am also very thankful to Kate Thulin, Ida Warburg, Lone Winther, Helle Bundgaard, Anne-Grethe Gammelgaard, Else Jespersen and Anja Dalsgaard for excellent and skilled feedback on manuscripts and help with numerous other things in relation to teaching. To Henrik Friis Back gratitude is due for making a lot of stuff work
around here and for always organizing great things around the place, really creating a feeling of togetherness. A very special mention to Annette Bruun Andersen, whose patient and skilled work with the manuscript in the final months before submitting was extremely valuable.

During my time as a PhD I have met a number of gifted students. Teaching them (or in some cases) teaching with them has been a great experience. I hope that many of them will put their hunger for knowledge and their gifted minds to good use.

Thanks and gratitude are also owed to a number of people and institutions who have hosted me during my PhD. In 2013 I spent a formidable and surprisingly sunny spring in Glasgow. I owe a lot of gratitude to Carl Knight, who took on the role as my supervisor during the research stay (along with the role as co-author, fellow Arsenal-supporter and provider of all sorts of tips for the Scottish life). His generous comments, advice and good company made my stay in Glasgow both productive and something I recall with great fondness. In March 2014 I was a visiting researcher at the Fondation Brocher in Geneve. Working and writing in the beautiful surroundings was inspiring and made a huge difference for my thesis. I met some great people there and hope one day to be able to beat Greg Bognar, Jasper Littmann, Leigh and Susanne in Petanque once more.

To my friends outside academia I offer both thanks and apologies; thanks for patience and apologies for the times I have been absent-minded. In the last hectic months of writing this thesis I have probably missed some birthday parties, football matches and phone calls but I’ll make up for all that in due time.

I am grateful to my family, Annette, Preben and Johannes, for their continued support and interest in my work. I really appreciate that you encourage me to follow my dreams – something which is surely more impressive when those dreams continuously happen to involve spending years in the company of books and philosophical arguments.

To my partner, Nynne, it feelsdistinctivelyunderwhelming to express gratitude in writing. But for what it is worth: Thanks for taking such a genuine interest in the strange world of academia. Dinner conversations over reviewer-reports, journals, (lack of) job-opportunities and far-fetched thought-experiments must have been exhausting at times. Your support, understanding, patience and egalitarian intuitions have been a rock solid foundation and source of inspiration during this project. I can only hope that many years lie ahead in your lovely company. I promise to make every possible effort towards realizing that.
The burden of disease is unequally distributed both between and within countries. There are a number of reasons why such health disparities may concern us. In some parts of the world people die of diseases which are treatable at little cost, while elsewhere the longevity of some illustrates the unfulfilled potential of the rest of the population.¹ Poor and sick people in destitute conditions clearly invite discussions about distributive justice when compared to the richer parts of the world. But the health inequalities in well-off societies are remarkable as well: In Denmark the quartile of men with the least education can expect to live 9.9 years less than the quartile with the most education. That inequality is widening, as it was 5.5 years in 1987.² In the United Kingdom, each of the five northern regions has poorer health and higher mortality than each of the four southern regions.³ In the United States, socio-economic health inequalities are growing.⁴ In some countries, health inequality is gendered, as women on average outlive men.⁵

The following example illustrates how stark such inequalities can be: A Glaswegian takes the train from well-off Jordanhill in western Glasgow towards Bridgeton in East Glasgow. 30 minutes, a mere seven stops later, he is


still in Glasgow but much is different there. For each of the seven stops which separate the two parts of Glasgow, life-expectancy has dropped 2.0 years for men and 1.2 years for women. In Jordanhill, men live, on average, for 75.8 years, and women 83.1. In Bridgeton, the corresponding numbers are 61.9 and 74.6. Thus, large health inequalities thrive even within short distances.

As the numbers illustrate, the health disparities within well-off countries are both remarkable and widespread. Such inequalities exist in countries where healthcare systems take up a vast amount of the national spending and which are often in parts or in whole financed through taxes. In the EU healthcare spending takes up on average 9% of GDP, while in the US twice this proportion is spend. Considering how much money is currently spent in health care systems, we might wonder whether we are spending them in the right way. Such thoughts give rise to moral questions; not least concerning what we owe to each other and what constitutes a just or unjust distribution of health. This thesis contributes to the ongoing debate on distributive justice in health by providing a luck egalitarian reply to the following question:

- What constitutes a just distribution of health?

Luck egalitarianism is a responsibility-sensitive approach to distributive justice, which leaves considerable room for people’s exercises of responsibility to affect how they fare compared to others. Luck egalitarianism is not a theory of health as such. Rather, it is a general theory of distributive justice. Furthermore, it is one in which significant disagreement over the correct formulation remains. Saying something about what luck egalitarianism means in the context of health presupposes saying something about luck egalitarianism in general. Therefore the thesis addresses both how luck egalitarianism is best construed, as well as what theoretical and practical insights can be gained by applying it to health. As a consequence of such reflections, the thesis also engag-

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es with the following sub-questions in order to provide a luck egalitarian answer to the above question:

- **What is the most plausible view on luck egalitarianism?**
- **What role does personal responsibility have in the luck egalitarian approach to health?**
- **How are we to apply luck egalitarianism to health?**
- **Does luck egalitarianism have plausible implications when applied to specific areas of health?**

The thesis answers, or contributes to answering the above questions through a number of articles on luck egalitarianism and luck egalitarianism in the context of health and healthcare. These articles and the present summary constitute my PhD dissertation. The articles are appended in full to the summary, but they will be briefly presented when it fits into the grander scheme of things. Articles already published or accepted for publishing are reprinted with permission from the respective journals and publishers. I acknowledge and appreciate their kind cooperation, which makes it possible to present my thesis here as a whole. In order to facilitate a more fluid discussion in this summary. The articles’ titles are shortened for future in-text reference (listed in brackets in the list). The shortened titles are italicized in the text.

1. Thaysen, Jens Damgaard; Albertsen, Andreas (Working Paper). ‘When Bad Things Happen to Good People: Luck egalitarianism and Justified Choice’. (Justified Choices)

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10 Articles where the shortened name is in Danish will be presented in italics and surrounded by quotation marks in the text.

11 The article is listed as Working Paper, but it has received a revise and resubmit decision from Public Health Ethics.
The summary of the thesis is divided into eight chapters. Starting with some preliminaries over health and justice, and then continuing with setting out some methodological and conceptual considerations. The purpose of those sections is to present some of the thoughts that have guided this project, along with the methodology of political theory. The main part of the thesis is structured around three topics, each of which will be treated in three separate chapters. The topics are: luck egalitarianism, personal responsibility in health and luck egalitarianism in health. For each topic a broader theoretical landscape will be described, before turning to the ways in which the thesis contributes to our understanding of the topic. This means that in each chapter first the existing literature will be introduced while pointing towards shortfalls and ambiguities there, before the contribution from the thesis is presented. In the chapter on luck egalitarianism one version of luck egalitarianism is presented, and a controversial aspect is argued for, namely that it applies to all distributions, including equalities. In the chapter on personal responsibility in health, two alternatives to luck egalitarianism is criticised before a luck egalitarian view on luck egalitarianism in health is set out. The chapter on luck egalitarianism in health utilizes the preceding conclusions, and develops them in the context of health. Considering luck egalitarianism both in general and in the context of specific health issues it is argued that luck egalitarianism has plausible implications in the context of health. Two distinct broadenings of the luck egalitarian approach to health is argued for. One broadening that encompasses a wide
range of ways in which people can be held responsible for their unhealthy behaviour, moving the debate beyond its preoccupation with denying treatment. The other broadening calls our attention to what our responsibility-sensitive commitments mean when we move beyond the provision of healthcare, and considers broader measures relevant to health such as public health initiatives. Thus, articles constituting the thesis are addressing each of the three topics. Three articles contributes to our theoretical understanding of luck egalitarianism, two to the literature on personal responsibility in health and seven to the debates over luck egalitarianism in health. Such a luck egalitarian account is a plausible approach for evaluating health distributions and health policies.
Chapter 2: Health and Justice

Before presenting the content of the project, it is important to give some preliminaries about the discussion. The purpose of such preliminaries is to focus the discussion at the topic at hand. The starting point of this endeavour is the distributive decisions regarding priority-setting in health. Decisions are constantly made which prioritize resources in one direction rather than another. In political deliberations, health concerns compete with other important concerns of society, such as education. In health budgets, politicians or bureaucrats allocate funds to different priorities such as prevention, treatment and research. In the delivery of care, healthcare personnel decide between competing claims of patients. The latter kind of prioritization happens both in a busy emergency room on a Friday night, and in the allocation of organs based on a waiting list principle. Thus, prioritization is part and parcel of the healthcare system and health policies. This thesis examines our reasons for prioritizing in the context of health and healthcare using a broad conception of what it means to give priority to some compared to others. Thus, lower priority describes situations where one person’s interests are given lower consideration than other persons’ interests in the context of health. Lower priority can understood as a broad notion covering instances where people are treated less (or not at all), at a higher price or asked to wait longer. It also covers situations where public health initiatives or research projects related to diseases are preferred over others. The project takes a special interest in situations where lower priority is given for reasons related to person responsibility.

While some may feel uncomfortable with the thought of rationing healthcare or giving priority to some needs over others, it seems inevitable in a world of scarce resources. Therefore, the least we can do is to give people's needs due consideration and go through a principled deliberation over how to make the tough choices facing us in this context. We owe it to each other and especially to those who are given lower priority that these decisions are made in a sound way and based on principles which we would upon consideration embrace as just. Such discussions about prioritization are clearly distributive. They address how we should distribute available resources and how we should balance the claims of those in need. This is connected to broader de-

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bates about distributive justice understood as debates about how we should distribute the goods and burdens, however defined, within whatever sphere we believe it to be applicable (a community, society or perhaps on a global scale).

While disagreements remain over the connection between distributive justice and health, there is widespread agreement that health disparities should be discussed in the context of distributive justice. This doesn’t mean that all health inequalities are unjust; it expresses the far weaker claim that health disparities are something we could and should evaluate through distributive principles. Whether we consider specific health inequalities to be just or unjust can have real world importance. In a world of scarce resources whether a health disadvantage is unjust is a reasonable guide as to whether we should direct funds towards its prevention, cure and further research on how to accomplish that.

While many different ideas are present in discussions about who should be given priority in healthcare and health policies, this thesis is strongly connected to one prominent idea in political and theoretical debates about health inequalities: the idea of personal responsibility. It is a common thought that personal responsibility matters in in the prioritization of scarce goods. It is a recurrent finding that individual behaviour regarding nutrition, alcohol consumption

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14 Presumably most diseases could arise in ways or circumstances which give rise to both disadvantages which are just and disadvantages which are unjust. The general thought of the sentence should be clear nonetheless.
and smoking accounts for a large proportion of the burden of disease. The concept of lifestyle-diseases seems to open up such discussions over personal responsibility in health as a rationing criterion. This is not to say that people are in the relevant sense responsible for such choices in health, but it is mentioned because such changes in the pattern of disease are often highlighted as one of the reasons for an increased focus on personal responsibility in health. Giving people lower priority for reasons related to personal responsibility is not only something which is considered by academics, it is also part and parcel of a wide range of real world policies and practices.

Consider how German health insurances allow increasing the degree of out-of-pocket payment for those, who’ve failed to continuously get their oral


health check-up over a specific period. In the US state of West Virginia, whole families can be disadvantaged if they (or their children) miss appointments. In the Netherlands personal responsibility for illness as a rationing criterion is a possibility given by the letter of the law and in Florida obese can be denied treatment qua being obese. If we consider as well proposed policies such as increasing insurance premiums on smokers, or letting alcohol consumers wait longer for a liver transplant than those who need a liver for other reasons it's clear that giving lower priority based on people’s responsibility for their health needs is a thought with much relevance. The question addressed in this thesis thus takes its cue from the debates over where to draw the line between societal and personal responsibility in health.

Interestingly, and this is a key motivation behind this project and its approach, this strikes a chord with a recent development in contemporary philosophy. The role of personal responsibility has been a central theme in discussions about distributive justice for about 20 years, especially in the so-called luck egalitarian tradition. Roughly formulated, luck egalitarians hold that dis-


24 Some surveys show medical personnel support some such measures, see. B. Bringedal and E. Feiring, ‘On the Relevance of Personal Responsibility in Priority Setting: A Cross-Sectional Survey among Norwegian Medical Doctors,’ *Journal of Medical Ethics* 37, no. 6 (February 18, 2011): 357–61, doi:10.1136/jme.2010.038844.

tributions are just if they reflect the choices people make, rather than luck or circumstances. Thus, it is hardly surprising that there have been several attempts in recent years to develop luck egalitarian approaches and insights in the context of health and healthcare. The thesis offers a development and contribution to this literature, maintaining that luck egalitarianism has plausible implications over a number of health cases and also as a general approach to distributive justice in health. After these considerations about the chosen topic, the next section will proceed with matters of terminology and methodology.

Chapter 3: Methodology

The purpose of this chapter is to set out some methodological considerations relevant for the task at hand. As the thesis is written in the tradition of normative political theory, the details of such an approach is the focus in this section. Some are general observations relevant for much political theory, while others are more topic-specific, related to the discussion of luck egalitarianism in the context of health.

Notably the research question addressed in this thesis is a normative one. Inquiring about what makes a health distribution just is a normative inquiry. Thus, the object of inquiry is how the world ought to be, rather than how it actually is.\(^{27}\) This has important implications for how to seek out an answer to the research question. That the question is normative rather than empirical does not mean that it doesn’t take an interest in the world as it is. But while examining existing practices, laws or institutions might inform or inspire the reasoning it cannot settle the question at hand. Knowing the size of health inequalities, the cause of specific diseases or the relative effectiveness of health initiatives does not by themselves provide us with the answers to how we should evaluate inequalities.\(^{28}\) Instead there is a need for normative or moral discussions in order to answer the research question.

Its normative nature makes this inquiry somewhat different from that of other parts of the social sciences, where the purpose there often is to explain or explore how the world works.\(^{29}\) The process of developing hypothesis about how the world is and testing whether they can be falsified is the hallmark of much empirical political science.\(^{30}\) That political theory as conducted here cannot answer its research question in such a manner remains an important source of scepticism towards normative such projects. Some doubt that we can


\(^{29}\) For an interesting argument, that these modes of inquiries have many things in common see, Lasse Nielsen, ‘Om Metoden I Normativ Politologi,’ *Tidsskriftet Politik* 16, no. 3 (2013): 45–54.

discuss normative matters in a scientific way. How are we, one might wonder, able to prefer one claim over the other and how should such a discussion be conducted?

The most common response to such doubts would be to evoke the idea of reflective equilibrium. The idea features prominently in Rawls’ *A Theory of Justice*[^31] and is often considered the closest we come to a standard theory of how to approach political theory.[^32] It should be understood as a view regarding how principles are justified. Rawls considered a principle to be justified when it fits into what he called a wide reflective equilibrium.[^33] Identifying or reaching such equilibrium is a process, which is not so unfamiliar. Scanlon describes it as having three steps. The first step involves forming considered judgements regarding specific cases.[^34] Not all our intuitions are equally useful in conduction such moral reasoning. Not all of them are as such considered. Judgement made while scared, drunk, pressed for time or while having vested interest in the outcome of a discussion are very unlikely to be the kind of reliable considered judgments needed for moral reasoning.[^35]

Reflecting over such considered judgement we can attempt to formulate principles which explain or account for our considered judgements. Forming principles to account for our considered judgements is the second step of the process.[^36] Forming such principles is not necessarily a one-way process. We could in doing so come to doubt our considered judgements. Daniels describes this process as one where we, ‘work back and forth between judgements we are inclined to make about right action in a particular case and the reasons or principles we offer for that judgement.’[^37] When we reach a fit between our considered judgement and our principles we have a narrow reflective equilibrium.

[^33]: The distinction between broad and narrow was not employed in *A Theory of Justice*, something which Rawls considered an omission, John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass: Harvard University Press, 2001), 31. Also discussed by Daniels, Daniels, ‘Reflective Equilibrium.’
[^36]: Scanlon, ‘Rawls on Justification,’ 140.
[^37]: Daniels, ‘Reflective Equilibrium.’
But reaching this point is not sufficient. It may show us that we have found an equilibrium for a judgement and a principle, but not that these fit our other judgements and principles. This shortfall brings forth the idea of a wide reflective equilibrium takes. As the name suggests, here a broader range of considerations are taken into account. Here we seek to align our considered judgements, relevant facts, principles, and background theories. Background theories are philosophic and scientific theories regarding psychological, sociological and biological affairs. The idea of reflective equilibrium reflects the thought that we can evaluate our principles and beliefs through assessing how well they fit together, seeking out a situation where they are not in conflict. Such a process involves reconsidering judgements (or principles) when they seem implausible in case of conflicts, where our judgements or principles in one case seems implausible when considered in another.

McDermott makes the interesting point that this is actually structurally similar to much empirical research. We approach what we want to know based on what we already know. In empirical social science we do it from a background of expectations about the world, in political theory we approach from our considered beliefs. In both cases, the process can end up showing a clear need to rethink what we had hitherto believed about the world (either about how the world is or about how it ought to be). The idea of reflective equilibrium reflects a back-and-forth movement where we readjust our broader theories and/or our intuitions until they are in alignment. The ideal reflected here is that we want to hold coherent or consistent views.

Rawls considers his contribution to be nonfoundationalist in the sense that it does not take any set of values or judgements as carrying the normative weight, instead emphasising how our considered judgements cohere with our other judgements, as a reason for why

38 Ibid.
39 Holtug, Kappel, and Lippert-Rasmussen, Det retfærdige samfund, 17.
40 While some may surely feel somewhat dissatisfied with this less than firm way of discussing and reasoning, perhaps the words of Rakowski can offer some comfort: ‘Those who feel disheartened by this conclusion should ask what result they would have preferred. We are, after all, rational animals with nothing to rely on but our ratiocinative powers. We cannot escape the responsibility of determining for ourselves what is right, for any putative authority, whether a voice from heaven or counsel from within, may and should be called upon to justify its edicts on matters of importance’ Eric Rakowski, Equal Justice (Oxford: Clarendon, 1993), 9.
42 To the movement toward reflective equilibrium as process is in line with Rawls remarks that we may never reach equilibrium, or that the one we reach may be unstable Rawls, A Theory of Justice, 20.
something is justified. Working within the framework of reflective equilibrium will often involve the applications of several tools prominent in much political theory. Holtug has listed three important aspects of the methodology: conceptual analysis, consistency and intuitions. These are presented here alongside a tool very much associated with intuitions: the hypothetical cases often employed in analytical philosophy, as one way of testing our considered judgement in one case with our considered judgements in another.

Conceptual analysis is a process of discussing and clarifying what we mean by a given concept. In conceptual analysis different meanings of a concept are disentangled to avoid conflating them. This gives clarity in a given discussion and advances it without the risk of disagreements and misunderstandings arising from different understandings of a concept. We need not to say that one understanding of a concept holds the true meaning of that concept, but rather that it is appropriate for our present purposes to use one specific understanding rather than another. When the concept of personal responsibility in health is discussed later, it is in the latter sense of a conceptual analysis, to give an account of what it means for the current purpose.

The second important aspect raised by Holtug is consistency. Its importance was introduced in the presentation of a reflective equilibrium, but more can be said about its importance. The general idea, and presumably the reason for its important role in the reflective equilibrium approach, is that we wish to avoid holding inconsistent views. Consistency narrows the scope of acceptable views to only those which are consistent and furthermore invites us to reassess our current convictions and the relationship between them. We do not only consider whether we would on reflection accept the principles A and B, we also consider whether we can, consistently, hold both principles at once. The third and arguably most controversial element in the methodology of political theo-

43 Rawls, *Justice as Fairness*, 31. Holtug, however, remarks that many tools employed in an reflective equilibrium approach, such as intuitions, could be used by foundationalist approaches Nils Holtug, *Persons, Interests, and Justice* (Oxford: Oxford University Press, 2010), 9.
48 Holtug, ‘Metoden i politisk teori,’ 283.
Intuitions in political philosophy are very different from the everyday use of that word. A person selecting lunch at a restaurant or taking a potential shortcut to a friend’s house might say that they ‘followed their intuitions’, but in those cases they mean that intuitions are gut feelings or sudden unreflective impulses. In political philosophy, intuitions are quite the opposite. They are more akin to Rawls’ considered judgements. Views we would hold under reflection and form in circumstances facilitating such reasoning.

Intuitions are clearly connected to one final element, which often features in discussions and arguments about normative political philosophy: the use of hypothetical cases. Both in analytical philosophy and, interestingly, in medical ethics, such cases are a very important part of the reasoning. The cases used are more often than not hypothetical. For people untrained in philosophical reasoning, it might be considered strange that thought experiments and hypothetical cases are so common. They are, however, introduced with the specific purpose of teasing out our intuitions about a specific example with the broader aim of discussing, testing or developing a principle. The cases are hypothetical because the real world is often confusing, nuanced and complex. Reducing complexity through discussing hypothetical cases is a step we take to make sure that our moral reasoning is not clouded by all those other factors which we are not, for the moment, addressing.

Surely, this means that the examples given are more artificial and less nuanced than the world, but too many details come with a loss of clarity. In her treatment of cases in medical ethics, Spranzi argues that for principled discussions we should employ ‘tamed’ cases. That is cases which are stripped of their specific characteristics and recounted in a more general manner. Such cases focus on the general rather than the unique, and we strive to present them without the appeal to emotions often present in the cases employed by newspapers. Holtug describes how hypothetical cases are employed with the pur-

50 Holtug, Persons, Interests, and Justice, 9; ibid., 286.
52 Both in the sense of testing their viability and their scope, the range of topics to which they can be applied.
pose of isolating the very thing being discussed. He further notes that this idea is very similar to the approaches employed in other parts of the sciences. Here it is also important to keep all else equal, in order to focus on the very issue examined. Consider how medical researchers, when testing a new drug, compare the treatment group, which receives the drug, with a control group, which is otherwise similar but does not receive the drug. The same reasoning underlines how social scientists control for other variables by holding them constant in their statistical analysis. We can also identity it in the experiments of political science, where we strive to isolate the effect of the stimulus. The mode of reasoning is similar across the cases. To acquire knowledge about a specific thing, we need to isolate it from other concerns which would distract our interpretation of the case in front of us.

To illustrate the way this form of reasoning is employed in the context of political philosophy, consider a discussion over whether a criminal record should lower one’s chance of receiving an organ transplant. We could then describe and discuss a case of two persons, Richard and Ben, one a convicted criminal and both needing a transplant. While in a complex world people are likely to differ on a wide range of features, we are, as already indicated, best served by abstracting from these for the purpose of discussion. Surely we could add to the discussion factors such as differences in ability to benefit, that one of the men provides for a family of four, an age difference of 50 years, or that one of them has earlier received an organ and needs a new transplant because he failed to take the prescribed drugs. If we did add all those features to the discussion we would provide a more realistic and detailed description, but it would arguably be harder to make any judgments. But most importantly, whatever judgment we reach upon considering the case in light of the wealth of details just suggested may reflect many things and say little about how having a criminal record should affect the chances of receiving an organ. When constructing hypothetical cases we thus strive to isolate the factor under discussion. This reasoning is often reflected with formulations such as all else being equal, and as stressed, it is not unfamiliar in other branches of research.

54 Holtug, ‘Metoden i politisk teori,’ 286.
56 Bognar and Hirose, The Ethics of Health Care Rationing, 22; Holtug, ‘Metoden i politisk teori,’ 286.
57 Even if we decide against treating Ben and Richard differently, this could be because the reasons to differentiate against them provided by the criminal record where outweighed by other concerns.
58 Some prefer the Latin expression ceteris paribus.
This mode of reasoning is employed several times in the thesis, for example in Transplant Decisions where the principled luck egalitarian case for giving lower priority to those whose need for a new liver is related to their past consumption of alcohol is developed through a case where a number of relevant background factors are held as being equal. In the Feiring article similar cases differing only on when they transpired is put forward to criticise Feiring’s view that we should not take the past into account when giving priority in health. The article Tough Luck discusses how one’s occupation may be a plausible barrier to taking care of one’s teeth. A hypothetical example is presented, but ultimately oral hygiene understood as diet and tooth brushing are at least not in a straightforward way affected by one’s occupation.

To end the discussion over hypothetical cases, a short remark on one critique off such reasoning. The use of hypothetical cases in political theory is sometimes criticized for being wrongheaded in that it assumes away many important aspects of the real world. Critics submit that the stylized cases overlook or ignore some of the most important injustices in the world, namely those associated with race, class and gender. However, this concern doesn’t really address the use of such cases in reasoning, but rather the topics to which they are applied. Hypothetical cases can be used to discuss anything, also the differences highlighted by its critics. It could further be submitted that the current literature often addresses the grey areas where existing theories disagree about what justice requires. Such discussions might concern something of great theoretical and principled importance, though maybe not of immediately recognizable importance to real world issues.

Following considerations about method in political theory, some remarks on discussions about justice are needed. As this project approaches discussions of health from the perspective of distributive justice it would seem appropriate to address how such discussions over justice are conducted. In discussing distributive justice (in health or elsewhere), it is important to stress what it means that a given state of affairs is just or that justice requires compensation. Cohen’s thought on the matter is instructive: Saying that x represents an injustice means that ‘the world is less than fully just by virtue of it.’ This is, Cohen notes, different from the claim that x represents an injustice ‘and should be rectified by the state.’ Such expressions make it clear that discussions about justice are con-

60 Holtug, Persons, Interests, and Justice, 12; Knight, Luck Egalitarianism, 2009, 154.
62 Ibid.
cerned with what makes the world good and bad from a normative perspective. In discussions about distributive justice egalitarians discuss whether this or that feature of a distribution makes it bad with respect to equality. Such discussions are different, and should be different, from discussions about the extent to which we could correct an injustice and who should bring this about. This should not be taken to mean that discussions about justice are irrelevant to real world practices. Deliberating over distributive justice often also involves considerations about whether the state could and should introduce policies to mitigate the aspects which are bad with respect to equality.

Cohen stressed that it is important to acknowledge how these questions are separate, and in that regard his distinction between principles of justice and rules of regulation is important. While we might accept the reasons for keeping our discussions of principles of justice apart from concerns such as those just mentioned, we would certainly also need our discussions of justice to have some sort of relevance for more practical measures. Cohen introduced the idea of rules of regulations. Principles of distributive justice describe when people’s share is just, while the rules of regulation describe steps it would be permissible and/or prudent to take in pursuit of such ends while showing due concern to values other than distributive justice and the facts of the world around us. Rules of regulation are different from the question raised above, where distributive justice was contrasted from questions about what the state should do. This is the case since a rule of regulation can express a specific balance of our distributive concerns in respect to other values (such as freedom), considerations which can be made even before we make decisions regarding whether the state should intervene to correct something. The advantage of proceeding in such a way is, in line with the reasoning earlier, that it minimizes the risk that our empirical beliefs about how the world is affect our normative judgments regarding how the world ought to be.

Why Health? And How? Topic Specific Methodology

The above considerations are somewhat general, in the sense that they would apply to many projects addressing normative discussions of distributive. They

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are stated as questions and considerations that are relevant to this thesis even though they would also apply to other projects in this tradition. In addition to such quite general thoughts about political theory and distributive justice, there are considerations of method, which are more specifically related to the task of applying luck egalitarianism to health. The following section presents a number of considerations and methodological choices made in this project. The section addresses general considerations about applying luck egalitarianism, why health is of special interest from a luck egalitarian perspective, and how the specific areas addressed in the discussion have been selected.

Luck egalitarianism is a heterogeneous theory. This has implications for this thesis, since applying luck egalitarianism to health involves discussions about what the most plausible view on luck egalitarianism is. Therefore the thesis engages with questions over what the most plausible view on luck egalitarianism is.

Methodological considerations arise when we decide in which areas it would be most interesting to apply luck egalitarianism. Where would we have most interest in exploring the consequences of such an application? We have at least two reasons to be interested in applying luck egalitarianism to health. People interested in luck egalitarianism (sympathetic or otherwise) will probably be interested in knowing whether it yields plausible conclusions in many areas. But they have a particular interest in the application of luck egalitarianism to health. At least they should have, because for luck egalitarianism health could be considered a hard case. Thus, here luck egalitarianism is applied to an area in which it is at least initially unlikely to yield plausible conclusions. Consider, for example, how critics of luck egalitarianism point to its implications in a health context in order to question its egalitarian credentials. On the other hand, if luck egalitarianism can yield plausible conclusions in a context where that was thought to be less likely, it would strengthen the theory as a whole. The second kind of reason to apply luck egalitarianism to health springs not from inside the luck egalitarian literature, but from current debates about priority-setting in health and healthcare. Both in political and academic debates personal responsibility is a much debated subject in relation to health.

Such academic literature and such policy debates may benefit from the application of a responsibility-sensitive theory of distributive justice to these questions.

Thought should also be given in which areas of healthcare and health policies it would give the most interesting insights to apply luck egalitarianism. The thesis takes up three vastly different areas in the discussion of luck egalitarianism in the belief that such applied discussions will give us a better chance of assessing the credentials of luck egalitarianism in health than more abstract discussions. Furthermore, the thought is that discussing luck egalitarianism in different settings gives us a more nuanced picture of the abilities and limitations of this theory in this context. However, these general considerations leave open which areas to discuss.

In this thesis the guiding principle has been to discuss the plausibility of luck egalitarianism over a wide range of health issues. The purpose of discussing different areas is to evaluate and explore the implications of luck egalitarianism in areas which differ on important parameters. Many health discussions involve the allocation of scarce healthcare resources in situations of dire need. Who should receive the life-saving treatment when we cannot save all is a question which is important to much reasoning in this context. The importance of such discussions arises because in such situations the consequences of denying treatment are severe. To address issues of scarcity and high stakes the issue of allocating livers for transplantation is discussed in Transplant Decisions. But even if such dramatic discussions are both a part of real worth allocation of healthcare resources and of the existing academic debate over prioritization, the discussion should also reflect that often discussions about who to give priority are much less spectacular. For that reason there is also a need to explore how the theory fares in less dramatic circumstances. The thought is that this enables us to explore what the different settings mean for the plausibility of luck egalitarianism. To accommodate for this observation discussions over more pedestrian topics must also be included. To accommodate such a need the thesis undertakes the discussion of oral health. This is the topic of Tough Choices and Ethical Considerations. As argued, it was included in the discussion because of (rather than despite of) it’s somewhat pedestrian nature. But allocation of (primarily) healthcare resources cannot exhaust the topics which must be discussed in this thesis. Much recent literature in epidemiology, especially the literature on social determinants, suggests that over health is not only influenced by what happens once we are admitted to hospitals for treatment. Social determinants literature stresses how place of residence, employment status and general socioeconomics position affect our health. That reason alone suggests the need to discuss how luck egalitarianism fares regarding public health initiatives aimed at mitigating the influence from social determi-

The need to address such a topic is also strengthened by the fact that it is a recurrent criticism of luck egalitarianism that it is unable to accommodate this important development of our understanding of health. Luck egalitarianism needs to be discussed in the context of such developments and it seemed fitting that the thesis address such developments as well. For those reasons *Social Determinants* address such questions. Even though the topics – liver allocation, oral health and social determinants - are distinct there is some similarity in the way they are discussed. For all topics, empirical knowledge regarding patterns and causes of disease informs the discussion. Potential ways of implementing responsibility-sensitive policies are also discussed in all three contexts.

Finally, a point regarding how the thesis contributes to the ongoing debate about luck egalitarianism in health. As argued above there is surely something to be gained from considering the implications of luck egalitarianism in specific health contexts. This, however does not remove the need to discuss and consider the larger picture. There is also a need to consider the contribution in a more general fashion. For those reason the thesis also provides a distinct framework for luck egalitarianism in health. In *Framework* a number of theoretical choices facing any luck egalitarian theory in health are presented along with suggestions for how they should be answered. These are questions such as whether we care about distributions of health or healthcare, should be pluralist in our values and how to consider concerns for health in relation to other distributive concerns. Supplementing such more general discussion ‘*Personligt ansvar*’ evaluates the strengths of different institutional proposals for holding people responsible for their self-inflicted health disadvantages in the light of prominent criticisms of personal responsibility in health. In the end, the final chapter concludes to answer the research questions regarding luck egalitarianism and distributive justice in health.

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Chapter 4: Conceptual Clarifications

When engaging with the vast literature on health and distributive justice, it is necessary to narrow the number of debates to engage with. This section identifies a number of discussions which are interesting, but to which this thesis does not make a substantial contribution. The most important is presented here along with some preliminary distinctions which are important for understanding what follows.

Parts of the established literature on health employs a convention that terms like ‘health differences’ and ‘health inequalities’ describe health distributions where people have unequal health but the distributions are not unfair. For unfair unequal distributions of health the literature prefers the term ‘inequalities’.\(^{74}\) This terminology will not be employed here for several reasons. The most important is that the literature also includes a pre-existing understanding of when something counts as an inequity and when it is only considered an inequality in the stated sense. As this thesis sets out to address this very question, it would be potentially confusing to use terminology which for many has a fixed meaning. A minor reason to avoid the terminology is that it does not have a word for unjust equal distributions.\(^{75}\) As the contribution in this thesis includes the view that equalities can also be unjust, following this convention would have resulted in unnecessarily inelegant terminology.\(^{76}\) Thus, whenever the thesis describes health distributions, the term ‘equal’ or ‘unequal’ only describes the shape of the distribution, but carries no meaning regarding the justness or unjustness of it. Instead terms such as (un)fair or (un)just are employed for such designations.

A word about the concept and measurement of health: What does it mean for a person to be healthier than another and how are we going to measure health distributions? Daniels famously argued that we should use a statistical approach to health where a person is unhealthy if that person deviates from the population as a whole by lacking a species function.\(^{77}\) The WHO employs

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\(^{75}\) Equities, as we know, means something quite different related to the world of finance.


\(^{77}\) Daniels, *Just Health Care*, 28–32.
a much broader definition of health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.’ Hausman has recently proposed that we define health on the basis of a specific organism’s (in whole or in part) functional efficiency. Efficiency here means the ability to serve the relevant purpose of that specific organism (or part of organism). This thesis does not contribute to this interesting discussion. Broadly speaking the arguments advanced here are applicable to any concept of health I’ve encountered. It remains neutral regarding how health is best conceptualized. Instead the thesis addresses how we should evaluate health distributions and is applicable to whichever understanding of health presented above one takes to be the most promising. There is nothing novel or particularly controversial in disentangling the concept of health from discussions about how to evaluate health distributions.

Somewhat related to the above there is a rich literature on how best to measure health disparities. This is not only a technical matter, but involves difficult discussions about how to weigh people’s different needs against each other. It is one thing to say that one person is sick and that another is not. But if both have succumbed to disease how can we compare their needs? The thought guiding the two most influential approaches to conducting such comparisons is that it matters morally how many years a person loses through illness, weighted to take account of differences in the quality of those years. The dominant approaches are DALY and QUALY. The relative strengths of the measures are not discussed, in order to focus the discussion on what makes a distribution just or unjust.

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80 Consider that each of the sources of different concepts of health listed above has proposed criteria for how to evaluate health distributions. Daniels, Just Health Care; Daniels, Just Health; Hausman, ‘What’s Wrong with Health Inequalities?; Hausman, ‘Egalitarian Critiques of Health Inequalities’; WHO, ‘Health Impact Assessment (HIA)-Glossary of Terms Used.’

81 Bognar and Hirose, The Ethics of Health Care Rationing; Diderichsen, Andersen, and Manuel, Ulighed i sundhed.

82 Setting such questions aside is far from an unusual move in the literature: Daniels, Just Health, 14 n2, 37 n18; Segall, Health, Luck, and Justice, 97. Also left out are a host of other measuring complexities. For a comprehensive introduction, see Mel Bartley, Health Inequality: An Introduction to Theories, Concepts, and Methods (Cambridge, UK: Polity Press, 2004).
As already mentioned, the thesis deals with the prominent idea of personal responsibility. As this is a highly complex notion, also in health, it is necessary to spell out exactly what is meant by this. The idea of personal responsibility in health has a long and varied history.\textsuperscript{83} This should come as no surprise given that the concept of responsibility is in itself highly complex. In his discussion of the topic G. Dworkin remarked that it may be in discussions over responsibility that we find it most difficult to keep the conceptual and normative elements apart.\textsuperscript{84} Responsibility can mean many different things. We can have responsibilities towards ourselves or others through our position or role in society. But we can also be responsible in the sense that our acts or omissions brought a state of affairs something about under conditions sufficient for some reaction be that, praise, blame or institutional actions.\textsuperscript{85} For those reasons people can coherently talk of personal responsibility in health and mean vastly different things by the term.

One meaning of personal responsibility regards how we are behave in relation to other people’s health, here our personal responsibility pertains to whether our acts and omissions makes it so that other people are worse off health wise. Such discussion arises in relation to our responsibilities regarding communicable diseases. Is there a duty to vaccinate one self and one’s children? How is the autonomy of the individual preserved and catered for, without losing the potential collective benefits of herd resistance? And how should we evaluate and react to such actions which potentially put the health of others at risk?\textsuperscript{86} It is not this aspect of responsibility in health which is addressed in this thesis. Another meaning of responsibility in the context of


health is those responsibilities that a doctor has towards her patients or towards the public as a whole. Consider for example the responsible conduct with deeply personal information, where the health care professional balances the confidential relationship with her patient along with the wider interest of the public.\(^{87}\) While such responsibilities can, and perhaps should, be addressed in discussions about health responsibility, they are set aside in what follows. Rather the thesis deals with acts and omissions of individuals regarding their own health, and how we should incorporate personal responsibility for such acts and omissions into a moral framework of distributive justice. While discussing the role of personal responsibility, the thesis remains neutral regarding specific theories of responsibilities, understood as the viability of different theories over what it means to be, in a metaphysical sense, responsible for one’s own health disadvantage.\(^{88}\) When the thesis occasionally discuss matters for which people are not responsible, these are factors which a range of theories of responsibility would classify similarly (such as having a congenial liver disease).\(^{89}\) The next section presents luck egalitarianism as a theory of distributive justice.


\(^{89}\) This way of reasoning is much similar to Mason’s discussion over what belongs to people’s circumstances, and borrows his idea that we can discuss whether a given factor is likely to be something a person is not responsible, even if there are other factors we are unsure about where to place Andrew Mason, Levelling the Playing Field: The Idea of Equal Opportunity and Its Place in Egalitarian Thought, Oxford Political Theory (Oxford ; New York: Oxford University Press, 2006), 93.
Chapter 5: Luck Egalitarianism

The purpose of this section is to introduce the luck egalitarian theory of distributive justice and present the thesis’ contributions to this theoretical tradition. After a brief overview over the early thoughts on luck egalitarianism, a canonical formulation of luck egalitarianism is discussed, highlighting some of its ambiguities and shortfalls which have been identified in the literature on luck egalitarianism. An adjusted formulation of luck egalitarianism is presented and compared to the canonical statement, and differences and similarities between the two formulations are identified. One difference, which has not received sufficient attention in the literature, pertains to whether luck egalitarianism applies to distributions as such or only to inequalities. Arguing that the former is correct is one of the thesis’ contributions to the luck egalitarian literature: this is the conclusion of *Unjust Equalities*. After a short summary of the article, three critiques of luck egalitarianism are introduced: That it is too harsh on those who are worse off through choices for which they are responsible; that it requires shameful revelations in the assessment of responsibility; and that it implausibly must deny compensation for those who are worse off through choices which are morally speaking good. The first critique is discussed and explored in *Lader Held-egalitarismen*. Both the first and second criticisms are addressed throughout the thesis, but the third is considered mostly in a separate article. In *Justified Choices* it is argued that luck egalitarianism can offer such compensation to those who are worse off through their attempt to save someone else from an unchosen disadvantage. The argument for that conclusion is given in a brief summary of that article.

Early Luck Egalitarianism

During the last 25 years, luck egalitarianism has become an influential theory in debates about distributive justice. Roughly speaking, luck egalitarianism asserts that distributions are just when they reflect choices for which people are responsible as opposed to luck. For that reason luck egalitarianism is considered a responsibility-sensitive theory of distributive justice. The luck egalitarian tradition is far from homogenous and still has many of the ambiguities of a young theory. As with many other contributions to contemporary political phi-
losophy, the luck egalitarian position can, in parts, be traced to ideas in John Rawls’ *A Theory of Justice*.\textsuperscript{92} In his treatment of the subject, Kymlicka argues that Rawls can be understood as a precursor of luck egalitarianism.\textsuperscript{93} This assessment is based on formulations in Rawls’ work\textsuperscript{94} where he strongly rejects that factors which are arbitrary from a moral perspective should be allowed to influence a just distribution.\textsuperscript{95} Thus we should seek out principles of justice which ‘nullifies the accidents of natural endowment and the contingencies of social circumstances’.\textsuperscript{96} In such formulations, Kymlicka identifies a distinction between choice and circumstance and an underlying idea that distributions should be allowed to reflect the former but not the latter.\textsuperscript{97} To the extent that this can be considered an important element in Rawls’ works,\textsuperscript{98} he can be considered a precursor to luck egalitarianism.\textsuperscript{99} It has been suggested that luck egalitarianism develops this idea further.\textsuperscript{100}

One scholar whose influence on the luck egalitarian tradition is beyond dispute is Dworkin. Though he did not consider himself a luck egalitarian, he

\textsuperscript{92}Rawls, *A Theory of Justice*.
\textsuperscript{93}Knight and Stemplowska, ‘Responsibility and Distributive Justice: An Introduction,’ 4.
\textsuperscript{95}Rawls, *A Theory of Justice*, 72.
\textsuperscript{96}Ibid., 15.
\textsuperscript{97}Kymlicka, *Contemporary Political Philosophy*, 75.
\textsuperscript{98}For the argument that the choice/luck distinction (or a similar distinction) is not an important part of the Rawlsian argument, see Matt Matravers, *Responsibility and Justice* (Cambridge, UK; Malden, MA: Polity, 2007), chap. 3; Samuel Scheffler, ‘What Is Egalitarianism?’, *Philosophy & Public Affairs* 31, no. 1 (January 2003): 5–39, doi:10.1111/j.1088-4963.2003.00005.x.
\textsuperscript{100}Arneson, ‘Luck Egalitarianism - A Primer,’ 28; Knight and Stemplowska, ‘Responsibility and Distributive Justice: An Introduction,’ 4; Roemer, *Theories of Distributive Justice*, 238; Segall, *Health, Luck, and Justice*, 10.
played an important role in the development of luck egalitarianism. He proposed a view on distributive justice taking its starting point in the belief that we should treat people as equals. Dworkin criticised the idea of equality of welfare, because equalizing welfare implies redistribution from those who are content with their share of the world’s resources to those who are dissatisfied, even when the shares are similar. The idea Dworkin advances is that people are entitled to an equal share of resources, which they can use to pursue their dreams. If people differ in their endowments, the disadvantages should be compensated, but if they differ in their ambitions, preferences and dreams, justice does not require equalization of the inequalities which spring from this. Thus it can be understood as taking even further the distinction Kymlicka identified in Rawls’ work. Dworkin expressed this view by utilizing the distinction between brute luck and option luck: Option luck is a matter of how deliberate and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined, while Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles. In accordance with Dworkin’s position we should compensate people for differences reflecting brute luck, but not for differences reflecting option luck.

Dworkin’s contribution to the luck egalitarian literature is widely recognized. Two prominent proponents of early luck egalitarianism, Arneson and Dworkin himself resisted the label, Ronald Dworkin, ‘Equality, Luck and Hierarchy,’ *Philosophy & Public Affairs* 31, no. 2 (April 1, 2003): 190–98. The issue is debated, however. For the argument that Dworkin is not a luck egalitarian, see: Samuel Scheffler, ‘Equality as the Virtue of Sovereigns: A Reply to Ronald Dworkin,’ *Philosophy & Public Affairs* 31, no. 2 (April 1, 2003): 199–206. For the argument that Dworkin is a luck egalitarian, see Alexander Brown, *Ronald Dworkin’s Theory of Equality: Domestic and Global Perspectives* (Basingstoke: Palgrave Macmillan, 2009), 75–82. His influence on the luck egalitarian tradition is not disputed, however.


Importantly, resources on the Dworkinian account need not be only monetary. We should also be compensated for shortfalls in our internal resources. This makes the adherence to the choice/luck distinction even more profound.


Ibid., 293.

Ibid.

Cohen, both critically engaged with Dworkin’s Equality of Resources to develop responsibility-sensitive theories of distributive justice. As far as the responsibility-sensitive elements in their respective works, the following quotes show how the authors stress the importance of distinguishing between disadvantages due to luck and disadvantages due to choice. Cohen writes about egalitarianism that: ‘Its purpose is to eliminate involuntary disadvantage, by which I (stipulatively) mean disadvantage for which the sufferer cannot be held responsible’ and Arneson writes that ‘it would be inappropriate to insist upon equality of welfare when welfare inequalities arise through the voluntary choice of the person who gets lesser welfare.’

Arneson and Cohen agree with Dworkin’s emphasis on responsibility, but deny that resources should be our concern. The reason is that people can have unchosen preferences, which would on a consistent reading of the choices/luck distinction also require compensation.

This illustrates one important disagreement among early contributors to the luck egalitarian position. They differ in their view on the currency of justice, that which justice requires us to equalize. Arneson argued for opportunity for welfare, Dworkin for resources and Cohen for advantage – a notion encompassing both. Another difference is their view on responsibility. Cohen and Arneson take what we should understand as a metaphysical view on responsibility. This means that there is some truth regarding the extent to which a person is responsible for a given state of affairs. It might be the case that this truth is not accessible to us, and that it requires the settlement of larger metaphysical debates, such as the questions of free will and determinism.

Dworkin, in contrast, employs a more everyday understanding of responsibility where people can be considered responsible for a given state of affairs without being


110 Knight, ‘Luck Egalitarianism,’ October 2013; Knight and Stemplowska, ‘Responsibility and Distributive Justice: An Introduction.’

111 It is sometimes argued that the difference between access and opportunity is purely semantic. Knight, *Luck Egalitarianism*, 2009, 74; Roemer, *Theories of Distributive Justice*, 274. Another luck egalitarian, Rakowski, agrees with Dworkin that resources should be the currency. Rakowski, *Equal Justice*.

in any metaphysical sense responsible.\textsuperscript{113} Verdicts of responsibility are made through current practices rather than discussions over metaphysics. Despite these differences the early luck egalitarians have a common ground in considering the brute luck/option luck and choice/circumstance distinctions as distributively significant, in that they signify the difference between distributions which require that some are compensated and those which do not. After this brief summary of the early luck egalitarian literature, we now turn to more recent developments and the thesis’ contributions in that regard. The above serves as a brief introduction to the luck egalitarian literature.

The starting point for this discussion is a canonical formulation of luck egalitarianism. Highlighting this canonical formulation and contrasting it with the adjusted formulation employed in this thesis makes it easier to discuss why we should prefer the latter. The luck egalitarian ideal is sometimes expressed with Parfit’s principle of equality, which asserts that: ‘[i]t is in itself bad if some people are worse off than others’ ‘through no fault or choice of theirs’\textsuperscript{114} This line of thinking clearly influenced central formulations for Cohen,\textsuperscript{115} Arneson\textsuperscript{116} and other luck egalitarians.\textsuperscript{117} However, it is for several reasons an incomplete statement of luck egalitarianism. Drawing on the work of Lippert-Rasmussen, the thesis employs a different formulation of luck egalitarianism, for reasons to be presented shortly: \textit{It is in itself bad with regard to inequality if, and only if, people’s comparative positions reflect something other than their comparative exercises of responsibility.}\textsuperscript{118} This formulation will be referred to as the adjusted formulation, and has important similarities with the canonical statement cited above. Both concern relative distributions and allow distributions to vary with choices for which people are responsible. Both formulations are also asocial in

\textsuperscript{115} Cohen, ‘On the Currency of Egalitarian Justice,’ 916.
\textsuperscript{116} Arneson, ‘Equality and Equal Opportunity for Welfare,’ 85.
the sense that distributional concerns do not only arise between persons with some specific relation to each other, but rather between all people.\textsuperscript{119}

Despite such similarities, the adjusted formulation is employed in the thesis because it improves upon the canonical statement while keeping these important features. Some of these advantages will be highlighted here. Lippert-Rasmussen has pointed out that in the absence of the ‘and only if’ the canonical formulation is underspecified as a formulation of when something is unjust with respect to inequality.\textsuperscript{120} It does not tell us how to evaluate situations where some are worse off than others through their own fault or choice. Such distributions could be either just or unjust under the canonical formulation. Adding the ‘and only if’ makes it so that distributions where some are worse off than others through their own fault or choice are not unjust.\textsuperscript{121} Another important difference is that the adjusted formulation applies to all distributions, not only inequalities.\textsuperscript{122} Evaluating people’s comparative positions instead of situations where some are worse off than others makes it the case that also equalities are evaluated.

It could also be submitted as a difference that the adjusted formulation talks of exercises of responsibility rather than choices. One could say that this is different because not all which could be considered a choice is something which a person is responsible for. Consider the choices of handing over your wallet to a robber as an illustration of such a choice.\textsuperscript{123} But in the works of both Cohen and Arneson there is sufficient textual evidence to conclude that they did not have such a simplistic view on choice.\textsuperscript{124} Cohen clearly talked about ‘genuine choice’\textsuperscript{125} and stressed that:

It is false that the only relevant questions about choice and responsibility are whether or not something (an action, a preference) is, simply, chosen (that is, tout court), and that the only relevant upshot is whether the agent is responsible, tout court. Here, as elsewhere, we make judgments of degree of responsibility, and they are based on graded and shaded judgments about choice. It always bears on the matter of responsibility that a person chose a certain course, but it

\begin{itemize}
\item \textsuperscript{119} Arneson, ‘Luck Egalitarianism - A Primer,’ 43.
\item \textsuperscript{120} Lippert-Rasmussen, ‘Arneson on Equality of Opportunity for Welfare,’ 478.
\item \textsuperscript{121} S. L Hurley, Justice, Luck, and Knowledge (Cambridge, Mass.; London: Harvard University Press, 2005), chap. 6.
\item \textsuperscript{122} Something which is argued for in Albertsen and Midtgaard, ‘Unjust Equalities.’
\item \textsuperscript{124} Here Cohen is quoted, but Arneson is quite specific in his specification of opportunities that not any choice in any situation will do (Citation)
\item \textsuperscript{125} Cohen, ‘On the Currency of Egalitarian Justice,’ 934.
\end{itemize}
is also always pertinent how genuine that choice was and how constraining the circumstances were in which it was made. The genuineness of a choice is a function of the chooser’s knowledge, self-possession, and so forth.

So it may reasonably be said that emphasizing responsibility instead of choice is an improvement, it is more because it avoids some confusion rather than changes the substance. Several authors express their views in responsibility terms, and this thesis does the same. It should be pointed out that preferring the term responsibility does not imply a specific view regarding what it means to be responsible for a given outcome. The luck egalitarian account employed here does not specify a theory of responsibility. But it is compatible with a wide range of such theories. This sums up the reasons for preferring the adjusted formulation of luck egalitarianism over the canonical.

As an alternative to formulating our egalitarian sentiments in one sentence, Fleurbaey and Roemer have argued that the luck egalitarian position should be presented as consisting of two separate principles: one of reward and one of compensation. The authors’ work reflects the idea that such principles can be formulated in different ways and thus combined to make up different ways of assessing distributions. A similar idea has recently been explored by Stemplowska. As will be clear from later discussion, Fleurbaey presents an important point: that there are many possible interpretations of what it means for a distribution to reflect people’s exercises of responsibility. But rather than formulating specific principles expressing the correct view, here it will be maintained that the adjusted formulation above expresses well enough a principled luck egalitarian view, but that we should surely be open to the fact that this might require different institutional measures in different contexts.

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126 Here Cohen refers to, Ibid.
Critiques of Luck Egalitarianism

Luck egalitarianism has been met with several criticisms. Three of the most important will be presented here. They are briefly introduced along with short statements regarding how and where they are discussed in the thesis. While the content of these critiques will be familiar to many, the presentations will stress how they relate to the project of applying luck egalitarianism to health. For the third criticism, the one pertaining to morally good criticism, a brief summary of the article Justified Choices is provided, as this is mainly where the thesis engages with such criticism.

Harshness

One criticism claims that it reflects badly on luck egalitarianism when we evaluate the theory in light of how it deals with people who end up much worse off as a consequence of choices they are responsible for. This objection is also considered important among those who are sympathetic to luck egalitarianism. A common example in the literature is the uninsured motorcyclist who crashes without a helmet and thus, the argument goes, should be left untreated at the roadside by a society with luck egalitarian institutions. The objection is sometimes referred to as the abandonment objection, but it is an unfortunate name for it. Luck egalitarians need not abandon those who make such choices – they could in many cases introduce some other responsibility-sensitive measure (i.e. out-of-pocket payments for treatment). The best way to understand the objection is to take it to claim not that luck egalitarians must abandon the imprudent, but rather that the luck egalitarian policies towards them are too harsh. In the thesis the term ‘harshness objection’ will be preferred.

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135 Anderson, ‘What Is the Point of Equality?’, Fleurbaey, ‘Equal Opportunity or Equal Social Outcome?’
136 Segall, Health, Luck, and Justice, 3–4, 58.
137 Something which Anderson clearly acknowledges. Anderson, ‘What Is the Point of Equality?’
138 A term also used by Voigt in her discussion, see: Kristin Voigt, ‘The Harshness Objection: Is Luck Egalitarianism Too Harsh on the Victims of Option Luck?’, Ethical Theo-
Luck egalitarians sometimes try to avoid the objection by making the empirical claim that in reality people do not make such choices, and if they do their choice situations are not likely to satisfy our requirements necessary to hold them responsible. While this sort of answer, under some metaphysical truths about responsibility, has practical relevance, it lacks the necessary theoretical strength. As Voigt points out, at least theoretically we can imagine a person who fulfills whichever criteria of responsibility we believe in, who acts in ways which make him much worse off than others. The interesting question is not how common such instances are (if they happen at all), but rather whether luck egalitarianism is able to deal with them in a satisfactory way. The questions posed by the harshness objection are clearly relevant in a health context, where we can easily imagine choices which are risky and can lead to very bad outcomes for the people concerned. The thesis engages with this criticism on several occasions. The content and importance of the criticism are discussed in *Lader Held-Egalitaren* along with the ability of the all-luck egalitarian approach to provide answers to it. The critique is part of the concerns evaluated in *Personligt Ansvar* and is discussed generally in *Framework.* In *Tough Luck and Tough Choices* it is part of the discussion about whether such considerations arise in the oral health discussions.

Shameful Revelations

Another critique asserts that luck egalitarianism requires shameful revelations. The general point as it has been forcefully expressed by Wolff as a critique of introducing luck egalitarian or responsibility-sensitive measures. According to Wolff institutions aimed at realizing luck egalitarian principles of distributive justice are likely to require shameful revelations from the people under assessment. The thought is that the implication of luck egalitarianism is that some policies will require the gathering of information about people's past, their be-

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140 Though often taken as such, Wolff did not intend his critique to make us reject luck egalitarianism, but rather as a more subtle concern for luck egalitarians to consider, and especially a contribution to how we are to discuss luck egalitarianism under non-ideal circumstances. Jonathan Wolff, ‘Fairness, Respect and the Egalitarian Ethos Revisited,’ *The Journal of Ethics* 14, no. 3–4 (December 2010): 335–50, doi:10.1007/s10892-010-9085-8.
haviours and circumstances. This would mean that we cannot design a luck egalitarian policy without the need to retrieve and assess information which some could reasonably consider it shameful to reveal. In a health context, where people’s lifestyles and family background would presumably often be considered relevant factors, this criticism is just as likely to be relevant as in the context of welfare benefits where Wolff discusses it. The thesis engages with this critique in several settings. It is part of the concerns evaluated in Personligt Ansvar and discussed generally in Framework. In Transplant Decisions it is discussed in the context of distributing transplant livers.

Morally Good Choices

A third critique is that luck egalitarianism leads to counterintuitive conclusions when faced by disadvantaged where people are responsible for being worse off, but where what they have chosen to do is morally speaking good. Several authors have addressed this. The criticism is theoretically interesting and especially relevant in a health context where at least a select subgroup of chosen disadvantaged can be considered morally speaking good. While many health disadvantages are not of a kind where any good was done for others in the process, others seemingly are. Consider for example firefighters, doctors, nurses and midwives who in some aspects of their jobs are exposed to health risks when they offer their skills to people with infectious diseases, and when they work in dangerous environments. While it could plausibly be argued that such disadvantages are chosen, the critics submit that if luck egalitarianism is not able to offer compensation, it would reflect badly on luck egalitarianism as a theory of distributive justice.

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This article engages with the critique presented above regarding compensation to people who are worse off through morally good choices. Its main argument is that luck egalitarianism need not be unable to compensate such disadvantages. Drawing on concepts from the literature on jurisprudence we employ the idea of a justified choice, i.e., a choice made for morally worthy reasons, noticing how in the literature on jurisprudence people can be acquitted from legal consequences of their actions if they are a) not responsible for those choices, b) those choices were justified, i.e. made for worthy reasons. When evaluating distributions, luck egalitarianism argues that people should be compensated if they are not responsible for their disadvantage. We explore whether compensation could be called for when the choices leading to a disadvantage were justified choices. We argue that when people choose to shoulder disadvantage which was unchosen for the other person instead of that person, then that is a justified choice. In those cases compensation is required. We press this point by showing that even though the choice in question changes the distribution of a disadvantage it did not create it, something which luck egalitarians should consider important when evaluating disadvantages. This refinement of luck egalitarianism is both interesting in itself and can strengthen luck egalitarianism by making it yield more intuitive judgments.

Thus the article offers a reformulation of luck egalitarianism. While I believe luck egalitarianism would be improved by this reformulation, the thesis does not employ this reformulation every time luck egalitarianism is applied to health. This is because the distinction between creating and distributing disadvantages has little relevance for the disadvantages discussed in the other articles constituting the thesis. Therefore a more familiar formulation of luck egalitarianism, which was introduced as the adjusted formulation above, is employed. This does not amount to any substantive differences in the other articles where the discussion is about disadvantages for which the two formulations yield similar assessments. This is surely not to say that the refinement of luck egalitarianism does not contribute to our understanding of health-related cases, as could be illustrated by the examples of firemen, nurses and others.
who are injured while caring for others, only that these cases are not considered in the other articles.

Unsettled Questions in the Luck Egalitarian Literature

The above tried to give a concise presentation of the luck egalitarian literature, while arguing for the formulation of luck egalitarianism which is employed in the thesis. Apart from the discussions already touched upon, a number of important issues are still unsettled in the luck egalitarian literature. Each issue is important for the thesis and for the application of luck egalitarianism to health. They are introduced here and their relevance for the project pointed out. As above, the section also presents summaries of articles where the thesis has addressed such unsettled questions.

All-luck Egalitarianism

One group of luck egalitarianism has raised an important point about how to interpret the luck egalitarian ideals. They have been named ‘all-luck egalitarians’ for reasons to be explained shortly.\textsuperscript{143, 144} While not a homogeneous group, they all address Dworkin’s prominent distinction between option luck and brute luck, and whether the normative prominence usually given to it by luck egalitarians, especially Cohen, is justified. Where Dworkin stressed that distributions should be allowed to reflect people’s option luck but not their brute luck, all-luck egalitarians argue that this does not adequately reflect the luck egalitarian project. On the contrary, they maintain that justice requires redistribution of option luck inequalities as well. To see why such a view could be plausible, consider two people who both take a similar gamble, which has only a slight chance of turning out bad, but a rather big chance of a huge reward. One wins, the other does not. Even though it is clearly bad option luck on the disadvantaged part, the all-luck egalitarians express doubt that the traditional luck egalitarian verdict, considering such a disadvantage to be just, is problematic. Would it not be fair to claim that the disadvantaged of the two is so because of things he was not responsible for – bad luck? All-luck egalitarians recommend

\textsuperscript{143} The term is used by Segall, in his critique of the position, Segall, \textit{Health, Luck, and Justice}, 45. Segall writes All Luck Egalitarianisms (without the hyphen). The thesis follows Knight in putting a hyphen between ‘all’ and ‘luck’. The main reason for this is to avoid confusion between sentences describing everyone (all) belonging to the luck egalitarian school of thought and sentences describing those in this specific subgroup.

\textsuperscript{144}
compensation in the case just described, on reasons very familiar to the luck egalitarian literature, namely that such a distribution reflects differential luck. There have been several suggestions in the literature as to why we might want to adopt such a view.\(^\text{145}\)

Two distinct versions of such arguments will be presented here. Lippert-Rasmussen introduces a distinction between *gambles proper* and *quasi-gambles* to underscore why such redistribution could be required. In the latter gambles, the persons involved would have preferred the expected value of the gamble as opposed to risking the gamble. Proper gambles are like the gambles we know from casinos, race tracks and sports betting.\(^\text{146}\) The distinction purposely takes the edge of Dworkin’s original reason to place normative emphasis on the distinction between option luck and brute luck, namely that redistribution between winners and losers of gambles defeats the very purpose of such activity.\(^\text{147}\) Such an argument is less applicable to quasi-gambles. When redistributing among quasi-gamblers, nobody is asked to live a life they do not want; on the contrary, the individual’s risks are pooled and minimized. Pooling and minimizing risks each would prefer to live without, which are not at the heart of the activity at hand. In a recent contribution to the all-luck egalitarian literature Knight proposes a position which allows for even more redistribution. He argues that we are owed, on grounds of distributive justice, the expected value of our choices. This position also allows for redistribution to those whose proper gambles fare badly.\(^\text{148}\) The finer differences between these ver-


\(^{146}\) Lippert-Rasmussen, ‘Egalitarianism, Option Luck, and Responsibility,’ 555.


\(^{148}\) Knight, ‘Egalitarian Justice and Expected Value.’
sions of all-luck egalitarianism will not be examined here, but are mentioned in order to stress the heterogeneity in this school of thought.\textsuperscript{149}

Article Summary: Lader Held-egalitarismen Fanden Tage de Uansvarlige Sidste?\textsuperscript{150}

This article explores the strengths of all-luck egalitarianism in the context of the harshness objection. The critique points to people who end up much worse than others through their own risky choices. Williams argues that the harshness objection poses a trilemma to luck egalitarians.\textsuperscript{151} This means that of three specific concerns, freedom, sufficiency and liability, luck egalitarianism is only able to adhere to two and must sacrifice the third. Sacrificing freedom means limiting people’s freedom to take risks, sacrificing sufficiency means accepting harsh consequence and sacrificing liability means allowing cost displacement so that those who did not run the risk end up with parts of the cost.\textsuperscript{152}

It is sometimes noted that one advantage of all-luck egalitarianism over traditional luck egalitarianism is that it avoids the harshness objection because it (at least) allows for redistribution between the group of people who all took similar risks and where only some ended up badly.\textsuperscript{153} The article explores different ways in which luck egalitarians can deal with the critique without reference to values external to luck egalitarianism, and one prominent solution is the all-luck egalitarian one.\textsuperscript{154}

The article examines different luck egalitarian solutions to or strategies for dealing with the critique and the trilemma it represents for luck egalitarians. First it evaluates solutions which restrict freedom. It argues, due to the sheer number of such activities, that forbidding risky choices implies too loss of freedom. Alternatively, a mandatory individual insurance scheme involves the least restriction on freedom, since it essentially forbids a praxis that involves cost-displacement to others. If we let insurance premiums track people’s be-

\textsuperscript{149} For a critique of redistributin option luck inequalities, see Andrew Williams, ‘How Gifts and Gambles Preserve Justice,’ \textit{Economics and Philosophy} 29, no. 01 (March 2013): 65–85, doi:10.1017/S0266267113000084.


\textsuperscript{152} Ibid., 502.

\textsuperscript{153} Knight, ‘Egalitarian Justice and Expected Value,’ 1070–1071; Segall, \textit{Health, Luck, and Justice}, 46.

\textsuperscript{154} Albertsen, ‘Lader Held-Egalitarismen Fanden Tage de Uansvarlige Sidste?,’ 219.
haviour we would, in principle, have come a long way in accommodating all three concerns in the trilemma. However, the drawback of such a solution is that it also compromises the liability concern, since it involves redistribution among risk-takers, as those who have luck in their risky endeavours, who do not suffer any severe consequence from their risk-taking, must contribute to those who do not have such luck.

The final parts of the article discuss a solution which achieves the same without the need to restrict freedom. It ensures that the freedom concern is adhered to through taxing risky/unhealthy behaviour. This still involves redistribution among risk-takers, a breach of liability, but does not involve the same curtailment of freedom. The solution gives rise to the discussion about all-luck egalitarianism, as this position denies that such redistribution is bad from a luck egalitarian perspective. As such the article concludes that the change in how to understand the liability requirement constitutes one solution to the trilemma. Whether this comes at too high a cost would be the concern for those who are sceptical towards all-luck egalitarianism. On a further note putting this conclusion into perspective, it must be acknowledged that the article was written and published before the publication of Knight’s recent contribution to the literature. As such it could have shown more concern for different specifications of all-luck egalitarianism, especially because this also would bring forward the question which the article sidesteps somewhat – whether proper gambles can still bring about disadvantages which are a concern for justice.

Unjust Distributions or Unjust Inequalities

Another important discussion pertains to whether luck egalitarianism applies to distributions as such or if the distributive concerns of such theories only arise in the context of inequalities. The crucial difference between such views is that the latter position does not consider equalities as potentially problematic from the standpoint of justice. Segall has argued for such a view. While some authors have expressed views on luck egalitarianism which are in conflict with Segall’s view, there has been little specific discussion about which view to pre-

155 Knight, ‘Egalitarian Justice and Expected Value.’
This is unsatisfactory as the discussion surely holds relevance for the general debate about the most plausible understanding of luck egalitarianism. Throughout the thesis a formulation of luck egalitarianism as concerned with both inequalities and equalities is employed. Why this is to be preferred is the topic of one of the thesis’ articles.

Article Summary: Unjust Equalities (Co-authored with Søren Flinch Midtgaard)

This article engages with a specific view on luck egalitarianism proposed by Segall, according to which the theory only applies to inequalities. The article contributes to the literature regarding what constitutes the most plausible interpretation of luck egalitarianism as a theory of distributive justice. Furthermore, it is a part of that discussion which has only been sparsely addressed. In the article we identify four kinds of distributions, which differ in their shape and whether that shape reflects people’s exercises of responsibility:

(A) Non-arbitrary Equality: Equality reflecting people’s choices or equivalent exercises of Responsibility;
(B) Non-arbitrary Inequality: Inequality reflecting people’s choices or different exercises of responsibility;
(C) Arbitrary Equality: Equality reflecting something other than people’s choices or equivalent exercises of responsibility, say, differential brute luck;
(D) Arbitrary Inequality: Inequality reflecting something other than people’s choices or different exercises of responsibility, say, differential brute luck.

The difference between our position and Segall’s can be clarified by observing how they assess the above. Our position is a symmetrical view, holding that arbitrary inequality and arbitrary equalities should be evaluated in a similar fashion, and likewise for non-arbitrary inequalities and equalities. We thus treat distributions symmetrically based on whether they are arbitrary or not, with no concern for their shape. In contrast, Segall’s view is asymmetrical, evaluating only inequalities. We argue that the most plausible view is the former. We do this by elaborating Cohen’s idea of fairness and drawing on Kymlicka’s critique of Rawls. On this view it is just if people fare differently based on different exercises of responsibility. Segall shares this view on inequalities, but we submit that

159 Albertsen and Midtgaard, ‘Unjust Equalities.’
it has implications for equalities as well. The reason is apparent when we understand an arbitrary equality as a transformed non-arbitrary inequality. An unequal but just distribution which is transformed through redistribution (or luck) to an equal one offends the very principle that considered the unequal distribution just in the first place. Segall does not provide much in way of reasons why we should suspend with the principles leading us to evaluate the inequality as unjust, when the shape of a distribution changes to an equality.

After presenting our argument for the symmetrical view, we address two criticisms which could be mounted against it: That it is not as such an egalitarian view, drawing on Hurley’s conception of what it requires for a theory to be egalitarian; and that Segal’s view is more intuitively combined with a concern for basic needs. Regarding the first critique we argue that our position is indeed egalitarian, even by Hurley’s account. This is the case since it is egalitarian with respect to opportunities. Regarding the second critique we argue that whatever such a critique says about our view, it says nothing about its egalitarian credentials. Drawing on Cohen we argue that the discussion about what is the right egalitarian position cannot be settled by reference to non-egalitarian values. The article’s contribution is at a quite theoretical level. It contributes to our understanding of luck egalitarianism by addressing a distinction made by Segall, but disagrees with his conclusions in that regard.

The Question of Stakes

A development with quite some importance for the topic of this thesis has been suggested by Olsaretti. She has argued that a responsibility-sensitive theory like luck egalitarianism must have two distinct elements or questions, as she calls them. The former describes which factors we believe people to be responsible for. The latter specifies ‘what costs should attach to whatever fea-

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160 Strikingly, Segall even points to an unfair equality when presenting luck egalitarianism. In his criticism of Rawls he writes that ‘Rawls’ distributive principle would assign the same priority to a talented person who chooses to work as he would to an equally poor (however that is measured) person who is hardworking but simply lacks marketable natural talent.’ Segall notes that ‘luck egalitarians would want to say that this is unfair’, Segall, Health, Luck, and Justice, 10. He presents the case in a context where the thought is that when both are worse off than others, the luck egalitarian verdict to give priority to the person who is worse off through no fault of his own is more plausible than the Rawlsian. But interestingly, this means that in a two-person world, Segall’s asymmetrical view would not be able to assess the equal distribution between the persons as unjust.
tures constitute the justifiable grounds of responsibility.' This important observation means that simply concluding that a person is responsible for a disadvantage is not enough; we should also discuss what flows from this presence of responsibility. This is a necessary discussion because it is not at all straightforward. Olsaretti highlights how what flows from such a disadvantage depends on price structures, institutional setting and so forth. In her recent discussion of luck egalitarianism Stemplowska interestingly pursues a path much similar to Olsaretti's. Stemplowska argues that luck egalitarianism must include an opportunity principle 'stipulating what opportunities should be open to people.' This is related to the idea of stakes because it opens up the realm of possible institutional consequences of a given action.

All such considerations are especially important in the context of health and healthcare. This is the case because they show that even in cases where people are responsible (whatever we might take that to mean) for their own health disadvantage, we need to discuss how we should let that responsibility affect them. That is, which institutional measures we should introduce to ensure that the distributive upshot tracks people's exercises of responsibility. While none of the articles address this question specifically it plays a significant role in the thesis as a whole. Both Ethical Considerations and Tough luck and Tough Choices include discussions about which institutional measures should be introduced in the specific cases addressed in these articles. Frame-work and Personligt Ansvar both involve broader considerations about the relative strengths and weaknesses of different institutional approaches. The next section discusses the idea of personal responsibility in priority setting.

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163 Stemplowska, ‘Rescuing Luck Egalitarianism,’ 404.
167 Albertsen, ‘Brugerbetaling, Ventelister Og Afgifter: Personligt Ansvar for Egen Sundhed?’
Concluding Remarks on Luck Egalitarianism

The thesis have employs an understanding of luck egalitarianism, which asserts that distributions are just if, and only if, people’s comparative positions reflect their comparative exercises of responsibility. Such a formulation is in important ways different from the canonical statement asserting that it is in itself bad if some people are worse off than others through no fault or choice of theirs. The differences between those ways of describing the luck egalitarian positon have been evaluated in the literature, though for at least one of them the discussion has been brief. That pertains to the question regarding whether luck egalitarians are concerned with all distributions, or only inequalities. This interpretation of luck egalitarianism was recently brought forth by Segall, and in the above his view is criticised with the purpose of arguing that luck egalitarianism applies to all distributions. This is a more plausible reading of luck egalitarianism, which is both more consistent and on reflection not vulnerable to some objections which Segall raises towards such a view. Another theoretical development pertained to the role of morally good choices, and the extent to which luck egalitarians can justify compensation for such. It was argued that luck egalitarians can offer such compensation, when the disadvantage in question came about while (attempting to) offset an unchosen disadvantage for others. As stated earlier, even though the article presents how this idea can be incorporated into formulations of luck egalitarianism it isn’t employed throughout the thesis. The reason for this is that it could create unnecessary confusion, and that it is not relevant for the cases discussed there, as they do not involve the morally good choices. Finally it should be mentioned that the above section presents two further ideas, which are important in the rest of the thesis. One is that there is a number of ways in which we could make sure that people’s relative position reflects their exercises of responsibility. The different institutional responses available are important for the discussion ahead. The other last thing to mention is the all-luck egalitarian position which has been introduced and discussed, a position which will be a reference point at later stages of this thesis.
Having presented luck egalitarianism as a theory of distributive justice, this chapter takes a closer look at one of the issues which arise in the context of applying such a theory to health. This is done by discussing a concept of increased prominence in the literature on distributive justice and priority-setting in health, namely personal responsibility for one’s own health. Wikler remarked that for such a discussion to be of interest, personal responsibility for health must mean something ‘more profound than that people will usually be healthier if they try to take better care of themselves.’

This section gives a very brief introduction to historical views on people’s responsibilities regarding their own health before turning to a more modern approach, which asks whether and to what extent personal responsibility should matter in priority-setting in the context of health. Discussing the relation between priority-setting and personal responsibility sets aside discussions of our responsibilities for the health of others or in relation to one’s professional duties. The discussion is based on an evaluation of two prominent proposals which have been raised as alternatives to a luck egalitarian approach. Both alternatives are rejected as unattractive. Towards the end of the section, a preliminary luck egalitarian view on priority-setting is presented.

Even in the context of personal responsibility for self-affecting actions, the idea of personal responsibility in health has a long and varied history. From the first recorded beliefs that human action could improve or protect one’s health came also the idea that one had a duty towards oneself to do so. One conception of personal responsibility in health could be that we have a duty to ourselves to preserve ourselves and our health. The Greeks famously considered health as a matter of balance between four different humors. This balance, according to common convention, could be affected both by one’s own behaviour and by one’s surroundings. Reisler notes that the Greeks ‘placed great emphasis on the effect of life’s activities on the illnesses that one got.’

In a similar fashion Roman philosopher Galen focused on personal hygiene and considered it blameworthy behaviour for a person to fall sick through negligence of one’s own health. Where such ancient philosophers considered

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170 Ibid.
negligence in health as failing oneself, the concern in the middle-ages was quite different. The failure to take care of oneself was not only a matter of having failed oneself, it was also a failure in the eyes of God (and thus towards God).

More recently the idea of personal responsibility has been transformed to incorporate the idea that we fail others if we bring bad health upon ourselves because our poor health puts costs on others. Knowles famously warned that ‘one man’s freedom in health is another man’s shackles in taxes and insurance premiums.’ According to Knowles, we owe it to others to take care of our health. While the above description is very condensed, it shows that even within discussions about personal responsibility for one’s own health the reasons for why we should care morally are different. This thesis connects with the discussion about personal responsibility in health by exploring two relations which are connected: How the presence or absence of personal responsibility affects our evaluation of health distributions; and how the presence or absence of personal responsibility affects prioritization in a health context. Here the key question is whether people who are responsible for their lower level of health should receive lower priority. Giving lower priority is understood as a broad notion covering instances where people are treated less (or not at all), at a higher price or asked to wait longer. It also covers situations where public health initiatives or research projects related to diseases are preferred over others.

In contrast to such thoughts many maintain that personal responsibility should only play a minor role (if any at all) in our evaluation of health distributions and prioritization of resources. Alongside discussions about individual responsibility in relation to health, some point instead towards a social responsibility in health. Note that those who emphasize society’s responsibility for individuals’ health do not necessarily deny that individuals have some responsibility; they do, however, emphasize the role of the state in improving people’s health and leave only a small role (if any) for individual responsibility in priority

171 Ibid., 10.
Much discussion about social and individual responsibility in health concerns where to draw the line between them, where the responsibilities of the state end and conversely, those of the individual begin. After this brief introduction to the theoretical landscape of the debate on personal responsibility in health, we now turn to a specific discussion of two prominent proposals. Each proposal has been presented as an alternative to luck egalitarianism, and each of these proposals are evaluated in two of the articles constituting this thesis.

Competing Accounts on Personal Responsibility and Priority Setting

The thesis addresses two prominent theories on the role of personal responsibility for personal health; one is presented by Feiring, and the other by Vansteenkiste, Devooght, and Schokkaert. Both approaches leave some role for individual responsibility, but proposes their approaches to viable alternatives to luck egalitarianism.

Feiring takes her starting point in the common notion that we are allowed to take into account the expected benefit from treatments when allocating healthcare resources. In her discussion of life-style diseases (especially obesity), she argues that we are not allowed to take people’s past behaviour into account. We should, however, give priority to those who will commit to a lifestyle change which is likely to increase the benefit of treatment.

Under the assumption that we are dealing with genuine choices, Vansteenkiste, Devooght and Schokkaert argue that we should grant fresh starts to the regretful, i.e., those who come to regret their past preferences and choices in health should be compensated by justice. Their ideal solution is to introduce a tax so that everyone contributes to those who later come to regret their health behaviour. They present their argument through a case where a population lives through time periods, but part of the population comes to regret their unhealthy choices in the first period. As their past choices are a hindrance to real-

178 Feiring, ‘Lifestyle, Responsibility and Justice.’
179 An idea also explored by Brown, ‘If We Value Individual Responsibility, Which Policies Should We Favour?’
izing present preferences, compensation is required according to the authors’ position.

Article Summary: Feiring’s Concept of Forward-Looking Responsibility: A Dead End for Responsibility in Healthcare

The article makes three distinct points in relation to Feiring’s article. The first is an elaboration, rather than a critique, of Feiring’s position. It points out that the universe of cases to which Feiring’s position is applicable is much larger than she explicitly acknowledges. Feiring discusses cases which can be related to lifestyle and where a lifestyle change can improve the benefits from treatment, but as the article shows, only the latter is a necessary condition for applying Feiring’s reasoning. Thus people should be asked to change their lifestyle when it will increase the benefit of treatment, regardless of whether their lifestyle could have caused the medical need in the first place.

Next, the article presents two criticisms. The first criticism addresses Feiring’s unwillingness to take past behaviour into account when prioritizing resources and claims that viewed in conjunction with her willingness to take future behaviour into account this saddles her with an implausible view on responsibility. This is illustrated by evoking Scanlon’s classic case of toxic waste removal, where a person ignores warnings and exposes himself to toxics evaporating into the air. According to Feiring, we cannot let this count against the person, but must treat him if he commits to a lifestyle change of avoiding exposure in the future. Now, consider a second situation of waste removal; also this time warnings are properly issued and the person ignores them again. Feiring, claims that this is vastly different from the first situation, but it is really hard to see why. A more plausible view on responsibility would take into account how hard or costly something is to avoid, rather than its chronological order.

The second criticism addresses only how Feiring treats those who do not fulfil their commitment to a lifestyle change. It argues that the solution to which she is seemingly committed, namely giving them lower priority should a future need arise, is inattentive to the fact that such failure could have many explanations. It further submits that any efforts to clarify the extent to which people are responsible for such failures would leave Feiring’s position vulnerable to criticisms she levels against luck egalitarian approaches (such as asking for shameful revelations). Feiring’s position is thus seemingly open to the critique.

that for those who fail in the lifestyle change they committed to, it offers little and it ignores the extent to which people’s ability to adjust their lifestyle is influenced by their social circumstances. Quite surprisingly, this makes Feiring’s position less forgiving than the luck egalitarian in instances where only the luck egalitarian account would allow disregarding people’s failure to follow through on a promised lifestyle change if they are not responsible for such failure.

The discussion of Feiring’s account is mainly a negative contribution in the sense that it offers little in the way of an alternative. It remains relevant to the subject of this thesis to evaluate and reject one prominent way of using personal responsibility in priority setting. Not least because Feiring considers her position an alternative to luck egalitarianism in health.

Article Summary: Fresh Starts for Unhealthy Behaviour: Should we provide them and who should pay?  

This article engages with the arguments of Vandenkiste, Devooght and Schokkaert. It notes that the authors present their initial scenario under a number of assumptions and features, all of which are seemingly important for reaching their conclusion. The article selects three particularly interesting features: the relative sizes of the groups; limiting the discussion to two periods; and the fact that resources must be spent equally in each period. The article evaluates the proposal by going through the scenario relaxing each assumption. The purpose is to test the plausibility of the (re)distributions which the authors must consider just. It is argued that for each feature, the position presented by the authors loses much of its plausibility when the assumptions are relaxed. The main critique is that when the assumptions are relaxed it becomes clearer that there is a tension in the authors’ position which they should acknowledge explicitly, especially since the tension seems to be between values which they appear to endorse. The central problem is that the resources distributed to those who regret past choices limit the resources available for the future choices of those who do not regret their past choices. The questionable fairness of such transactions is brought to the fore by relaxing the mentioned features of the authors’ initial scenario. By increasing the amount of people regretting, allowing for a second regret or for some big spenders regretting their past

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181 Albertsen. ‘Fresh Starts for Unhealthy Behaviour. Should We Provide Them and Who Should Pay?’
choices, the idea of granting fresh starts is put to a stern test. This happens because it shows the relation between the amount of resources requiring compensation and the way in which this limits future opportunities of those who do not regret their past choices. At some point it becomes difficult to maintain that an approach respecting opportunities, as the authors claim that their position is, should keep endorsing the distributive upshot subsidizing the regretful. The discussion of this view is mainly important because it presents itself as a viable alternative to luck egalitarianism.

Concluding remarks on Personal Responsibility in Health

The literature on personal responsibility in health is broad. The contribution delivered in the above should mostly be understood as a negative contribution. Examining, and rejecting, two interesting alternatives which are critical of the luck egalitarian approach to health, only takes us some way in clarifying how we should thing about luck egalitarianism in this regard. Discussing Feiring's view means engaging with a prominent argument for why past choices should not matter in priority-setting, while allowing for another role for personal responsibility. The article argued that this view commits Feiring to a strange and implausible view on responsibility, relying on a distinction between past and future choices which seems hard to sustain. Regarding how Feiring dealt with 'future choices' it were raised as reason to be critical that her position may not be attentive enough towards the plurality of reasons for why people can fail to fulfil their contracts. In discussion of the fresh start approach the argument highlighted an interesting tension in the position, between providing opportunities to the regretful and the cost acquiring to others as a consequence of that. It was argued that the fresh start approach is too inattentive to the consequences for others in supplying fresh starts for the regretful.

Such contributions are negative, in that they involve the rejection of alternatives to luck egalitarianism. But they do not bring us that much closer to what it is luck egalitarians are committed to regarding the role of personal responsibility. Building on the approach to luck egalitarianism presented in the previous chapter, luck egalitarians must hold that all else being equal, distributions of health should reflect people's exercises of responsibility. This means that a person, who is responsible for his health disadvantage, should be given lower priority than those who are not. Such a claim is hardly theoretical controversial, in the sense that it merely recounts the luck egalitarian ideas in a context of health. While some may still resist such implications (for non-luck egalitarian
reasons) it should be noted that it is a somewhat modest claim. It does not in-
clude a metaphysical theory of responsibility, and thus presents no conditions
which must be fulfilled for people to be responsible. Thus, it does not assert
whether people in general or a particular group is responsible for their health
disadvantages. In this thesis such questions are set aside. But the formulation
opens up for discussions of how we are to hold people responsible. Lower pri-
ority denotes situations where a person’s interests are given lower consider-
ation than that of another person in the context of health. This means that there
isn’t a fixed answer to what lower priority means, that it can be context-
dependent and that it can be given in a number of ways. The next section
turns to how we are to understand and evaluate the role of responsibility just
presented.
Chapter 7:
Luck Egalitarianism in Health

This section discusses luck egalitarian approaches to health. It presents the existing literature and offers an extensive summary of the thesis’ contributions to the topic of applying luck egalitarian to health. The summary of the exiting literature points towards ambiguities and problematic features of the existing literature. This helps to highlight some of the questions to which my own approach provides answers. Two contributions from the existing literature on luck egalitarianism in health are highlighted: Segall’s contribution and Capellen and Norheim’s.\(^{182}\) While they are not the only approaches they are widely discussed and the most comprehensive.\(^{183}\)

Arneson writes that we should acknowledge the difference between discussion of principles and discussion of policies.\(^{184}\) As already noted, there is a difference between endorsing responsibility-sensitive principles and endorsing (seemingly) responsibility-sensitive policies. Arneson notes several different reasons why the luck egalitarian might not want to introduce such policies. First, it could be too difficult or too costly to assess whether individuals are responsible for their condition. Second, we may conclude upon examination that it is not sensible to ascribe people responsibility for a given condition due to the influence of circumstance on their choices. Third, Arneson considers what we should take to be concerns which are not luck egalitarian such as the absolute levels of advantage people of those subject to responsibility-sensitive policies.\(^{185}\) Reflecting on such considerations might suggest that the luck egalitarian implications in health are less different when it comes to suggested policies


\(^{184}\) Arneson, ‘Luck Egalitarianism - A Primer,’ 31.

\(^{185}\) Ibid.
from the alternatives than sometimes depicted. Arneson suggests that we look for areas where concerns such as the above ‘cancel each other out, weight decisively in one direction or do not rise to the level of significance’\textsuperscript{186}. While it cannot be argued that health in general is an area which fulfils these requirements, it can be maintained that the discussion conducted in this thesis keeps Arneson’s suggestion in mind. This is the case because it engages with the concerns he raises not only in the abstract, but also in specific areas of health. And arguably it shows that our reasoning, even understood as our luck egalitarian reasoning, differs vastly across these areas.

Cappelen and Norheim

One very prominent attempt to apply the luck egalitarian ideals to a health context has been developed by Cappelen and Norheim.\textsuperscript{187} This section presents their approach and points to some difficulties and ambiguities within it.

The authors claim that their proposal it is responsibility-sensitive, but not vulnerable to prominent concerns regarding responsibility-sensitive policies in health.\textsuperscript{188} Their approach consists of two distinct institutional measures, each needed to realize their luck egalitarian, or as they prefer: liberal egalitarian, ambitions.\textsuperscript{189} One element involves the taxation of a distinct subset of risky choices, while the other element allows for out-of-pocket-payment on some diseases. Unfortunately the literature has done little to disentangle these two elements, often discussing only the first.\textsuperscript{190} The thought driving the presentation here is that a more comprehensive engagement with the authors’ position will help move the debate forward.\textsuperscript{191} According to Cappelen and Norheim, the nature of a disease determines which institutional measures we ought to introduce. They distinguish between two subsets of disease and introduce two distinct policy measures applicable to those, both seemingly responsibility-
sensitive. Consider first the element in their approach which has received the least attention. It applies to diseases for which all of the following conditions are met:

- Not life-threatening
- Do not limit the use of political rights or exercise of fundamental capabilities
- Cost of treatment low compared to income

Some of the diseases fulfilling those criteria will have been brought about completely or partly as a result of individual behaviour, while others result from factors outside the person’s control. The authors argue that the optimal policy would be to charge actual cost co-payment for those who get such diseases through their own negligence, with the purpose of offering full cover to those who get such diseases for reasons outside their control\(^\text{193}\). They illustrate their approach by comparing two groups with different diseases. In one group all are sick for reasons unrelated to behaviour, in the other it’s a mix of self-inflicted illness and illness from circumstance. Under the assumption that we cannot tell who is responsible in the second group, the authors maintain that there is still would favour to charge more from this group than the first\(^\text{193}\). This does not exhaust the role for personal responsibility. Let’s examine the second element in the authors’ position.

We can easily imagine diseases where individual choice may contribute to people’s risk of acquiring a low level for health, but where one or more of the conditions outlined above are not met. That would be all diseases which are life-threatening, expensive to treat or diminish people’s political capabilities, but where individual choices have contributed to the individuals poor health. For such diseases the first responsibility-sensitive element of Capellen and Nordheim’s approach should not be introduced. The relevant question thus is if there is room for responsibility-sensitive policies even in relation to such diseases.

The authors argue that there is. They propose that in such instances we should not hold people responsible for the consequences of their choices (the disease), but rather for the risky choices they’ve made. As their institutional measure for doing this, they propose taxing potentially unhealthy activities to

\(^{192}\) Capellen and Norheim, ‘Responsibility, Fairness and Rationing in Health Care,’ 315.

\(^{193}\) Ibid., 316.

\(^{194}\) Ibid., 317. Though acknowledging that how much to charge that group might be left to political deliberation and depend on the inequality aversion of society.
raise money for treating those who fall ill as a consequence of such choices. Each choice will be taxed the same, and no one suffering from such diseases will be further charged for treatment. According to the authors this idea has a number of advantages compared to introducing responsibility for consequences, co-payment, for this group of diseases as well. The advantage of taxing choices and treating everyone for free is that it does not let people die from their diseases, suffer severe economic hardship or allow the illness to diminish people’s fundamental capabilities. All diseases in this category have, by definition, the potential to do exactly that, but Capellen and Norheim’s proposal ensures that this does not transpire.

They offer another reason, related to luck, for introducing a tax on those choices. The authors argue that there is an unfairness in people being unequally well off after having made the same choices from a starting point of equality of opportunities. The unfairness, they submit, arises because the difference between the persons is due to luck. The liberal egalitarian commitments to eliminate differences in luck, they maintain, would lead us to the view that differences stemming from similar choices should be subject to redistribution. In that regard they suggest that if the outcome of people’s choices were not affected by luck, that is free from influence from other factors, then holding people responsible for their choices and holding people responsible for their circumstances would amount to the same thing. Having presented the two distinct elements in the approach from Capellen and Norheim along with their arguments in favour of them, three critical points will be made in that regard. The first pertains to the role of luck in their theory. Even though they clearly consider their position to be a luck egalitarian one, the view they take on luck, calling for redistribution between the lucky and unlucky takers of risky health choices, clearly comes close to the position which was earlier in the thesis introduced under the heading of all-luck egalitarianism. This is not as such problematic, but shows that rather than provide an account of what luck egalitarianism in health means they provide one which accepts a not controversial adjustment of luck egalitarianism. A second thing to note regarding

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195 Cappelen and Norheim, ‘Responsibility in Health Care,’ 479.
196 Ibid.
197 Ibid.
198 Ibid., 478–479.
199 I critically discuss their contribution at two points in my thesis, some of the remarks and would like to elaborate on those criticisms here. Albertsen, ‘Who Should Get the Liver? Luck Egalitarianism and Transplant Decisions’; Albertsen, ‘Brugerbetaling, Ventelister Og Afgifter: Personligt Ansvar for Egen Sundhed?’
200 Cappelen and Norheim, ‘Responsibility in Health Care,’ 478.
their approach is that it may not be as complete as they portray it. This becomes clear if we apply it to specific diseases. Consider, as will be discussed later, the question of allocating transplant livers among potential transplant recipients. Here we are clearly dealing with a life-threatening disease, and Cappelen and Norheim’s approach would recommend taxing unhealthy behaviour (i.e. consumption of alcohol) and then offering treatment to everyone for free. But as the primary shortage here is organs, raising extra funds does not make it possible to treat everyone. Their approach thus seems incomplete in that it is unable to deal with cases where the shortage is not monetary. The third remark has to do with the role of responsibility. According to the authors, if we hold people responsible for the consequences of their choices rather than their choices, this would imply in the context of healthcare ‘that individuals should be refused treatment (or collectively financed treatment).’ This brings forth another related discussion, namely how we choose which institutional policies to introduce as our responsibility-sensitive measures. The authors’ position includes two different answers to this. One is that we prefer one way of holding people responsible over another based on the characteristics of the context, but the other suggests that we do so based on responsibility considerations. One could submit, that this does not exhaust our possibilities, a narrowness which can be related to the authors more narrow view on the ways in which we can hold people responsible, one which includes only co-payment and extent of treatment. Their reasons for when we should prefer each of their suggested ways of holding people responsible is instructive. The former interpretation is supported by the criteria they use for differentiation between diseases, the latter by the weight they ascribe to the idea that when luck affects an outcome, we should prefer only to hold people responsible for their choices. The whole idea of holding people responsible for their choices actually points to a final concern with the position at hand, namely that it ends up holding people responsible for all such health choices (through taxing them). This is done without an attempt of incorporating the context in which these choices are made, thus healthcare is provided with little attention to influences of our health lying outside the traditional healthcare system. While Cappelen and Norheim’s contribution is surely important, it has its shortfalls. It is not able to address important distributive questions; it is too narrow in its interpretation of the ways in which we can hold people responsible; and somewhat ambiguous on how we choose between such schemes. The final concern is that the

\[201\text{ Ibid.}\]
\[202\text{ Ibid., 476.}\]
approach may be too narrow, seemingly without much concern for influences on health lying beyond the healthcare system.

Shlomi Segall

One of the most influential accounts of luck egalitarianism in health has been given by Segall.\textsuperscript{203} He presents a view on luck egalitarianism which differs somewhat from the depiction of that theoretical tradition given so far. His view involves two developments which have received quite a lot of attention. Segall asserts that: 'It is unjust for individuals to be worse off than others due to outcomes that it would have been unreasonable to expect them to avoid.'\textsuperscript{204} Compared to accounts of luck egalitarianism already discussed there are two notable changes here. One of them has been discussed already, namely whether luck egalitarianism applies to distributions or only to inequalities; the other is that Segall prefers the concept of reasonable avoidability to responsibility. Segall argues that we should ‘Replace responsible with a more plausible understanding of what constitutes a case of brute luck.’\textsuperscript{205} Brute luck should be understood as ‘the outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not avoid, in the case of omissions).’\textsuperscript{206} This implies a change of emphasis from whether a person is responsible to questions about how the community/state could reasonably have expected the person to have acted.\textsuperscript{207} In order to evaluate whether it is just to let people bear the burden of their choice, we further need to ask whether we could reasonably have expected them to avoid making such a choice. This seemingly moves the position closer to a social/political conception of responsibility, rather than a metaphysical. Segall believes his version to be a fine-tuned and stronger version of luck egalitarianism.\textsuperscript{208}

Segall engages with the harshness objection to luck egalitarianism and argues that luck egalitarians should answer this in a pluralist fashion, evoking that

\textsuperscript{204} Segall, \textit{Health, Luck, and Justice}, 13.
\textsuperscript{205} Ibid., 20. For a critique of this element, see: Martin Marchman Andersen, ‘Reasonable Avoidability, Responsibility and Lifestyle Diseases,’ \textit{Ethical Perspectives}, no. 2 (2012). For Segall’s answer, see: Segall, ‘Health, Luck, and Justice Revisited.’
\textsuperscript{206} Segall, \textit{Health, Luck, and Justice}, 20.
\textsuperscript{207} It has been suggested that this is not at odds with classic luck egalitarianism, Carl Knight, ‘Inequality, Avoidability, and Healthcare,’ \textit{Iyyun} 60 (2011): 72–88.
\textsuperscript{208} Segall, \textit{Health, Luck, and Justice}, 14.
there are other values than distributive justice. The value Segall emphasizes is basic needs. When people’s basic needs are unmet concerns besides distributive justice arise and offer us reasons to compensate those with unmet needs. We can distinguish between four kinds of disadvantages:

A: Below basic needs, which we could not reasonably have expected the person to avoid
B: Below basic needs, which we could reasonably have expected the person to avoid
C: Above basic needs, which we could not reasonably have expected the person to avoid
D: Above basic needs, which we could reasonably have expected the person to avoid

In Segall’s interpretation compensation can be offered to A and B on the grounds that they are below basic needs, while A and C are both eligible for luck egalitarian compensation on the grounds that they are worse off through choices we could not reasonably expect them to avoid. This brings up an interesting question about how to prioritize between different needs. The first thing to note is that an unfulfilled basic need is the most important concern. So that whenever we compare a person with an unfulfilled basic need with a person whose basic needs are met, the former takes priority over the latter. When people’s needs are equal but above the basic needs threshold, those who could not reasonably have avoided the disadvantage is given priority. For equal needs below the threshold of basic needs Segall seems ambiguous as to whether he prefers to give priority to the person who is not responsible, or introduce a weighted lottery favouring that person. This would imply the following rankings of priority of needs, where > denotes should be given priority over:

A/B > C/D
A>B (perhaps by weighted lottery)
C>D

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209 Ibid., 65, 72.
210 Ibid., 69.
211 Ibid., 78.
212 Ibid., 70; Segall, ‘Health, Luck, and Justice Revisited.’
After this brief presentation of Segall’s luck egalitarianism in health, some doubts and ambiguities in his position will be raised. One is that we could doubt whether basic needs always triumphs, and furthermore doubt that when considering two persons below basic needs we should allow the luck of the draw to determine who should receive our health (under severe scarcity). Another ambiguity is that Segall doesn’t really address how we are to hold people responsible. Segall discusses very little how the luck egalitarian principles could be implemented, but considers the same form of taxation as Capellen and Norheim suggest. Following from the lack of discussion over such alternatives, Segall does not offer much regarding how we should choose between different ways of implementing his proposal.

Questions Raised by the Above

The above invites several discussions. One is a thorough discussion of the different ways in which we can hold people responsible. This aspect is underdeveloped in both of the examined approaches, and an evaluation of the strength and weakness of such different institutional measures is lacking. Neither approach discusses specific areas to which the approach can be applied, so the amount of variation which may arise through such a discussion is potentially underappreciated. Capellen and Norheim’s approach raises the discussion of initiatives lying outside the realm of healthcare, and Segall’s the discussion of whether an absolute priority to basic needs is always the right weighting of different concerns.

Luck Egalitarianism in Health: a Pluralist, Integrationist and Plausible Alternative

This section addresses the details of the thesis’ contributions through short presentations of the articles which constitute this part of the thesis. First two general articles are presented, followed by three which address more specific health-related areas to which luck egalitarianism can be applied. The contribution has two levels of abstraction. One consist of two articles addressing

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213 One ambiguity is Segall’s treatment elsewhere, where Segall maintains that the severity of the medical condition is ‘a tiebreaker between those who were equally prudent in looking after their health.’ Segall, ‘Luck Prioritarian Justice in Health,’ 263. At least some specification is needed regarding whether this applies both below and above the threshold of unfulfilled basic needs.

214 Segall, Health, Luck, and Justice, 78.
general questions of luck egalitarianism in health, the other discusses specific health areas and the distributive concerns which arises in that regard.

Article Summary: A Framework for Luck Egalitarianism in Health and Healthcare (Co-authored with Carl Knight)²¹⁵

In this article we explore some important theoretical choices which any attempt to apply luck egalitarianism to a context of health and healthcare faces. The article presents those choices and reasons for preferring some answers over others, evaluates important critiques and discusses a number of things which should be considered if and when the application of luck egalitarianism to health and healthcare is to have practical implications. In approaching these questions the article sidesteps questions about what the correct view of luck egalitarianism is, and instead turns to questions which have received too little systematic attention in the literature on luck egalitarianism in health. We pose these as theoretical choices which any attempt to apply luck egalitarianism to health must address.

The first theoretical choice considered is whether it is the distributions of health or healthcare we are concerned about. We submit that the most plausible construal of luck egalitarianism in this context should be concerned with the broader category of health. We thus lend ourselves to the recurrent finding that many things outside of the healthcare system influence people’s health, and we would presumably want our luck egalitarian theory to be able to account for the badness of this (if any). The second theoretical choice pertains to the relationship between our health-related concerns and other concerns of justice. Here the distinction is drawn between isolationist theories and integrationist theories. The former are only concerned with health-related distributions, with health in relation with other concerns of justice. We argue for an integrationist interpretation, based on the intuitive answers this gives in cases where people are disadvantaged in other spheres of life. The third theoretical choice has to do with whether we should be pluralist or monists, whether our application of luck egalitarianism to health should care only for distributive justice or also be open to competing concerns. We submit that pluralism offers the most promising routes, something which most luck egalitarians also believe.

In addressing three prominent critiques, the article briefly shows how the theoretical choices just examine matters for luck egalitarianism’s ability to deal with those critiques. In discussing the harshness objection it is noted that a pluralist approach evoking sufficientarian or prioritarian concerns could be a
plausible route for luck egalitarians. In discussing the critique from shameful revelation it is argued that welfarist luck egalitarians can evoke a concern for the welfare loss of those not responsible for their disadvantage associated with assessing people’s responsibility as a reason not to endorse policies which require such revelations. Furthermore it is noted how a pluralist luck egalitarian approach can harbour a concern for those under such assessment. The third critique examined is proposed by Daniels, who argues that luck egalitarians cannot endorse public health measures aimed at encouraging healthier choices. The thought is that as long as a distribution reflects people’s exercises of responsibility, luck egalitarians can’t care if people make healthy or unhealthy choices. Again the pluralism point and prioritarian concerns are evoked as possible luck egalitarian retorts. On a broader note it might be added that the objection draws on a general feature of luck egalitarianism, namely its concern for people’s relative rather than absolute position. In the final sections of the article some implications are discussed. We address whether the presence of scarcity suspends luck egalitarian intuitions and argue that they do not. We address the issue of financing, concluding that whichever way of raising money we prefer is highly dependent on the nature of society (and the distributions of holdings within it). Finally the article asserts that how we are to hold people responsible depends on a number of factors (if they are indeed responsible).

The article thus presents some important theoretical choices faced by luck egalitarians in the context of health, and gives reasons for which answers we should prefer. It then shows how those theoretical choices have implications when we address prevalent criticisms and lists a number of things to pay attention to when applying luck egalitarianism in the current context.

Article Summary: Brugerbetaling, Ventelister Og Afgifter: Personligt Ansvar for Egen Sundhed?216

The article takes its starting point in two observations which have already been touched upon. One is Olsaretti’s observation that it is not at all clear what it means to hold people responsible — as was also explored in the framework article a number of institutional measures could serve that purpose. The other observation is that a number of criticisms are recurrently put forward against luck egalitarianism: that it overlooks the influence from social circumstances on

216 Albertsen, ‘Brugerbetaling, Ventelister og Afgifter: Personligt Ansvar for Egen Sundhed?’
people’s health, is too harsh on those who are responsible for their own bad health, and that it requires shameful revelation when assessing responsibility. The article discusses which of the responsibility-sensitive institutional measures proposed in and around the literature on luck egalitarianism in health are most successful in avoiding the common critiques. It does so under the assumption that we are dealing with a group of people who all need medical treatment, and where some, but not all, are responsible for this need and where we cannot easily know who belongs in which group. On this background six institutional measures are discussed in order to assess the extent to which they are able to avoid the three critiques. The six measures are: denial of treatment, lowering quality of treatment, out-of-pocket payments, tax on risky behaviour, responsibility-sensitive waiting lists, and Feiring’s waiting list. The extent to which the article finds that the institutional measures are vulnerable to the respective critiques is indicated in the table below. The scale goes from very vulnerable, X; over somewhat vulnerable x to maybe vulnerable (x). Empty boxes signify that it is not vulnerable.

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Several conclusions are drawn, which are interesting both as a discussion of the strengths of these institutional measures, but also as more general observations regarding the luck egalitarian approach to health. One conclusion which arises from this discussion is that there is a trade-off between the concern for shameful revelation and the concern for being certain of the extent to which people are responsible for their plight. The more thoroughly we seek to avoid the latter, the more likely we are to require the former. Another conclusion is that denial of treatment strategies fares quite badly in avoiding the critiques, but also has another independent drawback in their insistence on letting people’s behaviour result in bad health and not some other form disadvantage. In the discussion of monetary solutions it is observed that the attractiveness of such a solution is highly context-dependent, where a situation with an unjust distribution of monetary means would make us very unlikely to prefer such a system over a waiting list system. The final observation would be that where
the above presentation of the examined views gives the impression that Feiring’s model and Cappelen and Norheim’s model are most successful, this success comes at a price. As argued elsewhere, it is also somewhat far removed from luck egalitarianism. From such general considerations about important objections to luck egalitarianism in health, we turn to more specific discussions about its application. That our preference for institutional measures varies with the context makes it necessary to discuss luck egalitarianism in more specific contexts. The next articles summarized here takes up this task, discussing luck egalitarianism over a wide range of specific health topics.

Article Summary Personal Responsibility in Oral Health: Ethical Considerations

The article discusses personal responsibility in the context of oral health from a slightly broader perspective than other articles in the thesis, but provides some general insights which informed many of the discussions in the thesis which are also applicable to broader health discussions. The article examines different reasons, such as fairness, reciprocity and desert, why we could want to introduce personal responsibility in the context of oral health. It then goes on to acknowledge that introducing measures of personal responsibility faces an important ambiguity. One way of expressing it is as a distinction between a person being responsible for a given level of health and holding a person responsible. This translates into a discussion about which measures to introduce when holding people responsible for their bad health. Another complication is that assessing whether people are responsible for their health level must take into account the social and natural circumstances in which they make their choices. Finally, the article considers that ideas focusing on personal responsibility can also commit us to introduce broader social measures to counteract or mitigate the influences from circumstances on people’s health. This final thought is elaborated in later articles.


This article argues for the relevance of luck egalitarianism in the context of oral health. Drawing on insights from the work in *Ethical Considerations*, it singles out two common sources of oral health disadvantages: periodontal disease and caries. Engaging with the existing literature on luck egalitarianism and health it identifies two kinds of reasons why we could compensate people with bad (oral) health. One kind of reason arises in situations where people’s disadvantage does not reflect their exercise of responsibility. Such compensation follows from the standard formulation of luck egalitarianism, but the literature suggests other reasons to compensate, which apply in situations where the oral health disadvantage is indeed a consequence of people’s exercises of responsibility: In the literature three such suggestions are identified that the disadvantages bring people in a situation where basic needs are not met, that they reflect choices which we could not reasonably expect people to avoid making or that they reflect quasi gambles. The purpose of the article is to discuss the extent to which such reasons are applicable in the present context and to propose institutional measures which reflect this discussion.

The article first sets out to identify elements and factors which are likely barriers for people in their attempt to protect their own health. For both types of diseases a number of factors are identified in a review of the existing medical literature. Regarding caries, natural factors such as Sjögren’s and other diseases reducing the production of saliva in the mouth is among the prominent causes for caries. As for behavioural factors, both tooth brushing and sugar intake are important factors according to the literature. For periodontal disease, tooth brushing is an important behavioural factor. Socioeconomic position and the presence other diseases (such as diabetes) serve as social and natural barriers to staying healthy. The paper argues that responsibility-sensitive policies based on such evidence would have to introduce a system which seeks to discount the extent to which such factors make it harder for some people than others to take care of their oral health. Inspired by the work of Roemer, a model for a waiting list is put forward along with some form of co-payment for treatment. Afterwards the article examines additional reasons from the literature for not letting people fare worse even when they are responsible. In that context it is argued that basic needs seem not to be a relevant concern here, that we can in fact reasonably expect people to take care of their own health, but that the idea of quasi-gambles could justify some redistribution among risk-

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220 Albertsen, ‘Luck Egalitarianism, Social Determinants and Public Health Ethics.’
takers. The latter is, as we know, an option for luck egalitarians of the all-luck egalitarian persuasion.

Apart from arguing that luck egalitarianism delivers plausible answers in relation to oral health, the article offers several more general lessons. Taking up a discussion which is quite different from those spectacular examples often discussed in relation to luck egalitarianism in health offers insights. It tells us something about the strength of luck egalitarianism in less dramatic circumstances than it is usually considered, for example that the focus in many discussions, that of denying treatment, is not the only plausible luck egalitarian answer.\(^\text{221}\) But the discussion also highlights that many potential barriers exist, making it harder for some to take care of their oral health.

**Article Summary: Who Should Get the Liver? Luck Egalitarianism and Transplant Decisions\(^\text{222}\)**

This article applies luck egalitarianism to the allocation of livers for transplant. It contributes to the existing literature on priority-setting in this context, and more broadly to the discussion about luck egalitarianism in health. The article presents a principled luck egalitarian case for such differentiation, but argues that luck egalitarianism might also have a lot to say about things outside the allocation process. The article also explores different ways of making the allocation process more sensitive to responsibility.

It reaches its conclusions by discussing reasons to differentiate between those whose need for a new liver is related to their own behaviour and those whose need is not. Furthermore it explores what responsibility-sensitive policies might look like in this context and evaluates them in light of prevalent criticisms of luck egalitarianism in health. Compared to the existing literature on differentiation, the luck egalitarian approach offers three distinct advantages. It provides a clearer conception of what fairness means. It allows for individual assessment of people’s responsibility for their need. Finally it provides reasons to mitigate the influences from circumstances inside and outside of the allocation process. The same principle of fairness which can endorse giving lower priority to those who are responsible for their transplant need can endorse measures to mitigate the extent to which unchosen circumstances (such as much poverty) affect the distribution of transplant needs outside the transplant systems and the arbitrary factors (such as geography) inside it.

\(^{221}\) A point also stressed elsewhere, Albertsen, ‘Brugerbetaling, Ventelister Og Afgifter: Personligt Ansvar for Egen Sundhed?’

\(^{222}\) Albertsen, ‘Who Should Get the Liver? Luck Egalitarianism and Transplant Decisions.’
While such conclusions may be of general interest to those working on distributive justice in health, it should also be noted that applying luck egalitarianism to this specific area brings forth some lessons which are highly relevant for the project of applying luck egalitarianism in this context. It engages with a quite severe scarcity, where the consequences for those not treated are very serious. Discussing luck egalitarianism in this context shows at least three important things: While luck egalitarianism might be compatible with a wide range of institutional responses, here denial of treatment is a likely consequence if some are responsible for their transplant need; scarcity seemingly does not suspend our luck egalitarian principles. Our principles are applicable also in this situation of scarcity; finally, prevalent criticism of luck egalitarianism in health such as the harshness critique and the problem of shameful revelations were not considered decisive against the application of luck egalitarian in this context.

Article Summary: Luck Egalitarianism, Social Determinants and Public Health Initiatives

This article engages with recurrent criticisms of approaches which apply luck egalitarianism to health and healthcare. While expressed in different ways and with different emphasis, the core criticism is that it is in one way or another problematic for luck egalitarianism that people’s health is deeply affected by social determinants in health. The idea of social determinants comes from the epidemiological literature and expresses the idea that people’s health is very much influenced by where they live, their employment conditions and general socioeconomic status. As the critique comes in many variants, the paper addresses five versions which can be located in the literature. It concludes, however, that none of these can uphold the rejection of luck egalitarianism in health which they are often taken to imply. The critiques come in three overall categories, which argue that luck egalitarianism should be rejected because 1) social circumstances undermine people’s responsibility for their own health; 2) luck egalitarianism would introduce policies which would negatively affect those who are already worse off; 3) the focus on personal responsibility distracts from the important task of rectifying socioeconomic influences.

The first kind of critique takes two forms in the literature. One is in effect the claim that people are never responsible for their own health, the other that social circumstances make it hard to disentangle choices which people are responsible for from choices which people are not responsible for. Against the

223 Albertsen, ‘Luck Egalitarianism, Social Determinants and Public Health Ethics.’
first variant the article argues that the critique is actually stating a specific view regarding the extent to which people are responsible for their health (namely, that they are not). Even if this claim is true, the article argues, it isn’t as such problematic for luck egalitarians. This is the case, and the critics’ own formulations of luck egalitarianism show so as well, because luck egalitarianism says something about how we should evaluate distributions based on such presence or absence of responsibility. Luck egalitarianism is not committed to the claim that people are responsible. Regarding the second version of this critique, the article argues that several solutions are available for the luck egalitarians. One would be to undertake the project of disentangling genuine choices from choices which are not, for example by evoking some of the ideas presented by Roemer. When this is not an option, luck egalitarians should submit that their answer is in principle clear, even if its practical consequences don’t amount to much. Finally luck egalitarian approaches can be defended by reference to pluralism, where a concern for other values makes us decide against introducing certain policies to lay bare whether people are responsible for their own bad health.

The important aspect of the critique as presented by Cavallero is that he claims that luck egalitarian health policies will have adverse effects on people who are already unjustly worse off in their socioeconomic circumstances. The discussion of the second critique puts forward an example to clarify the plausibility of the critique. The example disentangles unjust social circumstances from health behaviour and argues that only an isolationist interpretation of luck egalitarianism would recommend introducing responsibility-sensitive policies on that background. Such an interpretation of luck egalitarianism evaluates health in isolation from all other concerns of justice. An integrationist view which also takes such concerns into account would not reach such a conclusion. It is therefore not necessarily correct that luck egalitarianism as such would endorse those policies. Regarding the third critique, the article acknowledges that we should always be aware that our moral theories may be (mis)interpreted to serve political ends. This is not only true for luck egalitarianism. On the subject of whether luck egalitarianism can endorse collective solutions and public policies to do away with social influences on people’s health, the article answers in the affirmative. The evaluation of the critiques as the literature presents them concludes that social determinants are not detrimental to the project of applying luck egalitarianism in health. On the contrary, luck egalitarianism is more than able to support and endorse collective measures to do away with the social circumstances which adversely affect people’s health. Moreover, it holds that justice would require us to undertake that task. Expanding on one of the conclusions on distribution of livers, the article takes head on
the pressing issue on luck egalitarianism’s ability to address the wide array of social influences on people’s health which are located beyond the traditional sphere of healthcare. In doing so, it evaluates and rejects a recurrent and prominent criticism of luck egalitarianism in health.

Article Summary: Rawlsian Justice and Palliative Care (co-authored with Carl Knight)\textsuperscript{224}

In this article we address an important area of healthcare, but deliver a contribution which is mainly negative. We show that Daniels’ prominent theory of distributive justice in health is insufficient when addressed to palliative care. Palliative care, which can both be pain relief when treatment is futile or pain relief given in combination with treatment, is becoming an important part of modern healthcare delivery. We argue that Daniels’ approach is unable to provide us with reasons to offer such care. We deliver two distinct arguments for this. Both draw on an important idea in Daniels’ work, namely that we should care about health distributions because health disadvantages limit people’s opportunities. The first argument shows that such an approach to health is inattentive to the pain associated with treatment. We compare two illnesses which do the same for people’s opportunities but differ in the amount of pain they inflict. We argue that it reflects badly on Daniels’ account that it cannot prefer the less painful one. Our next criticism addresses situations where treatment is futile. While Daniels argues that his position provides service for such cases as well, it is hard to see how that claim can be maintained. When people’s opportunities cannot be bettered, a position claiming that restoring opportunity is the purpose of care cannot offer care. Even if Daniels could perhaps rely on charity (i.e. non-justice based compensation) to provide in such cases, this seems unsatisfactory and Daniels’ own claim that we owe care in such instances concurs with that verdict. We also consider whether Daniels could introduce other values or concerns to deal with these cases, and submit that while maybe he could it surely raises the questions as to why we started out with a focus on opportunities in the first place.

The article points to a weakness in the Rawlsian approach, but one might also, going beyond the article’s content, reflect on how luck egalitarians would fare in this context. What can be said is that luck egalitarianism can disagree with the Rawlsian inattentiveness to welfare loss, and thus easier consider palliative care an integral part of discussions about healthcare provision.\textsuperscript{225}

\textsuperscript{224} Carl Knight and Andreas Albertsen, ‘Rawlsian Justice and Palliative Care,’ n.d.

\textsuperscript{225} Some might think that luck egalitarians who believe that resources are the currency of justice, e.g., Rawkoski, cannot embrace the last statement. After all, the inatten-
Concluding Remarks on Luck Egalitarianism in Health

The above summary of articles constitutes the thesis’ contribution to the literature on luck egalitarianism in health. It has provided a general framework for luck egalitarianism in health, which is concerned with distributions of health, and which is integrationist and pluralist. What applying such a framework amounts to is highly context dependent, and some patterns emerged in the discussion of important objections to luck egalitarianism in health. One is the apparent trade-off between avoiding shameful revelation and avoiding wrongful assessments of responsibility. Another is that we should be concerned with the general distribution of financial resources in society in relation to introducing user payments. In the specific application of luck egalitarianism it has been argued that luck egalitarianism has plausible implications when applied to areas such as oral health, liver transplants and public health initiatives concerning social determinants in health. Those discussions indicate that there is a wide variety of ways in which luck egalitarianism can hold people responsible in the context of health, i.e., that denying treatment is not the only option available. But when we seemingly cannot hold people responsible without introducing policies which come very close to denying treatment, at least in the liver case, this did not come across as implausible. The discussions also showed the need to go beyond healthcare and address larger issues affecting people’s health, something it has been argued that luck egalitarianism is well-equipped to do.

_Ittiveness to pain was an important part of Cohen’s critique of Dworkin’s position, see: Cohen, ‘On the Currency of Egalitarian Justice,’ 917–918. It has been suggested, however, that lack of identification with what causes the pain could supply luck egalitarians with reasons for compensation for luck egalitarians of the resourcist persuasion, Knight and Stemplowska, ‘Responsibility and Distributive Justice: An Introduction.’ _8.
Chapter 8: Conclusion

This final section takes stock and summarizes the most important contributions in the thesis. It sets out to formulate both specific contributions and those which are more easily identified when considering the thesis as a whole. Utilizing the structure of the summary so far the concluding section presents the contributions in three subsections: One about theoretical contributions to the luck egalitarian literature, one about the role of responsibility in health and one about luck egalitarianism in health.

Luck Egalitarianism

The thesis employs an understanding of luck egalitarianism, which asserts that distributions are just if, and only if, people’s comparative positions reflect their comparative exercises of responsibility. This formulation varies in several ways from the formulation often taken to express luck egalitarian commitments, namely the principle of equality stating that it is in itself bad if some people are worse off than others through no fault or choice of theirs. While many of the differences between those formulations of luck egalitarianism have been discussed in the literature, one difference was only recently brought to the fore by Segall. That specific discussion pertains to whether the luck egalitarian principles apply only to inequalities or to all distributions, including equalities. The thesis contributes to the discussion by providing an argument for why we should evaluate both equalities and inequalities in a symmetrical fashion. Contrary to Segall, it argues that we should apply our principles across all distributions. This is a more plausible reading of luck egalitarianism, which is both more consistent and on reflection not vulnerable to some of Segall’s objections to such a view.

Another theoretical development pertained to the role of morally good choices and the extent to which luck egalitarians can justify compensation for such. It thus deals with compensation to those who are responsible for being worse off than others, but whose disadvantage came about as a consequence of them doing good for others. In that regard it was argued that there is a plausible case for luck egalitarian compensation when the disadvantage in ques-

\[226\] Albertsen and Midtgaard, ‘Unjust Equalities.’
\[227\] Thaysen and Albertsen, ‘When Bad Things Happen to Good People: Luck Egalitarianism and Justified Choices.’
tion came about while the person (attempted to) offset an unchosen disadvantage for others. This discussion draws upon the idea that what matters morally is not, upon consideration, whether a disadvantage was chosen by the disadvantaged agent but how it came into the world in the first place (that is, whether it was created or merely redistributed by the choice in question). Even though the choice in question changes the distribution of a disadvantage it did not bring it about, something which we argue luck egalitarians should consider important when evaluating disadvantages. As stated earlier, even though we present how this idea can be incorporated into formulations of luck egalitarianism it isn’t employed through the thesis. The reason is that it could create unnecessary confusion and that it is not relevant for the cases discussed there, as they do not involve choices which are morally good in the stated sense.

Responsibility in Health

The literature on personal responsibility in health is quite broad and varied. The thesis delivers a negative contribution to this specific part of the literature, as it criticises recent views regarding responsibility as a factor in priority setting. The thesis critically engages with Feiring’s idea of forward-looking responsibility and the fresh start approach proposed by Vandenkiste, Devooght and Schokskaert, both of which present their views as alternatives to a luck egalitarian approach to health.

Feiring’s approach was considered inadequate and unable to sustain the strong conclusion that past choices should not matter. The article argued that this view commits Feiring to a strange and implausible view on responsibility. The fresh start approach was discussed with the purpose of highlighting a distinct tension in the proposed framework, namely that the commitment to offer a fresh start to those who regret their past choices comes at the price of reducing the opportunities of others. When the implicit assumptions of the authors’ view were relaxed, the view looks much less plausible.

However, criticizing and rejecting alternative views does not bring us that much closer to what it is luck egalitarians are committed to regarding the role of personal responsibility. Briefly put, the idea employed in the thesis is that luck egalitarians, qua the formulation of it endorsed above must hold that all else being equal, distributions of health should reflect people’s exercises of responsibility. This means that a person who is responsible for his health disadvantage should be given lower priority than a person who is not. Such a claim is hardly theoretically controversial, in the sense that it merely recounts the luck egalitarian ideas in a context of health. It is controversial in another sense, as it conflicts with alternative views on responsibility in health (and those who be-
lieve that responsibility should never be given any weight). But even so, it is also a somewhat modest claim. It does not include a metaphysical theory of responsibility and thus presents no conditions which must be fulfilled for them to be responsible. As a consequence it does not assert whether people in general or specific groups are in a real world context responsible for their health disadvantages. In this thesis such questions are set aside. But another question is left out in this formulation of the role of responsibility: What does it mean to give lower priority? Here an open-ended and broad notion of priority is employed. Lower priority denotes situations where one person’s interests are given lower consideration than another person’s interests in the context of health. This means that there is no fixed answer to what lower priority means, that it can be context-dependent and that it can be given in a number of ways. Lower priority could thus be given by offering prevention or treatment which is more expensive, of lower quality or at a later time than treatment given to others. Or it can be given by allocating funds to research in some form of illness rather than others.

Luck Egalitarianism in Health

In presenting the Framework it has been argued that luck egalitarianism in health should focus on distributions of health (rather than healthcare), be integrationist in the way it relates its evaluations of such distributions to other concerns of distributive justice, and that it should be pluralistic, keeping in mind other values than distributive justice. The thesis attempted a discussion of various ways of holding people responsible, concluding that how vulnerable they are to prevalent criticisms depends a lot on the context. This discussion also identified an apparent trade-off between the risk of overlooking social/natural influences on people’s health and asking them to reveal shameful information. Having described and developed such a framework matters when approaching more specific areas.

The thesis discussed the merits of luck egalitarianism in three different health settings: oral health,228 liver transplants229 and public health initiatives related to the social determinants of health.230 After conducting such a discussion it seems reasonable to uphold that luck egalitarianism yields plausible implications in each of these areas. But rather than merely saying something

230 Albertsen, ‘Luck Egalitarianism, Social Determinants and Public Health Ethics.’
about the plausibility of luck egalitarianism as an approach to health, each
discussion also brings forth some important general lessons on luck egalitarian-
ism in this context.

The discussion of oral health shows us that not all areas of health are spec-
tacular life or death cases, and that denying treatment is an odd solution
which luck egalitarians need not endorse as the upshot of their theoretical
contributions. In addition, the discussion highlights that even in the less dra-
matic context, and in one which is concerned with behaviours many may con-
sider quite easy to adhere to in order to protect one’s health, many social and
natural influences on people’s ability to do so remain. Something a responsibil-
ity sensitive approach to oral health should not overlook.

The discussion of liver allocation adds to the points just made. While deny-
ing treatment need not be the only option, this does not mean that luck egal-
tarians cannot end up in a situation where this must be included in the discus-
son. Under the prevailing conditions of scarcity in available transplant livers,
user-payment does not address the relevant scarcity, so tilting the waiting list
slightly in favour of those who are not responsible of their condition can mean
that a responsible person is denied treatment. Taking up the discussion in such
a context presses the luck egalitarian principles, as the harsh consequences
often envisioned by its critics seemingly arise here. It was argued that luck
egalitarians need not be embarrassed of those implications, as the harshness
arises not from luck egalitarian policies but rather from the scarcity of trans-
plant organs.

The discussion of liver allocation highlights another issue as well, namely
the different ways in which a distribution can be made more in accordance
with responsibility. This goes beyond the different options for holding those re-
sponsible who have brought their health disadvantage upon themselves. We
can and should also use the responsibility sensitive commitment to remove
factors influencing the distribution which people are not responsible for. This
applies both within the allocation process and without. Within, luck egalitarians
can be committed to remove or diminish the influence of allocation criteria for
which people are not responsible, geography could be considered an exam-
ple of this. Outside the allocation process initiatives to decrease the influence
from social factors on the distribution of transplant needs, should also be part
and parcel of the luck egalitarian commitments. Discussing initiatives clearly
outside the traditional sphere of healthcare provision lays out the foundation
for the third article on the application of luck egalitarianism, which deals with
public health initiatives and social determinants of health. Here a prevalent
criticism is recounted, evaluated and rejected. Contrary to the view often pre-
sented in the literature, luck egalitarianism is able to deal with the social de-
terminants in health. So even if it is the case that people's health is to a large extent influenced by where they live, whether they work and their socioeconomic status, this would not provide us reasons to reject the luck egalitarian theory of health.

The fourth area discussed is a bit different than the others, in that the contribution in relation to palliative care is mostly negative. The article describes the importance and relevance of the topic but mainly argues that the Rawlsian approach to health fares badly in this regard. In the summary it was suggested as a supplementary argument that luck egalitarianism fares seemingly better in that regard. Thus, we can move the discussion of luck egalitarianism in health forward by discussing a wide variety of specific areas of application.

The thesis has defended a view on luck egalitarianism in health, understood as asserting distributions are just, if, and only if people's comparative positions reflect their comparative exercises of responsibility. Such a position addresses the distribution of health between people, takes into account other distributive concerns in an integrationist fashion, and recalls that we should be pluralist about values balancing our views on distributive justice against other important values. While the thesis remains neutral regarding the correct view on responsibility, it notes and exploits the development in recent luck egalitarian literature that there is a plurality of ways in which we can make people's relative position reflect their exercises of responsibility. In the context of health this means that there are several possible institutional responses available to us. The debate is thus broadening beyond denying treatment.

If people are responsible, we must choose which measures it would be most plausible to introduce. In selecting such measures we should be aware that there is an apparent trade-off between the risk of overlooking social/natural influences on people's health and asking them to reveal shameful information. That the harsher the consequences the more likely we are to look for other solutions than denying treatment. But the scarcer the resources available the closer we are to introducing measures similar to denying treatment. The intuitive good sense it makes to allow people to exchange their health deficit to a monetary disadvantage versus our doubt that such may be unjustly distributed.

The discussions involve a second broadening of the discussion about luck egalitarianism in health. This is the need to go beyond the distribution of care. Not only, as implied by the framework in our theoretical discussions, but also in our possible policies as shown in the discussions of social determinants. While luck egalitarianism is likely to remain a controversial position in relation to health, the above should have gone a long way in redeeming luck egalitarianism as a plausible approach to evaluating health distributions and policies.


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English summary

This thesis engages with questions over what constitutes a just distribution of health. It does so by approaching the question from a luck egalitarian perspective. What follows is a brief summary of its most important conclusions. Luck egalitarianism is an influential theory of distributive justice, and one which is often referred to as responsibility-sensitive. One formulation of luck egalitarianism is that it asserts distributions to be just, if and only if, people's comparative positions reflect their exercises of responsibility. As a responsibility-sensitive theory of distributive justice, applying luck egalitarianism in the context of health connects firmly with the ongoing academic and political debate over the role of personal responsibility in health. The thesis contributes to our theoretical understanding of luck egalitarianism, the debates over personal responsibility in health and to the literature on luck egalitarianism in the context of health.

It does so through presenting an adjusted view on luck egalitarianism, which applies to all distributions, including equalities (as opposed to Segall's view). Furthermore the thesis argues that luck egalitarianism is able to offer compensation to people who are disadvantaged in their attempts to shoulder the unchosen disadvantages of others.

Regarding the role of personal responsibility, the thesis contributes to the existing literature through evaluating and criticizing two proposals in that regard. Feiring's idea that we should never take past actions into account is rejected, along with the idea proposed by Vandenkiste, Devooght and Schokkert that we should always provide people with a fresh start, if they genuinely regret their past preferences.

The thesis contributes to the literature on luck egalitarianism in health through a number of articles. Two of these are general discussions of the topic. One sets out a framework for luck egalitarianism in health arguing that it should be concerned with health distributions (as opposed to distributions of healthcare), integrationist, considering distributions of health alongside other distributive concerns and pluralist, taking into account concerns and values which are not distributive. In general terms different institutional arrangements aimed at holding people responsible for their unhealthy behaviour, concluding that which we prefer is likely to vary a lot over specific cases.

The rest of the thesis discusses luck egalitarianism in a number of different contexts, such as oral health, allocation of livers for transplant and public health initiatives. The idea is to test and evaluate luck egalitarianism through applying it to cases which varies a lot. In all areas luck egalitarianism provides
plausible answers, and each discussion holds valuable lessons for how we should understand luck egalitarianism in health. Discussing luck egalitarianism in relation to oral health, shows that not all such discussions need to be spectacular cases of life and death, furthermore it illustrates that we need not only to consider denying treatment as the only way of holding people responsible. Discussing the allocation of livers shows, that sometimes the real world offers us little choice, than to deal with cases where scarcity makes it so that denying treatment has severe consequences. Discussing such issues illustrates the luck egalitarian commitment to be responsibility-sensitive not only regarding the distribution of healthcare livers, but also in addressing unchosen features which influences the distributions of needs for livers (such as economic hardships). The final observation gives rise to a discussion of luck egalitarianism in relation to social determinants in health. One could say that the ability of luck egalitarianism to provide plausible answers in these contexts are dependent on two broadenings which are conducted in the thesis, both of which improves upon the existing literature. One is a broadening of the ways in which we can hold people responsible, moving beyond the discussion of denying treatment. The other broadening is one which takes the discussion beyond healthcare addressing social factors influencing the distribution of health. Recalling the initial luck egalitarian commitment to mitigate or eliminate the influence from unchosen factors on people’s relative positions, makes it necessary to discuss the extent to which such factors contribute to people’s poor health.

While luck egalitarianism is likely to remain a controversial position in relation to health, the above should have gone a long way in redeeming luck egalitarianism as a plausible approach to evaluating health distributions and policies.
Nærværende afhandling adresserer spørgsmålet om, hvad der udgør en retfærdig fordeling af sundhed. Spørgsmålet besvares ved at belyse denne problemstilling fra et held-egalitaristisk perspektiv. Det følgende præsenterer afhandlingens mest væsentlige bidrag. Held-egalitarismen er en indflydelsesrig teori om fordelingsmæssig retfærdighed, der ofte beskrives som ansvarssensitiv. Én formulering af denne tankegang er, at en fordeling er retfærdig, når, og kun når, personers relative positioner afspejler deres relative udøvelse af ansvar. Med dette fokus på personligt ansvar er applikeringen af held-egalitarismen i en sundhedskontekst relevant. Ikke mindst i lyst af de igangværende akademiske og politiske diskussioner af personligt ansvar i sundhed. Afhandlingen bidrager til vores teoretiske forståelse af held-egalitarismen, til debatter om personligt ansvar i prioriteringen af sundhedsressourcer og til eksisterende debatter om held-egalitarismens relevans og plausibilitet i en sundhedskontekst.

Dette gøres ved at præsentere en justeret held-egalitaristisk position og give grunde til, at vi bør foretage to specifikke justeringer af denne. Afhandlingen præsenterer et syn på held-egalitarismen, hvor denne anvendes på alle former for fordelinger, inklusive ligheder. Dette er i modstrid til Segalls udlægning. Ydermere argumenteres der for, at held-egalitarisme kan kompensere de særlige kategorier valgte ulemper, der opstår i forsøget på at skærme andre fra uvalgte ulemper.

I forhold til personligt ansvar i prioriteringen af sundhedsressourcer bidrager afhandlingen ved at vurdere og kritisere to positioner i den eksisterende litteratur. Det drejer sig om Feiring, der argumenterer for at vi aldrig må tage folks hidtidige valg ind som en faktor i fordelingen af ressourcer, og Vandenkiste, Devooght and Schokkaerts idé om, at vi bør give en ny start til dem, der genuint fortryder deres tidligere usunde livsstil.

Afhandlingen bidrager på flere måder til at udvikle en forståelse af heldegalitarisme i en sundhedskontekst. To af artiklerne der bidrager hertil gør dette på et generelt plan. Den ene præsenterer en overordnet ramme herfor. Der leveres argumenter for at en sådan tilgang skal være optaget af fordelinger af sundhed (frem for adgang til sundhedsydelser), bør være integrationistisk således at den også tager hensyn til andre fordelingsmæssige hensyn end sundhed, og at den bør være pluralistisk således at ikke-fordelingsmæssige hensyn også gives vægt. På et overordnet plan diskuteres forskellige måder at holde folk ansvarlige på, hvorpå det konkluderes at hvilke måder vi vil foretrække at gøre dette på afhænger meget af den konkrete kontekst.
Resten af afhandlingen diskuterer held-egalitarismen i en række forskellige sundhedskontekster. Dette inkluderer, tandsundhed, allokeringen af levere til transplantationer, og offentlige sundhedspolitikker. Tankegange bag disse diskussioner er vi kan lære noget om held-egalitarismen ved at diskutere den i vidt forskellige kontekster. I alle disse diskussioner konkluderer det, at held-egalitarismen leverer plausible svar. Men i hver af dem fremkommer der også mere generelle indsigter, der er relevante for vores syn på held-egalitarismen i en sundhedskontekst. Diskussionen af tandsundhed viser at der er mange måder at holde folk ansvarlige på og at vi i mange tilfælde ikke vil have grund til at foretrække den, hvor vi nægter at behandle folk der selv har bidraget til deres sygdom. Det er ikke mindst interessant fordi sådanne diskussioner fylder meget i litterature. Men diskussionen viser også at der findes sundhedsområder der er langt mindre spektakulære end litteraturen nogle gange giver indtryk af. Diskussionen af levere, hvor der er voldsomme konsekvenser for de der ikke tildeles en lever, viser dog, at det ikke altid er så udramatisk som tandsundhed. I disse diskussioner bliver det klart, at held-egalitarister nogen gange må være principielt villige til at nægte behandling. Men denne hårde konsekvens udspringer af organknapheden. Diskussionen viser også at vi ikke kun kan være ansvars sensitive i fordelingen af sundhedsressourcer, vi må også være principielt bekymrede over de mange faktorer folk givetvis ikke kan influere, der påvirker deres behov for at modtage en ny lever (fx socio-økonomiske forhold). Dette peger videre mod endnu et spørgsmål afhandlingen adresserer, nemlig offentlige sundhedspolitiker, der sigter mod at begrænse social ulighed i sundhed.

Afslutningsvist kan man sige at afhandlingens konklusion om at held-egalitarismen leverer plausible svar i en lang række sundhedskontekster i høj grad baserer sig på to forhold, hvor teorien gøres bredere end den hidtidige litteratur giver indtryk af. Det ene af disse forhold handler om at denne afhandling åbner op for at der er mange måder at holde folk ansvarlige på. Således rykker debatten videre end diskussionen om at nægte behandling til de, der selv har bidraget til deres egen sygdom. Det andet forhold vedrører at fokus bredes ud, således at ansvarsensitivitet også tolkes i den retning, hvor det kan bruges til at vurdere om faktorer ude i samfundet på uretfærdigvis bidrager til at nogen har ringere helbred end andre.

Selvom held-egalitarismen givetvis fortsat vil være en kontroversiel teori i en sundhedskontekst, så skulle ovenstående gerne have bidraget til at vi i højere grad betragter held-egalitarismen som en passibel teori hvorudfra vi kan vurdere fordelinger af sundhed og sundhedspolitikker.
Article 1.
When Bad Things Happen to Good People: Luck
Egalitarianism and Justified Choice
When Bad Things Happen to Good People: Luck Egalitarianism and Justified Choices

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According to luck egalitarianism it is no concern of justice when people are disadvantaged because of choices they are responsible for. This judgment seems counter-intuitive when the disadvantages stem from morally good choices. We argue that properly understood, luck egalitarianism does not yield this counter-intuitive judgment. As a matter of justice, luck egalitarianism should, in fact, compensate disadvantages stemming from a large subset of morally good choices. This is because luck egalitarianism should focus on how a disadvantage was created, rather than how the distribution of the disadvantage came about.

Keywords: Luck Egalitarianism; Justifications; Distributive Justice; Morally Good Actions; Vulnerability of Dependent Caretakers

Luck egalitarianism is an influential theory of distributive justice. It asserts that distributions are just if, and only if, people's comparable positions reflect nothing but their comparable exercises of responsibility. Thus, inequalities are just if they result from choices for which people are responsible, while unchosen inequalities are unjust and require compensation. In this way luck egalitarianism reconciles a commitment to egalitarianism with a concern for personal responsibility.

While it reflects principles many recognize as sound, luck egalitarianism has also received strong criticism. This paper considers Elizabeth Anderson's objection to luck egalitarianism, called the "vulnerability of dependent caretakers". Since being a stay-at-home parent is (often) a choice, luck egalitarians must deny compensation for the lack of income arising from such a choice. Anderson's criticism points to a general problem – that luck egalitarianism cannot offer compensation for those who are worse off through morally good choices – such as caring for those who cannot care for...

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1. The article has benefitted from comments from a number of people at the 'What do we owe to future generations?' workshop, in Aarhus, May 2014. We greatly appreciate the comments from Hugh Lazenby, David V. Axelsen, Søren Midtgaard, Kasper-Lippert Rasmussen, Rasmus Sommer Hansen, Juliana Bidadanure and Tim Meijers.

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themselves.\textsuperscript{6} This is counterintuitive and reflects badly on luck egalitarianism as a theory of distributive justice.

This paper investigates whether luck egalitarianism can compensate chosen disadvantages stemming from morally good acts. This is relevant for the compensation of firefighters, police officers and doctors, who all do good at the risk of their own health. We propose a revision of luck egalitarianism, which enables luck egalitarianism to provide such compensation, and we argue that this revision follows naturally from the luck egalitarian focus on people’s exercises of responsibility. In this we draw on insights from jurisprudence, especially the distinction between \textit{excuses} and \textit{justifications}.

First, we introduce the concepts of \textit{excuse} and \textit{justification} as they appear in the literature on jurisprudence, and elaborate on how they may be relevant for luck egalitarianism. Second, we show how introducing justifications into luck egalitarianism can justify luck egalitarian compensation for disadvantages stemming from morally good choices, while remaining responsibility sensitive.\textsuperscript{7} Third, we compare our account with previous luck egalitarian attempts to justify such compensation.\textsuperscript{8} Fourth, we consider some puzzling cases.

\section*{I. Justifications, Excuses, and Luck Egalitarianism}

As a theory of distributive justice, luck egalitarianism is concerned with assessing whether distributions are just or unjust. One prominent formulation of luck egalitarianism states that distributions are just, if and only if, people’s comparable positions reflect nothing but their comparable exercises of responsibility.\textsuperscript{9} This formulation of luck egalitarianism takes its starting point in the presence and absence of responsibility. When assessing whether it is just that a person is disadvantaged compared to another, we thus ask to which extent the difference between them reflects their exercises of responsibility. If this is not the case, luck egalitarians consider the disadvantage and the distribution unjust. There is an interesting parallel between the luck egalitarian idea of evaluating distribution based on people’s responsibility for their relative position and the jurisprudential assessment of the defendant’s responsibility for an alleged wrongdoing when deliberating which verdict is correct. To illustrate, suppose A breaks a window and enters a house, and is put on trial for this. The facts are clear. A is clearly causally responsible for breaking and entering. However, A can offer a defense. When A offers a defense, she concedes that

\begin{itemize}
  \item \textsuperscript{6} Ibid., 300.
  \item \textsuperscript{7} We focus on luck egalitarianism, but our account of compensation for morally good choices could probably be applied to other patterned theories of distribution, which hold that people should bear the cost of their own choices.
  \item \textsuperscript{9} Lippert-Rasmussen, “Arneson on Equality of Opportunity for Welfare.”
\end{itemize}
she is prima facie culpable of a criminal offense, but argues she is only prima facie culpable, and closer inspection will reveal that she is not all-things-considered culpable.\textsuperscript{10}

One line of defense is to argue that A is not responsible for her actions. This amounts to the claim that she is excused in her actions. By offering an excuse, A admits that what she did was bad, but denies that she is responsible for the deed. A could claim she was sleepwalking when she broke the window and entered the house. Thus, even though it was A who caused the window to break, she was not responsible for the damages, because she did not choose to break the window. Alternatively, A can offer a justification for her action by claiming that her actions were not wrong all-things-considered, though A accepts that she is responsible for committing the prima facie wrong deed. For instance, A could claim that while walking down the street she saw B, the owner of the house, lying lifeless on the floor, and A broke the window and entered the house in order to provide first aid to B. Thus, there is no bad act to hold A responsible for; since she broke the window for a morally worthy reason, she made a justified choice.

Excuses and justifications differ, because pleas of the first type deny that A was responsible for the criminal act, while pleas of the latter type accept that it was really A who was responsible for the deed, but deny that the deed was all-things-considered bad. But their consequences for the evaluation of legal liability are identical. A defendant whose actions are excused or justified can be acquitted of what would otherwise have been a criminal act. As mentioned, luck egalitarianism assesses whether a distribution is justified based on the presence/absence of responsibility. This is an important commonality with jurisprudence, where people in a similar fashion can be excused for their doings if they are not deemed to be responsible for them. Where the criminal trial evaluates which verdict is justified, luck egalitarianism assesses whether a distribution is justified.

If a person is disadvantaged, and we learn, upon assessing his situation, that he is not responsible for being disadvantaged, luck egalitarians consider compensation required by justice. Should we not in a similar fashion believe that compensation is called for if instead we learned that the choice he made was justified? It is important to stress the difference between a justified distribution and a justified choice. There is nothing tautological in claiming that compensating a disadvantage can be justified, because the disadvantage arose as the result of a justified choice, since compensation for the disadvantage could also have been justified because the person in question was not responsible (i.e. excused). While luck egalitarianism is very aware of the presence of absence of responsibility, there has been little attention of note regarding the role of justified choices in evaluating whether distributions are just. Our argument explores whether a justified choice can have the same role in our assessment of whether a distribution is justified as a lack of responsibility.

Imprudence on Trial
To see how justifications and excuses relate to luck egalitarianism, consider the hypothetical case of the prudential trial. In a society committed to luck egalitarianism, A has been run over by a car and needs expensive medical treatment. Reliable witnesses report that A seemingly just threw herself in front of a car and was run over. How can A argue that she is entitled to compensation on luck egalitarian grounds?

First, A can argue that a sudden gust of wind blew her of balance and made her step out in front of the truck. That would be to offer an excuse. In making such an excuse A is claiming that she is not responsible for throwing herself out in front of the truck. She is disadvantaged on grounds for which she is not responsible. This is a standard case of a disadvantage eligible for compensation according to luck egalitarianism. It is a fair assessment that in evaluating whether distributions are just, this line of thinking has dominated luck egalitarian thought. According to Dworkin, justice requires that people be compensated for “brute luck”, the result of risks that are not deliberate, but not for “option luck”, the result of risks that are chosen. His rationale seems precisely to be that the person disadvantaged due to brute luck has a valid excuse. Cohen argues in a similar fashion:

Brute luck is an enemy of just equality, and, since effects of genuine choice contrast with brute luck, genuine choice excuses otherwise unacceptable inequalities.

Statements focusing on the presence or absence of responsibility can be found elsewhere in the luck egalitarian literature. Analogies between luck egalitarianism and questions of jurisprudence are often evoked. Arneson likens the responsibility of an axe murderer for his murders to the responsibility of a victim of a chosen
disadvantage for his own imprudence. Temkin uses the example of a drunk driver who hits a pedestrian to explain the importance of personal responsibility. Stemplowska also considers the analogies between criminal justice and luck egalitarianism, and Knight discusses the relation thoroughly.

Since luck egalitarians routinely employ such analogies to jurisprudence, it is puzzling that it only allows one type of defense on the part of the disadvantaged who are charged with imprudence: the defense of excuse. This must surely give pause for thought in the current context. If luck egalitarians take only this route when assessing a distribution, they concede that they cannot offer compensation for those who are disadvantaged through morally good choices for which they are responsible. As noted, luck egalitarians evaluate the responsibility of people who have suffered disadvantage in much the same way as a court would evaluate the responsibility of a defendant for a criminal offense. However, unlike jurisprudence, which treats excused and justified choices similarly (i.e. as exculpatory), luck egalitarianism holds that in a just distribution only disadvantages caused by excused choices should be compensated, while disadvantages caused by justified choices should not. Is this the most plausible view?

Our answer is no. Treating disadvantages stemming from excused and justified choices as similar (i.e. as disadvantages for which compensation is required for a just distribution) will make luck egalitarianism more internally consistent, and will make luck egalitarianism yield more intuitive judgments about disadvantages stemming from morally good acts. In the next section we argue this position.

II. Two Kinds of Responsibility for Incurring Disadvantage
In this section we argue that luck egalitarianism is able to compensate disadvantages stemming from certain morally good choices, while remaining responsibility-sensitive. We first distinguish between agent-dependent and agent-independent disadvantages, then argue that luck egalitarianism requires compensation for agent-independent disadvantages, even when agents are responsible for incurring them, and that the agent-independent disadvantages, for which an agent is nevertheless responsible, are always the results of a certain type of morally good act, which we refer to as justified choice. According to us such choices are eligible for compensation.

Agent-independent disadvantages
Agent-independent disadvantages are disadvantages of which it is true that the disadvantage will occur to one (or more) member(s) of a certain group of people independently of any choice for which any member of this group is responsible. Formally a disadvantage, D, is agent-independent if, and only if:

A member of the group, G, is going to incur D regardless of any choice made by any member of G.

A person, P, is a member of G if and only if:

A) P cannot make a choice such that nobody in G incurs D

And either B) or C) is true:

B) P has the option of choosing such that P incurs (part of) D, while another member of group G (partially) avoids incurring D, because of that choice

C) P cannot avoid incurring D through her own actions.

Imagine the following case, Brick:

A brick falls towards a crowded street. We know it will hit someone. Suppose none of the people on the street are responsible for the brick falling, or could have foreseen that the brick would fall. If no one does anything Victim will be hit by the brick. Victim cannot avoid the brick through any choice of her own, but it is possible to give Victim a push so that she avoids the brick, but anyone who does that will be hit the brick herself.

Being hit by the falling brick is an agent-independent disadvantage. Victim and all the agents that could save her at the cost of being hit by the brick themselves form G. In Brick, we know the disadvantage will occur to someone who was not responsible for acting in such a way that a disadvantage would occur to someone, but we do not yet know who among the persons in the group will incur the disadvantage. Whether a disadvantage is agent-independent, is thus a question of the responsibility for the occurrence of a disadvantage prior to its distribution. Suppose one of the potential rescuers, Benefactor, pushes Victim away from the falling brick and as a result of doing so is hit herself. This disadvantage is agent-independent. Even though Benefactor has chosen to incur the disadvantage, she is not responsible for the fact that it would occur to someone; if Benefactor had done nothing Victim would have been hit. A member of G will incur a disadvantage no matter what any member of the group does, or could have done.

Depending on the disadvantage in question G can vary in size from a single person to all of humanity. If Victim through no fault of her own contracts bubonic plague and nobody can save Victim, then that is an agent-independent disadvantage, where G is restricted to a single person. In this case, Victim is a member of group G because she fulfils A) and C) and is not responsible for contracting bubonic plague, while nobody else fulfils B) or C). Conversely, if an apocalyptic asteroid is hurling towards Earth, and there is nothing humanity can do to stop it, all of humanity forms group G.

Who is not part of G? There are four categories of people. First, people who cannot incur the disadvantage are not part of G. Call them Bystanders. Suppose a Bystander is at the other end of the street and sees the brick hurling towards the crowd, but is too far away to do anything. Here, neither C) nor B) is satisfied. Second, people who can incur the disadvantage, but cannot alleviate the disadvantage of any member of G. Call them Endangered. Suppose Endangered’s neighbour contracts
bubonic plague, it is easy enough for Endangered to contract bubonic plague herself, but this will not remove the neighbour’s disadvantage. Again, neither C) nor B) is satisfied. Third, people who are responsible for the fact that somebody in G incurs a disadvantage. Call them Culpables. They are either responsible for the impending accident, or they could have saved Victim from being disadvantaged without being disadvantaged themselves. Imagine that the brick is hurling towards the crowded street because of a deliberately faulty construction and that the construction worker responsible for this is in the crowd. She is not part of G because A) is not fulfilled. She could have made a choice so nobody at all would have incurred the disadvantage.

Sometimes a disadvantage can be agent-dependent even though nobody is responsible for causing the event that creates the disadvantage. If P builds her house on top of an active volcano, and it is then destroyed by a fire when the volcano erupts, this is an agent-dependent disadvantage, because had P not built her house on top of the volcano, there would have been no disadvantage to anyone, which makes the disadvantage agent-dependent. The above reasoning also shows that avoidable must mean ‘avoidable at some point’ rather than ‘avoidable at any given point.’

Note, that compensating agent-independent disadvantages entails offering compensation in all the cases where standard luck egalitarianism would do so. Suppose Victim is hit by the falling brick. As per the example Victim could do nothing to avoid being hit by the brick. This is also an agent-independent disadvantage. Victim is a member of group G because A) and C) are true of Victim. The interesting part, however, is where the disadvantage is agent-independent, but P is responsible for incurring it. These are the cases where A) and B) hold true – as when Benefactor pushes Victim out of the way at the cost of being hurt herself. In such cases, standard luck egalitarianism would deny compensating the disadvantage. In the following, we shall argue that a consistent luck-egalitarianism should compensate agent-independent disadvantages even if they are chosen, and that such disadvantages constitute a category of justified choices, which contains an important subset of morally good acts.

Compensating Justified Choices

Return to the case of Brick. To set aside any considerations of efficiency, assume that Benefactor suffers exactly the same disadvantage that Victim would have suffered, had Benefactor done nothing, and that Benefactor knew this. Neither Benefactor nor Victim is responsible for the fact that a brick is hurling towards them. Thus, Benefactor has suffered a chosen, but agent-independent disadvantage.

Should luck egalitarianism compensate chosen, but agent-independent disadvantages? This depends on whether a just distribution requires holding people

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17 Henceforth, it is implied that holding agents responsible for creating or distributing disadvantage means holding them responsible as a matter of distributive justice. Sometimes we will want to hold agents responsible as a matter of retributive justice, without holding them responsible as a matter of distributive justice.
responsible for creating or for distributing disadvantages? If agents should only be held responsible for creating disadvantages, then Benefactor is entitled to compensation because she did not create a disadvantage, but merely distributed it from Victim to herself. If on the other hand, agents should be held responsible for distributing disadvantages, then Benefactor is not entitled to compensation because she is responsible for distributing the brick from Victim to herself. If agents should be held responsible for the creation of disadvantages, then it should not matter for luck egalitarianism whether a disadvantage is chosen, but whether it is agent-independent. Below we argue that this is the case.

Though we already believe that compensating Benefactor in Brick has considerable intuitive pull, we will try to strengthen our position through additional cases that elucidates whether it is the creation or the distribution of disadvantages that should matter for luck egalitarians. Imagine the following case, Money:

Instead of a brick it is now a bag full of money (in bills) that is hurling towards the street. Everybody accepts a peculiar version of Lockean acquisition, and the first person touched by the bag will come to own the money. From here the story proceeds like Brick, nobody on the street is responsible for creating the benefit, and if no one does anything, Victim will be hit by the bag and receive the money. However, Benefactor pushes Victim out of the way and thus comes to own the money.

Should Benefactor be allowed to keep the money? On our intuitions she should not, and we firmly believe many luck egalitarians would agree. Even though Benefactor is responsible for making a choice that led to her getting the money, it is still an amazing stroke of good luck that the money was falling to the ground near her, something she is in no way responsible for bringing about. Benefactor may be responsible for pushing and shoving hard enough to get the benefit, but the fact that somebody would accrue the benefit is independent of her actions. If one accepts that Benefactor should not be allowed to keep the money, one accepts that it is the creation, not the distribution, of disadvantages that luck egalitarianism should hold agents responsible for when assessing whether a given distribution is just. Since luck egalitarians treat advantages and disadvantages symmetrically, this leads to the conclusion that this also holds for disadvantages. Thus, seemingly one cannot consistently deny compensating Benefactor in Brick without conceding that Benefactor should be allowed to keep the money in Money. Consider next the following case, call it Redirection:

The same as Brick except now Benefactor cannot save Victim directly. Instead she is in a position to push Culpable, the construction worker who is responsible for constructing the building in such a shoddy way that the brick is now hurling towards a crowded street, into Victim in such a way that Victim is pushed out of the way and Culpable is hit by the brick instead.
Should Culpable be compensated? On our intuitions Culpable should not, because she seems clearly responsible, in the relevant sense, for the disadvantage.\textsuperscript{18} The thing is that Culpable is in fact \textit{not} responsible for the \textit{distribution} of the disadvantage to herself, so if we are right that a just distribution requires that Culpable is not compensated because she is responsible, this must be because she is responsible for \textit{creating} the disadvantage. Thus, if the reader shares our intuitions, then it must be the \textit{creation}, not the \textit{distribution} of disadvantage that people should be held responsible for. In turn, this means that one cannot both deny compensating Culpable in Redirection and deny Benefactor compensation in Brick.

Thus, if the reader shares our intuitions in Money and Redirection, she should also share our judgment in Brick, and when this is the case, the reader should accept that a just luck egalitarian distribution is one where agents are held responsible for creating disadvantages, not for distributing them, and that this means that the relevant distinction is between agent-dependent and agent-independent disadvantages, not between chosen and unchosen.

It is important to note that our argument is not an objection to luck egalitarianism, but rather a natural implication of the core idea of luck egalitarianism. The key emphasis is still on holding agents responsible for disadvantages they incur as a result of their own choices. We have merely pointed out that the relevant question in the assessment of responsibility for incurring a disadvantage arises earlier in the causal chain, namely at the point of the \textit{creation} of the disadvantage, which comes before its distribution. Thus, a just luck egalitarian distribution still reflects individual exercise of responsibility.

In many cases, agent-independent disadvantages will also be unchosen (and vice versa), there our view is indistinguishable from standard luck egalitarianism, but when they come apart, in cases like Brick, what matters is whether the disadvantage is agent-independent. Agent-independent, but chosen, disadvantages correspond to a subset of morally good acts. To see why, recall that to be an agent-independent, but chosen disadvantage, the disadvantage must be incurred in the reasonable belief\textsuperscript{19} that it would offset an agent-independent disadvantage. In most cases, rescuing someone from suffering an agent-independent disadvantage is a morally good act. However, not all morally good acts involve rescuing someone from suffering an agent-independent disadvantage.

First, some good acts will involve rescuing another from an agent-dependent disadvantage. An example could be Benefactor preventing Culpable from being hit by the brick and being hit herself. According to us Benefactor is not entitled to compensation, because just as for Culpable, the disadvantage she incurs will be agent-dependent. This is because Culpable is not part of group C, since she does not fulfil A).

\textsuperscript{18} We ask the reader to set aside the issue of whether Benefactor should be held criminally responsible for pushing Culpable into the falling brick. Both affirming and rejecting this is compatible with denying compensation to Culpable.

\textsuperscript{19} This is necessary to accommodate cases where Benefactor tries to save Victim, but fails because of unforeseeable factors. Henceforth “reasonable belief” will be implied.
Culpable could have acted in such a way that nobody would have suffered a disadvantage. As Culpable is not part of group G, but is about to suffer the disadvantage, the disadvantage is not agent-independent, because the main clause does not hold. Benefactor can act in such a way that no member of G will suffer the disadvantage, namely, by doing nothing and letting the brick hit Culpable, which in turn means that Benefactor is not part of G either. Thus, if Benefactor rescues Culpable to her own disadvantage, that disadvantage will be agent-dependent and not eligible for compensation. Second, some morally good acts will either not result in any disadvantage for Benefactor, or not offset any disadvantage for Victim. Successful heroic acts where Benefactor rescues Victim but escapes unscathed are examples of the first kind, as A) is not fulfilled. An example of the second kind is acts of kindness towards Victim on the part of Benefactor, where Victim is not even in danger of suffering an agent-independent disadvantage, and Benefactor does not offset any disadvantage. Thus, again A) is not fulfilled.

Thus, the chosen, but agent-independent disadvantages that luck egalitarians should compensate are disadvantages as a result of morally good acts that offset agent-independent disadvantages. There may be a case for compensating disadvantages incurred as a result of other morally good acts, but if so, they must either rest on an appeal to other values than justice or on a rejection of luck egalitarianism. We take no stance on this question; our contribution is to provide an argument to the effect that a consistent luck egalitarian can and must compensate disadvantages stemming from this particular subset of morally good acts. Arguing for such compensation corresponds to allowing the defense of justification to play a role in luck egalitarianism, since the argument for compensation is not based on a denial of responsibility for the choice, like the defense of excuse, or the standard luck egalitarian appeal to the distinction between chosen and unchosen, but rather to the particular reasons for making the disadvantageous choice, reasons which make it a justified choice. In light of our discussion, we suggest the following reformulation of luck egalitarianism:

A distribution is just if, and only if, people’s relative positions reflect nothing but their responsibility for creating advantages and disadvantages.

That is to say, all relative advantages and disadvantages of all agents are agent-dependent. This is a minor, but significant departure from the traditional focus on whether advantages and disadvantages were chosen, which includes (dis)advantages that agents are responsible for distributing as well as those they could be held responsible for creating.

Next we compare our argument for compensating disadvantages stemming from morally good choices with other luck egalitarian attempts to argue for the compensation of such disadvantages.

III. Other Accounts
Two luck egalitarian strategies for compensating disadvantages stemming from morally good choices have been employed in the literature. The first argues that
morally good choices are actually not choices that people are responsible for. In that line of thought people are eligible for compensation on luck egalitarian grounds, since they are not responsible for their disadvantage. The second strategy admits that agents might be responsible for disadvantages stemming from morally good choices, but nonetheless argues that we should adjust luck egalitarianism to offer compensation.\footnote{A third possible strategy is to bite the bullet and deny that luck egalitarians should compensate disadvantages stemming from morally good acts. We will not discuss this view here. Instead we note that this third option will be the fallback position if no plausible strategy for justifying luck egalitarian compensation for disadvantages stemming from morally good acts can be found.} In this section we compare those strategies with our appeal to compensation for agent-independent disadvantages, and argue that our solution has some clear advantages.

Considering Disadvantages Stemming from Morally Good Acts as Removing Responsibility

Consider first claims to the effect that those who incur disadvantage as a result of morally good choices are not responsible for doing so. Both Arneson and Temkin have hinted at this solution. Below we compare our view with theirs.

Arneson considers whether it is true that “if doing this [an action] were morally required, we might then view her choice as forced”,\footnote{Arneson, “Luck Egalitarianism – A Primer,” 35.} This is the claim that morally good choices are not choices we are responsible for in the relevant sense; the fact that we are morally obligated to act in a certain way undermines responsibility.\footnote{If determinism is true, compensation is required for disadvantages reflecting morally good choices. This would have nothing to do with the moral goodness of the choices, but rather reflect the fact that all choices are eligible for luck egalitarian compensation if determinism is true. See: Richard J. Arneson, “Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare,” Philosophy and Public Affairs 19, no. 2 (1990): 178–179; Cohen, “On the Currency of Egalitarian Justice,” 914–916; G. A. Cohen, “Expensive Tastes Ride Again.,” in Dworkin and His Critics : With Replies by Dworkin, ed. Justine Burley (Oxford: Blackwell, 2004), 19. Note that the critics present their cases as if these are choices for which we are responsible.} There are two differences between our view and the one hinted by Arneson.

First, our view is compatible with offering compensation for disadvantages incurred as a result of morally obligatory as well as supererogatory acts. Our account is able to compensate Benefactor, independently of whether he is morally obligated to save Victim in Brick, or it was a supererogatory act. Conversely the strategy Arneson considers is unable to compensate disadvantages acquired through supererogatory acts. The fact that a moral obligation removes responsibility for disadvantages acquired thereby does not provide any reason to compensate those who are worse off through their supererogatory acts, which by their very definition are good acts beyond the morally obligatory.\footnote{Kagan famously deny that such acts exists, see: Shelly Kagan, The Limits of Morality (Oxford [England]: Clarendon Press, 1991).} If it is a problem for luck egalitarianism that people who are disadvantaged through morally good choices are not eligible for compensation, then Arneson’s idea is unsatisfactory because it is the intuitively strongest cases for compensation, the disadvantaged heroes, who should not be
compensated on that account. The second difference is that our way of offering compensation to Benefactor is compatible with considering Benefactor responsible for incurring the disadvantage, in the sense that he is responsible for distributing it to himself. Arneson’s thought, in contrast, seems incompatible with holding Benefactor responsible. The problem is that this thought runs afoul of our general practices of praise and blame. Generally, we praise those who do good deeds. But since it does not make sense to praise people for doing what they were in effect forced to do, this practice is incompatible with not considering agents responsible for morally obligatory choices, and thus with Arneson’s argument for compensation of disadvantages incurred as a result of morally good actions. Arguing by reference to existing practices is vulnerable to the critique that this only shows that those practices should be revised. While this is a possible retort, we feel confident that few would be willing to revamp our existing practices of blame and praise, for a practice where we also praise (and blame!) people for their height and other unchosen traits. Our suggestion is compatible with compensating Benefactor, because she is not responsible for incurring the disadvantage in the sense that is relevant to luck egalitarian justice, since she did not create the disadvantage, while it is also compatible with praising Benefactor, because in another way she is responsible for his good deed, because she is responsible for distributing the disadvantage to herself. Unlike us, Arneson seems to suggest that agents should not be held responsible for morally obligatory acts in any sense, which enables him to offer compensation, but puts him at odds with the very meaning of “morally good”.

Temkin suggests a second way to connect compensation for morally good acts to luck egalitarianism. He writes that compensation could be warranted:

“[W]hen the worse-off are so because they chose to do their duty, or perhaps acted supererogatorily, in adverse circumstances not of their making.”

The claim stresses the circumstances of choice. Initially it fares better than the above view. Temkin is not committed to denying responsibility for the choice to be compensated tout court (thus praise is not misplaced) and his view is compatible with offering compensation to those who are worse off through supererogatory acts. The question remains however, whether Temkin’s position is compatible with providing compensation in all the relevant cases.

Consider a two person scenario, containing A and B; each person has five options, one of which is taking care of their sick mothers. A is better off and has 5 available options, of which the worst is the caring choice. B is not so well off option-wise and has 5 available options, the second best of which is the caring choice. Choosing to care has equal value for both. If only B chooses to care, he chose the morally good option and ends up worse than A. We might reasonably think that given his bad circumstances and the bad outcome he is owed compensation. However, he

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would also have been owed compensation if had he chosen to exercise some of his other options. If A chooses to care, while B pursues his best option, A will be worse off. But it is hard to see how this could be depicted as a consequence of the badness of his circumstances. Therefore, it is hard to see how Temkin can offer A compensation for the disadvantage he has incurred through his morally good act, unless Temkin holds that the mere presence of the option of caring turns the option-range into an unacceptable one. This line of thought thus seems to be drawing on the idea that whenever we are faced with a good act, we are not responsible for the choice we make. This would collapse the argument into the view from above, and is subject to the same objections. Thus, the kind of argument Temkin suggests seems not to be able to provide the compensation he believes it to.

So far, Temkin’s suggestion seems to differ from ours in much the same way that Arneson’s does. However, another crucial difference between our views and Temkin’s is that he seems to endorse a desert view, whereas our view as not of this kind. Temkin writes:

“Egalitarians needn’t object if a fully responsible criminal is worse off than a law-abiding citizen, even if the criminal craftily avoided capture, and so is only worse off because, through no fault or choice of his own a falling tree branch injured him.”

Thus, according to Temkin there needs to be no causal connection between the morally good act, and the disadvantage to be compensated. The mere fact that an agent has done a morally good act can potentially entitle him to be compensated for an unrelated disadvantage, for which the agent would not otherwise be eligible for compensation. On our view, conversely, there needs to be a causal connection between the morally good act and the compensated disadvantage. If Benefactor saves Victim from the falling brick, but avoids getting hit herself, and then later, through choices she is relevantly responsible for, acquires exactly the same head-trauma that she would have acquired if she had been hit by the falling brick, she will not be entitled to compensation regardless of her former virtuous behavior – at least not on luck egalitarian grounds.

Other Proposals
We now turn to proposals arguing for compensation for disadvantages stemming from morally good acts, while maintaining that people are responsible for these choices. Eyal argues that luck egalitarianism should be revised in the following manner:

“That someone incurs a disadvantage without having chosen culpably to risk incurring it is, in a central respect, unjust. If, however, that disadvantage results from that person’s own culpable choice to take that risk, then (barring prioritarian considerations) that disadvantage can remain perfectly just.

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“Culpable” choice is understood as a free and at least somewhat morally wrong choice.”

The universe of non-wrongful choices, which Eyal argues should be compensated, includes both morally permissible and morally good choices. There are two differences between Eyal’s account and ours. First, according to Eyal, disadvantages from culpable choices are the only ones which should not be compensated. While according to us neither disadvantages stemming from culpable nor from morally neutral (“innocent”) choices require compensation; only the subset of morally good choices we refer to as justified does. It seems to us that this difference favors our account. This is because unless Eyal wants to expand luck egalitarianism to be a theory of retributive as well as distributive justice, then Eyal’s account unacceptably reduces the scope of luck egalitarianism. Even though Eyal considers this, we would maintain that a large proportion of the criminal choices should presumably be treated differently than culpable, non-criminal choices. Instead of just refusing to compensate criminals for any disadvantages incurred as a result of their criminal acts, society imposes further disadvantages. This is problematic for Eyal, because it is unclear how luck egalitarianism can play any role in guiding our judgments about which further disadvantages should be imposed, and if luck egalitarianism cannot play a role here, then the scope of Eyal’s modified theory is reduced to culpable, but legal choices, which a rather small range of cases.

The second difference is that while our account, like Eyal’s, relies on an intuitive argument, our argument is clear about why compensation for disadvantages incurred as a result of certain morally good acts is compatible with, indeed required by, a consistent luck egalitarian theory. According to us agents are still responsible for incurring disadvantages, whether it is as a result of culpable, innocent or morally good actions. What we aim to show is that luck egalitarianism should only care about a certain kind of responsibility, namely responsibility for creating the disadvantage, and the intuitions we offer are meant to elucidate that. Conversely, an author more critical of luck egalitarianism could easily have presented Eyal’s cases as a counter-argument to luck egalitarianism, not a revision of it. If Eyal’s account is to justify a modified luck egalitarianism, we need an argument for why compensating for chosen disadvantages stemming from morally good choices is compatible with the core luck egalitarian intuitions. Without it we are left with a rather ad-hoc revision in face of hard cases.

Segall proposes that luck egalitarianism should be revised so we “Replace ‘responsibility’ with a more plausible understanding of what constitutes a case of brute luck”. Where brute luck should be understood as “the outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not avoid, in the case of omissions).” This implies that instead of caring about all choices, luck egalitarianism should focus on how the community/state can reasonably expect

30 Ibid., 17.
31 Segall, Health, Luck, and Justice, 20.
32 Ibid.
agents to act. According to Segall, reasonable expectations are connected to the idea that we cannot expect people to avoid actions that “agents generally have a vital interest in exercising, and/or society has a vital interest in having exercised.”

Segall’s account is quite unspecific, which makes it difficult to pinpoint exactly how our account differs, if at all. While Segall mostly makes plausible judgments based on this view, it is hard to see how he arrives at these conclusions. This is because it is not clear what makes expectations reasonable or unreasonable on Segall’s account. Suppose two persons who accept Segall’s account disagree over whether Mother Theresa should be compensated for wearing herself down while helping the poor, and try to settle their disagreement. Debating this, they will quickly arrive at the stage where one will say it was reasonable to expect Mother Theresa to take care of her health while helping the poor, while the other claims the opposite. The problem is that Segall has provided us with no tools for advancing the debate beyond this stage; we are left without much to go by when assessing whether an expectation is reasonable. Segall needs to say more about what carries the argumentative weight when deciding whether expectations are reasonable. That being said, Segall’s account is not necessarily incompatible with ours, and our suggestion could be seen as a fleshing out of Segall’s account.

Thus, our account differs from previous accounts by, first, being able to offer compensation for disadvantages incurred as a result of supererogatory acts, as well as morally obligatory ones, and providing a unified argument for why (most of) these acts should be compensated. Second, it is able to hold agents responsible for their morally good acts in one sense, making praise appropriate, while pointing at another sense in which the agents are not responsible, thus making compensation for disadvantages appropriate. Third, it elucidates how offering compensation for these chosen disadvantages is not at odds with, but flow naturally from a commitment to luck egalitarianism. We now move on to examine some puzzling cases, which can hopefully help flesh out and elucidate our view.

IV. Puzzling Cases
Traditionally two complex variants of justification have received attention in jurisprudence: unknown justification and putative justification. In relation to our discussion, an agent has an unknown justification for incurring a disadvantage when she prevents an agent-independent disadvantage without intending to, and an agent has a putative justification for incurring a disadvantage when she tries to prevent an agent-independent disadvantage but fails. In the following, we shall first examine our account in relation to unknown justification, second in relation to putative justification, and third we shall discuss compensation for unnecessarily costly good deeds.

34 Segall believes that she should not, Segall, Health, Luck, and Justice, 22, 24.
35 Duff “Answering for Crime”, pp. 271-284
Unknown justifications
Return again to Brick. Suppose that Benefactor does not intend to push Victim out of the way. Instead she is in a great hurry, and knowingly attempts to walk under the falling brick without being hit by it, because that will make her arrive at her destination slightly faster. However, Benefactor accidentally hits Victim with her shoulder, which pushes Victim out of her way and makes Benefactor get hit by the Brick.

Thus, Benefactor unintentionally rescues Victim, and has an unknown justification for incurring the disadvantage. Should Benefactor be compensated? Benefactor is not eligible for compensation. In effect, Benefactor was lucky she did not create a new disadvantage, but pushed Victim out of the way. Her choice was not to save Victim, but to recklessly take a shortcut, and her decision to risk being hit by the falling brick had nothing to do with Victim, thus, she acted in a way where it was reasonably foreseeable that an agent-dependent disadvantage would be created, but through an unlikely coincidence, she ended up distributing an agent-independent disadvantage to herself instead. The choice is not justified on our account. Unknown justifications are not justifications at all and do not give rise to justified choices. The coming together of good luck and bad choices does not give rise to entitlements for the former.

A more complex subset of unknown justifications might be called unutilized justifications. In the case described above, Benefactor could not reasonably have known that her actions would save Victim. Imagine now that Benefactor pushes Victim out of the way of the falling Brick, knowing that this will save her, but, though it was a known side effect, doing what was morally good played no role in Benefactor’s choice to push Victim away from the falling Brick. Suppose Benefactor just likes pushing people. Compensating Benefactor is not justified on luck egalitarian grounds, since it amounts to rewarding Benefactor’s good luck that she has a strong preference for pushing people and thereby saved Victim, but in a luck egalitarian society, the distribution should not be affected by luck.

Putative justification
Return again to Brick. Benefactor tries to push Victim out of the way, but due to a crack in the sidewalk she stumbles, and both Benefactor and Victim are hit by the falling brick. Thus, even though she tried, Benefactor failed to save Victim and was disadvantaged in the process. This is a putative justification. Should Benefactor be compensated?

Here we should distinguish between cases where failure was reasonably foreseeable, and where it was not. In the example advanced above, failure was not reasonably foreseeable, but imagine the same case, except now Benefactor lives in a building on the third floor, on the street where Victim is about to be hit by the brick. She sees the danger and jumps out the window in order to save Victim. Predictably Benefactor breaks both her legs, cannot move from the sidewalk, and Victim is hit by the falling brick anyway. If there was no reasonable chance of saving Victim, as is the
case here, then disadvantages stemming from trying should not be compensated, because Benefactor was not justified in jumping from the third floor; it had the foreseeable consequence of creating a new agent-dependent disadvantage into the world. If failure was not reasonably foreseeable, then it may be true that Benefactor suffered a new disadvantage, but it was through bad brute luck and this seems readily compensable by standard luck egalitarianism, which is supposed to even out differences in bad luck.\textsuperscript{36}

**Costs and Inefficient Benefactors**

We now turn to the question about whether compensating people for disadvantages stemming from morally good acts would be too costly. This worry is raised by Temkin.\textsuperscript{37} One reason for worrying is that the amount of agent-independent disadvantage to be alleviated is so massive that compensation for alleviating it would be astronomic. Think of alleviating global poverty. However, it is either the case that the community should be compensating this disadvantage anyway (had it been able), or it is not. If the community should be compensating this disadvantage anyway, then compensating Benefactor, who shouldered it through her morally good acts, will not be more expensive than the alternative of compensating the primary victims of chosen disadvantage. If the community should not be compensating this disadvantage then the community can also deny compensation to Benefactor when he chooses to shoulder it.

Another more interesting question concerns inefficient benefactors. Inefficient benefactors are not the same as people who are bad at doing good. People who are bad at doing good do not achieve their intended purpose of helping at all, while inefficient benefactors achieve the purpose of helping, but at an unnecessarily high cost. An inefficient benefactor may either be absolutely or comparatively inefficient. An absolutely inefficient benefactor incurs disadvantages from doing good that are greater than the disadvantages she prevented by her deed, while a comparatively inefficient benefactor incurs disadvantages from doing good that are greater than the disadvantage she would have incurred had she chosen the most efficient way of preventing the agent-independent disadvantage, but still smaller than the disadvantage she hinders.

According to us the compensation for disadvantage incurred by doing morally good acts is justified because Benefactor did not create any new disadvantage, but merely distributed an already created disadvantage from Victim to herself, and the disadvantage Benefactor incurs is therefore agent-independent. It follows that no one can be compensated for a greater disadvantage than the one she reasonably believed she would prevent. Any disadvantage incurred by Benefactor in excess of what she reasonably believed she would prevent is a newly created agent-dependent disadvantage, which is ineligible for compensation. Thus, those disadvantaged through absolutely inefficient good acts can only be compensated up to the

\textsuperscript{36} From now on, when we write "preventing disadvantage" this also includes trying and failing to prevent disadvantage through no fault of one’s own.

\textsuperscript{37} "Exploring the Roots of Egalitarian Concern", 144.
disadvantage they prevented. They will not be compensated for any additional disadvantages they incur.

Concerning comparatively inefficient morally good acts, imagine that Benefactor can only prevent Victim from being hit by the brick by throwing something that will deflect the brick. Near Benefactor are an old board and an expensive piece of art. Benefactor is able to throw either and knows or could reasonably know that either will deflect the brick. If Benefactor chooses to throw the expensive piece of art, she is comparatively inefficient. Should Benefactor be compensated for her loss? According to us she should not. If it was possible for Benefactor to distribute an agent-independent disadvantage to herself, in a manner that disadvantaged her less, then by distributing it in a way that disadvantages Benefactor more, Benefactor will bring a new agent-dependent disadvantage into the world, for which Benefactor is not entitled to compensation. Comparatively inefficient benefactors are thus only entitled to be compensated for the disadvantage they would have incurred if they chose the least disadvantageous way of doing good. While the above deals with intra-personal comparison, we believe the verdict also holds for inter-personal comparison, where a person chooses to do good knowing that someone else would be able to do the deed at a lower cost. Consider people who engage in rescue attempts when skilled and equipped fire-fighters have already arrived.

Just like the case of putative justifications, compensation for morally good deeds that are comparatively or absolutely inefficient should only be denied if the inefficient benefactor could reasonably have known that their morally good actions would be inefficient. If Benefactor reasonably believed that she could only save Victim by throwing the expensive piece of art to deflect the brick, but unbeknownst to her an old wooden board is hidden right beneath her car, it seems unfair to refuse to compensate Benefactor for the loss of her expensive piece of art.

In section II we attempted to set up the criteria for which disadvantages were agent-independent, but in reality many disadvantages will be compound in the sense that they are part agent-independent and part agent-dependent. In the course of our discussion of inefficient benefactors, we have suggested some tools for determining how much of a prima facie agent-independent disadvantage is in fact agent-independent and therefore eligible for compensation. For any disadvantage where the disadvantaged is not responsible for creating it, but is responsible for distributing it from another to herself, the size of the agent-independent disadvantage can be no larger than any of the following:

D) The amount of disadvantage Benefactor reasonably believed she would prevent.

E) The amount of disadvantage Benefactor would have suffered if she had acted in the way in which she reasonably believed she would incur the smallest amount of disadvantage while still saving victim

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38 I.e. where the disadvantaged fulfills criteria A) and B) for belonging to group G.
F) The amount of disadvantage Benefactor reasonably believed would be suffered by the person who Benefactor reasonably believed could and would have saved Victim while suffering the least disadvantage.

Any disadvantage suffered by Benefactor in excess of the disadvantage specified by D, E or F, whichever is lowest, is agent-dependent and therefore not eligible for compensation on luck egalitarianism grounds, regardless of how the disadvantage was created. This is because any amount of disadvantage suffered by Benefactor in excess of D, E, or F fails to satisfy the first criterion, A, from section II, since in all three cases Benefactor can make a choice such that nobody in group G incurs this amount of disadvantage.

V. Conclusion
In this paper we have argued that luck egalitarians should offer compensation for disadvantages stemming from morally good acts. While luck egalitarianism has traditionally focused on the presence or absence of responsibility in assessing whether distributions are just, we have argued for the need to supplement this with the concept of a justified choice. Drawing on the distinction in jurisprudence between excuses and justifications, we have suggested a luck egalitarian approach which takes justified choices into account when assessing whether distributions are just. This adjustment allows for compensation to people who were disadvantaged through their good choices. We have argued that, instead of holding agents responsible for actions that merely distributed a disadvantage to themselves, luck egalitarianism should only hold agents responsible for creating disadvantages. In light of this we suggested that luck egalitarianism should be revised in the following manner:

A distribution is just if, and only if, people’s relative positions reflect nothing but their responsibility for creating advantages and disadvantages.

We termed disadvantage that the disadvantaged agent could be held responsible for creating agent-dependent, and disadvantages that the disadvantaged agent could not be held responsible for creating agent-independent. We further argued that it was a feature of some morally good choices, specifically intentional actions done in the reasonable belief that they will offset another person’s agent-independent disadvantage, that they did not create disadvantages, but merely distributed them from one agent to another. For that reason these disadvantages are eligible for compensation, according to a properly conceived luck egalitarianism. An important contribution of this paper was thus that luck egalitarianism should compensate at least some disadvantages stemming from morally good acts even though agents are responsible for incurring these disadvantages.

How the insights of this paper are to be incorporated into luck egalitarianism depends on ones view on luck egalitarianism. Specifically it would differ depending on whether one holds the view that luck egalitarianism is concerned with inequalities
rather than distributions as such, and whether luck egalitarianism only applies to institutions. What can be said is that as it stands, our argument offers reasons why luck egalitarianism can compensate one important subset of chosen disadvantages. We also believe to have shown that our position offers such compensation on firmer ground than the competing alternatives.

Our proposed adjustment of luck egalitarianism has theoretical importance for two reasons. First, it raises the question of whether luck egalitarianism should only hold agents responsible for creating disadvantages, or whether luck egalitarianism should also hold agents responsible for distributing disadvantages. Second, our proposed adjustment enables luck egalitarianism to give plausible answers to hard cases raised as objections against luck egalitarianism. Notably, it seems that our account of luck egalitarianism can meet Elizabeth Anderson’s objection that luck egalitarianism abandons dependent caretakers. According to us many of these dependent caretakers will be eligible for compensation, because their disadvantageous choices help offset disadvantages larger than or equivalent to the disadvantages chosen by the dependent caretakers. Therefore, they do not create disadvantage, but only distribute it from others to themselves. Interestingly, the abandonment of dependent caretakers is one of the criticisms against luck egalitarianism that luck egalitarians have been inclined to concede. We hope to have shown that such a concession is unnecessary, since luck egalitarianism contains the resources to meet this challenge.

The insights argued in this paper have practical importance as well, since they enable luck egalitarianism to offer compensation to a host of agents who choose to do good acts at the risk of suffering a disadvantage themselves. From public servants occupying hazardous jobs for the greater good, like firefighters and police officers, to good Samaritans who help persons in need and at their own expense, putting the wellbeing of others over their own. When these people are hurt in the line of duty, they deserve to be compensated. Fortunately, luck egalitarianism is well equipped to offer such compensation, pace Anderson.

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41 Anderson, "What Is the Point of Equality?," 300.
Article 2.
Lader Held-Egalitarismen Fanden Tage De Uansvarlige Sidste?

*Politica*, 45 (2), pp. 158-173
Andreas Albertsen

Lader held-egalitarismen fanden tage de uansvarlige sidste?

Held-egalitarismen er en indflydelsesrig teori om fordelingsmæssig retfærdighed, der indebærer, at fordelinger er retfærdige, når og kun når menneskers relative positioner afspejler deres udøvelse af ansvar. Denne teoriretning kritiseres ofte for ikke at kunne retfærdiggøre hjælp til dem, der grundet deres egne valg ender i en situation, hvor basale behov ikke opfyldes. Kritikkens styrke er kun tilsyneladende, fordi det er muligt både at forhindre, at nogen falder under et behovsminimum, og undgå at give køb på grundlæggende held-egalitaristiske værdier. Dette kan gøres ved at omfordele mellem dem, der løber ensartede risici men oplever vidt forskellige udvalg.


Artiklens formål er normativt at diskutere styrken af denne kritik og afklare, om held-egalitarismen med henvisning til egne værdier kan retfærdiggøre en sådan omfordeling. Artiklen konkluderer, at held-egalitarister både kan undgå at svigte folk som Bert og gøre dette uden at brede med værdifulde friheder eller lade nogen bære omkostningerne for andres valg. Det vurderes, at særligt afgifter på risikofyldte aktiviteter afspejler de held-egalitaristiske værdier og gør det muligt at omfordele til dem, der gennem deres egne valg ender under et behovsminimum.

Held-egalitarismen og det personlige ansvar i fordelingsmæssig retfærdighed

Diskussionen om Bert og dem, der gennem egne valg ender under et behovsminimum, fortsætter en længere debat om, hvorledes individuelle valg påvirker fordelingens retfærdighed. Denne opstod i den revitalisering af normativ


en person, der grundet dårlig option luck er voldsomt ringere stillet end andre (Anderson, 1999: 296; Fleurbaey, 1995: 40). Det relevante spørgsmål er, om held-egalitarianismen er ubarmhjertig, fordi den må betragte sådanne situationer som retfærdige og ikke kan retfærdiggøre omfordeling. Denne artikel diskuterer, hvorfra ubarmhjertighedsindvendingen får sin styrke, og vurderer, hvorledes held-egalitarianismen kan undgå denne ”ubarmhjertighedsindvending”, ved at efterprøve, om held-egalitarianismen på egne præmisser og med baggrund i egne værdier er i stand til at retfærdiggøre omfordeling til dem, der rammes hårdt af dårlig option luck. Denne udlægning af problemstillingen indeholder et vigtigt fravalg. I artiklen undersøges det ikke, hvorvidt held-egalitarianismen ved på pluralistisk vis at appellere til andre værdier (fx solidaritet) kan retfærdiggøre omfordeling. Spørgsmålet er dermed ikke, om held-egalitarianister kan sige, at de alt andet lige foretrækker omfordelingen. Derimod er spørgsmålet om held-egalitarianismen, i sig selv og ved at appellere til egne iboende værdier, kan modstå den indvending, der af mange betragtes som den mest centrale i mod denne teori om fordelingsmæssig retfærdighed. Denne sidste tilgang til problemstillingen vælges primært, fordi det synes væsentligere at klargøre, hvorvidt held-egalitarianismen i sig selv kan imødegå kritikken. Artiklens metodologiske tilgang er politisk teoretisk i den forstand, at diskussionen søger at afklare, hvorledes noget bør være. Dette gøres ved konceptuelt at afklare centrale værdiers indhold (Holtug, 2010), særligt i relation til de værdier der synes at komme i konflikt i eksemplet med Bert. I den forbindelse diskuteres, hvordan og hvornår disse værdier kommer i konflikt med hinanden, og dermed hvilke implikationer det har at vælge nogle værdier frem for andre. Efter diskussionen om hvorledes værdierne er i konflikt med hinanden, og hvordan denne konflikt er potentielt problematisk for held-egalitarianismen, undersøges det, hvorvidt det er muligt at justere værdierne, så de får en udformning, der mindsker eller fjerner graden af konflikt og dermed udgør et held-egalitarianistisk svar på ubarmhjertighedsindvendingen. Tilgangen er således meget lig det, der betegnes reflektiv ligevægt. Artiklen leverer herigennem to distinkte bidrag. Dels bidrager den til en normativ diskussion af en central indvending mod held-egalitarianismen ved at diskutere udfordringen tilgangens grundlæggende værdier. Dels diskuterer den, i et anvendt etisk perspektiv, hvilke konkrete tiltag der kunne imødegå indvendingen og bevæge et samfund tættere på at indfri held-egalitarianistiske værdier.

Ubarmhjertighedsindvendingen og dens styrke
Ubarmhjertighedsindvendingens styrke fremkommer, fordi det synes bydende nødvendigt, at en teori om den retfærdige fordeling af samfundets goder kan

Ifølge Andrew Williams illustrerer eksemplet med Bert, at konflikten imellem disse hensyn er et såkaldt trilemma, hvor vi ikke kan agere således, at alle tre værdier respekteres samtidig (Williams, 2006: 502). Hvis vi lader Bert dø/lide, lader vi ham falde under et basalt minimum; hvis vi hjælper ham, lader vi andre bære omkostningerne for de valg, han har truffet; og hvis vi forhindrer ham i at handle, som han gør, begrænser vi hans frihed. Ifølge Williams kan vi analytisk skelne mellem to måder at sikre, at ingen rammes så hårdt af option luck, at de falder under et minimum af basale behov. Enten imødekommes tilstrækkelighedsbryderen på en måde, der undgår, at finansieringsbryderen tilsidesættes, ved at internalisere byrder eller begrænsninger, så de pålægges den, der har valgt at handle på en måde, der skaber udgifter. Ifølge Williams er det denne form for løsning, der anvendes, når folk tvinges til at forsikre sig, eller risikofyldte aktiviteter pålægges afgifter eller direkte forbydes. Alternativer hertil er at eksternalisere omkostningerne. Dette indebærer at tillade, at omkostningerne for nogle menneskers handlinger væltes over på andre, men ikke

Et initialt modsvar fra held-egalitarismen


Selvom der er (mange) tilfælde, hvor påvirkningen fra brute luck gør, at det ikke er åbenlyst, om en person bør kompenseres, så er der også eksempler på det modsatte. Det synes rimeligt at tale om, at en person udsættes for dårlig option luck, hvis han i høj fart og uden sikkerhedssele forulykker på en øde vej i godt føre. Et sådant valg indebærer en risiko, og han ender ringere stillet end andre som en konsekvens af sit valg. Tilsvarende må det siges, at forskellen mellem to personer, der på ensartet måde påvirkes af brute luck men træffer forskellige valg, er udtryk for option luck. Held-egalitarismen ikke er forpligtet til at lade mennesker bære konsekvenserne af valg, der er influeret af brute luck, men dette er ikke tilstrækkeligt til at afvise ubarmhjertighedsindvendingen. Tilbage står diskussionen om, hvorvidt held-egalitarismen, i et samfund der har elimineret indflydelsen fra brute luck, kan retfærdiggøre at hjælpe dem, der rammes hårdt af dårlig option luck.

Held-egalitaristiske muligheder for at undgå ubarmhjertighedsindvendingen
Efter en afklaring af indvendingens indhold og en vurdering af umiddelbare løsninger vil andre forslag til, hvorledes held-egalitarismen kan imødekomme tilstrækkelighedshensynet, blive diskuteret. Indledningsvis vurderes eksternaliseringsstrategien gennem en diskussion af modellen, hvor udgifterne finansieres gennem en generel skat. Herefter vurderes forskellige versioner af de internaliserende forsøg på at sikre tilstrækkelighedshensynet, hvor det konkluderes, at det er frugtbart at imødekomme dette gennem afgifter på risikofyldte aktiviteter og tvungne forsikringsordninger. Førstnævnte løsningsmodel har dog væsentlige fordele, og derfor vil den være genstand for en afrundende drøftelse.

Eksternaliseringsstrategi
Et skattefinansieret sundhedsvæsen kan garantere, at ingen, uanset deres egne valg, lever under et basalt behovsminimum. Sådan en finansieringsform kendes fra mange vesteuropæiske lande (Doorslaer et al., 1993). Lad os derfor betragte de normative perspektiver ved en finansieringsform, der tager goder fra samfundets borger som helhed og bruger disse til at sikre hjælp til alle. Denne finansieringsform er i stand til at imødekomme tilstrækkelighedshensynet og frihedshensynet, men til gengæld er det et klart brud på finansieringshensynet,
at folks bidrag er uafhængigt af, hvorledes de selv har handlet. Det bør på ny betones, at dette hensyn er vigtigt for flere held-egalitarister, fordi det forhindrer, at nogen i en situation med lige muligheder kan træffe valg, der leder til, at andre skal kompensere dem. Pointen er, at sådanne kompensationer mindsker ressourcemængden til rådighed for alle dem, der ikke handlede således. Når nogen har udgifter, der opstår, fordi de lever livet på en bestemt måde, så er det ikke retfærdigt at bede alle dem, der ikke valgte således, om at finansiere disse udgifter. Ovenstående udgør en principiel afvisning af den generelle skattefinansiering som en løsning på trilemmaet. Når forskellene i brute luck er udlignet (eksempelvis gennem skattefinansiering), så er det ikke retfærdigt at lave yderligere generelle omfordelinger for at udligne forskelle i option luck.

**Internaliseringsløsninger**

I det følgende vil de løsninger blive diskuteret, der sikrer, at ingen falder under et behovsminimum ved at begrænse friheden for den enkelte, men uden at lade andre betale for de udgifter, en person skaber ved sine handlinger. Det betyder, at tiltag som forbud og tvungne forsikringer vil blive vurderet på, hvorvidt de løser trilemmaet på en hensigtsmæssig måde.

**Forbudsløsninger**


Det synes dog umiddelbart muligt at opnå et tilsvarende resultat ved et mindre omfattende indgreb i friheden. Dette kan gøres ved at indføre tvungne forsikringsordninger for alle. Her tvinges alle til at indbetaele en forsikrings-
præmie og dækkes i tilfælde af uheld. Herved fratages folk friheden til at leve livet uden forsikring. Sådanne tvungne individuelle forsikringer respekterer finansieringshensynet og tilstrækkelighedshensynet, men tillader umiddelbart brud på friheden. Derfor synes den tvungne forsikringsordning, fordi bruddet på friheden er mindre, at være mere attraktiv end den meget omfattende forbuds løsning, men stadig et brud på friheden.


Helt overordnet synes der at være gode grunde til, at held-egalitarister ikke kan tilslutte sig en bred frihedsopfattelse, hvor alle begrænsninger af friheden er problematiske. Det skyldes, at et så bredt frihedsbegreb vil betegne det som problematisk at omforme at kompensere mennesker for dårlig brute luck. En sådan omfordeling er helt central for held-egalitarister af enhver støbning.
Der synes i første omgang ikke at være grunde til, at held-egalitarister skulle være tilhængere af denne meget brede forståelse af frihed. Det næste, der bør overvejes, er, om den frihed, skiftet fra en bred til en smal frihedsforståelse fratager folk, er vigtig. Er friheden til at leve farligt og uforsikret en central del af den frihed, held-egalitarister hylder? Begrundelsen for at afvise dette kunne være, at vi med udgangspunkt i finansieringshensynet og tilstrækkelighedshensyn kan argumentere for, at der er bestemte typer friheder, der ikke er lige så vigtige og tungtvejende som disse hensyn. Fra et held-egalitaristisk perspektiv er det umiddelbart en attraktiv tilgang til trilemmaet at ændre synet på friheden i den retning, Bou-Habib foreslår. Mennesker bevarer en stor del af deres frihed, de efterlades ikke til de rå konsekvenser af deres egne valg, og den frihed, de mister, er friheden til at vælte omkostningerne fra valg over på andre – en frihed der i et held-egalitaristisk perspektiv ikke kan være vigtig, idet den er i direkte konflikt med det held-egalitaristiske finansieringshensyn og behovet for at omfordre til dem, der rammes af brute luck.

Alligevel synes denne ændring af frihedsopfattelsen at være utilstrækkelig til helt at afværge ubarmhjertighedsindvendingen. I hvert fald vil en kollektiv forsikringsordning med ensartede præmier for alle i høj grad have samme konsekvens som en skattefinansieret universel ordning. Ved kollektive forsikringsordninger, der gælder alle og har ens præmier for alle, betaler både de, der ikke længer risikofyldte valg, og de, der traf risikofyldte valg, der ikke medførte udgifter til at dække udgifterne. Dette er på problematisk vis i strid med held-egalitarismens finansieringshensyn. Forsikringsløsningen synes derfor tættest på at løse ubarmhjertighedsindvendingen, hvis der er tale om, at forsikringspærmien varierer med individuers adfærd. Det er tilfældet, fordi det ved individuelle forsikringsordninger vil være lettere at justere præmien opad hos personer, der tidligere har udvist stor risikofyldt adfærd. En løsning synes at være, at forsikringspærmierne i højere grad individualiseres, så de varierer efter, hvorledes folk tidligere har opført sig. Det korrigerer det netop omtalte problem, men skaber samtidig et nyt, som går på, at en forsikringsløsning, hvor det fx er dyrere for rygere end ikke-rygere at forsikre sig, har en alvorlig mangel. Nok sørger denne indretning for, at ikke-rygere slipper for at betale for de udgifter, ryger skaber, men den medfører også, at der internt blandt rygere sker en omfordeling, hvor de, der ikke bliver syge, er med til at betale for dem, der gør. Det er derfor uklart, hvorvidt dette ændrede syn på friheden, hvor friheden til ved at leve livet uforsikret at gøre indhug i andres ressourcer ikke regnes for vigtig, er tilstrækkelig som løsning på trilemmaet. De tvungne forsikringsordninger med individualiserede præmier synes ikke i første omgang at kunne levere en helstøbt løsning på ubarmhjertighedsindvendingen.
Afgiftsløsninger

Dette afsnit diskuterer en anden af de løsninger, Williams betegner som interna-

liserende løsninger. Det er den type løsninger, der indebærer, at risikofyldte akti-

vitter pålægges en afgift. Løsningen minder om den, man i økonometri-

en kender fra eksternaliteter. Her hvor temaet i handlinger med omkostninger

ne for tredjeart, er der god ræson i at overveje at modvirke denne omvæltning af

omkostninger ved at øge prisen på bestemte handlinger, således at den afspej-

ler en funktion af risikoens sandsynlighed og pris. Det vil betyde afgifter på
cigaretter, fed mad og særligt risikofyldte aktiviteter. Denne finansieringsform

er temmelig udbredt og kaldes i Belgien for ”syndeskatter” (Mossialos og Le Grand,
1999: 5). Williams betegner denne strategi som en internaliserende

måde at sikre tilstrækkeligheden på, fordi den lader dem, der løber risikoen,
dække de udgifter, deres handler skaber.

Der synes dog at være grund til at overveje holdbarheden af denne klassifi-
cering. Synde-skatter sikrer nok, at ingen falder under det basale minimum,
men det kan betydes, at det lykkes at internalisere omkostningerne. Betragt
en gruppe mennesker, der løber en risiko og af denne grund pålægges en afgift.
Det er langt fra givet, at alle de menneskers risikofyldte adfærd resulterer i
udgifter. Idet personer også betaler afgiften, når deres handlinger ikke skaber
udgifter, hæfter nogen stadig for de udgifter, andre skaber. Dette indebærer et
mindre brud på finansieringsværdien end ved den kollektive forsikringsord-
nning, men stadig et brud. På denne måde er der ligheder med de individuelle
forsikringsordninger. I afgiftsdiskussionen betaler ikke-rygere ikke til rygeres
sygdom, men de mennesker, hvis rygning ikke resulterede i sygdom, betaler til
dem, der blev syge af deres rygning (og antageligt fik et liv under et basalt mi-
nimum). Afgifterne isolerer udgifterne som et anliggende for dem, der ager
risikofyldt men indebærer alligevel, at de, der løb en risiko, der ikke medførte
en udgift, betaler til dem, hvis risikofyldte adfærd skabte en udgift. I lighed
med den tidligere diskussion, hvor det blev vurderet rimeligt at justere frihedshensynet på en måde, hvor friheden til at leve livet uforsikret ikke er en central frihed, er der her værd at overveje, om ovenstående bør give anledning til en
justering af finansieringshensynet.

I den forbindelse er det nærliggende at inddrage en version af held-egalita-
rismen, der giver en anden fortolkning af, hvem det er rimeligt at bede om at
finansiere udgifterne til dem, der rammes af dårlig option luck. Den tilgang –
all luck egalitarianism – der vil blive diskuteret i det følgende, deler held-equali-
tarismens intuitioner, men mener, at disse er dårligt afspejlet i den klassiske
Dworkin-inspirerede version, hvor forskelle i option luck ikke berettiger komp-
ensation, mens forskelle i brute luck gør. All luck-egalitaristerne mener i ste-

Målsætningen er, at mennesker, der løb lige store risici, skal ende samme sted, men at mennesker, der løb forskellige risici, gerne må ende i ulige positioner, der svarer til den udøvede grad af ansvar. Dette er, selv blandt held-egalitatarister, en kontroversiel position, der derfor kræver uddybende begrundelse. Rationalet bag dette ændrede syn på option luck er, at sådanne uligheder adskiller sig fra situationer, hvor mennesker frivilligt vælger at være dårligere stillet end andre, fordi det, individerne i denne situation valgte, blot var at udsætte sig selv for en risiko (Barry, 2008: 137; Lippert-Rasmussen, 2005: 382). Denne position kan underbygges med et eksempel (jf. Lippert-Rasmussen, 2005: 385). Betragt to personer, der begge kan vælge et af følgende væddemål:

1: 100 pct. chance for at modtage 100 kr.
2: 95 pct. chance for at modtage 100 kr. og 5 pct. chance for at modtage 200 kr.

end forventet. Egentlige væddemål er de tilfælde, vi kender fra kasinoet eller travbanen, hvor risikoen er en del af formålet, og ingen af de deltagende ville foretrække den forventede værdi (Lippert-Rasmussen, 2005: 363). Argumentet imod omfordeling mellem gamblernes vindere og tabere synes intuitivt stærkt, når det anvendes på egentlige gambles, men tilsvarende uplauablet at anvende på quasi-gambles. I sidstnævnte tilfælde fratages ingen deres ønske om at leve et bestemt liv, men derimod pooles og minimeres en risiko, som de berørte helst vil være foruden. De befries dermed for en risiko, de helst ville undvære. Et er selvsagt, om selve distinktionen er teoretisk frugtbar, noget andet er, om de valg, mennesker træffer, der kan føre dem ned under et bestemt behovsmi-
nimum, bør klassificeres som quasi-gambles eller egentlige gambles. Kun hvis de kan klassificeres som førstnævnte, er det en mulighed at omførde mellem vindere og tabere.

Segall anfører, at tilfælde som rygning blandt unge og ekstremsport er egentlige gambles, fordi de udføres for spændingens skyld (Segall, 2010: 50). Det ville betyde, at all luck egalitarianism ikke kan forsvare at omførde mellem dem, der tager sådanne. Men Segalls argument beror på en forvængning af, hvornår noget er et egentligt gamble. For det er plauablet, at både rygning blandt unge og faldskærmudspring gøres for spændingens skyld. Men denne spænding kan også fremkomme fra det forbudte, følelsen af at gøre noget anderledes eller de rent fysiske processer, der er på spil – og dermed ikke fra selve risikoen for at komme til skade. Lakmusprøven på, om det er et egentligt gamble, er, om man ville foretrække den forventede værdi og undvære risikoen. Det synes at være en korrekt beskrivelse af også sådanne aktiviteter. Hvis vi redu-
cerede eller fjernede de skadelige stoffer i alle cigaretter, synes det uplauablet, at det, at det ikke længere er farligt, ville reducere eller afskaffe rygning blandt unge. Hvis det er rimeligt at antage, at den forventede værdi af rygning er luft-
vejsgener og ringere kondi (men altså ikke lungekræft), så synes skellet mellem egentlige gambles og quasi-gambles succesfuldt at kunne anvendes til at for-
vare en omfordeling fra dem, der med held udsætter deres helbred for et quasi-
gamble, til dem, der taber et tilsvarende gamble. Det næste relevante spørgsmål er så, hvorvidt det med rimelighed kan siges, at argumentet fra rygning kan generaliseres, eller rettere om der kan påpeges tilfælde af egentlige gambles, hvor folk ender under et basalt minimum. I de hidtil nævnte eksempler på til-
fælde, der bringer folk under et egentligt minimum synes det åbenlyst, at folk helst ville undvære spændingen og foretrække den forventede værdi af deres gambles. Ingen cykler på arbejde, reparerer taget på deres hus eller kører uden sikkerhedssele for spændingens skyld, og risikoen synes bestemt ikke at være en del af formålet. Men det er vel muligt at indgå egentlige gambles, der sender en
under et behovsminimum? To personer kunne vædde om, hvem der skulle være den andens slave, eller en person kunne smide hele formuen på en rød 7’er på rouletten og tabe alt. Disse tilfælde kan teoretisk tænkes. Men det er svært at forestille sig dem blive til virkelighed uden en kraftig påvirkning af brute luck. I langt hovedparten af tænkelige cases er den form for gamble, der er til stede, quasi-gambles, og derfor tillader det justerede syn på option luck omfordeling.

Ovenstående udgør to distinkte men vigtige skridt i retning af en accept af all luck egalitarianisme som et plausibelt svar på ubarmhjertighedsindvendingen. Dels er der blevet argumenteret for, at denne justering af, hvilke uligheder held egalitarismen tillader, er konceptuelt meningsfuld, og det er søgt at sandværende gøre, at den også er normativt attraktiv. Det sidste blev gjort på to måder. Dels ved at henvise til cases hvor omfordeling af forskelle grundet option luck synes rimelig, dels ved at introducere skellet mellem quasi og proper gambles. Afslutningsvis blev der argumenteret for, at det netop er quasi-gambles, der er på spil i ubarmhjertighedsindvendingen. Tilbage står et brugbart princip om, at retfærdigheden tilskynder os til at udligne fordeling, der ikke skyldes menneskers valg. Når mennesker møder forskellige valg, må det gerne lede til forskelle, men når de vælger ens og tager gambles, hvor de ville forvente en forventet risiko, så er det retfærdigt, at de, der risikerer at påføre andre udgifter, skal bidrage til de udgifter, der kausalt skabes af andre, der handler som dem, i tilfælde hvor deres egne handlinger ikke medførte sådanne udgifter. Et eksempel på applikationen af denne tankegang er mennesker, der kører bil, mens de er fulde. De, der i fuldskab kører galt og forvolder materiel og/eller personskade, skaber ved deres handlinger en udgift. De mennesker, der kører bil i fuldskab men ikke rammer nogen, har handlet lige så uansvarligt og med lige så stor mulighed for at skabe udgifter for andre. Så når folk tages i at køre spirituskørsel på en i øvrigt ode vej, så bør bøden afspejle det forhold, at de med deres adfærd risikerede at skabe udgifter for andre. Det giver dermed grunde til at omfordde internt mellem alle dem, der løb den samme risiko, og hvor forskellen dermed i relevant forstand er et udtryk for held (Barry, 2008: 144).

Ovenstående diskussion af all luck egalitarianism bidrager til diskussionen af muligheden for at finansiere, at tilstrækkelighedsens betrygning bliver tilgodeset via afgifter på risikofyldt adfærd. Det ændrede syn på option luck betyder ikke, at det bliver retfærdigt at udligne eventuelle forskelle mellem dem, der valgte at udsætte sig selv for risikoen for at blive ramt af dårlig option luck ved at indgå i quasi gambles, og dem, der ikke gjorde. Hvis denne mere plausible forståelse af, hvornår det er tilladeligt at lade folk hæfte for noget, anvendes, så udgør afgifterne en stærk afvisning af ubarmhjertighedsindvendingen, der ikke bryder med trilemmaets værdier. Det involverer ingen forbud, og det sikres at ingen
tvinges til at betale for udgifter, som de ikke selv ved deres handlinger risikere at skabe.

**Konklusion**


**Noter**

1. Der er variationer over, hvor meget dette princip fylder i litteraturen, men det er tydeligt hos eksempelvis Cohen, Dworkin og Rakowski.
2. Oversat fra ”the harshness objection”.
3. Der er variationer over, hvor meget dette princip fylder i litteraturen, men det er tydeligt hos Dworkin og Rakowski.
4. Tak til Kasper Lippert-Rasmussen, der foreslog også at inkludere dette perspektiv.

**Litteratur**


Article 3.
Unjust Equalities

Ethical Theory and Moral Practice, 17 (2)
Unjust Equalities

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Accepted: 20 June 2013 / Published online: 18 August 2013
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Abstract In the luck egalitarian literature, one influential formulation of luck egalitarianism does not specify whether equalities that do not reflect people’s equivalent exercises of responsibility are bad with regard to inequality. This equivocation gives rise to two competing versions of luck egalitarianism: asymmetrical and symmetrical luck egalitarianism. According to the former, while inequalities due to luck are unjust, equalities due to luck are not necessarily so. The latter view, by contrast, affirms the undesirability of equalities as well as inequalities insofar as they are due to luck. The symmetrical view, we argue, is by far the more compelling, both by internal luck egalitarian standards and in light of the external rightist emphasis on choice and responsibility to which luck egalitarianism may partly be seen as a response. Our main case for the symmetrical view is that when some people, against a background of equal opportunities, do not exercise their responsibility to the same degree as others, they cannot justifiably call for equalizing measures to be put in place. Indeed, such measures would be positively unfair. The symmetrical view, accordingly, rejects compensation in such cases, whereas the asymmetrical view, implausibly, enjoins it. We also examine two objections to this argument. First, that this view fails to qualify as genuinely egalitarian, instead collapsing the notion of equality into the notion of desert. Second, that the opposing asymmetrical view, in contrast to the symmetrical view, can draw support from its compatibility with sufficientarian concerns. Both objections are rebutted. We conclude that luck egalitarians are best served by endorsing the symmetrical, luck-neutralizing stance.

Earlier versions of the paper have been presented to various audiences: the section for Political Theory, Department of Political Science and Government, Aarhus University; Danish Society for Political Science, Annual Conference 2012; Working group on Practical Philosophy, Department of Philosophy, Aarhus University; Society of Applied Philosophy, Annual Conference 2012. For useful comments on these occasions, we are very grateful to a number of people, including David Axelsen, Alexander Heape, Iwao Hirose, Katrine Krause-Jensen, Kasper Lippert-Rasmussen, Jeremy Moss, Lasse Nielsen, Raffaele Rodogno, Shlomi Segall, Johanna Seibt, and Zofia Stemplowska. We are also grateful to the two anonymous reviewers for this journal for perceptive comments and constructive suggestions.

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Keywords  Luck egalitarianism · Unjust equalities · Sufficientarianism · Desert · Shlomi Segall

[F]lat, indiscriminate equality is not just a weak political value, or one that is easily overridden by other values. It is no value at all: there is nothing to be said for a world in which those who choose leisure, though they could work, are rewarded with the produce of the industrious (Dworkin 2000, p. 2).

1 Introduction

Derek Parfit has stated the Principle of Equality in a way that has been influential among egalitarians, especially those of the so-called ‘luck egalitarian’ persuasion. This principle claims that:

(1) ‘[I]t is bad if, through no fault of theirs, some people are worse off than others’ (Parfit 1984, p. 26), or ‘[i]t is in itself bad if some people are worse off than others’ [‘through no fault or choice of theirs’] (Parfit 1998, p. 3 Note 5; cf. Arneson 1989, p. 86; Cohen 1989, p. 916; Rakowski 1991, p. 74; Roemer 1996, p. 179; Temkin 1993, p. 17).

This formulation requires specification in several regards (e.g., Hurley 2003, chap. 6; Lippert-Rasmussen 1999, p. 478; 2011a, sec. 4.1–4.2; Vallentyne 2002; 2003, pp. 169, 172, 175–178; 2008). Of special concern to the matters discussed in this paper is how egalitarians should evaluate equal distributions1 in cases where some deserve to be worse off than others. The principle does not tell us, inter alia, how to evaluate such distributions: according to it, these distributions might or might not be bad with regard to inequality.2

Some egalitarians are convinced that such equalities—equalities which do not reflect people’s equivalent exercises of responsibility—should not be evaluated favourably. We refer to these as symmetrical egalitarians, in that they propose to treat inequalities and equalities due to (brute) luck in a parallel fashion. The following formulations are proposals as to how this view may be formulated:

(2) ‘It is in itself bad with regard to inequality if, and only if, people’s comparative positions reflect something other than their comparative exercises of responsibility’ (Lippert-Rasmussen 1999, p. 478).

(3) ‘[I]nequalities are justified only insofar as they reflect differential exercises of responsibility, and equalities only insofar as they reflect equivalent such exercises’ (Knight 2009, p. 230).

(4) ‘People’s advantages are unjustly unequal (or unjustly equal) when the inequality (or equality) reflects unequal access to advantage [luck], as opposed to patterns of choice against a background of equality of access’ (Cohen 1989, p. 920; cf. 2006, p. 444).

1 In this paper we use ‘equal’ in at least two central senses. First, we apply it in the flat or ‘equal treatment’ sense, implying an equal distribution of some benefit or burden. Second, we refer to a ‘right to be treated as an equal’ or to treatment in accordance with some notion of worth (see Dworkin 1977, p. 227). Cf. Aristotle’s distinction between proportionate and arithmetical equality (1980, bk. V). The sense at stake in different parts of the argument should be clear from the context; otherwise, it is specified.

2 This is an implication of the absence of an ‘only if’. See Lippert-Rasmussen 1999, p. 478.
Other egalitarians are unconvinced that we should object to such equalities and hence resist amendments of the Principle of Equality such as those proposed by formulations (2)–(4). We refer to these as asymmetrical egalitarians, reflecting the fact that they propose to treat luck-generated equalities and inequalities differently, only objecting to the latter on the grounds of fairness. In explicit opposition to such alterations of the original formulation, Shlomi Segall, in his recent book on luck egalitarianism and health, proposes the following formulation:

\[ \text{\textit{It is unjust for individuals to be worse off than others due to outcomes that it would have been unreasonable to expect them to avoid}} \] (Segall 2010, p. 13. Emphasis in the original).

Accordingly, he emphasizes that luck egalitarianism is ‘agnostic about the justice or injustice of any equality’ (Segall 2010, p. 18. Emphasis in the original) or is ‘silent on’ the justice or injustice of equalities in spite of differential exercises of responsibility (Segall 2010, p. 65). Elsewhere, he claims that luck egalitarianism ‘denies that there is anything unjust about equality …’ (Segall 2010, p. 18). Which of the views he endorses is unimportant to the present analysis—the pertinent contrast is between one of these views and one affirming the badness of equalities that do not reflect people’s equivalent exercises of responsibility.

This tension has, to our knowledge, only been explored in some depth by Segall, but the equivocation in the central formulations of luck egalitarianism that generates these opposing views has been noted by others (e.g., Knight 2011, 73; Lippert-Rasmussen, 1999; 2011b, p. 180).

The present paper presents a case for the symmetrical view. This view, we argue, is by far the more compelling, both by internal luck egalitarian standards and in light of the external rightist emphasis on choice and responsibility to which luck egalitarianism may partly be seen as a response. Our main case for the symmetrical view is that when some people, against a background of equal opportunities, do not exercise their responsibility to the same degree as others, they cannot justifiably call for equalizing measures to be put in place. Indeed, such measures would be positively unfair. The symmetrical view, accordingly, rejects compensation in such cases, whereas the asymmetrical view, implausibly, enjoins it.

We also examine two objections to our argument. First, that our view fails to qualify as genuinely egalitarian; it collapses instead the notion of equality into the notion of desert. Second, that the opposing asymmetrical view, in contrast to the symmetrical view, can draw support from its compatibility with sufficientarian concerns. Both objections are rebutted. We conclude that luck egalitarians are best served by endorsing the symmetrical, luck-neutralizing stance.

The structure of the paper is as follows. Section 2 sets the stage by briefly elaborating upon the distinction between the symmetrical and the asymmetrical views, in continuation of the points made in the present section. It also addresses some preliminary issues of importance to the argument that follows. This argument is presented in Section 3. The two counter arguments in defence of the asymmetrical view are presented and canvassed (and finally rebutted) in Sections 4 and 5 respectively. Section 6 concludes.

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3 Other ways of describing the contrast we are addressing in this paper include Segall’s distinction between the responsibility and the non-responsibility view (Segall 2012, p. 509) and Lippert-Rasmussen’s between maximal and minimal luck egalitarianism (Lippert-Rasmussen 2011b, p. 180).

4 In order to reflect this claim, Segall’s formulation should read something like: (5*) It is bad with regard to inequality if, and only if, some people are worse off than others due to outcomes it would have been unreasonable to expect them to avoid.
2 Symmetrical and Asymmetrical Egalitarianism

Egalitarians, we submit, should be concerned with the assessment of at least the following four situations (cf. formulation (2) above):

(A) Non-arbitrary Equality: Equality reflecting people’s choices or equivalent exercises of responsibility;

(B) Non-arbitrary Inequality: Inequality reflecting people’s choices or different exercises of responsibility;

(C) Arbitrary Equality: Equality reflecting something other than people’s choices or equivalent exercises of responsibility, say, differential brute luck;

(D) Arbitrary Inequality: Inequality reflecting something other than people’s choices or different exercises of responsibility, say, differential brute luck.

Segall’s version of egalitarianism (see (5) above) is not, as far as we can see, conceptually confused. It implies that (D) is bad and is agnostic regarding – or (alternatively) denies – the badness of (A)–(C). We will argue, however, that the most compelling egalitarian view is to hold that (C) and (D) are bad, whilst (A) and (B) are not bad. The crux of the conflict between symmetrical and asymmetrical luck egalitarianism is of course how to evaluate (C).

The two views diverge with respect to a number of cases, including the following case featuring prominently in Segall’s argument:

Prudent and Lazy are two survivors on a desert island. While Lazy lies on the beach, Prudent goes fishing and returns with a fish that she then proceeds to grill and enjoy on her own. Their respective levels of welfare are now, let us say, 10 for Lazy (hungry but rested), and 20 for Prudent. LE [luck egalitarianism] and desert agree that there is nothing unjust in this unequal state of affairs … Imagine now that a nice big fish washes up alongside Lazy, who, recall, is simply lying there. This turn of events generates a new distribution …, where now both Lazy and Prudent have 20 units of welfare … Is there anything unjust about the new distribution …? Desert tells us that there is … LE on my formulation, does not entail that view, and properly so, I maintain. It denies that there is anything unjust about equality, including the equality that now obtains between Prudent and Lazy. More generally, LE is agnostic about the justice or injustice of any equality (Segall 2010, pp. 17–18. Emphasis in the original).

The arbitrary equality in the new distribution—that is, equality generated by differential brute luck—should not then, Segall maintains, trouble egalitarians. We disagree. According to our view, the effects of differential brute luck should consistently be neutralized, implying in Segall’s scenario presented above that the welfare level of each should be improved by 5 (leaving Lazy with 15 and Prudent with 25). In the converse case, in which an instance of brute luck benefits Prudent (Lazy, say, remaining at 10, whilst Prudent achieves 30), Segall’s

5 The terms ‘responsibility’ and ‘choice’ are often used interchangeably in the luck egalitarian literature, and we do so as well (cf. formulations (1) and (4) above, and see Cohen 1989, p. 933). However, it bears notice that a person may be responsible for a certain outcome even though he has not deliberately chosen it (as in negligence). Furthermore, the choices by virtue of which luck egalitarians believe it is acceptable for people to be worse off than others are genuine or perfectly voluntary choices. We do not propose a specific account of what is required for a choice to be genuine (our argument is compatible with different ways of spelling this out).

6 As suggested by the formulations (C) and (D) we conceive of brute luck in the thin sense, that is, what is not due to choice or exercises of responsibility (cf. Hurley 2003, p. 107).

7 See Note 4.
view implies that it should be neutralized (leaving Lazy with 15 and Prudent with 25), due to the fact that otherwise Lazy would be worse off than Prudent due to an outcome it would not have been reasonable to expect him to avoid (or through no fault or choice of his own). Our view concurs.

Segall’s main cases concern arbitrary equality of the kind just described – that is, cases in which the situations of two persons, having exercised their responsibility in different ways, are equalized by a stroke of brute good luck accruing to Lazy. However, his view appears to have a wider reach, indeed encompassing every kind of equal distribution not reflecting people’s equal exercises of responsibility. This includes, for example (as suggested by another case discussed by Segall), situations in which equality is brought about by people being rewarded similarly despite having exercised their responsibility differently (i.e., not having made an equivalent effort) (Segall 2010, pp. 18–19). It also includes cases in which equality between Lazy and Prudent is achieved by redistributing resources from the latter to the former.

We follow Segall in conceiving of the equalities at issue between the two views to be outcome equalities in the ‘ultimate currency’, or in what ultimately matters to people from an egalitarian point of view, whether given by resourcism or welfarism or by some third conception of the appropriate egalitarian metric (Segall 2010, p. 17; 2012, pp. 507–508; personal communication July 11, 2012). In this way, eventual differences in labour burdens may be seen as being fully compensated in the appropriate metric. This allows us to focus on the key issues of contention between the asymmetrical and symmetrical views, namely equality in the appropriate egalitarian metric in the presence of differential effort or exercises of responsibility. Furthermore, the inequalities that are eradicated or removed in various ways are consistently non-arbitrary inequalities, or cleanly generated inequalities—that is, inequalities generated on the basis of a situation in which people face equivalent opportunities or equally good choice situations, thus reflecting choice or option luck (Lippert-Rasmussen 2011b, p. 181; Williams 2004, p. 134).

3 Rebuttal of the Asymmetrical View

Our rebuttal of the asymmetrical view is inspired by the fairness intuition highlighted by G.A. Cohen in his response to Susan Hurley (Cohen 2006). According to this, luck egalitarians ought to object to inequalities as well as equalities reflecting (differential) luck, and do so for the reason of fairness (or justice). Luck is here counterposed to choices or

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8 Speaking of ‘equality’ in this way is of course slightly misleading on certain notions of egalitarian justice, including the one we defend, in that the appropriate metric includes considerations of effort and responsibility. Still, referring to equality in this ‘flat’ sense facilitates discussion of the core issue at stake between the asymmetrical and symmetrical views (see further Note 1).

9 One might, as conditions for inequalities being cleanly generated or for matters of brute luck being successfully transformed into matters of option luck, include conditions such as those defended by Michael Otsuka. For example, one might require that among the array of options people face should be ‘a reasonable alternative to gambling whose outcome is certain (or at least nearly so)’ (Otsuka 2004, 153. Emphasis original. Note omitted). This would still leave a non-trivial number of cleanly generated inequalities with respect to which the asymmetrical and symmetrical views would differ concerning the justice of equalisation. The phrase ‘cleanly generated’ may indicate that in addition to there not being anything wrong with these inequalities, it would also be wrong to eradicate them – but note that nothing of the kind necessarily follows. One might, as Segall does, deny the badness of inequalities generated by choice or option luck, whilst at the same time denying the badness of cancelling such inequalities (bringing about equalities in the presence of differential exercises of responsibility). To be sure, we have fundamental objections of an egalitarian nature to this view, but we do not deny its availability and interest.
exercises of responsibility (Cohen 2006, pp. 443–444; cf. 2008, p. 7). While the fairness intuition thus stated arguably provides an apt way of describing the symmetrical view, it does not, of course, amount to an argument for it; the fairness intuition needs to be spelled out and defended if it is to support our view. We try to do so below.

The profound unfairness of equality in the presence of differential exercises of responsibility is that it amounts to asking some to bear the costs of others’ voluntary choices. When a person could easily have avoided a disadvantage or an inequality, it is unclear on what grounds he could plausibly call for compensation. It is not only that refraining from compensating this person would not be unfair; it would seem positively unfair to do so in that it countenances exploitative cost displacement. Why this is so is nicely highlighted in Will Kymlicka’s example of the tennis player and the gardener (Kymlicka 2002, pp. 72–74).10 They are equal in terms of personal and impersonal resources and face options that are equally good, offering them ‘varying amounts and kinds of work, leisure, and income’ (Kymlicka 2002, p. 73). The tennis player opts for a leisure-intensive package, the gardener for one rich in income. Absent interventions in the market, the bundle of impersonal goods possessed by the gardener will in time clearly surpass the bundle possessed by the tennis player. In this case, Kymlicka plausibly argues, equalization (or distribution according to the difference principle) does not amount to treating people as equals or with equal concern and respect:

Rather than removing a disadvantage, the difference principle simply makes her [the gardener] subsidize his [the tennis player’s] expensive desire for leisure. She has to pay for the cost of her choices—i.e. she forgoes leisure in order to get more income. But he does not have to pay for the costs of his choice—i.e. he does not forego income in order to get more leisure. He expects and Rawls’s theory requires that she pay for the cost of her own choices, and also subsidize his choice. That does not promote equality, it undermines it (Kymlicka 2002, p. 73).11

The unfairness of equalizing measures when people could have avoided the inequalities in question (i.e. equality against the background of differential exercises of responsibility) is also forcefully pointed out in Cohen’s treatment of the issue of chosen expensive tastes. Commenting on people who are bad converters of resources into welfare (i.e. have expensive tastes) ‘because they are negligent or feckless in a morally culpable way: they buy their food at Fortnum’s because they cannot be bothered to walk up to the Berwick Street market’, he claims:

Now there seems to me to be an egalitarian objection to a policy of ensuring that the Fortnum’s customer’s welfare level is as high as everybody else’s. It seems to me that, when other people pay for his readily avoidable wastefulness, there is, pro tanto, an exploitative distribution of burden which egalitarians should condemn (Cohen 1989, p. 911).

10 This case is an adaption of Dworkin’s Adrian-Bruce case (Dworkin 2000: 83–85).
11 Some readers may question the applicability of this central luck egalitarian intuition to cases such as Segall’s lead case, which is not overtly redistributive in direction of equality, but in which equality is brought about by a stroke of good brute luck befalling Lazy. However, note first, as stated above, that the applicability of Segall’s view is arguably broader than the mentioned lead case, including cases in which equality is restored by, for example, taxing Prudent. Second, in both cases equality is due to something other than choice or exercises of responsibility – that is, luck. Third, Prudent is, in a relevant sense, asked to fund Lazy’s optional choices in the sense of being asked to forgo the benefits that would otherwise accrue to him by virtue of a policy of equalizing matters of differential brute luck, so that equality is restored between him and Lazy.
Echoing Rawls’ stance on expensive preferences, Cohen further claims that:

People with expensive tastes could have chosen otherwise, and if and when they press for compensation, others are entitled to insist that they themselves bear the cost ‘of their lack of foresight or self-discipline’ (Cohen 1989, p. 913).

The central luck egalitarian fairness intuition, expressed in the above quotations and which we appeal to in support of the symmetrical view over the asymmetrical view, could be expressed as follows: Persons cannot reasonably demand compensation for inequalities or disadvantages that they could easily avoid (i.e. inequalities generated on the basis of having faced an array of options that was equally good as that faced by others). Granting them such compensation would be unfair or unjust, because it allows some people to extend the costs of their choices to others.¹³

A significant advantage of the symmetrical luck egalitarian view is that it meets head-on, and on arguably genuinely egalitarian grounds, a central rightist charge directed against flat (simple) non-responsibility-sensitive egalitarianism. This objection is directed precisely against measures of equalization that take place irrespective of people’s differential exercises of responsibility. Consider, for example, R.A. Musgrave’s objection to John Rawls’ difference principle (which would seem to apply a fortiori to flat equalizing measures):

Implementation of maximin thus leads to a redistributive system that, among individually equal earning ability, favors those with a high preference for leisure. It is to the advantage of recluses, saints, and (non-consulting) scholars who earn but little and hence will not have to contribute greatly to redistribution (Musgrave 1974, p. 632).

The symmetrical view answers this objection squarely by affirming that equal treatment, in the sense of extending the same amount of resources or income to the industrious and the lazy, would imply not treating them as equals—an and is therefore bad or unjust. By doing so it delivers on the task often ascribed to contemporary egalitarianism, namely to incorporate ‘within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility’ (Cohen 1989, p. 933) or to respond in appropriate ways to responsibility-catering ‘reactive attitudes’ (Scheffler 1992; Strawson 1974, chap. 1).

Asymmetrical egalitarianism, by contrast, is virtually impotent with respect to these objections. It gives the game away by granting that equality against the background of differential exercises of responsibility might, or might not, be bad, or even by positively affirming that it is not bad. In this way it not only abandons rightist reactive attitudes (which might be considered a bearable cost), it departs from what egalitarians should, upon reflection, endorse, namely that their resistance against luck is equally applicable to equalities as it is to inequalities.

4 The Egalitarian Credentials of Symmetrical Egalitarianism: Does Symmetrical Egalitarianism Collapse the Notion of Equality into the Notion of Desert?

The view we have so far defended in this paper gives a prominent role to responsibility, or to desert, assuming that this tracks responsibility. In this way, it may appear particularly vulnerable to a charge made by Segall against a view of the kind we endorse. He submits that such a view conflates equality with desert (Segall 2010, pp. 16–18). The asymmetrical view, by contrast, may be seen as

¹² A stance that seems notoriously at odds with his invocation of the difference principle, and a tension in Rawls’ work that luck egalitarians have been apt to exploit.

¹³ The avoidability motif integral to this view looms large in what Cohen has later referred to as the flagship statement of his 1989 article (see Cohen 1989, p. 923; Cohen 2004, pp. 7–8).

¹⁴ See Note 1.
maintaining the value of ‘equality’ because it is agnostic regarding the badness of equality against the background of differential exercises of responsibility, or positively denies the badness of this state of affairs. Focussing on two influential accounts of what an egalitarian view is, we argue that the symmetrical egalitarian view is a genuinely egalitarian one. Furthermore, we show that the egalitarian baseline view integral to the luck egalitarian stance rests on the notion of equality, not on the notion of desert.

First, a basic condition for a view to count as egalitarian seems to be that the theory or principle is concerned with relativities. Consider Parfit to this effect: ‘Egalitarians are concerned with relativities: with how each person’s level compares with the level of other people’ (Parfit 1998, p. 13. Emphasis in the original; cf. Holtug 2010; Knight 2009, pp. 89-96). The symmetrical view is obviously comparative in requiring that people’s comparative positions should reflect nothing but their comparative exercises of responsibility (cf. (2) in Sec. I). On this criterion for what counts as an egalitarian principle, our view is clearly egalitarian.

Second, one may demand of a theory of equality that it favours certain egalitarian patterns of distributions over less egalitarian patterns. In Susan Hurley’s formulation:

To count as egalitarian, a doctrine must, for some X, favor relatively more equal patterns of distribution of X over relatively less equal patterns of X, other things equal. It must, that is, count relative equality in the pattern of distribution in some dimension as pro tanto a good thing, even if it can be outweighed by other values (Hurley 2003, p. 147. Cf. Holtug 2010, p. 174).

The symmetrical would seem to satisfy this criterion also. Recall that the inequalities that symmetrical egalitarians want to preserve are cleanly generated (see Sec. II). This is to say that they do not reflect that people have not enjoyed option sets that are equally good; and the fact (or requirement) that people have enjoyed equally good sets constitutes a crucial element of the symmetrical view (in the absence of such sets, resulting equalities would not be due to choice or option luck). Hurley’s condition does not in any way rule out that the relevant dimension within which equality is pro tanto desirable is an opportunity dimension.15

As noted above, equality, not desert, may be seen to underpin the baseline or default egalitarian view integral to the symmetrical view (cf. Lippert-Rasmussen 2005, pp. 254–255). According to the baseline view, before people become differently deserving they have a claim to an equal amount of well-being (a baseline against which people may then become more or less deserving—variations that ought to be reflected in their level of well-being). This default may be endorsed on the grounds that people prior to becoming differently deserving are equally deserving (Kagan 1999, p. 312); but as Olsaretti (2002, pp. 396–397) has convincingly shown, this is not the only, and perhaps not the most plausible, reason for endorsing the egalitarian baseline in question. We may, alternatively, say that prior to becoming differentially deserving ‘no one deserves anything at all; that is, desert is inapplicable, and, when desert is inapplicable and does not justify inequalities, we should go for equality’ (Olsaretti 2002, p. 396).16

5 The Sufficentarian Compatibility Argument for the Asymmetrical View

Another reason for favouring the asymmetrical view over the symmetrical view might be that the former, in contrast to the latter, is compatible with sufficientarian considerations.

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15 We owe this point to one of our reviewers.
16 We recognize that there is much more to be said about the relation between ‘equality’ and ‘desert’. See e.g. Kagan (2012).
One might consider such compatibility desirable in the light of the so-called abandonment or harshness objection to luck egalitarian views. We believe that Segall himself alludes to such reasoning for his view.\textsuperscript{17} The harshness charge, in brief, is that the luck egalitarian view apparently proposes an implausibly unrelenting stance towards people who, by virtue of their own reckless or imprudent behaviour, experience serious shortfalls (Anderson 1999, pp. 295–296; Fleurbaey 1995, p. 40). This may concern, e.g., uninsured persons partaking in high-risk activities (e.g., free-style motocross or off-piste skiing) who get injured, or those who gamble with their financial assets and lose. Seemingly, the liberal response and \textit{a fortiori} the liberal luck egalitarian response is that these people ‘asked for it’ and must now ‘pay the price’ (Feinberg 1986, pp. 140–141). They have no grievances towards those who abstain from helping them—it is even possible that the liberal position positively requires that others should avoid bailing out those who are responsible for their own misery.

The notion that no decent society can, in fact, refrain from assisting those in misery—irrespective of the part they themselves have played in their own predicaments—is widespread (Feinberg 1986, p. 140; Jones 1985, p. 154). It is therefore incumbent upon luck egalitarians to somehow accommodate this intuition. One way in which they can attempt to overcome this challenge is by incorporating a sufficientarian baseline, i.e., a standard of well-being below which no one is allowed to fall, however irresponsible or reckless their behaviour proves to be (Williams 2006, pp. 500–502). We may conceive of this baseline, as Segall does, as being based on moral values other (and more fundamental) than justice, e.g. in terms of a fundamental requirement to meet basic needs (Segall 2010, pp. 64–66, 68–69).

In light of such a solution to this challenge, Segall’s version of luck egalitarianism may be seen to have some virtues. Consider Segall to this effect:

It is relatively easy, notice, for the sort of luck egalitarianism I defend here to allow the concern for basic needs to complement the requirements of egalitarian distributive justice. For, as I said repeatedly, my version of luck egalitarianism is distinct from the ideal of desert. It does not insist on punishing individuals or on matching the level of their well-being to the level of their deservingness (prudence-wise). It is therefore not a requirement of justice, on my account, that the imprudent be left to suffer. The account thus lends itself to being coupled with the rather straightforward concern for meeting basic needs (Segall 2010, p. 69. Cf. pp. 18, 65).

We interpret Segall’s claim of compatibility between his version of egalitarianism and a sufficientarian baseline in the sense that the former does not deny the facet of the latter that says we ought, for example, to cater to people’s basic health care needs unconditionally, i.e., irrespective of these needs stemming from their negligence or recklessness. This distinguishes it from the symmetrical egalitarian view. Like other egalitarian views, however, Segall’s view denies that we should be unconcerned about inequalities beyond the baseline.\textsuperscript{18}

We grant that Segall’s version of egalitarianism is in this sense easier to reconcile with a sufficientarian threshold, hence allowing egalitarians an effective response to the harshness or abandonment objection. We deny, however, that this amounts to an argument for accepting Segall’s version of egalitarianism in favor of alternative versions, including the one we defend. The fact that the latter is in conflict with a sufficientarian threshold amounts

\textsuperscript{17} And in communications (July 11, 2012) he makes clear that he believes that the considerations we have in mind might count in favour of his view, although not amounting to a decisive argument for it.

\textsuperscript{18} We may say that Segall’s view, as opposed to the symmetrical view, enjoins the positive thesis of sufficientarianism (i.e., it is important that people live above a certain threshold) and, together with other egalitarian views, denies the negative thesis (i.e., additional distributive requirements are irrelevant). See Casal 2007, pp. 297–298. We owe this point to Lasse Nielsen.
at most to a nonegalitarian objection to it—one that does not imply that the conception in question is not the correct conception of equality.

To explain, we should distinguish between different types of objections to notions of equality. One type rests upon a notion of equality differing from the notion being objected to; i.e., the notion of equality being objected to fails, the objection claims, to treat people equally or as equals. This is an egalitarian objection. Another type of objection questions the feasibility of the conception of equality to which it objects. For example, it says that the kind of information required to implement the conception (e.g., about the burdens of different types of labour) is inaccessible. A third type regards how a given conception may jeopardize cherished values other than equality. For example, the required information to implement a given conception may be accessible, but unearthing it would be intrusive (Cohen 1989, Sec. II). The latter two types of objections are nonegalitarian.

If we object to a proposed conception of equality, say equality of (opportunity for) welfare on the grounds that it is infeasible because the information required for its implementation regarding people’s welfare level is unavailable, we seem not to be objecting to the conception in question as the correct or best conception of equality. Indeed, if this represents our sole ground for objecting to the conception, we are plausibly committed to the conditional claim that if equality of (opportunity for) welfare could be implemented it should be (cf. Cohen 2008, pp. 250–251).

Similarly, if the objection to the latter conception is not that obtaining the required information is infeasible but that providing it would jeopardize other values (e.g., liberty), the point seems not to be that this conception is somehow misguided regarding what the correct conception of equality is; rather, the point is that the offered account is in conflict with other values that we cherish.

Returning to the kind of consideration to which Segall appeals in support of his version of egalitarianism, it amounts to the claim that the latter is not in conflict with another value, namely the sufficientarian basic human needs consideration; the implied objection to the alternative view, then, concerns its conflict with this other value. In this sense, it clearly seems to amount to a nonegalitarian objection. If this is the case, it provides no reason to reject the symmetrical view as an incorrect account of equality (or to endorse Segall’s alternative asymmetrical view as the correct account).

To be sure, in light of what we have said above regarding the harshness objection and the proper egalitarian reaction to it, a nonegalitarian objection of this type is valid and we should defer to the value to which it appeals (i.e., the importance of meeting basic human needs) when we implement egalitarian principles, but it does not provide any reason for abandoning the symmetrical view as the correct conception of equality. This would be a category mistake and conceal the kind of trade-offs luck egalitarians moved by the harshness objection must make. Accordingly, we believe that the potential foothold for Segall’s view canvassed here evaporates.

In our treatment of this argument we have proceeded on the assumption apparently shared by Segall that the values pertaining to the basic human needs threshold are external to considerations of luck egalitarianism strictly conceived. However, others believe, not unreasonably, that considerations of sufficiency may be seen as integral to egalitarian considerations (Arneson 2011; Gosseries 2012; Williams 2006). The basic needs threshold (or another threshold account) may, that is, be seen as an important component of the luck egalitarian view. Still, even in this construal of the relationship between the basic needs threshold and (other) egalitarian considerations, it is unclear that consistency or a lack of tension with the threshold on the part of a candidate account of the responsibility-sensitive

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19 Jeremy Moss raised this point in his comments to our presentation of an earlier version of the paper.
component of luck egalitarianism counts in favour of that account. In the service of clarity it may be desirable to develop the components separately and then balance them against each other afterwards, in the manner alluded to above.

6 Conclusion

We conclude that the equivocation present in one of the standard formulations of the luck egalitarian view, the Principle of Equality, should be resolved by embracing the view we call symmetrical egalitarianism. According to the latter, equalities, just as inequalities, are bad if, and only if, they reflect something other than choices or exercises of responsibility; that is, if they reflect differential brute luck. Equalities reflecting differential exercises of responsibility, the issue of contention in this paper, are bad because they countenance cost displacement, making the prudent and industrious pay for the costs of the perfectly voluntary choices of the imprudent. Such extension of costs is unfair. It runs counter to the ideal of treating people as equals. The symmetrical view is, not least by virtue of its stance on arbitrary equalities, capable of meeting head-on a forceful responsibility objection often levelled against egalitarianism. The asymmetrical view, by contrast, seems impotent in light of this objection (denying, as it does, or being agnostic regarding, the badness of the equalities on which rightists focus).

Furthermore, the symmetrical view is capable of standing its ground against two central objections. The first objection holds that the view is not genuinely egalitarian; it collapses, this critique claims, into a notion of desert. However, we have shown that the symmetrical view is perfectly capable of satisfying standard conditions for qualifying as an egalitarian view, and that the value of equality, according to it, plays a role independent from that of desert or responsibility. The second objection holds that the symmetrical view, as opposed to the asymmetrical view, is problematic in light of its incompatibility with sufficientarian considerations, to which egalitarians may need to appeal in order to respond to the harshness objection. In response, we maintain that although the symmetrical view may be incompatible with sufficientarian considerations, this fails to amount to an egalitarian objection to the symmetrical view. The upshot of the considerations in this paper, then, is a strong recommendation of the symmetrical view.

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Article 4.
Feiring’s Concept of Forward-Looking Responsibility: A Dead End for Responsibility in Healthcare

Journal of Medical Ethics. doi:10.1136/medethics-2013-101563
Feiring’s concept of forward-looking responsibility: a dead end for responsibility in healthcare

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Abstract

Eli Feiring has developed a concept of forward-looking responsibility in healthcare. On this account, what matters morally in the allocation of scarce healthcare resources is not people’s past behaviours but rather their commitment to take on lifestyles that will increase the benefit acquired from received treatment. According to Feiring, this is to be preferred over the backward-looking concept of responsibility often associated with luck egalitarianism. The article critically scrutinises Feiring’s position. It begins by spelling out the wider implications of Feiring’s view. Against this background, it shows that (i) Feiring’s distinction between backward-looking and forward-looking responsibility is incompatible with the Scanlonian notion of responsibility she apparently endorses; (ii) her favoured forward-looking notion of responsibility is subject to the objections levelled against the luck egalitarian view (whatever the strength of such objections).

Introduction

In a time of increasing healthcare costs, strained public budgets and changing patterns of disease, the discussions over how society should allocate scarce healthcare resources is often influenced by an idea of personal responsibility. The burden from non-communicable chronic diseases is pivotal to this discussion. Some suggest that when people’s choices result in a greater need for healthcare, we should give them lower priority than those who are suffering from diseases unrelated to their own choices. In many ways, this corresponds to a central intuition of luck egalitarianism; an influential theory of distributive justice. Luck egalitarians assert that distributions are just, if and only if, people’s past choices result in a greater need for healthcare and, in that sense, it is backward-looking. Such notions of responsibility have gained much attention in the normative debate on allocation of healthcare. Instead of a backward-looking concept of responsibility, Feiring proposes one that looks to the future. This section examines her reasoning when developing the concept and her reasons for preferring it. She maintains that, on a fundamental level, we should be concerned with how sick people are and with the expected positive effect of treatment. Furthermore, she maintains that “severely ill patients who are likely to respond well to treatment...should, under the specified understanding of medical need, be given priority over patients less likely to benefit”.

Forward-looking Responsibility

Feiring has proposed that when allocating scarce healthcare resources, we should abandon the backward-looking concept of responsibility. Instead, we should be concerned with what she calls a forward-looking concept of responsibility. In short, it considers people’s post-treatment lifestyle to be the right focus for a responsibility-catering approach to healthcare. Although it is developed in the context of obesity, Feiring clearly believes it is relevant for other diseases since she also mentions alcohol consumption and smoking in her discussion.

To understand Feiring’s notion of forward-looking responsibility, it is instructive to consider the two main reasons she offers for rejecting a backward-looking concept of responsibility. First, she submits that it is often both philosophically and practically difficult to assess whether something has happened as a consequence of choice or is more reasonably attributed to a person’s circumstances. Second, she argues that the process of establishing whether some health disadvantage can be attributed to choice or circumstance may be intrusive, demeaning and shameful for the person under assessment. Consequently, Feiring finds it necessary to abandon the idea of backward-looking responsibility in healthcare. This conclusion, however, does not imply that there is no room for responsibility in the allocation of scarce healthcare resources. Focus should rather be on the forward-looking responsibility. The content of this concept is explored in the next section.
of the factors are circumstances beyond our control, while we may be in a position to improve upon other factors. Feiring counts our post-treatment lifestyle to be among the latter factors.12 The lifestyle people pursue can adversely affect the outcome of the prescribed treatment in a wide range of cases. This includes people who consume alcohol after receiving a liver transplant and people who eat to excess after receiving a bypass surgery. Feiring argues that we should give priority to people who are willing to commit to a change of lifestyle: “If the patient refuses, then she cannot reasonably complain to be given lower priority on the waiting list.”12 Her suggestion for implementation is as follows: two persons turn to the healthcare system with the disease x. Person A has a lifestyle that we know can lead to disease x, while person B does not. Whether person A will receive treatment on equal terms with person B depends on A’s willingness to sign a contract declaring a commitment to undertake medical follow-ups and other activities aimed at changing the lifestyle in question, thus increasing the benefit of treatment. Those who refuse to sign such a contract are given lower priority on the waiting list.12 On this account, healthcare personnel should not indulge in whether “it would have been obtainable for one in the patient’s circumstances to make a greater effort to get a healthy lifestyle in the past”.12 Thus, the notion of responsibility is forward-looking.

The remainder of this article critically engages with Feiring’s position. The first section elaborates the implications of Feiring’s view through a closer look on the values underpinning it. It shows that her position should be applied to a broader range of cases than her discussion suggests. The second section criticises her conceptual distinction between responsibility in past and future, while the third section argues that her suggested way of dealing with non-compliers is inconsistent.

Elaborating on the implications of Feiring’s position

This section elaborates on the implications of Feiring’s concept of forward-looking responsibility through an examination of the values underpinning it. On a fundamental level, her reasoning is contractual; searching for a principle people cannot reasonably reject. In the more specific arguments for her position, she presents two moral values in support of her concept of forward-looking responsibility. This section presents those values and labels them increasing benefits and reciprocity, respectively. Increasing benefits stems from the plausible thought that we should be attentive to how much good the provided resources will do for the person they are allocated to. Feiring embraces this value, when she writes that “ill patients who are likely to respond well to treatment (within given resource constraints) should, under the specified understanding of medical need, be given priority over patients less likely to benefit”.12 According to Feiring, this value justifies giving priority to those who agree to change their lifestyle because it increases the expected benefit of treatment.1 Feiring’s contractual idea is that people cannot reasonably reject this position.12 The value of reciprocity is expressed when Feiring claims as follows: “when resources are limited we owe each other to do what we can to make medical treatment efficacious”.12 It is even clearer when she writes the following: “when deciding on the terms on which we want to live with one another, it is reasonable to expect people to make do with their fair shares.”12 It seems plausible to suggest that reciprocity concerns what we owe to each other in a mutual relation. On that note, Feiring argues that we owe it to each other to change our lifestyle to increase benefits of treatment. Agreeing to such a change becomes a necessary precondition for receiving treatment on equal terms.

Before presenting the critique of Feiring, her concept of forward-looking responsibility will be elaborated upon to show that it should be applied much broader than her discussion suggests. Feiring explicitly deals with persons who have a condition that may or may not be caused by the health risks associated with a specific lifestyle (a lifestyle that they may or may not have been able to change in the past), but where a continuance of this lifestyle decreases the expected benefits of treatment. But is the concept not applicable to a whole range of other diseases unrelated to lifestyle? Suppose a person broke his arm in a traffic accident or acquired a large wound on his leg while working. Since smoking slows down the process of healing, the benefits of treatment would be increased if the person undertook a change of lifestyle. Thus, the following seems to be in accordance with Feiring’s position and the values she explicitly acknowledges: people should be asked to change their lifestyle when it will increase the benefit of treatment regardless of whether or not the chosen lifestyle could have caused the medical need. Furthermore, people should be given lower priority in the healthcare system if they decline to do so. Such a broader application of the concept of forward-looking responsibility could and should be welcomed by Feiring but will not be exploited in the critique that follows.

CRITIQUE OF FEIRING

Today was the future yesterday: Feiring’s inconsistent cut between past and future

In this section, it will be argued that Feiring’s differentiation between the choices facing us before and after we become ill is arbitrary and ultimately saddles her with a strange view on responsibility. Do the values of increasing benefits and reciprocity commit us to increase the benefits of our share of resources and to minimise the amount of extra resources needed to treat us in the future? According to Feiring, this is the case at t2 when a person is asked to commit to a lifestyle change as a precondition for receiving treatment on equal terms with others, and at (an eventual) t3 when a new medical need arises related to the same lifestyle. But is it also the case at t1, before the medical need arises? Feiring denies this. Drawing on an example from Scanlon, it will be argued that the distinction between past and future choices is less crucial than Feiring suggests.

The local town council is tasked with the removal of hazardous waste. The health risks of leaving it be would be huge, but removing it involves a much smaller although significant health risk (ie, chemicals evaporating into the air during transport).13 The town council does as much as could be expected of them in notifying the citizens prior to the event, and in shielding the relevant digging sites. Person C receives the information and chooses to travel to the site, climbs the fence and gets sick as a result. Adding to Scanlon’s familiar story, suppose that in addition to making people sick the exposure also makes them extra vulnerable at a possible later exposure. On Feiring’s account, person C must pledge to avoid such risks in the future, and

\*\*This only holds if it is true that (1) people who change their lifestyle benefits more from the treatment and (2) that those who enrol in such programmes are more likely to succeed in such a change. I have no quarrel with such assumptions and will not discuss them further.

\*\*The possibility that Feiring could accept this broadening was suggested by both reviewers.
compliance becomes a precondition for treatment on equal terms with others. Person C makes such a commitment. As it happens, another chemical deposit must be moved on a later occasion. Person C gets sick as a result of acting as before, with all else remaining equal.

This modified example raises serious doubts over Feiring’s sharp distinction between the concepts of backward-looking and forward-looking responsibility. In her own reasoning, Feiring leans on a view on responsibility often associated with Scanlon. Here, responsibility has to do with whether something bad (or costly) was avoidable, and we might add that we also care about how difficult or costly it was to avoid. Such a view on responsibility is neutral on the subject of time. Instead, it sets up a number of conditions that must be in place before a person can be said to be responsible for a state of affair. Whether such conditions are in place can change over time, but which factors that are relevant should not. The example with person C shows that Feiring’s position is inconsistent. On Feiring’s account, person C will only suffer the consequences for his imprudent behaviour the second time even though other factors were equal. This is counter-intuitive and suggests a questionable view on responsibility. Consequently, when Feiring argues that people’s post-treatment behaviour can be taken into account, we really should be wondering why this is not the case with pre-treatment behaviour. The right question to ask must be under which conditions people made their choices, which alternatives were available to them and how difficult or costly it was to pursue those alternatives.

It can be the case that such information is difficult to uncover or that trying to do so is demeaning or wrong towards people. But that applies equally at t1, t2 and t3, and it gives us no reason to talk of responsibility only at t2 and t3. Could it be that the conditions are different at t3. One attempt to uphold such a view would be to submit that the people at t1 have failed to comply with a value but they have not failed to meet the specifications of a contract. Such an objection cannot rescue Feiring’s position. For suppose we gave every able-bodied and able-minded person a choice once they reached adulthood asking them to commit to a healthy lifestyle and to attend counsellor’s for healthy living. The choice presented to these young people is parallel with what Feiring proposes we ask those that become sick and accordingly we can give priority to those who promised to change their lifestyle. The normative prominence Feiring gives the distinction between past and future choices thus seems implausible. It saddles her with a questionable view on responsibility, which passes vastly different judgements on identical situations.

Consequences for non-compliers
This section examines a critique of how Feiring’s account treats those who agree to change their lifestyle but fail to do so. The strength of this critique is independent of the arguments presented so far, and thus proceeds as if the distinction between backward-looking and forward-looking responsibility can be upheld. Thus, the section proceeds as if we are justified in refusing to take people’s past choices into account.

Consider person D who has lifestyle disease x, lives a lifestyle with risk r1 associated with disease x. At t2, person D agrees to change his lifestyle and is therefore given treatment t2 on equal terms with others. Person D fails to change his lifestyle, and at t3 he once again turns to the healthcare system for a medical need associated with r1. How should we deal with person D? Feiring maintains that failure to live up to one’s commitment should weaken one’s claim for assistance: thus it would seem that person D is not allowed to sign yet another contract promising to eliminate r1 from his lifestyle. It will be argued that the terms Feiring offers those who do not live up to the agreement they entered should a new medical need arise are in conflict with her two critiques of backward-looking responsibility: that it is very difficult to assess what counts as choice and what counts as circumstance, and, furthermore, that a process of clarifying it could potentially be a demeaning and intrusive process. Her views on responsibility at t2 and t3 are thus inconsistent.

Consider a given individual living a life with an unhealthy lifestyle. Such a lifestyle can be pictured as a long series of choices. The content of the choices has to do with avoiding something which is unhealthy or conversely with doing something which is healthy. According to Feiring, we are unable to satisfactorily determine whether this lifestyle and the choices it consists of are most fittingly attributed to circumstances or can be considered genuinely related to choice. Considering this understanding as a plausible view on past events is admitted for the purpose of argument. At some point, t2, this lifestyle leads to a medical need. On Feiring’s account, the person must choose to commit to a lifestyle change to receive treatment on an equal footing with others. Having received the treatment, the person will face a new series of choices, the content of which is much similar to those before the treatment. If the person does not live up to his commitment to lifestyle change and a new medical need arises, Feiring would allow it to affect future access to healthcare. Thus, Feiring believes that we are unable to assess the degree to which the lifestyle choices leading to an illness are chosen, but if a person continues to make such choices after commitment to a lifestyle change, consequences are justified. If we cannot assert whether the choices leading to the first instance of medical need were actual choices, why should we fare any better with the choices that led up to the second? If we cannot justifiably let the first series of choices result in differentiation in treatment or waiting time, why then let the second series of choices do so? Presumably, the choices made after the commitment to a lifestyle change are undertaken as much affected by circumstances as the previous ones. The concern here is thus, if Feiring is correct in her view that at t2 we cannot take past choices into account, why does this line of thinking not apply to the case at t3? Even though the choices regarding post-treatment lifestyle are indeed ahead of us when we promise to change our lifestyle to increase the benefits of treatment, this is not the case when we turn to the healthcare system on a later occasion with a similar medical condition, an unchanged lifestyle and thus in the light of non-compliance. At this point all this is very much in the past.

Feiring’s positions of forward-looking responsibility furthermore seem to overlook how people’s circumstances affect their abilities to fulfil their commitments to lifestyle change. This is quite remarkable since her critique of luck egalitarianism and backward-looking responsibility was built around such a concern. Consider again person C, from the example of removal of hazardous material. For the purpose of the argument, it is admitted that Feiring is correct in giving him the option at t2 to avoid future exposure. But suppose that the first exposure severely reduces his capacities and judgements. He agrees to avoid future exposure, but nevertheless fails to comply with the agreement. Intuitively, we would not count such a breach of agreement against him. But Feiring must submit that we should.

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10 A point raised by an anonymous reviewer.
11 This point was suggested to me by David V Axelsen.
The most obvious solution available to Feiring would be to suggest that how we treat people’s second instance of medical need related to a specific lifestyle or choice of action should depend on an individual assessment of the effort made to follow through on the commitment to a lifestyle change. We could perhaps inquire into their own reasons for this failure, how often they attended the required meetings and how the medical staff judged their commitment to the required programme. Presumably, people do differ in their efforts and in the extent that their failure can be explained by social circumstances. Some would have good reasons for non-compliance and others would have ignored instructions, failed to honour agreements and showed a lack of effort. If we tried to assess which is which, one could argue that the above concern over the influence of circumstances on people’s ability to change their lifestyle could be mitigated. However, this most plausible solution cannot be consistently applied by Feiring since she argues against backward-looking responsibility that any attempt at assessment may involve shameful revelations and be demeaning for the person whose choices and circumstances are under assessment. Those who would like to argue that this is too simplistic a view on our methods of retrieving information should acknowledge that this argument would be open to those favouring backward-looking responsibility as well. In conclusion, it would seem that any plausible version of Feiring’s forward-looking responsibility, that is, any position which involves actual consequences when people fail to live up to the agreements they have entered into, will seem vulnerable to at least one of the critiques she laboured against backward-looking responsibility.

Even if Feiring is right (as doubted in the previous section) that we should treat pretreatment and post-treatment behaviour in radically different ways, her treatment of non-compliers is inconsistent with what she states elsewhere. Furthermore, her position is less attentive to social and natural circumstances than any luck egalitarian approach would ever be (since any breach seems to count against people).

**CONCLUSION**

The above sections discussed three important elements in Feiring’s concept of forward-looking responsibility. The first section elaborates on who the concept is applicable to by presenting arguments that it should be applicable in a broader way than her discussion suggests. Second, and more profoundly, the values she subscribes to suggest that people should act in ways to take care of their health and that failure to do so should result in lower priority in the healthcare system. Our past choices matter, and the strong normative emphasis she places on the distinction between past and future saddles her with an implausible view on responsibility. The third section considered how Feiring’s account treats those who fail to live up to the agreements made prior to receiving treatment. It submits that the consequence she allows of such non-compliance is inconsistent with what she writes elsewhere, and it is surprisingly inattentive to people’s circumstances.

**Acknowledgements** In the writing of this article I am indebted to several people. Especially, comments from Søren Flinch Midtggaard and David V Axelsen have improved the paper, together with the comments from two anonymous reviewers. I am also grateful to the students who attended my seminar on Inequalities in Health in the autumn of 2012 for our mutual discussion on the merits of Feiring’s paper. Most of the paper was written during a research stay at University of Glasgow, and I am grateful for the hospitality shown to me there.

**Funding** Oticon Foundation (grant No 12-4238), Augustinus Fonden (grant No 12-4996).

**Competing interests** None.

**Provenance and peer review** Not commissioned; externally peer reviewed.

**REFERENCES**

Feiring's concept of forward-looking responsibility: a dead end for responsibility in healthcare

Andreas Albertsen

*J Med Ethics* published online December 6, 2013
doi: 10.1136/medethics-2013-101563

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Article 5.
Fresh Starts for Unhealthy Behaviour. Should We Provide Them and Who Should Pay?
**Fresh starts for poor choices in health: Should we provide them and who should pay?**  
Andreas Albertsen

*Should we grant fresh starts to those who come to regret their past choices in health? In a recent article, Vandenkiste, Devooght and Schokkaert argue that we should and contrast their view with luck egalitarian approaches to health and healthcare. As a responsibility-sensitive theory of justice, luck egalitarians consider it just that people's relative positions reflect their past choices. The authors maintain, on the contrary, that we should grant people a fresh start if they come to regret their past choices and preferences. They purport to show the fairness of such an arrangement through a hypothetical scenario employing the ideal that people should be provided with equivalent resources. But relaxing the (implicit) assumptions of this initial scenario brings forth several strange and unattractive consequences of the authors’ position. The main problem is that in striving to ensure that people’s past choices don’t affect their own opportunities, the authors must accept that these choices put heavy strains on other people’s opportunities. Furthermore, the luck egalitarian position is much more compelling than they admit.*

Key Words: Allocation of healthcare resources; distributive justice; luck egalitarianism; public health ethics; health opportunities

**Introduction**

Our choices in health affect our overall health. Choices regarding what we eat and drink, whether we smoke, and the extent to which we exercise affect our longevity and our general health. There are many important things worth noting when discussing the normative implications of such health choices. One is that people’s choices correlate strongly with their social position, and it is also commonly argued that our health as such is affected by our socioeconomic status (Marmot and Wilkinson 2006; Venkatapuram and Marmot 2009). But moving beyond this discussion, important issues remain. Specifically how we should consider and conceive choices in health for which people are in fact responsible, choices that reflect their genuine preferences for how they want to live their lives.

Under the assumption that we are dealing with such genuine choices, Vandenkiste, Devooght and Schokkaert have argued for a novel approach to personal responsibility in health. In their recent article entitled *Beyond Individual Responsibility for Lifestyle: Granting a Fresh and Fair Start to the Regretful*, they argue that we should endorse a view which grants a fresh start to the regretful.¹ The basic idea is that we should refrain from letting past choices limit current freedom and opportunities.² Instead, people should be granted fresh starts, if they are regretful about their past

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¹ An idea also explored by (A. Brown 2005).
² Inspired by Fleurbaey (Fleurbaey 2008; Fleurbaey and Schokkaert 2009).
choices. This article sets out to evaluate the coherence and strength of such a view in the context of health.

Debates over personal responsibility in health is not a new phenomenon (Leichter 2003; Minkler 1999; Reiser 1985), but recently it has received a lot of attention especially in the context of priority setting in healthcare and health policies as such (Bringedal and Feiring 2011; Daniels 2011; Golan 2010; Ubel, Baron, and Asch 1999; Schmidt 2008). One important branch of this discussion relates to the influential theory of distributive justice, also known as luck egalitarianism. Roughly speaking, luck egalitarianism is a responsibility-sensitive view on distributive justice allowing people’s past exercises of responsibility to affect their relative position (Knight 2009). The authors contrast their view with the luck egalitarian approach to health and argue that luck egalitarianism is less attractive than the approach granting fresh starts. The application of luck egalitarianism in health has received attention both among people somewhat sympathetic to the idea (Albertsen and Knight 2014; Hunter 2007; Segall 2007; Segall 2010; Segall 2013), and those who remain skeptical towards its implication on health (M. Marchman Andersen et al. 2013; Martin Marchman Andersen 2014; R. C. H. Brown 2013; Feiring 2008; Nielsen and Axelsen 2012; Nielsen 2013; Wikler 2004). The article by Vandenkiste, Devooght and Schokkaert should thus be viewed as an important contribution to both the general debate over personal responsibility in health and to the more specific debate over luck egalitarianism in health. While the presented view should be appreciated both for ingenuity and interesting policy proposals, I will argue that it is ultimately unsatisfactory and furthermore, that the luck egalitarian approach to health cannot be dismissed as easily as the authors suggest.

**Granting fresh starts: The argument**

Vandenkiste, Devooght and Schokkaert consider a population in which each individual has 300 units of a given resource. Each person goes through two continuous periods of time, spending 150 units during each period, and can choose to spend the units on healthy or unhealthy activities. After the first period, the population consists of two groups: Those who made healthy choices and those who made unhealthy choices with their resources.

Vandenkiste, Devooght and Schokkaert purport to show that this new distribution should be a concern of justice if some of the people regret their earlier choices. They do so in the sense, that they change their preferences and would have wished that their past choices had reflected their new way of life, rather than the old. To illustrate this, they assume that half of those who lived unhealthily in the first period come to regret this. This particular group would have preferred a healthier lifestyle. We thus have three distinct groups. Those who have made unhealthy choices can be divided into those who regret their past choices and those who do not. In the constructed scenario it is stipulated that those who have made healthy choices do not regret their activities and therefore form a third group. In light of the above scenario, the authors claim that justice requires compensation for those who are regretful about
their past choices and preferences. In addition, the authors present a specific idea about how to understand the injustice of the situation and policy proposals to change it.

The authors believe that justice requires people to have equivalent resources. Equivalent resources are a conception of resources where one’s past choices are evaluated in the light of one’s present preferences (Vansteenkiste, Devooght, and Schokkaert 2014, 70). In that light, the unhealthy lifestyle of the first period is worthless to the person who now prefers a healthy lifestyle. As the resources spent in the first period do no contribute to the fulfillment of current preferences, they are not taken into account when comparing equivalent resources. Measured in this way, the persons who come to regret their past choices are significantly disadvantaged compared to those without such regrets. This means that after the first period, their opportunity to live the life they now prefer is significantly hampered by their past activities (Vansteenkiste, Devooght, and Schokkaert 2014, 70–71). The table below shows the equivalent resources of each group after the second period.

<table>
<thead>
<tr>
<th>Group</th>
<th>Healthy lifestyle – no regrets</th>
<th>Unhealthy lifestyle – regrets</th>
<th>Unhealthy lifestyle – no regrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>50 %</td>
<td>25 %</td>
<td>25 %</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 1</td>
<td>0</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>Spent on healthy activity in 1</td>
<td>150</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 2</td>
<td>0</td>
<td>0</td>
<td>150</td>
</tr>
<tr>
<td>Spent on healthy activity in 2</td>
<td>150</td>
<td>150</td>
<td>0</td>
</tr>
<tr>
<td>Equivalent Resources:</td>
<td>300</td>
<td>150</td>
<td>300</td>
</tr>
<tr>
<td>Health outcome</td>
<td>300</td>
<td>150</td>
<td>300</td>
</tr>
</tbody>
</table>

Going through the second period, it is clear that those regretting their past unhealthy choices cannot surpass a certain level of equivalent resources by spending their remaining resources in accordance with their new healthy preferences. The regret of some who lived unhealthily in the first period brings about a situation where this group is much worse off than others measured in equivalent resources. The authors consider it to be wrong that someone should fare worse in this way and contend that justice requires that the regretful should be offered a fresh start going into the second period (Vansteenkiste, Devooght, and Schokkaert 2014, 69). Fresh-start policies thus denote initiatives aimed at giving people equivalent resources.

The authors furthermore offer a solution of how to finance such redistributive initiatives. They propose that everybody should be taxed in the first period in order to raise funds for a check which can only be used for healthy activities.
and is made available to those who have lived unhealthily during the first period (Vansteenkiste, Devooght, and Schokkaert 2014, 72). As the check is ear-marked for healthy activities it only has value for those who have come to regret their unhealthy lifestyle. This brings about the following distribution after the second period.

<table>
<thead>
<tr>
<th>Group</th>
<th>Healthy lifestyle – no regrets</th>
<th>Unhealthy lifestyle – regrets</th>
<th>Unhealthy lifestyle – no regrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>50 %</td>
<td>25 %</td>
<td>25 %</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 1</td>
<td>0</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Spent on healthy activity in 1</td>
<td>120</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tax</td>
<td>30</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 2</td>
<td>0</td>
<td>0</td>
<td>150</td>
</tr>
<tr>
<td>Spent on healthy activity in 2</td>
<td>150</td>
<td>150+120</td>
<td>0</td>
</tr>
<tr>
<td>Equivalent Resources:</td>
<td>270</td>
<td>270</td>
<td>270</td>
</tr>
<tr>
<td>Health outcome</td>
<td>270</td>
<td>270</td>
<td>0</td>
</tr>
</tbody>
</table>

Here, everyone ends up with equal equivalent resources. It is worth stressing that the above scenarios are presented under a couple of notable features and assumptions. These include that the scenario consists of only two periods and that the resources are spent equally in both periods. Furthermore, the scenario is presented to us with a certain proportion of the groups. The next section examines the position proposed by the authors through relaxing such prominent features of the initial scenario one at a time. In the process of doing so, it will be argued that even if one considers the above to be fair, the fresh-start policies are far less plausible when evaluated in this way. Besides arguing against their main claim, the paper also doubts their critique of the luck egalitarian position.

**Implausible consequences of the proposal**

For the purpose of the argument, this section accepts the ideal of equivalent resources. It then tries to show that, even under that assumption, slight changes of the scenario presented by the authors cause them to endorse distributions which are seemingly unfair.

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2They also consider another solution in which people are forced to spend part of their resources on healthy activities in the first period. This benefits those who regret their past unhealthy lifestyle, but such a spending of resources is by definition worthless to those who keep on living unhealthy lives and thus introduces a waste in the system. For that reason the check solution is preferred by the authors, even if implementing these thoughts in the real world may require a mixture of such schemes.
Changing proportions
First, let us see what happens if we change the proportions of the affected groups, in terms of their relative sizes. Consider a revised scenario where all those who have been living unhealthy lives in the first period regret this. This gives rise to the following revised scenario.

<table>
<thead>
<tr>
<th>Group</th>
<th>Healthy lifestyle – no regrets</th>
<th>Unhealthy lifestyle – regrets</th>
<th>Unhealthy lifestyle – no regrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>50 %</td>
<td>50 %</td>
<td>0 %</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 1</td>
<td>0</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td>Spent on healthy activity in 1</td>
<td>100</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Tax</td>
<td>50</td>
<td>50</td>
<td>-</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 2</td>
<td>0</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Spent on healthy activity in 2</td>
<td>150</td>
<td>150+100</td>
<td>-</td>
</tr>
<tr>
<td>Equivalent Resources:</td>
<td>250</td>
<td>250</td>
<td>-</td>
</tr>
<tr>
<td>Health outcome</td>
<td>250</td>
<td>250</td>
<td>-</td>
</tr>
</tbody>
</table>

In this scenario, the authors must endorse a distribution where fresh starts are granted to the regretful, but at a profound loss for those leading a healthy lifestyle. In the first period, the healthy must give up one third of their resources to finance future regretful persons, and in the end, the healthy end up at a health outcome 50 resources lower than they could otherwise have had. This points to a curious tension within the authors’ framework. It springs from the belief that we should not let a person’s past choice affect his current opportunities, but must in the end accept that other people’s past choices affect a person’s opportunities, because the costs of upholding fresh-start policies impede the options available to others.

Big spenders
Let us consider a second scenario to evaluate the authors’ position. Instead of changing the relative size of the groups, another feature of the initial scenario is relaxed. So far, the discussion has been conducted under the assumption that people can spend half of their resources in each period, no more no less. But what would happen if we relaxed this feature in order to let people spend as much as they want in each period, only keeping with the requirement that, all in all, they have to spend the 300? Consider the now familiar scenario. In this version, everyone who initially had an unhealthy lifestyle come to regret it (as above), but some have spent more resources in the first period than others.
<table>
<thead>
<tr>
<th>Group</th>
<th>Healthy lifestyle – no regrets</th>
<th>Unhealthy lifestyle – regrets</th>
<th>Unhealthy lifestyle – regrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>50 %</td>
<td>25 %</td>
<td>25 %</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 1</td>
<td>0</td>
<td>200</td>
<td>150</td>
</tr>
<tr>
<td>Spent on healthy activity in 1</td>
<td>150</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 2</td>
<td>0</td>
<td>0</td>
<td>150</td>
</tr>
<tr>
<td>Spent on healthy activity in 2</td>
<td>150</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>Equivalent Resources:</td>
<td>300</td>
<td>100</td>
<td>150</td>
</tr>
<tr>
<td>Health outcome</td>
<td>300</td>
<td>100</td>
<td>150</td>
</tr>
</tbody>
</table>

Relaxing the restriction on how much a person can spend in each period brings forth an interesting element of the fresh-start theory proposed by the authors. Namely that the more persistent one was in pursuing the preferences which one comes to regret, the stronger one’s claim for compensation. As above, one could strive to redistribute through taxation to make sure that the equivalent resources will be equal in the end. There is no need to go through this in detail, suffice to say, the taxes on those who do not regret their past choices would be increased by the fact that some have spent more than half their resources in the first period, pursuing preferences they no longer have. The overspending by some increases the burden of others, if fresh-start policies are required by justice. The more you have spent pursuing activities you no longer value the larger your claim for compensation.

When adjusting the initial scenario, one should be wary, not least when using the adjusted scenario to criticize a position developed and defended through the initial scenario. The concern would be whether the adjusted scenario introduces elements so different from the initial scenario that the authors need not embrace the redistribution required to give people equivalent resources. In this version of the scenario, people are allowed to spend more in the first period than in the second. The most obvious reason to resist such spending would be a paternalistic one, protecting people against a later change of mind. But the authors can hardly put forward such reasons since they consider it an advantage of their theory that it is not paternalistic (Vansteenkiste, Devooght, and Schokkaert 2014, 73, 74, 75 fn 6, fn 11).4 Relaxing this

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4 We may think that this claim is doubtful. The authors consider interventions forcing people to spend a proportion of their resources on healthy activities, but prefer the check solution for efficiency reasons. In the end, they believe that such measures should be used alongside the health check (Vansteenkiste, Devooght, and Schokkaert 2014, 73). Furthermore, we doubt that they would provide fresh starts for people who regret healthy preferences. But they do not discuss such cases and could be committed to do so, something which would be an alternative route for a critique. That route will not be pursued further here.
assumption introduces a variation much in tune with the real world, and fresh-start policies seems to still be required. And the change seems not to be an unfair variation of the initial scenario. This gives us another reason to doubt the correctness of the examined position.

A second regret
Consider a third adjustment to the original scenario, like before with the purpose of illustrating that the distributions the authors are committed to consider as just are not as plausible as they suggest. Imagine that we go through three periods instead of two, giving people a resource bundle of 100 for each period. Like before, half of those leading unhealthy lifestyles regret doing so after the first period. According to the examined account, they should be offered the possibility of a fresh start in accordance with their new healthy preferences. This is completely like before, but adding the third period enables us to examine the plausibility of the account in light of a 'double regret'. Now some come to regret their newfound healthy lifestyles and revert to the unhealthy habits they pursued in the first period. Thus, after the first two periods, we have the already examined situation where everybody is taxed in the first period to make sure that they (including those regretting their unhealthy lifestyle) have equivalent resources. To keep matters simple, consider that all those who, after the first period, regretted their past unhealthy lifestyle and made a subsidized lifestyle change come to regret their preferences once more. For all other groups, the preferences remain the same in the third period. After the second period, their preferences change such that the equivalent resources of the three groups are:

<table>
<thead>
<tr>
<th>Group</th>
<th>Healthy lifestyle – no regrets</th>
<th>Unhealthy lifestyle – double regrets</th>
<th>Unhealthy lifestyle – no regrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>50 %</td>
<td>25 %</td>
<td>25 %</td>
</tr>
<tr>
<td>Equivalent Resources:</td>
<td>175</td>
<td>75</td>
<td>175</td>
</tr>
</tbody>
</table>

With their preferences once again in alignment with their original mindset, those experiencing a second regret now only regard the unhealthy activities of the first period as worthless. They consider the healthy activities of the second period as worthless. As the second period comes to an end, this group has significantly fewer equivalent resources than the other groups. Thus, they have much less opportunity to pursue their goals. The tough question to ask the authors at this point is whether justice requires us to grant them another fresh start? As the language of the preceding sentences purposely reveal, these persons are worse off after their second regret in exactly the kind of way the authors argue should concern us. They are disadvantaged measured in equivalent resources. So, from the standpoint of their current preferences, they lack the opportunities to pursue their goals. The authors must believe that justice requires compensation even for those who regret a second
time. Let us consider the scenario in which we introduce a tax in the second period to make sure that everyone has equivalent resources in the third period.

<table>
<thead>
<tr>
<th>Group</th>
<th>Healthy lifestyle – no regrets</th>
<th>Unhealthy lifestyle – double regrets</th>
<th>Unhealthy lifestyle – no regrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>50 %</td>
<td>25 %</td>
<td>25 %</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 1</td>
<td>0</td>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td>Spent on healthy activity in 1</td>
<td>75</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tax 1</td>
<td>25</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 2</td>
<td>0</td>
<td>0</td>
<td>75</td>
</tr>
<tr>
<td>Spent on healthy activity in 2</td>
<td>75</td>
<td>100+50</td>
<td>0</td>
</tr>
<tr>
<td>Tax 2</td>
<td>25</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 3</td>
<td>0</td>
<td>100+75</td>
<td>100</td>
</tr>
<tr>
<td>Spent on healthy activity in 3</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Equivalent Resources:</td>
<td>250</td>
<td>250</td>
<td>250</td>
</tr>
<tr>
<td>Health outcome</td>
<td>250</td>
<td>150</td>
<td>0</td>
</tr>
</tbody>
</table>

At the end of the third period, the double regretful have spent 400 resources to end up with equivalent resources of 250. The other groups have spent only 250 to achieve this, and each of these groups have given up 1/6 of their available resources to finance the fresh-start policies required by the changing preferences of the double regretful. This seems to be a highly implausible consequence of the position taken by the authors. Given that the implausibility becomes clear, due to an adjustment of the scenario of a third period introduced here, we should again pause to consider whether the authors could reject the above as an element that their position should endorse. In other words, we should consider whether the introduction of a third period brings something to the scenario which, strictly speaking, is not an inherent part of the authors’ position.

The most likely candidate as an objection to the above would be that it somehow misconstrues the idea of equivalent resources. The reason why the double regretful end up receiving and spending so many resources is that they are compensated twice: at their first as well as their second regret. It was argued that their claim for compensation could, in both instances, be grounded in the fact that they were disadvantaged compared to others with regard to their equivalent resources. At this particular point, they have, by their own preferences, less than others. And it is exactly such disadvantages that the authors claim should be a concern.
for justice. A concern that we, according to the authors, should address through fresh-start policies. The authors could perhaps submit that the above presentation is skewed in the sense that people cannot claim to be disadvantaged twice based on two different sets of preferences. The idea being that when receiving the compensation for the second regret, the recipient is no longer eligible for the compensation received for the first regret. Since, by their unhealthy preferences after the second period, they would not have any complaints about their opportunities after the first period and their unhealthy choices there.

But this form of defense points in directions that are hardly attractive for the authors. Should the double regretful be asked to repay resources received through fresh-start policies in the second period for now abandoned preferences? Such initiatives would only set them further back in their ambitions to pursue their re-found preferences for an unhealthy life. If this line of defense points to anything it is to a problem with the concept of equivalent resources, not with the criticism of the authors’ position. As judged by their present preferences, the group of regretful is worse off than others after their first regret and after their second one. A position committed to offer fresh starts to people who, by their own current preferences, are worse off than others, cannot withhold such compensation on the grounds that a possible later change in preferences would make the compensation futile. A second rejoinder from the authors could be that offering second fresh-start packages is somewhat strange. After all, they are offered to people who wish to live unhealthy lives. While the authors do not discuss this variation of fresh-start policies, their commitment to the view that all lifestyles and preferences are equally good makes it hard to see that they could withhold resources on such grounds.

The three arguments above quite clearly point out certain weaknesses in the idea of fresh starts. In their attempt to make sure that people’s past choices do not make them worse off, the authors end up being committed to a position where people’s past choices are allowed to hinder and limit other people’s opportunities to pursue their dreams. This tension within the position is seemingly increased by the authors’ commitment to equivalent resources as the measure of disadvantage. But surely, fresh-start policies could be advanced with other conceptions of disadvantages in mind, for example by views that give most weight to current preferences, but let past choices and preferences count for something as well. The next section examines such a view and evaluates what it means for the proposed position and its plausibility.

Reconsidering equivalent resources
The arguments above highlight two features of the authors’ arguments. Namely, that equivalent resources may not be the best way to understand which disadvantages are problematic, and that granting fresh starts to the regretful has a significant impact on the opportunities of others. As suggested, this could be remedied by changing how past choices are taken into account. Instead of claiming, as the equivalent resources account presupposes, that past choices are worthless to people, we could state that a change in preferences halves the value of choices made under previous preferences. In
this way, the past is not worthless, but the regretful value the choices less than they would if they had kept their preferences as during the first period. It is important for our discussion that under such a scheme of discounting the benefit from choices made under past preferences people can still feel and experience regret. Regret can here be broader conceived as the state of inability to satisfy current preferences, due to past choices. So it is not the case that the past was without value that gives rise to regret, but rather that past choices hinder the fulfilment of present preferences. A person regretting his unhealthy behavior could thus be regretful about not being able to reach the perfect health he would have reached had he lived healthily for both periods. If we consider the now familiar distribution of groups after the first period we should be able to test the authors’ claim that their “analysis does not depend on this choice” of equivalent resources (Vansteenkiste, Devoght, and Schokkaert 2014, 70). How would the argument look if we merely discounted rather than completely discarded the choices made under past preferences? To evaluate this consider again the initial scenario:

<table>
<thead>
<tr>
<th>Group</th>
<th>Healthy lifestyle – no regrets</th>
<th>Unhealthy lifestyle – regrets</th>
<th>Unhealthy lifestyle – no regrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>50 %</td>
<td>25 %</td>
<td>25 %</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 1</td>
<td>0</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>Spent on healthy activity in 1</td>
<td>150</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spent on unhealthy activity in 2</td>
<td>0</td>
<td>0</td>
<td>150</td>
</tr>
<tr>
<td>Spent on healthy activity in 2</td>
<td>150</td>
<td>150</td>
<td>0</td>
</tr>
<tr>
<td>Resources (discounted)</td>
<td>300</td>
<td>225</td>
<td>300</td>
</tr>
<tr>
<td>Health outcome</td>
<td>300</td>
<td>150</td>
<td>0</td>
</tr>
</tbody>
</table>

Counting regretted choices as half gives an additional 75 when comparing the outcomes in the end. This means that the gap between the groups is smaller when evaluated in this way and so is the need for a redistributive tax. Conversely, a smaller burden will be placed on those who do not end up regretting their preferences. There are two interesting things to note here. The first is that taking past choices somewhat into account limits the need for redistribution, thus making the examined position less vulnerable to the critiques discussed so far. The other thing is, however, that this way of examining the distribution places it as a half-way house between the fresh-start approach and a luck egalitarian approach which allows people’s past choices to affect their future opportunities. The fact that moving the position closer to luck egalitarianism or responsibility-sensitive policies makes it more plausible is an
intriguing thought. Not least because the authors criticize luck egalitarianism and consider their own alternative to be superior. We will now turn to the relationship between luck egalitarianism and fresh starts, and to the authors’ critique of luck egalitarianism in health.

The luck egalitarian alternative
The authors contrast their position to other responsibility-sensitive positions. They portray luck egalitarianism (or responsibility-sensitive egalitarianism) as consisting of two distinct approaches. One is a freedom approach where people are given equal amounts of resources to pursue their dreams and ambitions, the other is a control approach compensating people for things beyond their control and accepting distributions as just if they reflect factors that were under their control (Vansteenkiste, Devooght, and Schokkaert 2014). The authors consider their own position a variant of the freedom approach. It is somewhat hard to reconcile the authors’ position with the works of Dworkin, even though they claim such a relation exists (Vansteenkiste, Devooght, and Schokkaert 2014, 68). This is the case since Dworkin argued that people should be held responsible for their preferences, given equal resources to pursue them (Dworkin 1981). However, whether or not the position under discussion is attractive does not depend on such matters of classification. But it points towards a feature of the proposed position to which the authors do not pay sufficient attention.

The authors assume that we are dealing with genuine choices and consequently preferences which people are responsible for acquiring. The gist of the authors’ position is that even though the past choices and preferences of the regretful are voluntary, we should not let them stand in their way when they change their preferences. The above arguments point to the fact that when providing fresh starts and renewed opportunities for some, we take away opportunities from others. There is a certain trade-off to be made here; between providing fresh starts and resisting letting some people’s past actions diminish the opportunities for others. The authors do little to acknowledge this trade-off, or even suggest a reason why it is problematic. This emerges when discussing the solution of taxing only those with unhealthy preferences to pay for fresh-start initiatives. The authors declare that this distribution is unfair. Without going into a debate over whether luck egalitarians are committed to endorse a scheme such as this one, it is interesting to consider the authors’ reasons for rejecting it. This is the case because their reasons for considering it unfair are quite surprising. They point to the fact that the non-regretful leading unhealthy lives are asked to settle for fewer equivalent resources than they would otherwise have had (Vansteenkiste, Devooght, and Schokkaert 2014, 73). As appears from what has already been shown, how harsh this is towards the non-regretful depends on the relative size of the groups. Surely, taxing only those living unhealthily sets them further back than in scenarios in which everyone is taxed. But the difference is hardly big enough to avoid asking the tough question: If such setbacks in equivalent resources are problematic in this case, how come the taxes for fresh-start policies are
not unfair for the same reasons?

The authors consider and present another (quite common) reason to be skeptical about luck egalitarianism in health. They remark that responsibility-sensitive policies can ‘have harsh consequences, especially in a health setting’ (Vansteenkiste, Devooght, and Schokkaert 2014, 68). But here it should be noted that the position proposed by the authors does not care for all those who end up with a low health outcome. They offer help only to those who regret their past choices. And importantly, they do so at the expense (in equivalent resources) of everyone else. If there is a trade-off to consider it should be between responsible-sensitive policies and the care for those with low, self-inflicted health outcomes. The fresh-start approach is as much in need of such a supplement as the luck egalitarian approach.

In this purely theoretical debate, under the assumption that all choices and preferences are genuine, the implementation of fresh-start policies is seemingly unattractive and can be detrimental to the opportunities of those financing it. Some would perhaps concede such theoretical weakness, if it was necessary to provide fresh starts in a real-world context, where those offered such starts where a mix of people whose past choices where genuine and non-genuine. Would the luck egalitarian position be able to offer such help to the regretful? Or would it mean no public spending should be made available for smoking cessation and initiatives promoting exercise? Not necessarily. Clearly, luck egalitarians cannot say that those who freely choose to pursue their unhealthy preferences and later regret having had such preferences are entitled to luck egalitarian compensation. This article goes some way towards showing why luck egalitarians should not be too disheartened about that. But luck egalitarianism could provide such public health measure out of the concern that many people’s choices in health are affected by many things they cannot control.5 In such a non-neutral choice structure, public support for behavioral changes can be both reducing the extent to which people’s choices and health reflect unchosen circumstances and thereby autonomy preserving.

Conclusion
Relaxing the (implicit) assumptions of the initial scenario put forth by the authors brings forth several strange and unattractive consequences of their position. Granting a fresh start to people who have freely chosen that they now prefer a different path comes at a cost not clearly acknowledged by the authors. A tension can be identified between the effort to introduce arrangements to avoid people having limited opportunities as a consequence of their own past choices and the fact that such policies limit the opportunities of those who are asked to finance such initiatives. When preferences are genuine, it is not clear why we should prefer policies of fresh starts to those recommended by luck egalitarians in which people’s past choices affect their own opportunities – but not those of others. Under the assumption that we are dealing with choices of a less genuine kind, luck egalitarians are equally (or better)

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5 For elaboration on these points, see Albertsen 2014
equipped to introduce policies counteracting the features in the surrounding society which are making such choices non-genuine.

References


Article 6.
A Framework for Luck Egalitarianism in Health and Healthcare

Journal of Medical Ethics
doi:10.1136/medethics-2013-101666
PAPER

A framework for luck egalitarianism in health and healthcare

Andreas Albertsen,1 Carl Knight2,3

ABSTRACT

Several attempts have been made to apply the choice-sensitive theory of distributive justice, luck egalitarianism, in the context of health and healthcare. This article presents a framework for this discussion by highlighting different normative decisions to be made in such an application, some of the objections to which luck egalitarians must provide answers and some of the practical implications associated with applying such an approach in the real world. It is argued that luck egalitarians should address distributions of health rather than healthcare, endorse an integrationist theory that combines health concerns with general distributive concerns and be pluralist in their approach. It further suggests that choice-sensitive policies need not be the result of applying luck egalitarianism in this context.

Luck egalitarianism is an influential theory of distributive justice. The theory has been described in several ways. One common account requires that the effects of luck, understood as the inverse of responsibility, be neutralised.1–3 Another, non-equivalent account has it that “it is bad if some people are worse off than others through no voluntary fault or choice of their own”.4–6 The common feature of these accounts is the distributive significance they assign to the distinction between the chosen (associated with responsibility and the voluntary) and the unchosen (luck, or the absence of the voluntary).

It is sometimes argued that luck egalitarianism, with its focus on personal responsibility, can make a valuable contribution to our moral assessment in the complicated areas of health and healthcare.7–11 There could be a practical need for such a contribution since references to personal responsibility are frequent in policy discussion.12–16 However, several writers remain unconvinced of such an application and have raised important critiques in that regard.17–27

A comprehensive application of luck egalitarianism in health and healthcare would presumably require a specification of what luck egalitarianism means. Due to the heterogeneity of the luck egalitarian literature, such a specification involves taking sides on several difficult issues. This would include (but not necessarily be limited to) how advantage should be measured, what constitutes choice and whether we address only inequalities not reflecting choice or also equalities.10 We will not add to this vast literature here. Instead we present a framework to serve as a useful guide for applying luck egalitarianism (however construed) to health and healthcare. After setting out the framework, we address significant criticism of luck egalitarian approaches to health and healthcare, and finally deal with several real-world issues raised by such approaches.

QUESTIONS

In this section, we consider some questions that we believe arise for all attempts to apply luck egalitarianism to health and healthcare. The theoretical choices presented in this section concern the normative core of such an application.

Health

When assessing the fairness of distributions in relation to health from a luck egalitarian perspective, which health-related goods should we ultimately be concerned with? One proposal is concerned with inequalities in people’s access to (or opportunity for) healthcare. Such an account is thus attentive to unchosen differences in distance to hospitals, co-payments, treatment outcomes and other things related to the healthcare system. This position, which we could call the healthcare view, is prominent in much earlier work on distributive justice in this area.9–28,30 A concern for healthcare has been defended on the basis of the benefits healthcare provides,31 as reflecting the fact that delivering the just amount of health is not within society’s control,28 and on the grounds that treating people as equals involves supplying them with equal access to healthcare without considering the health effects of such a provision.29 The main alternative view is concerned with distributions of health as such. Inspired by the recurrent confirmation of the importance of social determinants to people’s health,32,33 this broader view means that sources of inequalities in health that are unrelated to the healthcare system are also a concern.10 Call this the health view.

We are inclined to accept the health view. While we cannot claim to provide a full argument for this position, we offer an example to support it. If we have a fixed amount of money at our disposal to spend on any initiative, should we let the health view or the healthcare view guide us? If it is healthcare that is our focus, we would opt for measures that increase access to healthcare. Guiding us to give priority to preventive health visits in vulnerable areas or mandatory health checkups initially seems to speak favourably for the healthcare view. But assuming the availability of another policy that would presumably require a specification of what luck egalitarianism means. Due to the heterogeneity of the luck egalitarian literature, such a specification involves taking sides on several difficult issues. This would include (but not necessarily be limited to) how advantage should be measured, what constitutes choice and whether we address only inequalities not reflecting choice or also equalities.10 We will not add to this vast literature here. Instead we present a framework to serve as a useful guide for applying luck egalitarianism (however construed) to health and healthcare. After setting out the framework, we address significant criticism of luck egalitarian approaches to health and healthcare, and finally deal with several real-world issues raised by such approaches.

To cite: Albertsen A, Knight C. J Med Ethics Published Online First: [please include Day Month Year] doi:10.1136/medethics-2013-101666

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such as providing apples in schools, cleaner air or better sewage systems would result in a larger increase in health, how are we to choose between such initiatives and those that increase the access to healthcare? On the healthcare view we do not have much choice since only the first group of initiatives affects access to healthcare. On the health view we can prefer whichever gives the greatest health benefit for the group in question.

We believe this to be the most plausible scale to evaluate alternate initiatives. The initial appeal of the healthcare view might be derived from its perceived positive effect on people’s health. When alternatives not related to healthcare do better in providing health benefits, it becomes apparent that health as such should be our concern.

Integration

Luck egalitarians can differ in how they perceive the relationship between the concerns of justice in health and healthcare and other concerns of justice. The question here is whether we are proposing a theory dealing specifically with health alone, or one considering it in relation to other concerns of justice as well. Borrowing a terminology used by Caney on another topic, we could refer to the former approach as the isolationist view, while calling the latter the integrationist view.4 The former seems prominent in medical ethics, where the relationship to other spheres is often opaque or unaddressed.5–7 This means that the literature often addresses health as a separate issue, rather than as an issue interconnected with other issues of justice. One instance where this would make a difference is in relation to an unchosen health disadvantage that we cannot remove. An isolationist theory of health would say that this unfortunate state of affairs cannot be remedied. The integrationist view, on the other hand, could recommend addressing the shortfall in advantage located in the sphere of health by compensating the person in some other way not associated with health. Increased public spending targeted to individuals of this sort would be one way of doing this. For instance, if we found that members of the working class had systematic health disadvantages, only some of which could be removed in a reasonable timescale, we could respond by providing improved public education for this group.

While some may find this an attractive suggestion, we imagine that not all will. The integrationist view is, however, supported by two further considerations. The first is that isolationist approaches risk imposing burdens on people who experience unchosen disadvantages in every sphere of life except health, thus increasing rather than decreasing the extent to which their lives as a whole reflect unchosen circumstances. Suppose A has little money, an unsatisfying job and an overall below-average standard of life, while B is rich, loves his work and generally has a wonderful life. If A’s health is but a little better than B’s, the isolationist view would recommend prioritising improvements to B’s health. This will work to reduce or eliminate the one advantage A has over B and expand the inequality in their overall life prospects. This would seem at odds with luck egalitarianism in general. Integrationism, by contrast, can take into account these wider considerations. As a further suggestion of the viability of the integrationist view, consider another example, where we have to choose between different policies. Initiatives y and z would have equal effects on people’s health, but z also decreases unchosen economic inequality. An isolationist theory cannot prefer one over the other, while an integrationist view would be readily equipped to prefer the initiative that best satisfies other concerns of justice. The choice we make in whether to develop an integrationist or isolationist theory thus has important implications for the policies such a theory would recommend and which inequalities it would address.

Plurality

It seems very likely that there is a plurality of relevant values. Almost all luck egalitarians recognise that luck egalitarianism must be complemented by principles reflecting other values.1 10 39 There are, in our view, compelling reasons for doing this, one of which is the levelling down objection to egalitarianism.5 It points out that, while luck egalitarianism tells us to correct any unchosen inequalities between C and D, it does not by itself tell us that we should prefer to do so by increasing C’s advantage level rather than by decreasing D’s advantage level.10

Given that most luck egalitarians endorse a pluralist view rather than a monist view, and have good reasons for doing so, the most interesting question in this area is which other values should be taken into account. One form of pluralism would be to cite values to be balanced against the assessments made by luck egalitarianism. Within a healthcare context, candidate values include respect for autonomy, non-maleficence, beneficence and utility.3 11 A different approach would be to introduce another distributive value instead of (or as a supplement to) egalitarianism. This value could be prioritarian, giving more weight to people’s interests the lower their absolute level of health or healthcare,1 39 or sufficentarian, keeping people above a certain threshold of advantage.40 Combining luck egalitarianism with prioritarianism supplements the concern with whether people’s relative share reflects unchosen circumstances with a concern for their absolute level of advantage. Combining luck egalitarianism with sufficentitarianism supplements the concern with whether people’s relative share reflects unchosen circumstances with a concern for keeping people above the specified threshold.

OBJECTIONS

Luck egalitarianism has been met by important objections. Since some of the most powerful objections draw their strength from pointing towards its application in relation to health and healthcare, it might be said that such an application is a hard case for luck egalitarianism. In light of the framework developed above, we discuss three prominent critiques.

Respect

One powerful objection has been proposed by Wolff. He argues that the process of collecting the data needed for luck egalitarian institutions to function and for implementing choice-sensitive policies will fail at the important egalitarian task of showing equal respect towards all people.41 According to Wolff, it is possible that luck egalitarian institutions will fail to show common courtesy, show distrust towards its potential claimants or require shameful revelations from the people under assessment. While it is hard to think of a lack of common courtesy as an integral part of any policy, it seems to be the case for the application of luck egalitarianism in health that some policies will require the gathering of information about past behaviours and circumstances so that we cannot design a luck egalitarian policy without one or more of the features Wolff describes.

On reflection luck egalitarians would have (at least) two distinct ways of dealing with this critique. It is reasonable to expect that treating any individual in the fashion described by Wolff would result in a loss of welfare. Such welfare losses could and should be a concern for a welfarist luck egalitarian and can potentially outweigh the other luck egalitarian reasons that...
support the introduction of an overtly choice-sensitive policy.\textsuperscript{42} For instance, if we accept that many obese people are responsible for their obesity and consequent health problems, we have a luck egalitarian reason for wanting to identify these people so we can pass costs on to them. But it may be that the investigations needed to distinguish these people from other obese people who are not responsible for their condition would be so demeaning and consequently costly in welfare terms for the latter group that such a policy would increase unchosen inequality. A second luck egalitarian response is that even if we could allocate costs to the first group of obese people (those responsible for their condition) without imposing costs on the second (non-responsible) group, we should not do so on pluralist grounds. For instance, many of the obese might be badly off in absolute terms and so be of particular concern for prioritarianism, or be in danger of falling below the sufficiency threshold. As we have seen pluralistic luck egalitarianism can respond to concerns such as these. For these reasons, luck egalitarian goals might better be served by a seemingly choice-insensitive policy, which does not allocate any special costs to any of the obese. In other words, this choice-sensitive theory of egalitarian justice may be best served by a choice-insensitive rule of regulation.\textsuperscript{43}

**Harshness**

This objection concerns how luck egalitarianism treats those who end up worse off as a consequence of their own choices.\textsuperscript{44} Fleurbaey offered the colourful example of the uninsured motorcyclist who is badly injured while carelessly riding without a helmet and left to his fate by luck egalitarianism.\textsuperscript{45} This kind of case is important since it is routinely put forward in order to criticise the application of luck egalitarianism in health\textsuperscript{22} and is also acknowledged as a significant obstacle among those more drawn to luck egalitarianism.\textsuperscript{10} One possible response would be to argue that cases of luck egalitarian harshness are too rare in a real-world context to suffice for the rejection of luck egalitarianism.\textsuperscript{47} But though such a practical argument might have some plausibility it leaves the theoretical relevance of the harshness critique untouched.\textsuperscript{48} When a pluralistic approach is introduced, however, it is clear that we can deal with the critique in several ways. For instance, prioritarianism allows us to have special concern for people with very low levels of advantage, even where they are responsible for their condition, while sufficiency egalitarianism would allow us to care for them if they fall under a specified threshold. In a similar fashion an adherent to the value of beneficence, which holds that there is an obligation to benefit others, would allow us to care for people such as the motorcyclist.

**Promotion**

Norman Daniels has voiced the objection against luck egalitarianism that its concern for whether distributions reflect people’s choices makes it unfit as an approach to health. The reason for this is that this concern for responsibility surpasses a concern for health promotion in a seemingly implausible way. To see why this might be so consider a case where institutions are in place that make sure that only unchosen inequalities (however construed) are eliminated, while chosen ones are left untouched. In such a situation why would luck egalitarians prefer that people made healthy choices rather than unhealthy?\textsuperscript{29} The point made by Daniels is essentially that luck egalitarians can prefer that a distribution reflect people’s choices, but cannot prefer that some choices rather than others occur, provided institutional measures ensure that others are not asked to bear the cost of these choices. This critique is specifically relevant in the context of health since it claims that luck egalitarianism is unable to support initiatives to promote healthy lifestyles, and thus that many aspects of health promotion seem unattainable for luck egalitarianism.

Pluralism again seems to be an important part of a possible luck egalitarian answer here. For instance, if we are prioritarians, we will have direct reasons for wanting to make sure that people, and especially the worst off, achieve good health outcomes. This is the case because the prioritarian concern allows us to care even for those who are responsible for their plight. We would therefore have grounds for favouring the promotion of healthy lifestyle choices.

**APPLICATIONS**

In the foregoing sections, we have set out an approach to luck egalitarianism in the area of health and healthcare, and defended it against some common objections. In this final section, we consider how this approach bears on several important real-world issues of public health and healthcare allocation.

**Scarcity**

Many distributive decisions involve some form of scarcity. It is therefore crucial to determine whether scarcity changes our evaluation of a distribution. One view could be that scarcity makes considerations other than need, such as responsibility, irrelevant.\textsuperscript{49} However, an alternative view suggests that when scarcity forces tough choices upon us, we must see first to those who are least responsible for their current disadvantage. Luck egalitarianism comes down firmly on the side of the second view. On this view, there is nothing about scarcity that would make it appropriate to disregard responsibility considerations. And on further consideration, why should the presence of scarcity have a bearing on which fundamental moral considerations should come into play? Many decisions are affected by scarcity, and it seems odd to suggest that we should, in situations where we have the least amount of resources and are least able to bring about more, invoke principles less attuned to whether people have some responsibility for their need for resources. Luck egalitarianism therefore suggests that those who are responsible for their need for a scarce resource should, all else being equal, receive lower priority than those who are not in this way responsible. However, it should be emphasised that luck egalitarianism is a view about how to respond to responsibility, not a view about who is in fact responsible for bringing about what. Consider, for example, the seemingly responsibility-sensitive policy of giving lower priority to people whose need for a new liver is related to alcohol consumption. While luck egalitarianism under certain empirical conditions and on a specific theory of responsibility is compatible with such a policy, it is not an integral part of luck egalitarianism to claim that this group of patients is in fact responsible for their condition. We again find that luck egalitarianism does not provide the unmitigated support for real-world attempts at ‘choice-sensitive’ policies that many suppose it to.

**Financing**

Another issue is who should pay for the healthcare system and health-promoting policies. This is important since healthcare expenditures claim a large share of the national budget in developed countries. In the EU, for example, member states spend on average 9% of GDP on health and healthcare, while the USA spends twice this amount.\textsuperscript{10} If we believe that people should
The last possibility to be mentioned is a financing scheme, where healthcare and health policies are financed through general taxation. At first this might seem a bit at odds with the luck egalitarian perspective of this article since it makes no straightforward attempt to place the burden of finance upon those who take risks with their health or end up creating expenses in the healthcare system. An isolationist view would tend to favour such a dismissive verdict. But from an integrationist perspective, it might be considered. If health is an element we care about along with other things, then in a society with significant unchosen inequalities in wealth, we should worry if a responsibility-sensitive financing of healthcare would increase such inequalities, while a general taxation scheme that places the heaviest burden on the rich might all things considered be the solution that most reduced the degree to which the distribution reflected unchosen circumstances. This means that luck egalitarianism in our view does not necessarily come down to economic justice, but to the question of which values to care about in a society with significant inequalities in wealth. A related question is the extent to which the person is responsible for his or her own bad health. One approach would be to make those deemed responsible for their own bad health contribute through out-of-pocket payments to the costs associated with their treatment. Such a scheme however does risk that many people will be unable to pay the considerable costs. An alternative would be to tax activities or consumer products likely to result in bad health. Even if we assume luck egalitarianism and some degree of responsibility for bad health, it is not in itself obvious which practical consequences should follow from that responsibility. This follows partly from the wide range of measures we could employ towards such an end. We could vary the quality of care people receive, the price they pay for their treatment or their place in a queue for scarce resources (and any combination of such measures).

The evaluation of these measures depends on a number of considerations. These might include the expected benefit of treatment, the cost of treatment in relation to the patient’s wealth and the extent to which the person is responsible for his condition. For instance, increasing a patient’s proportion of treatment costs may seem more appealing the less urgent the treatment, the lower the cost of the treatment, the richer the patient, and the more responsible the patient is for the medical need. It should also be taken into account which other responsibility-tracking measures are already in place. It would matter, presumably, whether people’s behaviour has already had some kind of consequence through specific taxes, higher insurance premiums or similar.

Taking these points together, it may be that, in countries with high levels of tax on tobacco and in which smokers are disproportionately poor, smokers who develop lung cancer should usually be relieved of paying the financial costs of their treatment because they have already paid significant costs via taxes, often have little capacity for paying more and may be considered to have less than full responsibility for their smoking for socioeconomic reasons. By contrast, if the victims of skiing accidents have not paid high taxes on their risky behaviour and are typically wealthy, it may be reasonable to expect a patient contribution. The specific consequences that follow from risky behaviour depend on several factors and are unlikely to be uniform across different categories of disease and injury.

**CONCLUSION**

Above we tried to present what we consider a viable framework for luck egalitarianism in health. The purpose has been to bring forth distinctions and concepts that we believe can advance the debate about luck egalitarianism in health. The purpose of this article has for the most part been an exploration of concepts, rather than an attempt to argue for our own convictions. On three central themes we have, however, argued for our own view. Luck egalitarians should address distributions of health rather than healthcare, endorse an integrationist theory that combines health concerns with general distributive concerns, and be pluralist in their approach. We also discussed what we consider to be some of the most important objections against such an application of luck egalitarianism. Finally, we addressed real-world topics such as medical scarcity, health financing schemes and institutional approaches to introducing personal responsibility to health policies. A further point that arises from the discussion is that one should be careful not to leap too quickly from a choice-sensitive theory of egalitarian justice to a choice-sensitive role of regulation. We have seen that there may sometimes be good luck egalitarian reasons for pursuing choice-insensitive policies.

**Funding** Oticom Foundation (grant number 12-4238), Augustinus Foundation (grant number 12-4996), British Academy (grant number f100118).

**Competing interests** None.

**Provenance and peer review** Not commissioned; externally peer reviewed.

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A framework for luck egalitarianism in health and healthcare

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*J Med Ethics* published online February 6, 2014
doi: 10.1136/medethics-2013-101666

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Published online February 6, 2014 in advance of the print journal.

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Article 7.
Brugerbetaling, Ventelister og Afgifter: Personligt Ansvar for Egen Sundhed?

*Politica* 46, no. 2: 135–51
BRUGERBETALING, VENTELISTER OG AFGIFTER: PERSONLIGT ANSVAR FOR EGEN SUNDEHED?1


Artiklen præsenterer kort den held-egalitaristiske idé om fairness og dernæst tre bekymringer vedrørende personligt ansvar i sundhed og held-egalitarisme i sundhed. Herefter diskuteres styrker og svagheder ved seks konkrete institutionelle tiltag, der i større eller mindre grad søger at holde folk ansvarlige for egne valg. Udgangspunktet for diskussionen er kritikker kendt både fra den medicinsk-etiske diskussion om personligt ansvar og fra den held-egalitaristiske litteratur. Kritikkerne går på, at tilgange, der betoner personligt ansvar i sundhed, risikerer at overse, at den betydelige effekt, sociale og naturlige omstændigheder har på menneskers helbred, vil betyde en ubarmhjertig skæbne til dem, der træffer risikobetone f valg, og vil basere sig på en indsamling af information, der langt overskrider privatsfæren. Held-egalitarismen synes at være et oplagt udgangspunkt for dem, der er tiltalt af personligt ansvar i sundhed men er bekymrede over disse kritikker. Det skyldes, at held-egalitarister er principielt imod at lade fordelinger afspejle uvalgte omstændigheder, og at der i den held-egalitaristiske litteratur er brugt meget energi på at komme med principielle forsvare imod de øvrige to indvendinger. Artiklen diskuterer med inspiration fra held-egalitarismen forskellige ansvarsinspirerende modeller, vi kunne indføre i en sundhedskontekst, og diskuterer, hvorvidt disse rammes af de respektive kritikker.

Diskussionen er selvsagt ikke uden antagelser og klare begrænsninger. Modellerne vurderes under antagelser, der tilstræber at tage diskussionen under ikke-ideelle forudsætninger. De væsentligste antagelser er, at vi meningsfyldt kan tale om, at nogle (men ikke alle) mennesker kan tilskrives ansvaret for deres egen, ringere sundheds tilstand, og at vi ikke umiddelbart ved, om en
given person er ansvarlig eller ej. Artiklen benytter sig af de brede kategorier naturlige og sociale omstændigheder til at beskrive tilfælde, hvor folk ikke er ansvarlige, men baserer sig ikke på noget specifikt syn på, hvilke betingelser der skal være til stede, før man meningsfyldt kan sige, at en person ikke er ansvarlig for sit livsstilsvalg. Selvom det tilstræbes at gøre diskussionen anvendt i forhold til egentlige politiske tiltag, er debatten på flere punkter overordnet og idealiseret. Det diskuterer ikke, hvilket ansvaret samfundet har for at sikre lige muligheder og eliminere de omstændigheder, der påvirker menneskers helbred, og de muligheder, de har for at passe på dette. Det betyder, at kun få ord er brugt på andre (uretfærdige) uligheder, som fx de uligheder i indkomst eller beskæftigelse, der påvirker menneskers helbred. Tilgangen er yderligere afgrænset i den forstand, at den diskuterer fordelingsmæssig retfærdighed inden for sundhed. Det betyder at diskussionen ikke har inddraget andre værdier og hensyn såsom effektivitet, solidaritet eller gensidighed, der kunne siges at være vigtigere end retfærdighed i en sundhedskontekst. Det følgende afsnit præsenterer held-egalitarismen som generel teori om fordelingsmæssig retfærdighed, og hvorledes en bestemt udvikling heri er særlig relevant for diskussionen i en sundhedskontekst.

Held-egalitarisme og sundhed
Selvom disse teoretiske forskelle er interessante, vil de ikke blive behandlet indgående her. De udtrykker bestemte forståelser af, hvad det er, held-egalitister mere specifikt bør mene udgør en retfærdig fordeling typisk gennem forskellige forståelser af, hvad der udgør en valgt ulighed. De argumenter, der præsenteres og diskuterer i det følgende, kan for så vidt anvendes, uagtet hvilket af ovenstående man foretrækker.

Efter den kortfattede præsentation af held-egalitarismen og nogle nyere udviklinger af denne vil et forskelligartet men vigtigt argument blive præsenteret. En pointe med stor relevans for artiklenes tema er et argument fremført af Serena Olsaretti. Hun har introduceret den indflydelsesrige idé om, at en ansvarssensitiv teori som held-egalitarismen indeholder to forskelligartede elementer: Et kaldet ansvarets grundlag, der beskriver, hvilke faktorer vi mener folk er ansvarlige for, og et kaldet principippet om indsatser, der specificerer de konsekvenser, vi skal lade et sådant ansvar have for personen (Olsaretti, 2009: 170). Det betyder, at blot det at konstatere, at en person er ansvarlig for sin egen ringere position, ikke siger noget endeligt om, hvorledes vi rent institutionelt skal forholde os til det.


Kritikken af personligt ansvar
I den akademiske debat er der fremkommet flere forskelligartede kritikker af at introducere personligt ansvar i en sundhedskontekst. De tre mest markante vil

Den tredje kritik angår karakteren af de oplysninger, der skal frembringes for at kunne sige noget om, hvorvidt en person er ansvarlig for sin (ringere) sundhedstilstand. Det vil typisk være i en situation, hvor vi ønsker at være sikre på, at det ikke er ydre omstændigheder, der er skyld i dette. Det er blevet fremført, at oplysninger kan have en sådan karakter, at selve indsamlingen af dem er grænseoverskridende, forkert og indgribende i dybt personlige forhold. (Harris, 1995). Det kan opfattes som nedværdigende og urimeligt for en patient i et kritisk sygdomsforløb at skulle redegøre for, hvorvidt den aktivitet, der førte til den ringere sundhedstilstand, var valgt eller snarere en vane, der kan spores tilbage til tidlig barndom, opdragelse eller andre uvalgte forhold. Kritikken vil herefter blive diskuteret under overskriften skamfulde afsløringer.

Artiklen diskuterer styrker og svagheder ved forskellige modeller for personligt ansvar fremkommet i og omkring den held-egalitaristiske litteratur. Det vil blive gjort ved at se på, i hvor høj grad de nævnte modeller formår at undgå disse væsentlige indvendinger. Det skal bemærkes, at disse indvendinger er forskelligartede. Den første kritik kan fremføres med udgangspunkt i en af

Forskel i behandlingens kvalitet
Ser vi helt overordnet på den type forslag, der går ud på, at folk, der har handlet ansvarspligtsende og som følge heraf har ringere sundhedstilstand end andre, skal behandles ringere i sundhedssystemet end andre, findes der to varianter. En stærk der indebærer, at folk helt nægtes behandling, og en svagere der tilsiger, at de skal modtage behandling af en ringere kvalitet (fx ved at der stilles færre ressourcer til rådighed). Selvom positionen ikke finder mange forsvarende i litteraturen, er den teoretisk interessant. Ihukommende at diskussionen her tages under de to antagelser, at nogle, men ikke alle, er ansvarlige for deres egen ringere sundhedstilstand, og at vi ikke umiddelbart har sikker viden om, hvilke personer det gælder for, synes denne tilgang umiddelbart at være problematisk af flere grunde. Indfører vi et system, der nægter at behandle dem, der er ansvarlige, indebærer det en betydelig risiko for, at denne meget voldsomme konsekvens også vil ramme nogle, der reelt ikke er ansvarlige for deres egen sundhedstilstand. Et system, der tilstræber at nægte behandling til dem, der selv er ansvarlige for deres egen ringere sundhedstilstand, kunne suppleres af en praksis, der undersøger og afklarer, hvorvidt en given person reelt er ansvarlig for sit eget ringere helbred. Problemet herved synes at være, at en sådan undersøgelse risikerer at inddrage faktorer og forhold, som det synes ydmygende at skulle oplyse til tredjepart. Det betyder, at tilgangen synes såbar overfor indvendingen om skamfulde afsløringer. Selv hvis vi kunne forestille os at en indledende undersøgelse kunne give klarhed over, hvem der var ansvarlig for egen sundhedstilstand uden at involvere skamfulde afsløringer, er der yder-
ligere komplikationer for tilgangen. Det må siges, at de, der korrekt vurderes som værende ansvarlig for egen sygdom, overlades til en meget hård skæbne. Tilgangen, hvor folk nægtes behandling, synes dermed også at være ubarmhjertig og må samlet set siges i meget ringe grad at være i stand til at undgå de gængse indvendinger mod at anvende personligt ansvar i en sundhedskontekst.

Man kunne forestille sig den her diskuterede tilgang varieret således, at modellen i stedet tilstræbte at give de pågældende en ringere behandling end dem med uforskyldt dårligt helbred. Udover at det givetvis kan være lidt svært at forestille sig, hvorledes denne ringere behandling konkret skal praktiseres, er denne ændring stadig problematisk i forhold til de kritikker, de konkrete modeller her diskuteres ud fra. Det fjerner eller mindsker givetvis styrken af ubarmhjertighedskritikken, mens de øvrige kritikker synes at bevare deres styrke. Afslutningsvis bør det bemærkes, at både tilgangen, hvor behandling nægtes til dem, der selv er ansvarlige for deres sundhedstilstand, og den, hvor de gives ringere behandling, synes at have en fælles svaghed. I hvert fald et fælles stræk som held-egalitarister, der ønskede at foreslå sådanne tiltag, må forholdse sig til. Det synes intuitivt mærkværdigt at nægte folk muligheden for at lade deres handlinger have konsekvenser på anden vis end ringere helbred. Eller sagt på en anden måde: Hvis en person træffer et risikofyldt valg, der resulterer i, at vedkommende har ringere helbred end andre, så synes der ikke umiddelbart at være gode grunde til at forbyde vedkommende at betale sig fra at modtage samme behandling (og helbred) som andre, for til gengæld økonomisk set at være ringere stillet som følge af de risikofyldte valg. Held-egalitarister der måtte være tiltalt af de løsninger, der her diskuteres, skulle altså fremkomme med et argument for, hvorfor personer, der er ansvarlige for deres ringere sundhedstilstand, absolut skal være ved dårligere helbred end andre frem for blot på en eller anden parameter at være dårligere stillet som følge af deres egne valg. Den oplagte måde er at tillade folk at veksle en ringere sundhedstilstand til en økonomisk ulempe gennem en form for brugerbetaling. Denne afsluttende poente giver anledning til at drøfte den type tiltag, hvor folk bliver bedt om at dække de omkostninger, deres adfærd medfører.

**Forskel i behandlingens pris**

I det følgende diskuteres to forskellige tiltag, der på hver sin måde forsøger at få folk til at dække omkostningerne, der følger af deres risikofyldte adfærd i relation til sundhed. Det første forslag synes enkelt i sin natur. Det går ud på, at alle de, der gennem egne valg påfører sig en sygdom, skal dække de omkostninger, behandlingen af sygdommen indebærer. Umiddelbart kan det lyde simpelt. En person pådrager sig en sygdom gennem sine egne valg, og dette
har så nogle omkostninger, som denne person selv skal dække. Inden vi for alvor kan tage fat i diskussionen af, hvorvidt denne løsning undgår de relevante kritikker, er det nødvendigt at gøre opmærksom på, at omkostninger faktisk er et mere upræcist begreb i denne sammenhæng end ovenstående indikerer. Da spørgsmålet om, hvad omkostninger præcist dækker over, kan have betydning for vores vurdering af denne model, er det nødvendigt at bemærke usikkerheden omkring dette. Vi bør derfor starte med at overveje, hvad der tæller som omkostninger i denne sammenhæng. En række omkostninger, såsom opvarmning og oplysning af operationsstuen, synes egentlig upåvirket af, om den pågældende person pådrager sig en sygdom eller ej. For omkostninger til hospitallets administrative personale, lægens uddannelse eller anlægsudgifter synes det svært konkret at vurdere, om patienten også skal pålægges at betale en andel af disse udgifter. Alt dette vedrører, hvad der tæller som omkostninger forbundet med behandling. Lad os for nemheds skyld antage, at der er muligt at fastsætte dette præcist. Det vil herefter være nødvendigt at afgøre, hvorvidt patienten skal betale de fulde omkostninger eller blot en andel heraf. Begrundelsen for at lade dem betale udgiften er givetvis, at de belaster sundhedsvæsnet som følge af deres valg. Det er rigtigt, men for de fleste er alternativet ikke, at de ikke ville belaste sundhedsvæsnet, men derimod at de ville belaste det senere og på anden vis. Dette kan illustreres ved at betragte en person, der er ansvarlig for at ryge og derfor under den her diskuterede model skal dække udgifterne, der følger, når vedkommende får behov for behandling. Men hvis personen ikke havde roget, er det usandsynligt, at udgifterne til behandling for senere fremkomne uvalgte sygdomme ville have været 0. Som følge heraf kunne man argumentere for, at det, folk burde betale, er den andel af deres omkostninger, der udgør forskellen mellem deres faktiske forbrug og deres forventelige/kontrafaktiske forbrug, i fald de ikke havde haft den pågældende adfærd. Ser vi bort fra disse problemer med at bestemme omkostningerne og hvilke omkostninger, der kan tilskrives en persons ansvar, så er det muligt at lave en vurdering af, hvorvidt hel eller delvis brugerbetaling undgår de nævnte kritikker. Tilgangen synes på lige fod med de ovenfor drøftede tiltag, hvor der varieres på kvalitet, at kunne kritisere for at risikere at overse sociale og naturlige omstændigheder og for at være afhængig af en ydmygende indsamling af informationer. En væsentlig social omstændighed, der synes særlig aktuel i denne kontekst, er, hvorvidt folks økonomiske formåen afspæler uvalgte omstændigheder. Er der store uretfærdige økonomiske uligheder, synes det selvsagt problematisk, at store dele af befolkningen udelukkes fra at modtage behandling, blot fordi de uforskyldt ikke har råd. Hvis det er tilfældet, er det ikke i tråd med held-egalitarismen at lade sådanne forskelle blive til forskelle i sundhed gennem brugerbetaling. I tillæg
hertil møder vi igen et trade-off mellem, hvor sikre vi ønsker at være på, at vi ikke opkræver betaling fra dem, der ikke selv er skyld i deres sygdom, og faren for at undersøgelserne, der skal kortlægge dette, berør på skamfulde afsløringer og manglende respekt for folk. Dog synes anklagen om ubarmhjertighed noget mindre relevant i denne sammenhæng. Det skyldes, at alle vil kunne modtage behandling, men ikke alle vil kunne modtage gratis behandling. Det kan selvsagt fremføres, at det stadig er en ubarmhjertig konsekvens for personer, hvor det både gælder, at de selv er ansvarlige for deres ringere sundhedstilstand og for, at de ikke har råd til at betale for det. I forlængelse heraf er det oplagt at se på en variant, hvis fortalere selv mener bedre afspejler held-egalitarismens intuitioner og undgår mange af de her nævnte problemer, der er ved omkostningsløsningen, som den blev præsenteret herover.

**Capellan og Norheim: afgifter på usunde valg**

dette ofte indebære, at folks valg pålægges en skat eller en afgift. De på denne måde indbetalte penge dækker så de udgifter, der opstår i forbindelse med, at nogle personers valg har den konsekvens, at de får en behandlingskrævende sygdom. De anfører som begrundelse for denne tilgang, at ansvar for omkostninger i disse tilfælde ville betyde, at de pågældende personer ville opleve en eller flere af følgende: livstruende konsekvenser, begrænsede muligheder for politisk deltagelse, og at omkostningerne har en uproportionel størrelse set i forhold til personens indkomst.


Det næste, der skal bemærkes, er, at tilgangen faktisk lader sociale og naturlige omstændigheder have en betydelig indflydelse. Det skyldes, at alle valg pålægges en afgift uden at tage i betragtning, om nogle grupper har sværere ved at undlade at tænke på, at de synes at være ansvar for de trufne valg. Problemet er således, at tilgange også tillægger folks valg moralsk betydning i tilfælde, hvor det ikke for alle, der træffer sådanne valg, synes rimeligt at tilskrive dem ansvar for de trufne valg. Så selvom der i idéen om, at alle der har en given risikoadfærd, synes at være en tiltalende tankegang, risikerer selv denne tilgang at tillade folks omstændig-

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heder at påvirke folks relative position. Effekten af dette må dog siges at være mindre end den, der kan forventes af den model, der holdt folk omkostnings-ansvarlige. Hertil skal lægges den allerede nævnte problematik, at dette andet element i teoridannelsen bevæger denne væk fra et klassisk held-egalitaristisk udgangspunkt og tættere på det, der i litteraturen omtales som all luck egalitarianism. Fra et held-egalitaristisk synspunkt er det klart problematisk, at denne tilgang både synes at holde folk ansvarlige for (nogle) uvalgte omstændigheder og sikrer omfordeling, der kompenserer for valgte forhold ved at omfordele mellem dem, der løber en ensartet risiko.

Forskel i ventetid
det kan dog være nødvendigt at lave ad hoc undtagelser for tilfælde, hvor øget ventetid i høj grad øger chancen for permanent forværret helbred. I det kommende afsnit vil vi se på en løsning, der potentielt også indebærer en venteliste, men som også giver folk muligheden for ikke at skulle vente.

**Feirings ventemodel**

Eli Feiring (2008) har præsenteret en variant af idéen om ventelister, hvis eksplicitte formål er at undgå flere af de indvendinger, der her drøftes. Selvom Feiring ikke er held-egalitarist, er det værd at overveje, om hendes tilgang til ansvar i sundhed er attraktiv i denne kontekst. Feirings idé udvikles i forbindelse med livsstilssygdommen fedme men kan fint anvendes i en bredere kontekst. Hun oplistet en række grunde til, at det kan være praktisk svært og/eller normativt problematisk at arbejde med et ansvarsbegreb, der er bagudrettet i den forstand, at det beskæftiger sig med, hvorvidt folk selv er ansvarlige for deres sygdom, og så forsøger at holde folk ansvarlige herudfra. Det er netop et sådant ansvarsbegreb, der har været motivationen for de hidtil diskuterede tilgange, og den måde, Feiring problematiserer det på, relaterer sig netop til sociale og naturlige omstændigheder, skamfulde afsløringer og ubarmhjertighed. Feiring ønsker af disse grunde at tale om det, hun kalder et fremadrettet ansvar. Idéen er, at de, der kommer til sundhedsvæsnet med en behandlingskrævende sygdom, der kan relateres til deres livsstil, stilles overfor et valg. De kan indgå en aftale med sundhedsvæsnet, der indebærer, at de skal ændre deres livsstil fremadrettet. I fald de indgår en sådan aftale, vil de blive behandlet på lige fod med alle andre. Hvis de vælger ikke at indgå aftalen, vil de blive placeret længere tilbage på ventelisten. Det er dermed nærliggende at behandle Feirings forslag som en mildere variant af ventelisten behandlet ovenfor. Konceptet er grundlæggende, at folk ikke vurderes på deres fortidige ageren, men på det valg de træffer vedrørende deres fremtidige ageren. Hvis de ønsker at vedblive med at leve det liv, der har resulteret i denne sygdom, så får de en lavere prioritet i sundhedsvæsnet, end hvis de siger ja til at lægge deres liv om. Først diskuteres en række uklarheder i Feirings teori, herefter diskuteres det, hvordan Feirings position klarer sig i forhold til de relevante indvendinger. Der synes at være et behov for, at Feiring specificerer, hvilke konsekvenser det bør have, i fald nogen bryder en indgået aftale. Hun synes at være tiltalt af, at dette kan resultere i en nedprioritering i forhold til fremtidige behandlingsbehov. En anden komplikation, der synes relevant at nævne, er den, der opstår, hvis en person pådrager sig en sygdom, der skyldes personens egne valg, efter at denne person har aflagt sig denne adfærd, fx ved at holde op med at ryge. Hvis modellen ikke stiller krav til denne person eller blot stiller krav om at fortsætte med at
være ikke-ryger, så forekommer den at ignorere personens eget ansvar i en grad, der synes problematisk. Hvis vi antager en rimelig afklaring på begge disse komplikationer, lad os da se på, hvorvidt Feirings teoridannelse kan undgå de gængse kritikker, og hvorvidt det er et alternativ, held-egalitarister kan omfavne. Feirings tilgang synes ikke at indebære risiko for at blive ubarmhjertig, idet en ansvarsjusteret venteliste næppe kan karakteriseres som havende en sådan karakter. Ej heller synes modellen i første omgang at få brug for undersøgelser, der kan involvere skamfulde afsløringer. Disse kan givetvis være nødvendige i forbindelse med at placere et ansvar for aftalebrud. På tilsvarende vis synes der at være et problem med sociale eller naturlige omstændigheder. I forhold til sådanne uvalgte omstændigheder er de hovedsageligt relevante i forhold til at influere folks evne til at overholde en indgået aftale. Feiring synes at tillade konsekvenser ved aftalebrud, uanset om det er sådanne omstændigheder, der ligger bag et aftalebrud. Det sidste, der skal bemærkes, er, at Feirings model i tilfælde, hvor folk har aflagt sig deres risikobetoneede adfærd, ikke synes i stand til at lade denne adfærd få nogle konsekvenser – selv i situationer hvor adfærd- den er klart selvvalgt og tilgængelig uden nogen form for skamfulde afsløringer. Dette er klart problematisk i et held-egalitaristisk perspektiv, og det synes derfor tvivlsomt, at held-egalitarister direkte kan tage Feirings forslag til sig.

**Perspektiverende konklusion**

På baggrund af ovenstående kunne det være nærliggende at drage en konklusion om, at det på baggrund af diskussionen er svært at vælge imellem de forskellige modeller for at holde folk ansvarlige. De har alle på forskellig vis svært ved at undgå at blive ramt af en eller flere af de væsentlige kritikker, der er blevet drøftet her. Men blot det, at det ikke er klart, hvilken model vi bør foretrække generelt, udelukker ikke, at der er værdifulde pointer i at tage diskussionen.

Selv det at diskutere forskellige modeller for personligt ansvar er vigtigt for den held-egalitaristiske litteratur. Det skyldes, at idéen om at nægte behandling til tider behandles som den held-egalitaristiske standardposition. Den ovenstående diskussion viser en pluralitet af mulige tiltag, held-egalitarister kan tilslutte sig. En pluralitet kritikker af held-egalitarismen i en sundhedskontekst burde notere sig. Idéen om at nægte behandling er ydermere problematisk som paradigmatiske eksempler på held-egalitarisme i sundhed, fordi vi faktisk har held-egalitaristiske grunde til at være skeptiske overfor denne løsningens ensidige fokus på, at de, der løber en risiko med deres helbred, skal have dårligere helbred end andre frem for blot at være dårligere stillet på et andet parameter. I tillæg hertil synes den også både ubarmhjertig og med risiko for at skulle
anvende skamfulde afsløringer. For både ventelister og omkostninger gælder det, at der synes at være et trade-off mellem, hvor præcist vi ønsker at kortlægge ansvar for at undgå at holde folk ansvarlige for deres omstændigheder og faren for, at de afsløringer, vi beder folk om at lave, er skamfulde og ydmygende for dem. Det betyder at det kan have stor betydning for, om en løsning er attraktiv, hvor let og tilgængelig information sådanne vurderinger baserer sig på. Herudover kan det siges, at skulle vi overordnet set vælge mellem ventelister og brugerbetaling, synes det væsentligt, om samfundet som helhed er præget af uvalgte uligheder i indkomst og formue. Er dette tilfældet, kan vi have held-egalitaristiske grunde til at foretrække en model baseret på ventelister frem for brugerbetaling. Denne pointe om indkomst udtrykkes en anden mere generel pointe. Selvom vi kan diskutere retfærdighed i sundhed, så vil vores vurdering af retfærdige fordelinger og retfærdige tiltag på sundhedsområdet spille sammen med vurderinger af, hvor retfærdigt andre goder og byrder er fordelt.

Modeller, der delvist nedtoner et fokus på ansvar, blev også drøftet. Det blev bemærket, at Capellan og Norheims alternative version af brugerbetalingsmodellen på et afgørende punkt afviger fra det held-egalitaristiske ideal og er nærmere all luck egalitarianism. For Feirings version af ventelisterne gælder det, at den afviger fra det held-egalitaristiske ideal, men også at den indeholder uklarheder, der gør, at den ikke oplagt er at foretrække som alternativ. Hverken Capellan og Norheims idé om at pålægge alle risikofyldte valg en afgift eller Feirings forslag til ventelister synes at undgå risikoen for, at vi ender med at holde folk ansvarlige for sundhedstilstande, der i høj grad skyldes bestemte omstændigheder. Held-egalitarister må ydermere være bekymret for, om ikke modellerne siger for lidt om statens ansvar for at eliminere sådanne omstændigheder. Det synes at være vigtigt for held-egalitarismen, men samtidig noget der glider i baggrunden i sådanne modeller, hvor alle valg pålægges en afgift, eller hvis alle, der ikke overholder aftaler med sundhedsvæsenet, stilles ringere af den grund. De mere rene modeller for brugerbetaling, venteliste eller behandlings kvalitet synes mere oplagt at kunne kombineres med sådanne tiltag.

Noter
1. Temaet i denne artikel var centralt i kandidatseminaret ”Ulighed i sundhed: Svære valg for individer og samfund”, som jeg underviste i efteråret 2012. Jeg skyldte derfor en tak til de studerende, der gennem drøftelser og diskussioner har bidraget til ovenstående. Herudover er jeg taknemmelig for konstruktiv kritik fra Martin Marchman Andersen, David V. Axelsen, Kristian Jensen, Søren Flinch Midtgaard,
Lasse Nielsen, Thomas Søbirk Petersen, Jens Dambaard Thaysen og to anonyme reviewere.

3. En komplikation påpeget af en reviewer.

Litteratur


Article 8.
Personal Responsibility in Oral Health: Ethical Considerations.

Journal of Forensic Odonto-Stomatology 30, Suppl 1: 12–20
Personal Responsibility in Oral Health: Ethical Considerations

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The authors declare that they have no conflict of interest.

An oral presentation of this paper was delivered at the International Dental Ethics and Law Society (IDEALS) Congress 2012 in Leuven.

**ABSTRACT**

Personal responsibility is a powerful idea supported by many values central to West European thought. On the conceptual level personal responsibility is a complex notion. It is important to separate the concept of being responsible for a given state of affairs from the concept of holding people responsible by introducing measures that decrease their share of available resources. Introducing personal responsibility in oral health also has limitations of a more practical nature. Knowledge, social status and other diseases affect the degree to which people can be said to be responsible for their poor oral health. These factors affect people’s oral health and their ability to take care of it. Both the conceptual and practical issues at stake are not reasons to abandon the idea of personal responsibility in oral health, but they do affect what the notion means and when it is reasonable to hold people responsible. They also commit people who support the idea of personal responsibility in oral health to supporting the idea of societal responsibility for mitigating the effects of factors that diminish people’s responsibility and increase the available information and knowledge in the population.

**KEYWORDS:** Personal responsibility, life-style diseases, distributive justice, oral health
INTRODUCTION

There is great variety in the health care systems of Western Europe. But in the midst of the variety of organizational structures and financing schemes, one aspect seems remarkably similar. In the area of oral health, private suppliers and private payments are the common denominators. Most normative discussions regarding this topic seek to point out that the asymmetry between oral health and health in general is incoherent. To that end, arguments are presented for an alternative closer to universal coverage.

Though such a massive increase in public health care expenses is hardly on the horizon, the normative relevance of the issue should not be ignored. It is noteworthy that the great bulk of normative literature on oral health leaves little or no room for the idea of personal responsibility. This means that how people have chosen to live their life is not allowed to affect their share of the resources. Personal responsibility is both a provocative and controversial idea and considerable disagreement exists on whether and how it could be taken into consideration, when tough decisions are to be made about the distribution of scarce oral health care resources. The article is a contribution to this discussion.

The article is normative in the sense that it deals with how things ought to be. It is also applied in its approach as it outlines implications and limitations of the principles under discussion. Firstly, it presents the values that support the idea of personal responsibility in oral health. Secondly, it discusses the conceptual issues at stake. Thirdly, it discusses the consequences of the vast range of factors affecting people’s oral health and the degree to which we can say they are responsible for it. Finally, it offers some thoughts about what a commitment to personal responsibility in oral health implies in the light of the topics discussed in this paper. Both the conceptual and practical issues at stake are not, as such, reasons to abandon the idea of personal responsibility in oral health, but they affect what the notion means and when it is reasonable to hold people responsible. They also commit people who support the idea of personal responsibility in oral health to supporting the idea of societal responsibility for mitigating the effects of factors that diminish people’s responsibility and increase the available
information and knowledge in the population.

VALUES SUPPORTING PERSONAL RESPONSIBILITY

It seems reasonable to start with the most fundamental question. Why should we be concerned with the idea of personal responsibility or more precisely - what values are we accommodating when introducing the idea of responsibility to the area of oral health? Practical reasons like giving people incentives to make prudent choices and accommodating budget constraints might be of some importance, but the issues here are mainly the moral reasons to consider personal responsibility. Such values are often present in discussions about health in general, where the correlation between poor health and specific lifestyles has spurred some to recommend the idea of personal responsibility. The proponents of this position argue that in a world of limited resources, it seems reasonable to take into account whether and how the person in question has influenced his own level of health.

In this discussion it is of interest that the debate about responsibility is far from new and that the idea rests on values that are highly influential in modern Western thought. The values will be presented in a concise way, sufficient to demonstrate how they can be said to support the idea of personal responsibility in oral health. In the literature, the values are mostly presented in the context of general health, but they seem equally applicable to responsibility in oral health.

One value is self-determination. The idea is that the individual is the best available judge of how to live his life and thus to make the relevant choices. But the value reflects more than confidence in the individual. It is not only that choices and opportunities to choose are important. It includes commitment to the idea that people’s lives may vary in accordance with those choices. This is closely related to the idea of personal responsibility. Thus, self-determination prescribes an approach where distributions of oral health are allowed to vary in accordance with the choices people make.

Another value is sometimes termed solidarity, but is perhaps best understood as reciprocity. It is the idea that we, as members of a given community, owe something to each other. This means that when we make choices in life we should consider how these choices affect others. If our choices mean that we take up a larger
share of the health care resources, reciprocity demands that we chip in and cover the part of the cost that reflects our choices. The idea of reciprocity could make acting with concern for the effects on others a precondition, moral if not actual, for receiving (free) care. If people fail to act in a way that includes such reciprocity, they have forfeited their opportunity to be treated as equals by their peers and on those grounds can be asked to pay for their own treatment.

A third value is desert, which traditionally includes considerations about whether people deserve the situation they end up in. Such a value could support a system where imprudent persons fare worse than others. Desert by most accounts has two meanings: treating people according to their prudential choices, or treating people in accordance with the virtue of their choices. Regardless of the preferred interpretation of desert it can be understood as a rationing criterion that takes into account the choices people have made and allows for letting their fates to vary in a way that reflects those choices.

The fourth value is fairness. As presented by the luck-egalitarian literature on distributive justice, fairness implies that distributions are just, if and only if how well people fare reflects how they have chosen relative to others. A related idea is horizontal equality. Often related to Aristotle, this is the idea that like cases should be treated alike and allowing for different treatments of unlike cases. This idea could be used to argue for personal responsibility when people who have acted in ways that affect their oral health negatively are compared to people who have not acted in such ways.

These four values seem to support the idea that personal responsibility should play a role in our distributions of resources in oral health care. They are broad and have much intuitive appeal. They are neither uncontroversial nor uncontestable - few values are - but they are presented in order to show that strong values point to the idea of personal responsibility - values that we would not want to ignore in other assessments of distribution. It remains to be seen whether conceptual or practical issues should lead us to abandon the idea of personal responsibility.

THE CONCEPT OF RESPONSIBILITY

The previous section covers some ground by presenting values in support of introducing a notion of personal responsibility. But any consideration of this must take into account that the values
tell us little about what responsibility means in this context. This is a huge task, given that responsibility is both a controversial and a complex notion. Gerald Dworkin remarked that the distinction between the normative and the mere descriptive sense of the term is “harder to distinguish clearly in the area of responsibility than in any other area of moral philosophy.”

The need to make this distinction and to be clear about the use of responsibility is apparent. If I choose not to brush my teeth every night, I am in one sense of the word responsible for not doing so, since this is a choice I make. But if, as a consequence, I end up worse off than others, then who is responsible, in a different sense, for bearing the cost of the consequences of my choice? Is it myself or is it a universal health care system? The literature on personal responsibility has many different takes on how to distinguish between a backward-looking understanding of responsibility and a forward-looking notion. Some suggest that the concepts are related in a very straightforward way that states that whatever you are responsible for in the backward-looking sense, you should bear the consequences in the forward-looking sense. However tempting such a simple view is, it is not plausible. The consequences of a given action are not necessarily straightforward. They depend on many factors such as price structures, the availability of insurance, the possibility of paying for treatment and so forth. So even though one might want to hold people responsible for their actions, what the consequences should be is in many ways a separate, but important, discussion. Such a clarification is of immense importance and neither discussion can be taken lightly. I deliberately refrain from using the term “consequential responsibility” since it seems to exclude measures that hold people responsible for their choices independent of the actual consequence of a choice (if any).

The discussion of what is needed in order to say that a person is responsible for poor oral health includes many important issues. However, the requirements can be outlined conceptually. Firstly, causality in the sense that we should be able to link a person’s voluntary choices or omissions to his poor oral health. Also the background factors of the choice must be taken into account; their influence can eliminate or decrease the degree to which people are responsible in the relevant sense. The second discussion concerns how we are to hold people responsible for what we can rightfully say they are responsible for and which of the
broad array of measures to apply. Holding people responsible is not just one thing. One could be asked to pay part of the costs of treatment or be billed for the whole cost. Other measures are denying treatment, taxing certain choices, and queuing people for treatment in accordance with their relative exercise of responsibility.\textsuperscript{14}

In relation to the complexities of responsibility mentioned above, the ideal of oral health as such is also a complex notion. A person’s oral health is comprised of many things, not only in the sense that many things affect it but also in the sense that oral health is a very broad notion. This means that when we speak of responsibility for oral health, there is an inherent danger of advancing too broad a notion. It seems more precise to speak of being and holding people responsible in particular areas of oral health. The fact that oral health covers a broad range of health issues affecting the state of the mouth, and that many factors contribute to the level of people’s oral health makes it less useful to talk of responsibility for oral health as such. We should therefore prefer an approach that talks of being and holding people responsible for specific parts of oral health or specific actions that affect our oral health.

**FACTORS AFFECTING RESPONSIBILITY**

When we consider responsibility in oral health, many things must be taken into account. The discussion about when a person is indeed responsible for his oral health requires a stringent approach. But after the presentation of values that point to the idea of personal responsibility and the interpretation of how we should conceptualize the idea of responsibility, we still need to discuss the wealth of factors that influence people’s health. How can we take them into account in a satisfactory manner? Consider firstly two major categories encompassing the reasons that people have poor oral health. One is internal and has to do with genetics, saliva levels and oral hygiene. The other is external and concerns food intake, accidents etc. To apply the idea of personal responsibility properly and to be able to assert whether a person is responsible for his current level of oral health, the different reasons for poor oral health must be disentangled and sorted based on whether he has acted in a way that caused them. This is both a vast and necessary task.

It is necessary in order to hold people responsible only for those levels of oral
health that can be attributed to their own actions or omissions. The lessons outlined earlier are highly relevant. The right question to ask is not whether it would be just to hold people responsible for their oral health as a whole, but rather whether people’s choices have affected parts of their oral health in a way that makes it fair to let them bear some of the consequences for their actions or omissions. Below it will be evaluated how we can include factors that affect not only people’s oral health but also their ability to take care of their oral health.

One issue is the availability of information. This can be taken in two ways. One has to do with information and knowledge in society. Do we as a society have sufficient knowledge about what is good and bad for oral health? If we as a society have little knowledge about the causal influences of oral health, then decisions based on this lack of knowledge that end up being bad for people’s oral health cannot be considered decisions that people are, in the relevant sense, responsible for. The second related but distinct aspect has to do with the knowledge available to the individual. Though knowledge that is present in society is important, we cannot and should not overlook that differences in knowledge and access to knowledge between individuals are likely to be present and to affect our evaluations of their responsibility.

Another important issue is natural disadvantages. They are not as such indications of good or bad oral health, but nevertheless affect a person’s oral health or his ability to take care of his own oral health. Obvious examples are mental illness and diseases limiting the coordinated movement of arms that is needed to properly brush one’s teeth, but the occurrence of natural disadvantage can be of a much broader nature. Diseases such as Sjögren’s syndrome and diabetes limit the production of saliva in the mouth. Saliva serves as a natural defense against caries these diseases and reduction in saliva should be considered as natural barriers that make it harder for some people than for others to protect their oral health. Social circumstance is an important category of barrier. Both oral health and the ability to take care of it are affected by a broad range of social factors. This includes the mother’s diet during pregnancy, the social status of children and adults. Though they are treated separately for analytical reasons, it will in practice be very hard to isolate the effects of social and natural circumstances on oral health. They interact and knowledge will
sometimes dampen/increase the effect of these circumstances, and is, at the same time, affected by both social and natural circumstances.

**CONCLUDING CONSIDERATIONS**

The discussion shows that values embraced widely in Western philosophy, theories of distributive justice and medical ethics can be used as arguments for introducing personal responsibility in oral health. It also shows that the term responsibility is marred by controversy and conceptual disagreement. We need to clarify two things: what it means to be responsible for one’s oral health, and how we are to hold people responsible who are in such a way responsible, for the state of affairs they brought about. The last thing to consider is that there are several important barriers in society that diminish the degree to which people are responsible for the choices and omissions that affect their oral health. The arguments presented above commit those attracted to personal responsibility in oral health in at least three ways.

A commitment to mitigate and eliminate social and natural factors affecting people’s oral health and the degree to which they can be held responsible.

A commitment to research and educational initiatives to increase the knowledge in society about oral health and equip individuals to make healthy choices in that regard.

A commitment to take into account the extent to which the abovementioned initiatives are unsuccessful in a given society, in order to avoid holding people responsible for an oral health deficit for which they are, in the relevant sense, not responsible.

**Acknowledgements**

The article is based on work presented in August 2012 at the 9th International Congress on Dental Law and Ethics arranged by IDEALS in Leuven. I am grateful for the encouraging and kind comments I received on that occasion.

**REFERENCES**


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Article 9.
Tough Luck and Tough Choices: Applying Luck Egalitarianism to Oral Health
Tough Luck and Tough Choices: Applying Luck Egalitarianism to Oral Health

Abbreviated title: Applying Luck Egalitarianism to Oral Health

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Abstract

Luck egalitarianism is often taken to task for its alleged harsh implications. For example, it may seem to imply a policy of non-assistance towards uninsured reckless drivers who suffer injuries. Luck egalitarians respond to such objections partly by pointing to a number of factors pertaining to the cases being debated, which suggests that their stance is less inattentive to the plight of the victims than it might seem at first. However, the strategy leaves some cases in which the attribution of individual responsibility is appropriate (and so is, it seems, asking people to pick up the tab for their choices). One such case is oral health or significant aspects of this. It is appropriate, the paper argues, to hold people responsible for a number of factors that affect their oral health. A luck egalitarian approach inspired by John Roemer can assess whether people have acted responsibly by comparing their choices to those of their peers. A luck egalitarian approach to oral health would recommend prioritizing scarce resources in a responsibility-weighted queuing system and include co-payment and general taxation among its measures off financing.

Key Words: luck egalitarianism; oral health; dental care; personal responsibility; lifestyle diseases.

I INTRODUCTION

Luck egalitarianism asserts that distributions are just if, and only if, how well people fare relative to others, reflect their exercises of responsibility (Lippert-Rasmussen, 1999: Knight 2009, 230). Thus, luck egalitarianism embraces personal responsibility and rejects holding people responsible for natural or social circumstances (Cohen 2006; Voigt 2013). Often Luck egalitarianism is interpreted as encompassing a principle of compensation and a principle of reward. The former states that people who are worse off relative to others in a way not reflecting their exercise of responsibility should be compensated and the latter that differences between people reflecting such exercises of responsibility should be left untouched (Fleurbaey, 2008; Roemer, 2012).1 Applying luck egalitarianism to health is controversial, but there is a growing literature on the topic (Albertsen and Knight 2014; Cappelen and Norheim 2005; Cappelen and Norheim 2006; Le Grand 2013; Segall 2007; Segall 2010; Segall 2011; Segall 2012).

It has famously been argued that luck egalitarianism must refuse to compensate those who make imprudent choices (Anderson 1999: Fleurbaey 1995, 40). Such critics
ask whether it is just for society to refuse to treat the reckless motorcyclist who drives without helmet and is severely injured in a crash. Since many luck egalitarians wish to resist this conclusion health may be considered a hard case for luck egalitarianism, and for those and other reasons many remain unconvinced over its viability in a health care context (Andersen et. al 2013; Brown, 2013; Nielsen, 2013; Nielsen and Axelsen 2012; Venkampoorum, 2011; Wikler, 2004). In response to the charge of being too harsh, luck egalitarians have developed a number of reasons why we should not, after all, hold people responsible for their health-affecting choices. In principle such reasons can be divided in two categories. The first claims that compensation in such cases does in fact follow from the principle of compensation. This claim is often based on the an argument to the effect that people’s choices are so heavily influenced by circumstances that they should not be considered exercises of responsibility and thus eligible for compensation. The second category consists of different arguments for, why we should for some choices dispense with the principles of reward and compensation, even when we acknowledge that people are in fact responsible for being worse off. One such reason is that people should not be held responsible for their choices, because the choices reflect their conception of the good life. Doing so, some authors claim would be unreasonable. Others allow for compensation, when choices leave people with their basic needs unfulfilled. Redistribution is also recommended by some, who argue that the gambles people undertake by their health-related choices are to be considered quasi gambles; gambles where people would prefer the expected value to the risk of gambling. This last type of reason argues that redistribution among quasi-gamblers is just.

This article discusses whether these reasons are relevant in the context of oral health. It undertakes this discussion for the oral health of adults in the context of two widespread and well-known sources of bad oral health: periodontal disease and carries. It concludes that these reasons are less present in this context. Oral Health should be considered a subject of importance since bad oral health can significantly worsen a person’s well-being by inflicting pain and reducing his/her ability to sleep and chew (Chavers, Gilbert, and Shelton 2003; Dharamsi and MacEntee 2002; Vargas and Arevalo 2009; U.S. Department of Health and Human Services. 2000). It is therefore interesting, that it seems not, on reflection, counter-intuitive to hold people responsible for their oral health in this area of health. However, bad oral health unequally affects people’s lives (Geyer, Schneller, and Michelis 2010; Thomson et al., 2004; U.S. Department of Health and Human Services. 2000). In order to evaluate such inequalities a luck egalitarian approach inspired by John Roemer is introduced to assess whether people are responsible for their choices by comparing their choices to those of their peers. Afterwards it is evaluated whether such choices are of a kind that allows for compensation, and it is argued, that choice of food consumption and maintaining oral hygiene is neither unreasonable to expect of people, nor in general resulting in people’s basic needs being unmet. The strongest candidate for (some) redistribution is the argument that the choice affecting oral health could be classified as quasi-gambles.
Even though one might deem a person to be responsible for his/her actions that affects health and want to hold that person responsible for the relevant choices, what the consequences should be is a separate, but important, discussion (Olsaretti 2009). The consequences of a given choice depend on a range of factors such as price structures, quality of care, the availability of insurance and the possibility of paying for treatment. In this regard the article introduces the idea of a responsibility-weighted queuing system and endorses co-payment and general taxation as a scheme for financing it. It would seem that oral health is one area, where people can and should in fact be held responsible for their health-affecting choices. In the latter regard, it is interesting that many European countries have separated oral health care from health care in general and financed it with a larger role for co-payment or out-of-pocket payment (Holst, Sheiham, and Petersen 2001, 114–115). Some, but not all, of this institutional arrangement is supported by a luck egalitarian theory of justice.

II. LUCK Egalitarianism and health

This section surveys important developments in the luck egalitarian literature, especially the tendency to argue that appearance notwithstanding the luck egalitarian theory does not have the counterintuitive harsh implications emphasized by critics. This is followed, in the next section, by an argument to the effect that while refraining from holding people responsible in a number of critical cases is appropriate on the luck egalitarian view, they are impotent with respect to the area of oral health under consideration. The intuition of luck egalitarianism is often taken to be captured in Derek Parfit’s formulations that “it is bad if, through no fault of theirs, some people are worse off than others” (Parfit 1984, 26), or “[i]t is in itself bad if some people are worse off than others” [“through no fault or choice of theirs”] (Parfit 1998, 3). This formulation is unable to evaluate a number of distributions, but a recent interpretation of luck egalitarianism asserts that distributions are just if, and only if, how well people fare, relative to others, reflects their exercises of responsibility (Knight 2009, 230: Lippert-Rasmussen 1999).

In his seminal account of the luck egalitarian position, G.A. Cohen argues in line with the above formula that we should seek to eliminate “disadvantage for which the sufferer cannot be held responsible, since it does not appropriately reflect choices that he has made or is making or would make” (Cohen 1989, 916). To identify such involuntary disadvantages, we should ask whether a person facing a given disadvantage “could have avoided it or could now overcome it” (Cohen 1989, 920). According to Cohen, people should be compensated only for what they could not avoid. If in such instances they can now overcome it, we should subsidize their treatment, and if they cannot, they should be compensated to relieve its continued effect on their lives. Such traditional luck egalitarianism with emphasis on choice and luck is often described using Ronald Dworkin’s famous distinction between brute luck and option luck. The latter concerns “how deliberate and calculated gambles turn out – whether someone gains or loses from an isolated risk he or she should have anticipated and might have declined;” the former instances that are not such
deliberate gambles (R. Dworkin 2000, 73). Luck egalitarianism is, in its standard interpretation, only concerned with extinguishing the differential effects of brute luck while it leaves the differences in option luck following from people's choices untouched (Rakowski 1993).

The interpretation of the distinction is still a subject for debate just as how the concepts can be separated in the evaluation of real world distributions. This also holds in a health care context. When taken to task for being too harsh on the victims of option luck, luck egalitarians can either claim that the specific disadvantage is not chosen or provide reasons why it should be compensated anyway. Prominent in the first category are those who argue, that luck egalitarians are committed to more distribution than its critics assume, because many inequalities are most plausible understood as caused by brute luck (Barry, 2008). In a health context it is uncontroversial to state, that luck egalitarians wish to compensate those who are worse off than others for reasons not reflecting their exercises of responsibility. This however seemingly leaves a range of situations, where people should be denied compensation because there situations adequately reflects the choices they have made (Voigt 2007). This would give rise to second category of reasons, arguing for compensation even though the disadvantage in question does reflect people’s exercises of responsibility. Several such reasons have been suggested in the literature. One argument of this kind stresses that regarding some choices it would be unreasonable for society to hold people responsible for the consequences. Cohen proposed to revise the luck egalitarian view to cater for such thoughts. According to Cohen, chosen disadvantages may require compensation when they reflect our values. The reason for this is that it would be unreasonable to ask people to avoid making such choices (Cohen 2004; see also, Price 1999). Under the influence of such thoughts, Segall argues in his influential account of luck egalitarianism in health that we should compensate people for what it would be unreasonable to ask them to avoid. He further argues that compensation might be justified even for choices that we could reasonable ask people to avoid if people end up with unmet basic needs (Segall, 2010).

The appropriateness of accepting inequalities generated by differential option luck can also be questioned in a different manner. Lippert-Rasmussen argues that it may be proper to compensate some unfortunate gamblers (Lippert-Rasmussen 2001; Temkin 2011). This may seem counterintuitive, since Ronald Dworkin maintains offers the reluctance to take away people’s opportunity to take on risks by redistributing inequalities that arise through gambles as a virtue of luck egalitarianism (R. Dworkin 2000, 74–75). However, Kasper Lippert-Rasmussen has introduced a distinction between *gambles proper* and *quasi-gambles* that renders redistribution more plausible. In the latter gambles, the persons involved would have preferred the expected value of the gamble as opposed to risking the gamble. Proper gambles are well-known from casinos and race-tracks where the risk is part of the purpose (Lippert-Rasmussen 2001, 555). The argument against redistribution between winners and losers of gambles seems implausible when applied to quasi-gambles. When redistributing among quasi-gamblers, no one is asked to live a life they
do not want, on the contrary, the individual’s risks are pooled and minimized — risks each would prefer to live without.

It seems that luck egalitarians, who wish to argue for compensation to those whose health related choices make them worse off than others in regard to their oral health, have several options available. Besides from claiming the behaviour to be not sufficiently chosen (i.e. reflecting people’s exercises of responsibility), it is furthermore possible to argue for compensation when we could not reasonably expect people to avoid making such choices, when the consequences of such choices hamper people’s satisfaction of basic needs or when the choices are best described as quasi-gambles. In what follows, these highlighted developments in the luck egalitarian literature will be evaluated in order to assert whether these different reasons for not holding people responsible are present in oral health. Though the different strands of luck egalitarianism are distinct in important ways, they are all considered in order to evaluate the widest possible range of luck egalitarian reasons to not hold people responsible for their own oral health.

III. Responsibility and oral health

In this and the next section, it will be argued that many of the reasons luck egalitarians give for not holding people responsible for their health are not present in the area of oral health. The discussion considers this in the context of two widespread and well-known sources of bad oral health: periodontal disease and carries. It starts out by evaluating the most straightforward claim, regarding the presence responsibility-diminishing influence from social or natural circumstances on people’s oral health. A proposal is put forward to how we can plausibly assess people’s degree of responsibility in this context. Afterwards, drawing on the development of the luck egalitarian literature the following reasons for compensating people for their choices is considered: that inequalities in oral health reflect choices we cannot reasonably expect people to avoid, that choices regarding oral health brings about distributions where people’s basic needs are not met and that inequalities in oral health can be described as quasi-gambles that allow for redistribution between ‘takers’ of such gambles.

Responsibility-diminishing circumstances

First in any debate over responsibility and health are discussions over whether people are responsible for the choices that affect their health (cf. Barry 2008; Kaufman 2004). If it could be shown that people are not responsible for their oral health, luck egalitarianism would consider it unjust to hold them responsible for it. In oral health, we have good reasons to examine this discussion thoroughly. Regarding consumption choices it is relevant whether they had a healthy alternative at a reasonable price and whether their preference for certain sugary foods can be related to habits instilled in childhood (Mennella et al. 2010). Regarding choices in oral hygiene, it could be pointed out, that social circumstances affects people’s capacities for taking care of their oral health through unequal distribution of knowledge about oral hygiene (Lee
et al. 2012) or factors related to childhood upbringing (Dye et al. 2011; Pieper et al. 2012; Schou, Currie, and McQueen 1990). The argument to be considered is whether, people are, in the relevant sense, responsible for suffering from bad oral health through periodontal disease and carries. It is assumed here, following Cohen, that the basic egalitarian question is whether the disadvantages from which people suffer could initially have been avoided.

Periodontal disease is a gum disease caused by a build-up of plaque on the teeth. Plaque can be bad for the gum health, leading to soreness, inflammation and with a possibility of evolving into more severe gum diseases such as periodontitis, which among other things can lead to damage of the tissue that connects the tooth to the socket, receding gums, loose teeth and loss of teeth (NHS, 2012). Periodontal disease is widespread: In UK 54 per cent of adults over 16 had moderate signs of periodontal disease (Department of Health, 2005: 14). In Germany 70.9 per cent of adults aged 35–44 (Holtfreter et al., 2010), and surveys from the US indicates that over 50 per cent of the population has periodontal disease (Oliver et al., 1998). To understand whether a person could have avoided periodontal disease, it is necessary to find out what causes it. Periodontal disease is, since it is caused by bacteria on the teeth, avoided through by oral hygiene (Hioe and van der Weijden 2005; Sambunjak et al., 2011). Studies further suggest that dental visits have a positive effect in that regard (Ljaljević et al., 2012), and others stress the role of knowledge (van der Weijden and Hioe 2005). In supplement to the discussion of oral hygiene, it should be mentioned that there is little evidence for an association between diet and periodontal disease (Moynihan and Petersen 2004, 203). Though people’s level of periodontal disease is, all things equal, related to their own choices in tooth brushing, all things are in many ways not equal. People’s oral health is affected by both natural and social circumstances making it harder for some than for others to avoid periodontal disease. If we first consider the social factors, periodontal disease shows a social gradient (Zini, Sgan-Cohen, and Marcenes 2011). This means that the burden of disease in unequally spread in society, and indicates that social factors contribute to this unequal distribution. Furthermore, alcohol (Lages et al. 2012) and cigarette smoking are considered risk factors for periodontitis (Johnson and Hill 2004; Klinge and Norlund 2005; Tonetti 1998). Apart from such arguably social factors, the presence of periodontal disease is also associated with several natural factors. It is well documented that the ability to avoid periodontal disease is worsened by the presence of some specific diseases. Among those are diabetes (Almeida Abdo et al. 2013; Matu, Stephen, and Lalloo 2009; Mealey and Oates 2006) and Paget’s disease (Sundaram et al., 2012). Periodontal disease is also known to be widespread among people with intellectual and developmental disabilities (Fisher 2012; Moreira et al. 2012)

Consider next, in a similar fashion, the factors influencing the development of dental carries. This is an infection that causes demineralization of the hard tissues and destruction of the organic matter of the tooth. It is usually brought about through the production of acid by bacteria accumulated on the tooth surface (Selwitz, Ismail, and Pitts 2007). Developed carries can lead to both pain and tooth loss and is as such
cause for bad oral health. Dental caries is a major health problem in most industrialized countries and affects 60–90 per cent of school-aged children and the vast majority of adults (Petersen et al., 2005). In several ways, the development of caries is contingent on human behaviour and thus, to some extent, avoidable. Caries is related to sugary diet and negligent tooth brushing (Chankanka et al. 2011; Reisine and Psoter 2001; Steyn and Temple 2012), this is also the case among children (Harris et al. 2004). However, the relationship is yet again altered and affected by social factors such as the diet of the mother (Tanaka et al., 2012), childhood factors (Pieper et al. 2012) and social status (Boyce et al., 2010; Dye et al. 2011; Chankanka et al., 2011; Ferro et al., 2012). As such, people’s oral health is affected by other factors than their own choices (and their choices are also affected by these factors). Apart from social circumstances, caries is also affected by natural circumstances. Reduced production of saliva in the mouth is among the prominent causes for caries. Saliva serves as a natural defence against caries (Kościelniak et al. 2012). Thus a number of diseases make the particular individual more vulnerable to caries and its adverse effects by reducing the natural production of saliva. Among such diseases are Sjögren’s syndrome (Mathews, Kurien, and Scofield 2008; Pedersen, Bardow, and Nauntofte 2005), diabetes (Bajaj et al. 2012; Jawed et al. 2012). Other diseases are known risk factors for caries, including types of cancer treated with chemo and radiography (Michelet 2012).

Whether or not a given individual suffers from caries and/or periodontal disease is contingent on a wide range of factors, including individual behaviour. Some of these factors are indeed beyond the control of the individual, while others are highly manageable, though requiring knowledge and the correct application of materials (e.g. toothpaste, toothbrush). When considering the social and natural factors affecting whether one suffers from bad oral health through caries or periodontal disease, it is clearly necessary for a luck egalitarian approach to take into account that social and natural factors differently affect people’s oral health, and also makes it harder for some than for others to make the healthy choices to avoid suffering from bad oral health as caries and/or periodontal disease.

The Roemerian approach to assessing responsibility

The following section presents an approach inspired by the work of John Roemer (Roemer, 1993; 1998; 2012). In the foregoing section it was concluded that in order to evaluate people’s degree of responsibility for their periodontal disease and dental caries, luck egalitarianism must take into account how this is not only affected by their own choices but also by social and natural circumstances. Roemer’s approach will be presented as a principled solution to this, and practical objections will be discussed at the end of the article. Roemer’s approach is distinctively luck egalitarian, since he argues that society should indemnify people against poor outcomes that are the consequences of causes that are beyond their control, but not against outcomes
that are the consequences of causes that are within their control, and therefore for which they are personally responsible (Roemer, 1993: 147).

In order to assess people’s responsibility Roemer proposes to classify the population into different types consisting of people with the same/similar circumstances (Roemer, 1993: 150; 2001: 449; 2003: 261; 2012: 168). Within each type is a distribution of effort, because people in similar circumstances differ in how much they do to avoid a bad/obtain a good. When evaluating people’s exercise of responsibility, we should compare them to people of the same type by observing who has shown the highest degree of effort (Roemer, 1998: 11). It is also possible to compare the exercise of responsibility in different types of people. Two people from different types varying equally from the median of their respective type are deemed to have exercised a comparative degree of responsibility (Roemer, 2001: 450; see also: Roemer, 1993: 151–152; 2012: 169). The key point in both forms of comparisons is that whether one is, in the relevant sense, responsible for such choices, depends on how these choices vary from the choices of people in comparable circumstances.

Roemer illustrates his position in relation to smoking and lung cancer (Roemer 1993, 150). He asks us to consider a black male steelworker and a female college professor, both 60 years of age and both now suffering from lung cancer. The former has been smoking for 25 years, while the latter only smoked for eight years. For simplicity, we can assume they belong to types of black male steel workers and female college professors, respectively. Within each type, the distribution of cigarettes per day varies across a median. Assuming that each year as a smoker involves an increased risk of getting lung cancer, how are we to assess the responsibility for the smoking behaviour of the two individuals? Roemer suggests that we do not compare their absolute level of effort but rather their degree of effort, which allows us to compare how much (if any) they deviate from the median of their type. This is significant if, as we would expect, the distribution of years smoked among black steel workers varies around a higher median than that of the college professors. If the two persons have both smoked the median number of years (or deviates from it in a comparable way), then society should treat them as equals despite their different absolute levels of effort (Roemer 1993, 152).

How is Roemer’s approach applicable to oral health? In accordance with the discussion of social factors when discussing caries and periodontal disease, the following seems appropriate: age, social class and parent’s education. IQ or education level as a proxy for knowledge should be included to account for that influence. Using these factors, people can be classified as belonging to a specific type depending on their score on the relevant factors. A second issue concerns how to include the identified natural factors (e.g. the specific illnesses mentioned previously). Let us for the sake of simplicity assume the existence of a finite number of illnesses, which people cannot help having. These diseases affect people’s oral health by making them more prone to periodontal disease and/or caries, through increasing the adverse effect of neglectful brushing of teeth and/or having a sugary diet. In other words,
more is required of some people than of their peers to maintain good oral health. In light of this it seems plausible to expand the concept of type in order to permit compensation for differences caused by natural circumstances. The Roemerian approach presented above can serve as a principled guide to how we can assess and compare people's degree of effort to avoid caries and periodontal disease. The purpose of doing so is to filter out the social and natural causes of bad oral health, for which luck egalitarians would find it unjust to hold people responsible. Roemer's approach seems a promising candidate for doing so, while still being able to compare people's degree of effort. This approach has been criticised for both practical and principled reasons. The practical reasons are mainly offered in the form of doubts over the extent to which this approach is manageable and possible to implement. To address such concerns a sketch will be presented in the last part of the paper, dealing with how we are to implement the ideas presented here in a workable way that tracks the luck egalitarian notion of justice.

IV. CONSIDERING FURTHER REASONS FOR NOT HOLDING PEOPLE RESPONSIBLE

As argued above, individual choices affect oral outcomes when considering the two widespread courses for bad oral health, caries and periodontal disease. A Roemerian approach can filter out those whose bad oral health is due to social or natural factors. We now consider those, who are responsible for their own bad oral health, in the light of luck egalitarian reasons for not holding people responsible for the consequences of their own choices. Whereas the above discussion focuses on whether people's oral health is a result of their own choices, this part of the discussion is somewhat different. It offers reasons for not holding people responsible for their own choices and for the consequences of these, even when they are responsible for them in the relevant Roemerian sense.

Reasonable avoidability

Shlomi Segall proposes a reason to not hold people responsible for their choices, following Cohen's 2004-revision of luck egalitarianism. Explicitly addressing situations where a person is responsible for his own level of health, he argues that there may be situations when this condition is not sufficient to hold a person responsible for his level of oral health. Segall argues that what matters is not whether something is chosen, but whether it would be reasonable to expect a person to avoid it. This allows us to compensate those who make the choices we, as a community, want people to make, though doing so involves a considerable risk for themselves (Segall 2010, 20).

Elaborating on Segall's view we can identify three different reasons for not considering it reasonable to hold people responsible for the choices they have made regarding their oral health. The first reason is that these choices are of value to the community, the second that they are of value to the individual and the third is related to the degree of complexity involved. Considering these different reasons for not holding an individual responsible for his choices, the first seems hard to uphold in
the context of oral health. In the literature on health, voluntary firemen are cited as an example of persons who risk being worse off through their own choices, nevertheless, they should not be asked to bear the consequences of their choices since they are of great value to the community (Veatch 1980, 53). Though present in the debate over health in general, very few people are able to say that they risk getting caries or periodontal disease as an integral part of their valuable contribution to society. Consider construction workers who eat their lunch while sitting on beams high above the ground. They do not, presumably, have the opportunity to brush after their meal. But since they only need adequate tooth brushing twice a day, they could presumably brush before and after their work shift. Most jobs, however intense, extreme and without breaks we imagine them, start and end at some point during the day. Brushing before and after should be a possibility. Some employments do involve risk to oral health, but in a way that is different from those arising through caries and periodontal disease considered here (i.e. certain participants in professional sports such as boxing and ice hockey, and people employed in military or police jobs risk losing their teeth13) If we then consider what could be called risky choices that are valuable to the considered persons who, though they adversely affect their oral health, make the choices then they should not be held responsible because it would not be reasonable for society to expect them not to choose as they did. It seems hard to identify value-based choices that negatively affect people’s oral health, where the consequences could not be avoided by thoroughly brushing ones teeth, and where we could not reasonably expect people to undertake this effort. One could argue that many parts of the Christmas tradition in western countries involve a large consumption of sugary food, and thus risk of caries, but one could hardly argue that it is unreasonable to ask people to pay special attention to tooth brushing during Christmas.

The third relevant consideration is the level complexity. It seems reasonable to suggest that complexity in different forms can be offered as a reason for not holding people responsible for their own choices. Some risks associated with specific human behaviour are either too vague to casually relate to a person's health, too hard to comprehend or too difficult and/or costly to avoid undertaking. Therefore it seems perfectly plausible to claim that it would be unreasonable to hold people responsible for their own level of health under such conditions. However, considering oral health, it seems reasonable to suggest that the large majority of adult people are able to understand how to brush their teeth and the effects of avoiding sugary food, which is not expensive to do. The relevant actions do not seem that complex to perform. None of these acts are especially difficult, though it should perhaps be admitted that some people’s desire to eat food bad for their oral health can be instilled in them from childhood. But to have such desires instilled would make it more plausible to suggest that the relevant act is less chosen (and thus compensable on grounds of justice), rather than making it an actual choice that would be unreasonable not to compensate. The idea of reasonable avoidability does not give us good reasons why people should
not be held responsible for the part of their caries and/or periodontal disease that can be ascribed to their own choices.

Unmet basic needs
Segall proposes another reason for not holding people responsible for their choices. He addresses instances where people suffer due to choices that it would be reasonable to expect them to avoid. He argues that even though we do not owe such people anything as a matter of distributive justice, we can offer them assistance on other grounds. One such ground could be charity or, as Segall prefers, our duty to meet people's basic needs (Segall 2010, 69). So compensation for people's choices (including choices we could reasonably expect them not to make) is just if those choices bring about a situation in which a person's basic needs are not met. Regarding choices pertaining to oral health, it seems clear that only in extreme cases will they result in deprivation of basic needs such as not being able to eat and speak. Even in such cases, the process leading up to them is remarkably different from the reckless driver who neglected to put on his helmet. In that famous example, one moment of neglect has disastrous consequences; it seems that in the case of oral health, at least understood as suffering from caries or periodontal disease, it will more often be a whole series of neglectful choices over a longer period of time. This makes a difference and also suggests that only in very few cases will people's choices lead them to a state of oral health in which their basic needs are unmet. However, it does suggest, in line with the discussion of reasonable avoidability, that perhaps there is a need for a different discussion regarding people who suffer from missing teeth after work-related injuries, violence or traffic incidents. This separate discussion will not be pursued here and the conclusions made are not necessarily applicable to those areas of oral health.

Oral health gambles as quasi-gambles
A final reason for compensating people whose bad oral health reflects their choices and bad option luck can be found in Lippert-Rasmussen's idea of quasi-gambles and gambles proper. Where the latter are gambles of which excitement (and the risk of them turning out bad) are part of our reasons for engaging in them, the former are gambles where we would prefer the expected value of the gamble to taking on the risk (Lippert-Rasmussen 2001, 555). In the context of oral health it is interesting to discuss whether the choices involved are best understood as quasi-gambles. The touching stone should be whether people involved in gambles with their oral health would prefer the expected value of such gambles to the risk of bad oral health. If behaviour that is bad for oral health, such as the consumption of sugary food and the neglectful brushing of teeth, could be classified as quasi-gambles, this could serve as vindication of redistribution among those partaking in such gambles. In examining whether behaviour associated with bad oral health should be considered as quasi-gambles, two main features seem necessary to consider. The first is whether the thrill from the risk of losing the gamble is an integral part of taking the gamble; the
second is whether it is reasonable to say that one would have preferred the expected outcome of the gamble rather than taking on the risk.

Considering the thrill, the verdict is straightforward. There seems to be no thrill at all involved in risking one’s oral health due to consumption of sugar or not brushing one’s teeth. Based on that criterion, it seems fair to consider these as quasi-gambles. However, the term “to prefer the expected value” seems harder to reconcile with the oral health cases considered here because of uncertainty over, what counts as the expected values of such gambles. It is far from clear what it means to prefer the expected value of neglectful teeth brushing or a sugary diet. But perhaps we can understand the expected value of such gambles, as irritation, bleeding gums and occasional pain – but note that there is also the risk of it turning out much worse (e.g. severe pain, inability to eat/sleep). It is the risk for the latter outcome, that does not include a thrill and which people would presumably prefer to live without. If this serves as a reasonable description of gambles over oral health, then they could presumably be described as quasi-gambles.

This article has considered different luck egalitarian reasons for not holding people responsible for choices that badly affect their oral health. Thus, it seems reasonable to conclude that in regard to important causes of bad oral health, such as caries and periodontal disease; not holding people responsible for such choices receives little support. The strongest candidate for some redistribution was the argument that the choice affecting oral health could be classified as quasi-gambles. An argument, it must be stressed, that is only open to those luck egalitarians sometimes referred to as all luck egalitarians (Segall 2010, 45-57).14

V. HOLDING PEOPLE RESPONSIBLE FOR THEIR ORAL HEALTH
After having examined how we can assess people’s responsibility for their oral health and discussed different reasons from luck egalitarian literature for not holding people responsible after all, it seems timely to discuss how the presence of responsibility for such oral health deficits should be allowed to affect people’s level of advantage. Introducing a Roemerian system to access people’s exercises of responsibility is indeed difficult. At the most basic level society should strive to provide information, education and eradicate the social circumstances influencing people’s oral health (Albertsen, 2012). But even on this background, it would still be necessary to assess people’s different exercise of responsibility in order to let them fare in accordance with that. The model most fit for this seems to be a system of exemptions, where people in certain circumstances are treated differently from people who cannot cite such conditions as reasons for their bad oral health. For example, when we know that some types of cancer treatment are very bad for people’s oral health; those undergoing such treatments should not be held responsible for their bad oral health. The same could be said for certain social conditions and could also be used to provide free care for children, mentally ill and for people very disadvantaged by social circumstances. Such exemptions from holding people responsible could be based on easily attainable information. The system would not as such assign people to certain
types, but would use available information about their social and natural circumstances, to determine if they should be held responsible for their bad oral health. This proposal is both sketchy and rough, but in such discussions it should be recalled that many (if not all) arrangements of health care systems fail to completely track their guiding moral principles (e.g. people are both over- and undertreated in systems treating in accordance with need).

Finally, something must be said about the different ways of holding people responsible in cases where the Roemerian approach considers them to be so (and other considerations allows us to do so). Inspired by Gerald Dworkin, issues such as to deny people treatment, to arrange queuing after responsibility and to introduce different measures of co-payment for people responsible for their own oral health needs will be considered (G. Dworkin, 1981). Considering first the idea of denying treatment, this ensures that their oral health corresponds to their exercise of responsibility, but removes their opportunity for restoring their oral health by paying for that restoration themselves. Such a solution is one possibility, but fits badly with the luck egalitarian idea that how well people fare, relative to others, should reflect their exercises of responsibility. Luck egalitarians are not committed to the view that neglectful exercise in oral health must translate into inequalities in oral health. If people prefer to transform it to a monetary inequality, then luck egalitarians should not seek to eliminate that possibility.

Another measure to discuss is a system that allocates one’s place on the waiting list in accordance with whether or not one is deemed to be responsible for one’s level of oral health. The system can be arranged in many ways. A very rigid system moves everyone with some sort of responsibility for their own oral health backwards, so that no one with some responsibility for their oral health is treated prior to a person without such responsibility. A more moderate suggestion would be to introduce a responsibility-weighted waiting list where people with comparable needs, but who have exercised responsibility, are treated in order depending on their comparable exercises of responsibility. The weighted-system should be preferred because if you send persons who are responsible for their own oral health to the back of the queue, it could, in effect, come close to denying these people treatment. But weighting the waiting list seems to fit nicely with luck egalitarian ideals.

Where the above considered the allocation of scarce resources in health care, the following involves measures that affect how the burden of financing these resources is distributed across the population. One way of financing would be to introduce out-of-pocket payments for those who are responsible for their own bad oral health. Most luck egalitarians would be able to endorse such measures. Since luck egalitarians are not only interested in redistribution among people whose health reflects differential exercises of responsibility, it would also be a possibility to tax people who have good brute luck in other parts of life in order to finance those suffering from bad brute luck in oral health. Luck egalitarians persuaded by the idea of all luck egalitarianism would want to supplement this with specific taxes on some unhealthy products earmarked to dental care for those who have bad oral health. The purpose such an arrangement
would be to increase the extent to which all those who undertake quasi-gambles with their oral health contributes to financing the treatment of those, who fall ill as a consequence of such gambles.

VI. CONCLUSION
In many ways, luck egalitarianism can contribute to our evaluation of distributions in oral health. How people fare with respect to widespread and important causes of bad oral health, caries and periodontal disease, is contingent on individual behaviour as well as natural and social circumstances. People’s degree of responsibility can be accessed from a Roemerian approach modified to filter out the effects of natural and social circumstance. When considering luck egalitarian reasons for not holding people responsible for their oral health, only the all luck egalitarian conception of quasi-gambles had some merit. In deference to those findings, luck egalitarians seem well fit to recommend institutional arrangements of oral health care that raise revenue through co-payment, general taxation and, for all luck egalitarians, specific taxes on unhealthy activities. These scarce resources should be prioritized in a responsibility-weighted queuing system that serves to compensate persons for natural and social disadvantages, while holding them responsible for their risky choices and at least partly for the costs arising from such choices.

NOTES

1 The principles guide us in evaluating whether distributions are just, they do not tell us whether these distributions should be left untouched in deterrence to other values beside distributive justice (Cohen, 2004; Stemplowska, 2009). In the practical recommendations of this article it is the hope, that such other considerations are given sufficient attention.

2 Riding my bike to work could be considered a quasi gamble, since it evolves a risk, but the thrill of it turning out bad is not part of my reasons for engaging in the gamble.

3 Furthermore, oral health is of symbolic importance. Bad oral health (e.g. black or missing teeth) is considered shameful and thus contributes to stigmatizing those who experience it (Bedos, Levine, and Brodeur 2009; Treadwell and Northridge 2007; Vargas and Arevalo 2009, 400).

4 The literature gives many suggestions to how to draw such a distinction, the subtle differences between these views will not be treated in this article (Hart 1968; Knight 2011, 157; Roemer 1998, 17; Scanlon 1998; Stemplowska 2011). Nicole Vincent has recently emphasized the need for such a distinction in the discussion of health (Vincent 2009, 50).

5 See, for example, (Hurley 2005, chap. 6; Lippert-Rasmussen 1999, 478; Vallentyne 2002; 2003, 169).

6 One implication of this formulation is that equalities and not reflection choice may be unjust. Some resist this understanding of Luck Egalitarianism (Segall 2010; 2011), but others (including this author) believe that there are good reasons to affirm it (Albertsen and Midtgaard 2014).

7 See also suggestions by (Cappelen and Norheim, 2005; 2006; Le Grand 1991).

8 Some evidence still questions the causality (S. Fisher et al., 2008), and it must be admitted that whether the effects of smoking count against people having responsibility for their periodontal disease is contingent on considerations over the relationship between responsibility and smoking; a task that cannot be undertaken in this article.

9 In his recent treatment of the topic, Roemer talks of the mean instead of the median. The consequences
of this shift of emphasis is unimportant for this article (Roemer 2012). Note also that Roemer hesitates to apply his proposal to health.

10 Similar points can be found elsewhere (Dworkin, 1981; Stemplowska, 2008: 244; Veatch, 1980: 53).

11 This elaboration is not a direct application of Segall’s later statement of his concept of reasonable avoidability, but if different Segall’s view would allow for less redistribution that the elaborated view examined here. (Segall, 2012)

12 A position also criticized from inside the luck egalitarian (Hansen and Midtgaard, 2011; Knight, 2009: 52–54).

13 I am grateful to Morten Brænder for bringing the case of military personnel to my attention.

14 All Luck Egalitarianism is not a homogeneous strand of thought, a version of it also requiring redistribution towards those undertaking proper gambles have been proposed by Carl Knight (Knight, 2013)

ACKNOWLEDGMENTS

The article has benefitted hugely from comments and encouragements received on numerous occasions. It was presented at “The Rule of Distributive Justice Workshop” in Aarhus, July 2012.; at the “Vejle II – Political Philosophy Conference and PhD Course” in Vejle, August 2012; at the “9th International Congress on Dental Law and Ethics” in Leuven, August 2012. I am very grateful for the insightful comments and helpful remarks received from Martin Marchman Andersen, Paula Casal, Naima Chahboun, Axel Gossseries, Carl Knight, Annabelle Lever, Kasper Lippert-Rasmussen, Søren Midtgaard, Serena Olisaretti, David Ozar, Richard Penny, Søren Serritzlew, Zofia Stemplowska, Alex Voorhoeve, Martin Westergren and Andrew Williams.

REFERENCES


Article 10.
Who Should Get the Liver? Luck Egalitarianism and Transplant Decisions
Who should get the liver? Luck egalitarianism and transplant decisions
Andreas Albertsen

Abstract
The scarcity of livers available for transplant forces tough choices upon us. Lives for those who do not get a transplant are likely to be short. One large group of potential recipients needs a new liver as a consequence of a history of alcohol consumption, while others suffer for reasons unrelated to their own behaviour. Should the former group receive lower priority? This discussion connects with one of the most pertinent issues in contemporary political philosophy, the role of personal responsibility in distributive justice. One prominent theory of distributive justice, luck egalitarianism, assesses distributions as just if, and only if, people’s relative positions reflect their exercises of responsibility. There is a principled luck egalitarian case for giving lower priority to those who are responsible for their need. Compared to the existing literature favouring differentiation luck egalitarianism provides a clearer rationale of fairness, acknowledges the need for individual assessments of responsibility and requires initiatives both inside and outside of the allocation systems aimed at mitigating the influence from circumstances. Furthermore, the concrete policies luck egalitarians can recommend are neither too harsh on those who make imprudent choices nor excessively intrusive towards those whose exercises of responsibility are assessed.

Key Words: Distributive Justice; Luck Egalitarianism; Organ allocation; Personal Responsibility; transplantation.

Introduction
In political philosophy principles are often tested through the discussion of hypothetical cases. Thus, it is far from unusual to deliberate over whether to change the direction of a rampant trolley towards the few innocents to save the many or which among fellow sailors in the lifeboat should be sacrificed so that others may live.\(^2\) The real world rarely exposes us to actual dilemmas of such stark a nature, but

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\(^1\) This article has benefitted from helpful and encouraging comments received on several occasions. It was presented to the Political Philosophy Group at the University of Stirling, March 2013; at the PGR-seminar Department of Politics at University of Glasgow, May 2013; at the Association for Legal and Social Philosophy in Stirling, June 2013; at the Political Theory Section, Department of Political Science and Government of Aarhus University, September 2013. I am especially grateful for the comments provided by: David V. Axelsen; Andrea Baumeister, Rowan Cruft, Brian Ho, Kasper Lippert-Rasmussen, Lasse Nielsen, Tore Olesen; Ben Sachs, Ben Saunders, Asbjørn Aagaard Schmidt; Kate Spence, Jens Damgaard Thaysen, Ricardo Villanueva, Kristin Voigt and Anna Zielinska. Furthermore the comments provided by Carl Knight and Søren Flinch Mødtgaard have been essential in the writing of the paper. The paper was written during a research stay at University of Glasgow, I am grateful for the hospitality shown to me there and to my supervisor on that occasion, Carl Knight.

\(^2\) Philosophy is not for the faint-hearted. But the examples serves a purpose and, as Philippa Foot remarked in a discussion highlighting many now such classic examples: “The levity of the examples is not meant to offend” (Foot, 2002: 31)
sometimes however, it does. The allocation of livers between potential transplant-recipients suffering from End Stage Liver Disease (ESLD) continuously pose the question: who shall live, when not all can live? It does so because for many receiving a transplant is the only viable solution and livers are in short supply.\(^3\) In the US approximately 15,000 people wait to receive the 6,000 livers available annually for transplant (OPTN, 2012a).

It remains a source of controversy that people need a new liver for different reasons: the needs of a large group came about as a consequence of their own past behaviour in relation to alcohol consumption.\(^4\) Their illness is classified as Alcohol-Related End Stage Liver Disease (ARESLD) and contrasted with those who need a new liver for other reasons, such as congenital biliary atresia, congenital polycystic liver disease, and primary sclerosing cholangitis (non-ARESLD) (Glannon, 2009: 23). The main disagreement to be addressed pertains to whether relevant differences between those two groups could justify giving lower priority to people with ARESLD. Giving lower priority to all or some of those with ARESLD compared to those with non-ARESLD will henceforth be referred to as \textit{differentiation}. Whether such responsibility sensitive policies are implemented is important because of what is at stake for each individual, but also because it has potential to alter the chance of getting a new liver for a large number of people. Currently ARESLD accounts for a large proportion of performed transplants: 22.1\% in the United States, 16.6\% in Canada and 19.9\% in the United Kingdom (Stell et al., 2004).

This article offers a luck egalitarian argument for differentiation.\(^5\) Luck egalitarianism is a responsibility-sensitive theory of distributive justice, considering distributions as just if, and only if, people’s relative positions reflect their exercises of responsibility (as opposed to differences in their circumstances). It has been suggested in discussions over distributive justice that luck egalitarians would favour to give lower priority to people with ARESLD (Arneson, 2004: 20; Fleck, 2011; Knight, 2009: 159; MacDougall and Trotter, 2012; Segall, 2007: 177, 2010: 29; Shiffrin, 2000; Sobel, 1999; Vincent, 2009). Such arguments have not as of yet been elaborated in detail, but the present paper aims to do so. Two features make it interesting to discuss luck egalitarianism in this context. The first is the immense scarcity. We must make tough choices regarding who to benefit, and no other solution is at hand. The second important feature is that causality is relatively clear. We can know whether a transplant need is caused by alcohol consumption (Dietrich, 2002; The National Clinical Guideline Centre for Acute and Chronic Conditions, 2010: 99–117). Although the presence

\(^3\) The singular term “one liver” is slightly misleading. The emerging procedure of using living donors is opening up the possibility of two persons living with what originated as one liver (Muller et al., 2007). This, however, is not yet able to address the shortage, and the numbers presented here already take into account the existence of alternative sources in addition to the more traditional cadaveric livers.

\(^4\) Other sources of liver failure also relate to behaviour (i.e. Hepatitis C and intravenous drug use, or paracetamol overdose). Careful discussion of those instances will not be undertaken here.

\(^5\) This article relates to a recent literature on luck egalitarianism and health: (Le Grand, 2013; Segall, 2007, 2010, 2013; Voigt, 2013)
of causation does not mean that people are suitably responsible for their need at least a layer of complexity is removed, which characterises for example the debate over smoking and lung cancer given that people contract lung cancer without smoking.

After a brief introduction to the medical aspects, and the existing literature on differentiation the article turns its attention towards luck egalitarianism. A principled luck egalitarian case for differentiation is presented along with a discussion on how this view differs from prominent views in the luck egalitarian literature. After this a discussion over what it means to be responsible for ones need for a liver transplant is conducted. Then the article moves from a principled discussion to a discussion over concrete measures to make the current system more responsibility-sensitive, before addressing important criticisms. The first criticism argues that policies of differentiation would be inconsistent with well-founded practices other places in society. The second critique holds that luck egalitarian policies are too harsh towards those, who are worse off through their own choices and the third that luck egalitarianism requires shameful revelations from people in order to assess responsibility. While the critiques are not new, discussing them in concrete contexts throws new light on their strength. It is argued that the luck egalitarian arguments and policies in the context of allocating livers are able to resist such criticism.

The luck egalitarian approach presented here has several advantages over the existing literature favouring differentiation. As will be shown, luck egalitarianism has a clearer principled criterion for evaluating distributions. This provides a sound basis for evaluating when to introduce responsibility sensitive measures within the allocation system. In supplement to that the luck egalitarian approach allows for individual assessment. Furthermore the luck egalitarian approach can endorse broader policies aimed at mitigating the influence from luck and circumstance both outside the transplant system on people’s health and inside the allocation process.

**Differentiation: The current debate**
Recalling the Aristotelian idea of treating like cases alike and conversely, treating unlike cases unlike (Aristotele, 1997: 20), any plausible argument favouring differentiation must point towards some morally significant difference between the group of ARESLD and non-ARESLD. If we consider first the consequences of non-treatment, the literature does not suggest that the groups are different. One study reports that without transplantation the five-year survival rate in patients with ARESLD is 50%, (Trzepacz and DiMartini, 2011: 216) while another estimates it to be as low as 23% (Varma et al., 2010: 4377).

Consider instead the benefits of treatment. To suggest this as a reason for differentiation has historical roots. Until the 1980s evidence suggested lower post-transplantation survival rates among those with ARESLD (Caplan, 1994: 220;

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6 These critiques are often taken as good arguments luck egalitarianism in the context of healthcare: (Feiring, 2008; Hausman, 2013: 100–101; Mailly, 2005; Venkatapuram, 2011: 198)
Scharschmidt, 1984; Trzepacz and DiMartini, 2011: 222). For various reasons the scientific evidence today suggests that the survival rates between the groups are not significantly different (Anantharaju and Van Thiel, 2003; Batey, 1997; Caplan, 1994; Kumar et al., 1990; Mailly, 2005). Similarity is also found when considering broader measures of wellbeing (Burra and Lucey, 2005: 496). Thus, the groups seems not to be significantly different regarding how bad the situation is for those in the two groups compared or how much good a transplant is likely to do for them. While one way of engaging in the debate would be to doubt these empirical findings, this article set this question aside. Efficiency concerns will not be used to argue in favour of policies of differentiation, since the severity of the need and the utilization of the new liver seems not to differ between the groups. Many who are sceptical towards differentiation embraces this, and argue that on the absence of a relevant medical difference between the two groups we should reject differentiation (Anantharaju and Van Thiel, 2003; Batey, 1997; Caplan, 1994; Kumar et al., 1990; Mailly, 2005).

While current practices are aligned with such views, a group of philosophers have maintained that we should introduce policies of differentiation. Taking the acute scarcity of livers as their starting point, Moss and Siegler suggests that the group of ARESLD is treated after the needs of non-ARESLD have been meet (Moss and Siegler, 1991: 1296). The reason for this is that they are responsible for not seeking help for their alcoholism (Moss and Siegler, 1991: 1296). Glannon and Veatch suggest a milder consequence, that people with ARESLD should have a small deduction in their MELD-score, a measure used in the allocation process. Such a reduction reduces the chance of obtaining a liver (Glannon, 2009: 30; Veatch, 2000: 321). Glannon initially seems to favour a view that there is an inverse relationship between the degree of responsibility and the strength of one’s claim for assistance (Glannon, 1998: 35). He believes this view to be inspired by luck egalitarianism (Glannon, 1998: 35). But later he embraces the (quite different) idea that people have failed their duty towards others, when acting in ways bringing about a need for a very scarce resource (Glannon, 2009: 24). Veatch’ reasons for favouring lower priority are similarly linked to the thought that voluntary choice weakens one’s claim for a transplant (Veatch, 2000: 315, 2007). The above authors consider the question as one of distributive justice. Thus, philosophers such as Veatch, Glannon, Moss and Siegler argue that since there is a casual relationship between alcohol consumption and ARESLD, and since people in this group can be considered responsible for their behaviour, policies which differentiate between the group of ARESLD and the group of non-ARESLD should be

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7 Often ascribed to the introduction immunosuppressants such as cyclosporine and tacrolimus (Starzl, 2011: 9)
8 (Brudney, 2007: 44; Moss and Siegler, 1991: 1297; Veatch, 2000: 314–315) Smart agrees that it is not about punishment but rather restitution (Smart, 1994: 28) He is however, compared to the other cited authors, more focused on the moral fault of the persons involved and to some extent the moral value of their pursued activities.
9 Brudney is not included here, since he is not convinced that people are in a sufficient way responsible for their behaviour (Brudney, 2007: 46).
introduced. They maintain that from a fairness perspective, we should differentiate in a way where all with ARESLD are given lower priority than those in the group of non-ARESLD. This article argues that approaching the question from a luck egalitarian offers important insights beyond this existing literature.

The luck egalitarian case for differentiation
A classic luck egalitarian, Cohen, asserted that we should evaluate distributions in accordance to whether they reflect choice or luck, justice disapproving of distributions reflecting the latter but not the former. In the following luck egalitarianism will be taken as asserting that distributions are just if, and only if, people’s relative position reflects their exercises of responsibility.11

How can this way of evaluating distributions be related to the context of allocating livers? Consider the following example to that effect: Jack and James are both well educated, have similar middleclass incomes, sufficient knowledge regarding the possible adverse consequences of alcohol consumption and no family history of or genetic disposals towards consumption of alcohol. Jack drinks to excess, while James does not. Some 20 years down the road they both contract ESLD, Jack suffers from ARESLD, while James’ need for a new liver is unrelated to alcohol. For Luck egalitarianism the fact that Jack’s predicament can be ascribed to his past voluntary conduct (whereas James’ cannot) is one important factor in deciding to whom a benefit should go. All else being equal, it is more important to help James. This does not mean that Jack has no claim to be helped, but rather that his claim is weakened by his own past choices. This means that if and when a liver becomes available for transplant, luck egalitarianism would consider it just to give priority to James. This principled claim means that, all else being equal, we would have luck egalitarian reasons to favour differentiation. When tasked with distributing the scarce resources of the world, it matters morally if some brought the need upon themselves. On the luck egalitarian account we would maintain that this results in a weakened claim to such resources, giving priority instead to those who have not in such a way contributed to their own need, whose needs reflect their bad luck.

However, this does not exhaust the luck egalitarian contribution. The luck egalitarian commitment to let distributions reflect people’s exercises of responsibility also includes, conversely, that distributions should not reflect differential luck. The commitment that people should not fare worse as a consequence of bad luck is part and parcel of the luck egalitarian view. The focus on people’s choices and personal responsibility presented above is thus complemented by a strong resistance towards distributions of transplant needs heavily influences by people’s circumstances.

But this principled views says little about how, and if, we should go about

10 See (Cohen, 1989). For other early statements of luck egalitarianism: (Arneson, 1989; Rakowski, 1993; Roemer, 1993).
introducing policies with the purpose of making the present distribution more responsibility sensitive. When consider whether to introduce responsibility sensitive policies, Cohen wrote that ‘It can be bad policy to seek to promote justice, whether because that would in fact not promote justice or because seeking to promote it would prejudice other values’ (Cohen 2008, 381). The quote nicely sums up the two different obstacles relevant here. The first covers instances where introducing choice sensitive policies ends up disadvantaging people who are in fact not sufficiently responsible for their need, the second where other values or concerns makes it so that we should, all things considered, introduce luck egalitarian policies. Here Cohen’s distinction between distributive justice and rules of regulation is important (Cohen, 2008: 3). The former describes which distributions we assess as just, while the latter describes steps it would be permissible and/or prudent to take in pursuit of such ends while showing due concern to values other than distributive justice and the facts of the world around us. Most luck egalitarians are pluralists believing we should cater for other concerns along with distributive justice (Arneson, 1989: 81; Cohen, 1989: 906; Knight, 2009: 232; Rakowski, 1993: 74; Tan, 2012: 22, 31; Temkin, 2003: 769). Thus we should not abandon concerns for efficiency, beneficence and urgency, but consider them alongside the luck egalitarian vision of distributive justice. While acknowledging that there is a principled luck egalitarian case for differentiation, it could be the case that we have reasons apart from those of distributive justice, to resist implementing responsibility sensitive policies.

After those general comments about the pluralist nature of many contemporary luck egalitarians it is important to note, that such concerns have played an important role for those who have thought to apply luck egalitarianism in the context of health and health care. They do by pointing towards specific institutional arrangements less vulnerable to the concerns at hand, and by in the pluralistic fashion just mentioned, highlighting concerns to cater for alongside that of distributive justice. An often suggested policy which is seemingly responsibility sensitive, introduces a tax on unhealthy behaviour (Cappelen and Norheim, 2005, 2006; Le Grand, 2013; Segall, 2010). The general thought is, that such a tax could be used to fund the expenses created when those behaviours turn into a medical need. Such proposals for institutional reactions to people’s responsibility for their own health are often suggested because they seem more attractive than denying treatment. Norheim and Cappelen suggest it as the solution when risky behaviour leads to diseases which are costly compared to their income and/or life threatening (Cappelen and Norheim, 2005, 2006). While much could be said for such policies in other contexts, they seem of little use in the current context. Here the shortage here is not (only of) monetary nature, the scarcity is of organs as such.

In his seminal work on distributive justice and health, Segall argues that apart from our luck egalitarian concerns regarding distributive justice, we should also have other concerns, such as those of fulfilling people’s basic needs (Segall, 2010: 69). In
cases of choosing between people whose basic needs are unfulfilled, Segall proposes a weighted lottery in favour of the person not responsible for the need.\textsuperscript{12} Even if Segall does not specify what he means by basic needs going unfulfilled people needing a new liver most clearly be cases where this is so. Implementing such a system here would effectively mean that sometimes those who are responsible for their behaviour will be treated on equal terms with some who are not. It seems unfair to do so and hardly in accordance with the luck egalitarian position presented above.

This section has argued that there is a principled luck egalitarian case for differentiation and pointed out that luck egalitarianism can incorporate a plural concern for other measures in deliberating over whether to introduce responsibility sensitive policies. When examining the concrete measures endorsed by present applications of luck egalitarians to health, such as a weighted lottery or taxes on unhealthy behaviour, they seem not quite to express our luck egalitarian concerns. Luck egalitarianism is compatible with many views on what it means to be responsible,\textsuperscript{13} and with different institutional responses to the presence of responsibility. On the latter discussion, it seems that in a context of acute scarcity, the discussion must address reducing access to treatment for those who are responsible. It is to the question of what it means to be responsible for one's own need for a transplant that we now turn.

\textbf{Assessing responsibility}

The principled argument presented above claimed that if people are responsible, we have luck egalitarian reasons of distributive justice to give them lower priority. This claim is importantly different from describing what it means to be responsible for acquiring ARESLD and from the empirical assessment of how many people are actually so.\textsuperscript{14} While the latter is a complicated empirical question, something must be said about how we could plausible understand the idea of being responsible for one's own need for a liver transplant. The simplest suggestion that it is both a necessary and a sufficient condition that a person's past choice(s) brought the need for a liver about. Following Hart we could also call this causal responsibility (Hart, 1968: 214–215). A number of authors have suggested that for a person to be causal responsible for a given state of affairs a number of further conditions must be fulfilled (Dworkin, 1981: 27; Glannon, 1998: 33), but here it is not necessary to take a stand on the correct interpretation of causal responsibility. Rather it is enough to note, how and why bringing something about isn't sufficient for society to let it affect one's claim for health care resources. As a clear illustration of why this is the case, consider a mentally handicapped person, who is residing in an asylum where he will only get food if he drinks large amounts of alcohol every day. Clearly any transplant need

\textsuperscript{12} For an interesting critique of this solution, see (Nielsen and Axelsen, 2012: 312) In his reply to Nielsen and Axelsen, Segall expresses doubts regarding the weighted lottery (Segall, 2012: 327)

\textsuperscript{13} Removed to make review anonymous

\textsuperscript{14} It is sometimes argued that luck egalitarianism provides sound conclusions, even if we are never responsible for our relative positions (Knight, 2006)
arising from his choices in this bizarre arrangement would not qualify as something for which the person is suitably responsible for, even though ordinary language permits us to say that he chose to drink the wine. The example purposely points towards a number of important considerations regarding potential factors mitigating responsibility.

When causal responsibility is necessary it is not sufficient for the luck egalitarian, we should consider what else to take into considerations. Briefly we could say, that for anyway a person could cause his or her own transplant need\(^{15}\) a number of other factors must also be taken into account, before we could reasonably say that the person is sufficiently responsible for his or he own transplant need. Consider firstly external factors such as direct treats or social circumstances, which influences people’s behaviour in relation to alcohol consumption (Glannon, 1998; Walker, 2010). We have quite a lot of evidence that social factors, such as alcohol abuse in the family counts as risk factors towards alcohol abuse (Ellis et al., 1997; Rhee et al., 2003). But also internal factors can matter (Glannon, 1998; Walker, 2010). Genetic factors are suggested as affecting vulnerability to alcohol and propensity for becoming addicted (Buscemi and Turchi, 2011; Ducci and Goldman, 2008). Would a person, whose alcohol consumption are not too heavily influenced by internal or external factors, would we then say he is suitably responsibility? An epistemic factor should seemingly be taken into account: is the knowledge regarding the adverse effects of alcohol attainable or comprehensible to the person in question. This seems especially interesting since knowledge/competence mediates or softens the effect of other known risk factors for alcohol consumption (Stenbacka and Leifman, 2001). Whether people are aware of the dangers involved in alcohol consumption (or had sufficient opportunity to become aware) influences the degree to which they can be said to be responsible for the relevant choice. In such thoughts, as Goodin’s discussion over smoking reminds us, should also be included thoughts about whether cognitive errors makes us vulnerable to committing mistakes we are in general prone to making when evaluating risks (Goodin, 1989: 21–22). Interestingly, studies show that those consuming alcohol are very much aware of its link with liver disease, in fact even more so, than those without the behaviour.\(^{16}\)

An interesting further aspect of this discussion is what it is that people need to have knowledge about. While the risk of creating a need has already been discussed, it is interesting to consider whether people also need to know about the scarcity of livers and furthermore whether they need to know that they will be given lesser priority should the need arise. Glannon suggests something like this, but luck egalitarians would probably maintain that while fair warnings about the possibility of getting lower priority can be a good policy for incentive reasons, it should not be

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\(^{15}\) Consider: the consumption of alcohol; initiating alcohol consumption that turned into an addiction; not seeking help when addicted; not following advice given; not administering the necessary immunosuppressant drugs after receiving an initial transplant (creating a new need for a transplant).

\(^{16}\) (Blaxter, 1990: 157) Note though, that people have a tendency when they or their loved ones become sick to use a more complex causal explanations (Bailey et al., 2009; Blaxter, 1990: 157)
required in order to assess responsibility (Glannon, 1998: 34). People could still be responsible for creating their own need and fairly disadvantaged as a consequence of that, even when they did not know (and had not been told) that they would be given lower priority.

A final remark regarding addiction. It is sometimes presented as if alcoholism as a disease where people are addicted\textsuperscript{17} to substance abuse rules out the possibility of personal responsibility. Whether people are addicted requires some theory of addiction. A theory of addiction will not be presented here. But it might be sensible to state at least, that such a theory needs not to require that people are completely unable to alter their ways, but rather that it would be unbearable hard for them to do so (Goodin, 1989: 25). Addiction does not rule out that one could be considered responsible for initiating the abuse leading to said addiction or responsible for whether or not one seeks counselling.\textsuperscript{18} The above remarks do not, and need not be, a full fledged theory of what it means to be responsible for a transplant need. It does however present a number of relevant factors which should clearly be taken into account, if and when one tries to figure out the extent to which a person or a group of patients is responsible for such needs. The next section of this article discusses the implementation of luck egalitarian (or responsibility sensitive) policies.

**Luck egalitarianism, distributions of livers and the real world**

So far a principled argument for giving priority to a person who has not brought about his need for a new liver has been presented. It was argued that as a matter of distributive justice we have reasons of fairness to favour such policies differentiation. The preceding section considered how we could understand being responsible in this context. While that section cannot and need not be the last thing says about this difficult subject, it is the thought that it suffices to highlight both concerns and factors which luck egalitarians would need to filter in when assigning responsibility and when introducing responsibility sensitive measures. Even those convinced by the principled argument could submit that the real world is never like the stylised example of Jack and James, and for that reason we would be ill served if we took our principled convictions to the transplant clinics.

The first thing to note however is that the allocation decisions aren’t the only matter luck egalitarian principles can address. A commitment to luck egalitarianism in health would also include views on a wider area of policies with relation to health. Taking as a starting point the luck egalitarian resistance towards unchosen factors affecting people’s relative position, we could recommend a number of policies designed to mitigate or eliminate the social determinants of health. Including, but not limited to, policies of wealth redistribution, policies affecting the availability of alternatives to alcohol, or policies affecting the availability of alcohol for example young people. Depending on the concrete context, a wide variety of such policies could

\textsuperscript{17} For an interesting piece on addiction, see: (Stell, 2002).

\textsuperscript{18} In that regarding it should be noted that some suggest that different factors matter regarding initiation and becoming addicted (Kalaydjian et al., 2009).
be employed, to reduce directly or indirectly the influence from social circumstances on the distribution of transplant needs.

But surely luck egalitarianism can also contribute within the transplant system. Three factors are very important in the US system allocating livers. The first is whether a person is classified as a Status 1 patient, which includes 1A candidates (life expectancy of hours to a few days) and 1B (patients under 18). The second factor is geography: here the main distinction is between the local level, referring to areas designated to local Organ Procurement Organizations (OPO), and the regional level, referring to the 11 geographical transplant regions, each covering several OPO’s. The third factor is the objective, numerical MELD score. It assigns transplant candidates ages 12 and older a score, which can be used to predict the likelihood that they will survive the next three months (Burra and Lucey, 2005: 493; Kamath and Kim, 2007; Kamath, 2001; Kim and Lee, 2013). MELD ranges from 6 (less ill) to 40 (gravely ill), and is calculated using routine lab test results (United Network for Organ Sharing (UNOS), 2011) These include Bilirubin, measuring how effectively the liver excretes bile; INR (prothrombin time) measuring the liver’s ability to make blood clotting factors, and Creatinine measuring kidney function.

Consider a population admitted to the waiting list, all being similar in relevant aspects, such as blood type. Among these, donated livers are allocated first to the persons in the highest category. The distribution continues downwards until either no more patients remain on the list, or, as is usually the case, no more livers are available for distribution.

1: Regional level:
2: Local and regional Candidates with MELD Scores >=35 in descending order of mortality, with local candidates prioritized over regional candidates at each level of MELD score
3. Local Candidates with MELD Scores >=29-34 in descending order of mortality
4. Nationwide: Candidates with Liver-Intestine in descending order of status and mortality risk scores

19 Interestingly, this priority given to young people can also be interpreted as adhering to luck egalitarian values, since it would seem that young people are never responsible for their liver failure.
20 When dealing with children under the age of 12 a different measure referred to as the PELD-score is used.
21 The actual calculation is done using this formula: MELD Score = (0.957 * ln(Serum Cr) + 0.378 * ln(Serum Bilirubin) + 1.120 * ln(INR) + 0.643 ) * 10
22 Often associated with severe liver disease
23 Based on the newly approved (though not yet implemented) adult donor liver allocation algorithm (OPTN, 2012b).
24 The terms ‘local’ and ‘regional’ refer to the geographic location of the organ donor.
25 The term ‘points’ here does not refer to MELD, but a distinct scheme awarding different points depending on the nature of the condition.
26 This new addition covers people with short bowel syndrome developing ESLD.
5. Local candidates with MELD Scores >=15-28 in descending order of mortality risk scores
6. Regional candidates with MELD Scores >=15-34 in descending order of mortality risk scores
7. Nationwide Status 1A candidates in descending point order
8. Nationwide Status 1B candidates in descending point order
9. Nationwide Candidates with MELD Scores >=15 in descending order of mortality risk scores
10. Local Candidates with MELD Scores < 15 in descending order of mortality risk scores
11. Regional Candidates with MELD Scores < 15 in descending order of mortality risk scores
12. All other Candidates with MELD Scores < 15 in descending order of mortality risk scores

Which responsibility sensitive measures could be introduced in such a context? The first proposal (also proposed by Veatch and Glannon) amounts to deducting one or two points from the MELD score for patients with ARESLD (Glannon, 1998; Veatch, 2007). Though its proponents articulate it as giving a lower MELD score, it is perhaps best understood as introducing a responsibility-adjusted MELD score. This could quite easily be implemented in the system presented above and amounts to a deduction in an influential parameter.

Another suggestion would be to let responsibility play a part not as an adjustment to the MELD score, but as an independent factor along with geography, age and MELD. Consider how geography as an independent factor gives higher priority to those in the proximity of the available liver. In a similarly a fashion a responsibility factor could be introduced, lowering those responsible for their ARESLD to a subsequent point on the list. In principle this differs from the solution just suggested, since it would mean that responsibility is not limited to influencing the allocation of livers only when MELD is taken into consideration. To illustrate: the responsibility-adjusted MELD score is capable of rearranging people within each category, and depending on the deducted amount, in some cases move a patient down to a lower category.27 The second solution, taking responsibility into account as a separate factor, allows for more of such movement. For example, on level two in the ranking above (currently relating to geography) could be changed, so that it gave priority to responsibility instead of giving preference to local over regional patients in the filtering of possible transplant recipients. Similar adjustments could be made in subsequent steps on the list.

For both the above suggestion an interesting specification remains. That is whether they should be implemented for all or only some with ARESLD. Proponents of

27 Depending on the precise amount deducted from the MELD score, it would be possible to move local candidates from position 2 to 3; 3 to 5; 5 to 9; and 9 to 10. For regional candidates the possible movements would be from 2 to 6 and from 6 to 10.
differentiation such as Veatch, Glannon, Moss and Siegler, seems to suggest that differentiation for all with ARESLD is the correct policy. But this gives rise to the concern that if not all in that group is sufficiently responsible for their condition, they will be unfairly disadvantaged. A concern often raised by those critical of differentiation (Balint, 2007; Beresford, 2001: 177; Cohen and Benjamin, 1991: 1300; Ho, 2008: 81; Shelton and Balint, 1997: 98). This critique implies that differentiating between the groups risks holding some responsible for a condition that reflects their social circumstances and/or genetic dispositions (Mailly, 2005; Shelton and Balint, 1997: 95). Luck egalitarians can favour general differentiation based on the idea of probability. When considering the two groups, all those with non-ARELD are not responsible for their disease, whereas, among those with ARESLD, some are responsible for it and some are not (due to genetic predisposition to alcoholism, social circumstances in childhood or adult life, etc.). If a patient is chosen at random from the first group, they are definitely non-responsible, whereas someone from the second group may or may not be responsible. This difference in probabilities may be sufficient to justify differential treatment. This is the case because everyone with non-ARESLD is worse off through no fault or choice of their own, whereas someone with ARESLD may or may not be.¹

The above holds under the assumption that some, but not all in the ARESLD are responsible for their plight.² But as luck egalitarianism would prefer to minimize the number of instances where someone with ARESLD, who is not responsible for this condition, are disadvantaged compared to the non-ARESLD group, it seems most plausible to introduce measures to assess responsibility. The problems this brings will be addressed in the next section, where three criticisms are addressed.

A third luck egalitarian contribution is possible. It could also be the case that a commitment to luck egalitarianism leads us to reconsider the weight given to other factors in the allocation process. The reason for doing so is not a rejection of pluralism, but expresses rather that luck egalitarianism might provide reasons to consider a factor to be unjustly influencing the distribution of livers in a way not sufficiently grounded in values such as efficiency and urgency. Thus, those of luck egalitarian persuasion would also want to reconsideration of the role of geography in the US system for distributing donated livers. Since place of residence is arguably arbitrary, luck egalitarians could be critical of the huge importance given to geographical proximity. This is at least the case if this consideration cannot be justified by efficiency reasons. Thus luck egalitarian policies regarding the distributions of livers reflect the basic intuitions of the theory, alongside with other concerns. We turn now to different possible critiques of the luck egalitarian position.

After having considers these suggestions, it might be interesting to consider if and how they differ from the existing philosophical contributions favouring differentiation. The luck egalitarian commitment to mitigate the influence of circumstance is pursued both inside and outside the allocation system. Outside this

¹ Under the assumption that no one is responsible for their transplant need, luck egalitarians would not favour differentiation.
allocation process it can endorse policies measures to mitigate the extent to which people's need for a transplant is contingent on their social circumstances. Within the allocation process it sets itself against the arbitrary influence from geography in allocation decisions. Furthermore it allows for responsibility sensitive policies, but offers those who are not responsible for their alcohol consumption the opportunity to be treated on equal terms than others based on an individual assessment. All three elements are interesting improvements compared to the existing literature favouring differentiation.

Three critiques
In this final section a number of relevant critiques will be considered. While the evaluate topics are also discussed elsewhere in the literature, discussing them in this context is quite interesting because of the acute shortage and the dire consequences for those untreated.

The first critique claims that policies of differentiation would be inconsistent because society does not in general give lower priority to health needs arising from risky behaviour (Balint, 2007: 5; Beresford, 2001: 178; Caplan, 1994: 220; Cohen and Benjamin, 1991; Ho, 2008: 81; Shelton and Balint, 1997: 98). This criticism will be referred to as the inconsistency critique. In effect the inconsistency critique draws on current practices in other spheres of society, inferring that they provide us with good reasons for rejecting arguments for differentiating (luck egalitarian or otherwise). As an illustration of such reasoning consider Caplan, who writes that if we favour lower priority to those with ARESLD:

‘equity would require exclusionary policies for individuals who require medical care as a result of conduct as diverse as participation in athletics, horseback riding, failure to wear a seatbelt or helmet while operating a motor vehicle, failure to obey speed limits, failure to stop smoking, the ownership and use of a firearm, morbid obesity, employment in environments that are dangerous or stressful or, owning a large dog, a chain saw, or a swimming pool.’ (Caplan, 1994: 220)

To what extent does such a claim defeat the luck egalitarian case for differentiation? The in consistency critique is a mix of different reasons and arguments. When made explicit it is unconvincing. It takes exclusionary policies as its starting point. This is not the only possible luck egalitarian consequence. Further problems remain with the argument. Firstly it presupposes that our current practices are correct and thus a sound basis for evaluating differentiation. Secondly it presupposes that the mentioned things are relevantly similar to organ allocation and that we have some theoretical understanding of what constitutes relevantly similar in this context. Luck egalitarianism provides us with a basis for comparing different spheres and for assessing whether responsibility sensitive policies should be implemented: the presence or absence of responsibility (however construed) on the part of the disadvantaged agents. As a responsibility-sensitive theory, luck egalitarianism would not arbitrarily limit its applications to the distribution of livers only (or indeed, to
29 This seems to be an advantage compared to theories more narrowly focussed on the distributions of livers, which might be more open to such a critique or less able to provide answers regarding where and to what extent we are allowed to introduce measures aimed at differentiating.

Two further critiques will be addressed. The first holds that luck egalitarianism are too harsh on those whose disadvantage reflect their own choices, while the next argues that luck egalitarianism requires shameful revelations from people in order to assess responsibility. Both are often considered as good reasons not to introduce luck egalitarian measures in the context of health. The first criticism is sometimes referred to as the harshness objection. It holds that luck egalitarianism is too harsh a theory of distributive justice. This is considered an important critique, also among those sympathetic to luck egalitarianism. The example often deployed in the literature is that of the uninsured motorcyclist who crashes without a helmet and thus should be left untreated at the roadside. One immediate reaction from luck egalitarians would be to point out that being left to die is but one of several possible consequences. Another possible consequence would be to let those who brought their medical need upon themselves pay for treatment. Whatever the viability of such a strategy in other context, it remains futile in the liver allocation case.

Given the scarcity of organs we cannot treat everyone and charge those who are responsible for their condition. Since the stakes are so high that some will be denied the only viable treatment, perhaps the allocation of livers is especially suited for discussing Anderson’s critique. Here there is no room for middle ground solutions such as user payments or ex-ante taxation. In the end someone is not receiving a liver and the luck egalitarian policies makes it more likely that this will happen for those, who brought it upon themselves. Interestingly, however, I will argue that the exact same serious consequences, which makes it so apt to raise Anderson’s critique in the context of liver allocation, at the same time reduces its strength considerably. The pull and persuasiveness in the roadside case is that society could easily and perhaps without great cost help this person. The cost of saving him is diffuse while the consequences of doing nothing are both concentrated and vivid. Luck egalitarians refusing help can come across as heartless and perhaps even as penny pinching if and when the reason is that the costs should not be passed on to others. In the case of allocating livers consequences are tough and as long as shortage is among us, allocating a liver to one person is likely to mean very tough consequences for another. But the harshness here stems from the shortage, rather than luck egalitarian policies.

29 (Omitted)
30 Some favouring differentiation argues for such a difference. Moss and Siegler highlights the acute scarcity and (what they consider to be) the straightforward causality (Moss and Siegler, 1991: 195). While Smart stresses that the activity of drinking alcohol has little value to society (Smart, 1994).
31 (Anderson, 1999; Fleurbaey, 1995) (Voigt, 2007)
32 (Arneson, 2000; Segall, 2007) Not all luck egalitarians consider the consequences obviously unfair (Stemplowska, 2009: 252).
33 See, (Knight, 2009: 141) See also Olsaretti’s idea of stakes (Olsaretti, 2009)
When we cannot avoid denying treatment to some, is it really that implausible to tilt the scales in favour of those who did not bring their need upon themselves? When the luck egalitarian claim is that responsibility should be considered alongside other factors and when scarcity forces tough choices upon us, the policies luck egalitarians can recommend seems not overly harsh and not anywhere near as implausible as Anderson depicts them.

The second critique to be considered is related to the process of assessing responsibility rather than the consequences which follow. It was argued earlier that when not all in the ARESLD group are responsible for their condition, luck egalitarians should prefer a system which makes individual assessments of responsibility. The advantage of such an individual assessment is that it would allow someone in the ARESLD group to count as not responsible for his own condition. This caters for the concern examined earlier that some patients with ARESLD are for some reason beyond any doubt not responsible for their consumption of alcohol. The individual assessment as such reflects the genuine luck egalitarian concern over influence from circumstances. However, this modification might turn out to be a catch-22, since people who 'prove' that they are without responsibility for their past consumption of alcohol are not very likely to be fit recipients of donated livers, at least not if this also suggest that they will continue drinking after receiving the transplant. Denying liver transplant on such grounds would be a regrettable and unjust state of affairs, but nevertheless one which also luck egalitarians, all things considered, can recommend due to considerations of efficiency.

Such possibilities are not the only concern with the individual assessment. Another possible critique points out that such an assessment process is wrong because it requires people to reveal shameful and personal information regarding their past, upbringing and lifestyle. Should such concerns make us reject responsibility sensitive measures? Jonathan Wolff has forcefully argued that it should (Wolff, 1998, 2010). This critique is sometimes labelled the intrusiveness objection. How demeaning and wrong would it be to introduce such assessment in the context of allocating livers? As a counter-argument against the view that it is demeaning, it might be worth noting a specific feature of the current allocation process. We know that for reasons of efficiency, we have good reasons to assess (and include in our allocation decisions) many things which could also be considered of a personal character. As it is today psychosocial screening is common at most transplant centres in the US: The purpose of those is to give a clear picture of the potential transplant recipient. The assessment plays a part in whether a person can be admitted to a waiting list. This includes elements such as likelihood of compliance with instructions, the presence of psychopathological issues and whether friends and family are likely to provide a supporting environment after the transplant. Such questions are personal, but they are none the less part of the system for efficiency reasons. If we are, for efficiency reasons, allowed to investigate all such factors. Why should we not, for reasons of fairness, be allowed to inquire into people's past actions and circumstances? In light of those concerns, it does not seem too intrusive and furthermore as something which
could be incorporated into existing practices. With those considerations, I think it can be concluded that the weight of the critiques regarding harshness and intrusiveness should not lead us to abandon responsibility sensitive policies, under the assumption that some are in fact responsible for their condition.

Conclusion
The above applied the distributive theory of luck egalitarianism to the allocation of livers for transplant. It thus continues recent attempts to apply luck egalitarianism to real world distributive decisions related to health and health care. Two distinct kinds of contributions arise from the above. One about luck egalitarianism in health, the other acquires to the existing debate over differentiation. Considering the latter kind. While many of the existing contributions talk of fairness, luck egalitarianism provides a clearer conception of what fairness means. This provides a more solid ground for putting forward the idea of differentiation. The second contribution is that the luck egalitarian approach allows for individual assessment. The third is that the luck egalitarian principles provide us with reasons to mitigate the influences from circumstances inside and outside of the allocation process. The same principle of fairness which can endorse giving lower priority to those who are responsible for their ARESLD can endorse measures to mitigate the extent to which unchosen circumstances (such as much poverty) affect the distribution of transplant needs outside the transplant systems and the arbitrary factors (such as geography) inside it.

The above also contributes to the effort of applying luck egalitarianism in the context of health and healthcare. The topic is one with extreme scarcity and very severe consequences for those who are not benefitted. Discussing luck egalitarianism in this context shows at least three important things. The first is that while luck egalitarianism might be compatible with a wide range of institutional responses to the presence of responsibility, it would seem unlikely that the same institutional response is the correct in each context. As illustrated by the approaches implementing luck egalitarianism through levying taxes on unhealthy behaviour, this is seemingly not a plausible approach in the context where the scarcity of organs cannot straightforwardly be offset through such measures. The second is that scarcity seemingly does not suspend our luck egalitarian principles. They seem applicable also in this situation of scarcity. The third contribution to the luck egalitarian literature is that it was showed that prevalent criticism of luck egalitarianism in health seemed not to be that worrying when discussed in this context.

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OPTN (2012a) OPTN Data.


Article 11.
Luck Egalitarianism, Social Determinants and Public Health Initiatives
Luck Egalitarianism, Social Determinants and Public Health Initiatives

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People’s health is hugely affected by where they live, their occupational status and their socio-economic position. It has been widely argued that the presence of such social determinants in health provides good reasons to reject luck egalitarianism as a theory of distributive justice in health. The literature provides different reasons why this responsibility-sensitive theory of distributive justice should not be applied to health. The critiques submit that (i) the social circumstances undermine or remove people’s responsibility for their health; (ii) responsibility sensitive health policies would adversely affect those who are worst off and; (iii) the luck egalitarian approach to health distracts from the important task of rectifying socio-economic influences on people’s health and provides individualistic solutions to collective problems. But for each of these variants of the critique luck egalitarianism provides suitable answers. The literature on social determinants is no detriment to the project of applying luck egalitarianism to health.

Social Determinants and Health

According to epidemiological research, social determinants explain many of the existing health inequalities (Townsend et al., 1988; Marmot and Wilkinson, 2006).1 People’s health is highly influenced by their employment status, living conditions and income. The idea of social determinants influences contemporary thinking on how to understand and evaluate health inequalities. The social determinants in health suggest that health inequalities cannot properly be understood or eliminated through a narrow focus on access to healthcare. They suggest a need for broader public health initiatives understood as collective interventions aimed at promoting and protecting the health of the public (Dawson, 2011: 3). Social determinants also matter when evaluating health inequalities (Sreenivasan, 2009; Wilson, 2009; Wolff, 2009). It is commonly thought that our normative evaluation of a health distribution depends on how it came about (Hausman, 2007; 2013; Daniels, 2008; Segall, 2010). Therefore an important task is to incorporate the literature on social determinants into discussions of distributive justice in health.

A number of scholars have recently argued that the social determinants literature is problematic for attempts to apply luck egalitarianism, an influential view on distributive justice, to the sphere of health and healthcare (Wikler, 2004; Daniels, 2008; 2011; Feiring, 2008; Cavallero, 2011; Brown, 2013). Luck egalitarianism is sometimes referred to as a responsibility-sensitive egalitarianism since it asserts that distributions are just, if, and only if, they reflect nothing but people’s exercise of responsibility (Lippert-Rasmussen, 1999; Knight, 2009: 230). The critiques provide various reasons why such an application would be misguided. Some stress how social determinants undermine responsibility, others that luck egalitarian policies would adversely affect the worse off, and others still focus on the discursive effects of an approach emphasizing personal responsibility. These critiques are the topic of this article.2 In doing so, the article takes up a critique which is both recurrent and so far unaddressed by those sympathetic towards luck egalitarianism.

Before doing so, it should be acknowledged that this critique may seem puzzling to some. One reason could be that the influence from social determinants may be interpreted as the kind of circumstances that people are not responsible for, thus something for which luck egalitarianism requires compensation. But given that the critique has been raised both often, recently, and by important scholars in the field, it should not be taken lightly. Instead it should be analysed and evaluated with
the purpose of evaluating what this critique brings to the discussion. This article acknowledges the positive insights from the literature on social determinants, but rejects that they provide reasons to reject luck egalitarian approaches to health. The criticism, though common, cannot uphold such a conclusion.

The Social Determinants Critique of Luck Egalitarianism

This section reviews the recent attempts to use the literature on social determinants to criticize luck egalitarianism in health. The aim is to obtain a clearer understanding of the content and strength of such a critique. The critiques fall into three categories which are labelled: Undermining responsibility, adverse effects on the worse off and discursive consequences.

Undermining Responsibility

One way of criticizing luck egalitarianism is to cast doubt over the extent to which people are responsible for their own health. In relation to social determinants such doubt comes in two versions. Some authors express the view that social determinants makes futile the claims that people are responsible for their bad health. The second version holds that even though we can talk of people being responsible, their choices are very much influenced by social factors. While these ideas are distinct, it may not always be easy to identify which of the two versions an author is arguing for. For the sake of completeness both versions are included. Included in this section are a number of authors who raise such issues and who consider it a strong reason to reject luck egalitarianism in health. After describing the content of the critique, it is argued that the latter claim is unconvincing.

Eliminating responsibility

First, critiques pointing to how social circumstances mitigate against people’s responsibility will be examined. Brown argues that ‘those who are subject to more social deprivation are more likely to have their freedom limited’ (Brown, 2013: 3–4). According to Brown, people’s social circumstances mitigate their ‘fitness to be held responsible’ (Brown, 2013: 3–4). When people in deprived circumstances are not fit to be held responsible, we cannot substantiate the claim that they are responsible for their own bad health. The reasoning is that we cannot, in a meaningful way, attribute them responsibility for their own bad health. In his treatment of the subject Fleck reaches a similar conclusion:

‘If we are reflective about the personal, political, economic, and social circumstances of these individuals, we will realize that making judgments about personal responsibility for bad health outcomes is extraordinarily complex and opaque to outside judgment’ (Fleck, 2011: 7).

According to Fleck, the social determinants imply that to rely ‘on judgments of personal responsibility for health to control costs by denying “less responsible”’ individuals needed healthcare or erecting financial barriers to needed care would be neither just nor compassionate’ (Fleck, 2011: 8). Fleck’s use of quotation marks around responsibility underscores that it is responsibility that is not sufficiently present (if at all). In her discussion of luck egalitarianism, Feiring argues in a similar vein that in the light of social circumstances, ‘It may not, then, be reasonable to hold that lifestyle choices are informed and deliberate in the way that ought to be conditions for personal responsibility’.

All authors raise these issues in articles critical towards luck egalitarianism in health (Feiring, 2008; Fleck, 2011: 4; Brown, 2013: 2). The authors are sceptical towards luck egalitarianism because they hold social circumstances to militate against the idea that people are responsible for their health disadvantages. The authors clearly think both that social determinants undermine people’s responsibility and that this is suitable as a critique of luck egalitarianism in health. But upon consideration, this is not at all straightforward. To illustrate, consider the description of luck egalitarianism given by the critics themselves. Feiring describes the luck egalitarian position in health as the view that ‘inequalities in health expectancies that stem from differences in lifestyle that reflect personal priorities are justified, and might not be compensated’ (Feiring, 2008: 33). Similar statements can be found in the writings of Fleck and Brown (Fleck, 2011: 4; Brown, 2013). Such formulations illustrate why Fleck, Feiring and Brown could be correct that the presence of social factors eliminates responsibility, and still be wrong that this is a problem for luck egalitarianism in health. If luck egalitarianism is a theory with a certain view on how to evaluate distributions reflecting choices for which people are responsible, then the central claims of such a theory is not undermined if it turns out people are not responsible for their own adverse health. Most descriptions of luck egalitarianism make no assumptions regarding the extent to which people are responsible for their choices and the distributions brought about by such choices (Arneson, 1989: 86; Cohen,
In the health context, luck egalitarianism should not assume responsibility, but rather continue to be a theory about how to respond to the presence (or absence) of responsibility (Albertsen and Knight, 2014). Luck egalitarianism should thus not be troubled if the empirical claims underlying this critique are true. If social circumstances result in people’s relative positions being unfairly unequal, luck egalitarianism is committed to consider such inequalities as unjust. If people are not responsible for their own bad health, luck egalitarians would consider it a concern of justice to remedy this situation. This means that if the factual claims to which the critics appeal are true, if it is indeed the case that social factors not traceable to people’s choices affect people’s relative positions, then they are disadvantaged in a way that luck egalitarianism must consider unjust.

Influencing choices

Doubts regarding responsibility in health are not always expressed as above. Some critics stress how people’s choices regarding health are heavily influenced by their circumstances. Consider Feiring’s formulation: ‘It is hard to identify any action that is not partly determined by circumstance understood as the social contexts in which the individual finds herself or her traits of character (included the ability to choose)’ (Feiring, 2008: 34). In that regard Feiring’s discussion on obesity is instructive. She argues that ‘poverty, class and income are key-determinates of obesity and weight-related disease’ (Feiring, 2008: 35). A similar view is expressed by Buyx and Prainsack who argue ‘that health behavior cannot be taken as subject to individual choice only, but rather is shaped significantly by upbringing, education, wealth and many other social and environmental factors’ (Buyx and Prainsack, 2012: 82). They describe it as an empirical uncertainty, and stress that the heavy influence from circumstances on people’s health-related choices ‘is also one of the main objections to the arguments of luck egalitarians’ (Buyx and Prainsack, 2012: 82 n49). The claims examined here are different than those cited in the previous section. Attributing responsibility is not considered impossible, but the strong influence from social circumstance is stressed as problematic for luck egalitarianism. Three answers seem available to the luck egalitarian, all of which will be examined here.

First, it should be stressed that luck egalitarianism delivers an answer which is in principle clear. It tells us something about how we should deal with matters of responsibility. So even if we are in fact unable to disentangle genuine choices, from choices which are heavily influenced by circumstances, the principled luck egalitarian answer remains. That we (currently) lack the ability to identify genuine choices, does not take anything away from a principled view regarding how we should assess distributions if we could.

A second possible answer would be that luck egalitarianism need not to claim people’s health choices completely shielded from influencing circumstances. Luck egalitarianism could take up the task of defining what counts as circumstances in the relevant context in order to be able to take into account the extent to which choices where influenced by circumstances. After all, as Cohen, the famous luck egalitarian, remarked in a related context, there is a difference between claiming that something is influenced by factors beyond our control, and the stronger claim that it is wholly determined (Cohen, 1989: 914). One prominent suggestion on how to do this has been developed by Roemer. He argues that if we want to compare people’s effort in obtaining some good (for example, health); we should compare people in similar circumstances to make judgements about responsibility (Roemer, 1993; 1995; 1998; 2003; 2012). Roemer proposes that we classify people into types, which are relevantly similar in their circumstances, and then consider people as being responsible for the degree to which their choices differ from the mean of their type. Though space does not allow for a thorough discussion of such proposals, it is mentioned as a prominent attempt to handle the disentanglement of choice and circumstances.

In light of the above, it could be submitted that sometimes the relevant information is simply hard to acquire. Or perhaps we can only obtain it through procedures which we would, upon consideration, not want to evoke. Cohen’s remark in that regard is instructive: ‘It can be bad policy to seek to promote justice, whether because that would in fact not promote justice or because seeking to promote it would prejudice other values’ (Cohen, 2008: 381). The last part of the sentence constitutes the third possible answer available to luck egalitarianism. It addresses situations where luck egalitarian policies conflict with other important values. Luck egalitarians care about such situations because luck egalitarians need not be monist. Most luck egalitarians are pluralists with a genuine concern for other aspects than distributive justice (Arneson, 1989: 81; Cohen, 1989: 906; Rakowski, 1993: 74; Temkin, 2003: 769; Knight, 2009: 232) Such a pluralism would, as the Cohen quote suggest, allow luck egalitarians to reject introducing specific policies that conflicts with such other important values. Depending on the nature of the influence exercised by social circumstances it
would seem that luck egalitarianism have suitable answers at hand.

Adverse Effects on the Worst Off

The next critique from the social determinants literature points towards possible regressive effects of luck egalitarian policies. It is a central element in luck egalitarianism that if people make choices that create costs, they should not be allowed to pass those costs over to others.6

In his criticism of luck egalitarianism, Cavallero writes on responsibility sensitive allocations of healthcare that they ‘will tend to be regressive in its effects, hitting the worst off the hardest and thus…tending to aggravate the burdens of those who are already unjustly disadvantaged’ (Cavallero, 2011: 401). This critique grants that we can identify some risky choices and hold people responsible for them. According to Cavallero, responsibility sensitive provisions of healthcare trying to mitigate cost-displacement from risky behaviours are likely to have adverse effects on those who are socio-economically worst off (Cavallero, 2011: 401). Even though Cavallero frames his argument in terms of healthcare provisions, it would still be applicable if we are concerned with distributions of health as such. Most luck egalitarians in health focus on health rather than healthcare (Segall, 2010: 1, 90–93; Le Grand, 2013; Voigt, 2013; Albertsen and Knight, 2014).2

The critique would still be able to argue that responsibility-sensitive policies disadvantage people, who are responsible for their own bad health, but who are not responsible for their disadvantages in other spheres of life. Two options are open to the luck egalitarian: to deny that introducing such policies would be bad; or to deny that luck egalitarians are committed to introducing such policies. Regarding the second option, could there be luck egalitarian reasons for refusing the implementation of such policies under those circumstances? An example may clarify the issue: consider a community with two groups of citizens each accounting for half of the population. Group A is employed, earns good money and lives in good houses. Assume that all this can be considered group A’s circumstances. For reasons unrelated to those circumstances, A-people take good care of their health. Consider then group B. B-people’s circumstances are quite worse: they struggle with unemployment, modest unemployment benefits and shabby housing. For reasons unrelated to those circumstances, B-people live unhealthy lives.

Cavallero’s argument rests on the idea that luck egalitarianism must endorse making B-people worse off than they already are through responsibility-sensitive policies in the healthcare setting. Should luck egalitarians endorse such responsibility-sensitive policies? Only a very peculiar kind of luck egalitarianism would do so. Only an isolationist theory of luck egalitarianism, concerned only with distributions of health, could endorse such policies. Other versions of luck egalitarianism in health could not. The main alternative to an isolationist theory would be an integrationist one: a theory caring about distributions of health or healthcare resources along with distributions in other spheres of people’s lives (Albertsen and Knight, 2014). All else being equal, such a theory can evaluate distributions of healthcare resources. But when all else is not equal, as it is not in Cavallero’s example, this must be taken into account. Including the social circumstances into the equation would lead a luck egalitarian to reject introducing measures which would make the overall distribution even more unequal. The integrationist luck egalitarian may thus argue that we should eliminate the social circumstances, and could then not endorse introducing responsibility-sensitive healthcare allocations while leaving social circumstances as they are. The claim that luck egalitarian policies would have regressive effects seems upon consideration to be unwarranted.

Discursive Consequences of Luck Egalitarianism

The above critiques all argue that luck egalitarianism is wrong. They provide reasons for that conclusion, and, so far, luck egalitarian counter-arguments have been offered as to why the critics’ argumentation is ultimately unconvincing. The critique examined in this section is of a different nature. It can be understood as claiming that even if luck egalitarianism can be salvaged from the critiques above, we should still avoid evoking it as a theory of evaluating health inequalities. The main reason is that its focus on personal responsibility overlooks or distracts from more pertinent issues. In its strongest form, the critique finds that luck egalitarianism is not only misleading, but that it also must suggest solutions of the wrong kind.

Victim blaming and stigmatization

Consider first the claim that the emphasis on personal responsibility is wrongheaded or distracts attention from more pertinent issues. This is stressed by Schmidt who argues that discussions about responsibility for health and disease tend to ‘distract the attention of policy makers away from addressing the underlying and
huge important social determinants of health’ (Schmidt 2009, 130), a point also emphasized by Buyx and Prainsack (Buyx and Prainsack, 2012: 48). Voigt raises similar concerns and writes that this issue has received relatively less attention in the literature (Voigt, 2013: 154). According to Voigt, there is one understanding of responsibility in public debates and another in the luck egalitarian literature. The latter is nuanced, but the former is ‘emphasizing the importance of individual choice while understating the relevance of social structures that may constrain such choices’ (Voigt, 2013: 154).

One possible consequence could be that people with so-called lifestyle diseases are stigmatized by the luck egalitarian emphasis on personal responsibility. As Daniels puts it, it might ‘make it look as if we are blaming the victim’ (Daniels, 2008: 76).

This is an important point to raise, with avoiding stigma being a genuine concern in much debate over health policy (MacLean et al., 2008; Puhl and Heuer, 2010). However, one should hesitate to write off luck egalitarianism based on mistaken views about which policies it would recommend (Knight, 2009: 154–155). As argued earlier, it is not necessarily the case that luck egalitarians would support the introduction of such policies. The point about how a pluralist luck egalitarianism can take such costs into account is applicable here as well. But the concern is justified to some extent. Philosophers of any kind should be observant to whether their moral theories are open to misinterpretation. Putting it this way, however, also shows the limit of the critique since almost any normative theory would be open to misinterpretation. Luck egalitarians are not alone in that regard.

**Endorsing the wrong solutions**

While the discursive concerns above are interesting, a related but more substantive point is suggested in the literature. The introduction highlighted how the literature on social determinants in health is often taken to suggest the need for a broader approach to health policies. An approach which has prevention and policies located outside the traditional sphere of healthcare as important elements. Many would consider it bad if luck egalitarianism was unable to embrace such policies. Daniels hints towards such a critique when he writes:

‘If individuals are to be held responsible for the externalities of their lifestyle choices, viewed as analogous to “expensive tastes”, then we depart from Rawls’s account of a division of responsibility. We fail to meet social responsibilities but we (erroneously) insist on individual ones’ (Daniels, 2011: 277).

While this point has some resemblance to the earlier critiques, it also goes beyond them. The concern here is whether the luck egalitarian approach to evaluating health inequalities are somehow committed to individualistic solutions. Thus even if luck egalitarians care about distributions of health and the effects social determinants have on people’s health and ability to take care of their health, luck egalitarians are unable to address the social determinants of health in a satisfying way. Luck egalitarians may claim that the influence from social determinants is a bad thing, and perhaps even something which makes it impossible to hold people responsible for their health level. But luck egalitarians cannot, the critique suggests, make positive demands towards removing social determinants. Such a conclusion should and would upset many luck egalitarians since it would render their position unable to justify many important real world policies. The first answer to provide here resembles a point stressed by Lippert-Rasmussen in another context. He argues that even if an injustice is best understood as being between two individuals, it does not imply that we should have an individualistic approach in removing such injustices (Lippert-Rasmussen, 2013: 63). I consider that point to be correct and to be applicable to this context as well. Even if we are concerned with individual responsibility (and lack of it), this does not tell us whether the actions taken to eliminate unfair distributions should be collective or individualistic.

As a second reply, consider Segall’s argument that luck egalitarian policies might be more willing to include broader measures than other views on health inequalities (namely those focused more narrowly on healthcare). He argues that since luck egalitarians are concerned with unchosen disadvantages, and do not subscribe to any special primacy to healthcare provision, luck egalitarianism would readily embrace broader initiatives than those commonly thought of as part of the healthcare system (Segall, 2010: 81). Luck egalitarianism would often have both health-based reasons, and other reasons to eliminate the social circumstance in question. All such reasons spring from the luck egalitarian commitment to removing the influence from unchosen circumstances on people’s relative position. However, some formulations of the luck egalitarian view on health come close to a view without such commitments. When Roemer argues that we should indemnify people from their circumstances, critics could ask if we should not instead be concerned with removing those circumstances rather than to merely counteract or compensate their effect (Roemer, 1993; 1998). But pointing towards Roemer’s formulation is not enough to confirm that
Daniels’ critique is correct. Removing the effects of bad luck on people’s relative position does not exclude doing so by removing the social circumstances which produce them. In a pragmatic sense, luck egalitarians can prefer the strategy best serving the purpose of eliminating the extent to which people’s lives are affected by circumstance. Thus, it seems not to be correct that luck egalitarians cannot recommend broader measures in dealing with inequalities in health and their social determinants. Luck egalitarians then, can affirm, rather than resist, the policies suggested by the proponents of this critique.

Conclusion

The article examined critiques of luck egalitarianism in health based on the social determinants in health literature. The critique from social determinants comes in very different versions. But importantly, luck egalitarianism provides sufficient answers to such critiques. Debating this type of critique is important because it is quite common among those critical of luck egalitarianism in health, and, furthermore, because it relates the normative literature to one of the most important recent epidemiological discussions. Presenting luck egalitarian answers to this critique is an important task for anyone sympathetic to luck egalitarianism in health.

But the discussion should also give pause for thought among those sympathetic to luck egalitarianism. What makes this critique so common? I would suggest that it could be explained by a central miscommunication in the academic dialogue regarding the implications of luck egalitarianism in health. The discussion over luck egalitarianism in health has focused almost exclusively on how the presence of personal responsibility should affect the allocation of scarce healthcare resources (Rakowski, 1993; Anderson, 1999; Mailly, 2005). As such, the discussion has focused on who should get the available hospital bed, and on whether smokers and people who have consumed alcohol in excess should be treated differently because of their past behaviours. For critics it has been natural to question whether a distribution of healthcare resources in accordance with people’s behaviour would risk overlooking the social factors influencing people’s health and behaviours. Perhaps this article can contribute towards eliminating the miscommunication and thus improve the understanding of how luck egalitarianism can incorporate and appreciate the important literature on social determinants in health.

Acknowledgements

The original idea for the article was presented at the Louvain-Aarhus Political Philosophy High-speed Video Workshop, December 2012. The article was written partly during a research stay at the University of Glasgow in the spring of 2013 and partly while I was a visiting researcher at Fondation Brocher in Geneva in the spring of 2014. I am very grateful for the generous hospitality shown to me by the respective institutions on those occasions. Furthermore, I am grateful for valuable comments received from David Axelsen, Axel Gossieres, Carl Knight, Søren Flinch Midtgaard, Lasse Nielsen and two anonymous reviewers.

Funding

The work on this article was supported by the Brocher Foundation in Hermance, Switzerland, during the author’s 1-month research stay at the Foundation in March 2014. www.brocher.ch.

Conflict of Interest

None declared.

Notes

1. For an interesting critique of the social determinants literature, see Deaton, 2013.
2. I draw a distinction between critique of luck egalitarianism and the more general debate regarding individual responsibility in health, for such discussion see Wikler, 1987; 2002; Harris, 1995; Minkler, 1999; Resnik, 2007; Boddington, 2009; Magnusson, 2010; Daniels, 2011; Goldberg, 2012; Vansteenkiste et al., 2014.
3. For such recent attempts see Albertsen, Forthcoming; Albertsen and Knight, 2014; Roemer, 1998; Segall, 2007, 2010; 2013; Le Grand, 2013; Voigt, 2013. Others have offered reasons unrelated to social determinants, such reasons will not be considered here. See for example Vincent, 2009; Nielsen and Axelsen, 2012; Andersen et al., 2013; Hausman, 2013; Nielsen, 2013.
4. As opposed to views that take the social determinants to limit the relevance of luck egalitarianism in health, but mainly cites other reasons for rejection it. Such as Bognar and Hirose, 2014: 131–133.
5. See also Voigt’s excellent discussion of smoking (Voigt, 2010) and Roemer’s (Roemer, 1993; 1998).
6. In the broadest sense covering any disadvantage. See also Mason, 2006: 158. For an interesting discussion on the concept of cost see Andersen, 2014.
8. Mason has an important discussion on the complaint that luck egalitarianism is individualistic (Mason, 2006).

References


Article 12.
Rawlsian Justice and Palliative Care
RAWLSIAN JUSTICE AND PALLIATIVE CARE
Carl Knight¹ and Andreas Albertsen²

ABSTRACT
Palliative care serves both as an integrated part of treatment and as a last effort to care for those we cannot cure. The extent to which palliative care should be provided and our reasons for doing so have been curiously overlooked in the debate about distributive justice in health and health care. We argue that one prominent approach, the Rawlsian approach developed by Norman Daniels, is unable to provide such reasons and such care. This is because of a central feature in Daniels’ account, namely that care should be provided to restore people’s opportunities. Daniels view is both unable to provide pain relief to those who need it as a supplement to treatment and without justice-based reasons to provide palliative care to those whose opportunities cannot be restored. We conclude that Daniels’ framework is not attractive to the egalitarian.

I. INTRODUCTION
Arguably the most prominent theory of distributive justice is that developed ‘by’ John Rawls. His concern is with the distribution of primary goods, understood as ‘things which it is supposed a man wants whatever else he wants’.³ Rawls is specifically focused on ‘the chief primary goods at the disposition of society’, which are ‘rights, liberties, and opportunities, and income and wealth’ and ‘the social bases of self-respect’.⁴ The focus on social primary goods prompted critiques pointing out that this is unfair towards people who are disadvantaged in their natural characteristics.⁵ This critique is especially relevant in the area of health and healthcare, which Rawls says little about.⁶ In his introduction to Political Liberalism he suggest that ‘[b]asic health

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care assured all citizens’ is an ‘institution required for ... stability’. But given that political stability is consistent with low levels of health care coverage, this is hardly an adequate reason to supply it. Elsewhere Rawls leaves decisions over the provision of healthcare to the legislative stage.

Though acknowledging such shortfalls in Rawls’ work, Norman Daniels maintained that ‘[p]roperly extended, Rawls’ theory captures just the structure of our responses [to inequalities in capabilities sets] in a plausible way’. This article sets out to consider this extension in the context of the pain relieving practices known as palliative care. This is an increasingly important aspect of contemporary health care. WHO defines palliative care as: ‘an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering’. The importance of palliative care is acknowledged in a wide variety of situations. But despite growing importance for medical practice, little theoretical work has been done to integrate the idea into work on distributive justice in health and healthcare. Addressing this very issue, the article brings an important practical aspect into the discussion of the most prominent theory of distributive justice in medical ethics.

It does so by first presenting Daniels now famous account of Rawlsian justice in health and healthcare. Afterwards it raises two criticism of this position in relation to palliative care. One is that Daniels’ account is indifferent toward the pain associated with treatment and unable to prefer the less painful of two equally effective treatments. The other is that when little or nothing can be done in terms of treatment, Daniels view doesn’t give us good reason to relieve people’s pain. In both discussions several proposals for maintaining Daniels view are discussed, including a recent argument for the viability of Daniels’ account in relation to palliative care. Finding none of these persuasive, we conclude that, on account of its inability to provide

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13 Blinderman, op. cit note 12.
convincing answers in relation to this important topic, the Rawlsian enterprise loses much of its appeal to egalitarians in a health context.

II: DANIELS’ EXTENSION OF THE RAWLSIAN ACCOUNT
Daniels’ account is the most developed Rawlsian position in relation to health and healthcare. Furthermore, Rawls endorses this view on several occasions.¹⁴ Thus, Daniels’ account is the natural starting point for a discussion of Rawlsian justice in palliative care. Daniels admits that ‘Rawls’s index of primary goods seems to be too truncated once we drop the assumption that all people are normal. People with equal indices will not have equally good life prospects if they have different health-care needs’.¹⁵ To cater for this shortfall Daniels extends Rawls’ theory by including the institutions protecting people’s health among society’s basic institutions aimed at providing fair equality of opportunity.¹⁶

To see why, we must consider Daniels’ view on health. Daniels understands health deficits as deviations from normal functioning. Normal functioning for an individual is ‘the subset of the normal range their skills and talents make it reasonable for them to pursue’.¹⁷ Health needs are defined objectively as ‘those things we need in order to maintain, restore or provide functional equivalents (where possible) to normal species functioning (for the appropriate reference class by gender and age)’.¹⁸ Daniels then ‘emphasize[s] a relationship between normal functioning and opportunity, one of the primary social goods’.¹⁹ If health deficits impede people’s opportunities then the institutions tasked with providing such opportunities should also restore people to normal functioning. Thus, according to Daniels the prominence and importance of health arises through its impact on people’s opportunities.²⁰ The relation between health and opportunities does not rely on the specification of health as normal functioning (as long as health deficits reduce opportunities). So even though much criticism of Daniels revolves around the plausibility of his view on health, this article does not dwell on that discussion.²¹ The above formulations are

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¹⁷ Daniels, Just Health Care: 108.
¹⁸ Ibid., 32; Daniels, Just Health: 42.
²⁰ Daniels, Justice, Health, and Healthcare: 3,4.
more or less consistently expressed throughout Daniels’ work. The most important recent development has been Daniels’ effort to underscore how health is influenced by social determinants outside what is traditionally understood as health care and to develop a procedural answer on how to distribute resources when reasonable persons could disagree over whom to give priority to in a world of scarce resources. We now turn to how Daniels’ extension fares in relation to palliative care.

III. RAWLSIAN PALLIATIVE CARE
The starting point for the discussion of Daniels’ view is that it has a clear focus on opportunities rather than wellbeing. Intuitively and certainly in relation to palliative care the impact of health on our life-plans and opportunities might be considered as a strange reason to provide care. Wouldn’t well-being on some dimension provide a more sensible rationale? Rawlsians, however, do not have this individualistic conception of the aim of society. For them, the restoration of normal functioning is a compelling rationale for compensation because, and only because, it is a means to the social and political objectives of securing people’s opportunities. The next subsections examine different problems which this raises for Daniels’ account. The first relates to the role of pain relief in treatment and the second to the rationale for providing pain relief for those who cannot be cured.

Reducing pain in treatment
In the delivery of medical treatment the role of pain relief differs. Sometimes treatment is painful and could thus be supplemented by medicaments or other initiatives to relieve pain. In other cases only some forms of available treatment are painful and pain might be one reason for preferring one treatment over another. It is interesting whether Daniels’ account, with its focus on opportunities, is able to justify taking the relief of pain into account.

To see why we may doubt this, consider first a person for whom the available treatment is painful. If the treatment is able to effectively restore the person’s normal functioning, it is hard to see how an account justifying treatment based on its ability to restore normal functioning can argue that pain relief should be supplied as well (or at least that it should be provided free of charge). Aspirin, Codeine, Ibuprofen, Morphine, and Paracetamol, analgesics included on the WHO Model List of Essential Medicines, would not be provided in any such cases, however bad the pain. Or consider a

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22 Daniels, Justice, Health, and Healthcare: 2; Daniels, Just Health: 12, 17, 42.
24 While the former is widely accepted as an important development, the later has been criticized; see A. Friedman. Beyond Accountability for Reasonableness. Bioethics 2008; 22: 101–12; M. B. Mahowald. Why Retreat to Procedural Justice?. The American Journal of Bioethics 2001; 1: 25–26.
situation where we can choose between two treatments, which are equally effective in restoring opportunities. They differ, however, in how painful they are to undergo. Suppose, for instance, that an invasive procedure has the same quality of outcome as an alternative non-invasive procedure, with the exception that the former will bring severe post-surgery pain while the latter is painless. Daniels’ account is, in principle, indifferent as to whether that treatment is carried out in a painless or agonizing manner. Since both of these criticisms would surely reflect badly on Daniels’ account, we will discuss three possible answers to them.

The first reply to be considered doubts the relevance of wellbeing in a healthcare context. Briefly considering the idea that wellbeing or welfare is a more plausible rationale than preserving opportunities, Daniels dismisses the idea, writing that ‘much health care affects quality of life in other ways, so the benefit of reducing pain and suffering is not general enough for our purposes’. But this reply addresses the claim that health care is provided solely to ease pain and suffering. However, that is not the present claim, which is rather that pain and suffering are (at the very least) factors among others to be taken into account when assigning healthcare. Furthermore, Daniels states that ‘some suffering, for example, some emotional suffering, though a cause for concern, does not obviously become a concern of justice’ (Daniels 1981, 169). But our claim leaves open the question of whether justice is concerned with all (human) suffering. We merely need to show some cases where pain and suffering are a matter of justice. The amount of avoidable pain the state chooses to inflict when administering medical treatment is very much a matter of justice. Some suffering may not be a matter of justice, but that is not simply because it falls into the category of suffering. Other considerations are needed to support that conclusion. We may think that Daniels’ example of emotional suffering would often not be a matter of justice because it is impermissible for the state to interfere with citizens’ private lives by, for instance, compensating jilted lovers. But the state is not acting outside its jurisdiction when it provides less painful rather than more painful treatment. Thus, these answers from Daniels are inadequate to uphold the view that pain and wellbeing are not a concern in these matters.

Another type of answer available to Daniels would be to concede the importance of wellbeing, but claim that his account is compatible with taking pain reduction into account. Let’s examine some possible arguments for such compatibility. The first compatibility claim could be to submit that relieving pain is, in practice, often necessary for doctors in order to perform a given treatment. But this does not provide a reason to prefer the least painful treatment under the stipulation that we are choosing between equally efficient treatments. Furthermore, it is bizarre to say that the only reason doctors should ever prescribe painkillers is to make their job easier, rather than to ease pain itself, so this argument for relieving pain is not satisfactory.

It could also be submitted, drawing on Rawls, that we should prevent pain to secure the ‘social bases of self-respect.’ This however, also seems inadequate. In some

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cases persons may receive unnecessarily discomforting treatment from the state without feeling disrespected. Many patients do not have a full understanding of the treatments available for their condition, so they would not know that they had received a more painful than necessary treatment. If, for all they know, the state has done as well as it can for them, why would they feel disrespected? Moreover, even if they do know that there are less painful treatments available, it will probably also be known that the state consistently refuses to accept pain reduction as one of its goals, and is merely acting on its stated principle. Again, in such circumstances patients may well feel greatly discomforted but not disrespected. The second argument for the compatibility of Rawlsian justice with pain relief also fails.

A final reply to the criticism is suggested by Blinderman. He argues that eliminating pain should be considered a part of protecting opportunities. On this account the issue has so far been discussed from the wrong perspective. Daniels need not argue that wellbeing or relief of pain is unimportant in the context of health care and he need not claim that protecting opportunities is compatible with the different concern of pain relief. Instead protecting opportunities includes providing the relief of pain. To illustrate why this is so Blinderman provides the following example of how this can be:

As patients progress towards death their opportunities become profoundly limited. Nonetheless, we must acknowledge that one goal of palliative care is to preserve this limited opportunity range. Terminally ill patients may hope to communicate meaningfully with loved ones, reflect on their lives and finish a variety of projects. Such opportunities would be incompatible with pain and suffering. 29

For that reason he argues that Daniels’ account is very able to give us good reason to supply palliative care. He notes, however, one important limitation to that view: situations where we cannot bring people back to normal functioning.30 As this is discussed in the next section, we can set that aside in order to assess whether Blinderman’s argument is plausible in the important context in which he offers it.

The first thing that should be granted to the argument above is that since functioning is age-specific we can reasonably acknowledge that the palliative care in the example can be supplied by Daniels. This is so because it restores functioning in the relevant sense and can thus firmly be justified by the Rawlsian approach to health proposed by Daniels. We will not argue that it is stretching the concept of protecting opportunities. But we do argue that it does not show enough and that it is far from self-evident from the provided example that Daniels’ account can, in general, recommend palliative care. The reason for this is that in the example palliative care is the very thing restoring functioning. Surely, then, it can be incorporated into Daniels’ framework. But what happens when restoring functioning and relieving pain comes

29 Blinderman, Palliative Care, Public Health and Justice: Setting Priorities in Resource Poor Countries: 107.
30 Ibid.
apart? Suppose a patient already has the ability to communicate with family and reflect on her life, but also suffers from severe pain. We can provide morphine, which will slightly reduce their overall ability to communicate and reflect, but will significantly reduce the pain. If the patient prefers to receive the morphine, we should surely provide it. But Daniels account cannot say this, as the morphine does nothing in terms of restoring opportunity – indeed, it slightly reduces opportunity. The fundamental problem – the tension between the objectives of alleviating pain and restoring functioning - resurfaces.

*Reducing pain - beyond treatment*

Aside from whether Daniels’ account is able to provide palliative care as an integrated part of treatment, another important complication springs from the focus on restoring opportunities. There seem to be cases where the Rawlsian rationale developed by Daniels suggests care should not be provided at all. The thrust of the critique presented here is that if we allocate healthcare solely to restore ‘normal functioning’ in order to protect opportunities, many kinds of important palliative care initiatives should not be undertaken at all as they do not serve this purpose. On the face of it the Rawlsian idea of restoring people to the norm leaves those who cannot be so restored – who, we may hypothesise, are often the most ill – without any medical assistance. Consider Daniels’ statement that ‘if we can minimize the impact of the deficit on opportunities we have an obligation to do so...’, The critique is then straightforwardly to ask what we owe people when we cannot minimize the health impact on opportunities. When we are concerned with health deficits (or deviations from normal functioning) because of their impact on people’s opportunities, why should we then provide care for those whose opportunities we cannot bring back or improve?

There is a fairly obvious response to this second problem. Daniels observes that ‘not all treatments are cures, and some institutions and services are needed to maintain persons in a way that is as close as possible to the idealization’, where idealization refers to normal functioning. Daniels labels such institutions a ‘third layer of institutions’, adding them to the layers aimed at preventing or curing disease. But this response is in clear tension with the objective of restoring normal functioning, as part of the activities of this ‘third layer of institutions’ will be to restore minor functionings which make it no easier to create or pursue life plans. For instance, pain

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33 A point which Blinderman concedes Blinderman, Palliative Care, Public Health and Justice: Setting Priorities in Resource Poor Countries: 107.
34 Daniels, Just Health: 148.
35 Daniels, Just Health Care: 48.
relief may sometimes be neutral (or worse) regarding cognitive performance. Resources are thus allocated to activities with little or no influence on people’s opportunities in the Rawlsian sense.

This problem is exacerbated when we consider what Daniels calls the fourth layer of institutions, which ‘involves health care and related social services for those who can in no way be brought closer to the idealization’. This seems to be where palliative care for those who cannot be cured is located. But here the tension between a justice-based rationale of restoring or protecting opportunities and the provision of care for those we cannot help in such a way is apparent. For if a patient is beyond the point at which we can bring them closer to normal functioning, it is clear that the objective of restoring normal functioning cannot provide the rationale for their treatment. It is, then, very hard to see how Daniels can maintain that ‘all these institutions and services are needed if fair equality of opportunity is to be guaranteed’. None of the fourth layer activities will enable people to construct and act upon life plans. Freedom and opportunity in the Rawlsian senses will not in any way be expanded by the activities undertaken here. It would, as Daniels seems to agree, reflect badly on the Rawlsian theory of justice in health if such services cannot be provided in the name of justice. This would in effect leave Daniels’ account without the ability to justify palliative care.

Stopping short of accepting that people whose opportunities we cannot improve should not be aided, two possibilities are seemingly open to the Rawlsian. One is to present other reasons of justice for providing the care under discussion; the other is to point to values outside the scope of distributive justice able to secure the provision of such care. Considering the first possibility, wellbeing or welfare would be suitable candidates for this. But as should be clear from the earlier discussion this amounts to invoking non-Rawlsian reasons, and furthermore, to invoking reasons Daniels elsewhere considers not to be the right reasons for providing care. This approach raises a rather delicate question: if we prefer to go with provisions based on welfare rather than those based on opportunities when they differ in their recommendations, then why not use welfare from the outset? Thus this line of defence from the Rawlsian increases rather than decreases the extent to which we doubt that opportunities are the right focus.

But perhaps Daniels and other Rawlsians need not introduce other justice values and furthermore need not to be embarrassed that their theory cannot justify the provision of palliative care to those whose opportunities we cannot improve. For as Daniels writes ‘by the time we get to the fourth layer moral virtues other than justice become prominent’, or similarly, that ‘[t]hese services raise serious issues, for example about compassion and beneficence, that go beyond justice’. Although the word is not used, this appears to be a gesture towards charity. But non-restorative

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36 Ibid.
37 Ibid.; Daniels, Just Health: 62.
38 Daniels, Just Health Care: 48.
39 Daniels, Just Health: 62.
treatment cannot be left to the contingencies of charity. Some cases at least are unambiguously matters of justice and it seems Daniels agrees when he asserts that ‘we owe people health care and related social services even when they cannot be brought closer to idealization’. While Daniels could say that those matters are of no concern to justice, his hesitation to do so reveals that he does not consider this an attractive solution. We concur.

The strength of the objections examined here and in the previous section, and the importance of the lack of suitable replies in Daniels’ framework can be illustrated by an example where they come together. Consider the case of cancer patients, often associated with palliative care. When the cancer is thought treatable, treatment will be provided in the most efficient way, regardless of how painful that may be. If the cancer turns terminal, any morphine publicly provided for instrumental reasons – to make medical procedures easier to perform – will be switched off, and the patient left in agony, if he cannot afford to pay for continued treatment and no charitable individual or organisation comes forward. Such cases show that, contrary to Daniels’ claim, it is simply not true in the context of the important areas of palliative care that an appropriate extension of Rawlsian theory accommodates egalitarian intuitions. The justificatory structure of Rawlsian justice, either orthodox or extended as Daniels proposes, leaves it indifferent to some kinds of overwhelmingly compelling medical need.

IV. RAWLSIAN ALTERNATIVES

After having considered Daniels’ account and found it unable to justify palliative care in a satisfying matter, it might be worth to consider alternative replies which could be used to address this discussion from a broader Rawlsian framework.

The Rawlsian might, firstly, suggest that our claims have failed to account for the extent to which their favoured redistributive theory provides everyone with sufficient goods to secure their basic needs without the need for special provision. In particular, Rawls’ difference principle allocates income and wealth to the greatest benefit of the least advantage. Under such an egalitarian distribution it could be thought sheer hyperbole to talk of cancer patients without morphine, especially given the fact that Rawlsian justice will compensate persons who do not receive the expected social primary goods owing to illnesses or accidents. Views along similar lines are also expressed by Daniels.

We do not think this response is sound. It is simply not the case that Rawlsian redistribution provides for all the needs that it should. Certain medical treatments that may significantly decrease the amount of pain suffered by a patient may be beyond the means of some such persons even after redistribution. The Rawlsian compensation only provides for the loss of social primary goods, primarily income,

40 Ibid.
and is insensitive to the cost of individual health care needs. The cost of an individuals’ palliative care, even in an otherwise egalitarian society, may exceed the income they have lost due to illness. In that case the compensation they receive will be insufficient to meet their health care need. Even where the necessary treatments and aids are within the buying power of those who need them, it is simply unfair that the provision of such things should come out of their share of goods, leaving them with less money to spend on other things. Why, the egalitarian asks, should the ill have less money to spend on food, accommodation and other essential needs just because they are ill and want to be free of pain? In this regard more subjective ‘luck egalitarian’ distributive theories such as equality of resources, equality of opportunity for welfare and equality of access to advantage seem to be preferable, on account of their ability to take into account disadvantaging natural characteristics.43

A second Rawlsian response, like the first, aims to provide for palliative care through the difference. It differs from the first by adding health care to the list of social primary goods to be distributed by that principle, on the basis that health is something you want, whatever else you want.44

This seems a clear improvement on the standard Rawlsian theory as it provides a principled basis for providing palliative care where it does not further opportunity restoration. Yet it still falls short of what is required. Even if the list of primary goods relevant to justice where lengthened in this way, many of the inequalitarian effects of Rawlsian theory regarding health and healthcare would remain. As Allen Buchanan points out, Rawls proposes that principles are selected from behind a ‘veil of ignorance’ that would ‘preclude a solution to the problem of weighting health care against other primary goods because the answer will depend upon facts about the particular conditions of the society in which the notions in question are to be applied’ (Buchanan 1984: 61). Thus, the theory cannot guarantee any significant level of support for healthcare that does not restore opportunity as the decision regarding the weightings of particular primary goods would be left to politics.


44 Daniels writes that being in good health is not necessarily good for all of our goals, N. Daniels. Health-Care Needs and Distributive Justice. Philosophy & Public Affairs 1981;10: 154. Daniels remains sceptical towards such a strategy: Daniels, Just Health Care, 43; Daniels, Just Health, 56. Daniels offers no examples here to back up his view but they would surely be fairly exceptional, as the text suggests. On this point Rawls and Daniels disagree, for Rawls lists health as a natural primary good Rawls, A Theory of Justice: 62. It certainly seems rather beside the point that people may satisfactorily adapt their goals to their ill health. People may be able to cope in a parallel way when they go from an average level of income to a low one but Daniels does not on that basis say that income is not a primary good.
to decide.\textsuperscript{45} This response does at least give palliative care representation within Rawlsian theory, but this may well amount to little in practice.

The final Rawlsian response accepts that on the test of accounting for natural variations Rawlsian justice fails. But rather than adjust the theory, as the second response suggested, the third response insists that this shows the test to be incompatible with the Rawlsian requirement that theories of justice should be \textit{neutral between conceptions of the good}. In other words, palliative care is not provided because to do so would prioritize one conception of the good (one concerned with pain reduction) over others.

We have two comments on this response. First, were it true that palliative care was incompatible with the neutrality requirement, that would suggest nothing more than that this requirement is incompatible with egalitarianism. Second, we do not think it is true. Ronald Dworkin’s theory of equality of resources, for instance, acknowledges the neutrality requirement whilst being sensitive to natural.\textsuperscript{46} Furthermore, we can get further towards equality using primary goods than Rawls and Daniels manage. Allow us to return to the example of terminal cancer patients. The Rawlsian denies them their morphine on two dubious grounds: that absence of pain is not a primary social good, and they are the only things that get distributed; and that they are beyond any recovery to full membership of society. But is the benefit of being free of intense pain really only a conception of the good-relative benefit? Perhaps there are some flagellants who do not view this as a benefit; nonetheless, we feel confident that we could find as many, if not more, persons whose ends are not served by their possessing primary social goods such as wealth and power.\textsuperscript{47} We are inclined, then, to believe that absence of pain is at least as conception neutral as Rawls’ social primary goods.

V. CONCLUSION

In relation to the increasingly important topic of palliative care, it must be concluded that the Rawlsian project, as extended by Daniels, does not provide sound answers. Its inability to recommend the less painful treatment and its willingness to leave those who cannot be cured to the contingencies of charity is unacceptable to the egalitarian. Those looking for a normative account of health care that accommodates palliative care should look elsewhere.