

# Chapter 2

## Injustice and Inequality in Health and Health Care

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### 2.1 Introduction

I chose the title of this essay in part because of the balanced alliteration between “injustice” and “inequality” on the one hand and “health” and “health care” on the other. But the parallelisms of sound in this case mirror analogies in the relations. In each pair, the first member is the more important and more general. Injustice is of obvious moral importance. Inequality is one source of injustice, though inequalities are not always unjust, and inequalities may have other ethically significant consequences. Similarly, health is much more important than health care, though health care obviously contributes to health and may have other morally significant effects on well-being and social solidarity.

In this essay, I shall sketch the ways in which inequalities – and especially inequalities in both health and health care – may constitute or contribute to injustice. More specifically, I shall address the following questions. In Sect. 2.2 I shall ask when inequalities are of moral concern. One answer is the luck egalitarian’s: inequalities for which people are not responsible are unjust. Section 2.2 sketches and criticizes this view. Section 2.3 considers whether health and health care are special and whether the luck egalitarian can justify a demand for equality in health and health care. Section 2.3.1 considers what implications the other main version of egalitarianism – which I call “relational egalitarianism” – may have for the distribution of health and health care. Section 2.3.2 asks whether there is any other case for condemning inequalities in health and health care.

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## 2.2 Why Are Inequalities Unjust: The Luck Egalitarian Answer

What motivates egalitarians are the huge disparities in life prospects between those who grow up in affluent circumstances and secure and loving homes and those who grow up in extreme poverty or in abusive, chaotic circumstances. It is unconscionable that life expectancy in Angola should be half that in Japan. Similarly, most people feel that it is unjust that one person dies of a simple staph infection, because she could not get a simple antibiotic, while for others such infections are a minor irritation. Though not everyone shares the intuitions, most people feel that inequalities like these are seriously unjust. One explanation for these intuitions is that morality includes a fundamental egalitarian principle (EP) to the effect that

***EP1: other things being equal, inequalities are unjust.***

The “other things being equal” clause is crucial, because equality is not the only relevant consideration. All things considered, greater inequalities accompanied by greater welfare may be better.

A little reflection shows that EP1 is nevertheless absurd. No sane egalitarian wants to eliminate all differences between people. Egalitarians must specify which differences are of moral concern. The examples suggest that significant inequalities in life prospects or overall well-being are of moral concern, while small inequalities in prospects or well-being or other more specific inequalities in height, hair length, or numbers of handkerchiefs are not of moral concern. So perhaps what explains egalitarian intuitions is a principle to the effect that

***EP2: other things being equal, significant inequalities in overall well-being are unjust.***

For the moment, I shall speak of the object of distributive concern as overall well-being, because most luck egalitarians have taken well-being to be the “stuff” whose distribution they are concerned about, but as I will discuss later, other egalitarians are concerned about other goods.

Reformulating the purported egalitarian principle as EP2 does not answer all objections. Suppose that the individual mentioned above who dies of a simple staph infection was unable to get access to an antibiotic, because she lived in the twelfth century. Is it unjust that she died while individuals with the same infection today live? Is this inequality in any way morally wrong? Of course the early death of this woman in the twelfth century is sad and unfortunate, but is the inequality of any moral concern? Is there anything wrong about the inequality between health and comfort of people in affluent societies today and the situation of the medieval European aristocracy, whose lives were much less healthy and comfortable? People’s intuitions differ on this point. Larry Temkin believes that such inequalities are morally bad, though he would grant that no one can be blamed for them (Temkin 2003). Kok-Chor Tan (2008), in contrast, takes the egalitarian to be concerned exclusively with the ways in which institutions influence inequalities and, like me, would find nothing morally objectionable about these inequalities. Egalitarians who share our intuition will want to modify the egalitarian principle further:

***EP3: other things being equal, significant inequalities in overall well being that could have been addressed by human<sup>1</sup> action or social institutions are unjust.***

Most contemporary egalitarians would have a further objection to make to EP3. Most would maintain that there is nothing unjust about inequalities, such as those that obtain between innocent citizens and convicted and imprisoned murderers.<sup>2</sup> It is open to an egalitarian to maintain that, other things being equal, the inequalities between a convicted murderer's well being and the well-being of others are morally objectionable, but to point out that other things are in this case obviously not equal and that the claims of equality are outweighed by considerations of retribution, protection, and so forth. But most egalitarians have instead felt that there may be nothing unjust at all inequalities in overall well-being among people, which are their own responsibility. So one arrives at a vague "luck egalitarian" sufficient condition for injustice:

***EP4: other things being equal, significant inequalities in overall well being for which individuals are not responsible that could have been addressed by human action or social institutions are unjust.***

Tan states what he takes to be the core of luck egalitarianism as "[P]ersons should not be disadvantaged or advantaged simply on account of bad or good luck" (2008, p. 665). If one stipulates that "opportunity for welfare" is equal if and only if overall well-being for which individuals are not responsible is equal, then one can restate EP4 as

***EP4': other things being equal, significant inequalities in opportunities for welfare that could have been addressed by human action or social institutions are unjust.***

EP4 and EP4' provide only a vague sufficient condition (other things being equal) for injustice. EP4 does not say that, other things being equal, inequalities for which individuals are responsible are just. It thus falls far short of defining how inequalities matter to justice. One way to proceed, is treat the condition in EP4 as both necessary and sufficient and thus to defend the following a vague version of luck egalitarianism:

***EP5: other things being equal, significant inequalities in overall well being that could have been addressed by human action or social institutions are unjust if and only if individuals are not responsible for them.***

There appear, however, to be serious objections to the necessary condition stated in EP5. I shall mention three. First, there is the problem of "the abandonment of the imprudent." For example, suppose that through imprudent choices in his early 20s, for which Albert is fully responsible, Albert finds himself at age 30 with few skills, a criminal record, physical and mental disabilities, and no friends or family

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<sup>1</sup> This formulation assumes that humans are the only morally responsible agents.

<sup>2</sup> Indeed some egalitarians, such as Larry Temkin (1993, 2003), would argue that it would be unjust if murderers were living well. But this view seems to reflect considerations of desert, which are orthogonal to egalitarian concerns.

to care for him. His society offers no social services for people like Albert. The attitude his society takes, “He made their own beds; so let him lie in it.” Though there may be non-luck-egalitarian moral objections to Albert’s harsh society, there is no luck-egalitarian objection. Elizabeth Anderson (1999) argues that such a society fails to implement the most fundamental egalitarian concern for equal respect.

Second, consider the case of Amy, who is badly off because she has contracted a contagious disease in the course of heroically tending to others. Her society, like Albert’s, does nothing for her, because she is responsible for her own bad health. EP5 says that an egalitarian has no grounds upon which to criticize abandoning the self-sacrificing. This strikes many egalitarians as implausible.

In the face of these counterexamples, the luck egalitarian has two choices. One alternative is to accept the verdict that there are no luck-egalitarian objections to Albert’s or Amy’s societies and emphasize the other, non-egalitarian grounds upon which to criticize them. The luck egalitarian might argue that such societies are cruel, destructive, mean-spirited, and ungrateful but they are not unjustly inequalitarian. Most luck egalitarians, including Tan (2008) and Shlomi Segall (2010), instead retreat and deny that inequalities for which individuals are not responsible are necessary for an egalitarian complaint of injustice. They maintain instead that inequalities may be unjust, even when people are responsible for them and that there are other egalitarian considerations, such a requirement that everyone’s basic needs be met, which are not satisfied by societies such as Albert’s or Amy’s.

A third objection to EP5 is that it favors leveling-down. Here is one version: It is possible to destroy enough of the productive resources of societies across the earth so as to lower everybody’s well-being to the level achieved by members of some isolated destitute indigenous tribe, who know nothing of the rest of the world. Assume that this destruction of productive resources has no benefits at all either now or in the future for members of the indigenous tribe or for anybody else. Since EP5 has an ‘other-things-being-equal’ clause, those who endorse EP5 can agree that, all things considered, the drastic immiseration of almost the whole of the earth’s population would be unjust. But if, as EP5 maintains, the only grounds for an egalitarian objection are inequalities for which individuals are not responsible, then with respect to specifically egalitarian concerns, egalitarians should prefer the distribution that results from this immiseration. Those who make this objection regard this as an absurd implication. How could there be *anything* good about causing so much harm without benefit to anyone. Surely any reasonable version of egalitarianism must object to this immiseration.

I do not find this objection compelling. I think it confuses the moral assessment of the distribution of well-being before and after productive resources are destroyed with the moral assessment of destroying those productive resources. Luck egalitarians should condemn the latter because this destruction fails to show equal respect to individuals whose well-being is sacrificed. But that does not imply that the resulting distribution cannot be better from an egalitarian perspective. So I do not think that the leveling down objection has much to it. Those impressed with the objection have

been drawn to luck prioritarianism,<sup>3</sup> which weights the interests of individuals in proportion to how badly off they would be if they were not responsible for their well-being. Luck prioritarianism avoids the leveling down objection, but it is subject to versions of the problems of the abandonment of the imprudent and of the self-sacrificing.

So let us retreat to EP4 and concede that it only captures a portion of what the egalitarian demands:

***EP4: other things being equal, significant inequalities in overall well being for which individuals are not responsible and that could have been addressed by human action or social institutions are unjust.***

The responsibility here is moral responsibility of some sort. According to Richard Arneson people are responsible for “the foreseeable consequences of their voluntary choices,” (1989, p. 88). Causal responsibility and hence, as G.A. Cohen (1989) insists, free will are necessary for the relevant sort of moral responsibility, but not sufficient. Until it became known that smoking causes lung cancer, smokers could not be held responsible for contracting lung cancer. By linking responsibility to free will, Cohen and Arneson make it questionable whether people are ever responsible, and they have a hard time accommodating intuitive distinctions between just and unjust inequalities. Ronald Dworkin, in contrast, does not require free will. In his view, what distinguishes those actions for which individuals should be held responsible from those that one should regard as matters of luck is whether the actions stem from “those beliefs and attitudes that define what a successful life would be like, which the ideal assigns to the person, and those features of body or mind or personality that provide means or impediments to that success, which the ideal assigns to the person’s circumstances” (1981, p. 303). But this is vague, and it is questionable whether, as Dworkin’s view implies, people are not responsible for the consequences of psychological impediments to the pursuit of their objectives, such as compulsions or whims. Segall holds that an individual is not responsible for an outcome if it would have been unreasonable for society to expect the individual to avoid it. Segall’s account is attractive as a sufficient condition on responsibility. For example, since it is reasonable to expect an individual to avoid driving while intoxicated, the individual is responsible for doing so. But it is not necessary for responsibility for some action and its consequences that it is reasonable to expect someone to avoid the action. For example, it would be unreasonable for society to expect a Jehovah’s witness to accept a blood transfusion, but Jehovah’s witnesses are in the relevant sense responsible for refusing to accept a transfusion and for the consequences that follow. A luck egalitarian should not object to the worse outcomes experienced by Jehovah’s witnesses. As this cursory discussion shows, it is not easy to provide an adequate account of responsibility.

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<sup>3</sup> For the classic discussion of prioritarianism, see Parfit (1991). Segall discusses luck prioritarianism in Segall (2010, pp. 111–12, 118–20).

Moreover, even if luck egalitarians possessed an adequate account of responsibility, they would face the problem that responsibility appears to be typically shared: outcomes are almost always due both to individual choice and to contingent circumstances. Those who smoke increase their risk of lung cancer, but they are still unlikely to get cancer, and if they do, there may be no way to tell whether their smoking caused it. If we assume that smokers are responsible for their smoking, how much responsibility should they bear for the inequalities due to bad outcomes that smoking makes somewhat more probable?

This section began with the intuition that the gross inequalities we observe in the world today constitute serious moral wrongs. One way to explain this intuition is to invoke an egalitarian principle to the effect that inequalities in the distribution of benefits and harms are morally objectionable. Other intuitions concerning responsibility pushed us toward a version of luck egalitarianism. But luck egalitarianism faces counterexamples, falls short of a comprehensive account of egalitarianism, and conflicts with some central egalitarian intuitions.

The luck egalitarian offers one explanation for the central intuition that the gross inequalities we observe in the world today constitute serious moral wrongs, but there are others. One possibility is that what is wrong with these inequalities is not the inequality, but the suffering and misery of those who are doing badly.<sup>4</sup> The importance specifically of the inequality lies in its demonstration that the suffering and misery of those doing badly is avoidable and hence a moral wrong. On this view, there is nothing intrinsically unjust or morally wrong about inequalities themselves; though the actual inequalities we observe, which involve great suffering and deprivation, constitute serious wrongs.

Another possibility, which I defend elsewhere (Hausman and Waldren 2011), is that egalitarianism is a family of related positions with different egalitarians focusing on the distribution of different goods and with different reasons explaining why they take the distribution of these goods to be of moral importance.<sup>5</sup> So some egalitarians are concerned about the distribution of benefits and burdens by societies and especially by the state as the agent of society. A commitment to fairness and a particular construal of impartiality explains why egalitarians of this sort are so concerned with the distribution of benefits and burdens. Other egalitarians are concerned with the distribution of status, power, and respect, because they think that morality rests upon equality of respect and moral standing and that relations among human beings should be governed by reciprocity. Still other egalitarians are motivated by a concern with solidarity and fraternity and for that reason condemn large inequalities in wealth, status, and power. What

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<sup>4</sup> “[...] what makes us care about various inequalities is [...] the hunger of the hungry, the need of the needy, the suffering of the ill, and so on. The fact that they are worse-off in the relevant respect than their neighbors is relevant. But it is relevant not as an independent evil of inequality. Its relevance is in showing that their hunger is greater, their need more pressing, their suffering more hurtful, and therefore our concern for the hungry, the needy, the suffering, and not our concern for equality makes us give them the priority” (Raz 1984, p. 240).

<sup>5</sup> For a related view, see O’Neill (2008).

makes those concerned with solidarity, like those concerned with reciprocity, equality of respect, or impartiality all egalitarians is the fact that certain kinds of distributional equalities constitute, not merely cause, the realization or frustration of these ideals.

From this perspective, luck egalitarianism appears to be *superficial* as well as problematic. Luck egalitarianism stipulates a concern with significant inequalities in welfare without providing any philosophical foundations for this concern. It never explains why distributive inequality matters. For example, Tan argues that what distinguishes luck egalitarianism is that it is a “grounding principle” that answers the question, “Why does distributive inequality matter?” (2008, p. 667) – that is, that it answers the question that I am accusing it of failing to answer. What then, in his view, is the answer? According to Tan, the luck egalitarian holds that “persons should not be disadvantaged simply because of bad luck” because “individuals can only be held responsible for outcomes that are due to their own choices” (2008, p. 667). But the uncontroversial premise concerning responsibility says nothing at all about how advantages or disadvantages for which individuals should not be held responsible should be distributed. Tan never tells us how the luck egalitarian answers the question, “Why does distributive inequality matter.” Both to justify luck egalitarianism and to explain how it should cope with the difficulties canvassed above, more needs to be said about its moral foundations.

The author who has taken this challenge most seriously is Larry Temkin, who grounds his version of luck egalitarianism in considerations of desert.<sup>6</sup> His view condemns both undeserved inequalities and undeserved equalities. What explains why undeserved equalities in well-being are wrong cannot, of course, be some fundamental concern about inequality in the distribution of well-being, since, by hypothesis, there is none. What drives the theory is the view that rewards should match deserts. The emphasis on desert nicely explains the intuition that the imprudent should not be fully compensated, nor abandoned altogether, while those who have been disadvantaged as a result of their own choices in course of doing something admirable should be compensated. The principle that people should get what they deserve is not itself an egalitarian principle. But, with the additional assumption that there is a baseline equality of desert or that equality is the default when desert is not defined, Temkin’s position is arguably egalitarian – though only marginally so.<sup>7</sup>

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<sup>6</sup>I am indebted to Matt Waldren for this reading of Temkin (which Temkin accepts). Segall explicitly rejects such a justification (2010, pp. 16–17), and argues that his concerns are completely independent of questions of desert. But he provides no alternative philosophical rationale for his qualified luck egalitarianism. The only consideration in its favor is its questionable ability to match our intuitions.

<sup>7</sup>See Kagan (1999). Serena Olsaretti (2002) disputes Kagan’s view that notions of desert completely displace egalitarian concerns. She argues that valuing equality makes a difference when considering starting points, where no one yet deserves anything, or when considering different patterns of desert.

### 2.3 Equality of Health and Health Care

Luck egalitarians want to eliminate differences in opportunities for welfare. Health strongly influences opportunity for welfare, and so the distribution of health will be of concern to luck egalitarians. The provision of health care influences health and thereby influences well-being. It may also affect well-being by providing financial security in the face of illness. As a significant influence on well-being, the distribution of health-care will also be of interest to luck egalitarians. But is there any reason why luck egalitarians should want specifically to equalize health outcomes for which individuals are not responsible or why luck egalitarians should want to equalize access to health care?

To address this question, something must be said about what is meant by equality in health. (One could also ask for some clarification concerning what constitutes equality of access to health care, but I shall assume here that the idea is clear enough.) One might maintain that the health of two individuals is unequal if there is any time period during which they are in different health states. But to attempt to redress all temporary inequalities in health for which individuals are not responsible would not be sensible. Among other things, it would shift the emphasis in medical care toward addressing temporary ailments. Most people think that two individuals can be equally healthy if one has the flu a few weeks before the other. At the other extreme, one might say that individuals are equally healthy if they have the same lifetime quantity or value of health. This presupposes some way to measure or value overall health at a time and to aggregate it over a lifetime. Luck egalitarians would not, of course, insist on equality of realized health, because individuals are responsible for a good deal of their health and because many health differences cannot be eliminated by human action. Equality of lifetime health *expectations* comes closer to what the luck egalitarian aims for. But equality in lifetime health expectations is consistent with compensating inequalities in health in different life stages, and an egalitarian might be unwilling to accept inequalities within life stages.

Having at least laid out some alternative conceptions of equality in health, I can return to the question of what reason luck egalitarians might have to seek equality in health. Consider two people, Abby and Alan. Abby is better off than Alan, but she is sick, while he is in full health. Neither is responsible for the inequalities. If one rules out leveling down, the only way to equalize health is to cure Abby. But curing Abby will amplify rather than mitigate the inequality in *overall* well-being. In these circumstances, a luck egalitarian should oppose equalizing health. To mitigate the inequality, Alan needs other, non-health related resources. Suppose instead that Abby is both better off and healthier than Alan. In that case, it may be possible to equalize well-being either via separately equalizing health and other determinants of well-being or via compensating inequalities in health and other resources. As far as I can see, nothing in luck egalitarianism favors equalizing health. Luck egalitarianism offers no general justification for equalizing health.

There is, however, one special case where luck egalitarianism does favor equalizing health. To describe that case, some distinctions are needed. Some health



deficiencies are preventable or curable – call these “remediable” – while others are not. Some health deficiencies are compensable – individuals can be made just as well off by providing them with more of other resources – while others are uncompensable. For example, a diabetic coma is uncompensable, but remediable. Congenital blindness is irremediable but compensable. Tay Sachs disease is neither remediable nor compensable. Mild myopia is both remediable and compensable. Only serious health conditions will be uncompensable.<sup>8</sup>

Consider then a case in which Abby is better off than Alan because he has a remediable and uncompensable health deficiency that Abby does not have. If Alan is not responsible for his health problem, then the luck egalitarian finds this state of affairs unjust. Since Alan’s health problem is uncompensable, the unjust inequality in well-being can only be addressed by eliminating the inequality in health. When health problems are remediable and uncompensable and individuals are not responsible for them, then equalizing opportunity for welfare will often require equalizing health. But this is a special case. In general, luck egalitarianism provides no justification for equalizing health.

Neither is there a luck egalitarian case for equalizing access to health care. There are many ways to equalize opportunity for welfare or to eliminate inequalities in welfare for which individuals are not responsible. Some of these may involve equalizing access to health care. Many will not. Nothing in luck egalitarianism tells us to favor those that involve equalizing access to health care. If one seeks a justification for equalizing health or health care, he or she needs to look beyond luck egalitarianism.

### 2.3.1 *Relational Egalitarian Approaches*

As I mentioned, though all too briefly, near the end of Sect. 2.2, I maintain that egalitarianism is a family of positions motivated by several distinct moral commitments, which are egalitarian in their spirit, rationale, and implications. The most-discussed alternative to luck egalitarianism sees equality as a matter of how individuals relate to one another and consequently focuses on equality of standing, respect, and political power. This “relational egalitarianism,” versions of which one finds in the work of Rawls (1971), Daniels (1985, 2007), Anderson (1999), Scheffler (2003, 2005), and Freeman (2007) is grounded in a moral commitment to equal respect and a political commitment to reciprocity and liberty (in the sense of non-domination). It is not mainly concerned with the distribution of benefits and burdens

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<sup>8</sup> I first drew these distinctions in Hausman (2007). There is more to be said about them. It might be possible to mitigate the inequalities between Abby and Alan that are due to Alan’s irremediable bad health by providing Alan with additional non-health resources or by making Abby otherwise worse off. I count only the former as “compensation.” The fact that one might be able to make Alan and Abby equally well off by making Abby sufficiently miserable does not make Alan’s ill-health compensable.

by state or society or with holdings of goods, except insofar as these impinge on the relations among individuals and threaten to subordinate some to others or to diminish the liberties of some relative to the liberties of others.

A relational egalitarian has an easier time defending policies that mitigate health inequalities than does a luck egalitarian. Though it would be hard for a relational egalitarian to make the case for strict equality, large inequalities in health undermine reciprocity and equal liberty. They render individuals vulnerable to domination by others and diminish their political voice. The case for mitigating inequalities in access to health care is more tenuous, but it is arguable that failing to take steps (or to make it easy for individuals to take their own steps) toward protecting the health of some individuals fails to show them equal respect. The case for equalizing health then rests on the claim that significant inequalities in health, unlike inequalities in goods in general, are crucial to maintaining equality among citizens. Although the effects of ill-health on well-being are often compensable, the effects on the political and social relations among individuals are not readily compensable, and there is consequently an egalitarian case to be made for mitigating health inequalities, even in circumstances in which there are inequalities in well-being that might be aggravated by the lessening of health inequalities.

Norman Daniels' influential and well-known argument for equality of access to health care (1985, 2007) and for equalizing health (2007) is a hybrid that inherits the problems that arise when luck egalitarians try to argue for equality with respect to health and health care, and it ultimately lacks any clear egalitarian rationale. Daniels rejects luck egalitarianism and draws on Rawls' relationally egalitarian *Theory of Justice*. Daniels takes the distribution of health and health care to be governed by generalizations of Rawls' two principles of justice, and in particular by a generalization of a portion of Rawls' second principle, which Rawls calls "Fair Equality of Opportunity." In Rawls' work (which abstracts from all health disparities), fair equality of opportunity obtains when people's social circumstances do not affect their career prospects. This principle diverges from luck egalitarianism, because it is not concerned with the distribution of overall well-being and because it permits career prospects (as well as well-being) to be influenced by an individual's talents and skills, even though individuals are typically not responsible for them.

Daniels points out that if one relaxes Rawls' simplification and allows for the possibility of ill health, then one must recognize that society can influence opportunity not through social resources such as education and personal contacts, but also via health care. Since it would be bizarre to measure the importance of health entirely by its impact on careers, Daniels broadens the notion of opportunity. If individuals  $P$  and  $Q$  have the same talents, then  $P$  has greater opportunities than  $Q$  if and only if  $P$  can access a larger portion of the range of life plans accessible in that society to individuals with these talents than  $Q$  can. Rather than opportunity for welfare, which is what the luck egalitarian is concerned with, or opportunity for careers, which is what Rawls is concerned with, Daniels is concerned with opportunities for carrying out life plans.

Daniels' reinterpretation of the fair equality of opportunity principle requires that those whose talents are the same should have available to them the same range

of life plans. This diverges from luck egalitarianism, since it calls for no compensation for differences in talents, even though individuals are typically not responsible for those differences. But it faces the same difficulties in justifying equalizing health or access to health care that the luck egalitarian faces. Suppose that despite being sick, Annabelle has access to a larger portion of the range of life plans open to someone with her talents than does Alphonse, who has the same talents, comes from a poor family, and is healthy. In such circumstances fair equality of opportunity does not imply that society should attempt to improve Annabelle's health or provide her with better access to health care. One can equalize opportunities by compensating inequalities in health and social advantages or by separately equalizing each; and nothing in Daniels' theory favors the latter (Sreenivasan 2007).

Moreover, in revising Rawls' fair equality of opportunity principle, Daniels undermines its egalitarian rationale. As Daniels emphasizes, his version of the fair equality of opportunity principle requires prevention and treatment of disease or disability, not enhancement of non-pathological traits, even when these traits lead to overall functioning that significantly diminishes opportunity. Non-pathological traits – abilities and skills – define what someone's fair share of the normal opportunity range is, while pathological traits prevent individuals from enjoying their fair share. So fair opportunity, as Daniels interprets it, requires that someone whose short stature is due to a (pathological) growth-hormone deficiency be treated with growth hormone while someone of equal stature who lacks the pathology but who is equally sensitive to growth hormone, need not be treated.

Daniels' position on treatment versus enhancement is obviously inconsistent with luck egalitarianism, and one might wonder how a relational egalitarian could defend it. Crucial to its defense is Daniels' view that fair equality of opportunity requires mitigation of pathologies but tolerates inequalities due to differences in talents. This way of distinguishing the cases thus places a great deal of weight on the distinction between "low talent" and pathology,<sup>9</sup> which, according to the account of health that Daniels relies on, is in fact largely arbitrary.<sup>10</sup> But what reason could a relational egalitarian have to favor remediation or compensation for conditions depending on whether they are due to pathologies or to talent deficiencies? What is relevant appears to be how a condition affects people and the possibilities and costs of remedy or compensation, not whether it is a disease.

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<sup>9</sup>Lesley Jacobs makes a similar point, "Daniels could respond that from the perspective of equality of opportunity, the effects of some natural differences—those originating from differences in talents—are fair, but the effects of other natural differences—those originating from illness and disease—are unfair. The cogency of this response depends on the basis for this distinction" (1996, p. 337).

<sup>10</sup>Daniels adopts Christopher Boorse's view (1977, 1997), according to which health is the absence of disease or pathology. According to Boorse, there is a pathology in some part of an organism when the level of functioning or capacity to function is in the lower tail of the distribution of efficiency of part function. Exactly where to draw the line between low normal and pathological functioning is in Boorse's view arbitrary. There is nothing in theoretical medicine or biology that tells one whether the bottom 5% or 1% or .001% of liver function among some reference class divides the pathological from the non-pathological. For a critique of this view, see Schwartz (2007).

The fact that Daniels' version of fair equality of opportunity principle justifies the disparate treatment of conditions depending on whether they result from pathology or from low talent casts doubt on the principle. In Rawls' hands, the principle had a clear rationale from a relational egalitarian perspective. Allowing social factors such as one's family's wealth and status to influence opportunities for careers and positions fails to show equal respect and facilitates domination of some people by others, while allowing talents and motivation to influence opportunities for careers and positions does not. But why should a relational egalitarian believe that permitting health deficiencies to influence what life plans are accessible fails to show equal respect and facilitates subjugation, while maintaining that permitting talents to have such influence is unobjectionable? From a relational egalitarian perspective, there is no reason to be more concerned about inequalities due to poor health than there are to be concerned about inequalities due to differences in talents. Daniels' version of fair equality of opportunity has no relational egalitarian rationale.

If Daniels were instead to regard inequalities in opportunities to achieve life plans due to talents as just as unacceptable as inequalities due to poor health, then his view would become a form of luck egalitarianism where the object of distributional concern consists in the range of accessible life plans rather than well-being. The resulting view would have much the same rationale as more standard variants of luck egalitarianism; and it would be no better able to justify equalizing health or access to health care.

### 2.3.2 *Justifying Equality of Health and Health Care*

Most luck egalitarians have been concerning about inequalities in overall well-being for which individuals are not responsible. Relational egalitarians have been concerned about differences in moral standing, political influence, and extent to which some individuals can dominate others. Other versions of egalitarianism have, I have suggested, been concerned about impartiality or solidarity. If health inequalities or inequalities in access to health care are of egalitarian concern, it must be because of their bearing on inequalities in well-being for which individuals are not responsible, their implications for the relations among citizens, whether they conflict with the impartiality and fairness required of the state, or what they imply about solidarity. Since equalizing health or equalizing access to health care is not a necessary condition for achieving the goals of the luck egalitarian and indeed sometimes impedes those goals, luck egalitarians cannot justify the claim that health inequalities and inequalities in access to health care are *prima facie* unjust. Relational egalitarians, in contrast, can make a case, but not in the way that Norman Daniels hopes.

Are there then no other grounds upon which to condemn health inequalities and inequalities in health care? In addition to a variety of not altogether convincing practical political considerations, I think that two arguments can be made. The strongest egalitarian criticisms of inequalities in health and health care rest, I think, on the values of solidarity and reciprocity, which, as I argued above, I take to be

egalitarian values. Very few of us are never sick and in need of aid, and collectively we are able (to varying extents) to protect, cure, or comfort those who are stricken. By guaranteeing that we will be there to assist one another in times of need, we recognize our common vulnerability and affirm our common humanity. Though some health care differs little from the personal services one might purchase at a private spa, the protection of life and basic functioning and the alleviation of physical and mental suffering have a special significance, since everything of value in human life depends on them. To permit some to suffer, to die, or to be disabled needlessly is to fail to embrace them as partners in the human enterprise. This is, in rough outline, what I believe to be the central egalitarian basis for condemning inequalities in health and access to health care.

A second reason to object to inequalities in health and access to health care rests on benevolence rather than equality: As a matter of fact, inequalities greatly lessen total well-being and involve enormous suffering. Relatively small transfers of resources to the impoverished to improve nutrition and sanitation and to provide treatments for common diseases would diminish inequalities in health and at the same time limit suffering and increase total well-being both directly and through improvements in the labor force.<sup>11</sup> Though one can easily imagine circumstances in which those who are worse off are not badly off and in which inequalities in health and health care would increase rather than decrease total well-being, those circumstances are not ours. This argument for the egalitarian conclusion that we should lessen inequalities in the distribution of health and health care does not rest on any egalitarian premises, but it is none the worse for that. Indeed, given how contentious egalitarianism is, the possibility of making non-egalitarian arguments for diminishing inequalities in health and health care should be welcomed.

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<sup>11</sup> One might question this claim on the grounds that improving the health of those who are worst off would lead to a population explosion which in the future would diminish total well-being. The tragic scenario suggested by this objection might come to pass. But the future is too uncertain to justify a certain present loss of well-being.

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