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Inequality, Avoidability, and Healthcare

On Shlomi Segall, *Health, Luck, and Justice*. Princeton: Princeton University Press, 2010.

Introduction

In the thirty years since the publication of Ronald Dworkin's "What is Equality" (1981) luck, choice, and responsibility have come to the fore in philosophical discussion of distributive justice. Luck egalitarianism, which aims to reduce or eliminate the effects of luck, making distributions sensitive to individual responsibility, has been a particular focus of the debate (see Arneson 1989; Cohen 1989). Over a similar time period health and healthcare have come to be a major area of application for theories of distributive justice, most notably in Norman Daniels' (1985, 2008) Rawlsian approach to health and healthcare based on a fair equality of opportunity principle (FEOP). It is overdue, then, for these two important developments to be brought into contact in systematic fashion. This is precisely what Shlomi Segall's *Health, Luck, and Justice* sets out to do, with considerable success.

The book is arranged into three parts. The first part focuses on healthcare, the second part on health 'proper', while the third and by far the shortest part focuses on the connection between political borders and distribution of health and healthcare. In addition to the usual introduction and conclusion there is an opening chapter that stands apart, as it were, setting out "a working definition of the theory of justice to be employed throughout the rest of the book" (2). Although, like all eleven chapters, relatively brief, the chapter contains discussion of two neglected but significant topics in the definition of luck egalitarianism, and deserves special attention. This chapter will be the focus of the first two sections. I move on to consider Segall's treatment

of just healthcare in the third section; considerations of space prohibit giving the second half of the book the attention it deserves, though some of the arguments there are briefly mentioned. While I primarily focus on points of disagreement with Segall, I hope it is clear throughout how much I have gained from reading what is a thoroughly researched, timely, and insightful book.

Inequality

Segall proposes that the following formulation captures "the proper luck egalitarian sentiment":

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. (13)

This departs from the standard understanding of luck egalitarianism in two ways: I consider the first in this section, and the second in the next section. First, then, it makes it a necessary condition for injustice that an inequality is present. If no inequality is present, no individual is worse off than others, so there can be no injustice on Segall's formulation. By contrast, the usual luck egalitarian position is that even equalities can be unjust where they have come about in a certain way.

I had barely considered the view that equalities and inequalities should be treated asymmetrically in the way Segall suggests, so I was surprised to find that well-known statements of luck egalitarianism suggest this position. Segall cites Larry Temkin and the influential critic Susan Hurley on this score, but even Richard Arneson and G. A. Cohen, who Segall cites as adherents of the symmetrical view (14–15), sometimes appear to advocate the asymmetrical view. Arneson (1990, 177) writes that his "ideal of equal opportunity for welfare is roughly that other things equal, it is morally wrong if some people are worse off than others through no fault or voluntary choice of their own," without saying that it is, ceteris paribus, morally wrong if some people are as well off as others in spite of making much more prudentially or morally sound choices (see also Arneson 1989, 85). Similarly, Cohen (1989, 916) writes that "what currently strikes me as the right reading of egalitarianism [is] that its purpose is to eliminate involuntary disadvantage, by which I (stipulatively) mean 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." There is no mention here of the elimination of involuntary equality. While there is ample evidence that Arneson's and Cohen's settled positions do not require inequality for redistribution to be appropriate, Segall has done political philosophers, including myself (see Knight 2009, 1), a service in encouraging us to think harder about our statements of luck egalitarianism.

It is a different issue whether we should accept the first part of the reformulation of luck egalitarianism. Segall suggests that this is appropriate as the standard view which treats equality and inequality symmetrically is better understood as a kind of desert view (16–18). It seems clear that a desert-sensitive account of justice will require that, where two individuals are differentially deserving, an equal outcome is an unjust outcome. But I do not see how the standard luck egalitarian view can be thought of as a kind of desert view. Arneson (1989, 84) is especially explicit that "there need be no grounds for finding fault with any aims or actions" of any individuals who lose out under luck egalitarianism. A luck egalitarian who bases distributions on the outcomes of voluntary actions may be willing to concede that two individuals are equally deserving – have made decisions that are equally good from a moral or prudential perspective, say – yet insist that, as one individual's decisions have (undeservedly) worked out better, he is entitled to a greater distributive share. Cases such as this, where option luck shapes the consequences of actions, show that it is a misunderstanding of conventional luck egalitarianism to equate it with desert. Unless a particular form of luck egalitarianism states otherwise (Arneson 2011 mentions such a view), it will distribute in a way that ignores the moral or prudential desert of individuals.

One objection to Segall's proposal supposes that "Jack and Jill occupy identical positions in a firm, but where Jill puts in twice as many hours (and, accordingly, let us also assume, produces twice as much output). Yet, at the end of the month Jack and Jill receive an identical pay check" (18). Against the suggestion that an injustice has occurred here, Segall notes, fairly, that there may be no wrong here were it the case that these terms were known in advance, as in a Kibbutz. But what about the more difficult case, where such terms are not known in advance? Here Segall urges that "if the state of affairs (her [Jill] getting as much as Jack despite working harder) is unjust, it is so because she has been discriminated against, or because her legitimate expectations have been frustrated" (19). On Segall's view, then, it is this

discrimination which is constitutive of the injustice of the case, and the equality itself is "only potentially indicative of it."

I do not believe that this defence succeeds. To see this we need simply change the case so that Jill and Jack work equally hard, but this time Jack is given a much larger paycheck than Jill. If it is true that the previous case's equality is only indicative of injustice (in the form of discrimination or frustration of legitimate expectation), rather than itself unjust, then it is true that the new case's inequality is also merely indicative of injustice, rather than being itself unjust. But the inequality in the new case is patently unjust according to luck egalitarianism, as it is an inequality deriving from identical exercises of responsibility. The fact that it has come about as a result of discrimination merely proves that Jill has suffered brute bad luck, and is entitled to redress. Similarly, in the original case, the fact that the equality is generated by unjust discrimination does not somehow prevent it from being a matter of bad brute luck for Jill. To maintain the view that this equality does not need redress because it derived from discrimination one would, for the sake of consistency, have to maintain that inequalities derived from discrimination did not need redress, and that is something that no luck egalitarian (including Segall) can allow.

An objection to Segall's position which lacks the distracting involvement of discrimination can be made by revising a well known example from Will Kymlicka (1990, chap. 3). Suppose that two people of identical initial talents and resources make very different choices. One works hard planting and tending vegetables, in the reasonable expectation that they will be able to sell them at market for a good price, while the other spends all day playing tennis. Within a year, the gardener has a valuable crop which, once sold, will make his welfare level much higher than the tennis player. Now suppose that some wholly unforeseeable catastrophe befalls the gardener. Perhaps his crop – specially selected for its resistance to all known diseases – is devastated by a new and particularly virulent strain. Furthermore, this same disease destroys the weeds that have recently been making the tennis court next door unplayable, and so through sheer luck the tennis player's welfare level increases at the same time as the gardener's decreases, so that they will have identical welfare levels for the foreseeable future.

I submit that egalitarian justice requires that we redistribute from the tennis player to the gardener, and that it is a powerful objection to the idea that inequality is a necessary condition for egalitarian redistribution that such

a condition precludes a transfer to the spectacularly unfortunate gardener from the lucky tennis fanatic. In refusing such redistribution, Segall allows distributions to be much more dependent on brute luck than the core intuitions of luck egalitarianism permit. Indeed, I would argue, as Kymlicka (1990, 74) and Cohen (1989, 911) do, that giving people like the gardener only as much as people like the tennis player amounts to treating them unequally, given the morally significant difference in their actions.

Segall's position actually contradicts core luck egalitarian ideas even prior to the tragedy which befalls the gardener. It is actually indifferent to the inequality which stood between the gardener and tennis player, and believes that the brute luck–generated inequality which followed it is just as good from the perspective of justice. So the problem is not just how the position handles a case where a brute luck equality is already present, but rather how it handles *any* case: it is just as likely to upset an inequality resulting from option luck as it is to keep it in place.

The position is, then, indeterminate in many cases. The only place where it will prescribe a specific outcome is where either equality or option luck inequality is impossible: wherever both are possible, it offers no guidance as to which we should prefer. Some might see this level of indeterminacy as a problem in itself, but it poses a special problem when combined with the luck egalitarian aversion to luck having an influence on distributions. Wherever equality or option luck inequality are possible, it will, for every individual, be a matter of brute good or bad luck whether the distribution of the two which favours them has been selected by the distributive agency. In one gardener/tennis player case equality might be chosen, and in another identical gardener/tennis player case option luck inequality might be chosen. This subjects the gardener in the first case to brute bad luck relative to the gardener in the second case, and the tennis player in the second case to brute bad luck relative to the gardener in the first case. This source of brute luck is not even present under outcome egalitarianism, which is determinate, so Segall's proposal violates luck egalitarian ideals in one way which even outcome egalitarianism does not.

There is a final objection to the proposal that inequality is a necessary condition for injustice which is, perhaps, the strongest of all. This is because it does not rely upon the idea that some inequalities are better than some equalities. Segall provides no criterion for distinguishing between equal distributions – for saying that one is more just, or less unjust, than the other.

This has the strongly counterintuitive result that we should be indifferent between an equality that results from brute luck and one which results from option luck. If we could intervene in the labour market, either to make all act like the tennis player, or to make all act like the gardener, with the distribution equal either way, Segall's view gives us no reason to prefer one intervention to the other. The view says, in effect, that, when it comes to equalities, making individual distributive shares proportional to what individuals have brought about, through their own decisions and toil, is no better a distributive criterion than tossing a coin. Even if one is committed to the view that egalitarians place a value on equality that cannot be overridden by responsibility considerations, as Segall is, one should still be able to use responsibility considerations as a tie-breaker, where equality is assured. As Segall's position does not even give responsibility this role, it amounts, in one regard, to a stronger rejection of brute luck neutralization than is necessitated by a commitment to equality.

The idea that inequality is a necessary but not sufficient condition for redistribution is interesting and quite original. But given the objections presented above, relating to its refusal to endorse option luck inequalities, its introduction of a new kind of brute luck, and its refusal to prefer option luck equalities over brute luck equalities, it seems clear that it does not capture 'the proper luck egalitarian sentiment'. It is, rather, a halfway house between luck egalitarianism and outcome egalitarianism. That is not necessarily a bad thing, but the view is in need of a strong independent justification as it cannot rely on the arguments of luck egalitarians or outcome egalitarians. From the luck egalitarian side it can be asked: if we should neutralize brute luck when it results in inequalities, why shouldn't we neutralize it when it results in equalities? From the outcome egalitarian side it can be asked: if we think that equality is important enough that we should allow brute luck–created equalities to stand, why should we let option luck–created inequalities stand?

Avoidability

The second departure from standard definitions of luck egalitarianism concerns the issue of how distributions come about. Luck egalitarianism usually requires that an individual is agent responsible for bringing about some outcome, in order for that outcome to influence that individual's distributive

share. Segall replaces this agent responsibility condition with a 'reasonable avoidability' condition. Accordingly he treats brute luck not as the inverse of agent responsibility as on the standard view but rather as the "*outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not to avoid, in the case of omissions)*" (20).

This formulation is intended to deliver luck egalitarianism from several counterexamples that the standard, responsibility-focused form of luck egalitarianism has been subjected to, and to do so without violating the core ideas of luck egalitarianism. By these measures the formulation is a success.

To take the latter measure first, there is a considerable degree of overlap between responsibility and reasonable avoidability. In many of the most intuitively significant cases, the presence of agent responsibility goes hand in hand with the presence of reasonable avoidability, and the absence of responsibility is accompanied by the absence of avoidability. For instance, where an individual is unproblematically agent responsible for gambling, it is likely also that they could have reasonably avoided the gamble. More clearly still, where an agent is clearly non-responsible for their disability, on account of it being congenital, it is also the case that the disability could not be reasonably avoided. Furthermore, while responsibility and avoidability come apart in some cases, it's not prima facie implausible that it is in just those cases that luck egalitarianism should abandon responsibility. Some odds are so good that it would be unreasonable to expect someone to turn them down, and it might still be fair to compensate the rational gambler when they have bad luck despite the fact they are responsible for accepting the odds. The literature certainly suggests that luck egalitarianism is not tightly bound to agent responsibility. Writers such as Dworkin (1981) and John Roemer (1993) have often been identified as luck egalitarians even though they do not base distributions on agent responsibility, and even theorists such as Arneson and Cohen who give responsibility a central role often describe their positions with terms such as control, choice, and fault, which are about as close to reasonable avoidability as they are to responsibility. Indeed, Cohen (1989, 908) comes close to Segall's suggestion when he writes that "a person . . . suffers from (bad) brute luck when his bad luck is not the result of a gamble or risk which he could have avoided." In short, I do not think that Segall's second departure from traditional luck egalitarianism is inconsistent with the core luck egalitarian ideas in the way that his first departure – the asymmetrical treatment of equality and inequality – is.

But why modify luck egalitarianism in this second way? One counter-example that responsibility-sensitive egalitarianism has faced involves people who are responsible for living in areas that are known to suffer from a risk of earthquakes, and which are indeed struck by earthquakes (20–21). Another relates to women who are responsible for becoming pregnant, and so require medical treatment during the pregnancy and delivery. And others concern firefighters responsible for entering the burning building which injures them, and caregivers who are responsible for choosing to care for relatives at the cost of their careers and social lives (22–23). In all these cases, at least some readings of luck egalitarianism appear to harshly rule out socially-funded assistance as the people concerned are responsible for bringing about the need for assistance. But Segall notes that, in every case, it would have been unreasonable to expect the agents to have acted otherwise – to expect people to not live in certain parts of California on account of a small earthquake risk, to expect women not to become pregnant, to expect firefighters not to enter burning buildings, and to expect daughters to not look after their disabled and elderly mothers. Furthermore, we retain luck egalitarianism's feature of denying assistance in cases of imprudence, as we would not assist someone who camped on the side of an erupting volcano, or who burned themselves jumping through a ring of fire. The barrier for imprudence is effectively raised so that disadvantaged persons who have acted reasonably are not left to fend for themselves.

These cases suggest that there is strong intuitive support for the reasonable avoidability proposal. It may be a significant step in the right direction. Nevertheless, I have four comments which I believe should as a minimum motivate some refinement of the proposal.

First, as it is stated in the book, the reasonable avoidability proposal appears to be a black or white thing: some bad outcome either was reasonably avoidable, or it was not. While I can see that that might make application easier, in many cases this will have counterintuitive results. For instance, a known earthquake risk is something that is likely to affect real estate prices in parts of California. Someone may choose to move to one of these areas precisely because real estate prices are lower, while a more risk averse person may prefer to live somewhere with no history of earthquakes elsewhere on the West Coast and pay higher prices. If the less risk averse person's home is then struck by an earthquake, it is wrong to say that this disaster was, for him, *as* unavoidable as a strike on the more risk averse person's home would have

been for her. After all, the more risk averse person decided against taking the steps to avoid this kind of disaster that the less risk averse person took on. The fuzzy notion of reasonableness disguises the fact that there are various degrees of avoidability, with moral implications. Intuitively, and all else being equal, a disadvantage which was more avoidable should give entitlements to less assistance than a disadvantage which was less avoidable.

Second, Segall openly admits that " 'unreasonableness' is an ambiguous notion, and that obviously has the weakness of leading to indeterminacy" (21). While he goes on to claim that "the formulation's ambiguity could be a source of strength" (22) I am not so convinced that an example advanced in support of this shows as much. Segall mentions that in some extreme circumstances, a one child policy similar to China's might be a "reasonable one to pursue," and so parents might not receive egalitarian assistance for having a child beyond the first (assuming the child was not in danger). While that does not strike me as a strange claim in general, I am not sure that it really follows from the reasonable avoidability criterion. The question is not whether the policy is reasonable but rather whether the parents could reasonably avoid the second or third child. To be sure, the legislative background is one thing that affects reasonable avoidability, but so too might deeply held cultural beliefs. Ambiguity might be an advantage in that it allows for changes in the legal backdrop, but it is a disadvantage where it requires distributions to be based on an assessment of whether it is reasonable to expect someone to act in accordance with the law even where that is both illiberally invasive of family life and contrary to religious conviction. It is hard to see how to make such an assessment without filling in 'reasonable' with a fairly comprehensive account of morality – a huge task in itself.

Third, in other examples Segall interprets reasonable avoidability in ways that seem to commit it to injustice. For instance, where there is no especially strong connection between a caregiver and a cared-for family member, so that others might provide the treatment, the caregiving can be seen as praiseworthy but reasonably avoidable, and compensation denied in spite of the employment and socializing cost (23). This can perhaps be handled by appealing to the aforementioned ambiguity of reasonableness. It is not obvious to me that we have to say it is reasonable to expect someone to avoid caring for a relative even if alternative provision is available. More difficult is Segall's suggestion that, where a woman has been warned of medical complications should she become pregnant, "if she does opt for the

pregnancy, then it would not be unreasonable . . . to see her as forfeiting a claim to treatment on grounds of egalitarian distributive justice" (22). For some severity of complication, it surely would be unreasonable for this woman to choose to become pregnant, but I don't think that closes off our egalitarian concern with her plight. From a standard luck egalitarian perspective such a woman is entitled to treatment, for she is disadvantaged relative to other pregnant women on account of the brute bad luck of having this medical condition (assuming she has not caused her condition). This seems to be a counterexample to reasonable avoidability of comparable strength to the counterexamples to other forms of luck egalitarianism mentioned earlier. Of course, it is not decisive, but it does show that reasonable avoidability does not have all the intuitive phenomena its own way.

Finally, there is a cost associated with any use of reasonableness as a criterion for distribution. Describing his standard, prudential-choice form of luck egalitarianism, Arneson (1990, 176) makes this observation:

the judgment that it would be inappropriate to transfer resources to restore equality of welfare … need not involve any claim that the individuals making choices that generate inequality are behaving unreasonably. No imperative of practical reason commands us to maximize our personal welfare.

On conventional luck egalitarian views like this, those who are disadvantaged through their own actions are not thereby stigmatized as having failed to be reasonable, because it is not assumed that reasonable persons maximize their welfare. By contrast, Segall could be interpreted as saying that some people are not due compensation for their disadvantages because they fell short of what could be reasonable expected of them – they refused to avoid performing the action that has disadvantaged them even though they could be reasonably expected to avoid performing it. The reasonable avoidability criterion thereby appears to add insult to injury by telling the unassisted disadvantaged that they are to blame for the state they are in. This is a disadvantage relative to conventional luck egalitarianism, at least of the prudential sort, which does not have these moralizing implications.

Healthcare

Segall's discussion of healthcare begins, appropriately enough, with a critique of Daniel's Rawlsian account of just healthcare. It is claimed that, as Daniels' account is motivated by FEOP for not just careers (as with Rawls)

but life plans (which include non-career projects), it has two unfortunate implications. First, since the rich will generally have greater opportunities than the poor, selective provision of healthcare such that only the poor receive it may be the best way of securing an overall equality of opportunity, contrary to the common thought that healthcare should be universally provided. The second and most distinctive part of Segall's contribution to criticism of Daniels' work is the suggestion that, as the elderly generally do not have life plans in the relevant sense, Daniels cannot justify healthcare for the elderly.

I am not entirely convinced by this second move. It turns upon defining the relevant kind of life plan narrowly, so that "taking it easy once one retires and reading lots of novels" doesn't count as a life plan. This is justified on account of the fact that the Rawlsian FEOP guarantees (roughly) equal opportunities only for those of equal talent, and "talents – equal or not – do not come into play" in the broader, retirement-inclusive type of life plan (35). But talents of a certain sort surely do come into play when a retirement plan is being pursued. Clearly, more talented readers will be able to read more novels than less talented ones, and it might even be the case that those of a placid disposition will be better able to take it easy than livewires and worriers. While "these pursuits do not constitute competitive positions," and so are "contrary to the rationale behind Rawls's FEOP" (35), it does not take much of a leap to suppose that, as Daniels departs from Rawls in being concerned with projects such as publishing a non-profit book of one's poems, he must allow that some life plans are distributed according to FEOP despite being noncompetitive. Indeed, Segall says that the extension of FEOP to cover not just careers but also life plans is justifiable on the basis that "major rewards also follow from pursuing the type of life plan we choose to lead" (34), and this basis makes no reference to competitiveness. Although I am not entirely convinced by Segall's critique of the Rawlsian approach to healthcare, he does certainly push that approach to its limits, critically engaging with Daniels on Daniels' terms.

The value of the discussion of democratic equality, the other 'responsibility-insensitive' account of healthcare considered in chapter 2, is rather different, in that this is one of the first attempts to draw an account of healthcare out of a view mostly developed (at least in its recent 'resurfaced' [37] form) in response to luck egalitarianism by writers such as Elizabeth Anderson and Samuel Scheffler. The shape of the criticism is different also, with the focus

of the numerous objections being not the internal consistency of the view but rather its inconsistency with considered moral judgments. One objection of note is the suggestion that, as democratic equality is just concerned with providing a distribution of goods sufficient for equal citizenship, equal involvement in civil society, and protection from oppression, it is contingent on the presence of certain social and political forms. Segall specifically says that, where there is no democratic regime in place, healthcare will receive no justification on democratic egalitarian grounds (41), but I think other conditions might also have to be satisfied – for instance, that there is neither a (nondemocratic) civil society nor any risk of oppression that might be averted by medical assistance. Even revised in this way, the objection is a powerful one.

Finding responsibility-insensitive accounts wanting, Segall moves on to consider a position he terms 'all-luck egalitarianism'. Rather than just correcting the effects of brute luck, as standard luck egalitarianism does, this view corrects the effects of both brute luck and option luck. Even where an individual is responsible for (or could not have reasonably avoided) taking on some risk, it is, on this view, appropriate for the effects of that risk to be pooled among all persons taking similar risks, so that the 'losers' (for example, smokers who develop cancer) receive healthcare at the expense of the 'winners' (for example, relatively healthy smokers). Segall argues that this view, applied consistently, would counterintuitively prohibit gambles and, worse, permit a form of levelling down, as the perceived unfair inequality between winners and losers could just as well be met by lowering the well-being of the 'winners'.

I feel the attraction of all-luck egalitarianism, and believe Segall is a little quick with it. In chapter 8, in response to a similar levelling down objection, Segall defends a form of luck egalitarianism that endorses prioritarianism (that is, the view that priority should be given to the worst off in absolute terms) rather than strict egalitarianism (which reduces relative variations in advantage). It therefore seems unfair not to consider a prioritarian form of all-luck egalitarianism that sees the unfairness between option luck winners and losers as issuing in the fact that the results of the option luck are not distributed to the maximal benefit of the worst off risk takers. That thought notwithstanding, chapter 3 is one of the best of the book, shedding light on a very recent but widespread trend in egalitarian political philosophy that has largely gone unnoticed.

With the critique of rival approaches complete, Segall is in a position to describe and defend his own approach to justice in healthcare. First he seeks to establish pluralism as a viable weapon in the luck egalitarian arsenal, and then weds luck egalitarianism to the view that basic needs must not go unmet. This latter move is intended as a response to the 'abandonment objection' raised by Anderson, Scheffler, and others, which holds that luck egalitarianism unfairly leaves those who are severely disadvantaged through their own actions (such as driving recklessly, without insurance) to their fates. I have to admit to a certain disappointment that, in a work that fine tunes luck egalitarianism in such ways as associating brute luck with the absence of reasonable avoidability and replacing its strictly egalitarian component with a prioritarian one, and which considers such nuanced luck egalitarian responses to the problem of some people's basic needs going unmet as all-luck egalitarianism, the ultimate solution to that problem is simply to add to luck egalitarianism a principle requiring that basic needs always be met. As Cohen (1989, 921) comments upon using 'semitheory' to describe his own luck egalitarian account, "it is perhaps too close to the intuitive phenomena to merit the name 'theory.'"

I am also very far from convinced by the claim that "the abandonment objection points to the sort of case . . . where luck egalitarian distributive justice is indeterminate" (65). Where agents are responsible for their (reasonably avoidable) joyride and seriously injure themselves, it is uncontroversial that they are disadvantaged on account of option luck and that luck egalitarianism therefore prohibits assisting them at society's expense *in the name of distributive justice*. The argument for Segall's position seems to be the argument in chapter 1, according to which brute luck equality, such as that between a joyrider who has been treated at public expense and a non-joyrider, is not unjust, but I hope to have shown earlier that this is contrary to luck egalitarianism. In chapter 4 Segall does make the interesting point that distributive justice is only part of justice, and justice only part of morality, but that does not at all go to show that there is something *internal to luck egalitarian distributive justice* that makes it indeterminate in its treatment of option luck. If, as Segall holds, luck egalitarian justice is part of morality, and all-things-considered morality requires us to assist the needy negligent, that must be because some other part of morality trumps or outweighs the very determinate judgment of luck egalitarianism to disregard the needy negligent. In one place Segall appears to get this right by writing that "the

concern for basic needs . . . overrides luck egalitarian distributive justice" (76). This less ambitious claim has a much firmer footing.

The fifth and final chapter of part I aims to show how Segall's luck egalitarian account can defend a universal system of healthcare. Such a system is universal not just in providing treatment to all those who require it, but also in preventing potential patients from exchanging their entitlement to free medical treatment for a cash equivalent. This second sense of universal has obvious importance to proponents of universal healthcare schemes, for without it important sources of funding – those who prefer private healthcare or no healthcare at all – are lost. Segall argues that even the welfare luck egalitarian will not allow the ill to opt out and claim the cash equivalent as "someone who is ill due to bad luck is entitled thereby to have that bad luck reversed through medical treatment. She does not, in contrast, have an entitlement to the cash equivalent of what it takes to neutralize that bad luck disadvantage" (85). While this is true so far as it goes, it does not really establish that persons may never trade medical aid for cash. A welfare luck egalitarian is only concerned with illness insofar as it is a welfare deficit for which the victim is not responsible (or could not have reasonably avoided), and luck egalitarianism does not limit itself to alleviating that deficit through medical means. If giving the ill person cash will more assuredly or comprehensively correct their welfare deficit than medical treatment, then I do not see how the luck egalitarian can insist upon medical treatment. Prohibiting this kind of medical opt out would amount to leaving some easily neutralizable brute bad luck untouched. Even so, the discussion of the normative underpinnings of this significant but underexplored aspect of universality has many merits, not least the demonstration that Daniels' view is, on account of its extension of FEOP to include life plans, unable to resist the provision of a Stradivarius to a keen violinist, though this might come at the cost of their mobility.

One distinctively luck egalitarian feature of the discussion of the first, provision-based universality is that it mandates passing part of the cost of meeting basic needs to imprudent patients. While this feature is itself clearly luck egalitarian in nature, I find it curious that Segall believes the best application of this feature is ex ante, as where insurance for risky activities is compulsory. The chapter does not seem to address the objection that this would make not only the needy negligent, but also the non-needy negligent, pay for treating the needy negligent. Of course, from an all-luck egalitarian

perspective, that is an attractive outcome, but on the more standard luck egalitarian view that constitutes treating the non-needy negligent unfairly, as they have to pay for other people's bad option luck. Noting the similarity with all-luck egalitarian policy proposals, Segall comments that "the justification offered is considerably different" (75), but the only justifications advanced seem to be the practical advantages that it is easier to make ex ante insurance progressive on wealth, that patients will not be deterred from receiving treatment where they have already paid, and that medical staff are separated from decisions about culpability where payments are already taken (77–78). Desirable as it is for patients to choose to be treated, it is hard to see why luck egalitarianism would prefer that they make that choice, and it would take no great ingenuity to design an ex post system of payments administered by non-medical staff and progressive on wealth – for instance, one especially focused on skiing-related injuries. Even taken together these advantages surely can not, from a luck egalitarian perspective, outweigh the huge disadvantage of effectively taxing a large number of persons (all non-seriously injured skiers in a season, say) with good option luck in order to assist a much smaller number of persons (the broken boned minority) with bad option luck.

Segall may be able to respond by suggesting that this transfer will tend towards creating outcome equality, and a brute luck equality such as this is no worse than an option luck inequality on his view. But this would still not explain why we were targeting risk-takers for ex ante payments. From Segall's non–all luck perspective, skiers who do not injure themselves are no more liable than non-skiers to compensate skiers who do injure themselves. If the benefit of ex ante transfers is the creation of equality, we can better achieve that goal by making ex ante transfers from everybody, not just from risk-takers. It is true that Segall may still be able to defend compulsory ex ante insurance for risky activities – and, indeed, the prohibition on cash compensation for opting out – by reference to other values, but insofar as that is successful, it is in spite of luck egalitarianism, not because of it.

Concluding Remarks

Health, Luck, and Justice is not only the only monograph on luck egalitarian approaches to health policy, but also one of the very best sustained studies

of the contribution political philosophy can make to bioethics. Segall has, I believe, established luck egalitarianism as a contender among approaches to health and healthcare, while contributing to our understanding of luck egalitarianism itself in, for example, his suggestion that disadvantages which were not reasonably avoidable should be compensable, and his analysis of all-luck egalitarianism.

One remaining and quite general comment I have is that the book does surprisingly little to mount a positive case for a distinctively luck egalitarian approach to healthcare, but rather mostly focuses on showing that luck egalitarianism is not subject to the common criticism that, in taking individual responsibility as central, it takes a right-wing stance that is blind to social injustice. In the conclusion Segall says that, if his account "is in any way attractive, then it may provide luck egalitarians with a response" to this criticism (174). There is much effort put into showing that luck egalitarianism can handle cases of medical need in the way suggested by traditional left-wing thinking, but little is said to show the distinctive benefits of luck egalitarianism as an approach to distributing healthcare. For instance, I think the fact that luck egalitarianism will make those who are responsible for (unavoidably) putting themselves in harm's way pay for the resulting medical treatment, where they can afford it, makes luck egalitarianism more morally appealing than more conventional liberal views such as Daniels' and Anderson's, which allow risk-takers to indulge in moral hostage-taking (see Keller 2002). Similarly, luck egalitarianism's willingness to assign scarce organs to those who are not responsible for damaging their original ones in preference to those who are so responsible seems to me to make luck egalitarianism more morally plausible than views which will disregard culpability, even where it is not in dispute, and even where a tie-breaking criterion is needed. Positive arguments of this sort are not advanced in the book, though something like the first seems to be assumed in chapter 5.

In fairness, it may be that Segall, like many writers, is simply not so hard-nosed on individual responsibility, and is willing to give the values that run counter to these luck egalitarian ideas a more prominent role in his pluralistic position than they have in my view (see Knight 2009, chap. 6). In other words, he may think that some of what I call distinctive advantages of luck egalitarianism are not really advantages at all, and possibly even excesses that need to be curbed. It should also be said that, when Segall moves away from health*care* in the second half of the book, the distinctive appeals of

luck egalitarianism as an approach to health simpliciter – for instance, as providing a rationale for distribution of enhancements to full normal health (chapter 9) and as mandating assistance to those with the brute bad luck of being born in poor and unhealthy nations (chapter 11) – are brought out very nicely indeed. It may be that, on Segall's view, the positive advantages of luck egalitarianism become apparent where it is applied to the more radical enterprise of distributing health.

Although I approached the book with a broadly similar (that is pluralistic luck egalitarian) stance to Segall's, I found the arguments took many unexpected turns, though never in such a way as to leave me lost. Any political philosopher or bioethicist will come away from the book knowing much more about both luck egalitarianism and philosophical approaches to health and healthcare.

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