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Taxing unhealthy choices: The complex idea of liberal egalitarianism in health

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ABSTRACT

Under the heading of liberal egalitarianism, Cappelen and Norheim present a novel approach regarding how we are to assess health disadvantages reflecting people's choices. It seeks to uphold a commitment to principles of responsibility and egalitarianism, while avoiding objections that such theories fail for humanitarian, liberal or fairness reasons. The approach draws a line between those of such diseases which are life-threatening, costly to treat relative to income or undermining important political capabilities and those which are not. For the latter kind, their approach allows for co-payment, whereas the former requires a different measure. Here, the authors maintain that unhealthy choices should be taxed and treatment offered equally to everyone without further cost. While this is an interesting approach, it faces important difficulties. It consists of two elements, which can come into tension with each other when concerns for severity of disease and personal responsibility recommend the employment of different elements. Furthermore, as it stands, the approach is incomplete because it seems unable to address important non-monetary shortages, such as the organ shortage. Finally, it is not apparent how the approach is able to address the significant ways in which social circumstances influences people's choices in health and their ability to stay healthy.

1. Introduction

Contemporary policy debates often emphasise the relationship between lifestyle and poor health outcomes, suggesting that this relationship may affect how we evaluate inequalities in health [1–3]. This has brought forth the notion of personal responsibility, understood as the idea that we should give lower priority to those, who are deemed responsible for their own medical needs [1–17], and the developments of a series of attempts to introduce personal responsibility in health [18–24]. But it has also spurred much criticism of such responsibility-sensitive approaches [17,25–34]. Three objections have been very prominent. A *humanitarian objection* arguing that that responsibility-sensitive policies are too harsh on people, who are indeed responsible for their plight. A *liberal objection* pointing out how bad health can limit people fundamental political capabilities. A *fairness objection* which stresses that responsibility sensitive policies end up tolerating many influences on health which do not reflect people's exercises of responsibility. Explicitly acknowledging the strength of these objections Cappelen and Norheim have published two influential articles which explore and develops an interesting responsibility-sensitive approach [35,36]. Drawing on their two articles: 'Responsibility in health care: a liberal egalitarian approach', [35] and 'Responsibility, fairness and rationing in health care' [36], this article presents their liberal egalitarian approach and points to some difficulties and ambiguities within it. A central element in liberal egalitarianism is the idea of taxing

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unhealthy life-style choices with the purpose of providing treatment for free to those who fall ill from such choices. As such taxes are a frequent measure of raising revenue [37], discussing this policy measure and the reasons provided for it has broader interest.

2. Material and methods

This section presents the liberal egalitarian approach based on the two articles and sets the scene for how it is to be evaluated. According to the authors liberal egalitarianism consists of two parts. A *principle of responsibility*, stating that people should be held accountable for their choices [35,36] and a *principle of equalisation*, stating that individuals who make the same choices should also have the same outcome [35,36].[1] In two articles they explore different aspects of what such a view may commit us to in relation to personal responsibility in health. In 'Responsibility, fairness and rationing in health care' they argue that there is a 'limited but significant role to personal responsibility' in decisions regarding diseases which reflect a person's exercise of responsibility, but are assumed to not have any of the impacts suggested by the three objections presented above [36]. In 'Responsibility in health care: a liberal egalitarian approach' they propose an interpretation of the principle of responsibility, which allows for personal responsibility even when people could end up as badly as depicted by the humanitarian, liberal and fairness objection respectively. In the end we are offered two policy measures, each applicable to one of two sub-categories of diseases influenced or caused by people's choices [35,36]. One measure involves taxation of risky choices, while the other allows for out-of-pocket-payment for treatment of some diseases.[2] The liberal egalitarian approach allows for out-of-pocket payments for those diseases reflecting choices which are:

- Not life-threatening.
- Not limiting the use of political rights or exercise of fundamental capabilities.
- Inexpensive to treat compared to income [36].

Some 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 choice or negligence, with the purpose of offering full cover to those who get those diseases for reasons outside their control [36]. The first element of Cappelen and Norheim's approach *introduces co-payments for diseases related to individual choices which are not life-threatening, which do not limit political capabilities and where the cost of treatment is low in comparison with the patient's income.* The next section examines the second element of the authors' approach.

By definition, the first element of Cappelen and Norheim's approach is silent regarding how we are to deal with diseases reflecting choices, which are in fact life-threatening, expensive to treat relative to income or diminish people's political capabilities. According to the authors, there is room for responsibility-sensitive policies even in such cases. As their second measure they propose that in such instances we should not hold people responsible for the consequences of their choices (the disease and associated costs), but rather for their risky choices [35,36]. As an institutional measure to this end they propose taxing potentially unhealthy activities to raise money for treating those who fall ill as a consequence of such choices. Each choice will be taxed the same, and nobody suffering from such diseases will be further charged for treatment. Instead, they are treated on equal terms with everyone else [35]. This is the second element of the liberal egalitarian approach, which *taxes potential unhealthy choices and provides treatment on equal terms for diseases related to individual choices which are life-threatening, which limits political capabilities or where the cost of treatment is high in comparison with the patient's income.* The form of responsibility present in the second element of the approach can be understood as holding people responsible for their choices, as opposed to the consequences of their choices. This idea is proposed in both articles and in both instances it is highlighted how this avoids the bad consequences highlighted by the liberal and humanitarian objection [35,36]. The authors offer two reasons why we should introduce responsibility for choice rather than responsibility for costs for this category of disease. They will be presented below while also stressing how these reasons clearly reflect the author's ambition of presenting a theory which is not vulnerable to the humanitarian, liberal and fairness objections.

The first is that taxing unhealthy choices and treating those who fall sick due to the severe diseases in this category for free avoids potential harsh outcomes. It does not let people die from their diseases, or suffer severe economic hardship from medical bills or allow illness to diminish people's fundamental capabilities. All diseases in this category have, by definition, the potential to bring about such a scenario, but Cappelen and Norheim's proposal ensures that this does not transpire. In effect, this move seeks to steer clear of those bad outcomes envisioned by the humanitarian and liberal objections.

The authors offer a second reason, related to luck, for introducing a tax on unhealthy choices. The recurrent thought in the authors' text is that it is unfair if similar health choices lead to vastly different health outcomes. Such differences arise, due to the differential influence of luck, or as the authors sometimes describe it, factors outside the person's control. As examples of such factors, the authors submit 'different genetic makeup' and differences in luck, 'the parachute did not open' [35]. But notably, this is two different kinds of luck. Recalling Dworkin's distinction between brute luck and option luck, where the latter is defined as '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

[1] As an explicit source of these ideas, prominent responsibility-sensitive egalitarians are mentioned, such as Dworkin, Cohen, Arneson, etc. [38–41].

[2] Unfortunately, the literature has done little to disentangle these two elements, often discussing only the former [10,23,26,29,42,43].