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Fairness and Priority-Setting in Health Care

Thanks, Dan, for your warm introduction. I'd like to begin by thanking the conference organizers for arranging this wonderful conference, and for inviting me to participate. I'd also like to thank all of you for sticking around till the last session on Friday afternoon. I am extremely grateful that I have been paired with Eric Rakowski and James Hammitt; for that gives me great confidence that you won't entirely regret your decision not to get an early start on the weekend!

Some years ago, I had the great fortune to spend a fellowship year in a program at a rather tony institution. As a man whose principle attire is shorts and t-shirts—except when the weather forces me to don jeans and a sweatshirt—my lack of sartorial splendor was, I gather, rather conspicuous. At the end of the year, my best friend in the program gave me a going away present, with the words, “Here Larry, some day you're going to need this.” That institution was Harvard, my friend was Dan, and his gift was this tie. And

today, for the second time in the past 14 years, I have the occasion to wear, and publicly acknowledge, my appreciation of his gift.

I never had the heart to tell Dan, at the time, that I actually HAD plenty of ties, I just didn't WEAR them; indeed, I literally had many dozens of them, virtually all of which I received as gifts, and many of which, unlike this one, were quite beautiful. But there are few, if any, gifts of clothing that I have received over the years that I wear with more relish, or more fond memories, than this one. So, it is with great pleasure that, suitably dressed, or at least as suitably dressed as I virtually ever get, I address you today.

Part I. Introduction

Surely there are many important reasons relevant to our treatment of the ill. These may include virtue-based reasons of compassion, kindness, charity, or beneficence; deontological reasons connected with positive duties to aid the needy; consequentialist reasons to promote the best outcome, perhaps of a humanitarian, prioritarian, or utilitarian stripe; political reasons, connected with the importance of a government treating each of its citizens with consideration and respect; or fairness-based reasons, that may themselves reflect deontological, consequentialist, or political aims. Some reasons for helping the ill will be non-instrumental person-affecting reasons, having to do with the way

in which illness directly affects the quality of lives of the ill; but some may be instrumental, and perhaps impersonal reasons, having to do with the way in which helping the ill may promote other ideals like autonomy or perfectionism, or may help contribute to a stable, well-functioning, society.

Accordingly, if we construe the question for today's session as follows: "Is ethical priority-setting regarding health-care a matter of ensuring the fair distribution of health prospects, or is it, instead, a matter of ensuring the best possible health outcome?" I want to dismiss this question as far too narrow, and presenting us with a false dichotomy. Moreover, this is especially so, if we interpret the best health outcome in narrow efficiency terms, such as the outcome that maximizes QALYs or minimizes DALYs.

So, on one natural interpretation of this session's question, I'm PRETTY sure that I can give an answer which is both succinct and true. "NO." Ultimately, ethical priority-setting must pay attention to the full range of reasons that bear on the question, and, as indicated, these extend well beyond merely ensuring the fair distribution of prospects, or the best outcome.

Having said that, I couldn't possibly answer the broader question one might want answered: namely, what are all the factors relevant for ethical priority-setting, and how much weight should be given to each of them. So, instead, I shall focus on the issue Dan Brock originally asked me to talk about:

the issue of fairness. One justification for doing this is as follows: many believe that fairness has a particularly important role to play in thinking about health care; whether the question concerns human-subject experiments, worries about exploitation in developing countries, obligations to the ill at home or abroad, rationing of scarce medical resources, or the justifiability of a single- or two-tier health-care system. But we need a much clearer idea of what fairness involves, before we can accurately assess how much weight should be given to it in the prioritization of health care.

Unfortunately, the notion of fairness is incredibly complex. So, even with my restricted focus on fairness, I can't begin to adequately address all of the many aspects of fairness that are relevant to questions of health care. Accordingly, I shall proceed as follows.

First, I shall briefly distinguish between various fairness concerns, and note the one that I shall focus on, which I call comparative fairness. Second, I will then take up the question of whether, insofar as we are concerned with comparative fairness in ethical priority setting, we should be concerned with fairness in the distribution of prospects or fairness in the distribution of outcomes. Finally, I will briefly address the role that individual responsibility might play, at least theoretically, in setting ethical priorities regarding health care.

Part II. Distinguishing Different Fairness Concerns

As indicated, there are many different notions or aspects of fairness. Let me roughly characterize some of these.

First, there is a notion of fairness that tracks Aristotle's famous claim that we should treat likes alike and unalikes unlike. Specifically, many would claim that it is unfair to treat two people who were alike, in some relevant respects, as if they were different in that respect.

Second, there is a related notion of fairness that tracks the notion of impartiality. Although there are competing views about what constitutes treating people impartially, for many purposes we think it would be unfair to favor one person over another merely because of such factors as their race, religion, gender, sexual orientation, nationality, weight, or hair color.

These notions are connected with the idea that in many contexts it is unfair to treat people arbitrarily or capriciously. To borrow from Bernard Williams, we think it is typically unfair to treat some people differently than others, or to show partiality towards some people, unless there is a morally relevant reason for doing so.

Third, most agree that I treat you unfairly if I violate your rights, or exploit you; though, of course, this view requires a substantive account of the notions of rights and exploitation.

Fourth, most agree that I treat you unfairly if I break a contract with you, or fail to abide by my agreement with you, lie to you in certain circumstances, or if I disappoint your reasonable expectations by failing to act in ways that I had purposefully given you good reason to believe that you could count on me to act.

Fifth, another notion of fairness is connected with any set of rules or regulations that are propounded by an appropriate authority, or the reasonable conventions of a group or society. For example, it is unfair for one person to break the rules of a game that others are abiding by; unfair if a teacher punishes some students for violating her attendance rule, but not others; and unfair to circumvent a reasonable social policy for the provision of scarce medical resources on behalf of someone who is rich, famous, or well-connected.

Sixth, many political conceptions of the just society have analogous conceptions of fairness. So, for example, for Marxists it is unfair if the state doesn't take from each according to his ability or distribute to each according to his need; for Nozickians is it unfair if the state forcibly redistributes anything to which someone had a legitimate entitlement; and for Rawlsians it is unfair if the state fails to set up its principles and institutions so as to maximize the expectations of the representative member of the worst off group. Note, since society's worst-off group will include those who are suffering from the most

debilitating physical and mental illnesses, on Rawls's theory a society will almost certainly have to set up its principles and institutions with an eye, among things, to improving the health of its sickest members.

Seventh, there is a notion of fairness akin to, though not identical with, the notion of absolute justice subscribed to by people like Kant and W.D. Ross. So, for example, when bad things happen to good people, a common reaction is that "it isn't fair"; similarly when good things happen to bad people. We might say that such claims express a principle of absolute fairness, expressing the view that whether or not there is a rational agent responsible for the situation, there is something unfair about people being better, or worse off, than they deserve to be.

Finally, there is a notion of fairness akin to, though again not identical with, a notion of comparative justice or desert, according to which to the extent that someone has lived a worthier life than another she deserves to live a proportionally better life. Here, justice determines the relative standing of the two lives, not their absolute standing. John Broome defends such a conception, claiming that it would be unjust for sinners to fare better than saints, but it wouldn't be unjust for both to fare well, or poorly, as long as the saints fared better than the sinners in proportion to how much better they had lived their lives.¹ Thus, for Broome, "Sinners should be worse off

than saints, but ... justice does not determine how well off each group should be absolutely.”²

As indicated, there is an analogous conception of comparative fairness. On this view, it is comparatively unfair for some to be born blind while others are not, or for a child in Chad to be born with much worse life prospects than her American counterpart. In such cases, the situation strikes many as comparatively unfair, given that the worse off person is no less deserving than her more fortunate counterpart, and in no way responsible for her worse predicament.

This is a representative, though not exhaustive, list of conceptions or aspects of fairness. I think all, or most, of these conceptions have a legitimate role to play in thinking about the kinds of questions with which this conference is concerned. But, since I cannot possibly do justice to each of these conceptions, in the remainder of this talk I want to focus on the last conception, the conception of comparative fairness. This conception isn't necessarily more important than the others, but it is the one I have thought the most about, and it raises a number of difficult and intriguing issues.

Part III. Fairness of Prospects versus Fairness of Outcomes

Fair opportunity plays a crucial role in debates about rationing. In the face of scarce medical resources, what system will ensure that among those who are similarly needy, everyone at least has a fair opportunity to have their health needs

met? This is an important question, but I have deep reservations about thinking about fairness in a single realm, like health care, rather than in the broader context of which health care is a part. Accordingly, in this discussion, I shall mainly focus on fairness in the domain of life, as a whole. If, for pragmatic or theoretical reasons, we convince ourselves that it is legitimate to have a domain specific focus, hopefully many of my remarks would apply, *mutatis mutandis*, to fairness in the domain of health care.

Two preliminary comments.

First, there may be different ways of fully or partially satisfying the ideal of fair opportunity. Second, here, as elsewhere, there will be other moral ideals that compete with the ideal of fair opportunity, or provide reasons for fully or partially satisfying it one way rather than another. We must not lose sight of this, even as we try to determine what we should seek, insofar as we value the ideal of fair opportunity.

Questions about whether, and when, we should be concerned about fair opportunity, are relevant to several other topics, such as whether we should be concerned about ex ante fairness—fairness in people’s prospects concerning the lives they might lead—or ex post fairness—fairness in outcomes concerning the actual lives that people end up leading; and similarly, whether we should be concerned with procedural fairness, or with a more outcome-related conception of

substantive fairness, according to which an outcome that resulted from a perfectly fair procedure, might nonetheless be substantively unfair, and require amelioration. Given my time constraints, I shall lump these distinct, but related, topics together.

In fact, I think there is reason to care about both ex ante and ex post fairness, and also about both procedural fairness and a more robust outcome-related conception of substantive fairness. In some cases, perhaps, ex ante fairness, or procedural fairness, will be all that is realizable, and in others our main concern might be with ex post, or substantive, fairness. But in certain circumstances the two will be intimately related. So, for example, under certain circumstances, whatever outcome results from an initial situation that meets sufficiently demanding criteria for ex ante fairness, or procedural fairness, will, in fact, also be guaranteed to meet the most plausible conception of ex post fairness, or substantive fairness. Moreover, under certain circumstances, no coherent account can be given of what ex post or substantive fairness demands, independently of certain favorable conditions initially obtaining that would at least partially satisfy the criteria for ex ante fairness or procedural fairness.

I cannot fully defend these claims here, but let me offer some observations to help illuminate them.

Most people recognize that in the game of life, each of us, to some extent, must play the cards we are dealt. But they also recognize that sometimes our cards

are, as it were, both dealt to us, and played for us. On this analogy, the concern for ex ante fairness, and procedural fairness, reflects the concern that the deck should not be stacked against certain players, and that there should be no cheating in the play of the hand. So, minimally, we want each person's hand to be determined by a fair deal and fairly played. If, for example, the deck is stacked in favor of whites or men, so that they are always dealt aces and kings, while blacks or women are always dealt deuces and treys, that situation will be patently unfair, and it can be rightly criticized from the standpoint of ex ante fairness, or procedural fairness. Likewise, it will be unfair if the cards are dealt fairly, but unfairly played; if, for example, whites or males are allowed to look at the hands of blacks or women, before deciding what cards to play.

Ensuring that each person's hand will be determined by a fair deal and played fairly ensures that, in advance of the deal, the expected value of each hand is the same, and we can say that that meets an important criterion for ex ante fairness, or procedural fairness. But surely, insofar as we are concerned about fairness, we want more than just a fair deal and a fair play, since, by itself, this would do nothing to preclude the result that some people will be dealt aces and kings, while others, no less deserving, will be dealt deuces and treys. That is, in the game of life, the cards don't have to be stacked against particular groups or individuals for it to still turn out that some are born with extraordinary advantages,

and hence extraordinary life prospects, relative to others. For most, this is deeply unfair, even if, in an important sense, it is clearly not as unfair as such a situation would have been had it resulted from a stacked deck of bias or discrimination.

The preceding suggests that we not only want the deal to be fair, we want, as it were, each hand to be fair. That is, we do not merely want the expected value of each hand to be the same in advance of each deal, we want the expected value of each hand to be the same after the deal. Thus, it should not only be that in advance of bringing a child into the world, one can reasonably expect the expected value of its life to be as good as anyone else's, but rather that any child that is actually brought into the world should face a constellation of natural and social circumstances, including its state of health, that give its life prospects an expected value as good as anyone else's. Here one is reminded of an example first introduced by James Fishkin, and made famous by the sadly, recently departed, Brian Barry. Suppose there was an extremely stratified society, where one's life prospects were dramatically altered depending on whether one was raised in a "privileged" or an "oppressed" family. Surely, such a society would involve tremendous unfairness in people's opportunities, even if, as it happened, at birth, babies were randomly assigned to the cradles of different families. The point, of course, is that prior to being born and assigned to their cradles, each baby would have equal prospects, but their prospects would be dramatically unequal, and

unfair, after they had been assigned to their respective cradles, even if the process by which they were assigned to their cradles was completely fair, in the sense of giving no preference to one baby over any other.

Next, let us develop our card analogy a bit. Suppose that each person is to be dealt four cards, each of which represents a possible life that someone might lead, and one of which will be selected at random. If an ace is selected, someone will lead a very high quality life of value 20,000, if an eight is selected he will lead a decent life of value 10,000, and if a deuce is selected he will lead a very poor quality life of value 0. Now suppose that as a result of a completely fair deal, involving many decks, half the population in outcome A has been dealt two aces and two deuces, while the other half has been dealt four eights. Here, we meet the initial criteria that prior to the deal the expected value of each life is the same, and we further meet the additional criteria that after the deal the expected value of each life is the same, namely 10,000. Still, although the expected values of their lives are the same, it is clear that some in A face significantly different life prospects. Those who have been dealt four eights face the certainty of a life of value 10,000. Those who have been dealt aces and twos, face the equal probability that they will end up with a life of value 20,000 or a life of value 0. Hence, whatever happens, it is certain that those who were dealt different kinds of cards will lead lives of significantly different value.

Contrast outcome A with outcome B, where, everyone is dealt four eights, and hence faces the certain prospect of living a life of value 10,000, or outcome C, where, everyone is dealt two aces and two deuces, and hence faces an equal probability of living a life of value 20,000 or a life of value 0. Clearly, there is a respect in which those in B face the same life prospects, also those in C, but not those in A. I believe that the respect in which this is so reflects an important element of what one should care about insofar as one cares about ex ante fairness, or procedural fairness. Arguably, from the standpoint of ex ante fairness, or procedural fairness, B and C are both perfect. One should be indifferent between them, and each should be preferred to A.

If right, the preceding suggests that insofar as one cares about ex ante fairness, or procedural fairness, one should not merely be concerned with the expected value of different lives, either in advance of their coming to be, or even at birth. Rather, for each kind of life, L, with value V, that someone faces at birth with probability p, it will be desirable if everyone else, at birth, also faces a kind of life, L', with probability p, that also has value V. As should be evident, these considerations are relevant to a host of issues connected with pre- and post-conception testing, gene therapy and enhancements, and pre- and neo-natal care.

Suppose we fully achieved ex ante fairness, or procedural fairness, along the lines suggested above. So, each person faced an equivalent set of life prospects in

terms of their values and probabilities. In this case, we would have met an important fairness goal that no one should be disadvantaged relative to another merely by the circumstances surrounding their birth. Still, such *ex ante* fairness, or procedural fairness, would be compatible with undeserved ex post differences of any size. And many will object to this precisely when, and because, it involves the substantive, comparative unfairness of some people being worse off than others, though they are no less deserving and not responsible for their lot.

Consider an outcome like C, above, where, at birth, everyone faces an equal probability of living a very high quality life of value 20,000, or a very low quality life of value 0. Let us assume that this reflects a fair situation, equivalent to each being dealt a fair hand from a fair deck. And suppose that it will be pure chance--so that no charge of bias or unfairness can be made—which determines what life they would ultimately lead. Even so, assuming that no one is less deserving than anyone else, it will be comparatively unfair if half the people end up with lives of value 20,000 and half with lives of value 0. *Ex ante* and procedural fairness are desirable, but they are no substitute for *ex post* or substantive fairness. In such a case, at least, an outcome where each person lived a life of value 10,000 would be substantively fairer.

Next, suppose that the game of life was “stacked” so that at birth certain groups had a much greater chance of ending up well off than others. On the

analogy we have been using, we can imagine that some people have been unfairly dealt three aces and a deuce, while others have been unfairly dealt three deuces and an ace, but that, as before, what life each person will actually lead will be determined by a random selection of one of her cards. Clearly, this would be objectionable from the standpoint of ex ante fairness and procedural fairness, and there would be reason to try to prevent such unfairness in people's initial starting points if one could. Still, assuming that neither the advantaged nor disadvantaged were less deserving than the others, if, in fact, both groups had aces drawn, so that both ended up living very high quality lives there would see no reason to change the outcome from the standpoint of comparative fairness. And similarly, if both groups had deuces drawn. If, on the other hand, one of the groups had an ace drawn, and the other a deuce, there would be reason to favor redistribution between the better and worse off whichever group was better off. Here, it seems clear that the concern for ex post fairness, and substantive fairness, would dictate how one would respond to the actual lives people ended up leading, and any concerns one might have about ex ante fairness or procedural justice would play no role in that response.

Might one simply focus on achieving ex post fairness, and not worry about ex ante or procedural fairness? I think not. Let me make several points regarding this.

First, the concern for ex ante fairness and procedural fairness, reflects the view that it not only matters how people end up, it also matters how they have been treated; for example, that they are treated with equal consideration and respect, so that no one is discriminated against, or otherwise dealt an unfair hand to play. Importantly, it also matters that each person be given a fair start from which to autonomously plan and lead a life of her own choosing, so that each person is significantly responsible for her own lot in life.

Second, there may be some cases where ex post fairness is unobtainable, or undesirable all things considered, where it would be better, precisely because fairer, if the outcome resulted from an initial situation of ex ante fairness, or procedural fairness, than if it didn't. For example, in our world there may not be enough resources to provide everyone with expensive lifesaving technologies. And for a number of moral reasons, it may not be desirable to completely withhold such technologies from those who could benefit from them. Still, it would be better from the standpoint of comparative fairness if everyone who needed it had an equal prospect of being provided with such technologies, rather than having it determined, as it largely is today, by which country or family one is fortunate enough or unfortunate to be born into.

Third, suppose that John is dealt an initial hand that enables him to live a life ranging in value from 10,000 to 20,000, while Mary is dealt a hand that only

enables her to live a life of value from 0 to 10,000. Even if John and Mary end up equally well off, there is good reason to worry that the outcome was comparatively unfair. Perhaps Mary, having done her best to take full advantage of her opportunities, ought to end up much better off than John, who may have knowingly frittered away his abundant opportunities. So, insofar as one cares about comparative fairness one can't just ignore questions of ex ante and procedural fairness, and focus on questions of ex post fairness; because whether an outcome involves ex post fairness may itself depend on questions of ex ante or procedural fairness.

But this raises a fourth important issue. One can't simply assume that Mary deserves to be better off than John, based on the extent to which they differed in maximizing their potential. Perhaps, if John had been given Mary's initial starting point, he would have acted as Mary in fact did, and similarly for Mary. In that case, perhaps Mary and John deserve to be equally well off after all, despite their completely different, and seemingly unfair, initial starting points. This shows that it may be important to promote ex ante and procedural fairness, to ensure that people have sufficiently comparable starting points, in order to make meaningful judgments of comparative fairness.³ Furthermore, if, contrary to fact, one could ensure that people's initial starting points fully met the robust criteria for ex ante and procedural fairness—so, in particular, people had been dealt similar hands in

terms of talents, temperament, individual responsibility, and life prospects—and if, in addition, one could later remove or rectify the influence of luck on people’s choices—so that, ultimately, each person was responsible for how they ended up relative to others; then, someone concerned about comparative fairness would regard any resulting outcome as involving ex post fairness even if the people ended up with lives of significantly different quality.

Part IV. Fairness, Luck, and Responsibility

Suppose one believed, as Derek Parfit does, that free will is an illusion, and that there is no meaningfully robust sense in which people are responsible for their character, commitments, or actions. One might then think that no one ever had a moral claim to a superior predicament, and that all cases where some people were worse off than others in normatively significant respects would involve comparative unfairness. In that case, we might want to promote conditions of ex ante or procedural fairness, as a way of expressing our commitment to treating people with equal consideration and respect, but we might also focus on equalizing people’s conditions, confident that equality in outcomes would then correlate with fairness in outcomes. Of course, we shouldn’t lose sight of our earlier point that we care about more than the comparative fairness of outcomes, we also care about utility, perfection, and other ideals. Still, on such a scenario, it might be fairly

clear and straightforward how we should respond to the world insofar as we were concerned about comparative fairness.

Note, by the way, that while a conception of absolute justice or fairness presupposes that it is possible for people to deserve to be at one level or another, a conception of comparative justice or fairness has no such commitment. It is enough for such a notion to get a grip on us if we think it is unfair for one to be worse off than another who is no more deserving, and in a world where no one deserves anything that condition will always be met.

I am often tempted to Parfit's view. But I confess that I am one of the many who believe that people often are at least partially responsible in a sufficiently robust sense for their characters, commitments, and actions. Sadly, this raises a host of tricky questions for those who care about comparative fairness. Before expounding on this, let me say a few words about the relations between the notion of comparative fairness and the notions of luck, fault, choice, and individual responsibility.

For those who believe in a robust sense of individual responsibility, comparative fairness will involve such notions as moral desert, fault, and choice. But the exact relations between these notions is tricky. For example, we may think that among equally deserving people, it is often comparatively unfair for some to be worse off than others through no fault or choice of their

own. But if someone is worse off than another where it is his own fault, or as a result of his freely chosen actions, then it needn't be comparatively unfair.

Thus, assuming that criminal John and citizen Mary are each fully responsible for their characters and actions, it needn't be comparatively unfair for imprisoned John to be worse off than free Mary, as a result of John's faulty choices.

Indeed, it won't be unfair for someone less deserving to be worse off than someone more deserving, even if the former is worse off through no fault or choice of his own. For example, it wouldn't be comparatively unfair if a fully responsible criminal were worse off than a law abiding citizen, even if the criminal craftily avoided capture, and so only was worse off because, through no fault or choice of his own, a falling limb injured him.

Additionally, in some cases it would be unfair for someone to be worse off than another, even if she were fully responsible for her plight; as when the worse off person was so because she chose to do her duty, or perhaps acted supererogatorily, in adverse circumstances not of her making. So, for example, if I'm unlucky enough to walk by a drowning child, and I injure myself saving her, it may be comparatively unfair that I end up worse off than others, even though I am so as a result of my own responsible free choice to do my duty or act supererogatorily to help someone in need.⁴

Notice, luck itself is neither good nor bad from the standpoint of comparative fairness. Luck will typically be objectionable if it leaves equally deserving people who have made similar choices unequally well off. But it will be unobjectionable if it makes equally deserving people who have made similar choices equally well off, or unequally deserving people unequally well off proportional to their choices or deserts. Thus, luck is to be approved or opposed only to the extent that it promotes or undermines comparative fairness.

Following Ronald Dworkin, some people distinguish between option luck, luck to which we responsibly open ourselves, and brute luck, luck that simply "befalls" us, unbidden.⁵ This distinction's advocates believe that any option luck inequalities that result from people autonomously choosing to gamble, or invest in the stock market, are unobjectionable. By contrast, brute luck inequalities, such as being born with less intelligence, or suffering from an unavoidable accident, are objectionable.

I reject the way the option/brute luck distinction is often invoked. In part, this is because drawing the line between them is difficult. But more importantly, I believe that it is objectionable if Mary takes a prudent risk, and John an imprudent one, yet Mary fares much worse than John, because she is the victim of bad, and he the beneficiary of good, option luck. Likewise, if Mary and John are equally deserving, and choose similar options, but John ends up much better off than Mary,

because he enjoys vastly greater option luck, I believe there is an objection to the situation based on comparative fairness. As with paradigmatic cases involving brute luck, in such a case Mary ends up much worse off than John, though she is in no way responsible for her relative misfortune. This seems to me patently unfair. It is a case of comparative unfairness to which one should, I think, object.

This discussion is, in theory at least, relevant to many practical issues of public policy, including issues of health care. If it is true that people can have personal responsibility for their actions in a way that is compatible with a meaningful conception of desert—and I stress that this is a big “if”, but one that many accept, and that I shall assume in the rest of this discussion—then for the reasons suggested above not all substantive inequalities will involve comparative unfairness. This has deep and important implications for the nature and extent of our obligations towards the less fortunate whose predicaments resulted from their own fully responsible choices regarding job selection, lifestyle, risky behavior, and so on.

Clearly, this issue’s scope is too large to deal adequately with here; but let me just make five relevant points.

First, the starting point of our discussion is that the mere fact that some are much worse off than others, does not mean that there is reason to aid the worse off

from the standpoint of comparative fairness—this will depend on the facts of individual responsibility pertinent to the case.

Second, even if there is no reason if fairness to aid the ill, other powerful normative considerations may dictate doing so. These may include maximin or prioritarian considerations, humanitarian considerations to ease suffering, utilitarian reasons to promote the general welfare, virtue-related reasons of compassion, mercy, and beneficence, and so on. As noted earlier, we have to be sensitive to the full range of reasons for aiding the ill, in addition to considerations of fairness.

But third, where the other morally relevant factors are sufficiently close, reasons of comparative fairness may well help determine who among the needy has the strongest claim on scarce resources. So, for example, if one had to choose between who gets the last available bed in the ICU, perhaps it ought to go to the innocent pedestrian, rather than the injured drunk driver who struck him. Or perhaps it should go to someone struck down by an unavoidable illness, rather than to someone with a debilitating condition that could have been prudently avoided.

Fourth, regarding comparative fairness, it is crucial that one determine appropriate comparison classes, so that one is comparing all relevant types of behavior in the same way. For example, if one downgraded the medical claims of AIDS patients who engaged in unprotected sex, perhaps one must similarly

downgrade the medical claims of pregnant women who engaged in unprotected sex, or the claims of obese stroke victims who did nothing to curb their indulgence of rich foods.

Finally, in accordance with my point about option luck, it is important regarding comparative fairness that one not merely compare the “losers” of those who make poor choices with the “winners” of those who make good choices, but that, in addition, one compare the winners and losers of both categories with each other. Most smokers don’t develop lung cancer, most overeaters don’t have a stroke, and most helmetless motorcyclists don’t end up in the emergency room. Thus, regarding comparative fairness, one must bear in mind that full responsibility for one’s choices doesn’t automatically translate into full responsibility for one’s predicament. Indeed, as Kant rightly saw, the two are only loosely, and coincidentally, connected. Correspondingly, comparative fairness requires that we pay attention not only to actual outcomes, but to considerations of expected utility. More particularly, comparative fairness will require that we pay attention to the extent to which different people end up better and worse off than the expected value of their choices.

Concluding Remark

In this talk, I have been focusing on one aspect of fairness, comparative fairness. I believe that, theoretically, at least, this aspect is of great importance for

the desirability of different alternatives, in general, and for a host of healthcare-related issues, in particular. Having said that, however, there are powerful moral, political, and practical reasons of the sort W.D. Ross alerted us to long ago,⁶ that may severely limit the role that comparative fairness can actually play in any feasible health care system or policy. This is a point to be taken very seriously; but unfortunately, I cannot pursue it here. Perhaps, if someone is interested, we can take it up during discussion.

¹ See Weighing Goods, Basil Blackwell, 1991, pp. 168-169.

² Ibid.

³ Susan Hurley stressed the importance of this point in an important article challenging the coherence of egalitarian views that try to recognize the significance of individual responsibility. See her “Luck and Equality,” Supplement to the Proceedings of The Aristotelian Society 75, 2001, pp. 51-72. See also her Justice, Luck and Knowledge, Harvard University Press, 2003.

⁴ Note, not all instances of someone’s ending up worse off than others as a result of supererogatory action might warrant rectification. I believe that some would involve comparative unfairness, but others not.

⁵ The distinction between option luck and brute luck is given in chapters one and two of Dworkin’s Sovereign Virtue (Harvard University Press, 2002). For an important critique of the distinction, see Kasper Lippert-Rasmussen’s “Egalitarianism, Option Luck, and Responsibility” (Ethics 111, 2001, pp. 548-579).

⁶ In The Right and the Good, Clarendon Press, 1965, pp. 56-64.