

Deep exclusionary reasons: the case of luck egalitarianism and personal responsibility for health

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*“Ma ke everythin g a s simple as possible, but not sim p ler.” (Alb ert
Ei nste in)*

This article presents the notion of a deep exclusionary reason, a special category of what Raz calls an exclusionary reason. It shows the fruitfulness of that notion in ethics and political philosophy, focusing on one area: the harshness objection to luck egalitarianism.

According to luck egalitarianism,

When deciding whether or not justice (as opposed to charity) requires redistribution, the egalitarian asks if someone with a disadvantage could have avoided it... If he could have avoided it, he has no claim to compensation, from an egalitari an poi nt of vi ew

Luck egalitarianism has appealing implications when it comes to whether to compensate gamblers for small losses from easily avoidable gambles. Most of us feel that such gamblers should not be compensated. One reason why could be that the risk they undertook was perfectly avoidable. However, luck egalitarianism initially seems to carry unappealing, harsh implications when it comes to emergent healthcare. In one famous example,

Challenge 1 (Simple harshness objection): a driver hits a tree secondary to his own easily avoidable reckless driving. His resulting disadvantage— serious disability unless he is immediately evacuated to hospital—results from his own avoidable risk-taking.

Critics Marc Fleurbaey, Elizabeth Anderson, Sam Scheffler, Dan Wikler, and Norm Daniels accuse luck egalitarianism of endorsing the abandonment of reckless drivers: refusing to fund his evacuation and hospitalization and even to refuse to send him an ambulance. The critics point out that, intuitively, such treatment of reckless drivers would be exceedingly harsh. They add that

Similarly, it seems harsh to refuse to treat disease resulting from patients' own avoidable choices to have unprotected sex, eat fatty foods, or read articles instead of jogging. The critics conclude that luck egalitarianism is wrong, and some critics suggest replacing it by other egalitarian theories, such as democratic equality.

The most prevalent luck egalitarian response to the harshness objection is pluralism.³⁴ Pluralist luck egalitarians answer that luck egalitarians are perfectly free to support the very same rescue policies that most everyone else does, under their other hats: *qua* supporters of need satisfaction, autonomy-protection, solidarity, charity, and so forth. Luck egalitarianism is a theory of distributive justice, not a theory of the right policy all things considered. Because luck egalitarianism, like most theories of one important determinant of right policy (democratic equality included!) is perfectly compatible with pluralism—the view that other determinants also matter, the harshness objection attacks a straw man. As Nicole Vincent recently put this response, the harshness objection “seems weak because the luck egalitarian’s point is not that it is *nice* to abandon someone who has fallen on hard times (even if this is due to their own bad choices), but it is rather that these people have no entitlement or claim on the rest of us *as a matter of justice*”

But what precisely do luck-egalitarian pluralists say? That the luck-egalitarian reasons permitting the abandonment of reckless drivers are weaker than other, perhaps needs-based, reasons to treat them? That the former do not apply at all in this domain? That they apply but are somehow disabled?

And what precisely do the critics of luck egalitarianism deny? That luck-egalitarian reasons apply in emergency situations, in the health arena, or in general? That they apply often enough to matter? That whether they apply is the right question, or the right question is what rules should govern this domain, all things considered?

In a different context, Joseph Raz has proposed three familiar mechanisms that may prevent what seems like a reason for action from settling what we should do, all things considered: overriding, exclusion and cancelling. In Raz’s summary.

there are two ways in which reasons can be defeated. They can be overridden by strictly conflicting reasons or excluded by exclusionary reasons. They may, of course, also be cancelled by cancelling conditions.

While recent years have seen some alternative classifications of reasons for action, the bulk of recent classifications distinguish between reasons affecting what we are required to do, and reasons affecting what is merely favored, advised, permitted “enticed”, or justified for us to do. Nevertheless, Raz’s distinction remains helpful for sharpening luck-egalitarian pluralism and its critique. In our context, recent classifications seem relevant only to determining whether abandoning the imprudent is required or it is merely advised: either option would be counterintuitive and raise the harshness objection, making the new classifications tangential to assessing the harshness objection. In sharpening and evaluating the positions expressed in the personal responsibility for health debate, I shall therefore stick to Raz’s classical distinction.

The article begins by mapping central contenders in the personal responsibility for health debate onto Raz's three respective mechanisms. As I show, some theories of personal responsibility for health envisage one Razian relation, and some, another, between the reasons weighing for, and the ones weighing against, the abandonment of the imprudent.

Sections I-III describe each of Raz's three mechanisms, respectively; note central theories in the debate about personal responsibility for health that may fall under each; and show that these theories do not capture fully the intricacies of commonsense intuition on personal responsibility for health. The discussion also suggests that, in simple form, Raz's three mechanisms probably fail to account for some of our intuitions in this area. Section IV begins the constructive part of the article. It suggests a special sub-category of exclusionary reasons, which I call deep exclusionary reasons: second-order reasons to refrain from acting for some reason and even from declaring or feeling that that reason is relevant. That section invokes deep exclusionary reasons to lay out a complex picture of how personal responsibility affects fair claims to health benefits. That picture accounts for commonsense intuitions in this debate with relative success. Section V suggests additional areas of ethics and political philosophy where deep exclusionary reasons are in operation, concluding that philosophers should take such reasons seriously.

I. OVERRIDING

For Raz,

The need to take an injured man to hospital at the time I promised to meet a friend at Carfax is a reason for not keeping the appointment which *overrides* the promise which is a reason for keeping it.

Overriding occurs when two genuine (*pro tanto*) reasons for action pull us in different directions, and one is stronger than the other. That reason then overrides (or overwhelms, or counterweighs) the other.

Through and through pluralism

To meet the harshness objection and explain why luck egalitarians can endorse a duty to save the medically imprudent, luck egalitarian Shlomi Segall cashes out pluralism in overriding terms.

Adding our reasons to satisfy people's basic needs, he writes,

The concern for basic needs thus *overrides* luck egalitarian distributive justice and ⁸

mandates meeting the basic medical needs of the prudent and the imprudent alike."

⁹To different extents, earlier luck egalitarians Jerry Cohen and Larry Temkin also cashed out pluralism in overriding terms. For reasons that will become clearer later, I shall call these writers through and through pluralists.

Most critiques of luck egalitarianism fail to take the possibility of pluralism into account, and work only against the straw man of monistic luck egalitarianism. However, in what we may term the second wave of the harshness objection, more serious challenges initially do jeopardize overriding-pluralist luck egalitarianism.

Consider

Challenge 2 (Tie-breaking between medical needs): Overriding-pluralist luck egalitarianism still permits personal responsibility to serve as tie-breaker, when medical need is equal, and that permission already clashes with intuition.

¹⁰This challenge rests on our reluctance to let people's personal responsibility for their bad health cost them their life and limb *even absent other differences between them and other people*. This challenge engages luck-egalitarian pluralism because even using personal responsibility as one factor among many affecting personal entitlements can offend commonsense morality. It can do so when it breaks ties among other factors and decide matters of life and death. Daniels makes criticism, but its most powerful exponent is Segall, who raises it as a challenge for his own pluralist luck-egalitarian theory:

¹¹Suppose two patients are in equal need but one of them is so out of her own fault while the other is not. Suppose the situation is one of a car crash, where one of the injured individuals is the reckless driver and the other, equally needy, is her innocent passenger. Though both are equally needy, considerations of luck egalitarian justice would determine that the innocent passenger should be assigned priority and get treated first. This may seem harsh toward the reckless driver. It seems the notion that even coupled with the concern for meeting basic needs, luck egalitarianism is unable to escape being harsh.

¹²In defense of luck egalitarianism, Segall immediately assures the reader, "There is indeed a simple and obvious way around this problem and that is to apply, at least in principle, a mechanism of weighted lottery." However, ethicists use weighted lotteries where there exists reason to prioritize some over others, say, some instrumental social value, and yet everyone's claims to assistance are equal. The situation is different in Segall's example. Not only are there reasons to treat Segall's passenger better than we treat the driver as a disincentive against reckless driving, additionally, according to Segall, the driver lacks a just claim to be rescued, whereas the passenger has one. Since for Segall, all reasons and personal claims support helping the passenger, a weighted lottery, appealing as it may be independently, seems misplaced within his framework. Both independent reasons and reasons of justice side with saving the passenger without conducting a (weighted) lottery.

To see another problem with through and through pluralism, consider

Challenge 3 (Near-tie between medical needs): Overriding-pluralist luck egalitarianism usually permits personal responsibility to prevail over medical need when differences in medical need are small and differences in personal responsibility are large. But licensing abandonment on these occasions is already counterintuitive.

Imagine a situation in which the reckless driver is at a slightly greater medical need than the “innocent” accident victim. Therefore, from the viewpoint of medical need, there is no real tie, but slight priority for the driver. Imagine that the difference in medical need is not so small as to make it obscene for that difference to decide weighty matters, just fairly small. A serious through and through pluralist who uses plausible weights will usually have to decide against the needier driver, without a lottery, for the following reason. Whereas that difference in basic need fulfillment is fairly small, the difference in terms of luck-egalitarian justice was assumed to be large (the reckless driver is clearly responsible for his own plight, and the innocent passenger, clearly not responsible for hers), for serious luck egalitarians, presumably that large difference matters a lot. However, as Segall himself appreciates, to turn away from the comparatively needy driver with no lottery, just because his responsibility is greater, would be ethically disturbing and contrary to medical practice.

¹³As a case in point, consider standard medical practice for allocating livers and lungs for transplantation. When a patient has end-stage liver or lung disease, and needs liver or lung transplantation to live, doctors do not consider whether that patient has a history of alcoholism and smoking, except when ongoing unhealthy habits jeopardize the future success of transplantation. In other words, doctors consider personal habits only out of a future-looking, pragmatic concern to prevent wastage. That a patient needs transplantation owing to her own past avoidable habits does not count against her *at all*. Once she disabuses herself of these habits for several years, rendering the chance of recurrence and related future risk negligible, she is treated like any patient who contracted end-stage disease for reasons fully outside her control. Over the years there have been suggestions to take past choices into account, but they have attracted wide criticism even when they proposed only limited negative weights against some alcoholics and smokers. The idea that the claims of some patients in acute need would attract even somewhat lower weight than patients in similar need, just because of past choices with no future implications, remains intuitively repelling and contrary to medical ethos despite the many arguments that one may mobilize to substantiate it. In my experience, such policy ideas prompt strong resistance among medical practitioners and relatively “uncorrupted” first-year medical students, even in hypothetical examples where it is clear whose risky habits were truly avoidable. Something in us seems to resist the very introduction of responsibility into the realm of basic care, even as a mere tie-breaker or weight.

As a final challenge to through and through pluralism, note

Challenge 4 (Doing the right thing for the wrong reasons): The overriding pluralist luck-egalitarian response that we should help the desperate imprudent only out of charity, humanity, or solidarity— not justice— gives a counterintuitive story about the reason why we should help them.

Anderson's recurring reference to justice, in the following excerpt may express precisely this challenge:

¹⁴It follows [on luck egalitarianism] that the post office must let the guide dogs of the congenitally blind guide their owners through the building, but it can with *justice* turn away the guide dogs of faulty drivers who lost their sight in a car accident. No doubt it would be too costly for the state to administer such a discriminatory system. But this administrative consideration is irrelevant to the question of whether luck egalitarianism identifies the right standard of what *justice* requires.

¹⁵Anderson's and for other critics' responses to pluralist luck egalitarianism is that the intuition is not only that we should help the imprudent. It is also that we should help them as a matter of justice. A society where imprudent accident victims are left to die on the road appears unjust, and not only cruel. These critics might add that the intuition is that rescuing them is a matter of duty, a very stringent duty, and a duty toward the injured driver, who is entitled to medical aid and would be wronged if abandoned. All that sits more comfortably with a picture of duties of justice to rescue than with one of other reasons to rescue, say, reasons of charity, solidarity, or compassion.

To illustrate further that intuitively, it matters also why we rescue, and not only whether we do, note that some intuitions bear on the phenomenology behind agents' rescue efforts / Imagine a paramedic who mulls over luck-egalitarian considerations instead of simply rushing to help accident victims. Quite inevitably, such a paramedic parts ways with a moral ideal, even if after some consideration he decides to take accident victims to hospital. While we give different accounts, many of us would agree that, in the process, the paramedic had "one thought too many."

¹⁶Empirical findings confirm that when an emergency unfolds nearby, then, within certain limits, people feel impelled to help unconditionally, without first considering the possibility that victims have brought their dire conditions upon themselves. Nor do people consider how much rescue might cost, or other *prima facie* reasons against moving into action: "There is a tendency to 'act first and ask questions later.'" ¹⁷ This human tendency might be dismissed as a sheer heuristic to preempt emergency health workers from pronouncing some choices truly avoidable and others not, typically without the time and the information to decide correctly. But many of us would view the paramedic's over-calculation as a failure, not merely of expediency and rationality but of something deeper. The calculating paramedic, we may want to say, is cynical in an ethical sense. Again, different accounts can be offered for this intuition: I relay it only as a *prima facie* challenge for through and through pluralism.

Lexical priority pluralism

A different model couples overriding with the qualification that, upon collision, a conflicting consideration such as democratic equality or basic-need satisfaction always defeats luck-egalitarian considerations. In other words, the former consideration has lexical priority over the latter, or infinitely greater weight.

¹⁸Segall interprets Daniels as saying just that: that first-order democratic values, for example, enjoy a strict normative primacy over first-order reasons of personal responsibility. Reasons of personal responsibility sometimes exist; but they come strictly second. Invariably, more urgent is the unbridled supply of health resources that enable democratic participation—including ambulance evacuation that protects fellow citizens' democratic capacities.

However, lexical priority pluralism is vulnerable to its own set of challenges:

¹⁹*Challenge 5 (Tie-breaking between democratic needs):* As Segall points out, even if democracy comes first, damage to someone's (equal) democratic capacity is sometimes unavoidable because two people have equal medical need of a scarce resource that is vital for democratic function. One must lose that (equal) capacity, and the question whether that loss should accrue to the prudent or to the imprudent re-arises. Since the lexical priority pluralist agrees that personal responsibility has secondary relevance, in his system, personal responsibility should break the democratic tie. As Segall adds, even giving personal responsibility that limited role can remain counterintuitive.

Differently put, rationing according to personal responsibility may remain unavoidable even if personal responsibility considerations come second. The lexical overriding model would therefore seem to generate the same counterintuitive result that standard luck egalitarianism is accused of generating: in many tie-breaking situations, lexical priority pluralism supports prioritizing the prudent as such, even when life and limb are at stake.

As an additional potential problem for the lexical overriding model (and for democratic equality more generally), consider

Challenge 6 (Harsh democratic promotion): If democracy comes first, it may still normally turn out, depending on the exact numbers, that we should abandon reckless drivers so as to promote the basic democratic needs of more people.

²⁰If we refused to evacuate the reckless driver, we could save a lot of money on expensive evacuation and hospitalization, and we could use that money to increase and equalize basic democratic equality. Among other things, we could buy cost-effective medical interventions for the poor, which for Anderson and Daniels increase equal democratic capabilities and hence, democratic equality. Furthermore, by promulgating that from now on we shall cease to evacuate and fund treatment for reckless drivers, we may potentially put in place powerful disincentives against

reckless driving, and pre-empt many future accidents that would jeopardize health and democratic participation. Depending on the exact numbers, such harsh policies could turn out to promote and protect democratic equality more than they harm it. Recall that for Daniels, protecting democratic equality is what (usually) bears lexical priority over personal responsibility considerations (Daniels does *not* mention compassion or charity as additional overriding considerations). Quite often, therefore, Daniels would have to deem the abandonment of reckless drivers to be a just, mandatory policy, even outside tie-breaking situations. Since their abandonment is wrong, both according to Daniels's intuitions and according to most everyone else's—we feel that evacuation and treatment are owed, even if there is some positive impact on population health/ Daniels' theory clashes with Daniels's intuitions and with general commonsense.

Neither the simple, luck egalitarian overriding model nor the lexical democratic-egalitarian overriding model, seems to encapsulate satisfactorily our intuitions on responsibility for health. Let us look, then, to alternative Razian relations among practical considerations, beyond overriding.

II. CANCELLING

Raz juxtaposes overriding reasons to what he calls canceling conditions:

²²The fact that my friend has released me from my promise is a reason for nothing at all and yet it cancels the reason to go to Carfax created by the promise.

When a reason is cancelled, it simply does not exist. *Prima facie*, it may seem to exist, but it is not a *pro tanto* reason. In the broad sense of canceling (perhaps broader than Raz's), that I shall use, if what the friend clarifies is that the promise was to meet on a later date, the friend's words also count as canceling the (merely *prima facie*) reason to go to Carfax. Let me discuss proponents and opponents of luck egalitarianism according to whom, it appears, luck-egalitarian reasons do not apply—they are “canceled”—in the problem areas that have given rise to the harshness objection.

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Separate domains pluralism

For luck egalitarian Kok-Chor Tan,

The objection that luck egalitarians neglect the imprudent in need of rescuing rests on a category mistake of sorts. It mistakenly applies the luck egalitarian principle to

²⁴a category of cases (for example, cases of urgent and basic needs) to which it is not designed to apply.

Unlike through and through pluralist luck egalitarians, Tan does not envisage luck egalitarian considerations applying universally:

Instead of claiming such a broad domain, luck egalitarianism should, and can, claim for itself a more limited domain of application. Its purpose is to explain and justify why distributive equality with respect to economic goods and burdens, *over and above those that persons need for basic subsistence*, is required as a matter of justice.

Tan further illustrates this position by analogy to John Rawls's and Tom Nagel's

²⁵division of moral domains (for example, between distributive justice and humanitarian concerns) My point is that, as summing such a division, luck egalitarianism can be understood to apply only within the domain of distributive justice.

On one interpretation, Tan holds that the luck egalitarian reason permitting the denial of care when a patient's medical disadvantage is her own responsibility is cancelled when her basic needs are at stake. On that interpretation, her personal responsibility is then as thoroughly irrelevant as is a promise from which the promisee has been released, or which, you realize, has never been granted. Before discussing this position, let me mention another canceling model operating in the personal responsibility for health debate.

²⁶Tan's separate domains luck-egalitarian pluralism is strikingly similar to Daniels's anti-luck egalitarianism. For Daniels, it counts against luck egalitarianism that luck-egalitarian considerations often do not arise in medical emergencies, for example, because they would push us away from promoting fuller and more equal democratic participation. For Daniels, to show that luck-egalitarian reasons do not apply universally is to refute luck egalitarianism, which has universal ambitions.

²⁷*Challenge 7 (Analogy to justice in other domains):* The difference between brute luck and option luck is arguably central to justice in commercial and in criminal contexts. Tan, at least, is emphatic that this difference is pivotal in many distributive decisions that do not implicate basic goods. It would be odd if that difference were utterly irrelevant in the distribution of basic goods, as irrelevant as a promise from which one has been released. The health sphere may be special, but it cannot be that special.

When a promisee releases you from a promise (as in Raz's example), his or her action closely addresses the reason-given aspect of the promise. It is thus understandable insisting to keep the

promise later simply misses a point. Our context is different, however. The fact that basic health interests are implicated hardly seems to clearly address and cancel any reasons of personal responsibility, desert, and cost-saving to abandon the medically imprudent (although, of course, it may override these reasons). It arguably cannot make insisting to abandon them for these reasons into “ a category mistake of sorts ,” to quote Tan .

²⁸It is true that, in many basic-care provision contexts, we already have sufficientarian and other strong reasons to provide care. That might be thought to leave no need for a luck-egalitarian case for care provision, and to cancel it completely.²⁹ But over-determination—in this case, more than one sufficient reason to provide basic care—is perfectly possible. Luck egalitarianism is not a decision procedure or a rhetorical tool that we created for a certain purpose, and which we ought to abandon if superfluous. Rather, it is a fundamental moral principle (as Tan emphasizes). There is nothing odd about fundamental moral considerations that overlap, and sometimes generate the same conclusions as others.

General irrelevance thesis

Some opponents of luck egalitarianism use a more radical canceling model. For them, luckegalitarian considerations are nowhere in force. They say that the avoidability of a person’s choice to take a risk has nothing to do with whether we should hold that person accountable for taking these risks. It certainly has a thing to do with how these risks pan out.

³⁰Firstly, Tim Scanlon distinguishes between responsibility in a causal sense, including causal responsibility for one’s own plight, and responsibility in a normative sense. Being properly held accountable for a state of affairs, through praise, punishment, *and* failure to compensate. Scanlon argues that these different senses of responsibility are conceptually distinct. He and others conclude that luck egalitarianism, which couples them, is founded on a mistake. On this position, “ luck -egalitarian” policy makes sense only insofar as independent reasons exist to hold someone who is causally responsible for her own plight to be accountable for it. The fact that she is causally responsible for it does not in itself make that case. In the medical arena, Scanlon, Daniels and other authors add that holding people responsible for disadvantages for which they are causally responsible happens to hold little independent appeal— usually it would *not* be part of a social contract that no one could reasonably reject— and so, these authors conclude, there is simply no reason to hold people accountable for medical disadvantage just because they are causally responsible for it; in most medical arenas, distinctively luck-egalitarian reasons for action are cancelled. Luck egalitarianism is simply irrelevant there.

³¹In a different vein, Marc Fleurbaey doubts that justice considerations turn on how gambles pan out, that is, on luck-egalitarian evaluation *ex post* to the fall-out of gambles. For him, justice in health and elsewhere minds only whether gambling took place, that is, *ex ante* evaluation.

Let me present challenges to theories that use a canceling model, in clud in g Tan's , S can lon's and F leurb aey's .

³²*Challenge 8 (Investment priorities):* A remote county council deliberates whether to invest in a new helicopter to save hikers in a remote part of the county, or in a medical device that would save the lives of an equal number of otherwise similar adults from late-onset congenital disease. It seems perfectly cogent to prioritize the latter. A natural explanation is that the victims of congenital disease took fewer avoidable risks.

In this case, life and death hang in the balance for the hikers and for the congenital patients alike; but our intuitions side with reserving limited resources for the latter, not the former . Luckegalitarian considerations appear perfectly relevant, although basic medical needs are implicated

Let us ask, then: Do our intuitions side in that way here just because the case is highly distinctive? Does it include unique features that turn an utterly irrelevant factor, personal responsibility, into a sound reason *ex nihilo*? It strikes me as more likely that other cases, which made personal responsibility considerations appear irrelevant, are special. It is these other cases that seem to involve biasing factors. For example, cases of reckless drivers in need of ambulance evacuation involve identifiable persons in dire straits. The y tri gger a “rul e of resc ue” mentali ty and a related package of dispositions and biases that make us pronounce some relevant considerations to be irrelevant. In other words, the investment priorities case is purer and more reliable than those other cases, in the sense of involving fewer distracting factors which mask genuine practical reasons. Since in that purer and more reliable case, *ex-post* personal responsibility seems perfectly relevant, luck-egalitarian reasons may exist, and fundamentally count, even in other cases, in which the relevance of these reasons is less apparent. If this is true, then the cancelling model does not accurately encapsulate the status of luck-egalitarian reasoning in the health arena.

Challenge 9 (Ambivalence of polls): When questions are framed in certain ways, publics are perfectly happy to support allocating health resources in accordance with pati ents ' responsibility for their own health problems.

³³For exam ple, ! rec ent s urvey i n Yorks hi re, UK, conclu des , “ whe n co ns ideri ng i nequali ties i n health, people seem to give weight to the extent to which individuals can be held responsible for those inequalities.”³⁴ In an earlier survey of students from Belgium, Burkina Faso and Indonesia, a m ajori ty in all grou ps woul d ration he althcare coverage wi th som e sensi ti vi ty to pati ents ' pers onal responsibility; in Burkina Faso and, even more so, in Indonesia, that sensitivity was high. It is true

that a higher portion of these publics might have rejected personal responsibility considerations if the questions were very direct, for example, “Should doctors put fewer resources into helping patients who face pain, disability or death, just because these patients could have avoided risking these bad health outcomes?” But the general irrelevance thesis, at least, must dismiss current majority views as utterly mistaken; it makes it hard to see why so many of us are often responsive to personal responsibility considerations in the health arena.

Likewise,

Challenge 10 (Ambivalence of ordinary language): Whether it feels appropriate to associate words like “just”, “fair” and “fairer” with holding vicarious responsible for avoidable risk taking varies between contexts.

³⁵Earlier, we noted that luck-egalitarians’ descriptions of harsh policies as fair and just (albeit wrong all things considered) can ring very odd (see Challenge 4 above). But ordinary language is fickle. Other times, the use of these words feels natural. For example, the following sentence from Segall feels natural to me, although it describes harsh policies as just. “the view that luck egalitarian distributive *justice* does not compel us to provide treatment to reckless drivers and unlucky smokers is compatible with the view that we should nevertheless do so, due to some other moral consideration.”³⁶ Likewise, Cohen is correct to write of the imprudent driver and the prudent passenger, “We might say of the first, “We must, in all charity, help him” - but it would be much harder to say in his case than in the case of the other, “we must, in all justice, help him/” As these examples show, ordinary language does not always work against overriding-luck egalitarianism. Sometimes, depending on the frame, the context, and the sentence structure, ordinary language lends its support to overriding-luck egalitarianism. Dismissing any association between personal responsibility and basic health as “a category mistake of sorts” (as Tan puts it) makes it hard to see why other times, associating them feels so natural.

These challenges suggest that the cancelling model is too simple to account fully for the relation between personal responsibility and health. Let us look, then, to a more complex model from Raz.

III. EXCLUDING

Raz illustrates a third notion, of exclusionary reasons, with examples of arbitration. Imagine that my girlfriend and I disagree on whether I should leave an Oxonian relative’s dinner party midway to go meet a friend at Carfax. I believe that I should do so, as a matter of keeping promises. She, on the other hand, holds that leaving midway is rude, and that I have more reason to stay. We fail to convince each other, and so we turn to our neighbor at dinner table and ask her to arbitrate. The arbitrator decides in my girlfriend’s favor/ I continue to hold that I was right, and that there is more reason to keep the promise and turn out at Carfax than to stay at the party. But the arbitrator’s decision makes it inappropriate for me to act directly on my reason to keep the promise/ Given the arbitrator’s legitimate appointment and role, her decision ought to exclude my

37arguments for heading to Carfax from affecting my actions, at least in part/ In Raz's classic definition, "In *exclusionary reason* is a second-order reason to refrain from acting for some reason/" The arbitrator's decision is a second-order reason to refrain from acting on the reason to keep the promise to show up at Carfax.

Standard exclusion

If basic medical needs sometimes exclude luck-egalitarian considerations, then luck egalitarian reasoning make little or nil practical difference there. That could nicely explain why luck egalitarianism does not even break ties there, while not being fully cancelled there either: while creeping up at other decision nodes surrounding basic health needs, for example, in the future investment example. Fully stated, the standard exclusion account can go as follows. Often dormant, luck-egalitarian considerations continue to exist throughout, and they come into full relief when the second-order reasons that sometimes exclude them from practical consideration become irrelevant.

38It is possible that Tan, to whom I earlier tentatively ascribed a cancelling model of the relation between basic needs and personal responsibility, actually meant to offer a standard exclusion account: personal responsibility considerations exist, but in the basic needs domain, we should not act upon them. Perhaps this is why Tan writes that basic need satisfaction lies outside the mere "domain" of distributive justice, unlike non-institutional inequalities, for example, which lie outside its very "subject matter" and "concern": one way to understand this difference would be that personal responsibility considerations are excluded by basic need satisfaction, whereas concerns about natural inequalities are fully canceled.

The standard exclusion model makes more progress, and it may initially seem to capture the proper place of personal responsibility in reasoning on health resource allocation. Nevertheless, it addresses the second wave of the harshness objection only in part.

Challenge 11 (Odd phenomenology): In the dinner party illustration of the standard exclusion model, the person who lost in arbitration continues to believe in the soundness of the first-order reason to keep the promise and meet the friend at Carfax. That reason retains its full normative allure. He believes only that he is morally barred from acting on that sound reason in the circumstances. Our intuitions are different on the denial of life-saving treatment to an imprudent driver. Here, we are not even attracted to deny care. The intuition is that there is nothing to recommend care denial.

For example, health workers do not say that there is perfectly sound reason to deny life-saving treatment to the reckless driver, the avoidably obese, and other medical imprudents, which unfortunately they are barred from acting upon. Nor do they comment, "I can see why they don't let people in my position decide this matter, but this reckless conduct is clearly relevant to these patients' claims to assistance, so this is very frustrating." More typically, health workers oppose

even talking and thinking as though a patient's avoidable earlier risk-taking should cost her her life and limb; they repudiate such talk as "a category mistake" or confusion of medicine with draconic penal system.

Furthermore, as we mentioned earlier, our intuitions touch not only on whether to exclude personal responsibility from affecting action and policy, but also on what it is appropriate to feel and say about such exclusion. The intuition is that excluding personal responsibility from affect decisions on life-saving care provision is an obligation of justice toward all patients, and not simply good policy or mere charity.

Beyond all that, consider

Challenge 12 (ambivalence, again): The standard exclusion model does not contain the resources to explain why both the public's intuitions on personal responsibility for health and ordinary language are as dynamic and heterogeneous as we have seen.

Standard exclusionary reasons exclude only acting on certain reasons. They do not even begin to clarify why polls and ordinary language should reveal so much flux and ambivalence in our thinking and discourse about these issues: why our willingness to acknowledge luck-egalitarian reasons as real (though excluded from affecting conduct) should be so erratic. While this diversity and flux in commonsense intuition does not refute the standard exclusionary model, that model does not help explain it either; other models might.

In sum, under none of the familiar Razian models do prominent luck-egalitarian outlooks and some of their noteworthy alternatives provide fully satisfactory pictures of the practical reasoning surrounding harshness cases.

IV. DEEP EXCLUSION

This section proposes a new defense of luck egalitarianism from the harshness objection. In many health contexts, I shall argue, we are morally justified in acting, teaching others, and even feeling as though abandoning imprudent patients would unjustly wrong them— although it would not, and in other contexts our practices, discourse and attitudes assume that it would not. In other words, luck egalitarianism is true, but we often have reason to act, speak and talk as though it were false. To introduce this alternative picture in detail, let me first add a definition to the Razian corpus:

A deep exclusionary reason is a second-order reason to refrain from acting for some reason, *and even* from declaring and/or feeling that that reason is relevant. The deeper an exclusionary reason is, roughly, the more types of things it calls on us to refrain from, in more contexts.

Unlike standard exclusionary reasons, which pertain only to action, deep exclusionary reasons bear on discourse and attitude as well. A deep exclusionary reason is a reason to treat, to speak and to feel of a first-order reason as though it was cancelled, whether or not it was, and whether or not in other contexts, one should and does believe and acknowledge it to exist.

Take an example from virtue ethics. My reasons to be generous could be cast as deep exclusionary reasons. On one possible account, they are reasons both to act as though I have less prudential reason to be financially selfish about something than in fact I have *and* to think and speak in that way. In other words, they bear on my attitude and self-presentation, not only on how I act. For example, some would hold that a deeply generous person not only picks up an expensive tab when she knows that it is a lot of money— enough money to make her choice to pick it generous; if she is deeply generous, she will not do so begrudgingly: she will also feel, and she may say to her fellow diners, that it does not matter much whether she picks the tab or they do. Importantly, deep generosity could be thought to involve all that even when in fact it does matter a lot who picks the tab, because the money involved is significant enough to preserve the prudential first-order reason not to pay, and although the generous person on some deep level knows that the money is a lot. One way to understand this conception of generosity invokes the notion of a deep exclusionary reason; in this case, we have a second-order reason not only to behave, but also to talk and feel as though the money did not matter— as though the first-order reason did not exist at all. Of course, in the generosity case, the deep exclusionary reason is not maximally deep, because acting generously requires some cognizance that the material sacrifice is substantial (otherwise any person who miscalculated the tab and therefore overpays would have been generous). But that reason remains somewhat deep. There is a level on which the generous person— quite admirably— talks and feels as though she lacks first-order reasons that in fact she has. Is this “moral schizophrenia” ? How can a single person feel and declare that the money is of little import and also, that it has great import? This duality is interesting, and it ought to be studied and characterized further, but I submit that it is part of a familiar conception of generosity (and of ones of courage, charity, and other virtues). It is also a psychological feature of many people I know.

³⁹As a further example of a deep exclusionary reason, take the prevalent human response to emergency situations, which we mentioned earlier. When a nearby identifiable person is in acute need of our immediate assistance, we will often leave everything and rush to the rescue, ignoring the potential drawbacks of rescuing him. Within limits, our practical reasoning excludes calculations of many kinds: of cost to ourselves and to society, of our chances of failure and of that person's desert and personal responsibility for her plight. Not only does the option to rescue prevail; it appears to prevail without calculation, as though cost, potential for failure, desert, and personal responsibility were wholly irrelevant. People often feel as though even going into these calculations would show a corrupt mind, and push these considerations to one side.⁴¹⁴⁰ However, surely cost and the chance of failure, at least, remain fundamentally relevant. These considerations lurk in the background. They rear their ugly heads once it becomes unaffordable to ignore them. With all the good intentions in the world, for example, there is a limit to how much money we do and we should spend on rescue missions. When the chance of saving someone's life is very small, often we must decide against her in triage. That's the ugly truth, but decent people find it difficult to act on it and even struggle against acknowledging it. Why? Part of the explanation seems to be that

⁴²we have good reason to resist that truth. For one thing, resisting it helps us to do what is usually (not always) the right thing— jumping to the rescue— and to do it immediately, without wasting precious time first. Moreover, the very fact that we deliberate in this way may have high “symbolic” value: it teaches the lesson “that life is precious, and worth great effort to preserve”. There are probably additional deep exclusionary reasons to believe and to say, on some levels, that cost, personal responsibility and so forth are simply irrelevant in decisions on rescue.

As a final example of deep exclusionary reasons, consider prevalent fruitful fictions in medical ethics. Some myths about clinicians’ obligations to patients are fruitful, for example, in order to protect vulnerable patients, giving doctors a deep exclusionary reason to cultivate and spread those myths among colleagues, students, and themselves. Examples of myths that held generally to protect the vulnerable are easy to come by. “As the patient’s advocate, I must always promote his best interests” (as though no other relevant stakeholders existed)- “The oath I took obligates me to show up to work even during life-risking epidemics” (as though promises can have that much moral force). Doctors, professional societies, health educators and medical students sustain those myths even when some doubts about them arise, arguably for good reason. More often than not, these myths improve decisions and outcomes.

Luck egalitarianism and harshness: a new picture

Returning to the relation of luck egalitarianism to basic health needs, I now wish to propose the following picture. In many health contexts, there exist a number of deep exclusionary reasons to refrain either from acting on luck-egalitarian reasons, or from admitting and feeling that they are relevant, although as a matter of basic principle these luck-egalitarian reasons are relevant there and although, rarely and reluctantly, we acknowledge their relevance there.

Put differently, the honest truth is that these personal responsibility reasons exist throughout. But it is equally true that in our conduct, discourse, and attitudes, we also have sound second-order reasons to treat personal responsibility reasons as though they didn’t exist. At some level we all grasp that, strictly in distributive justice terms, there is no objection to denying reckless risk takers related benefits, including medical benefits; but we also sense strong reasons, some of which I list below, to behave, communicate and even believe that distributive justice opposes their abandonment.

This complex interplay of epistemological and practical reasons explains many of the perplexities encountered earlier. It is the source of many apparent tensions between intuitions that side with personal responsibility and ones that repudiate it. It could also be the source of persistent social disagreement and the ambivalence of ordinary language about these matters. In general, when people to some degree see that p , but also feel a strong impetus (moral or non-moral) to deny that p , even to themselves, the result is often extreme but shifting judgments and seemingly erratic behavior. When many individuals espouse p at one moment, then reject it altogether, the combined result is often diversity and flux in societal approaches to p . The somewhat chaotic system that we observed may ensue.

⁴³What are some sound moral reasons for the deep exclusion of personal responsibility from (parts of) the health arena? One reason applies primarily to emergency interventions like ambulance evacuation. Because in most emergency situations, health workers cannot reliably tell which patients were avoidably imprudent, and because life and death hang in the balance, these health workers should not even attempt to do so. That much is often accepted. I wish to add, though, that, since health workers have reasons to maintain their morale and the patients' trust, they often also have reasons to develop non-judgmental attitudes, and fervently to deny that personal responsibility considerations are even remotely relevant. Such a belief system and discourse would often be more stable and reliable than an institutional mandate that health workers separate their beliefs from their conduct. This reason to regard personal responsibility as entirely absent from the health arena would be deeply exclusionary.

Now, as mentioned above, Daniels says that health workers' rejection of personal responsibility considerations appears more profound than a sheer "policy reason" such as efficiency in one sense he is right. Health workers do not ordinarily say, "For reasons of sheer efficiency and so forth, it is best if people in my position do not make decisions based on personal responsibility." Far more often, they believe that there exist profound grounds for their refusal to take personal responsibility into account. However, what Daniels may overlook is that the existence of the latter beliefs is itself conducive to efficiency. Deeply held myths can help sustain compliance. It would not have been very effective to teach health workers *never* to be judgmental because judgmentalism is often inefficient.

Not only emergency health workers; we all have deep exclusionary reasons to behave, talk and think as though personal responsibility considerations did not apply to health. To name one such reason, patients, anxious and frail, would usually enjoy respite from being held accountable for their past actions. This goes beyond patients' health noncompliance, to their occasional misconduct in other areas, including areas where a broad consensus would usually endorse the application of personal responsibility considerations. Health workers are highly reluctant to take punitive measures against patients who pilfer or who harm others during hospitalization, or even to facilitate such measures. Several American female physician friends quite regularly overlook slight sexual innuendos from male patients, taking them as charitably as they can, though they would not accept similar innuendos from other people. They seem to feel that given patients' vulnerability, it is not the time to take them to task. In other words, they identify some sound reason to overlook these patients' (non-medical) noncompliance, both in deed and in word, although clearly there exist some reasons to hold them accountable for it.

Now, as these examples also illustrate, deep exclusionary reasons rarely if ever exclude first-order reasons in full. It is reassuring that these female physicians remain somewhat cognizant that this innuendo is not just raunchy humor; it is minor harassment, and the situation is far from optimal. Had they not seen this as something of a problem, they might have shown insufficient respect for themselves, and they might not report severe harassment. Raz, who sometimes writes as though valid "exclusionary reasons always prevail, when in conflict with first-order reasons,"⁴⁵⁴⁴ at one point acknowledges, quite correctly in my view, that exclusionary reasons sometimes exclude the force of first-order reasons *in part*. We have deeply exclusionary reasons to free patients from

accountability for some choices, in our actions, words, and thoughts, but these deeply exclusionary reasons are themselves overridable.

Moving from an example surrounding blame to one surrounding distribution, in the definition of luck egalitarianism that we quoted earlier, Jerry Cohen mentions charity as a candidate overriding reason that offsets luck-egalitarian desiderata and counts against harsh policies. But charity bears not only on conduct. It also governs interpretation and speech. If we have reasons of virtue or utility to show charity and sympathy, these reasons may well affect how much we should hold the medically imprudent accountable through non-judgmental discourse and attitudes that give these patients the respite they need. The resulting, justified attitudes would tend to generate more lenient policies. Importantly, these reasons could remain real even if, in honest truth, the imprudent have lost their just distributive claims to social assistance.

⁴⁶Elsewhere, I have laid out multiple additional reasons to deeply exclude personal responsibility in the medical arena. For example, there is value in causally reinforcing unconditional respect for persons, which unconditional care may do; and there is disvalue in stigmatizing medically noncompliant minorities, which personal responsibility policies, especially when coupled with special legal exceptions for these minorities, can cause (so it is often better to declare personal responsibility for health irrelevant for anyone, without having to name these minorities).

Again, concerns may arise about the supposed schizophrenia of entertaining different attitudes in different settings. Concerns may also arise about the very possibility of adopting an attitude, including a belief, just in order to accommodate a non-epistemic reason to do so. These worries bring up complex discussions, including ones of motive-consequentialism, and deciding to believe, which I lack the space to pursue here. Hopefully, the examples of deep generosity and the rule of rescue may illustrate that these phenomena, complex and puzzling as they may be, are also staples of multiple ethical theories, and of everyday psychology.

V. FURTHER APPLICATIONS

Deep exclusionary reasons exist in many areas of applied ethics. We already mentioned that our reasons to be generous and charitable, and to rescue others in distress, are often deeply exclusionary. The reasons support acting, speaking and feeling as though some first order reason were cancelled even when it was not. Many additional candidate deep exclusionary reasons suggest themselves.

⁴⁷For example, does tact not sometimes require that we act as though reasons to point out that someone looks hideous, did not exist— as though he looked normal? Reasons of tact are somewhat deep, in that they pertain not only to actions but also to discourse.

Does the value of building a child's self-esteem and her Millian autonomy never call on parents and educators to pretend— to refrain from acting, talking, and often even feeling— that the child is quite average, relatively untalented, or thoroughly incompetent for autonomous decision making,

even when, like many children, he is? Parents often deliberately work up such feelings because they realize that to have them would help give off an impression that builds their child's self-esteem.

⁴⁸Does recognition for minority cultures not require striving to espouse their worths in discourse and thought, say, by starting from a presumption in their favor? Does respect and reverence for the deceased not require that, when we write a eulogy or attend a funeral, we overlook in action, discourse, and, to some degree, even thought, some reasons to be fully attentive to their flaws?

Moving to racism and racial profiling, do norms of respect not recommend the rejection of stigmatizing allegations that correlate someone's minority affiliation with allegedly elevated tendency to be a terrorist, to have low IQ, or to renege on credit card payments, even absent epistemic reasons to assume the contrary? This is not just a matter of saving minorities from the increased material burdens to them from racial profiling policies. Some of our reasons pertain to stigma and personal standing, and so, to what we should communicate and believe.

Elsewhere, I intend to argue that the notion of deep exclusionary reason sheds new light on additional discussions: the discussion of allegedly "irrelevant" utilities; that of the alleged irrelevance of past benefits to fair health resource allocation; that of the strict equality of the democratic vote; and that of the notion that there is "no" reason to level down health. Deep exclusionary reasons make important and under-explored appearances in many fields of morality, political philosophy and the law.

VI. THEORETICAL IMPLICATIONS

If deep exclusionary reasons are common, moral reasoning is more complex and multilayered than ethicists usually take it to be. Colleagues who move quietly from identifying an intuition to opining about right and wrong in its light commonly confuse appearance with reality. Even when an intuition is right in the sense that entertaining it is the right thing to do (as opposed to it being a leftover of our sociobiological heritage or the ideology of the ruling classes), that intuition often gives unreliable guidance on moral truth. That we should entertain and cultivate this intuition does not make its content right.

A second theoretical implication is that the instability and variety of moral intuitions, far from being a fleeting reality, results partly from our lasting commitment to two sets of reasons: firstorder practical reasons (and related epistemic reasons to believe that we have these practical reasons), and second-order practical reasons to believe and educate others that we lack these firstorder practical reasons. When we look at the former set of reasons, we answer normative questions in one way; when we look at the latter, we answer them differently. Different people, under different frames, will focus differently and answer normative questions variably. Because either set consists of good reasons (of very different types), we should not do away with either. This moral instability should, and hopefully will, remain with us for a while.

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¹Cohen 1989, p. 920

²Daniels 2007; Anderson 1999; Fleurbaey 2008; Scheffler 2005

³Temkin 2003; Eyal 2007, pp. 1-2; Segall 2010, pp. 64ff.; Tan 2008, pp. 669ff.

⁴Vincent 2009, p. 41

⁵Raz 1990, p. 40

⁶See e.g. Hill 2002 pp. 128-36; Dancy 2004; Gert 2007. I am grateful to Drew Schroeder for these citations.

⁷Raz 1990, p. 27 (my italics).

⁸Segall 2010, pp. 76-77 (my italics). See also pp. 68-72. Elsewhere Segall says that additional reasons, to promote autonomy and social solidarity, also override the reasons to instill luck-egalitarian injustice

⁹Temkin 2003; Cohen 1989

¹⁰Daniels warns that Segall's "position still leaves it a core conclusion of distributive fairness that we owe people *less* if they choose to do or are responsible for doing something that makes them worse off" (Daniels forthcoming, p. 467; my italics).

¹¹Segall 2010, pp. 69-70

¹²Segall 2010, pp. 70f. A weighted lottery system may be a good pragmatic solution, but note that weighted lotteries usually seem appropriate where there exist exogenous reasons to prioritize someone who lacks a just claim for priority. For example, weighted lotteries have been proposed as compromises between fairness, which would have demanded giving all equal chance at survival, maximizing the number of victims saved or achieving still other benefits if preference is given to some over others.

¹³ Moss and Siegler 2003; Veatch 2000, pp. 311-324
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¹⁴ Anderson 1999, p. 296 (my italics). See also Daniels forthcoming, pp. 466-7.

¹⁵ In a related vein, both Daniels and Herald Schmidt say of public health campaigns that encourage healthy choice, that luck egalitarianism may demand such campaigns, but not as obligations of justice, although justice demands anti-smoking campaigns, for example. Even if luck egalitarianism endorses such campaigns out of charity, solidarity, and so forth, chronologically, such campaigns come before not after patients make the relevant choices, so luck egalitarianism cannot endorse them as matters of justice (Daniels forthcoming, pp. 469ff; Schmidt 2009). Note, however, that, on one interpretation, part of what fully-fledged luck egalitarianism demands as a matter of justice is the promotion of prudent choice (Lippert Rasmussen 2001).

¹⁶ McKie and Richardson 2003. See more on this below.

¹⁷ Daniels forthcoming, pp. 467f. discusses this possibility

¹⁸ Segall 2010, p. 71; However, for Daniels, the normative “prima cy” of democratic equality may actually have different upshots (Daniels forthcoming, p. 452).

¹⁹ Segall 2010, pp. 70.

²⁰ Daniels forthcoming. Anderson might say that they increase equal democratic capabilities, and thereby, democratic equality (Anderson 1999, pp. 316-321).

²¹ Eyal draft. Contrast with Segall’s “unnecessary condition that democratic equality “evaluates the abandonment of objective”

²² Raz 1990, p. 27

²³ Tan also denies that luck-egalitarian considerations arise when inequalities are natural. For him, they arise only when what creates inequality is basic social institutions, for example, through discrimination. See Tan 2008, pp. 671ff/, 679ff/ Tan fails to clarify whether basic institutions’ avoidable neglect to correct otherwise wholly natural inequality is of luck-egalitarian concern.

²⁴ Tan 2008, p. 676.

²⁵ Tan 2008, pp. 670, 671

²⁶ Daniels forthcoming, e-9 p. 452. Daniels assigns this position to Anderson.

²⁷ [On the continuity between luck-egalitarian distributive justice and justice elsewhere, especially in the criminal arena, see Eyal 2007, pp. 16-18.

²⁸ Tan 2008, e.g. pp. 669-670

²⁹ Cohen 2008, pp. 229-273; Tan 2008, pp. 673-675

³⁰ Scanlon 2007; Hurley 2003; Daniels forthcoming; Schmidt 2009; Vincent 2009, pp. 44ff. Additionally, Scanlon denies that “the actual genesis of a person’s preferences” is even “relevant” to the strength of that person’s claims to compensation (Scanlon 1975. On this strong position, when someone’s preferences disadvantage her, there is simply no reason to settle compensation claims in the light of whether these

preferences were themselves avoidable for her. Some would have regarded these cancelled reasons as luck egalitarian (Cohen 2004).

³¹ Fleurbaey 2008

³² I owe this case to Alex Voorhoeve.

³³ Dolan and Tsuchiya 2009, p. 217. Specifically, in this group of respondents, “the weight given to a marginal health improvement for someone who has not cared for her health is about half (0.45) as much as that for someone who has cared for their health. The relative weight given to a marginal health improvement to a smoker in poorer health relative to a non-smoker in better health could be as low as 0.43 (on the assumption that the poorer health of smokers is entirely their responsibility)” (Dolan and Tsuchiya 2009, pp. 215, 216; but see Ubel, Baron, and Asch 1999).

³⁴ Schokkaert and Devooght 2003

³⁵ Segall 2010, p. 66 (my italics).

³⁶ Paraphrasing a statement that Cohen made on a different case (Cohen 1989, p. 940; my italics).

³⁷ Raz 1990, p. 39

³⁸ Tan 2008, pp. 669-673

³⁹ McKie and Richardson 2003, p. 2414

⁴⁰ McKie and Richardson 2003, p. 2408

⁴¹ Brock 2006

⁴² McKie and Richardson 2003, p. 2414,

⁴³ Compare to Raz’s somewhat parallel discussion of “incapacity-based exclusionary reasons” / In Raz’s example, Ann decides not to make an investment only because in the two hours she has for deciding whether or not to make it, she cannot assess it reliably (Raz 1990, p. 48).

⁴⁴ Raz 1990, p. 40. See also p. 46.

⁴⁵ Raz 1989, p. 1178. I thank Daniel Viehoff for referring me to Raz’s acknowledgment. See also Schauer 1993, p. 89.

⁴⁶ Eyal 2009

⁴⁷ Heyd 1995

⁴⁸ Taylor 1994