

Monday 18 April 2005

Dear David

Thank you for writing to us in response to our criticism in Witness to AIDS of your 2002 Lancet article. We appreciate your doing so, and also the fact that you agree that the exchange our criticism generates can be posted on www.WitnesstoAIDS.com. We affirm the spirit of academic debate you endorse.

In reply, may we start by saying that we do not consider that we have misrepresented you at all. On the contrary, we think that, colloquially speaking, we let you off lightly. This is for two reasons.

The first is that in our view a signal problem with your comment is its failure to place the debate about access to antiretroviral therapy in its proper social setting. We agree that in conditions of social scarcity, it is morally justified for the state to distinguish, as one among a number of factors, between claimants on health care resources who are responsible for their own condition and those who are not. Where resources are scarce, and conditions constrain a simple choice between helping those responsible for their own predicament and those not so responsible, then principle suggests favouring the latter. As our discussion below suggests, though, coherently defining responsibility is not a simple matter. This is particularly true of HIV transmission where a myriad of factors affect transmission through unsafe sex.

However, when resources are not scarce, there can be no principled reason for disfavouring those responsible for their own condition. We can well imagine that punitive moralism might support the opposite conclusion, but we do not think that approach principled or respectable. The principle of respect for persons suggests that where there is no scarcity of resources, all who need them should receive them – not merely for the pragmatic reasons you cite, but for reasons arising from our common personhood.

Your comment's first principal error lies in projecting the assumption that antiretroviral therapy is an inevitably scarce resource, and hence that distinguishing between the 'innocently' and the 'irresponsibly' infected is necessary. That assumption is unwarranted. We consider it incontestable that the world can afford to provide resources to treat AIDS, on the principle of universal access, in Africa. The statistics offered in this connection are well-worn – we mention the fact that European Union subsidies to already rich farmers exceed €1bn per day. This is not to mention the cost of unjustifiable wars, or of luxury living in resource-rich countries.

In these conditions of relative opulence, we find your premise that the South African state is poor and that it is therefore morally justified in distinguishing between the 'responsibly' and 'irresponsibly' infected inappropriate and misguided. The treatment access movement has challenged iniquities in medicine pricing and access, and health care infrastructure, in a world skewed by grotesque disproportion in allocation of resources. It did not ask – as you imply – that the South African government (a middle-income developing country) should subsidise the cost of antiretroviral therapy from the existing health care budget alone, or at a cost to other health resource claimants. It demanded readjusted resource allocation, and lowered drug prices, that would cover the costs of saving poor African lives, both responsible and irresponsible.

The debate is thus hardly whether in resource-scarce conditions

discernment between those responsible for their own condition and those not would be justified. It is whether in a globalised world of historically unimagined affluence, poor Africans should be allowed to die of AIDS. In this debate – one of the great moral debates of the last and the new century – your Lancet comment took a stand. Its stand was against broadening treatment access. We find that unjustified and regrettable.

We note that your letter to us states, 'I wholeheartedly support the TAC's pressure on government to provide antiretrovirals to those who need them': but we doubt a reader would so conclude from your Lancet article.

Our second reason for considering that we let you off lightly is the closing jibe of your article. We chose your Lancet piece because you have argued better than anyone we know a view that is widely held: namely, that, in resource allocation contests, moral justification exists for dividing people with HIV into those who contracted it through negligence and those who did not, and that the former are somehow not entitled to treatment. Your view is somewhat more nuanced in that you admit the practical difficulties of differentiating between the two and therefore conclude in favour of treating all.

But you also state that there is 'something ignominious about those who are responsible for their condition, and that of others, self-righteously joining the chorus of criticism, if not leading the choir'. We consider that not only unworthy, but itself self-righteous. We interpret it as a thinly veiled criticism of treatment activists in general and of the TAC and perhaps one of the authors in particular (Many 'choir-leaders' are HIV-positive, no doubt often because of unsafe sexual acts, which we would unhesitatingly concede were in many cases irresponsible.)

We believe Lancet readers would have drawn the same conclusion. Yet if it weren't for people with HIV, who contracted it through their own doing, there would be no treatment for anyone, even those you consider morally deserving.

To proceed to more detail. We have not misunderstood that you put mothers who could reasonably have avoided transmission in the category of 'responsible for ... other people's HIV-positive status'. Nor does our text imply such a misunderstanding. Furthermore your view does discriminate against poor people. We do not know if you believe that the sexual nature of HIV heightens the irresponsibility, because you might be entirely consistent in your view of irresponsibility: but we believe that the argument in *Witness to AIDS* showed that such consistency leads to odd moral positions. (We did not dissect your argument in greater depth in the book because it is aimed at a wide range of readers for many of whom a full academic response would be inappropriate and unwarranted. Instead posed a few questions to lead readers to see that consistency in your position would lead to moral positions most people would reject.)

Your position is that people responsible for their own ill-health have in principle no moral claim to state care. It is our position that in current conditions of world affluence this is irrelevant to a claim on state care, particularly in AIDS. We will try to show here that to maintain your position consistently leads to odd moral positions. We will not try to demonstrate that our position is correct. However, our position is also the position of the South African Constitution and every welfare state in the world including the United States (which is

often mistakenly held as an example of your view because of the rhetoric of some of its leaders; but which actually has a fairly sophisticated state-funded welfare infrastructure, albeit not as elaborate as most other developed countries.) We acknowledge that there might be some pathological instance where we might concede that some irresponsible person is not entitled to state care, but we are interested here in what usually happens in society.

We particularly reject your view that 'blaming the blameworthy' provides a disincentive to dangerous behaviour. Quite the opposite: stigmatisation of people with HIV as irresponsible on precisely the grounds you outline is what drives the epidemic underground at huge cost in suffering and human lives. It has arguably been the biggest obstacle to dealing successfully with the epidemic and is one of the main themes of Witness to AIDS.

Response on first accusation of misrepresentation

You say we misrepresent you by suggesting that you imply that mothers of children with HIV are undeserving of state-provided antiretroviral treatment. But it is not clear from your Lancet article why you mentioned the class of HIV-positive women with HIV-positive children who could have avoided conceiving.

A reasonable reader could infer one or more of the following: (a) the woman is undeserving of making a moral claim for antiretroviral treatment for her child, (b) the woman is undeserving of having children and (c) the woman should be blamed (in some unspecified way) for having a child in order to discourage such behaviour. If none of these were intended we can hardly be blamed for misrepresenting you; the only option left (as far as we can see) is that the inclusion of such women in your irresponsible category was for rhetorical effect.

In our position, against the background we sketch, it is irrelevant whether the woman contracted HIV through her own irresponsibility or not; she has the right to conceive and have a child and to have access to the best health-care possible for that child, pre-, intra- and post-partum, within the state's available resources. However, in the view you propose, it is important to consider the responsibility of the woman in contracting HIV: surely a woman who contracted HIV through no fault of her own (and we use fault and responsibility here as you would use it not necessarily as we conceive it) and desperately wants a child, goes through the mother-to-child transmission prevention programme and still gives birth to an HIV-positive child has not obviously acted irresponsibly, even in your conception of responsibility? Or perhaps we underestimate the consistency with which you hold your view.

By way of illustration to see how consistently far you are prepared to take your position: Tay-Sachs is a disease that affects almost exclusively people of Jewish Ashkenazi descent. The risk of transmission if both parents carry the genes that code for the Hex-A protein is 25%. There is no cure for Tay-Sachs, no mechanism for reducing the transmission rate and death usually occurs within the first three years of life. One of us knows a family that gave birth to a child with Tay-Sachs. The child died. They then proceeded to try again, quite consciously, to have another child. The risk of transmission remained 25% (probability of transmission is independent of the status of the first child), almost the same as the risk of mother-to-child HIV transmission in the absence of an antiretroviral intervention.

Would you characterise these parents as irresponsible, or perhaps undeserving of moral claims on the state should treatment for Tay-Sachs

become available? If not, then surely you cannot characterise the mothers of HIV-positive children, who 'innocently' contracted the disease and wilfully conceived a child as irresponsible.

If you have not done so, we respectfully suggest you read the section of the book on Nontsikelelo Zwedala. She has just had another child, perhaps because she, like many other people, loves the joy of raising children. We find it hard to fathom that she could be judged as irresponsible if her child contracts HIV, the risk of which is much less than 25% because she is taking triple-drug therapy.

Response on second accusation of misrepresentation

You say we misread you when we imply that you promote the message that 'we may deny life-saving treatment to the poor' 'because HIV is transmitted through "irresponsible" acts that are sexual'. It is true that you use other non-sexual examples of irresponsible acts, but the proposition that other non-sexual irresponsible acts forfeit moral claims does not negate the implication that the sexual nature of HIV transmission has a particular opprobrium of irresponsibility. We believe you associated yourself with such an implication (unless you are willing to take your position to a consistent extreme).

The examples you give are traditionally thought of as irresponsible acts (and indeed they are - who could deny that smoking, overeating, alcoholism etc are irresponsible, but we do not believe this to be linked to whether people who do this receive state-funded care, nor does the Constitution).

But let's look at examples of self-incurred injury that are not so loaded: What about serious runners? With very high probability they risk injuries that will require expensive medical treatment at some point in their lives? What about people who work too hard and consequently suffer from depression and other stress-related diseases, or people who drive home from work in a state of fatigue and consequently have a serious accident? Do none of these people have a moral claim to treatment?

One of us, Nathan, ate large chunks of cheese and did not increase his water intake following a kidney stone incident, in contradiction of doctor's orders. Subsequently he got another kidney stone (which might or might not have been related to his unchanged irresponsible behaviour). If he was not lucky enough to be able to afford private care, would he have no moral claim on state care for the second incident even though he behaved irresponsibly? Seems ridiculous doesn't it? Surely eating too much cheese and not drinking enough water is morally different and less irresponsible than having unprotected sex? But if so, why?

Which adult human being has not brought some misfortune on her- or himself at some point in life? Should we never be rescued by the state for our self-inflicted misfortunes? How far are you prepared to take the moral austerity that arises from your position? Unless you take it all the way, it becomes inconsistent or you need to differentiate, somehow, between unsafe sex and other everyday irresponsible things that 'normal' people everywhere do.

Discriminating between the rich and the poor

Your view inevitably differentiates between the poor and the well-off, because only the former must encounter the resource-poor conditions in which the opprobrium of their conduct is visited with denial of care.

The well-off have no need to make moral claims on the state because they can afford private care. The poor have no choice. If they don't make claims on the state for their health they remain sick or die. Your argument is thus irrelevant to well-off people (the state subsidy of medical insurance plans aside) and is applicable only to the poor.

A consequence of your argument is that well-off people can act irresponsibly and sort their own health out, but if their financial position changes through their own incompetence and they become dependent on the state they suddenly have no right, if your view is consistently held, to make moral claims. You cannot escape this example by saying that financial positions change through the lottery of life. Yes, some people suffer financially due to chance. But some other people make terribly poor financial decisions, perhaps through recklessness or lack of financial intelligence, and consequently lose their financial security and become dependent on state health-care.

We can take your argument that irresponsibility negates moral claims against the state to its consistent but very illiberal conclusion: if a well-off person contracts a disease through no fault of her own but becomes poor through her own financial incompetence (as opposed to chance) then she has no moral claim to state health-care because she has acted irresponsibly in order to get to the point where she needs state care.

You also leave out an example that would pose a moral dilemma for many people holding your view. Even criminals who get injured in the course of doing their illegal deeds have a Constitutional claim to state care, so why not the rest of us for harming ourselves or others doing non-criminal deeds? Are you prepared to say criminals have no moral claim to state care for injuries or diseases inflicted through illegal acts? To maintain consistency in your position, you have to answer yes, but such a view is extremely illiberal. Furthermore, it is easy to determine if a criminal is injured through his own criminal negligence (in contrast to determining the responsibility of a person who contracted HIV), so we could in practice deny criminals, at least some of them, medical care. If you do believe that criminals are entitled to medical care, would you argue that alcoholics, over-eaters, irresponsible HIV contractors and transmitters, runners, and the normal foible-burdened mass of humanity are entitled to a lesser moral claim?

What the above examples demonstrate is that taking your argument to its consistent conclusion leads to unacceptable moral positions, which many who think that 'guilty' HIV contractors and transmitters should not be entitled to state-sponsored treatment would not endorse.

With thanks and our best regards

Edwin Cameron and Nathan Geffen