

20 April 2005

Dear Edwin and Nathan

Thank you for your reply, disturbing though it is. What is most troubling about it is that it further entrenches your (partial) misunderstanding of my position. It is regrettable that you still cannot see how you have misrepresented my argument. I encourage those following this correspondence to read my paper for themselves ("HIV and the Hemi-Nanny State", *The Lancet Infectious Diseases*, Vol 2(7), July 2002, p. 394). Unless they too misunderstand, they will see that my paper was not an argument against state provision of anti-retrovirals. My paper does not, as you suggest it does, take a "stand ... against broadening treatment access". I argued that, all things considered, the state *should* provide anti-retrovirals both to those who are and to those who are not responsible for being HIV positive. At the heart of my short paper was an argument for personal responsibility and against pinning *all* the blame for the AIDS epidemic on government. I was suggesting, implicitly, that AIDS activists be more nuanced in their moral views about the AIDS epidemic.

You think that readers would not conclude from my article that I (wholeheartedly) support the TAC's pressure on government to provide antiretrovirals to those who need them. I'm surprised at this, given that I said in reference to HIV treatment that "the state has reason to provide social services to all who need it" and that "a state that does not meet these obligations is worthy of criticism ...". Moreover, even if readers could not conclude from my paper that I support the TAC's pressure on government, they could not conclude from that that I am opposed to the TAC's efforts. I do not say more about my support for the TAC's campaign, because that is not the point of that particular paper. I leave to others the endless repetition of popular views. That practice has its value, but I prefer to express important views that are not usually expressed, which has a different kind of value.

Scarce resources:

Towards the beginning of your reply you claim that it is an assumption of my argument that resources to provide antiretrovirals are scarce – because in the absence of scarcity there would be no reason to differentiate between those who are and those who are not responsible for contracting HIV. Your point here turns partly on an ambiguity in the term "scarce resources" – namely between "finite resources" and "insufficient resources". You are quite right that if resources were literally infinite, there would be no in-principle reason to withhold resources even from those who were responsible for their ill-health. But resources are not infinite. Following this recognition, "scarce resources", if this term is not to refer to all resources, refers to "insufficient resources" – there not being enough to treat everybody. Now the important point is that my argument, contrary to what you suggest, does *not* presuppose a scarcity of resources in this second sense. Even if there are sufficient resources, these still have to come from somebody and thus opportunity costs are incurred. The (recurring) question is whether we can really offer an *in-principle* argument (rather than my pragmatic argument) for why some people should pay those costs in order to treat others who have failed to take responsibility for themselves. I'll say more about how to answer this question later.

Getting personal:

In the second main point of your reply I gain some further insight into why you have reacted so vehemently to my piece and possibly into why you have misunderstood me. You have taken my piece far too personally. You write that I offered a “thinly veiled criticism of treatment activists in general and of the TAC and perhaps one of the authors in particular”. In response, I note the following. First, my criticism of those treatment activists, and especially those who are responsible for being HIV positive, who want to pin *all* the blame for the HIV epidemic on government is not veiled at all, not even thinly. I stand by that. Government, culpable though it is, does not bear all the responsibility and thus it is not appropriate to allocate all the blame to government. But no part of my criticism was directed personally at either of you. Although I knew the HIV status of one of you, because of your public statement, I most certainly had neither of you in mind when I wrote my piece. Central to my argument is that one often cannot know who is and who is not responsible for the HIV infection of themselves or others. I certainly never presumed to know this about you or anybody else in particular.

Blame and stigma:

You reject my claim that “blaming the blameworthy” provides a disincentive to dangerous behaviour. You insist that “[q]uite the opposite: stigmatisation of people with HIV as irresponsible ... is what drives the epidemic underground”. This is partly an empirical question, but it is also partly a conceptual one. Blaming the blameworthy and stigmatising people with HIV are not identical. A nuanced view can preclude stigmatising HIV-positive people while blaming that subset of HIV-positive people who are culpably spreading the epidemic. However, it is precisely because we often cannot know who is and who is not responsible that one should not ordinarily sit in judgement of particular HIV-positive people. There will be some cases where we have no such epistemic impediment. For instance, a convicted rapist, who has been found by a court of law to have wittingly or recklessly infected his victim, is deserving of personal blame. Nor is there any intrinsic problem with stigmatizing that person. Something like stigmatization, on the expressive view of punishment, is exactly what criminal punishment is about. It is irresponsible and inappropriate for us to tip-toe delicately around those, for example, whom we have excellent reason for thinking have intentionally or recklessly trodden on the vital interests of others.

Mothers of HIV-positive children:

I turn now to your more detailed responses. You deny that you misrepresented my position when you stated that I include “among the ‘undeserving’ ... mothers of children with HIV ...” In defence of your claim, you say that it is not clear from my article why I, to use your words, “mentioned the class of HIV positive women with HIV-positive children who could have avoided conceiving”. I think it should be abundantly clear to you. Here is the relevant passage from my paper:

“... many HIV-positive people are responsible for their or other people’s HIV-positive status. In this category are mothers of HIV-positive children who could reasonably have avoided conception. Similarly responsible are those who ignored warnings about the dangers (to themselves and others) of unprotected sex, especially with multiple partners, and those who force themselves on virgins in the erroneous and culpable belief that this will cure them of HIV”.

Understanding a simple logical operator – the disjunction – avoids misunderstanding of this passage. A disjunction is true if one of the disjuncts is true. The relevant disjunction here is: "... many HIV-positive people are responsible for their *or* other people's HIV-positive status". I then provide examples. They are examples of one *or* other of the disjuncts (although I do not exclude the possibility of a weak disjunction which, unlike a strong disjunction, can be true even if both disjuncts are true). "[M]others of HIV-positive children who could reasonably have avoided conception" is an illustration of the second disjunct – namely, those who are responsible for other people's HIV-positive status. I concede that I did not spell that out, but I was writing, under the severe space limitations of an opinion column, for an educated adult audience. Given how obvious it is that "mothers of HIV-positive children" are not necessarily responsible for their *own* HIV-positive status, I would have had to have had an extremely dim view of my readers to assume that they were incapable of comprehending an exemplification of a disjunction.

You wonder why I even mention HIV-positive women who could have avoided but did not avoid conception. The answer should have been clear to you. Those women who know they are HIV-positive, who know the significant risks of transmitting HIV to the children they bear and who could have avoided conception are culpably responsible for producing an HIV-positive child. Such conduct is blameworthy and should be blamed, just as we should blame (culpable) child-abusers. I do not believe, as you seem to believe, that parents have a right to conceive children who stand a high chance of suffering a serious disability or disease (at least if the right in question is a moral rather than a legal one). This applies not only to HIV-positive woman, but equally to other conditions such as the carriers of conditions such as Tay-Sachs. Thus your provision of the Tay-Sachs case is not a counterexample to my position. I apply the same judgement to it as I do to HIV. (For more on the philosophical issues, see my paper "The Wrong of Wrongful Life", *American Philosophical Quarterly*, Vol. 37, No. 2, April 2000, pp. 175-183.)

In neither the HIV case nor the Tay-Sachs case would I suggest that the state should withhold treatment from the child, even in principle. I don't know why you keep insisting that I think it should. These are both cases of people who are not responsible for their condition. But I do think that in both cases we may blame the parents for taking such great risks of producing suffering children. Although prospective parents have an understandable interest in having and rearing children, this interest does not have absolute weight and can be outweighed by the interests of their prospective children. Nobody has a right to have a child irrespective of how much that child may suffer. You seem to think that a moral right to have children is stronger than it really could be. (These issues are treated in much greater detail in a forthcoming book of mine.)

Personal responsibility:

Much of your reply criticizes the logical implications of my claim that *ideally* X should not have to pay for those of Y's healthcare costs that result from Y's irresponsibility. One problem with your argument is that you harness intuitions from *non-ideal* or practical cases to assault my claim about *ideal* or theoretical cases. Although effective rhetorically, this strategy is notoriously defective as a rational strategy. This is because people have difficulty disengaging their judgements about ideal cases from their intuitions about non-ideal cases. Put another way, it is no use your raising intuitions about messy practical cases in order to undermine a theoretical point, especially given that I share your intuitions about the former.

You cite a number of cases – including serious runners who bear a great risk of injuring themselves, hard workers who risk stress-related disorders, those who drive fatigued and thus risk a serious accident, those who ignore doctors' instructions and become ill. In practice, I share your view that all these people have a (non-absolute) claim on the state for healthcare if they are unable to pay for it themselves. The question is whether that claim is founded on their entitlement to care for conditions for which they are responsible. I deny that it is. In response it will not suffice to say, as you do, that a country's constitution says otherwise, because a constitution is made for the non-ideal world. It similarly will not do to cite a principle of respect for persons, because that principle cuts both ways. Why should X be required to respect Y's freedom to harm himself and then be required to pay Y's subsequent healthcare bills? That may respect Y, but it disrespects X. There are very good reasons in the actual world to require X (via the State) to pay for Y's expenses. However, there are no good reasons in an ideal world – a world in which, for example, we know exactly who is responsible for causing exactly how much of their healthcare costs.

There are further complexities that you ignore, however. To say that ideally (although not in practice) the state has no duty to pay for people's costs resulting from their own irresponsibility, is not to claim that all cases of irresponsibility stand or fall together. Irresponsibility is a matter of degree. One can think, without inconsistency, that ill-health that is the actual but *unlikely* outcome of some action is deserving of more state attention than ill-health that is the actual and highly *likely* outcome of some action. There are other important variables too. What all this shows is that, contrary to your assumption, one does not have to make the same judgement about all cases of irresponsibility. However, what distinguishes the cases is not whether they are sexual or not, as you suggest I'm claiming, but rather other factors, such as the degree of irresponsibility. If the transmission of HIV from mother to child, for example, were an extremely rare phenomenon, we would need to judge witting maternal transmitters less harshly than we should judge them given the actual transmission rates. In short, I think you will find that I am entirely consistent in my judgements, although my consistency is sensitive to a number of relevant considerations that you ignore. They are thus not nearly as hard to swallow as you suggest. Indeed, I think that they are much easier to accept than are your views.

Rich and Poor:

Finally you charge me with differentiating unfairly between rich and poor. "The well-off", you say, "have no need to make moral claims on the state because they can afford private care. The poor have no choice." Here again you ignore the important distinction between ideal and non-ideal cases. That most poor people are poor through no fault of their own is a further argument for having a hemi-nanny state in practice. None of this undermines my in-principle remarks about whether one person ideally has a claim on others to pay the costs of his own irresponsibility.

You raise the case of criminals. I do not think that criminals have an in-principle claim on the state to pay for injuries incurred in the commission of a crime (assuming appropriate limits of the criminal law). But again there are good reasons in practice for the state to pay for treatment of such injuries, where the criminal cannot cover these costs himself. Prisoners are a slightly different case from criminals who are not prisoners. Since prisoners' liberty is heavily restricted, the state acts not as a hemi-nanny but as a full nanny for the prisoner during the period of incarceration.

Conclusion:

I made a number of claims in my original paper, which I render explicit here:

1. The state has a duty to provide anti-retrovirals to all those HIV-positive people who are unable to purchase these themselves.
2. This duty is not founded on any in-principle moral entitlement of those who are responsible for having contracted HIV.
3. Government does not bear all responsibility for the AIDS epidemic, and some of the responsibility lies with those who contract HIV or transmit it to others when they could reasonably have avoided this.
4. There is something ignominious or unseemly about those who are responsible for having contracted HIV wanting to pin *all* the blame for AIDS on the government.

In saying that my article takes a “stand ...against broadening treatment access” you misrepresent me as denying rather than affirming the first claim. That aside, we both agree on the first claim, as it seems we do on the third one. I have now responded to each of your arguments against the second claim. I conclude now by offering a clarification about my final claim. In saying that there is *something* ignominious about those who are responsible for having contracted or spread HIV “self-righteously joining the chorus of criticism [of the government], if not leading the choir”, I do not suggest that they may not engage in such criticism, all things considered. It would be appropriate, however, if that criticism were tempered with an acknowledgement of individuals’ personal responsibility for the spread of HIV. That acknowledgement would not diminish government’s actual obligations. It would show more nuance. Activists might shun such nuance, but if they do so they invite the criticism I have offered.

With best wishes,

Yours sincerely
David Benatar