

# Social insurance, mutualistic insurance and genetic information

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While a number of jurisdictions internationally prohibit insuring companies to be able to use genetic information in their risk classification, a voluntary code of practice permits insurers the limited use of predictive genetic test results in the UK.

Jonathan Pugh<sup>1</sup> offers a pluralist justice-based argument in support of the UK practice. Pugh's position is developed to avoid what he sees as flaws with the current debate on insurers' access to genetic information, including (1) an alleged reliance on idealised assumptions about the predictive power of genetic test results, (2) revisionary implications for the provision of insurance suggested in the debate and (3) failings of commentators to engage adequately with a conception of justice that undergirds the status quo approach in the UK.

Pugh suggests that a quasi-libertarian approach to justice is implicit within the terms of the present Code and should be phrased as a principle of *equity*. Further, he argues that basic egalitarian and non-comparative concerns should be captured in broad principles: *equal access* and *need*. This leaves him with three principles that should be balanced in order to guide protection insurance policy.

When the argument is applied to review the current iteration of the code, Pugh demonstrates the argument's critical potential. He illustrates how the quasi-libertarian interpretation seems to dominate the implementation of the code. Hence, the principle of equity justifies the use of genetic information selectively rather than to guard against general adverse selection. Pugh criticises this application of the principle.

While I am largely sympathetic with Pugh's intention to engage with a conception of justice that underpins the UK approach, I am sceptical of his view on genetic exceptionalism. If insurers are permitted to use non-genetic medical risk information, there is no reason to forestall the use of predictive genetic information, as Pugh suggests. The implication may be that the quasi-libertarian approach to justice gains dominance.

## METHOD: AN ENGAGED VIEW

Normative disagreement can be dealt with in different ways. Some argue in favour of the method of applied philosophy. Foundational and ideal principles will guide us to make decisions that best approximate the theory. However, political theorising often make use of false or unlikely conditional assumptions about motivation, behaviour and social structures that do not apply effortlessly to real-world circumstances. Indeed, a number of theorists have pointed out that theorising involving idealisation rather than mere abstractions from real-world complexities cannot be brought to bear on non-ideal problems.<sup>2,3</sup> Ideal theorising turns out counterproductive and fails to motivate agents and to inform political decisions. In short: it fails to be action guiding. In response to such worries, we may turn to non-ideal theory, formulating principles of policy and regulation, given certain assumptions about what individuals and institutions are actually likely to do.

Alternatively, moral disagreement may rather be reviewed using the method of engaged or constructive philosophy.<sup>4,5</sup> This method asks us to identify relevant values in the context of a specific problem and to work through a series of steps so that agreement can be made in a given case.

Pugh seems to favour this latter option. There is, however, an inbuilt conservatism in the process, which may support the status quo.<sup>4</sup> This challenge is worth our attention.

## GENETIC INJUSTICE IN HEALTHCARE PROVISION: A PRAGMATIC VIEW

Healthcare systems like the NHS, which are universal, tax-financed and need-based, are typically founded on values and principles such as equal access, equity and solidarity. If we take these constitutive values seriously, differential treatment in provision of healthcare on the basis of genetic information is unjust.

However, as Pugh rightly points out, there may be several other values that are relevant to the debate on access to mutualistic insurance, including health or critical

illness schemes. These values should be identified and evaluated. For example, in societies that value freedom to access advantages that accrue to individuals by virtue of their health status, mutualistic health insurance is often established as a *supplement* providing better access to high-quality services, a lump sum in case of critical illness, etc.

A system of mutualistic insurance is stable only under conditions of sufficient informational symmetry. Thus, the insurer should have roughly the same risk-relevant information about the insured as the insured has herself (the principle of *uberrima fides*). Moreover, the insured should pay a premium commensurate with the risks she brings into the insurance pool (the principle of actuarial fairness).<sup>6</sup>

Regulating access to genetic information introduces an informational asymmetry between the insurer and the insured and, consequently, undermine the principle of actuarial fairness. Given a future where genetic testing is widespread and tests are developed with significant actuarial value, restricting insurers' access to genetic test results may lead to social inefficiencies and inequities in the market.<sup>7</sup> Consequently, restricting insurers' access to risk-relevant information, including genetic information, is difficult to defend.<sup>6</sup> Voluntary supplementary insurance should operate on commercial principles, without differential treatment of genetic and non-genetic information.

However, the legitimacy of such arrangements is crucially dependent on the provision of necessary care within the social health insurance scheme. Differentiation in premiums of voluntary supplementary insurance on the basis of medical risk information, including genetic information, is acceptable only if citizens are provided sufficient healthcare on an equal footing.

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