

DISABILITY AND THE SCOPE OF PUBLIC REASON

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ABSTRACT

Elvio Baccarini, in his recent book that is entitled *In a better world? Public reason and biotechnologies*, argues that interventions of genetic engineering to prevent a certain class of disabilities are justified. This paper suggests some refinements of Baccarini's way of individuating the relevant class of disabilities. While two suggested amendments require minor clarifications, a third one is more substantial. Baccarini appears to endorse the medical account of disability. I argue that he should adopt, instead, an explicitly normative social account of disability. In particular, this would enable an enlargement of the scope of his public reason approach to the discussion of disabilities. Besides constraining the legitimate responses to disability, such an approach could help in offering justified grounds for specifying what should be regarded as a disability.

KEYWORDS

Disability, public reason, Elvio Baccarini, medical model of disability, social model of disability.

1. INTRODUCTION

Disability has attracted considerable philosophical attention in the last years. Two interrelated issues are central in these debates.¹ One concerns the nature of disability.² The other concerns the appropriate social responses to it.³ Baccarini in his recent book that is entitled *In a better world? Public reason and*

¹ See the collection Brownlee and Cureton 2009.

² For an introduction, see Wasserman et al. 2013b.

³ For a recent example, see chapter 7 of Wolff 2011.

biotechnologies (Baccarini 2015) pays considerable attention to this latter problem. In fact, the second chapter of the book, amongst other things, considers the legitimacy of genetic engineering when aimed at preventing disability. In addition, the third chapter considers whether and how the introduction of genetic and other interventions aimed at eliminating or otherwise responding to disabilities might affect the overall justice of society. However, in pursuing these issues, Baccarini also engages explicitly and implicitly with different aspects of the problem of the nature of the relevant disabilities.

The philosophical problem of the nature of disability stems from disagreements on the *causes* of disabilities and on how we *individuate*, besides their harmfulness, their *pathological* or *impairment* dimension. Philosophical views on these issues can be placed on a spectrum whose opposite extremes are what can be called the “medical model” and the “social construct model”. The medical model characterises the causes and the pathological status of disabilities as exhaustively describable and explainable in terms of any of the sciences at the core of the theoretical side of medicine. The social construct model, instead, maintains that the causes and the sources of the disorder status of disabilities should be found within social practices. In particular, the focus should be on the norms that regulate certain social practices and the organisation of the environment that might determine, but also be determined, by such social practices.

This paper aims at highlighting and clarifying some aspects of Baccarini’s handling of the normative issues concerning the responses to disability, by focussing on the philosophical issue of the nature of disability. Specifically, I criticise the “medical model” of disability that, mostly implicitly, appears to be involved in Baccarini’s proposal. I argue that appreciating the shortcomings of this model suggests a fruitful extension of his approach to disability. In fact, his admirable, sustained and articulated project of putting in touch *public reason* with biotechnology on the specific issue of disability should not just focus on the investigation of the legitimate forms of biotechnological interventions. More than that, it could also provide the resources for prescribing certain regimentations of the notion of disability.

The next section briefly describes Baccarini’s central tenet on the legitimacy of genetic engineering for a family of disabilities. Then, I argue that two clarifications concerning the criteria of inclusion in this class are needed. Finally,

I criticise the medical model of disability and investigate the consequences that this criticism might have for Baccharini's project.

TWO CLARIFICATIONS

Baccharini maintains that the liberal line of justification that he advocates warrants genetic engineering as legitimate:

if, and only if, it is used (i) in order to eliminate some generally recognised disabilities; and (ii) in order to add talents without eliminating other talents. This rule permits genetic interventions in accordance with the liberal conception of legitimacy. (Baccharini 2015, 61)

According to Baccharini, generally recognised disabilities are „impairment and disabilities that everybody agrees are undesirable“ (Baccharini 2015, 61). This characterisation is essential for the justification that he offers of the legitimacy of preventing them with genetic interventions. I do not engage with the difficult problems that he tackles to set the theoretical framework required to articulate such a justification. Here, the task is the much more modest one of clarifying further Baccharini's requirement (i). The focus is, specifically, on the possible constraints on the class of disabilities that should fall under this condition.

The need to clarify the scope of requirement (i) derives from an objection that points to a possible tension of it with the other requirement (ii). According to this criticism, sometimes by eliminating a certain disability we would also eliminate a talent. Baccharini replies that there is a public reason for resisting this objection.⁴ In these occasions, we eliminate a necessary or highly probable disability that everybody agrees is undesirable. However, we eliminate a talent that is less probable, given that it is a disposition that would require certain other conditions to manifest. Therefore, in these cases, we eliminate a sure or highly probable evil at the cost of missing a less probable good.

The success of the previous objection to Baccharini, but also his reply to it, depends on the type of disability that is taken into consideration and it is hostage to empirical evidence. The relation of determination between a certain disability and a certain talent cannot be established *a priori*. It is not inconceivable that certain disabilities, that everybody would rationally agree is preferable not to have, are strictly associated with certain talents. For example, anecdotic reports,

⁴ Baccharini 2015, 59.

but also some empirical studies, appear to confirm a quite strict correlation between bipolar disorders and artistic creativity.⁵ In particular, while the state of severe depression typical of this condition might have a role in offering artistic insight into reality, the following manic state might have, then, a role in allowing the artist to express these insights.

I am not taking here side on the issue of the existence and strength of this relation between bipolar disorders and artistic creativity and production. Moreover, it is clear that Baccarini puts the burden on the opponent to show that there are disabilities that determine, in a robust way, the presence of certain talents. However, the previous considerations might be enough to suggest that requirement (i) needs to be more precise.

Baccarini could just say that requirement (i) applies to those disabilities that are not tightly related to talents. Alternatively, he might argue that, in these cases, the issue is not the strength of the relation of determination between the incapacity and the talent. Instead, what is relevant is whether everybody would reasonably prefer a less probable talent to the more probable combination of that talent and a certain undesirable disability. It seems that both replies are enough to disarm the charge of the inconsistency of requirements (i) and (ii). Let us now consider another issue that needs clarification.

Baccarini's requirement (i) implies that it is possible that in considering two possible types of life, one afflicted by a certain disability and the other not so afflicted, everyone would reach the conclusion that the life without the disability is preferable. Baccarini is aware that this might be taken to have some problematic consequences.⁶ In fact, he points out that he does not want to conclude that the life of individuals who actually have that disability lacks value. He maintains, however, that: "it is undeniable that these human beings would have greater opportunities and would avoid a great amount of suffering in their life by not having the disability"⁷. This claim appears to require another clarification about the sort of disabilities that fall under requirement (i).

It seems that what Baccarini says about people who endure a disability might be interpreted as presupposing that the disability contemplated in (i) should be, somehow, "detachable" from the person. In fact, we can take Baccarini's

⁵ For a survey of recent research on these correlations, see Post 1994 and Andreasen 2008. A recent genetic explanation of these correlations has been advanced in Power et al. 2015.

⁶ Baccarini 2015, 62-63.

⁷ Baccarini 2015, 63.

counterfactual reasoning as stating that the person who has actually the disability would not suffer as much as she is actually suffering, and thus she would be better off without the disability. This appears to require that the *same person* would have to exist in the counterfactual situation to reap the advantages of removing the disability. Therefore, it would follow, that (i) refers to the disabilities whose removal does not affect, in a substantive way, the identity of the person or that does not undermine their existence. However, is there any practical consideration for introducing such a restriction?

Now establishing whether a certain disability, including those that everybody would reasonably prefer not to have, is constitutive of a person is a complex empirical and philosophical matter. There are difficult conceptual issues about what constitutes the criteria for the identity of a person. In addition, there are also problems concerning how physical or biological features might satisfy these criteria. Here, I can just point towards disabilities that affect from birth some permanent psychological traits as some possible example of “non-detachable” disabilities. Perhaps, for instance, we might think about severe cases of autism or the Down syndrome.

Baccarini might be left with three ways of proceeding. With the first one, he might like to offer an alternative argument to block the possibility of drawing from (i) the conclusion that people with the disabilities contemplated by this requirement lack a valuable life. Therefore, he should offer a reasoning alternative to the counterfactual reasoning that the *same people*, who exist actually and have a disability, would suffer less or be better off if the disability were removed. Alternatively, he would have to deny that there are disabilities that cannot be detached from the person. Finally, he might simply accept the suggestion that is advanced here. Thus, he should specify that requirement (i) refers to the subclass of “detachable” disabilities. This would leave open the possibility of investigating further hard and debatable cases. While I find the last one the less costly option, Baccarini might have a different answer. In any case, there is a final and, probably, more important clarification of the notion of disability that appears to be operative in Baccarini’s requirement (i). I address this issue in the next section.

3. MEDICAL AND SOCIAL ACCOUNTS OF DISABILITY

Baccarini offers a clarification concerning the disabilities at issue in his requirement (i) that bridges his work on the social response to disability with the

problem of its definition. He correctly points out that the fact that all would reasonable judge that it is not preferable to have condition x by itself is not enough to warrant the application of genetic engineering to eliminate x . For example, being a woman in a radical male chauvinist society would be a condition everyone would reasonably prefer not to endure.⁸ Clearly, genetic engineering to determine a change of sex would not be a legitimate intervention in this case. According to Baccarini, the required constraint is that (i) should be taken to refer to disabilities “that are disabilities independently of the social and political situation (even though social policy might reduce their effect)” (Baccarini 2015, 62). Now, contemporary reflection on the nature of disability focuses primarily on the nature and extent of the dependence of disability on social, political, and associated environmental factors (from now on, for simplicity’s sake, I will call all these factors *social*).

Bridging Baccarini’s treatment of disability with the debate on the dependence of disability on social factors requires some clarifications. We need to decompose the notion of disability and establish the nature of the dependence or dependences at issue. Moreover, it has to be investigated whether and how the components of disability are so dependent on social factors. According to a plausible decomposition, that we can use here heuristically as a working hypothesis, disability is:

- (a) a physical or mental characteristic labelled or perceived as an impairment or dysfunction and (b) some personal or social limitation associated with that impairment. (Wasserman et al. 2013)

Let us consider the notion of dependence on social factors. There are two interrelated ways to spell it out. The first one, ontological, is *causal*. Therefore, there would be an issue about whether or how social factors causally determine the components of disability. The other notion of dependence has more to do with the way in which we *individuate* the impairment status, in component (a), and the limitation status, component (b), of the relevant condition. This appears to be an epistemic understanding of dependence.

It seems that Baccarini argues that the limitation status in the component (b) of disabilities, that fall within the scope of his requirement (i), should be *causally* independent from social factors. In fact, the justification that this requirement offers for genetic engineering is that everyone would reasonably find it

⁸ Baccarini 2015, 62.

undesirable. It seems natural, then, that the focus here is on the problem of individuating a certain type of limitation. This is a limitation that would be regarded to be so severe that, within Baccharini's framework of public reason, would render legitimate certain interventions to remove it. This appears to be suggested also by the example that Baccharini uses to introduce the requirement of independence. The physical and psychological condition of being a woman involves personal and social limitations in virtue of a certain social and political situation. Removing that situation of discrimination would remove the limitations.

However, principle (i) describes "some generally recognised disabilities". So we might be left wondering whether when Baccharini says that these are "disabilities that everybody agrees are undesirable", in reality he wants to say that these are "conditions that everybody agrees are disabilities". In that case, his requirement of independence from social factors would concern conditions that everybody agrees are disabilities and that are independent from social factors. This might leave open the issue whether Baccharini's requirement of independence is directed to both components of disability, impairment-dysfunction and limitation or just one of them. Let us assume here, anyway, that Baccharini is considering just the limitation dimension of disability.

Whether or not there are disabilities that satisfy the requirement that their limitation aspect is causally independent from the social factors is a debated issue. The polarisation of views is well characterised by this quote:

Consider, for example, the question of how well-being is affected by the characteristics on which the disability classification is based. Some philosophers and disability scholars claim that the answer is no different than in the case of race or sex: to the extent that disability reduces well-being, it is because of the stigma and discrimination it evokes. In contrast, other philosophers claim that disability is fundamentally different from race and gender in that it necessarily reduces well-being: even in a utopian world of non-discrimination, people with blindness, deafness or paraplegia would be worse off than their able-bodied counterparts. (Wasserman et al. 2013)

Let us call the first option the "medical model" of disability or, pedantically, the "medical model of the limitation aspect" of disability. The medical model understands a disability as a physical or mental impairment of the individual that causes certain personal and social consequences. It regards the limitations faced by people with disabilities as resulting primarily or solely from their impairments,

when understood as socially independent physical or biological conditions to be regarded as dysfunctional.

The second option is, instead, a form of the “social model” of the limitation component of the notion of disability. In this case, it is argued that certain impairments involve limitations in virtue of social and political conditions, which might, in particular, shape the physical environment as well. It is interesting to notice that many disability activists defend radical versions of the social model. For example, in the UK the *Union of the Physically Impaired Against Segregation* (UPIAS 1976) defines the limitations associated to disability exclusively as a result of “contemporary social organization”.

There are also intermediate positions between the “medical” and the “social” models. The supporters of these views assert that individual impairments and the social factors are jointly sufficient causes of limitation. The WHO's *International Classification of Functioning, Disability and Health* emphasizes, for instance, that disability is a “dynamic interaction between health conditions and environmental and personal factors.”⁹

Baccarini's requirement of social independence of the limitation dimension of a disability appears to restrict the application of (i) to disabilities that satisfy the medical model. Therefore, both the extreme social model and the mixed models, that deny the existence of such disabilities, are incompatible with his proposal.

Of course, one way to proceed for Baccarini would be to show, at least for the class of relevant disabilities, that these models are inapplicable. In these cases, the associated limitations would not be caused by social factors. There are philosophers that have offered arguments for a conclusion of this type, although within the context of mixed positions that differ from the radical medical model.¹⁰ They maintain that pain or discomforts are limitations associated to certain impairments independently from social factors. Clearly, it is not difficult to think about certain disabilities that involve such an amount of pain and discomfort that everyone would reasonably prefer not to have. However, this might introduce a too restrictive reading of the notion of the limitations involved in disabilities that everyone would reasonably find undesirable. Consequently, Baccarini's recommendation would be restricted to these very specific cases.

Baccarini has not argued for the existence of disabilities that are independent, in their limitation dimension, from social factors. Instead, he argues compellingly

⁹ World Health Organization 2001.

¹⁰ See, for instance, Terzi 2004 and Shakespeare 2006.

for the conclusion that there are disabilities that involve limitations that everyone would reasonably prefer not to endure. Perhaps, we could derive from this conclusion, with some further premises, that these are exactly the disabilities that fall squarely within the medical model of limitation. This is an intriguing possibility worth exploring. However, I would finally like to suggest that a defence of the medical model, even for a restricted class of disabilities, is neither advisable nor needed to support Baccharini's proposal.

The dysfunction component should be at the core of the medical model of disability. A condition that just satisfies the limitation requirement might not be a disability that requires a medical intervention. Consider, for instance, poverty or lack of education. Disabilities involve limitations that result specifically from deviances of the body or the mind from certain standards of health or proper functioning. For instance, several authors, who engage with the philosophy of psychiatry, have thought that we should recur to the notion of biological function and dysfunction to articulate such standards and their violations. Usually the relevant notion of function in these accounts is understood in evolutionary or other naturalistic terms. This naturalised notion of function is then used as a, at least, necessary grounding to the notion of impairment to be integrated with the openly evaluative and socially dependent notion of limitation.¹¹ According to these views, an account of mental impairment or illness should involve an objective grounding in value-free scientific notions such as, the supposedly so, concept of biological function.

Many, at least in philosophy of psychiatry, argue that value-free biological functions cannot ground objectively the notion of impairment. A plausible pragmatic argument is that contemporary evolutionary psychology and evolutionary psychiatry are in their infancy, and waiting from these disciplines a verdict on what constitutes impairment would unreasonably require putting on a hold all our contemporary diagnostic and therapeutic practices.¹² Another convincing line of reasoning is that, in any case, it is impossible to separate biological and social factors within psychiatric classification and explanation.¹³ There are also arguments of a conceptual type. Rachel Cooper argues, for instance, that we can conceive plausible instances of biologically functional or adaptive mechanisms that produce outcomes that we could still take to be

¹¹ For influential statements of this position, see Boorse 1977 and Wakefield 2007.

¹² See Bolton 2008, pp. 160-161.

¹³ See Bolton 2008, pp. 151-158.

disordered or impairing.¹⁴ For the sake of argument, she assumes that agoraphobia is an adaptive trait for the kind of dangerous environments where humans used to live. Despite we could regard agoraphobia as being biologically functional; we would still regard the condition of a person who has this type of phobia, in the type of society we are living in, as being an impairment. This authorises the conjecture that there could be forms of agoraphobia that amount to something that everyone would find to be undesirable to have in the type of society we currently live.

In general, there can be justified scepticism about *individuating* the impairment status of a certain condition independently from certain social factors.¹⁵ The general gist of these lines of argument is well illustrated in the following quote:

What counts as an impairment may depend on which variations appear to be disadvantageous in familiar or salient environments, or on which variations are subject to social prejudice: Less-than-average height may be more readily classified as an impairment than greater-than-average height because the former is more often disadvantageous in environments designed for people of average height, or because it is generally seen as less desirable. (Wasserman et al. 2013)

For such reasons, it is difficult to establish the objectivity of the impairment classification by appealing to a clear and undisputed biomedical norm.

However, difficulties in the medical model do not mean that Baccarini cannot successfully isolate the relevant disabilities to which requirement (i) applies in accordance with his general justificatory framework. A first step to show how this could be done is to blur the distinction between the impairment-dysfunction and limitation components of disabilities that I have used so far. This implies adopting a reading that appears to be already in the letter of Baccarini's formulation of requirement (i). In fact, he says that this principle should concern "conditions that are generally recognised as disabilities".¹⁶ Thus, the general recognition should at the same time offer the ground for the undesirability of the condition and its impairment status, and thus its being a candidate for medical treatment.

A second step needed to detach successfully Baccarini's proposal from the medical model of disability, involves adopting a weaker requirement of independence from social factors. The requirement should just prescribe

¹⁴ Cooper 2007, pp. 31-34. In addition, see Cooper 2002.

¹⁵ See, for instance, Fulford 1989 and Shakespeare 2006.

¹⁶ Baccarini 2015, 61.

independence from a specific class of social factors: those that are not justifiable within a certain preferred normative framework. For example, it seems that the central issue in Baccarini's example of being a woman in a radical male chauvinistic society is not whether or not, in general, the impairment/limitation dimension of that condition depends on social factors. The issue concerns the type of factors that can be accepted as causes, and on the epistemic side as the bases for the individuation, of that condition as a disability. Clearly, many normative frameworks recommend that discriminatory factors on the basis of sex should not be included. Therefore, the aim is not to isolate some biological or physical objective, and value independent, impairments-disabilities. We should not be in the business of individuating facts that fix the disability status of a condition by means of features that pertain essentially to the individual independently from any social factor. The core problem is whether the relevant social factors are morally justifiable. It might be worth clarifying that here there is no need to take a stance on the issue of the existence of objective moral values or on that concerning the naturalisation of these values. The focus here is on the fact that the status of impairment-disability has to depend on the explicit reference to certain justifiable values.

There could be social factors that it is legitimate to assume to be *causes* of what we regard as disabilities, and/or as the sources of our *individuating* those conditions as disabilities. Two specific cases might help to illustrate the point. Let us first consider dyslexia. Such a condition, when it involves a biologically grounded incapacity, can be regarded as a disability only within literate societies. Moreover, this condition can be *legitimately* regarded as a disability when there is a justification for preferring a literate society to a pre-literate one. Let us also consider the possible case of individuals who perform criminal or antisocial behaviours that involve limitations. These limitations would be exclusively due to social factors that would determine justified forms of social rejection. Let us assume that there are, moreover, certain justified social practices of ascription of moral or legal responsibility. Interfacing the requirements of these practices with what we can know about the underlying biological and/or psychological nature of these individuals, we might have reasons to conclude that they, being not responsible for their behaviour, are impaired and suffer limitations. So, they are disabled in a way that everyone would reasonably agree is not desirable. Nowhere, in such a hypothetical case, we would have to recur to the assumption that there is

society-independent way of fixing the status of disability (although, of course the underlying physical causes might be so fixed).¹⁷

Clearly the previous examples show that in many crucial points we would have to rely on the justification of certain social practices, such as those involved in the ascription of responsibility and how these ascriptions can be overturned by specific biological or psychological explanations. Where can we get this justification from? I would suggest that the domain of public reason, in relation to the legitimacy of genetic engineering applied to disability, should have a wider scope than the one assigned to it by Baccarini. It has not just to do with determining the kind of reasonable and shared undesirability that has to be attached to an objective society-independent impairment that would legitimate, for instance, genetic intervention. More than that, the methods of justification of public reason should regiment and legitimise our views concerning the social factors that we might allow to enter in the causation and individuation of the conditions that justifiably we can regard as disabilities.

Clearly, the present proposal does not require that sciences have nothing to say on the issue of disability. Science has the essential role of describing and explaining the cause of these conditions and offering, if medicalisation is justified independently as suggested above, the means to modify or eliminate them. Moreover, considerations concerning feasibility and risk-assessments coming from the experts would be relevant contribution to the public justification of the conclusion whether or not some condition can be regarded as a disability, and whether it is undesirable in ways that render legitimate genetic engineering.

4. CONCLUSION

Baccarini has offered a very articulated and sustained defence of the justification of genetic engineering in the case of certain disabilities. I have argued that a more precise characterisation of the disabilities at issue might be beneficial to his approach. The substantive integration should involve an explicit rejection of a radical medical model of disability and embracing a social and value-laden model. This would open up another relevant domain of investigation for the integration of public reason and biotechnologies when the response to disability is at issue.

¹⁷ I defend in more details this view in Malatesti 2014, where I investigate the illness status of psychopathy.

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