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NORMATIVITY, EQUAL ACCESS TO BIOTECHNOLOGIES, AND ANTI-PERFECTIONISM

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ABSTRACT

In this paper I critically assess some arguments made by Elvio Baccharini in his book *In a Better World?*. I suggest some ways in which his arguments can be clarified; more notable in relation to his general framework of public justification. I also suggests that Baccharini is too lenient with parents in two respects: he gives too much leeway to their right to shape their children's ambitions and plans, and he also allows them too much room for improving their chances to get social and economic advantages. Finally, I make smaller remarks in relation to Baccharini's conception of disabilities and the duties to enhance the severely disabled.

KEYWORDS

Normative political philosophy, equality of opportunity, parental rights, public reason

In A Better World? Public Reason and Biotechnologies is Elvio Baccharini's attempt to provide a framework to think about challenges that possible findings in biotechnology raise for liberal democracies. The framework he employs is distinctive because it is premised on a requirement of public justification. This requirement is based on the idea that law and public policy must be justified to citizens in terms that they can reasonably be expected to accept as free and equal. Appealing to public justification makes it possible to reject arguments not because they are unsound, but rather because they are not public in the right way. Indeed, this is Baccharini's most common argumentative strategy. He rejects most 'conservative' positions against the use of biotechnologies (defended by Leo Katz, Michael Sandel and Francis Fukuyama among others) precisely on these grounds. This approach can be

frustrating to some people since it refuses to engage with some premises (which could be true) in virtue of not being premised on political values. I, however, find this approach attractive. With Baccharini I believe that respecting citizens' political autonomy is a necessary requirement for the legitimacy of law. I am also in broad agreement with Baccharini's permissive view on the use of biological technologies. Thus, my following remarks on Baccharini's arguments are intramural. Those who reject public justification at the outset will not be convinced.

These short remarks are divided in four sections. First, I make some reflections on the methodology employed by Baccharini. My main aim in this section is to clarify, and hopefully complement, his broad methodological approach. Second, I suggest that he is too quick with respect to parents' rights to enhance their children. Third, I discuss the role and importance of equal opportunity in the distribution of human enhancement. My belief is that, although Baccharini's conclusion might be warranted, he is too quick to accept agents mobilizing their privately owned resources to access enhancement technologies. Fourth, I make a few remarks on whether there are reasons to enhance individuals who are severely disabled, and how to think about the fair costs and that publicly supported enhancement programs rise.

1. NORMATIVITY

A great virtue of Baccharini's book is that it explicitly discusses some of the methodological assumptions that guide his substantive arguments. This is helpful since it clarifies the nature (and limits) of his claims.

In Baccharini's view, a fundamental aspect of political philosophy is that it must be capable of guiding actions (including laws and policies) in our concrete circumstances. I agree with him that normative political philosophy must be action guiding. But I am less sure about some aspects in which he makes the case for action guidance. I will address two different dimensions that Baccharini explores, and I hope that my comments help to clarify and advance some of the positions he advocates in his book. First, action guidance can be related to the type of reasons that political philosophy encounters. Second, it can also be related to the relationship between facts and normative principles.

To my mind there seems to be a pervasive lack of clarity concerning the types of questions that political philosophy is meant to address. The debate between telic and deontic egalitarianism provides a nice illustration of this lack of clarity. Take, for instance, the canonical definition of luck egalitarianism

according to which “it is bad —unjust and unfair— for some to be worse off than others through no fault of their own” (Temkin 1993: 13). It is unclear what kind of reasons undeserved inequalities gives us. We might think that it is regretful that some undeserved inequalities exist without thinking that there are any reasons to address them. Some strands in political philosophy are insufficiently attentive to this distinction because they assume that the fact that something is bad gives us a reason to correct it (Segall 2016). Without further argument this seems unwarranted. Distinguishing between claims about things that are good or bad, and things that are just or unjust (or fair or unfair) helps to clarify many purported disagreements in contemporary political philosophy. If this distinction is correct there is no obvious disagreement between normative political philosophy and other forms of political philosophy (the kind of philosophy Baccarini, following David Miller, calls neo-Augustinianism). They just address different questions: Normative political philosophy asks ‘What should we do?’, Neo-Augustinianism asks ‘what states of affairs are desirable?’ (Scanlon 2006, Williams 2008). The difference between these two projects is that they appeal to different kinds of reasons.

Some people, though, make a different diagnosis. For instance, David Miller suggests that contemporary political philosophy has ceased to be action guiding by relying too heavily on idealisation. Baccarini seems to endorse Miller’s diagnosis, and thereby accepts the latter’s worries on ideal theory. This diagnosis seems inaccurate to me. I’ll return to it below.

Recent years have witnessed some debate about whether fundamental principles of justice must be sensitive to facts or not. Cohen famously argues that fundamental normative principles (including principles of justice) are fact independent (Cohen 2008). Cohen thinks that, unfortunately, a large amount of today’s political philosophy is affected by fact-based premises. In his view, taking facts into account derails us from discovering true principles of justice. As an example, take Rawls’s argument to the effect that justice permits offering higher salaries to some members of society, if the outcome of higher salaries is beneficial to the worst-off members of society. This idea clearly is based in an empirical fact: it is a fact of human psychology (or of human contemporary society) that people can be motivated to choose socially valuable occupations if they are offered incentives in the form of higher remuneration. Cohen thinks that, “a principle can respond to [...] a fact only because it is also a response to more ultimate principle that is not a response to a fact” (Cohen 2008, 229). In the case of the difference principle, the pure normative principle is one that establishes that we should strive to make the worst-off as better off as possible. This principle does not depend on any facts. Despite this

argument, Cohen thinks that facts do have some important role to play in political philosophy; their role, though, is more limited. He thinks that facts matter for establishing ‘rules of regulation’, but he also thinks that the philosophical meat is in discovering the fact-free normative principles (Cohen 2008, 263-68).

Baccarini and I disagree with Cohen. We think that fact-sensitive principles are principles of justice in the sense that a complete theory of justice will be fully action guiding and will have no moral residue. Although these principles are less pure than Cohen’s fact-insensitive principles, this does not mean that they are not principles of justice (Cf. Williams 2008). Again, we might appeal to the distinction I made in the previous section between normative political philosophy and axiology. Since normative political philosophy must be action guiding, we cannot ignore facts altogether.

The next question is, of course, which facts should principles be sensitive to. Few people disagree that facts such as relative scarcity of natural resources must be taken into account. Also, I think it is clear that general facts about human psychology and society should be taken as fixed. I am less sure about whether widespread beliefs in society should be taken as a fact or not. My worry here is that taking beliefs as facts, and trying to develop principles that are sensitive to them might be too conservative.

Baccarini approves Miller’s claim that “the limits of proper reasoning about justice are set, among else, by what we take as tolerable and intolerable outcomes” (24).¹ Socially held beliefs can play two roles in philosophical theorizing. On the one hand, they might be taken as the starting point for, or building blocks of, normative political philosophy. On the other hand, they might play the stronger role of constraining the conclusions that political philosophers reach. Baccarini is not sufficiently clear about this distinction but his writing suggests that he embraces both senses to a considerable degree. I think that widely held beliefs must be the starting point for political philosophy, rather than only abstract principles. We have to start from somewhere and these beliefs seem a plausible candidate. But I am far less sure about the second role. Taking beliefs as constraints makes political philosophy far too conservative: any challenges to what most of our co-citizens believe would be ruled out at the outset (26). My sense, however is that Baccarini fails to pay sufficient attention to these two roles on occasions. Considering the role of families in creating unequal opportunities Baccarini argues that any suggestion that involves the abolition of the family should be discarded on the

¹ All page numbers refer to his book, unless otherwise stated.

grounds that doing so “is inconceivable to us” (24). My sense, though, is that this reply is insufficient. We need to say something about why the family should not be abolished. This can be done, for instance, by developing an account of the values and interests individuals have in forming and living in families. Just saying ‘abolishing the family is inconceivable to us’ sounds too weak a reply. This is because we can see that some principles that we endorse now were inconceivable to many people in the past. Allowing same-sex couples to adopt children still is, for large segments of some societies, inconceivable.

To what extent should we care about “actual moral beliefs of citizens” (40)? There is an ambiguity about this. Rawlsians do pay attention to the fact of pluralism, and to that extent are sensitive to people's actual beliefs, even if they are mistaken (Rawls 1996). But it is not obvious that the set of beliefs that must be accommodated is the set of beliefs of actual citizens. In my view the most attractive reading of Rawls demands that public justification is owed to a subset of idealized citizens who accept the core liberal values of freedom and equality (for a defence of this account see Quong 2011). This demand would be unaffected if most of our co-citizens in fact rejected those ideas. Again, the risk is that this belief turns the project of political liberalism into neo-Augustinianism, but this need not be. The aspiration to justify policies to citizens as free and equal still gives us reasons for action, rather than merely for regret.

This of course does not mean that a person *qua* citizen (rather than *qua* political philosopher) should reject any kind of compromise. Few people think that the maxim ‘*fiat iustitia, et pereas mundus*’ is the right conclusion all things considered. But, as Baccharini agrees, sometimes compromises are purely “tactical and temporary” (41).

2. PARENTAL RIGHTS

In this section I plan to discuss some disagreements I have with some of Baccharini’s arguments regarding parents’ rights to intervene in their children’s prospects in life. The main point I make is that Baccharini’s argument is too permissive with regards to parents’ rights to shape the preferences and opportunities of their children both in terms of shaping their environment, and in terms of genetic interventions.

Baccharini seems to defend a two level anti-perfectionism: at the first level it is illegitimate for the state to defend perfectionist policies.² At the second it is

² I agree with Baccharini about state perfectionism, thus I will not discuss it further.

permissible for parents to appeal to perfectionist reasons when they make certain choices regarding their children's education, upbringing and genetic make up.

Regarding educational choices, Baccarini argues that parental rights are broader than rights concerning genetic interventions. This is because experience strongly suggests that "in the education and care of their children a family of medium virtue is usually more successful in comparison to public institution" (53). Genetic interventions are different, though. He holds that we must be careful in granting parents rights to apply genetic interventions for their children because "we have no experience in this" (53).

The upshot is that parental rights are quite extensive in relation to education and upbringing choices, whereas genetic interventions are more constrained. In relation to the former, he endorses the possibility that parents offer their children alternative forms of education such as religious schools or homeschooling when parents reject the content of the standard curriculum, even if the rejection is based on comprehensive reasons (53). This claim is too swiping. It is true that mediocre parents tend to be better than institutions when they take primary responsibility for the care of children. But it is far less clear that forcing parents to send their kinds to public schools makes children worse off than they would be with full parental discretion.

Baccarini thinks that genetic engineering "is 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 (61)".

This principle raises (at least) two significant issues: first, it seems specially permissive with parents who want to add talents to their kids, even when the kids already have an adequate range of talents, and the parents' justification is premised on perfectionist reasons. This permission is even stronger in conjunction to the extensive educational rights that Baccarini defends. To see this consider:

Samba: a child called Sara has a range of talents that is fully adequate. She could develop into a ballet dancer, mathematician, painter, footballer, etc. But she lacks the talent for dancing samba. Her parents believe that samba is very valuable and modify Sara's genes so that she now also has the potential of being a samba dancer.

Now imagine also that Sara's parents shape her education and upbringing in a way that highly increases the likelihood that she becomes a samba dancer. They send her to samba classes from an early age, take her to samba festivals,

and encourage her in other ways. They also discourage her from developing other talents: say, they rarely take her to football stadiums, try and dissuade her from learning ballet, etc. The principle of genetic modification is satisfied, since the parents have just added a further talent, without eliminating any other one, and the educational choices parents make also seem legitimate since Baccarini is willing to concede wide discretion in the way in which parents exercise their parental rights.³ My judgement, however, is that parents in *samba* act illegitimately: although it is true that it is not impossible for her to become something but a samba dancer, it is very *costly* for her to do so (Cf. Cohen 2011, Clayton 2006). Parents have a duty, I believe, not to impose high costs on their children when the latter form and choose a conception of the good. My view on parental rights is, thus, far more restrictive than Baccarini's.⁴ One might worry that the less permissive account that I prefer is problematic because it might jeopardise other values, specially other family values. I can only sketch two answers to this challenge. First, one can argue that parents act wrongly when they impose these high costs, and still believe that they have a claim-right to impose them. In other words, the duty might be non-enforceable. Second, it is not clear to me that forcing parents to avoid shaping their children's preferences should always destroy family values. We might think, for instance, that families can flourish, even if parents are not legally entitled to home-school their children, and are forced to send them to public schools.

Perhaps part of the disagreement I have with Baccarini on these matters partly depends on how we understand the processes by which people come to form and pursue a conception of the good. Baccarini thinks that people appreciate what forms of live are valuable, and on that basis come to exercise some talents and not others. He writes,

[p]eople do not make choices through a consideration of the talents which they have, and then choose according to this. They come to appreciate some activities, and then they try to be successful in them. The situation is not that each of them recognises his or her talents [...]. [People] make choices in relation to their initial system of values. (65).

³ Baccarini defends "a complete denial of genetic interventions on human beings (both in relation to families and societies), when enhancement of some talents is at the loss of other talents" (61).

⁴ A further worry is that it is unclear to me why should parents be allowed to create new talents in children who already have a good range of opportunities. This is because, with Raz, I think that autonomy requires only an adequate range of options. Beyond a certain point, further choice does not increase autonomy (and might even decrease it). For a defence of this idea see Raz 1986.

I suspect that this is not the right description of how we choose our life plans. I believe that there is a deeper interaction between our values and our talents. The view that we care mostly about preference satisfaction, and that we choose what goals to pursue only in function of how successful we will be strikes as deeply implausible. Mill is right when he argues that it is better to choose more worthwhile projects at lower level of satisfaction than to choose less valuable projects at higher level of satisfaction (Mill 2015, Dworkin 2002). A hybrid view seems more plausible. On this view, “talents and preferences can to some extent be cultivated, but they are usually cultivated on the basis of other existing tastes and capacities” (Miller 1999, 147). This is because some degree of success is necessary for an activity to be valuable. I might think that writing poetry is valuable, but if I am hopeless at it, then my meagre efforts are valueless. It is not only that the hopeless poet gets frustrated by his lack of talent, it is that his efforts are pure waste. He has no reason to keep trying. However, if the poet’s efforts were partially successful then he would have reasons to keep writing. It would be true that he is mediocre, but his projects are valuable nevertheless.

The second point that the principle of genetic modification raises relates to an ambiguity in Baccarini’s treatment of disability. Recall that the principle states that genetic engineering “is legitimate if, and only if, it is used (i) in order to eliminate some generally recognised disabilities” (61). It is unclear what role does being “generally recognised” play. According to the *recognition condition*, it is permissible to eliminate (through genetic interventions) a person’s feature only if this feature is generally recognised to be a disability. Imagine a society where there is widespread disagreement about whether blindness is a disability or not. Some people believe that being blind makes a life worse, so that restoring sight is an improvement. Imagine that through genetic scanning and treatment they could drastically reduce the number of blind children born. Imagine also that the treatment has no side effects, and is not intrusive. For this reason, they advocate that the treatment is offered (or perhaps required). A different segment of the population disagrees. They believe that blindness is a positive feature because it opens the door to sensorial experiences not open to the sighted. For this reason they oppose the genetic scan and treatment. According to the recognition condition, in this society blindness is not a disability because it is not recognised as such. Indeed, Baccarini appeals to this condition to explain why we should not program men instead of women female despite the fact in our societies women tend to be worse off than men. He writes that we this type of programming

would be wrong “because the condition of being a woman is surely appreciated as valuable by a lot of people” (62).

However, he seems to reject the recognition condition when he writes that “[t]he disabilities to which condition (i) refers to are different. They are disabilities independently of the social and political situation (even though social policy may reduce their effects” (62). This claim seems to endorse an objective account of disability, according to which there is a criterion for identifying disability that is independent of the attitudes and beliefs that exist in society. These conditions raise fascinating questions about the morality of treating disability. I do not have a fully worked out conception of disability, and can see the attractions of both conditions. Nevertheless, I tend to think that any model should make some room to accommodate people’s assessment of their own condition. The idea that blindness is a disability even if the blind think themselves as better off than the sighted seems implausible to me. Of course, sometimes there are reasons to disregard a person’s assessment of their own situation, especially when we suspect that it is the outcome of unjust socialisation or adaptive preferences. But it does not follow that their assessment is never crucial.

3. EQUAL OPPORTUNITY

The previous section discusses cases where enhancement is motivated by parents’ perfectionist reasons. The question is whether the children upon whom the genetic intervention is practiced have a legitimate complaint. In this section I discuss cases genetic enhancement on some people have harmful effects on others, which grounds a legitimate complain. The case I have in mind is this:

Intelligence. Adam’s parents decide to invest a considerable sum of money to enhance Adam’s general capacities (such as creativity, concentration, general intelligence, etc.). As a result, Adam has access to jobs that both well remunerated and intrinsically valuable.

Let’s make two assumptions about this case. First, let’s assume that Adam has no legitimate complaint against his parents. The enhanced skills he has now can be useful for the pursuit of any permissible conception of the good that Adam might come to endorse. Second, since the investment and research needed to develop these technologies is high, their market value is accessible to a few rich people. The question now is whether it is unjust to allow Adam’s parents to buy these technologies. Some Rawlsians argue that there are reasons

to restrict access to these technologies because they violate a principle of fair equality of opportunity. The principle behind this idea is that

those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born (Rawls 1999, 63).

Genetic enhancements violate fair equality of opportunity because they allow parents to pass on resources (even if justly owned) to their children. In many ways, these enhancements are like parents buying expensive education to their children (Cf. Swift and Brighouse 2016). The fair equality of opportunity argument is egalitarian because it claims that there is a reason to restrict the opportunities to some, if they are not available to everyone.

Baccarini makes two main objections to his argument. He argues that “[i]n general, it appears implausible to forbid somebody the chance to improve her talents and abilities, even if this gives her advantages over others” (70). It might be true that in general we should not restrict people from improving their skills even if this creates inequalities. But this principle gains plausibility only when there is a background of equal opportunity. Since the case I am discussing assumes that there is no equal opportunity (in the sense that it involves parents mobilising private resources to benefit their children), Baccarini’s remark loses plausibility.

One objection Baccarini makes takes force from the levelling down objection (70; see Parfit 2000). According to this objection, egalitarians are committed to promote equality even when increases in equality make some people worse off, and no one better off. Those who are persuaded by this objection believe that conceding that there is a reason (even if only *pro tanto*) to level down renders egalitarianism implausible (Parfit 2000). This objection is not convincing because fair equality of opportunity does not involve levelling down. The reason is that restricting the opportunities of some does benefit those who are worse off. Imagine that Betty is poorer than Adam, and therefore the technologies that Adam’s parents bought are inaccessible to her. Imagine that she has the same level of natural talents that Adam (and the same willingness to exercise them). So, in a world where Adam is not enhanced, Betty can compete with him for the same prestigious jobs. But, in a world where Adam is enhanced, Betty becomes less competitive. This is because some goods are positional: the value of a given amount of good X partly depends on how much others enjoy X. Education is a clear case. Some

years ago, the value of an MA was much higher than now, simply because nowadays many more people have MAs. The type of genetic enhancements I discussed here such as creativity, intelligence, and concentration are also partly positional.⁵

The second of Baccarini's argument against fair equality access to biotechnologies is that all things considered restrictions on biotechnologies are detrimental to the worse off. He writes that

[w]e can think, for example, of the development of the economy, better management of society, as well as easier discoveries of cures for diseases. These are, obviously, benefits for the less advantaged, as well as for the most advantaged and the least advantaged. Insisting on the individual gains/social harms dichotomy is pernicious because it risks making us neglect the general advantages that may come from enhancement (81).

The idea is that allowing some people to enhance might bring overall benefits to those who are worse off, even if enhancements makes them worse off in some domain (for a related critique see Arneson 1999). Let's go back to the case of Adam and Betty. It is true that Betty is worse off because she cannot compete with Adam for some prestigious job such as a being neuroscientist. But she might benefit overall when Adam discovers a cure for cancer that Betty suffers. Had Adam not been allowed to get the enhancement, this cure would be unavailable for Betty. There are two replies open to friends of equal opportunity. First, they can reply that individuals might prefer the combination of fewer goods and a broader range of opportunities, to the combination of more goods and fewer opportunities. This is because, up to a point, a broader range of opportunities can be valuable for self-realisation (Taylor 2004).⁶ That is, Betty might rather be more competitive having access to a broader range of occupations than having fewer opportunities and enjoying more of other goods. The second reply is more modest. It concedes that if it were the case that the same person who suffers the cost of unequal opportunity also benefits from it, then permitting enhancement would be justified. But, advocates of this reply argue, it is likely that the benefits will come too late. Imagine that the cure for cancer than Adam helps to develop takes many years. When it is available, Betty might be already dead. It is true that some people will benefit, but Betty will not. The force of this reply depends on the idea that it is harder to justify worsening the prospects of some

⁵ They are not uniquely positional because we get non-competitive goods from them such as the intrinsic rewards that engagement with complex activities brings about.

⁶ I am grateful to Matthew Clayton for discussion about the value of equal opportunity.

people in order to benefit another group of people, than making the same people worse off in some respects I order to benefit them in other respects.

4. GENERAL ENHANCEMENT AND ITS COSTS

The last point I want to make deals with Baccarini's account of enhancement to those who are so badly off that these enhancements have no value for them. Baccarini argues that we should not enhance the capacities of those whom, in virtue of their actual condition, the acquired capacities have no meaning. He argues that we must establish "the vital needs of people on the basis of their actual conditions. We must ask the question about what are the needs of a person in those conditions, not in general, not for the average human being" (73). I unsure whether I agree that the value of enhancements is conditional on individuals' current capacity to appreciate them. However, even if Baccarini is right, we might have paternalistic reasons to provide these forms of enhancement. Most of us think that because the capacities for justice and autonomy are very valuable here is a *prima facie* reason to provide those benefit to those who lack it. This is, of course, compatible with thinking that they are not wronged if we fail to enhance them. I am inclined to think that the strength of the reasons for enhancement depends in large part of the amount of resources that need to be spent in these enhancements, and in their distribution. According to some theories we should bring everyone above a given threshold. This view is problematic because ensuring that everyone reaches the threshold can be too costly. A more attractive view appeals to a hypothetical insurance market, where the amount and distribution of resources that must be spent in enhancement depends on the type of coverage that individuals would buy if they did not know their susceptibility to certain cognitive and physical disabilities. This view aims to equalise *ex-ante* brute luck inequalities (Dworkin 2002). Appealing to this type of insurance provides more concrete guidance as to how to determine the fair distribution of enhancement, as well as the resources that society invests in research that makes it possible.

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