Disability and Deference: A Kantian Approach

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Is it bad to be disabled? Does it matter? Many policies and private medical choices either explicitly distinguish disabled persons from non-disabled, or effectively place disabled people at a disadvantage. In some cases, these choices are motivated by the view that it is bad to be disabled, or that disabled people face hardships that non-disabled people do not. In this paper I argue that whether disability makes people worse off is irrelevant to practical questions about whether causing disability or non-disability is permissible, whether officials should extend rights or resources to disabled people that they do not extend to others, whether and when disability requires accommodation, and whether disabled people should be protected from discrimination. My goal is to outline a broadly Kantian framework for understanding disability rights and to show that this framework has several advantages over welfarist analyses of disability.

I begin by arguing in favor of defining disability as a set of physical differences in contrast to definitions of disability that make reference to a theory of wellbeing (§1). With this definition of disability in hand, I describe a Kantian approach to disability rights. (§2). On my view, disability rights, like all rights, are grounded in the more general value of humanity. All persons have rights in virtue of their capacity to make autonomous choices, not in virtue of their interests or considerations of wellbeing (§3). Practical questions about disability should therefore be settled by an appeal to facts about autonomy and more general rights-based arguments, not by an appeal to facts about wellbeing. Specifically, arguments on behalf of disability rights should appeal to arguments on behalf of the more general rights that people have in virtue of their autonomy (§4). Following feminist arguments against institutional gender dichotomies, I argue that in a just society a person’s ability status would be no more relevant than his eye color. This is not to say that disability would not merit differential treatment or accommodation, but that disability as such would not dictate public policy. I then discuss the applications of this argument within non-ideal contexts (§5). We can also answer questions about disability that address non-autonomous disabled beings or creating disabled beings with this framework in mind. If it is possible to facilitate a disabled being’s autonomous development it is morally good to do so, but people are not required to refrain from creating disabled or non-autonomous beings (§6). To close, I argue that these arguments against welfarist approaches to disability bolster arguments in favor of deferring to the testimony of disabled people about how they experience disability (§7).

1. Defining Disability

The word ‘disability’ refers to a set of physical conditions. It may also refer to other things. Julian Savulescu and Guy Kahne and Greg Bognar, among others, argue that disability is not just a physical condition that makes a person’s body different from most other peoples’ bodies, it is also a difference that makes a person’s life worse than it would otherwise be (Bognar 2015; Savulescu and Kahane 2011). Elizabeth Barnes calls this “the bad difference view” (Barnes 2014). Savulescu and Kahne call this view ‘a welfarist approach’ to disability. In contrast, Barnes argues that disability is a mere difference, just another way that a person’s body can be, and it is a further question whether disability is good or bad of a person’s wellbeing (Barnes 2014). Whether disability is a mere difference or a bad difference would depend on one’s theory of wellbeing, and according to some theories, the way people with disabilities experience
their condition. When it comes to matters of ethics and public policy, whether it matters that disability is a mere difference or a bad difference would depend on one’s view of whether and how welfarist considerations inform principles of ethics and public policy.

Begin with theories of wellbeing. Does having a disability make a person’s life worse? Savulescu and Kahane state that the concept of disability is inherently normative. Though they do not think that the inherent *pro tanto* badness of disability establishes that it is bad to be disabled all things considered, or that disability ought to be prevented, on their view, a disability just is a physical condition that reduces a person’s wellbeing for reasons that are not attributable to social prejudice. They contrast this welfarist approach to disability with the social model, which says that the kinds of physical conditions that are marked as disabilities are socially contingent, and that having one of these conditions is only bad for a person because of social prejudice. They also contrast their approach to disability with the medical model, which states that disability is any physical condition that negatively departs from the set of physical abilities that most people have (which is sometimes called normal species functioning). According to Savulescu and Kahane, an advantage of the welfarist approach is that it can accommodate changing conceptions of what is normal, so even if a physical condition causes someone to function in the way that most people do, it could still be a disability if it impairs a person’s wellbeing. Against the social model, Savulescu and Kahane point out that their view can make sense of the intuition that it would be bad to be disabled even in the absence of social prejudice or for reasons other than social prejudice.

Savulescu and Kahane intend their approach to function independently from a theory of wellbeing. Though their view has ‘in-built normativity’ because it defines disability in terms of the normative concept of wellbeing, they note that it does not take a stand on which theory of wellbeing is correct. And in this way they do not take a stand on which conditions count as a disability because that will depend on one’s theory of wellbeing. They do discuss some broad extensions of their view that will hold for any theory of wellbeing. For example, on their view disability is not intrinsically worse than other conditions that lower welfare, such as material deprivation or bad luck, so it does not characterize certain physical conditions as intrinsically bad apart from their effect on a person’s wellbeing. They also argue that everyone is disabled to an extent because everyone has physical properties that reduce their wellbeing according to a given theory of wellbeing.

Savulescu and Kahane’s approach represents one way to answer questions about how disability relates to wellbeing, but critics point out that there is no principled reason to define disability in terms of wellbeing or to build normativity into the concept of disability at all. Elizabeth Barnes and disability rights advocates suggest that the claim that it is intrinsically worse to have a disabled body is akin to the claim that it is intrinsically worse to have a female body or a dark-skinned body or a short body or a fat body (Barnes 2009b). Some people may think it is worse to have these sorts of bodies but others may enjoy having these sorts of bodies. In some cases having this sort of body could make a person’s life worse because of social prejudice. But social prejudice would be unjustified because having a body that is different from the bodies of members of socially dominant groups is not intrinsically worse. Barnes argues that Savulescu and Kahane’s position devalues disability and discounts the experiences of people who have disabilities (Barnes 2014).

If disability is a mere difference, defined apart from any particular theory of wellbeing, then questions about the relationship between disability and wellbeing are partly empirical questions. To answer them, one must first identify a disability or bodily...
difference as well as a theory of wellbeing. One must then ask whether having that particular bodily difference makes a person’s life worse according to that particular theory of wellbeing. If a disability makes a person’s life worse according to a given theory of wellbeing only because those who suffer from it are the victims of prejudice, then it is not the disability that is bad for wellbeing but patterns of discrimination and disadvantage that one suffers as a result of disability. On the other hand, a disability may make a person’s life worse according to a theory of wellbeing if reduced wellbeing is attributable to the physical difference even in the absence of social prejudice or a lack of accommodation.

In sum, welfarist accounts of disability, such as those discussed by Savulescu and Kahane define disability as a negative characteristic. In contrast, a descriptive account of disability, which defines it as a mere difference, yields no all-things-considered judgments about whether being disabled is bad for a person. It depends on the nature of the disability, what one thinks is bad for persons in general, and how a person experiences disability. When people talk about disability in everyday conversation they use descriptive and welfarist uses of the term. There is no reason that either side has a particular claim to the term or concept of disability. But one advantage of the descriptive account is that by defining disability apart from theories of wellbeing, the descriptive account can accommodate cases where the effect of a person’s physical condition on her wellbeing changes over time. For example, the disability paradox describes a range of circumstances where people have physical conditions that would conventionally be understood as disabilities, but nevertheless they seem to experience the same levels of wellbeing as non-disabled people on most measures of wellbeing. If we use the term disability to describe only a set of physical conditions and do not define it in relation to wellbeing, then we can still maintain that conditions such as deafness and mobility impairment are disabilities despite the disability paradox, which finds that these conditions do not hinder wellbeing (Moller 2011).

A related advantage of a descriptive definition of disability is that it does not prejudge how people should respond to disability. One may respond to evidence of the disability paradox by claiming that it is an artifact of people’s adaptive preferences, but that in fact disabilities like mobility impairments and deafness do hinder wellbeing even if people do not experience being disabled in that way. The descriptive account can accommodate this thought as well, since it may be the case according to some theories of wellbeing that physical differences hinder wellbeing though those with those differences do not experience the hindrances. For example, if wellbeing consists in what a person’s fully informed and rational self would desire for her, then a person who never knew what it was like to see may not know that blindness is bad for her even though it is intuitively

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1 To get a sense of the descriptive account of disability, it may be helpful to see how it would function for different disabilities and different theories of wellbeing. For example, say that a desire-satisfaction theory of wellbeing is correct. If so, then whether deafness is bad for a person would depend on whether deafness made it more difficult for her to satisfy her present desires, her desires overall, her higher-order desires, or the desires she would have if she were fully informed and rational. When asking these questions, we should answer them with respect to the independent effect of deafness, considered apart from anti-deaf discrimination and the difficulties of living in an oralist culture. Or, say that the correct theory of wellbeing is hedonism. If having mobility impairments due to an amputated foot causes a person to experience less pleasure, or if mobility impairments barred someone from experiencing higher-order pleasures, then the disability of having mobility impairments would make a person’s life worse.

2 If the correct theory of wellbeing is an objective list theory, then it is unclear whether disability is defined in a welfarist way or not. One may have an objective list theory of wellbeing that includes normal species functioning or physical ability as necessary for human flourishing. If so, then even though one may have a descriptive definition of disability, it will be extensionally identical to a welfarist definition of disability like Savulescu and Kahane’s because the set of conditions defined as disability would be coextensive with a set of conditions that reduced wellbeing. On the other hand, if an objective list theorist of wellbeing emphasizes conditions like autonomy and meaning, then conditions that are defined as disabilities according to descriptive definitions of disability may include some conditions that do not hinder wellbeing.
worse to be blind. But unlike welfarist approaches, a descriptive approach can also explain instances where a person is disabled but it is genuinely not bad for her.

These considerations may explain why many disability rights advocates insist on a descriptive approach to disability, such as Barnes’s mere difference view. Though the descriptive approach can accommodate cases that proponents of welfarist approaches may emphasize (e.g. cases where disability is bad for a person who doesn’t realize that it is bad) but the welfarist approach cannot accommodate cases that proponents of descriptive approaches may emphasize (e.g. cases where disability is not bad for a person but she still has a physical condition that would cause her to identify as disabled). In this way, the descriptive approach can allow for the possibility that a disabled person may not be a reliable judge of her own wellbeing but does not automatically discount the testimony of those who claim that disability as such does not make one’s life worse.

Another advantage of the descriptive approach is that it is more faithful to ordinary uses of the term ‘disability.’ Savulescu and Kahane’s welfarist approach to disability generates a revisionary account of disability. On their view, everyone is disabled and yet conditions that we normally think of as disabilities (such as deafness) may not be disabilities (Savulescu and Kahane 2011). For this reason, we must still develop arguments to answer normative questions surrounding disability with the welfarist definition in hand, but the arguments would address whether a physical condition is a disability according to the welfarist definition rather than whether a physical condition that we think of as being a disability is bad for those who have it.

So it is better to stick with the conventional categories of disability and just ask whether it is bad to have it then to adopt a revisionary conception of disability and then ask which conditions are bad to have, such that they should be called disabilities. For these reasons, I will use the term disability in the descriptive way going forward because I am interested in whether it is good or bad to have a body that is physically different from other bodies, and whether it is permissible or impermissible to cause a body to be physically different from other bodies.

2. A Kantian Proposal

With the descriptive definition in hand, we can then ask normative questions about disability beyond the question of whether it is bad for a particular person to be disabled according to a certain theory of wellbeing. For example, we can ask questions about disability rights such as:

- Should officials extend rights to disabled people that they do not extend to nondisabled people?
- Should officials provide disabled people with resources that they do not provide non-disabled people?
- Should officials prohibit people from discriminating against disabled people?
- Should officials require that people accommodate disabled people?
- Is it permissible to cause a person to be disabled?
- Is it permissible to cause a person to be non-disabled?
It is perhaps unsurprising that proponents of welfarist approaches to disability are likely to answer these questions on the basis of a broadly consequentialist moral theory. For these theorists of disability, it is a short walk from a conception of disability that is defined with reference to normative concepts to normative conclusions about how disabled people should be treated. But I have suggested that these normative associations with disability require further argument and cannot be established via definition. And I am skeptical that these questions should be answered with reference to considerations related to wellbeing. Rather, I will argue that we should think of disabilities as mere differences, and refrain from evaluating these questions about the ethics of disability with reference to consequentialist considerations.

Consequentialist considerations are often cited in philosophical discussions of disability. For example, ethicists have argued that disabled people should have the same rights as nondisabled people and deserve equal treatment, while explaining these claims by an appeal to disabled people’s interests (Harris 2001). Similarly, arguments on behalf of providing disabled people with additional resources appeal to considerations such as diminishing marginal utility or disabled people’s interest in receiving additional resources (Arneson 2015). Consequence-minded philosophers are hesitant, however, when it comes questions about whether it is permissible to create a disabled person, on the grounds they predict that a disabled life will be worse in expectation than a nondisabled life (J. Savulescu 2001; McMahan 2005; Kahane 2009). For similar reasons, some consequentialist philosophers have even submitted that it can be permissible to euthanize a disabled infant and replace her with a nondisabled infant in circumstances where a disabled child’s life would otherwise prevent parents from conceiving a nondisabled child (Singer 2011, 163).

In contrast, I propose that we can set aside questions of wellbeing when answering the aforementioned questions about disability rights because like other questions of rights, disability rights do not depend on whether having a disability is good or bad for a person. Moreover, I also propose that questions about disability rights do not even depend on whether a person’s physical conditions qualify as a disability because more generally the scope of a person’s rights do not depend on physical features of her body.

My argument for this claim relies on a broadly Kantian framework. For this reason, a quick detour into Kantian ethics may be helpful in explaining my claim that we should not consider questions of wellbeing when settling questions about disability rights. Kant was interested in questions about how to treat people, such as the questions listed above. Kant’s goal was to discover principles of action that applied in all circumstances, simply by reflecting on the nature of action. So for example, you might reflect on the fact that deciding to eat an apple gives you a reason to eat the apple, and infer from that that your ability to decide to act is a source of reasons. Those reasons have authority, Kant argued, because you confer value on your choices by making them. And from that you should infer that you are a source of value, and that your value issues from your ability to make choices. Based on an argument like this, Kant concluded that people should act in

3 And similarly, proponents of the medical model of disability are likely to answer these questions with reference to a moral theory that values normal functioning or health promotion.

4 Kant called an action an imperative if it was way one should act, and he argued that imperatives could be either categorical, referring to the things one should do in any circumstances, or hypothetical, referring to the things one should do only in some circumstances. To illustrate this point, it may be helpful to consider an analogy to the norms governing belief. Some beliefs are hypothetical, such as “If I won the lottery I would give eighty percent of my wealth to charity” and others are categorical such as “1+1=2”. But unlike hypothetical and categorical theoretical reasoning, imperatives in practical reasoning could not be avoided by merely suspending judgment because while a person may refrain from forming beliefs, she cannot refrain from acting.
ways that treated humanity, or human autonomy, as a source of value in itself and not merely as a means to one’s own ends. He called this the Formula of Humanity.⁵

People disagree about whether Kant’s argument for the Formula of Humanity or some version of it can successfully explain the whole of the moral landscape. And people also disagree about which substantive choices this formal constraint requires. Christine Korsgaard offers one interpretation of the Formula of Humanity that shows how we can deduce substantive moral principles by reflecting on what it is to act (Korsgaard 1996, 107). She argues that we should think of moral reasons as the objective reasons we have whatever our inclinations or desires (in contrast to the subjective reasons we have only in virtue of our desires) (Korsgaard 1996, 121). She then argues that people have objective reasons to respect other people’s choices because the only thing that each person has reason to value is the capacity to value, which is same capacity as the capacity to choose. Crucially, wellbeing is not unconditionally valuable for people in this universal way because the choices that promote one person’s wellbeing will not promote another’s.⁶ In contrast, each person does have an unconditional reason to respect other people’s choices because once you recognize the value of your own ability to choose “you must view anyone who has the power of rational choice as having, in virtue of that power, a value conferring status” (Korsgaard 1996, 123). In practice then, Kant’s argument requires that each person refrain from interfering with other people’s choices, but people are not required to attend to conditionally valuable features of others such as features of their wellbeing.

David Velleman and Stephen Darwall develop Kant’s argument in a different ways but with similar conclusions for our purposes. Velleman argues that people have a kind of value, in virtue of their autonomy, that cannot be traded off for the sake of greater wellbeing, and that the value of a person does not depend on her properties, such as the color of her hair (Velleman 1999b; Velleman 1999a). Morality, Velleman argues, is largely indifferent to whether a person’s desires are satisfied or whether she is happy. Instead, morality requires the protection of and respect for autonomy.

Darwall is skeptical that Kant’s project of deriving moral principles simply by reflecting on the nature of action can succeed (Darwall 2009). Instead he proposes that we can derive moral principles by reflecting on the nature of moral address within a moral community. On his view, people within a moral community must hold one another to the same standards. And while Darwall doesn’t say much about the substantive content of those standards, he does clarify that members of the moral community are required to respect each person’s equal standing to act as an independent agent within the moral community. About this duty to respect Darwall writes,

“What we attend to [by respecting someone] is not (at least not primarily) what is for someone’s welfare or good, but, among other things, what she herself values and holds good from her point of view as an equal independent agent.”

For this reason, Darwall argues that it is disrespectful to paternalistically interfere with someone in order to promote her wellbeing.

This is just a sketch of an argument in favor of a moral theory that does not accord welfarist considerations much weight when answering practical questions about how to treat people. But I think something like this sketch is the right way to think about

⁵ Kant also concluded that people should not act on the basis of principles that would contradict other principles they held (The Formula of Universal Law) and that people should act in ways that are consistent with both the Formula of Humanity and of Universal Law. He called the hypothetical world where people obeyed these two formulas the Kingdom of Ends.

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rights in general, and disability rights in particular. However, I am not committed to the particulars of Kant or Korsgaard specific derivations of rights. For example, one might reject the claim that moral reasons are the objective reasons that all people must recognize regardless of their desires. But even if one holds that moral reasons are ultimately subjective it is not clear that people have rights in virtue of welfarist considerations. Michael Smith argues that a person has moral reason to do what she would desire that she do were she fully informed and rational (Smith 2011) 357. And Smith concludes that such a being would desire that no one interfere with the exercise of her rational capacities and that she does what she can to ensure that she has rational capacities to exercise in the future, but she would not necessarily desire the promotion of her wellbeing (Smith 2011).

Others arrive at similar conclusions via a different route. The conclusion of all these arguments is that considerations of wellbeing do not bear on questions about people’s rights and duties. Utilitarianism, the view that we ought to promote the wellbeing of the greatest number of people, is the clearest philosophical rival to the Kantian approach. Against utilitarianism, Kantians reply that this kind of reasoning permits people to be used as means for the promotion of overall wellbeing. In principle utilitarianism permits killing the one to save the many. Kantian ethics prohibits this kind of conduct. Each person has moral status in virtue of her autonomy that places everyone else under a duty to respect her choices as long as she is complying with her own duty to respect the choices of others. In this way, the Kantian approach protects individuals from being treated as means for the promotion of others’ (or their own) wellbeing.

Turning to disability rights, Kantians would therefore emphasize that it is a mistake to focus on whether it is good or bad for a person’s wellbeing to be disabled. So Kantians would echo the familiar critiques of utilitarian approaches that are advanced within the disability rights community, such as objections to the use of Quality Adjusted Life Years in decisions about resource allocation and objections to policies that permit euthanasia for disabled infants but not for nondisabled infants. In contrast, Kantians answer questions about disability rights with reference to the claims that disabled and nondisabled people have with reference to the value that is intrinsic to all autonomous people.

3. Disability Rights

How would the broadly Kantian perspective that I have described bear on the above questions of disability rights? In this section, I will present some answers to questions about disability rights for people with physical disabilities. For each normative question concerning physical disabilities, the crucial distinction between Kantian approaches and welfarist approaches to disability is that the effect of disability on a

7 Another way of capturing this idea is by examining the distinction between will and interest theories of rights. Interest theorists argue that rights should function to promote a person’s wellbeing, whereas will theorists argue that rights should function to protect people’s authority to make decisions about their lives. On this distinction, the function of rights that I am focusing on is in line with the will theory of rights. (Wenar 2015)

8 Some people appeal to Kantian principles in order to show that people have a duty to promote the autonomy of others too (Ebels-Duggan 2008). As long as promotion of people’s autonomy is limited by people’s duties to respect other’s choices, this view is compatible with the Kantian principles I outlined in this section. In contrast, what Smith calls a “consequentialism of rights” where one holds that people have duties to minimize rights violations or promote the exercise of people’s rights would not be compatible with the Kantian principles I am defending (Smith 2009). For example, when philosophers such as Denis Arnold and Norman Bowie argue that Kantian principles require that managers promote the autonomy of workers, their interpretation of Kantianism departs from the principles I am defending (Arnold and Bowie 2003).

9 Where physical disabilities are defined as those that do not impair their ability to make autonomous decisions. These include disabilities that primarily affect non-cognitive abilities, such as mobility, hearing or sight, as well as conditions that cause chronic pain.
person’s wellbeing does not bear directly on the normative question at stake. Though considerations of wellbeing may bear indirectly on questions related to the ethics of disability insofar as people make choices based on how being disabled or nondisabled will affect their wellbeing, ultimately a person’s choices should dictate her treatment.

For example, imagine a blind person who chooses to undergo surgery that would restore her sight. Gaining the ability to see may improve her wellbeing by expanding her employment opportunities, improving her safety, and enabling her to enjoy visual forms of entertainment. Or gaining sight could hinder her wellbeing by alienating her from the blind community and causing her to feel pressure to comply with aesthetic norms that she previously felt free to ignore. But whether becoming disabled or nondisabled is good for her wellbeing is irrelevant to questions about whether she should be permitted or forced to undergo surgery. From a Kantian perspective, her choice to undergo surgery ought to be respected even if surgery would set back her interests and welfare. If she chose differently, her decision to refuse surgery ought to be respected even if surgery would have promoted her wellbeing.

Similarly, as Barnes argues, the reason that it is wrong to cause a nondisabled person to become disabled is that it would violate his bodily rights. Even if a person paternalistically disabled another person in order to promote his wellbeing, and the decision to cause disability did successfully promote the welfare of his victim, it would still be impermissible to assault another person and cause disability to a person who did not consent. On the other hand if a person chooses to become disabled his choice ought to be respected even if it makes his life worse. In these cases, moral questions about disability are settled not by an appeal to considerations related to welfare but rather with reference to people’s more general entitlement that others respect their freedom to choose what happens to their bodies.

In these and other questions concerning the rights of disabled and nondisabled people, disability per se is not normatively significant. What matters is whether a person’s status as a disabled or nondisabled person is a result of her exercising her rights or a result of a violation of her bodily rights. So the reason that public officials should extend the same rights to disabled people that they extend to nondisabled people is that disabled people are capable of making autonomous decisions just as nondisabled people are capable of choosing. To say that disabled people deserve equal treatment because treating them like nondisabled people would promote their own or aggregate wellbeing would be to cite the wrong kind of reason in favor of equal treatment.

These insights can shed light on specific questions about whether disabled people should have rights that nondisabled people do not have, such as questions about the right to die. In some jurisdictions, only people with terminal or degenerative diseases or disabilities are permitted to choose assisted dying. In contrast, healthy nondisabled people are not permitted to choose to die with assistance from a medical professional. Though proponents of the welfarist approach generally recognize the importance of autonomy, if only as a way of promoting wellbeing on balance, a welfarist might support this policy to the extent that disability and illness reduced a person’s wellbeing and public policy aimed to promote wellbeing on balance. If so, then a disabled person’s deaths would involve less of a total loss of lifetime wellbeing than a similarly situated nondisabled person’s death. So differential treatment could be warranted in light of the discrepant experiences of each group.

Yet disability rights advocates argue that these policies implicitly suggest that disabled lives are less valuable because it is worse to be disabled, all else equal. This
criticism is apt if nondisabled people are prevented from assisted dying for the sake of their future wellbeing. If so, then one might reasonably ask why paternalistic officials do not value disabled people’s future wellbeing in the same way. But on the Kantian approach, paternalistic prohibitions of assisted dying either should be permitted for all persons or prohibited. Some Kantians (including myself) argue that officials should respect people’s autonomous choices to die because the right to die is a species of more general bodily rights and rights against paternalistic interfere. But other Kantians, notably Veleman, argue that while moral requirement that people respect the value of autonomy generally calls for people to refrain from interference and to respect other’s choices, it would be a contradiction to argue that the decision to destroy one’s autonomous capacities ought to be respected in virtue of the value of those very same autonomous capacities. Either way, according to the Kantian approach a person’s ability status is irrelevant to her moral status. As above a person has the right to die, or a more general right against interference, it is in virtue of her autonomy and not in virtue of whether she has a physical condition that sets back her welfare.

A feature of this Kantian approach to disability is that a person has the standing to demand that her choices be respected once her autonomous capacities exceed a particular threshold. So it is not as if people whose autonomous capacities are more developed are more worthy of respect. This dichotomous approach to moral status reflects the kind of treatment that people have in virtue of their autonomy. To respect a person is generally to refrain from interfering with her choices. It is not as if a person can interfere to a greater or lesser extent. Interference is disrespectful whenever it deprives a person of the ability to make her own choices, which she is entitled to do in virtue of her autonomy. For this reason, once a person is sufficiently autonomous, she has equal standing within the moral community to demand that others respect her choices.

The Kantian approach can also explain why disabled people have rights against discrimination and rights to accommodation. Consider anti-discrimination requirements first. In some circumstances, people’s rights against interference require that others respect their rights to act in ways that discriminate against certain groups (Zwolinski 2006). Though refusing to date people on the basis of physical characteristics such as disability or race may reflect poorly on a person’s character, anti-discrimination law should not prohibit people from choosing romantic partners without reference to physical characteristics. This is because people may have good reason to consider physical characteristics when choosing a romantic partner since one of the goods of a romantic relationship is mutual physical attraction.

But in other cases, physical characteristics shouldn’t determine the range of choices that are available to a person. For example, in most cases landlords do not have good reason to consider whether their tenants are deaf, Latina, short, or attractive, when they consider rental applications. Sophia Moreau argues that in these circumstances

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10 We might imagine, for example, that people’s cognitive abilities developed through natural selection, cultural evolution, or human enhancement to the extent that some people’s ability to make autonomous choices, such as the ability to follow through with long-term plans, exceeded most people’s current capacities. But the presence of such trans-humans would not undermine Kantian justifications for individual rights, since on the Kantian account one must only possess the ability to choose for her choices to merit respect. (Buchanan 2009)

11 Against this position, David DeGrazia argues that people’s rights could plausibly vary with respect to their cognitive capacities, including the capacity to make autonomous choices (DeGrazia 2008).

12 On this point, Darwall distinguishes between recognition respect and appraisal respect (Darwall 1977). Though one may have more or less appraisal respect for a person in acknowledgment of whether he has achieved things or displayed properties that merit more or less respect of this sort, recognition respect refers to the way in which a person may be worthy of respect in virtue of his mere membership in the moral community, which does not vary with respect to a person’s properties (Darwall 2009).
discrimination is wrong because it hinders people’s interest in deliberative freedom, which is the freedom to make decisions in ways that are insulated from the influence of normatively extraneous traits (Moreau 2010). Though Moreau characterizes this argument in terms of interests and welfare, a Kantian may similarly cite cases where discrimination, especially by public officials, unduly limits people’s entitlement to make decisions about how to live.

Another way that a Kantian may explain the wrongness of discrimination is that discrimination is often incompatible with the ideal of human dignity. Within the Kantian framework, a person’s choices ought to be respected in virtue of the value of her autonomy. In this way, the value of autonomy sets limits on how people must treat each other. Paternalistic interference is therefore wrong because interference disrupts the exercise of an intrinsically valuable capacity (autonomy) for the sake of goods that are only conditionally valuable, such as welfare. Kantians may advance a similar criticism of discrimination. As Deborah Hellman argues, discrimination can be demeaning insofar as it conveys ideas that a person’s value is determined by features of her body (Hellman 2008, 172). In this way, discrimination implicitly denies the Kantian premise that all autonomous people have equal moral worth and merit equal respect.

Turning to matters of public accommodation, the Kantian approach could also justify policies that support the public provision of accommodation for disabled people or it could justify policies that do not accommodate people’s physical disabilities. The case against public accommodation would appeal to the view that public officials should avoid coercing people in order to advance perfectionist aims. If we think of accommodation as valuing certain goods, such as mobility and accessible communication, over others, then accommodation might be seen as violating the ideal of equal treatment that justifies anti-discrimination policy.

On the other hand, proponents of a broadly Kantian approach might also argue that public services are provided by coercing citizens in order to advantage some and disadvantage others. Since all policies limit people’s autonomy without their consent to some extent, to assess the permissibility of such a policy we must ask whether the interference was justified. And it is not justified that public officials design buildings and communications in ways that systematically disadvantage and exclude people with certain physical characteristics. So officials should be required to accommodate people with disabilities. Moreover, insofar as policies have historically encouraged or facilitated private patterns of exclusion and disadvantage within the public sphere, public officials today may require public accommodation for people with disabilities as a kind of compensation for previous acts of state-sponsored injustice.

These arguments show that the Kantian approach has the resources to answer normative questions about disability and disability rights. Though the Kantian arguments

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13 And on some accounts, such as Velleman’s, the same can be said of suicide (Velleman 1999b).
14 Other philosophers have tied the wrongness of discrimination to the inappropriateness of assigning benefits or burdens to people who do not deserve them (Altmann 2015; Goldman 2015). But unlike these accounts of why discrimination is wrong, the Kantian argument against discrimination does not require that we accept particular standards of merit in industries or admissions criteria. Instead, the Kantian arguments only require that all people merit equal moral consideration and equal respect.
15 Whether it is objectionably perfectionistic to privilege health or ability in matters of distributive justice is controversial. According to the Kantian framework that I am developing, some health-related goods may reasonably be distinguished from other goods by their relation to autonomy. Norman Daniels develops an argument to this effect when he argues that officials should provide people foremost with the resources that are necessary for them to participate as equals in a fair society, and not simply with whatever resources would further their interests or promote their wellbeing (Daniels 1981). A similar argument may be made on behalf of privileging goods that would facilitate the development or exercise of a person’s autonomous capacities.
I presented do not settle many of these questions either way, they point to the ways that we can answer questions about the treatment of disabled and nondisabled people without first answering questions about the relationship between disability and wellbeing.

4. Ideal and Non-ideal Questions

According to the position that I have defended, there are no intrinsic differences between the rights that people with disabilities have and the rights that all persons have in virtue of their autonomy. This position complements analyses that characterize disability as a social construction or a mere difference, though my argument does not directly refute the claim that disabled people are intrinsically different. I only deny that the differences between disabled and nondisabled people are not themselves morally significant because though it may be more difficult in some cases to respect disabled people’s rights, having a disabled body does not undermine a person’s moral status or claims to equal rights.

An analogy to gender may clarify this point. Some people argue that gender differences are intrinsic, whereas others claim that gender is a social construction. I am sympathetic to the latter view. But whatever one’s views about whether gender is socially constructed, it remains true that disrespect or legal discrimination on the basis of gender is wrong and that people of both genders should have the same rights. This is not to suggest that people should always minimize the salience of gender. People may identify with a particular gender and take pride in that identity. But when the salience of gender becomes more than a personal identity and officials create gendered locker rooms or bathrooms in public buildings, people of both genders no longer have the same rights and such policies violate the principle of equal respect that is central to the Kantian ethos (Overall 2007).

For these reasons, Susan Okin argued that social policy should aim to reduce the social salience of gender identity in order to diminish the marginalization and stigmatization of women. She argued that ideally, “in social structures and practices, one’s sex [and gender] is of no more social relevance than one’s eye color or the length of one’s toes” (Okin 1991, 171). Similarly, whether one is disabled or non-disabled should also be of no more social relevance than physical characteristics like eye color or toe length in social and political contexts, even if disabled people identify and take pride in being disabled within the private sphere.

Okin’s argument describes an ideal, however, and in non-ideal contexts where people do treat people differently on the basis of gender or disability, acting as if gender and disability are irrelevant may be counterproductive. When people fail to comply with principles of justice, in some circumstances it is appropriate to act in ways that would be incompatible with principles of justice in ideal circumstances (Valentini 2012). For example, invoking Kant’s metaphor of the Kingdom of Ends, Rae Langton argues that even though people have a duty not lie or treat others strategically, when people are failing to comply with their duties “strategy for Kingdom’s sake” is warranted (Langton 1992). Similarly, Tamar Schapiro argues that people may permissibly violate one’s duty as a member of the moral community in order to bring people who are grossly immoral back into a moral relationship (Schapiro 2006). Thomas Hill even goes so far as to say that one may have a Kantian duty of self-respect to resist the unjust conduct of others (Hill 2010).

All of which is to say that even if it were wrong in principle to treat people in ways that emphasize gender identity or disability over their identities as people who have
full moral status whatever their characteristics, when faced with unjust circumstances it may be permissibly to violate this principle in order to bring about a more just society for women and disabled people. The questions then turn to matters of strategy. If accounting for gender or ability status could rectify existing inequalities between men and women or nondisabled and disabled people then it may be permissible to act on the basis of these distinctions in order to bring about a society where such distinctions are no longer entrenched in our social institutions. If providing disabled people with additional medical resources could compensate them for the harms caused by institutionalized discrimination against disabled people in the allocation of medical resources, then perhaps officials should provide disabled people with additional resources. Or, perhaps such efforts would be counterproductive, but at least in principle, the Kantian approach allows that officials and citizens may in some circumstances treat people differently on the basis of their physical characteristics in order to bring about the ideal of equal respect.

5. Capacity and Disability

To this point I have focused on physical disabilities such as deafness, blindness, and mobility impairments. I argue that it is wrong to cause a nondisabled person to become disabled or to cause a disabled person to become nondisabled without her consent, but that the wrongness of these actions derives from the moral significance of autonomy and bodily rights. Considerations related to wellbeing do not explain why it is wrong to cause disability or nondisability because if a person consented to become disabled or nondisabled, even if her choice made her worse off on balance, it still wouldn’t be wrong to change her ability status and likewise without consent it is always wrong to change a person’s ability status.\footnote{In emergency situations where consent is impossible the following discussion about causing disability and nondisability in children (who like an unconscious patient, are temporarily non-autonomous) would apply to temporarily non-autonomous adults too.}

The Kantian approach is less clear in cases concerning disability and beings that are not autonomous. In this section I will address the ethics of causing disability and nondisability for non-autonomous beings at the point of conception and during infancy. I will also offer some tentative remarks on the moral status of people with cognitive disabilities that permanently undermine their autonomy.

Let us begin with cases of conception. Savulescu and Kahne argue that while parents should have the procreative freedom to deliberately conceive children with disabilities like deafness or dwarfism, they ought not do it because they predict that disabled people are worse off simply because they are disabled. McMahan argues similarly that it would be wrong for a person to recklessly conceive in a way that caused her to conceive a disabled baby when she could have conceived a nondisabled baby instead.

In response, Elizabeth Barnes argues, “it is not wrong to cause a disabled rather than a nondisabled person to exist” because it is not intrinsically worse to be disabled (Barnes 2014). Similarly, Adrienne Asch and David Wasserman argue that prospective parents have duties, in virtue of their role as parents, to “unconditionally welcome” their children whatever their ability status (Asch and Wasserman 2014, 428). As long as a child has a life worth living the hardship associated with being disabled is a “perfectly acceptable price to pay for a life he [or she] could not have without it. (Wasserman 2005)” So while there may be other reasons to discourage people to actively attempt to
select their child’s traits (Sandel 2004), parents do not have a duty to refrain from conceiving disabled children as such.

Proponents of a Kantian approach to disability should side with the latter camp. Even if disability were a hardship, it would not be wrong to conceive a disabled child because a person’s life is valuable in virtue of the value of the autonomous person she becomes, not in virtue of the benefits she experiences and the burdens she avoids. Against this position, David Velleman argues that each person has a right to be created with due consideration for the value of humanity, which requires the provision of more than a life worth living (Velleman 2008). Specifically, Velleman argues that prospective parents must give their children the best start in life. On Velleman’s account, being born with a disability can violate the child’s right, so it would be impermissible to conceive a disabled child out of a failure to give due consideration to the quality of the child’s life, and there is something regrettable about having a disabled child more generally (Velleman 2008).

In addition to the possibility that having a disability does not necessarily make a person’s life worse, we might also question Velleman’s claim that people should avoid creating a life that is worse because of a disability. If parents must give their children the best start in life, then Velleman’s conception of parental duty seems excessively demanding. In addition, though Velleman agrees that parents have reason to love their disabled children, his arguments against creating disabled children is in tension with other claims he makes about the nature of love and morality, where he argues that love is a moral emotion that consists in seeing the full value of humanity in a particular person, regardless of that person’s physical characteristics or properties (Velleman 1999a). Since the moral emotions that we have in recognition of the value of humanity do not usually depend on whether a person has an abled or disabled body, it is unclear why accounting for the value of humanity would require people to avoid creating disabled children.

Another reason to reject Velleman’s argument is that conceiving a disabled child violates the child’s rights if at the moment of conception, it is unclear whose rights are violated. If a child has a right to be born nondisabled and parents have a duty to not conceive disabled children, then parents who comply with such a duty would refrain from conceiving a disabled child for the sake of a child that does not and in virtue of their decision never will exist. People have duties to respect each other because they are required to recognize value of autonomy in themselves and others. But non-existent people have no such value, so no such claims can be made about their rights (Parfit 1986). At what point then would conceiving a disabled child violate his rights? It is default to locate the source of a duty to not have created a disabled child since satisfying that duty, by necessity, would consist in satisfying a duty to no one.

The same cannot be said, however, about causing an infant or very young child to become disabled or nondisabled. On one hand, parents and health professionals should make medical decisions on behalf of children because children do not have the standing in virtue of their autonomy to demand that others respect their choices (Dare 2009). It is then an open question which values should inform that decision-making. Many people argue that decisions should be made to promote a child’s interests going forward, but leave open which interests merit consideration (Committee on Bioethics 1995). Others argue that parents and professionals should act in ways that children would subsequently consent to, though this proposal faces the obvious challenge of predicting what a person would subsequently consent to (Davis 2004). Barnes claims that it is not necessarily wrong to cause an infant to become disabled, but it is risky, just as it is risky to cause an
infant to become nondisabled, suggesting that decision makers should maintain a child’s ability status until he is capable of choosing for himself (Barnes 2014).

Kantians tend to approach children as people whose autonomy is temporarily deficient. In these circumstances, Tamar Schapiro argues that the conditions that usually give moral norms their force are incomplete because the child does not yet have the standing to demand that others respect her choices (Schapiro 2006). Respecting a child’s rights is impossible because people have rights in virtue of their autonomy but children are not yet entirely autonomous, over the course of childhood they develop their autonomy within limited domains until they are sufficiently autonomous to command our respect as members of the moral community. This doesn’t mean that all bets are off when interacting with children, however, or that people should try to promote a child’s wellbeing either in the moment or over the course of the child’s life. Instead, Schapiro argues that people should respect children’s choices in the domains where they are capable of making decisions, partly in recognition of their authority within that domain and partly in order to further develop their autonomous capacities and to bring them into a moral relationship with others (Schapiro 1999). Schapiro writes, “Our end as adults cannot be to control children, it must be to make them free to control themselves,” (Schapiro 1999, 736).

A Kantian may return to the question of causing children to be nondisabled or disabled with this ideal in mind. A parent or medical professional acts wrongly to the extent that he changes a child’s ability status in order to control him. Intuitively, I suspect that these sorts of parental motivations are more likely to lead parents to cause children to be disabled (so that they will grow up within a community of disabled people) than to cause children to be nondisabled, but these parental motivations may apply in either case. On the other hand, if a parent or professional causes a child to be disabled or nondisabled in order to further his autonomous development it is permissible. So for example, a physician may choose to amputate a pediatric cancer patient’s leg in order to spare the child of high-dose radiation treatment, which could undermine his ability to reason going forward. Or a physician may recommend cochlear implants as a way of helping a deaf child who is struggling in school and socially.

This perspective is similar to Matthew Liao’s argument that all human beings are right-holders because they all have the genetic basis for moral agency, which Kantians emphasize as well (Liao 2010). But perhaps unlike the Kantian perspective, Liao argues that even those who have genetic conditions that make it genuinely impossible to make autonomous decisions have the genetic basis for moral agency in virtue of their humanity. Patrick Kain argues that Kant would have favored respecting at least beings without the capacity to act autonomously, for pragmatic reasons and because he thought that all members of the human species shared an essential disposition to be autonomous, which is sufficient form moral status (Kain 2009).

Alternatively, proponents of the Kantian approach might regard the possession of autonomous capacities (even if they are dormant or impaired) as a necessary condition for others to have duties to respect a being. According to such a view, people with severe cognitive disabilities would not have the moral status I described above and their choices would not command the same respect as autonomous people’s choices. And, insofar as parents and others have moral reasons to cultivate the autonomy of their children, it would be impermissible to cause children to have cognitive disabilities that permanently
impaired their autonomy in most cases (Schapiro 1999).\textsuperscript{17} These considerations would not necessarily prohibit creating humans that are permanently non-autonomous in virtue of a genetic condition, just as creating beings with other disabilities does not harm or wrong those who are created.

Yet even on this interpretation of the Kantian framework, there may still be reasons to care for nonautonomous humans who have severe cognitive disabilities. Consider for example Korsgaard’s argument in favor of animal rights—she argues that each person is required to recognize not only the value of humanity, but also the value of all beings who are the source of normative claim (Korsgaard 2004).\textsuperscript{18} Animals generate different kinds of normative claims—they act for the sake of their natural good rather than in order to achieve their ends, but just as we must recognize the normative claims that other people make on us to respect their choices we should also recognize animals’ claims that their natural good be advanced. A similar justification may explain why intrinsically non-autonomous persons with severe cognitive disabilities still have a kind of moral status that would give us reason to refrain from mistreating them or using them as means, though such an argument would not support a duty to respect their choices.

6. Testimony and Deference

To this point I have argued in favor of a Kantian approach to disability. On this approach, questions about the relationship between wellbeing and ability are not relevant to questions about causing disability or about the treatment of disabled people, except in cases where a disability undermines a person’s autonomous capacities in ways that make autonomous choice going forward impossible. But Kantian approaches to disability are also relevant to debates about disability and wellbeing. To close, I will discuss how a Kantian theory of value may inform debates about whether disability is a hardship or a mere difference.

According to Kant and Kantians, autonomy (aka “the good will”) has intrinsic value. It is “like a jewel” that shines having full worth in itself, meaning that the value of autonomy doesn’t depend on whether it is useful, or whether it serves any other value (Kant 2012, 10). The value of an autonomous person doesn’t even depend on whether she values herself, since in order to act autonomously at all she must presuppose that her will has a kind of value, even if she doesn’t recognize it (Langton 2007). In contrast, happiness is only valuable in the presence of a good will. Though people may value happiness for its own sake, Kantians claim that is only because people value happiness that happiness is valuable (Langton 2007). In other words, happiness is only subjectively valuable.

This Kantian understanding of the value of welfare reframes debates about whether disability is a mere difference or a hardship. The answer is that it depends on whether people (who are objectively and intrinsically valuable) subjectively value being disabled or nondisabled. Because the Kantian approach to welfare is informed by the subjective experiences of disabled people, policies that are informed by this approach are

\textsuperscript{17} I say “in most cases” because in some cases pregnant mothers may be entitled to cause prenatal injuries that prevent a child from developing his autonomous capacities (e.g. by using certain drugs or making a risky labor decision). And while she would have strong moral reasons not to cause such an injury, it would be permissible in the sense that she would not be liable to be interfered with or punished for her choice because causing prenatal injury would be a choice she was entitled to make in virtue of her bodily rights.

\textsuperscript{18} It is controversial to draw an analogy between cognitively disabled people and animals (Wasserman et al. 2013) and I have suggested that there may be other ways to distinguish between cognitively disabled humans and nonhuman animals. However, this analogy is appropriate as an example of one way that a Kantian framework may inform questions about how people with cognitive disabilities should be treated.
more likely to avoid practical problems of testimonial injustice—where disabled people’s experiences are treated as less credible in virtue of ablest prejudices (Fricker 2009).

This way of thinking about value lends further support to disability rights advocates calls for greater deference to the lived experiences of disabled people. Many disabled people do not experience their disabilities as hardships but do experience stigmatizing arguments that it is worse to be disabled as a hardship. Since the value of disability is determined by the subjective experience of people who are disabled, people should therefore defer to disabled people’s value judgments about these topics and refrain from characterizing disability as an intrinsic hardship. On the other hand, people should also defer to the judgments of disabled people who report negative experiences and who would value becoming nondisabled. So while Barnes rejects the language of ‘curing’ disability on the grounds that it expresses the view that disabilities are negative physical conditions that should be avoided, for some people this view and the language of curing disability is appropriate (Barnes 2014).

Those who hold an objective theory of wellbeing may object on the grounds that intuitively, disabled people’s preferences are adaptive responses to unjust conditions and ought to be discounted.19 Or, one may defend a conception of harm whereby a being harmed is defined as being physically disabled, and thus disability always involves a kind of moral loss.20 To this point, disability advocates reply that those who characterize disability as a harm and disability pride as an adaptive preference face significant epistemic hurdles in establishing this claim since even according to most objective theories of wellbeing the first-person testimony of disabled people would be one of the best sources of evidence about whether a disability is bad for a person (Barnes 2009a). The Kantian approach lends further support to this argument by denying the claim that wellbeing is objectively valuable in the first place. Since physical disabilities do not impair a person’s ability to confer value on her condition, disabled people who identify with the disability pride movement are correct when they claim that disability is a valuable form of difference just as disabled people who seek “cures” are correct in claiming that disability is a misfortune.

7. Conclusion

Many debates about the ethics of disability and disability rights focus on the hardships associated with being disabled. In this paper I have argued that whether being disabled is a hardship or a mere difference should not change our judgments about causing disability or disability rights. Instead, I developed a Kantian framework for understanding disability. The Kantian approach can explain why it doesn’t matter whether causing nondisability or disability is good or bad for a person, what matters is whether a person consents to become disabled or nondisabled. I also described ways that a Kantian framework can inform debates about disability discrimination, accommodation, creating disabled people, changing the ability status of children, and the treatment of people with cognitive disabilities. Finally, I defended a Kantian answer to the question of whether disability makes a person’s life worse and I argued that the value of being disabled or nondisabled depends on people’s attitudes toward their ability status. Stepping back from these particular arguments, as a general rule the Kantian approach

19 Philosophers sometimes make similar arguments regarding women’s economic preferences or low wage workers’ preferences to remain in harmful industries (Nussbaum 2001; Zimmerman 2003).
20 Seana Shiffrin defends a view like this with respect to causing disability, and elsewhere she links the harm of being disabled to an ideal of autonomy, which is undermined by disability (Shiffrin 1999; Shiffrin 2012). Elizabeth Harman also conceives of disability as pro tanto intrinsically harmful (Harman 2009).
supports a policy of respecting the choices of disabled and nondisabled people and deferring to people with disabilities about the value of their ability status.

8. References


