

The expressivist objection to prenatal diagnosis: can it be laid to rest?

S Holm

Correspondence to:
Professor Søren Holm, Cardiff
Law School, Museum Avenue,
Cardiff CF10 3AX, UK; holms@
cardiff.ac.uk

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Tom Shakespeare's book *Disability rights and wrongs* is very rich and interesting and ought to be compulsory reading for anyone interested in the relation between disability and medical ethics.¹

In my short contribution to this symposium on the book, I will focus on a particular aspect of his discussion of prenatal diagnosis and termination of pregnancy.

In chapter 6 of *Disability rights and wrongs*, a chapter entitled Questioning prenatal diagnosis, the author discusses a wide range of issues concerning the relation between disability and prenatal diagnosis. One of the arguments he discusses is the so-called "expressivist objection" to prenatal diagnosis—that is, the claim that prenatal diagnosis expresses a discriminatory or negative attitude towards people with disability. After having analysed the expressivist objection, Shakespeare, in line with a range of other authors, concludes that the argument is not sound:

Nor should we interpret a decision to have a test or a termination as expressing disrespect or discrimination towards disabled people.(p102)¹

Is it thus time now to lay the expressivist objection to rest? In the following, I will suggest that it may be too early to completely dismiss the objection, partially because it is often misrepresented by its opponents, who argue against implausibly strong versions of the objection.

THE OBJECTION UNFOLDED

What does the expressivist objection essentially claim? The core of the claim is, as described above, that prenatal diagnosis and termination of pregnancy expresses certain attitudes towards disabled people. What is taken to express these attitudes may be the social practice of prenatal diagnosis and termination of pregnancy either in abstraction or as it currently exists, or the individual choices made by prospective parents. There are thus at least three different possible expressivist objections, and arguments that are valid against one of them may not hold against the others. There is, for instance, an important difference between holding that a given politically backed social practice expresses something and holding that choices made by individual agents within the context of that practice express something. In Tom Shakespeare's discussion of the arguments, it is not always obvious which version of the expressivist objection he is addressing.

Another issue that needs disentangling is whether the practice of prenatal diagnosis is claimed to express a discriminatory or just a negative attitude towards (a particular) disability. This disentangling is

important because the latter claim is much more plausible and because it engages more directly with the issue of identity. The claim that prenatal diagnosis expresses a negative attitude towards disability is more plausible because in many cases there is a wanted pregnancy that is terminated only because a disability is detected, and in some of these cases this is done in a situation where there is no expectation of any further pregnancy—that is, it is not the case that the parents are choosing between two possible future worlds, one containing a disabled child and another containing a different non-disabled child. They are choosing between a world with the disabled child and another without it, and this must, in some cases at least, entail that they value (the particular) disability so negatively that they think the world without the disabled child is preferable simply because it does not contain that child. That attitude might carry over to people living with that disability, even though it does not lead to any actual discrimination.

The "negative attitude" version of the expressivist objection also engages more directly with the issue of identity. If having a particular disability is an essential part of my personal identity, part of what I am, the mere fact that I know or have reasonable reasons to believe (see below) that others evaluate that disability negatively may affect my sense of identity and social standing negatively. And I may justifiably feel that way even if the negative evaluation does not lead to any actual discrimination.

NO OBJECTION

But maybe the expressivist objection is unsustainable even if clarified in these ways. The point is often made that choosing to terminate the pregnancy of a disabled foetus does not *necessarily* or conceptually express a negative attitude towards disability in general, or towards any living disabled person in particular. Shakespeare makes these points on page 90 and 98,¹ referencing Buchanan, Brock and Daniels for the insight (p98) that

It is not incompatible to seek to prevent impaired children coming into the world, and also to support the rights of existing disabled people.

This is obviously right, but it is unclear whether a proponent of the expressivist objection needs to claim that prenatal diagnosis and termination of pregnancy *necessarily* expresses something. As an analogy, it is worth considering how we would assess the intentions and values of a politician claiming that "it is not incompatible to seek to prevent asylum seekers from coming into the country and also to support the rights of existing bona fide refugees who are already here."

The expressivist objection would have the same force even if it was just a matter of contingent fact that the present practice of prenatal diagnosis often expresses a discriminatory attitude towards disability. If it so happens that many politicians vote to fund prenatal diagnosis and screening programs, many healthcare professionals advise on prenatal diagnosis and termination of pregnancy, or many parents choose prenatal diagnosis and termination because they disrespect disabled people, then those cases do express disrespect or discrimination, even if it is conceptually possible to hold the two views in the quotation above.

Another important issue is that whereas an agent has control over what he or she intends to express, he or she does not have exclusive control over what an action or utterance actually expresses. Those who witness an action will often make inferences concerning what the action is meant to express. These inferences may be wrong, but as long as they are epistemically warranted, the witnesses are justified in claiming that the action did express this or that. I may want to convey a purely artistic message concerning the evanescence of post-modern nationalism by publicly burning your national flag, but you would in many circumstances be warranted in inferring a certain negative attitude towards your country (given the normal or normal symbolic meaning of flag burning), unless I clearly marked my action as an artistic and non-political action.

THE EXPRESSIVIST OBJECTION, VERSION 2

What can we conclude about the expressivist objection? I think we can conclude that it is possible to imagine a socially

embedded practice of prenatal diagnosis and termination of pregnancy that did not, as an empirical fact about that practice, express any negative attitudes towards the disabled and could not justifiably be construed to express such negative attitudes. Such a practice could, for instance, exist in a context where all reasonable healthcare and social needs of disabled persons and their carers were met, where economic savings generated by avoiding the birth of disabled children played no role in decisions about the design and implementation of prenatal screening and diagnosis programmes, where counselling was truly non-directional and unbiased and where the identity of all was celebrated. This is, however, not the practice of prenatal screening and diagnosis that we are currently engaged in. As Shakespeare himself points out, the discourse surrounding prenatal diagnosis and screening is full of highly problematic language use, and we have good reasons to believe that some of the actors involved in the process act from discriminatory motives or at the very least from a negative evaluation of disabled fetuses and persons. Our current practice of prenatal diagnosis and termination of pregnancy therefore to some degree expresses exactly those attitudes that proponents of the expressivist objection claim that it does. That the practice does not have to express those attitudes by logical necessity is largely irrelevant to whether it actually expresses them.

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