

Dan Brock, “Cost Effectiveness and Disability Discrimination”

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October 27, 2015

Dan Brock, “Cost Effectiveness and Disability Discrimination,” *Economics and Philosophy*, 25 (2009) 27-47.

- prioritizing healthcare resources by their relative cost-effectiveness can result in lower priority for the treatment of disabled persons
- this article distinguishes six different ways in which discrimination against the disabled can occur
- spells out and evaluates moral objections to this discrimination:
 - it implies that disabled persons’ lives are of lesser value
 - “double jeopardy” or violation of the non-linkage principle
 - conflicts with equality opportunity
 - conflicts with fairness
 - wrongly gives lower priority to disabled persons for equally effective treatment
 - conflicts with giving all persons an equal chance to reach their full potential
 - conflicts with giving priority to the worse off

Introduction

- prioritization of healthcare resources should be guided by two ethical aims or norms:
 - use limited resources to maximize the benefits of the population
 - distribute benefits equitably or fairly among the population
- these two goals conflict
- example: cost effectiveness vs avoiding unjust discrimination against persons with disabilities

- treating persons with a disability can result in fewer benefits and/or greater costs
- paper explores moral objection or putative injustice to the disabled of prioritizing health interventions by cost-effectiveness

Forms of Disability Discrimination from CEA

- lower life expectancy
 - when health interventions are life saving, the QALYs produced will depend on life expectancies
 - many disabilities reduce life expectancy, so saving a disabled person's life might produce fewer QALYs
- lower health-related quality of life
 - many disabilities reduce an individual's health-related quality of life
 - the quality adjustment inherent in QALYs means that a life year for a disabled person counts less than a life year for a non-disabled person
- less effective treatments
 - disabilities can act as comorbidities
 - comorbidities make treatment less effective
- more expensive treatments
 - the presence of a disability can make a treatment more complex or extended, and so more expensive
 - cost-effectiveness, other things being equal, prioritizes less expensive treatments
- treatments might cause functional limitations
 - if the treatment itself leads to a disability, then fewer QALYs are produced
 - cost-effectiveness would favor giving the treatment to those who can be treated without resulting in a disability
- less productive
 - people with disabilities might be less productive of economic benefits
 - productivity is usually ignored in the healthcare sector when doing CEA

A Defence of CEA's Disadvantaging Persons With Disabilities

- not every disadvantage is unjust
- being placed lower on a priority list is not always unjust discrimination
- some people argue that some/all of the above ways of discriminating disabled people are not unjust
- Hadorn: inevitable and acceptable consequence of a rational priority setting process
- Menzel: disability is one aspect of quality of life, but taking it into account is not discrimination; it is hard to produce any system of priority setting without taking into account some measure of quality of life
- Hadorn and Menzel are correct in that rationing of health resources is necessary and desirable and should take into account relative cost-effectiveness and quality of life
- Hadorn and Menzel ignore the fair or equitable distribution of resources

Moral Objections to CEA's Disability Discrimination

CEA Implies that Disabled Persons' Lives Are of Lesser Value Than Those of Non-Disabled Persons

- CEA seems to imply that the lives of disabled person's are worth less
- this is incompatible with the moral equality of all persons and the moral claim that all lives should count equally
- under CEA, preserving the life of a disabled person produces fewer QALYs because disabled persons' lives are taken to be of lower quality
- this moral objection is indecisive at best: in a sense it tells us only what we already knew

Prioritization by CE Is "Double Jeopardy" or Violates Kamm's Non-Linkage Principle

- "double jeopardy": when disability is a morally undeserved disadvantage, it would only compound the undeserved disadvantage to use it as the basis for giving lower priority

- “non-linkage principle”: “the fact that some undeserved bad thing has happened to you [should] not make it more likely that another bad thing will happen” (Kamm)
- more precise reformulation: we should not use a person’s undeserved or unjustified disadvantages as the basis to impose further disadvantage on them
- social policies under our control should not compound further undeserved or unjustified disadvantages
- this argument will not apply if people are responsible for having their disabilities
- the law also makes some accommodation for people with disabilities
- sometimes not violating the non-linkage principle has too large costs
- difficulty: we do not accept the non-linkage principle in its most general form (e.g., in the case of intelligence)
- the non-linkage principle articulates a forceful moral objection to the discrimination of disabled persons through CEA
- need to define precise form, scope, and limits of the principle

Prioritization by CEA Conflicts With Equality of Opportunity

- Norman Daniels: importance of healthcare for justice is its role in countering the diminishment of opportunity caused by diseases and disability
- equality of opportunity can require measures that are not cost effective
- the correct form, scope, and limits of a principle of equality of opportunity within a broader moral and political theory and how it should apply to healthcare are unclear and controversial
- Daniels’s “social structural” account might mean that equality of opportunity is only violated by differences caused by diseases and injury, but not by differences in intelligence
- this can be contrasted with a “brute luck” account
- the two accounts have different implications for whether CEA violates equality of opportunity only when people are disadvantaged because of disease or injury
- equality of opportunity might be the correct basis for the moral criticism of CEA’s implications for the disabled, but many issues need to be resolved about it

Prioritization by CEA Conflicts With Fairness, Which Requires Ignoring (Some/Most) Differential Impacts of Treatment

- ignoring differences in benefits and/or costs in prioritization is irrational and in conflict with maximally improving population health
- fairness provides a moral reason to ignore at least some differences
- fair chance argument
- we should not satisfy the stronger of two competing claims but satisfy both proportional to their strength

Prioritization by CEA Can Wrongly Give Lower Priority to Disabled Persons for Equally Effective Treatment

- we can make a case that equal need for treatment generates equal claim for the treatment, and so equal priority for the treatment
- this relies on a particular, treatment-specific account of treatment effectiveness

Prioritization by CEA Conflicts With Giving All Persons Equal Chance to Reach Their Full Potential

- everyone should have an equal chance at realizing their full potential
- no one should be disadvantaged because their potential may be less than that of others

Prioritization by CEA Is In Conflict With Giving Priority to the Worse Off

- Prioritarianism: benefiting people matters more morally the worse off those people are (Parfit)
- a prioritarian theory could adopt different metrics: based on overall well-being or health
- metric has an implication for the treatment of disabled persons: they might not be the worst off in terms of overall well-being or even health
- another issue is how much priority the worse off should receive