Article

Public Justification, Evaluative Standards, and Different Perspectives in the Attribution of Disability

Elvio Baccarini * and Kristina Lekić Barunčić

Department of Philosophy, Faculty of Humanities and Social Sciences, University of Rijeka, 51000 Rijeka, Croatia; kristina.lekic.baruncic@uniri.hr
* Correspondence: elvio.baccarini@ffri.uniri.hr

Abstract: This paper proposes a novel method for identifying the public evaluative standards that contribute to the classification of certain conditions as mental disabilities. Public evaluative standards could contribute to ascertaining disabilities by outlining characteristics whose presence beyond a threshold is fundamentally important for the life of a person and whose absence or reduced occurrence constitutes a disability. Additionally, they can participate in determining disabilities by delineating particularly grave difficulties, impairments, or incapacities. Our method relies on a model of public justification of evaluative standards that is inspired by Gerald Gaus's theory of public reason. Thus, our approach recommends the justification of evaluative standards through sound deliberative routes from reasons accessible to all persons who participate in the process of justification and the convergence of what is justified in this way to each of them. We deem that disabilities could be caused both by problems in the internal characteristics of a person as well as by unfairness or a lack of hospitality in external circumstances. This is why the method of justification is applied to the assessment of those circumstances as well. If social or environmental circumstances cannot be justified through the convergence of reasons accessible to all persons involved in the process of justification, we have reasons to exclude the presence of a disability and ascertain the presence of inadequate external conditions.

Keywords: capability approach; Gaus; mental disabilities; public reason; weak externalist epistemology

1. Introduction

This article analyzes the methods of selection of public evaluative standards that underpin the categorization of specific conditions as mental disabilities. Our endeavor introduces a distinctive political-philosophical perspective that bears relevance to its potential application within the domain of psychiatry. Thus, it presents an original proposal for the ongoing discussion.

This appears useful for the debate because of the accusations that psychiatric classifications are nothing more than arbitrary impositions of power, as famously argued by Szasz [1]. In some cases, arbitrary psychiatric classifications have assumed the most brutal forms of political repression: ""Misfits" and politically unwanted citizens were regularly deemed psychiatric patients because of their deviant behavior" ([2] p. 258). Additionally, recent contributions highlight the importance of a fair definition of values and entitlements of justice for the determination of disability [3–7] and the social and political components of mental disabilities [8,9]. Moreover, the political dimension is underscored by activists who reject the qualification of disability for their condition, which they instead describe as minority[1], diverse, or atypical. Such activism is not only present in disputes about mental disabilities, as in the neurodiversity movement [10] but also in debates on physical disabilities, such as the engagement for the definition of deafness as a condition of a linguistic minority rather than a disability [5,11,12].

The relevance of social and political dimensions is appropriately framed by Brandon Conley and Shane Glackin [13] in their determination of disease that widely overlaps with the concept of disability, as used in the present paper. As they say, we can judge a behavioural or mental state as a disease when it is considered:

"(a) as not representing a tolerable state of affairs;

(b) but neither as representing a moral failing of the individual concerned;

(c) as not being worth reorganizing society so as to fully neutralize the relative impairment caused by the state;

(d) but as being worthwhile to divert resources to 'correct' and/or ameliorate it" ([13] p. 10).

According to some of the authors we mentioned, this underscores the necessity to contextualize the discourse within a political framework guided by normative and evaluative considerations. Normativity and evaluation exercise a significant role, including assessing the state of affairs, the justifiability of restructuring society to eliminate negative occurrences, and the allocation of resources to correct or ameliorate said occurrences.

To clarify, our discussion is not related to discrimination and stigmatization of people with disabilities, like, for example, the improper denial of competence, of which they are victims in some cases. Hence, the subject of our discussion is not about the condition where a person, because of a properly diagnosed condition, is a victim of some form of unfairness contrary to her real competence. Rather, our discussion is directed toward the injustice represented by the wrong medicalization. Wrong medicalization refers to situations where a medical condition is incorrectly attributed to an individual, leading to unnecessary medical treatment or intervention or exclusion from some benefits (such as the opportunity to work). This can occur when medical professionals misinterpret the symptoms of a patient or rely too heavily on medical diagnoses without considering the wider social, cultural, and environmental factors that may be contributing to the individual's symptoms. In other cases, the medicalization of a condition may be driven by social or political pressures rather than medical necessity.

Wrong medicalization can have significant negative impacts on individuals, including unnecessary medical procedures, overdiagnosis, and increased medical costs. Importantly, wrong medicalization is not just a medical problem. In cases where it is unjustified, medicalization significantly affects the individual in a manner that is unrelated to their health. Moreover, the wrong medicalization can have far-reaching social, economic, and political implications [14,15]. These implications can be traced to diminished well-being, loss of life opportunities, disadvantageous positions in educational systems, job employment, etc. It can also perpetuate marginalization and exclusion from benefits for individuals with certain conditions by failing to recognize the wider social factors that contribute to their symptoms. Moreover, it avoids implementing reforms that would render a society hospitable to persons distinguished by atypical characteristics and evaluative standards [13]. Further, it can unjustly harm the self-respect of people and hinder social inclusion that is respectful of their identities. However, we need to be aware of the opposite danger—the unfair denial of disability status. For example, one could be excluded in this way from aid, support, or other benefits that could belong to the person if identified with a disability condition [13]; ([7] pp. 102–103).

We will not be able to address the full complexity of the dispute, which involves several issues. For example, different authors have expressed conflicting views on the relevance of values or natural properties and characteristics in debates on disability, disease, or disorder [16–24]. For some of these authors, the solution to wrongful medicalization is represented by a firm naturalistic component in the identification of disabilities. The project is well described in a discussion on mental disorders: "This aim requires a clear and justifiable model of mental disorder, which is based on findings about the processes and mechanisms of the human organism. [...] It is the way that we need to explore if we want to avoid, as far as possible, Szasz's legitimate worry regarding the wrong kind of medicalization and pathologization" ([2] p. 259).We do not enter into this discussion. Instead, we assume the relevance of evaluative standards for the definition of disabilities,

and we offer a proposal that guards against the imposition of wrong values and norms by elaborating a method of their justification that contributes to warranted medicalization. We hope that it will be helpful for more applicative debates by indicating the proper frame for (a) protecting minorities and atypical persons that, as the accusations listed above show, have been frequent victims of repression or discrimination by being classified as disabled; and (b) sustaining reasonableness in the justification of evaluative standards and classifications of conditions.

This is why the method of selection of evaluative standards for the assessment of conditions of persons and social orders includes two fundamental constraints: (1) the selection of evaluative standards must be responsive to the pluralism present among persons, inclusive of the values that they endorse, their characteristics, and their needs; and (2) the process of selection must disallow being taken hostage by epistemic flaws, like epistemic negligence, stubbornness, epistemically deviant influences, self-centered perspectives, adaptive preferences, etc.

The method must be employed in two stages. Firstly, analyze whether certain characteristics are significant enough to support attributing a disability if absent or present in an impaired form. It can also be applied to directly define disabilities by detecting conditions or characteristics that are burdensome in a relevant form. Secondly, in determining if a person's deprivation is due to her impairment, an unfair lack of economic resources, or an unfair social context or environment.

Our discussion remains abstract. It only demonstrates the method of selecting evaluative standards from political philosophy to resolve disputes across various psychiatric situations. However, it is not our intention to adjudicate such disputes through the application of this method. Instead, we illustrate briefly (in the context of autism) how the method can be operationalized without the ambition to reach conclusions regarding the autistic condition.[2]

The presentation and description of the method represent the central and innovative parts of the paper. We present the advantages of our approach as an alternative to the methods proposed by other authors in the capability approach (which we describe in more detail below). In the debate so far, there have been two main proposals. One is constituted by a theoretical reflection that finds objective lists of capabilities [25]. Here, we prefer to speak of theoretical reflection instead of philosophical reflection, as sometimes used in the debate [26]. The reason is that we accept that philosophers can have a precious role [27]. But we do not believe that philosophers can be favored as the exclusive bearers of this undertaking, as there are no a priori reasons to exclude other experts from participation. Thus, when we refer to the philosopher's role, we do so only to follow, in specific places, the terminology of the authors that we discuss.

To fully comprehend the dispute, we must also examine the opposing stance. Here, the democratic proposal argues for the democratic establishment of relevant evaluative standards [28,29]. Additionally, we will also discuss a third option that merges a theoretical model for capability lists' foundation with a democratic approach to validate them [26].

Here, our innovative contribution is made visible since it provides a theoretical model for selecting standards receptive to democratic insights. The uniqueness of our theoretical model lies in the requirement of addressing justification to all diverse people through reasons that all of them can accept. Our favored model is inspired by Gerald Gaus' theory of public justification [30,31]. Public justification is the procedure for establishing which public decisions (evaluative standards, etc.) are supported by reasons compelling all involved persons. In the view that we embrace, public justification is obtained when the valid reasons, from the perspectives properly assessed of all relevant subjects, converge on a public decision (or, in our case, more precisely, on an evaluative standard). Thus, the convergence requirement safeguards the protection of evaluative diversity from the imposition of a uniform standard that is not acceptable to all.

There are two reasons why we illustrate our method of selecting evaluative standards in the framework of the capability approach. First, our method starts from the elaborated

and advanced existing discussion in the capability approach and offers an alternative to the positions offered so far in this context. Second, the capability approach is particularly useful in analyzing the potential constituents and causes of disabilities that we deem relevant, such as, for instance, personal characteristics and environmental and economic contexts, as well as their interaction [8,9]. This is important in order to take into serious consideration the challenges affirming that (at least in some relevant cases) the attribution of disability is wrong because the deprivation of a person is not caused by her impairment but by a dysfunctional environment that is not hospitable to atypical characteristics.

The capability approach is constituted by various disciplines [32] and presents itself as an important contribution to disability and health disputes [8,9,33].The distinctive feature of the capability approach is to put capabilities, i.e., effective opportunities for being or doing something, at the center of consideration. In accordance with one of the central theories in the capability approach, we can speak about a life that is going well when the needed capabilities are present beyond a certain threshold [25,34–38]. Various theories detect the relevant capabilities in different ways. For example, Nussbaum [25] classifies capabilities by having in mind the effective opportunities to achieve what is valuable in human life, while Begon [4,6] speaks about capabilities to exercise control over important parts of our lives that belong to us by justice. Because we leave our discussion abstract, we do not enter into these disputes. Instead, our concern lies in the distinction between the internal and external dimensions of capabilities. Thus, a capability is an effective opportunity to be or do something (for example, being employed and working) that is constituted by an internal dimension (as mental characteristics that are necessary for some cognitive performance) and an external dimension (as the right and social opportunity to have access to job prospects due to the absence of discrimination). To establish that a person has a mental disability, we need to determine that her deprivation of capabilities (for example, for working and socializing) below a certain threshold is not caused by the absence of external dimensions of capabilities at the required level (because of dysfunctional social conditions or environments) or economic deprivation. In this case, we would have an unfair attribution of disability and a dysfunctional society, as denounced by Begon [3–5] and Glackin [6].

We remark that our debate on the selection of evaluative standards in the attribution of disability could be broader and not exclusively linked only with the capability approach but also consider alternative proposals. For example, we can accept that evaluative standards are generically those deeply and pervasively relevant characteristics that we would choose in a hypothetical condition that replicates Rawls's original Position [39]), where our decisions would not be under the influence of the contingencies of our lives [7]. But it is important to us that all plausible proposals consider both the traits of individuals and the environments in which they reside as possible origins of disabilities, as is carried out by the capability approach.

However, an objection could be raised that it is not required, or even not the best strategy, to start the definition of disabilities from the characterization of desirable characteristics such as valuable capabilities, or Graham's capacities selected in an original position [7]. Instead, the focus should be on specific impairments or incapacities and on the difficulties people encounter in their lives.[3] We think that this view can be compatible with the model of public justification that we propose. We elaborate on this below.

The structure of the paper is as follows: We begin by describing the problem of divergent identifications, or denial, of disabilities as a result of value pluralism, and we indicate the factors that need to be considered in addressing this challenge by using the capability approach and the concept of capabilities.

Second, we describe the two main foundations of capability lists: the democratic (represented most prominently by Sen) and the theoretical (represented most prominently by Nussbaum) ones. A pronounced role is credited to Claassen's defense of the practice and employment of theoretical justification of the capabilities list, together with a democratic final validation.

Third, we describe our favorite model of public justification of capability lists, inspired by Gaus' works.

2. Definition of Evaluative Standards

The history of psychiatry bears the weight of several fits of abuse and grave mistakes that resulted in severe human rights violations due to the wrong classification of certain conditions as disabilities [40]. The assumption of the present paper is that, in some cases, this was caused by the use of unwarranted values in the definition of disability. In virtue of this assumption, selecting evaluative standards for determining mental disabilities while respecting fairness and differences becomes an urgent task.

The first challenge in defining public evaluative standards for the definition of conditions as disabilities is to establish, fairly and non-arbitrarily, which are the relevant characteristics whose absence or reduced presence constitutes a disability. As mentioned in the introduction, to illustrate the selection method, we will identify characteristics among capabilities. Capabilities represent possibilities, which is different from the notion of functioning. Namely, functionings are the "beings and doings" of an individual, and capabilities are "various combinations of functions that a person can achieve" [36]. In other words, capabilities are effective opportunities for being or doing something. The problem, then, is to establish which are the relevant capabilities whose absence or reduced presence can determine disability. The criterion of reduced presence is noted by Nussbaum [25,41]. She says that capabilities are needed up to a threshold. Thus, imagine the capability of affiliation that, in Nussbaum's view, includes "being able [. . .] to imagine the situation of another" [41]. In order to avoid a disability, an effective opportunity to imagine the situation of another at a very high level is not required. Rather, it is important to have the capacity at a threshold. Below it, if we accept such capability as valuable, we could speak of a disability.[4]

The other challenge is represented by the question of where to find the cause of the absence of a capability. Is it located in the physical and mental condition of persons like skills and intelligence, i.e., in the internal dimensions of capabilities [42]? Or, must we identify the question from the social perspective and say that the problem is present in a dysfunctional society [43], i.e., in the external dimensions of capabilities [42]?

The problems that some autistic persons encounter, for example, in their search for career opportunities, such as long-term unemployment and the inability to practice their talents, could be seen as caused by the unfavorable autism-friendly labor-market conditions ([44], p. 4) rather than the actual absence of internal dimensions of capabilities for the same. A different environment inclusive of different attitudes could affirm the capability of autistic people to work. Thus, the typical narrow interests of autistic people can be employed in a hospitable manner to affirm them as experts in specialized fields ([44], p. 2). Further, the capability of social integration of a person with a disposition for literal interpretation of messages varies depending on society's reaction to unusual dispositions concerning her sense of humor.

The dispute is emphasized through the actual, vivid engagement against the medicalization of autistic conditions formed around the idea of neurodiversity [10].According to the neurodiversity idea, autistic disorders are inherent human variances in neurological development and cognitive functioning, not pathologies [45]. Namely, the thesis is based on understanding autism as a natural variation that does not represent a failure in biological design or a harmful condition. Rather, according to the thesis, autism is related to specific talents and abilities that should be considered evolutionary trade-offs rather than deficits that invoke medicalization [46]. The argument contests the need to emphasize impairment as the primary cause of the disabled person's inability to fully engage in society and medicalization as a remedy. The focus is on the notion of "disability" as a socially constructed term that should be understood as a form of social oppression, a mechanism that limits or excludes people who have or are perceived to have any type of deviation from a typical majority.

This perspective changes the paradigm and focuses on a society that, through its institutional arrangements, makes the individual disabled [47]. According to this model, in this specific case, the idea is that people with autistic spectrum conditions are not victims of autism but victims of society. Hence, the proponents of this model believe that the most severe harm experienced by autistic individuals is caused by social attitudes and practices rather than directly stemming from the autistic condition [48].The idea is, broadly speaking, that autism cannot and should not be treated or cured [10]. Instead, society must be modified.

However, this idea is the subject of intense controversy [49]. People with some forms of autism and their parents and caregivers strongly oppose the relativization of a condition that significantly affects and diminishes their quality of life and life opportunities. Here, then, the two-sided aspect of medicalization appears—the harms of possible incorrect attribution and the harms of possible denials of correct attribution of a medical condition.

We need to establish through a proper method of selection whether deprivations are caused by the person's impairments or by environmental or social circumstances. In what follows, we discuss proposals to identify this method. The model of selection that is chosen needs to, first, assess whether some candidates' valuable capabilities correspond to such qualifications. For example, we need to assess whether it is justified to qualify the capability for usual forms of socialization as essential. If we do not qualify such capability in this way, then we do not qualify its absence below a threshold as characterizing a certain disability. But further work is required to describe a capability before we establish that its deprivation represents a disability.

After a capability is assessed as significant, the method evaluates society and the environment in order to see whether a person is deprived of the capability because of its internal or external dimensions. Let us take, for the sake of illustration, the capability to work as an example. Imagine an autistic person whose ability to work is severely impaired by sensory overload in the workplace. Should we conclude that there is a working disability present? And what if we could provide a reasonably wide range of workplaces, ensuring the avoidance of sensory overload? In such cases, medicalization is only justifiable if we cannot justify changing the external circumstances. Otherwise, we have unfair social and environmental conditions. Thus, the question of selecting a social environment is fundamental, and we cannot only base the definition of deprivation on the internal dimensions of a person's capabilities.[5]

We will now show the different strategies for selecting capabilities from the lists offered so far.

3. Methods of Selection of Evaluative Standards

The first attempt that we consider is selecting a list of capabilities through theoretical reflection. The paradigmatic case of such an attempt is represented by Martha Nussbaum's proposal. She grounds her theory of justice and, thus, her reflection on disability on a conception of human dignity as constituted by a list of ten capabilities that are needed at a threshold for a dignified human life ([41] pp. 17–45). In her later formulation, this becomes a political liberal theoretical list-making [25]. This means that she does not intend to base her proposal on a philosophical doctrine that is possibly not accessible, endorsable by some of the relevant persons, or reasonably contested by other philosophical theories. Instead, her theory intends to express shared judgments about a valuable life. Such judgments, in her view, can be expressed through the indicated conception of human dignity, which is the idea that organizes reasoning about justice and is specified through the capabilities list. Below, we refer to two of the capabilities on the list.

Despite her political liberal motivation of relating the basic ideas that ground a theory of justice to ideas shared by relevant persons, Nussbaum's theory is criticized for not achieving this goal. Claassen [50] and Glackin [6], for example, contest that it is insufficiently respectful of pluralism and diversity. The objection is that Nussbaum has inserted in the list some capabilities that some people can evaluate as not constitutive of a fully good life

for them. For example, related to the fifth capability, emotions (that includes "being able [. . .] to love those who love and care for us, to grieve at their absence") ([41] p. 331), and the seventh capability, affiliation (that includes "being able [. . .] to imagine the situation of another") ([41] p. 33), one could reply by saying that she does not accept that her life is defective because of their absence.

By this, we are not saying that it could be plausible to affirm that emotions and affiliation could be entirely irrelevant in the life of a human being or that we must assume as valid the objections shown above. Instead, we are saying that the concepts are thick and that it is disputable how their content must be filled. This highlights the urgency of evaluating the challenge in a way that is respectful of pluralism and diversity. Thus, the counterexamples confirm the risk of inserting too much in the definition of essentially valuable characteristics of persons. In light of the indicated problems, it is worth analyzing the potentialities of the democratic view within the capability approach.

The democratic position in capability list-making is most influentially defended by Amartya Sen [28]; ([29] pp. 241–243). And Ingrid Robeyns [34,35]. The opposition to the theoretical list-making based on the political argument is related to the authority of persons and their right and wish to have a voice in public decision-making that concerns them. According to this objection, with the theoretical strategy of creating capability lists, philosophers give themselves the freedom to create their lists, which will then apply to others who have been excluded from the process. "To have such a fixed list, emanating entirely from pure theory is to deny the possibility of fruitful public participation on what should be included and why" ([28] p. 78). Thus, theoretical list-making clashes with the fact that "many people simply feel offended by confident intellectuals who speak on their behalf" ([35] p. 201), as we see from activists' opposition to theoretical frames of medicalization. If members of society to whom the list applies reasonably feel as if it was imposed on them, then the list lacks legitimacy ([35] pp. 199–202). Thus, even if philosophers arrive at the same list that would be endorsed as the outcome of a democratic deliberative process, only the latter outcome could have full legitimacy. This is because it has been achieved in a way respectful of the persons concerned ([34] p. 69); ([35] pp. 200–202). This is why Sen says that the establishment of capabilities needs to be democratized without "insisting on one predetermined canonical list of capabilities chosen by theorists without any general social discussion, or public reasoning." ([28] p. 77). This view is also sustained by Burchardt ([43] pp. 742–743), as she requires that the identification of capabilities be made by giving voice to organizations of disabled persons.

The second criticism, i.e., the "epistemological objection," stresses the epistemological limits of philosophers' comprehension. Robeyns remarks on the difficulty for a single person to understand the meaning of capabilities for all other people. A person will always have only a partial perspective. This is why we need a process of interactive deliberation ([42] pp. 198–199, 202). Proper assessment is better conducted through public reasoning and discussion than through "self-centered evaluations by secluded individuals" ([29] p. 242).

The distinction between the theoretical and democratic proposals does not need to be sharp because, in both cases, listening to the voices of the public could be required. This is the basis of Claassen's replies to the democratic criticisms [26]. He says that they are based on misinterpretations of the theoretical foundation, as he points to weak aspects of the democratic proposal. In fact, his position is elaborated, and it is not a univocal rejection of the democratic proposal. He defends the theoretical view of list-making and the theoretical justification of capability lists. However, the final validation of the capabilities list is democratic, and so, on our interpretation of Claassen's thought, it has the final legitimacy.

To distinguish the concepts, justification is constituted by the reasons that support a conclusion. When we are engaged in the justification of a capability list, we try to show that the list is properly supported by valid reasons. Thus, the justification of a capabilities list is represented, for example, by the philosophical arguments in its support, such as the one that relies on the concept of human dignity.

Validation, on the other hand, is the act or process of public acceptance of a decision. For example, in the present case, a capability list. In democratic societies, validation of the most important decisions is typically the result of a democratic decision, but it does not need to be so. A possibility is, for example, validation through a decision of the Supreme Court. Finally, legitimacy corresponds to the moral authority of, for example, a rule, an institution, etc., with the related duty of acting in conformity with it [51]. A capability list can be characterized by legitimacy as well. In such a case, it has, for example, the moral authority to be supported by political and medical institutions that have a corresponding duty.

Now, we will comment on Claassen's proposal in more detail. We start with his description of the misinterpretations present in the democratic criticism of the theoretical list-making of capabilities. Here it becomes visible how Claassen interprets the justification of capability lists, their validation, and, we think, their legitimacy. We agree with part of Claassen's conception of the justification of capability lists but also disagree with an important component. Then, we disagree with his conception of democratic legitimacy, and we partially oppose his conception of validation.

The first misinterpretation Claassen observes in the democratic objection to theoretical list-making is traced to the political objection. He considers that it is unfounded since, when advocates of the democratic position criticize philosophical list-making, they bear in mind that under this view, philosophers are authoritarians who merely impose philosophical ideas. But, according to Claassen, the philosophical strategy is linked to democracy in such a way that the philosopher is not a philosopher-king but a philosopher-citizen who offers her philosophical theory as an input to already existing democracies. The theoretician engaged in list-making indicates which list is justified and hopes that her favorite view will be accepted through the democratic process. She could even participate in it or try to influence it in various ways. But in the end, capability lists are a matter of democratic validation. As we interpret the proposal, the final legitimacy of capability lists is democratic.

The second misinterpretation is present because the epistemological objection neglects relevant aspects of the methodology at the disposal of the theoretician. Claassen responds to this objection by introducing the term "philosopher-investigator," whose knowledge is not solely based on isolated reflection but also on empirical observations and communicative interaction. The philosopher does not need to be engaged in list-making wholly in the armchair, detached from possible inputs. Instead, she can benefit from empirical research and communication with society. Here we see a component of Claassen's view of the theoretical justification of capability lists. It requires listening to the voices of the parties involved and the collection of empirical information. As we explain below, these are the aspects we also endorse.

However, there is another relevant aspect of Claassen's proposal that we deem problematic. Here, it is important to distinguish between the public reason and the correctness view of justification and legitimacy. In the former case, a decision is justified and legitimate only if it is supported by reasons that all relevant parties can accept [31,52,53]. In the latter case, only the best reasons count, even when they are not acceptable to some who cannot endorse them [54–56]. This is the view endorsed by Claassen [26]. As we have seen, he says that the philosopher must analyze the perspectives and beliefs of others, but, in the end, she must choose by herself what she sees as the best epistemic decision based on what she sees as the best reasons. This choice does not regard her own choice for what concerns her own life, but a public standard. This represents the theoretical input to the choice of a capabilities list.

With regard to the weak aspects of the democratic proposal, Claassen argues that it deprives the process of selecting capability lists of potentially valid contributions. It is represented by expressions of good theoretical reasoning that indicate which of them are properly justified.

In what follows, we agree with the endorsement of the theoretical justification of capability lists. But we disagree with Claassen on two points and, potentially, on a third. First, we go a step further than Claassen in criticizing the democratic proposal of capability

list-making, which also marks our first disagreement with his proposal. We disagree with his proposal when the dispute regards legitimacy. Here, Claassen embraces a democratic view. Second, we disagree with Claassen because of the kind of theoretical view of justification that he endorses. In fact, we endorse a theoretical view of legitimacy. However, the theoretical view that we propose is an alternative to the kind endorsed by Claassen. We propose a public reason instead of a correct conception of justification. Third, we partly disagree with the democratic validation of capability lists. Namely, we prefer a contextual to a principled and generalized democratic view of validation. In some contexts, it is better to have democratic validation. In others, it is better to leave validation to expert bodies.

We start by explaining why we do not endorse the democratic conception of legitimacy in the present context. Before arriving at our main argument, we indicate that by embracing the democratic conception of legitimacy, it is rendered difficult to understand the difference between the theoretical view of list-making and the democratic list-making of capabilities. In Sen's proposal, public reasoning is a needed component of the democratic process, and it can be possible to include in public reasoning the sophisticated theoretical justifications of capability lists. Thus, what makes the difference is not whether philosophers are permitted to put their proposals on the menu. At this level, the dilemma between the theoretical and democratic views is not genuine. What makes the relevant difference is what attributes legitimacy to capability lists: justification or democratic validation. In our view, justification is better. This brings us to our second and more substantial reply to Claassen's proposal.

We think that basing the legitimacy of capability lists on actual democratic processes compromises reasonableness, as it is visible even in actual democratic processes subject to various epistemic flaws that harm the quality of decisions under the pressure of fallacious reasoning, pseudoscience, fake news, etc. [57–60]. For this reason, democratic validation cannot be the ultimate ground for the legitimacy of capability lists because basic rights and liberties are at stake. Such a view of legitimacy could even threaten pluralism. Namely, the democratic process could result in the affirmation of widely shared prejudices, discrimination, and diffused insensitivity to differences. Thus, minorities that are characterized by diversity can be arbitrarily qualified as deviant or defective. This is particularly grave when disabilities, caused by dysfunctional and discriminatory environments, deprive atypical people of external dimensions of their capabilities. The possibility of discrimination is rendered vivid if we consider discriminatory attitudes, for example, toward homosexuality, even in countries of the EU. In Croatia, a 2013 referendum banned the possibility of same-sex marriage "https://www.theguardian.com/world/2013/dec/01/croatia-vote-ban-gay-marriage-referendum (accessed on 10th of December 2022)". Various indications of discriminatory attitudes toward homosexuality are present in Poland "https://www.ucl.ac.uk/ssees/research/research-guides/lgbtq-eastern-europe/poland (accessed on 10th of December 2022)".

One could reply that the representation of the democratic process that we offer does not correspond to Claassen's. Namely, it could be said that in the democratic process that Claassen describes, there are sophisticated theoretical inputs to the deliberation. Considered decisions rather than epistemic flaws and prejudices are favored by virtue of these inputs. But we do not think that this is a fully satisfactory reply, and we do not think that there is a warrant against epistemic flaws and prejudices. Just as there is a risk that democratic decision-making will attribute legitimacy to proposals based on pseudoscience and fake news instead of science, here lies the danger of democratically legitimizing discriminatory, theoretically based standards of evaluation rather than those supported by theoretical reasoning that is sensitive to differences. Namely, discrimination, or, at least, disrespect of pluralism, can happen not only because of common flaws in democratic intercourse but also because of theoretical foundations that are not sufficiently respectful of diversity, as we have seen from criticisms of Nussbaum's proposal. This introduces our disagreement with Claassen regarding the methodology that theoreticians must follow.

As we have seen, Claassen opts for the correct view of public justification. The problem of this view is present in a condition of value pluralism when alternative views can be

reasonable in the sense that they are supported by competing, undefeated, valid reasons endorsed by various people. If we want legitimacy (either directly or through democratic validation) in pluralistic contexts to be grounded on the correct view, in the sense of being supported by the best reasons even if some persons without epistemic guilt cannot accept them, we could be culpable of neglecting the diversity of persons. In the case of the definition of capabilities relevant to the determination of mental disability, this could lead to the repression or discrimination of atypical people, and this would be true whether the validation is democratic or not.

Think about a philosophical moral theory that declares that we can achieve a valuable human life only through heterosexual marriage that excludes intimate intercourse with other persons, including same-sex intercourse, as the good of heterosexual marriage exists as a basic human good [61,62]. Such a moral theory assesses that a person who misses the capability for such heterosexual intimate love misses the capability for valuable human life and, thus, could be described as having a disability. Even if such a view wins in the democratic procedure, this is a case of disrespect for pluralism and, in our view, discrimination against homosexuals.

Theories, like Finnnis' moral assessment of homosexuality, that are not supported by reasons that all reasonable persons can accept confirm why we must opt for an alternative to the correctness view of legitimacy. This is represented by the public reason view [30,31,52,53]. In this case, a capabilities list is justified (and, because we base legitimacy on justification, it is also legitimate) only when it is supported by reasons that all relevant persons can endorse. Such an approach to justification does not warrant correctness. We do not have a guarantee that the decision is supported by the best reasons that, perhaps, only a superior mind can understand. It, however, sustains reasonableness, which, in this context, means justification through valid reasons endorsed by all parties. In conclusion of this part, we think that the solution to the question of the legitimacy of capability lists is represented by theoretical list-making through public reason, i.e., through justification based on reasons that all reasonable persons can endorse. The pragmatic reason for this kind of public endorsement of evaluative standards in psychiatry is that the public reason constraint offers a powerful defense against harmful medicalization that disrespects pluralism. The theoretical backing of this approach is represented by the idea of persons as self-authenticating sources of valid claims that are free and equal ([53] p. 72). As Gaus says, evaluative standards can "be reconciled with our status as free and equal moral persons in a world characterized by deep and pervasive yet reasonable disagreements about the standards" only if they are "endorsed by the reasons of all" ([63] p. 8), i.e., all persons have reasons to endorse them. On the contrary, when public decisions concern some people but cannot be justified through the reasons that matter to them, these people are simply required to obey or are put in a submissive condition. The order is, then, authoritarian, or "a mode of oppression by which some invoke the idea of morality to rule the lives of others" ([63] p. 8). Unfortunately, this has happened in various cases in the history of psychiatry, with the medicalization of homosexuality being one of the notorious ones.

Above, we represent our conception of legitimacy. Importantly, legitimacy represents a moral entitlement. There is still the question of who institutionally implements what is justified and legitimate, or what is the procedure required for implementation. In other words, there is the question of validation. The first reason is that it could be possible to say that justification constitutes part of legitimacy, but validation in a fair procedure is needed for full legitimacy. Apart from this question, it could be a matter of political opportunity renouncing the realization of what is justified and legitimate due to unfavorable conditions. Again, validation becomes a relevant question.

In the end, we think that validation must be defined contextually. In some contexts, democratic validation is proper; in others, other kinds of validation could be better. This could depend on the subject matter, for example, and the level of sophisticated knowledge that it requires but also on the social climate. For example, in a context of widely shared

prejudices and discriminatory attitudes, a different form of validation might fare better than a democratic one.

But even when the democratic public has the final political authority to make decisions, i.e., validation, there could still be space to say that decisions are not fully legitimate when they miss valid justification. Validation does not imply legitimacy, which is important. In some contexts, or even in general, there could be only one realistic or clearly preferable form of validation. In contemporary Western societies, this is typically democratic. But it is important to distinguish it from legitimacy, for example, for the self-respect of the person. Imagine the referendum against same-sex marriage in Croatia mentioned above. We could say to same-sex couples that there are reasons to endorse democratic voting as a form of validation of decisions and that this is why, in such a situation, we must accept banning same-sex marriage. But, at the same time, we could tell them that the decision is discriminatory and that it lacks full legitimacy because it is not supported by valid reasons, i.e., it is not justified. We deem this important, for example, for supporting their self-respect and safeguarding them from adaptive preferences (the acceptance of a discriminatory condition as legitimate as a psychological reaction to the absence of realistic possibilities to modify it). Further, separating legitimacy from validation could be important for sustaining efforts to modify the situation in the future. The same reasoning can be applied to the question of alleged mental disabilities and the struggle of atypical people for recognition of their status as merely diverse and not disabled. Thus, the dilemma between the theoretical and democratic foundations of capability lists is authentic, and we opt for attributing legitimacy based on good theoretical justification.

We will now describe the method of public justification inspired by Gaus's convergence method of public reason [30,31] that we think responds to the requirements of respecting pluralism in the present context.

4. Convergent and Weak Externalist Public Justification

Gerald Gaus [30,31] shares with the political liberalism embraced by Nusbaum in capabilities list-making the idea that public evaluative standards must be based on reasons that all involved parties can endorse. Justification must not be based on sectarian reasons accepted by only some. However, for the political liberal view, this means that justification must be based on shared reasons. For Rawls, the prominent political liberal, this is the idea of society as a fair system of cooperation between free and equal people [53]. For Nussbaum, this is the idea of human dignity [25]. Because of the grounding justification in the identification of shared reasons, such views are defined as consensus views of public reason [52]. On the contrary, for Gaus, although publicly justified evaluative standards must be supported by reasons that all persons can endorse, these do not need to be the same reasons for all of them [30,31]. Public justification is obtained when the plural reasons of various people converge on the same evaluative standards. This is why the model is defined as a convergence view of public reason [52].

Transferring the proposal into our discussion means that we do not have to start, for example, from a common idea of human dignity with a related list of capabilities. We need to start from the variety of all perspectives, or, more precisely, from the variety of the systems of reasons of all relevant persons. The systems of reasons include beliefs, preferences, emotions, etc., i.e., what matters to each person. We, then, verify what is justified for each person starting from the reasons that matter to her, i.e., her system of reasons. Thus, conclusions, i.e., in our case, capability lists, can be justified by person P_1 through the set of reasons $R_1 \ldots R_3$, while they can be justified by person P_2 through the set of reasons $R_4 \ldots R_7$.

Although the proposal is favorable to pluralism, it is not uncritically populist. This is obtained because conclusions are justified for each person based on a weakly externalist theory of justification [30]. Namely, justification is externalist because evaluative standards must be justified through a sound deliberative route, starting from each subject's system of reasons, although persons do not need to be aware of this justification. Someone else

can make the inference instead of the person herself. But pluralism is respected because the proposal is weakly externalist. The basis of justification is constituted by systems of reasons that are relative to subjects and not externally imposed. If, for example, it could not be shown, based on responsible reasoning that starts from her system of reasons, that the absence of a capability is a loss from the perspective of a mildly autistic person, then the claim that such an absence is a loss is not to be considered justified to her, and the evaluative standard is not publicly justified.

Components of the systems of reasons can also be subject to revision due to the weak externalist epistemology. Such revisions can be inferred through other components of the systems of reasons of the subjects involved and accessible information. In other words, revisions of systems of reasons could be based on back-and-forth mutual adjustment of their actual components (some of which can be given up in the process) and accessible information. This permits correcting flaws due, for example, to epistemic negligence, stubbornness, loss of self-confidence, or wrong self-perception, like in the case of adaptive preferences, etc. Thus, both the systems of reasons as well as what they sustain are determined by what people would adopt after due consideration. What matters, in the end, are the perspectives of people as they are—after having been scrutinized through reflection, information, and responsibility.

After the verification of what is weakly justified for each person is accomplished, it is possible to assess public justification by seeing whether what is justified for each person converges on the same evaluative standards. When a capability list is not justifiable to some people, it is not publicly justified. Thus, imagine Finnis' proposal as a ground to define homosexuality as a disability because it implies the loss of the capability for heterosexual marriage. It is not publicly justified because defining the capability for heterosexual love that excludes same-sex love as an essential component of a human life that goes well is not acceptable by the systems of reason of all persons, and, thus, it is not justified to some persons.

The convergence conception of justification is more sensitive to differences. Consequently, it is better to avoid objections based on counterexamples of atypical human beings not conforming to the standardization of human values and valuable forms of life that legitimately want to be such, like those directed by Claassen [50] and Glackin [6] to Nussbaum [25]. It is therefore a better resource when it comes to personal matters like the attribution of disability. Likewise, when it is required to protect persons from an unfair identification of values and from the policies and medical practices based on them, like those that appeared in the history of psychiatry or are the subject of vehement disagreements in actual disputes.

To summarize, the advantage is that Gaus's convergence model is not based on any standardization. On the contrary, public justification requires reasons addressed to the diversity of human beings.

Where have we arrived in the debate over the determination of conditions as disabilities? The method that we propose defines the publicly justified list of capabilities that are required at a threshold. The absence, or presence below the threshold, of one of the capabilities on the list could determine disability. However, this applies only if we are speaking about deprivation up to a threshold of a publicly justified capability. Importantly, the attribution of a disability requires further reflection. Because a capability is composed of internal and external dimensions, there is still the question of whether the problem in its realization lies in an impairment or in unfair external circumstances that burden atypical people. It is only in the former case that we can speak of a disability. Otherwise, there is a dysfunctional society that is not hospitable to diversity. Thus, when determining the presence of a disability, it is also important to assess the social and environmental conditions in which people live, i.e., whether it is justified to leave them as they are or whether it is publicly justified to modify them.

Let us use the case of capability for job opportunities. In a social atmosphere, a person could be considered disabled as far as this capability is concerned if she has difficulties

sharing spaces with rather large groups of people and difficulties being receptive to messages beyond literal interpretation. One could say that her disability is present because of these impairments. However, it is needed to verify whether the working conditions offered to her are publicly justified or merely an accommodation to what is typical. Also, could the modification of the social circumstances be publicly justified to make them more hospitable to the person and allow her to have job opportunities? This would require, for example, a working space, like an office, with the presence of fewer people and openness to diversity, for example, in the form of readiness to communicate with a person who is impaired in the reception of non-literal messages and has a peculiar sense of humor. If such modifications could be publicly justified, then we could say that the deprivation of the person is caused by a dysfunctional society, and we could not attribute a mental disability to her. Importantly, deprivation of a capability also depends on socio-economic conditions. Again, we do not speak of a person's disability if its deprivation depends on a socio-economic distribution that cannot be publicly justified.

Before concluding, we consider objections that could be directed at Gaus's weakly externalist proposal for not being respectful of the evaluative authority of agents [64]. The objection is that some persons P_1...P_3 are allowed by the externalist side of justification to establish what is weakly externally justified for P_4, even when this is not confirmed by the latter. This can, again, be a form of disrespect for agents and a threat to persons' rights and could open the door to abuses, as those are already known in the history of psychiatry.

From a principled stance, it can be answered, as Gaus has already conducted, by remarking that there does not need to be disrespect for the moral equality of agents when the external assessment corrects an internal assessment of evaluative standards. As Gaus says, "When another demands that you comply with a rule, she is demanding that you do what you have sufficient reasons to do; she is appealing to your rational nature, not demanding that you put it aside. She must be saying, "You have reasons to comply that you are ignoring. My demand is not simply that you live as I see fit, but as you would see fit if you adequately employed your reason"([31] p. 263). This is coherent with a famous argument on respecting freedom provided by J.S. Mill ([31] pp. 33, 35–36, 236); ([65] p. 294). The important thing is that there is no external imposition of values, in the sense that there is no imposition of values that a person cannot have reasons to accept, even after responsible thinking. A person's status is, thus, respected because their perspectives and what matters to them are respected. This is the basis for saying that the model of justification is respectful of the moral equality of agents.

From a practical point of view, the danger is present, but we think that this is the price that we need to pay if we want to protect the authentic reasons of a person beyond their immediate expression or awareness. A threat of abuse is present, but this is not a reason to give up the model of justification but only to apply it carefully. Theoreticians who are engaged in verifying what is justified for various people must responsibly care about respecting what matters to them.

On the other side, there could be the objection that the method is too restrictive for a democratic interpretation of the definition of disability. The argument could be grounded on the thesis that mental disorders are based on specific dysfunctions [2,18,23,24]. As a consequence, and in order to determine a condition as a disability, the specific expertise of people who are skilled to assess these dysfunctions is required.[6]

In fact, whether mental disabilities depend on dysfunctions is a disputed question. For example, George Graham [7], who discusses the distinct but overlapping question of mental disorders, denies this. He relates dysfunctions to brain disorders and speaks of mental disorders as a separate issue. Independently of this, we do not deny the possibility that experts could have a decisive role in the attribution of a disability at some point. But we assume the thesis that evaluative standards matter in the definition of disability, as endorsed by authors such as those we quote in the opening part of the paper [1,3,4,6,7]. These authors highlight the (not exclusive) presence of evaluative standards in the determination of some conditions as disabilities.

Our paper offers a method for selecting these evaluative standards. Here, we think that the democratic assumption must be seriously taken into consideration to respect the pluralism of perspectives on values and diversity between people. Within this framework, the voices of experts do not have an overriding role to play because conceding this would contradict the values of freedom, equality, and respect for pluralism and diversity. These values require attributing an equal voice to all groups of people in the definition of evaluative standards. Thus, in the process of defining values, experts can participate only as equals.

How does the system of convergent public justification, inclusive of weak externalist epistemology, function in practice? The fundamental question is: who does the scrutiny of what is justified? We do not think that the model can be instantiated by a single theoretician. Instead, it must be practiced in interdisciplinary groups that include psychiatrists, patients, activists, value experts, etc. This team must function as an idealized Claassen's philosopher-investigator. In applying Gaus's model of public justification, members of the team must be careful to get sufficient evidence, which includes listening to the voices of all involved persons, even when expressed in non-verbal form [24]. They have to be well informed about scientific evidence. They need to use resources represented by artwork that help them understand other people and their conditions. The work that is to be conducted requires cooperative activity and remains a work in progress open to revisions. Importantly, the external determination of a conclusion for a person or group of persons that overrides their evaluation is legitimate only when the evidence and proof are stringent (quotation omitted for the reviewing process). Then, the group formulates evaluative standards for the determination of conditions as disabilities or recommends fixing social conditions that are dysfunctional for atypical people.

We are now in a position to address a further concern. Above, we have explained that the model of justification that we propose is not exclusively linked to the capability approach and can be applied to other kinds of evaluative standards or approaches. In one of such approaches, it is not required, or even not the best strategy, to start from the definition of desirable characteristics such as valuable capabilities or Graham's capacities selected in an original position [7]. Instead, the focus should be on specific impairments or incapacities and on the difficulties people encounter in their lives. It is from here that we can develop reasoning about disabilities ([66] p. 24). As a virtue of this approach, it could be indicated that it would simplify the attribution of disability. Namely, we have described a disability as the absence of a valid capability at the needed threshold. Thus, two questions seem to arise: (i) assessing which are the relevant capabilities, and (ii) establishing at what threshold they are needed. In the alternative approach, we would identify the difficulties, impairments, and incapacities the person encounters, and we could be able to assess her disabilities without the two-stage analysis of the capability approach.[7]

In fact, we could be open to the alternative of assuming that the evaluative standards are not valuable characteristics and then, defining disabilities through their absence below a threshold. Instead, we could directly define disabilities through negative evaluations that mark some characteristics or conditions in this way. We remind you that the goal of the present paper is to propose a method of public justification of evaluations that can be employed in the definition of disabilities. Likewise, we think that our model can be flexible in relation to various kinds of assessments of conditions. However, we also think that, presently, it is helpful to use, even if not exclusively, evaluative standards that refer to valuable characteristics in the process of public justification. Namely, the bottom-up approach implied in the objection encounters its own problems. As Jessica Begon says, "We are all restricted by our bodies and are all incapable of performing some tasks, but most of these inabilities are not considered disabilities" ([4] p. 936). It is a debated issue which of the inabilities people encounter in their lives constitutes a disability. For example, it is frequently thought that the deprivation of a sense, like deafness, represents a disability. The thought was endorsed by Nussbaum by inserting among capabilities "Being able to use the five senses" ([67] p. 222).[8] Instead, Begon speaks about impairments in exercising control

over important parts of our lives [5]. According to this definition, deafness is not necessarily a disability if the capabilities to control employment (through access to some professions), socialization (through forms of communication that do not imply hearing), enjoyment in the arts (through reading novels or watching visual artworks), etc. are sufficiently present. Defining disabilities, thus, is a complex task, and disagreements such as those between Nussbaum [25] and Begon [3–5] show reasons to think that it is also dubious that mere focusing on specific difficulties, impairments, and incapacities as in the bottom-up approach can suffice. Relying on criteria to establish when things are going sufficiently well can be helpful. Thus, having a picture of a life that is going well and flourishing [25,40] or that includes everything to which a person is entitled by justice [3–5] helps to determine which inabilities, impairments, and difficulties are evaluatively significant and, thus, contribute to the definition of disabilities.

For example, if we established that enjoying music was essential to a flourishing human life, we could establish that impairments, inabilities, or difficulties in hearing are disabilities. Otherwise, not. Or, to focus on justice instead of the idea of a flourishing human life, as Begon [3,5] does, if we established that a very high level of equality of opportunities for positions and jobs is an entitlement of justice, we could have reasons to think that deafness is a disability because of the range of professional opportunities that it precludes. On the contrary, if we thought that we were entitled by justice to only some opportunities to have a job, then deafness would not be a disability because, in the absence of other impairments, inabilities, and difficulties, it would leave open opportunities for various careers. This is why we presently think that it is useful to rely on a list of valuable characteristics in order to ground a discussion about disabilities and determine which impairments, inabilities, and difficulties are relevant.

We do not, however, think that people engaged in reasoning about evaluative standards need to follow an exclusive top-down method. Such would be, for example, a method where valuable capabilities would be identified only at an abstract level of reasoning, for example, in the context of a metaphysical theory of human nature or a general doctrine of flourishing human life. Instead, the weak externalist epistemology and public justification that we propose do not preclude (and, in fact, we favor) a method of reasoning about evaluative standards at various levels. There could be top-down reasoning from theories that people can develop. But they could follow the opposite path as well. Thus, we could reason starting from the difficulties that we, or some among us, encounter in life and arrive from them at the identification of the fundamentally relevant components in our lives and the threshold at which they are required and, thus, of disabilities. We favor a back-and-forth method of the kind of Rawls's reflective equilibrium. In this procedure, we mutually adjust, for example, our general views about what, by justice, the persons' entitlements are with the experiences that we encounter in our lives. Focusing on specific difficulties, impairments, and incapacities, as well as the required threshold of capabilities, would, thus, be included in our view of public justification, together with top-down reasoning.

The question of the threshold is important, and it represents a challenge for those who want to offer a picture of when things are going well in life (for example, because life is flourishing or a person disposes of everything to which she is entitled). However, we leave the dispute here. Determining which are the proper evaluative standards and their thresholds is not the goal of our paper. As we have said, the work is instead engaged with offering a method of public justification of evaluative standards and not with the application of this method or the justification or endorsement of standards. We only remind you of the constraints and opportunities of the public justification model that we endorse. Although various authors can engage sophisticated methodologies to establish thresholds, public justification requires convergence on thresholds that all people can accept. It is difficult to expect that a sharp convergence could be achieved at the theoretical level. However, by following Gaus [31] we do not require sharp convergence on results that are optimal for all people but only on a range in which internal variations are at least sufficiently good for all. It is a matter of social interaction to accommodate the precise end

result that will represent the social standard. We think that this is what can be said in the context of the definition of a method of public justification of evaluative standards and their thresholds.

The strategy we have presented embodies a theoretical model intended for the evaluation of personal characteristics as well as the societal environments in which certain individuals encounter difficulties, impairments, and inabilities. It represents an idealized model to assess whether a disability is present, but the framework represents a realistic idealization in the sense that it can function as a model that can be oriented and approximated by real-life agents (activists, policymakers, psychiatrists, etc.) engaged in public disability questions. Practices that diverge from their outputs are not justified and, thus, not fully legitimate.

5. Conclusions

In this paper, we have opted for a theoretical (as opposed to democratic) option for capability list-making in medical issues. Our peculiar contribution is present because we endorse a convergence model of public justification as the device of capability list-making. We recommend capabilities justified in this way as the evaluative standards to be employed in the determination of disabilities. In conformity with the convergence requirement, our model provides a public justification that disallows the imposition of a perspective on all when this is not in conformity with some people's reasons. It has, thus, the significant merit of safeguarding from evaluations of mental states disrespectful of diversity, which has, unfortunately, already appeared in the field of psychiatry. But it is protective from epistemic, moral, and political flaws and unjustified judgments, as well, because of the weakly externalist epistemology endorsed in assessing what is justified for each person. Our proposal also protects from discrimination by requiring not only the assessment of mental capacities but also the fairness of environments and socio-economic conditions in order to make them hospitable to atypical people.

Notes

[1]   By using this expression, we replicate the terminology of Thomas Schramme who speaks about "minority minds" (2021).

[2]   We thank an anonymous reviewer for indicating the need of the specification.

3   We thank an anonymous reviewer for raising the problem.

4   We thank an anonymous reviewer for indicating the need of the specification.

5   Obviously, which are valuable capabilities depend on the goals that can be justified (we thank an anonymous reviewer for indicating the need of the specification). We can construct numerous illustrations in dependence of goals that we can imagine. But we do not proceed in this way and remain linked to the single illustration that we have offered because, as we said, the goal of the paper is not to adjudicate specific issues, but to illustrate and propose a general method for doing this. We thank an anonymous reviewer for rising this point.

6   We thank an anonymous reviewer for raising the problem.

7   We thank an anonymous reviewer for raising the problem that, perhaps, we have partially reshaped through our interpretation of the objection.

8   In later works Nussbaum appears to be less strict and speaks more vaguely about "Being able to use the senses" (2011, 33) without remarking that we must be able to use all the senses.

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