

***The irreducibility of the personal perspective in ethics.
A reply to Baccarini***

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ABSTRACT

Elvio Baccarini has responded generously to my book *Medical Ethics: Ordinary Concepts, Ordinary Lives* (2008), but I would like to respond to three of his criticisms: first, about the role that theory ought to play in, and in relation to, moral experience; second, about my defence of a doctor's right to conscientiously object to performing legal abortions; and third, to the reality of posthumous harm. Baccarini claims that I have overstated my claims, and drawn illegitimate metaphysical conclusions from people's ordinary language. However, I argue that moral language is special precisely because of the way it expresses an irreducible personal perspective.

0. I am most grateful to Elvio Baccarini's two detailed and generous reviews of my book, *Medical Ethics: Ordinary Concepts and Ordinary Lives*.¹ I particularly liked his discussion of moral disagreement and changes of seeing, which was more subtle than my own, and which has induced me to re-think my position. In this article I would like to respond to three other issues where we disagree more profoundly. The dominant interest of my book was what I called the personal perspective in ethics, and I accused mainstream Anglo-American moral philosophy of neglecting this perspective or trying to reduce it to the impersonal. The most reliable access to the personal perspective, I argued, was through a serious examination of the ordinary words – and especially the moral concepts – that the protagonists themselves would be inclined to use in order to make sense of their predicament, especially under conditions of moral conflict or adversity. While Baccarini seems to be in broad sympathy with that project, he believes I have gone too far in certain aspects, and to these I would like to respond.

¹ The book was published by Palgrave Macmillan in 2008. See E. Baccarini, *On Cowley Medical Ethics*, "Etica e politica/Ethics & Politics", XI, 2, 2009, (www.units.it/etica/2009_2/BACCARINI.pdf) and E. Baccarini, *Medical Ethics, Ordinary Concepts and Ordinary Lives*, "Croatian Journal of Philosophy", Vol. IX, No. 27, 2009, pp. 317-329.

1. *The role of theory*

The first third of my book addressed the place of moral theory in any account of moral life and moral experience. While I certainly allowed some room for theory, I challenged the implicit priority that certain representative philosophers – Beauchamp and Childress² on the one hand, and Jeff McMahan³ on the other – assigned to theory over personal, non-theoretical articulations. Baccarini is more optimistic than I when it comes to finding a role for reason and principles, and he offers Tim Scanlon’s work⁴ as an example of a more sophisticated type of moral theory than the people whom I criticised.

My interest in Beauchamp and Childress was based on the massive popularity of their book *Principles of Biomedical Ethics* among medical students and practitioners in the English-speaking world, far beyond anything that Scanlon or any other philosopher has written. So although Beauchamp and Childress offer a primitive theory in philosophical terms, it nevertheless struck a chord in the professional readership that was worth taking seriously. McMahan I chose as a fairly successful representative (and he’s not *considered* as naïve as Baccarini and I believe) of a kind of moral philosophy that relies on ‘thought experiments,’ those highly schematic examples that are meant to test a theory against our intuitions. The most notorious thought experiment is the trolley problem, still apparently running strong after thirty years.⁵ The idea is that I control the points and can divert the runaway trolley down one track or another, and on each track are different people or groups of people who will be necessarily killed by the trolley. There is no third track, there is no way of stopping the trolley, and there is nobody else who can decide. It turns out that Baccarini shares McMahan’s faith in the usefulness of this approach: “so, different answers depend on whether the dilemma of the trolley case is described by first saying that five innocent people will be saved and then that one innocent person will die, or by first saying...” (Baccarini 2010a p. X). In fairness, Baccarini wants to make a valid empirical point about how the presentation of the information will incline the respondent to answer one way or another, a phenomenon known as the ‘framing problem’.

² *Principles of Biomedical Ethics*, 6th ed., OUP 2008.

³ *The Ethics of Killing: Problems at the Margins of Life*, OUP 2003.

⁴ See ‘Intention and permissibility’ in: *The Proceedings of the Aristotelian Society*, Supplement 2000; ‘The aims and authority of moral theory’ in: *Oxford Journal of Legal Studies*, vol. 11, 1992; *What We Owe to Each Other*, Harvard UP 1999

⁵ The original ‘trolley problem’ was described by Phillipa Foot, in her ‘The problem of abortion and the doctrine of double effect’ in: *Virtues and Vices*, Blackwell 1978.

However, I took a strong line in the book against McMahan about the use of thought experiments, and indeed against any theoretical conclusions he attempted to draw from them or from empirical research using them. And I would take a similar line against Baccarini. For I claim that the examples are so preposterous, contrived, and often just obscene in their trivialisation of death, that it is impossible to answer any questions on them with any moral seriousness. How the hell do I know which way I would throw the points in such a situation? How exactly did I get into the awful situation in the first place? How much can I possibly know about the situation? Surely under such pressure decisions just ‘make themselves’, and there is no way I would have the arrogance to claim that I chose the ‘right’ or ‘least worst’ option. While there *is* some room for deciding who will live and who will die in certain institutional contexts, for example in the allocation of scarce life-saving drugs in a hospital or a national health system, these thought experiments are usually a lot more ambitious, and therefore all the more pointless for that.

Now of course Baccarini is right to say that Scanlon’s theories are more sophisticated, and do not rely so much on thought experiments. But here it is important to realise that the purpose of that section of my book was *not* to develop a new moral theory that would then have to be defended against the likes of Scanlon. For I am sceptical about what Scanlon is trying to do, the very point of theorizing in ethics, and about how well such theories can fit with our ordinary moral experience. For example, Baccarini asks us, following Scanlon, to “imagine we have the prohibition against breaking promises” (Baccarini 2010a p. X). I would ask: is this really a moral principle? Do we really need a theory to underpin it? Surely the very *concept* of a promise is something that should not be broken without good reason: the putative principle does not do any work. The concept also includes reference to widely-shared understandings about the relevance and strength of reasons offered as excuses or justifications for breaking the promise; again I am not sure how much Scanlon’s theorising efforts are really achieving over and above our ordinary understandings. Most seven-year-olds understand what a promise is, and understand what a good reason for breaking it is, without any need for a principle: “you should go to the party because you promised to go, *a basta*.”

Similarly, I am less optimistic than Baccarini about the offerings of other theories, e.g. cognitive psychology’s attempt to “show that moral intuitions are frequently unreliable, even when widely supported” (Baccarini 2010a p. X). I am even less optimistic about evolutionary and neuro-physiological explanations for moral intuitions. I have two responses to all such efforts. The first is to take a very strong moral intuition, for example my intuition about the wrongness of slavery, and to declare that I do not understand how that could be unreliable: unreliable in what sense? In the intuition’s failure to cor-

respond to some theoretically-generated truth about the moral permissibility of slavery? In the intuition's failure to represent some brain state or some evolutionary disposition that involves the moral acceptance of slavery? I will confidently declare that my intuition is utterly reliable and trumps all of these.

My second response is to imagine myself in a situation where I am morally perplexed about what to do. Will the deliverances of evolutionary biology or brain science help me decide? If I learn that my empathy for my dying aunt is a naturally selected trait or an effect of a certain neuronal configuration, does that answer my question of whether to permit the withdrawal of her medical treatment? But even a moral theory won't help here, I suggest. Maybe I should maximise utility or show her respect, but *both* actions – permitting or forbidding the removal of treatment – could plausibly be said to instantiate both. Certainly we are a long way from the theoretical force with which, say, the cartographer offers advice to the lost tourist; such advice is essentially impersonal in that it is based on an expert body of knowledge and applies to *any* person who finds themselves with the same ignorance in the same situation.

But the important thing about hard cases is that even when my intuitions point in incompatible directions, this fact has to be understood against easy cases, indeed cases that I do not even notice at all, where my intuitions are reliable and shared with most other members of society – and it must be so, for otherwise society would fall apart, as Baccarini agrees. The cognitive scientist's tone comes too close to suggesting that intuitions ought to be jettisoned entirely, and it is not clear what would remain after that. Baccarini himself (2010a p. X) favours some sort of reflective equilibrium between theory and intuitions, but this has never struck me as particularly revolutionary, even in Rawls's original version.⁶ On the one hand, it is what we all do anyway in very ordinary cases of decision-making, so it is hardly controversial; on the other, reflective equilibrium still requires second-order intuitions to govern the final decision between theory and first-order intuitions, and these second-order intuitions will be just as 'unreliable' in the way Baccarini fears.

To conclude this section, let me reiterate my claim about the purpose of moral philosophy, a claim that puts me at odds with most Anglo-American moral philosophers writing at the moment. It is not to develop a theory that would legalistically systematise our intuitions and thereby allow us to solve our moral problems. Instead, moral philosophy should aim to clarify what is already going on in our moral experience and our moral conflicts; and one key element of such experience is the irreducibly personal nature of the problems that we sometimes face.

⁶ Rawls J *The Theory of Justice*, Harvard UP 1971.

2. *Agamemnon and the objecting doctor*

To understand more of the personal nature of moral problems, let me consider two examples, and Baccarini's discussions of them. (i) According to ancient Greek legend, Agamemnon was a general whose fleet was becalmed by an angry god. The only way for the winds to resume and the fleet to avoid starvation was for Agamemnon to sacrifice his daughter Iphigenia to the god – which he proceeded to do. (ii) A clause in English law allows doctors to conscientiously object to authorising or performing an otherwise legal abortion, except in cases where the woman's life is in danger. I imagined the particular kinds of misgivings that an objecting doctor would feel when he found it necessary to abort a foetus to save the mother's life.

As evidence of the irreducibility of the personal perspective, I suggested that neither Agamemnon nor the doctor would feel that their choice had been *justified* (that key concept for impersonal morality), even if, in one sense, each felt he “had to” do what he proceeded to do, and even if the spectators of either event would see the action as justified.

Baccarini (2010b p. X) asks about the precise relation between the personal requirements (to not kill his daughter, to not perform the abortion) and the impersonal requirements that was eventually chosen by the two protagonists: surely it is more plausible, he suggests, to describe both of them as weighing the reasons for and against, and going with the reasons that they discovered to be *overriding* (thereby making a justified “all-things-considered judgement”). Certainly the overridden reasons still linger in the form of moral residue (guilt feelings), says Baccarini, since wrong was done to Iphigenia and to the foetus; and nobody doubts the awful bad luck of being put in the situations in the first place. But in the end there was a clearly lesser evil, both protagonists chose to commit it, and neither comes to feel that they made the incorrect choice.

Certainly Baccarini follows the dominant line in most discussions of moral dilemmas. My interest, following Bernard Williams and his seminal discussion of ‘practical necessity’,⁷ was more in the experience of the protagonists, as revealed by the very words that we could imagine them using afterwards. And Williams's point is that Agamemnon himself would *not* claim that the sacrifice was ‘justified’, would not claim that what he did was the ‘lesser evil’, would not consider the reasons in favour of saving Iphigenia as ‘overridden’, and would not see his resulting distress as mere ‘residue’. And anybody who offered these words to Agamemnon would not succeed in reassuring him, and

⁷ Williams B ‘Practical Necessity’ in: *Moral Luck*, CUP 1981.

this would not be because of any failure of Agamemnon to understand. The whole discourse of justification already takes you into the impersonal, which is appropriate for many if not most moral decisions – but not for the two decisions that marked these examples. Baccarini, following Scanlon, believes that morality involves the “engagement to explain and justify our reasons to other people in a reciprocal process in terms of fair co-operation” (2010b p. X). Agamemnon’s difficulty in thinking of his act as ‘justified’, his reluctance to use the words, reveals the poverty of this kind of language for him – and therefore the poverty of the dichotomy Baccarini wishes to draw between the moral and the egotistical – when faced with the enormity of what he has just done.

Baccarini then describes Agamemnon’s and the doctor’s choice as morally admirable precisely because it took “into consideration all the reasons and interests relevant to the situation [... If, on the other hand,] the person takes into consideration only what is required in virtue of her personal emotions, personal values, close relations, or interests, we can have an egocentric, egoistic or prudential judgement, but not a moral one.” (Baccarini 2010b p. X)

Here I have a very clear disagreement with Baccarini. The doctor’s values were personal, but they were not *merely* personal; that is, they were not analogous to his gastronomic or musical preferences. Within his perspective, his moral values had nothing to do with him, but with the objective world. He discovered them ‘out there’, as real as the tables and chairs in the operating theatre. Similarly, Agamemnon’s emotional bond with his ‘close relation’ was not merely personal if we assume that she had anything more than instrumental significance for him; indeed, we have to assume that for the dilemma to be at all interesting. For parental love is normally taken as a paradigm of sacrifice and selflessness, and of huge moral significance. Clearly Baccarini is worried about nepotism and favouritism in institutional contexts: a loving father sitting on a job appointment panel can still vote against his daughter’s application with an eye for both procedural and substantive fairness, and for the interests of the company that employs him. In such contexts his emotional bond truly is irrelevant, and it is easy to imagine the daughter herself asking her father to “be objective”. But that is not the situation at hand, for the important reason that the daughter will not survive a choice against her. It would be quite intelligible for Iphigenia to offer to sacrifice herself for the good of the fleet, but this would be a very different kind of situation, one that allowed Iphigenia’s autonomy – which Baccarini is otherwise so worried about – to be respected. But there can surely be no *duty* on Iphigenia to sacrifice herself, and therefore, derivatively, no duty, not even an all-things-considered duty, for Agamemnon to sacrifice her.

Moreover, Baccarini believes that one essential component of genuinely moral (and morally-motivated) behaviour is that a person has to be able to offer “explanations and reasons and be open to others’ reasons and explanations [...] for anchoring the self-understanding close to reality. How can a person know that she is not an incurable egocentric or egoist, if she simply goes on with a requirement without caring whether it may be reasonably refuted by others?” (Baccarini 2010b p. X)

Baccarini and I must again differ in the optimism with which we approach these examples. Can Agamemnon offer any “explanations and reasons” to *Iphigenia*? Of course he can offer them, but are we – in the spirit of Scanlon – to expect her to “reasonably” *accept* such explanations and reasons if they are good ones? Will Agamemnon really be “open” to Iphigenia’s reasons and explanations, and what on earth might her reasons and explanations be for being allowed to live? It seems perverse to ask for a “reasonable refutation” in such a situation, as if it were a university debating club. All he is left with is the final look in her eyes as he pins her down on the deck of the boat and slits her throat. And to reiterate an earlier point, surely it would be unintelligible for Agamemnon to worry, having just killed his daughter, whether his actions were “egocentric or egoist,” since the dilemma was only created by his sense of responsibility for the men under his command: Agamemnon is far from being tempted by the isolated hedonism to which Baccarini believes my position commits me.

Least I be misunderstood, mine is not a sceptical or subjectivist argument about the *whole* of morality; I am not rejecting Scanlon’s principle of reasonable expectation entirely. On the contrary, I can accept Scanlon’s and Baccarini’s emphasis on reason-giving and reasonable expectation as the necessary background against which Agamemnon’s dilemma derives its significance as a limit to discursive ethical thought. Baccarini (2010b p. X) seems to find a contradiction in my position when he points to my later discussion of the importance of dialogical narrative understanding within a life of self-reflection. However, this is not a contradiction, for my point about dialogical narrative concerns this background, this default position prior to any encounter with a dilemma *as a dilemma*.

3. *Posthumous existence*

Another of Baccarini’s targets are my *prima facie* startling claims about posthumous existence. The claims arose out of a discussion of the so-called Alder Hey scandal in the UK, wherein the Alder Hey hospital in Liverpool had been secretly retaining some organs of dead children after returning the bodies to

the families for burial or cremation. The organs were mostly retained for entirely legitimate scientific research and medical education. The most palpable consequence of the scandal was to tighten up the legislation requiring much more explicit consent procedures for the retaining any tissue from a deceased patient of any age. During the discussions prompted by the scandal, many claimed that the parents had been both superstitious and selfish for objecting to the use of their children's organs for medical research, because clearly, neither the children nor the parents had any particular *use* for them.⁸

This is part of a larger debate about the donation of posthumous organs and bodies, but my philosophical interest in the book was focused mainly on the parents of dead children because of the clear and strong relationship that existed between them up to the death. Where my discussion became more controversial was in my claim that the relationship continued even after the death. I imagined the parents visiting the child's grave, and talking to 'him', despite knowing that he was dead. The only way to take this behaviour seriously, I suggested, would be to claim that despite the death the child continues to exist. But importantly, he does not exist as a memory, or an image, or a projection precisely because one does not *talk* to a memory, an image or a projection – one only talks with people. Certainly the parents, within their perspective, do not consider him to be 'merely' a memory at the moment they are talking to him. With respect to the Alder Hey scandal, I then used this intuition to address the accusation of irrationality and selfishness: the news of the dismemberment and organ retention was not something that was happening to a "body", or to "tissue"; nor was it something being done to their memory of their child; instead, it was something done to their child, even if he was dead.

Baccarini is not persuaded: "Cowley is too ready to attribute consistency to the discourse of ordinary people, and too ready to discharge them from the accusation of irrationality." But, he says, there is nothing wrong with some irrationality and indeed with some self-deception, for "these self-deceptions are also forms of evoking and permanently feeling the positive emotions related to the person we lost" (Baccarini 2010b p. X).

The problem with the word 'irrationality' is that it is normally used as part of a *reproach*. Someone is being irrational normally implies that they should not be, they should "grit their teeth and face the truth," they should "stop their emotions from clouding their perception," they should "calm down so we can think this through rationally." The implication is that parents who talk to gravestones or who get upset at news that their child has been buried with no

⁸ See, for example, Dewar S and Boddington P 'Returning to the Alder Hey report and its reporting: addressing confusions and improving inquiries', *Journal of Medical Ethics*, vol. 30, 2004. See also the references in Chap. 10 of my book.

internal organs should “get over it” and accept that there is no more personhood in a human corpse than in a chicken corpse in a supermarket. The concept of self-deception is also invoked normally as something that we should be trying to get away from, even if it might be understandable how we started to deceive ourselves. But even then it’s not clear that the parents *are* deceiving themselves, for they do not deny the death; as Baccarini says, they do not anticipate his return among the living by buying new clothes for him.

What I am trying to suggest is that there are different modes of existence in play here, different kinds of experience. It’s a complicated business, and I did not really do it justice in the book; all I know is that the accusations of irrationality and self-deception do not help to clarify it very much. It’s not just that I am more inclined to take the words of the grieving parents more seriously than Baccarini is; I suggest that there is something importantly revealing in the fact that most of us would *not* tell the grieving parents to “snap out of it,” would not roll our eyes and say “there they go, talking to ghosts again,” and would not, years later, make fun of the couple’s past self-deception and irrationality in the way that we could make fun of someone’s adolescent romantic self-deceptions.

So far Baccarini and I would disagree on a metaphysical matter without moral consequence. But Baccarini’s tone hardens when he condemns the parents for the “harmful” nature of their irrationality when other children have to suffer from organ failure while the useful organs are burned or rot in the ground (Baccarini 2010b p. X). This is part of Baccarini’s larger objection to the British and American “opt-in” system of posthumous organ donation, according to which explicit consent is required for the organs to be removed from the newly deceased. Baccarini favours the French and Hungarian “opt-out” policy of tacit consent,⁹ but it is not clear why he should be interested in consent at all, why he does not advocate a policy whereby all dead bodies automatically become the property of the state for it to quickly dismember for transplant and research. After all, now that the previous ‘tenant’ of the body is absent, why do his previous wishes matter at all? The fact that Baccarini stops short of this policy conclusion, the fact that the treatment of dead bodies is still governed by strict moral and legal codes even when no physical harm could be committed, and the fact that all countries still respect the insti-

⁹ Baccarini provides a statistic that “99.9%” or French organs are donated, but it is not quite clear what he means by this. Are there really only 0.1% of people who opt out of an opt-out system? Does the 99.9% include the organs of the very old or the very diseased, which would presumably not be suitable for transplant? Is there not a sizeable Muslim minority in France with very different attitudes to organ donation? None of the answers to these questions are evident from the sources he cites.

tution of the 'last will and testament' means, I suggest, that the living do not – and should not – always get priority over the dead.