

Master thesis Applied Ethics

The role of human dignity in justifying euthanasia

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Introduction

Human dignity is a bit of a problem child in ethics and as is custom with a problem child we all tend to interpret her behaviour differently. Some blame her for things she could never have done and others condone the questionable roles she played in the past. Human dignity is sometimes seen as young and fashionable and as a messiah in ethics, but others claim it is often reinvented and actually very old and boring. Some even do not believe she exists, others do believe she exists but that other concepts are better than she is. I believe we should not blame human dignity for its elusive character, she clearly had a rough childhood and probably feels misunderstood. The authors are the ones to blame in this, the authors who use her in so many different domains, in so many different ways. Now some have already tried to cleanse the name of her young incarnation or tried to show exactly how we should understand her, others have tried to show we do not need that old hag of a concept altogether. But those aims are a bit too ambitious for this thesis. I do, however, feel an obligation to help this poor problem child and I believe I can do so by making her less misunderstood. For that I will focus on a domain where she has an especially troubled reputation, namely end of life decisions.

Concepts like 'dying with dignity' or 'undignified death' frequently pop up in the end of life decision debate but it is often rather unclear what exactly is meant by those concepts and even if it is well explained we can be puzzled how other authors use dignity in an entirely different fashion and come to completely different conclusions. It would be helpful to look descriptively at a number of authors to help the reader to understand how these different accounts of human dignity relate to each other and ultimately to get a better understanding of the concept. An investigation into the concept of human dignity through the eyes of several influential authors will both clarify the terminology, and serve as a sound starting point for discussion, although some confusion is inevitable. Leon Kass for example argues *against* euthanasia with a concept of human dignity, while Deryck Beyleveld argues *for* euthanasia with a concept of human dignity. But he does this on different grounds than

David Velleman or Ronald Dworkin who also believe euthanasia is justifiable, still others like Ruth Macklin, John Harris or Helga Kuhse argue that dignity is a useless concept altogether and/or could easily be replaced by respect for autonomy. There are authors who believe that being dependent on life support is undignified and authors who believe that choosing death is undignified. When you first delve into the discussion of human dignity in end of life decisions you can get the feeling of being overwhelmed by all the different nuances and positions and uses of dignity. It would be a good thing to make some headway in making the discussion more understandable and this outlines the scope of this dissertation. I hope to make it more transparent how different authors come to different positions in the end of life decision debate while they all use a concept of human dignity. To achieve this I want to examine a few important authors who use human dignity in the domain of end of life decisions. I want to take a look at Ronald Dworkin, Leon Kass, Dyreck Beyleveld and David Velleman. They are an interesting collection of influential authors. All of the authors are heavy weights within the debate and together they cover a considerable portion of possible general opinions about human dignity. Chapter two will explain their theory of human dignity so we can get an understanding of those positions and of the discourse in general. In Chapter three the similarities between the positions of the authors will be explained, this gives us the opportunity to get a clearer notion of human dignity altogether.

An important aspect in this thesis will be 'capacity based' human dignity. In chapter three I will explain that most plausible accounts of human dignity will be in greater or lesser extent 'capacity based'. With that term I mean that the authors constitute human dignity in a capacity they believe to be the most valuable in humans. The capacity that explains *why* human beings have such a high or even absolute moral value. In situations where end of life decisions become relevant it is often the case that the persons in question have lost certain capacities without which they do not want to live any more, or they lose the capacity to request euthanasia. The capacities we dread to lose, and the capacities we need to be able to request a life terminating procedure, are often those capacities we so value in humans. Capacities as autonomous choice, rationality, being a moral agent etcetera. If human dignity wants to play any kind of role in end of life decisions I believe we should be able to give a convincing answer to the question what happens to human dignity when the capacity that constitutes dignity is compromised. I will use the knowledge we have gained from the

different authors to come to the possible answers to this question and then I will analyse which answer would be the most plausible. By doing this I hope to show an example of what role human dignity can play in end of life decisions and what arguments play a part in that role. So we can come ultimately to a better understanding of human dignity in the end of life decision discourse. First however we have to start at the beginning and look at the historical background of human dignity. The argumentation we find in the human dignity debate has different historical roots, I believe it can be helpful to explain how these roots relate to each other. Giving a historical context can give readers who are somewhat unfamiliar with human dignity a short introductory and help explain where the concept of dignity comes from and how it became relevant in bioethics.

Historical Background

With the historical background of human dignity I mean to show briefly how the notion that human beings have inherent ethical rights came to be. There are different stories about the historical origin of human dignity, but is at least a consensus regarding three or four important periods where a concept human dignity was conceived. Those periods are late antiquity, biblical medieval times or early renaissance and the enlightenment. It is not a complete and clear cut consensus because there are a few authors who believe that 'dignity' was used in ancient times but that 'human dignity' or 'dignity of man' is not to be found till the enlightenment.¹ But there is evidence of the concept of human dignity in Cicero's *De Officiis* where he clearly ties human dignity to human nature.² Cicero explains our human nature as our rationality, our reason or *logos*. It is what distinguishes us from beasts and it gives us an obligation to act according to our human nature, it urges us to have self-control, to act like a human should. This has obvious similarities with some modern interpretations of human dignity. All the authors that we will cover constitute dignity in a faculty that we would not be able to find in animals. We find the notions of self-control and to act as a human should especially in Leon Kass's account of dignity. A Christianized version of human dignity is found in the middle ages, where the concept is not derived from a divine human rationality but from man as *imago dei*, image of god. It is the notion that we have dignity because we are *like* God. We, as man, have similar (but weakened) faculties to those we so admire in God, these faculties and we as man in the process have therefore a certain sacredness. Some would argue that this is not exactly inherent dignity because we derive the dignity from God, we have dignity because God created man. It is from this background that we find a notion of sanctity of life closely tied to human dignity in end of life decisions. When we look at our authors we find this notion foremost in Kass.

The transition from a biblical understanding of human dignity to the next period is less clear, some say we find it first with Pufendorf, some with John Locke, I believe however that we can safely say that the most important account of human dignity after the early renaissance is

1 D. Beyleveld and R. Brownsword, "*Human Dignity and Biolo*" (Oxford, 2001) p. 51.

2 H. Cancik, "'dignity of man' and 'persona' in stoic anthropology: some remarks on *De Officiis* I 105-107" in Kretzmer and Klein (e.d.), "The concept of human dignity in human rights discourse" (The Hague, 2002) p. 21.

introduced by Kant. He argues that in the kingdom of ends everything either has a price or dignity. And if something is to be an end in itself it has intrinsic worth, dignity. “[...]das aber, was die Bedingung ausmacht, unter der allein etwas Zweck an sich selbst sein kann, hat nicht bloss einen relativen Wert, d.i. einen Preis, sondern einen innern Wert, d.i. Würde”³ This intrinsic worth of ends in themselves, human beings, became one of the core aspects of human dignity. We will see the influence of Kant rather strongly in the accounts of the authors that I will cover. The concept of human dignity led a somewhat sheltered life after Kant and was more at home in comfortable arm chairs than in the outside world. It grew however, with the spirit of the age and was able to accommodate the growing need to formulate a worth of the individual as a human being. But it was not until after the Second World War that the concept was forced onto the world stage. The specific horrors of the holocaust needed to be condemned on a global scale with a universal concept to explain *why* it was so terribly wrong what happened. Shortly after the Second World War the United Nations commissioned the Universal Declaration of Human Rights. In the declaration we can read right in the first sentence of the preamble: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. We can see that the first words of the text are about the recognition of the *inherent* and *equal* dignity of 'members of the human family'. When we look further in the text we can see that the first article reads: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” With the universal declaration of human rights human dignity established herself definitively as a concept on the world's stage.

When our medical technology changed the horizon of what is possible in healthcare, human dignity also entered the domain of bioethics. When we start to wonder about questions like; what would be right or wrong about cloning human beings? Whether or not we may screen embryos and abort them when they have a certain diseases? Can we justify terminating the life support of a comatose patient? We ask questions that would not have appeared before the technological possibility, we ask questions that have to do with what it is to be human, what respect we owe to humans. These questions undoubtedly tread onto the domain of the

3 I. Kant “*Grundlegung zur metaphysik der Sitten.*” (Reclam, 2008) p. 73, 435.

human dignity debate. So certain technological possibilities create a demand for a theory that can explain what is special about human life, a theory that can explain why tempers run high in discussions about abortion, cloning or euthanasia, in other words a theory that can explain what is at stake.

In this thesis I focus on human dignity in end of life decisions, perhaps one of the more popular topics of human dignity in bioethics. The most common use of human dignity in the end of life decisions debate is probably related to euthanasia. Most authors use human dignity, with varying degrees of success, to argue for or against euthanasia. Why some authors use it with less success has something to do with the elusive character of human dignity, it is not a concept just reserved for bioethics. It would even be erroneous to come to a concept of human dignity that cannot relate to some common ground in the socio-political realm. I have to make this small reference to those who criticise human dignity. An author like Ruth Macklin for example who sees that an appeal to human dignity is a 'vague restatement' of something like respect for autonomy and who believes that "dignity is a useless concept in medical ethics and can be eliminated without any loss of content."⁴ I must briefly address these difficulties before we can continue the search for human dignity with confidence. This is not a brilliant defence of human dignity that will silence all criticism from here on end but an attempt to show why I believe it is an important concept and not so easily dismissed from (medical) ethics. First of all we have to speak about a concept of human dignity with at least a few common characteristics, it is for example inadequate to talk solely about a cosmetic conception of dignity at the bed-side, or that a certain behaviour like picking your nose is undignified. That would have nothing to do with the more established 'human dignity' which we want to talk about. Viable use of human dignity should have a transcending aspect to it, it should make clear that it is not just the same as respect for autonomy, respect for integrity or quality of life. Human dignity can accommodate those other concepts but it is not the same. The main difference between human dignity and those other concepts is in the fundamental moral nature of human dignity. For example enhancing the quality of life of a person, or to have respect for a person's autonomy can be justified by appealing to human dignity. It does not go the other way around. Respect for a person's dignity can be essential for someone's quality of life but respect for a person's dignity cannot

4 As found on <http://www.bmj.com/content/327/7429/1419.full> on 18th of August.

be *justified* by it enhancing the quality of life of a person. Respect for someone's dignity is due because we believe he has dignity or we believe it necessary to attribute dignity to him, respect for someone's dignity cannot be instrumental. We attribute dignity for the sake of that person in itself, not because that would help him, but because he, as someone like us, has dignity.⁵ This base sketch of what dignity *should* entail is something most authors using human dignity will agree upon, if it does not do this it's hard to see how we are talking about the same concept. In the next chapter we are going to examine how the different authors I mentioned use human dignity. We will be able to see some important similarities between them regarding the grounds that constitute human dignity and show that human dignity is not as vague as it can appear. We will also see some problems, but like the similarities those will not be further analysed until chapter three.

5 Later in this thesis it will become clear why 'someone like us' is preferable over 'human being'

Human dignity in different theories

Leon Kass: a conservative account

I want to start this chapter that will guide us through a few of the most influential thinkers of the human dignity debate in end of life decisions with Leon Kass. In the paragraph thereafter we will examine Deryck Beyleveld. It is a good starting point because they are typical examples of authors who appear to differ greatly but still have the important similarities that constitute a common understanding of human dignity. However first we will start with Leon Kass. As I have mentioned he is one of the more conservative authors in this debate and a good representative of the group of authors who incorporated the religious background of human dignity into the modern debate and he is seen as an advocate of the concept of sanctity of life. Kass is a classic example of authors using human dignity as a constraint, as a concept to restrict technology in bioethics. He is also the founding director of the President's council of bioethics of the United States, the council came to life in 2001 and Kass stayed on as a chairman till 2005 and was a member to that council till 2007. That president's council had a lot of influence in the bioethical discourse. In 2002 he wrote '*Life, Liberty and the defence of dignity*' a book specifically about end of life decisions and dignity, in the following paragraph I will explain the theory Kass outlined.

In the chapters about end of life decisions Kass begins with a conceptual analyses of the term 'right to die'. That term is used in many different ways, from the concrete way of a right to become dead to a right to “choose the manner, the timing and the circumstances of one's death, or the right to choose what one considers the most humane or dignified way to finish out one's life.”⁶ Kass is convinced that this formulation of a right to die is a disguised complaint against nature, or against fate. People feel that they have been treated unjustly, for example by a disease, and want to straighten out this injustice by ending their life at the time that they choose. “Thus would the same act that was only yesterday declared a crime against humanity become a mandated act, not only of compassionate charity but also of compensatory justice!”⁷ It will come as no surprise that Kass argues against euthanasia. We want to look at the way he uses dignity, to get a better understanding of the functioning of

6 L. Kass, “*Life, Liberty and the Defense of Dignity*” (New York, 2004) p. 207

7 L. Kass (2004) p. 209

human dignity and how dignity relates to the justification of euthanasia.

Kass believes that it is not the best course of action to talk in ways of rights and duties regarding end of life decisions. Instead he wants to analyse the notions of death with dignity and sanctity of life. Those two notions often are used by opposite groups, in the most classic sense it is human dignity used by liberals and humanists who are pro euthanasia, versus sanctity of life used by people in the Judeo-Christian tradition who argue against euthanasia. Kass does not accept this polarization, he believes that “human dignity and the sanctity of life not only are compatible, but if rightly understood, they go hand in hand.”⁸ This merger of human dignity and sanctity of life is an indication of the character of Kass's concept of human dignity. What exactly is the difference between sanctity of life and human dignity? To be able to pinpoint the difference Kass uses an inductive strategy and looks at why we believe murder is wrong and hopes to find why we value human life in the process. He shows that we are familiar with situations where giving consent drastically changes the moral nature of the situation. For example when we give consent, it is no longer a violation of a patient's body but a medical procedure, when we give consent it is not rape, but making love. He then turns to murder, he asks himself if that works the same way, can we consent to be made dead? Kass believes we cannot consent to that, there is something in human beings as such that commands respect and that respect is not compatible with ending a person's life. Kass believes this respect has a religious aspect, a certain sanctity. “The *sanctity* of human life rests absolutely on the *dignity*—the godlikeness—of human beings.”⁹ With godlikeness he means that we share (with God) speech and reason, freedom in doing and making, and the powers of contemplation, judgement and care.¹⁰ Atheists can excuse Kass for bringing God into the picture because these faculties are what we commonly believe to be the distinguishing factors between humans and other animals. But now comes the important point Kass makes: “The point is crucial, and stands apart from the text that teaches it: everything high about human life—thinking, judging, loving, willing, acting—depends absolutely on everything low—metabolism, digestion, respiration, circulation, excretion. In the case of human beings, 'divinity needs blood—or 'mere' life—to sustain itself’¹¹ Human life demands respect because it is the condition for what we believe to be valuable, that

8 L. Kass (2004) p. 234

9 Ibid. p. 242

10 Ibid. p. 241

11 Ibid. p. 242

what is characteristic of being human. So that is what Kass means as dignity and sanctity going hand in hand. Dignity cannot exist without human life and human life is sacred because it is the necessary condition for dignity. Now this appears to leave room for the possibility of euthanasia as death with dignity. If life is sanctified because it is the necessary condition for dignity, we may well end a human life when that life does not support any dignity any longer. As I have said Kass is not a proponent of death with dignity as a justification of euthanasia, and we will see that he does not want to leave that possibility open, that is because dignity is not *just* the equal 'godlikeness' of man. He believes that there are two notions of dignity. When we talk about *human* dignity he claims we are talking about a democratic principle of equal worth of all human beings in comparison to plants and animals, but this is a concept that "pays tribute more to human potentiality, to the *possibilities* for human excellence. *Full* dignity, or dignity properly so-called, would depend on the *realization* of these possibilities."¹² Kass thinks that this full dignity also does more justice to the aristocratic heritage of dignity, the Latin root of dignity (*dignitas*) comes down to excellence or virtue.¹³ That means it would be absurd to talk about a right to death with dignity, it would be equally absurd as a right to death with courage. Full dignity or dignity properly so-called is, according to Kass, exercising those particular faculties that make us human, and especially exercising humanity in hardship. Death with dignity is thus better understood as "a dignified attitude and virtuous conduct in the face of death."¹⁴ I will come back to this virtue-ethics approach of dignity in chapter three.

So we come to the conclusion by examining Kass that it is impossible to justify euthanasia on his account of human dignity. It is not dignified to choose 'the easy way out', you show your humanity in enduring the end of your life, not by running away from pain that is so often the underlying motive of euthanasia according to Kass.¹⁵ The other argument is that it will violate how we look at social intercourse. "we will never be able to relate decently to people if we are entitled always to consider that one option before us to make them dead."¹⁶

12 L. Kass (2004) p. 247

13 Ibid. 246

14 Ibid. 248

15 Ibid. 251

16 Ibid. 254

Deryck Beyleveld and Roger Brownsword and the instrumental value of human life

We have seen how Leon Kass comes to a concept of human dignity and how that plays a role in his attitude to euthanasia. I believe it to be interesting to turn to Deryck Beyleveld at this time and his book written with Brownsword that is called "*Human Dignity in Bioethics and Biolaw*". Beyleveld also sees human life as a condition for human dignity but in a completely different fashion. He is someone who would drive a wedge between sanctity of life and human dignity. Beyleveld is influenced by Kant and even more so by Gewirth. That latter explains a more instrumental look at human life with regard to human dignity. Their concept of human dignity is a bit more intricate philosophically speaking, this is also because they give a more extensive analyses of human dignity in bioethics and want to cover more ground than just end of life decisions.

Beyleveld and Brownsword differentiate several notions of human dignity, first they divide dignity as empowerment and dignity as constraint. Dignity as empowerment emphasises respect for autonomy and grounds human rights in the intrinsic dignity of human beings. This dignity is either founded in a certain capacity or aimed at conditions in which persons can exercise a certain characteristic human capacity fully. Dignity as constraint is more paternalistic, it is focused on defending certain notions in the social sphere, it revolves around human duties to respect one's own and others' dignity. They do not necessarily see those divisions in human dignity as mutually exclusive, it is more a matter of emphasis. This emphasis however can be very influential whether or not euthanasia can be justified.

Beyleveld sees human dignity in general as a claim right, namely as the right to be treated as equal to others and the right not to be instrumentalized. But as I have said their concept is more difficult than that. They believe that respect for human dignity is grounded, like Kant and Gewirth think, in the capacity to be moral agents. The biggest problem they face is to show *why* we should value that moral capacity and the dignity of humans in the process. To justify that valuation they turn to the Principle of Generic Consistency. The PGC is a principle introduced by Gewirth that Beyleveld wants to use as "the governing principle in appeals to

human dignity in bioethics and biolaw.”¹⁷ The PGC is a theory of practical reasoning, practical reasoning or rational action is according to Kant and Gewirth the domain of ethics or moral behaviour. The PGC means that all agents have generic rights. With that they mean the basic generic rights agents have to be able to act. The bottom line argument of the PGC is that agents would contradict themselves as agents if they do not recognize the PGC as a governing principle. The argument goes as follows: If I claim to be an agent I claim by definition that as an agent I do X voluntarily for a purpose E that I have chosen. Then I would have to accept that E is good, in the sense that I attach sufficient value to E to motivate me to pursue E. For agency there are certain generic needs such as species specific needs to be able to act, like a certain mental stability, the ability to make choices, being (physically) unconstrained etc.¹⁸ Then I would have to accept that those generic needs are categorically instrumentally good for me, in every condition, if I value E, I have to value my generic needs because they instrumentally help me to purpose E. Others ought to respect those (basic) generic needs, and ought to secure these needs when I cannot do so by my own unaided efforts and if I want them to help me. This means that I have a right to my generic needs in a positive way, in the sense that others are obliged to protect my basic generic needs, but also that I have a right in a negative way, others are not allowed to interfere with my basic generic needs. Me having these negative and positive claim rights to these generic needs means that I have generic rights. Because I have these rights *as an agent* that means that *all agents* have these generic rights. Note that the PGC is applied to agents, that means not only to humans, everyone with the ability to act can be considered an agent. Human dignity for Beyleveld and Brownsword is to have these moral rights, and the PGC shows that every agent has them. Right now it could appear to leave open the possibility that not all humans will have intrinsic dignity, if a human is not an agent we could not attribute those generic rights and thus dignity. This problem is related to the problem the PGC could have when it is not able to tell how an agent can recognize other agents. If an agent accepts the PGC he can act like everyone around him does not have any generic rights, simply because he does not know whether there are any other agents. To the latter problem Beyleveld responds that would

17 D. Beyleveld and R. Brownsword, (2001) p. 69

18 Beyleveld and Brownsword name three categories of generic needs, *basic needs* that are absolutely necessary to act, *non-subtractive needs* that are needed to act successfully and *additive needs* who help the possibility of success. These categories are hierarchical, so basic needs trumps all and non-subtractive needs trumps additive needs. p. 71

mean resorting to solipsism and that is too big of a step to take to argue against the PGC. Beyleveld summarizes his argument as follows: “the point is that agents cannot know that marginal groups are not agents with sufficient certainty to satisfy the demands of a categorical moral imperative to grant rights to agents. Hence agents may never assume categorically that marginal groups are non-agents, even if that is what the available evidence most strongly indicates.”¹⁹ This leaves room for giving sub-agent status to all human beings on the account of that there is sufficient evidence that living human beings are at least partial agents, that way the PGC grants intrinsic moral status to all living human beings. However having intrinsic moral status is not equivalent to having dignity according to Beyleveld. That is because they want to argue for a notion of human dignity where dignity is the property of virtue of which beings have generic rights.²⁰ “A distinction must, then, be drawn between possessing intrinsic moral status and possessing dignity. There is no problem with such a distinction, because attribution of intrinsic moral status (which correlates with duties *to* a being) can correlate *either* with attribution of the generic rights (attribution of dignity, incapable of varying in degree) *or* with duties to protect possible possession of dignity when generic rights cannot be attributed (capable of varying in degree).”²¹ The intrinsic moral status to all human beings constitutes duties to protect the possible possession of dignity. But it is not the same as protecting the full basic generic rights of agents having actual dignity, on the account of them being actual agents. So we have seen that Beyleveld believes that dignity is the property of virtue of which beings have generic rights, this is a notion of dignity as empowerment rather than constraint and they use the word virtue in their definition. They have a rather complicated theory about how virtue plays a role in dignity. I will not explain that theory in detail but they mean that (not entirely unlike Kass) agents need to aspire to fortitude in the face of adversity, they believe agents to be caught in existential anxiety, torn between the hope in God and immortality and the fear of extinction. They believe it to be important for agents to find a balance between premature submission and futile resistance, between that hope for immortality and the fear of extinction. That balance and making choices through that disposition is virtuous behaviour, and dignified conduct. This does play a small roll in their understanding of dignity in end of life decisions and I believe it is about time we turn to that topic.

19 D. Beyleveld and R. Brownsword (2001) p. 126

20 Ibid.

21 Ibid.

How does their concept of human dignity relate to end of life decisions? First I will look at their opinion about the extent that persons may want or will their lives to end. For Beyleveld to be able to justify euthanasia he would first have to establish that the practice of euthanasia does not go against the PGC. But for a Gewirthian being able to accept a will to die is not the problem, an agent has the capacity to think: "I value my own existence, because it is a necessary means for achieving my particular valued purposes (which do not include putting an end to my life)', but equally 'My particular purpose is to put an end to my life. For the fulfilment of this particular purpose, I need and must value my own existence. Beyond this, however, I no longer value my own existence' And, crucially, for a Gewirthian, an agent thinking such thoughts does not contradict its status as an agent. Life is a generic instrumental, not an intrinsic value."²² So the respect that is due to the dignity of agency has no self-regarding dimension that places an agent under a categorical duty to preserve its own life.²³ Ultimately the generic right an agent has to his generic needs as an agent are waivable by the agent himself. Life is a basic generic need so it has instrumental value to agency, in other words, to act is more important than the conditions that make the act possible. However if someone else deprives an agent of his basic generic need, like life, he commits the gravest violation of the PGC. But if, say agent A, gives consent to, or wills it that, agent B ends A's life there is no violation what so ever, an agent is always entitled to waive his rights to achieve a valued purpose. So in the end dignity is "embedded in the right to choose itself, irrespective of the particular choice that one makes."²⁴ Because of Beylevelds understanding of agency, and the fact that other agents are obligated in a way to help other agents achieve their purposes by not interfering with their generic needs, we see that they understand that there is a right to die with dignity. There is a primary right to make the choice of how and when one dies and a secondary right to have that particular choice respected.²⁵ Thus we can conclude that from a Gewirthian perspective you can argue for euthanasia from a concept of human dignity if the consent conditions are met. That does imply that it only counts for agents who are able to consent, how about agents who lack that capacity, or agents for which we do not have enough evidence to presume their agency? End of life decisions often

22 D. Beyleveld and R. Brownsword (2001) p. 241

23 Ibid. p. 241

24 Ibid. p. 242

25 Ibid. p. 242

revolve around human beings whose competences are affected, so before we conclude this paragraph we must delve further into this matter.

It is rather difficult to argue about dignity and the right to choose when the patient itself lost that competence. Gewirthians are ever cautious with attributing agency, strictly speaking they call agents, *ostensible* agents. We cannot really know for sure if someone is an agent, we have to assume it and act on it in practise, but we cannot be certain. This works two ways, we cannot be sure that someone is not an agent so we have to assume the possibility of agency. But say for the sake of the argument we know with absolute certainty that the agency of a patient is irretrievably lost, that would imply that the patient lacks generic rights, because it couldn't recognize its own generic needs, that means Gewirthians could condone involuntary euthanasia on that ground. Because they do not see human life as an intrinsic good it is hard to see how they can object to the above exposition. But the Gewirthians warn that if there is even the slightest possibility of agency we have a minimal obligation to those possible agents on the account of them still having a certain moral status, albeit nowhere near ostensible agents. Apart from that, patients who have irretrievably lost their agency are in fact ex-ostensible agents, who maybe in their agency did write an advanced directive or stated opinions about their view on dying with dignity that we can respect. The other side of the coin of fear for easily justified involuntary euthanasia is not being able to justify euthanasia because everyone is a possible agent. But possible agency is a sword that cuts on both ways, even if there is not an advanced directive Beyleveld notes: "it is at least arguable that an obligation is owed to such ex-ostensible agents to treat them in accordance with the undertakings given or the expectations so engendered."²⁶ This means that they see some room to act according to the patient's best interest, even if this destroys human life. I would say that Beyleveld would argue that the respect for a possible agent does not entail that we cannot go against that persons basic generic rights if the possible agent would consent if he was an actual agent.

That roughly sums up Beyleveld's theory of human dignity and its application to end of life decisions. Different from Kass they believe life is not sanctified but a highly valuable basic generic condition that is necessary to act. We can easily argue for euthanasia on grounds of

26 D. Beyleveld and R. Brownsword (2001) p. 252

dignity with Beyleveld. Because people have dignity, or moral rights, they can waive those rights. But their understanding of dignity does not justify the killing of partial-agents, because we have to assume some form of agency in all human beings, and thus have to attribute some inherent moral status to them. It would be nonsensical to talk about death with dignity in human beings where we cannot distinguish any agency. They reserve dying with dignity for actual agents “For the virtuous agent, to die with dignity is the final act of a life lived with dignity; it is to meet one's fate with resistance and submission balanced in just the right measure.”²⁷ For 'possible' agents I believe they would say that they could not die with dignity but perhaps it is possible to end the life of a suffering possible agent out of respect for what they would have chosen if they were actual agents. Dignity would still play an important role in this justification.

David Velleman and the right to die

Now we have seen that Kass has a different idea of the value of human life compared to Beyleveld. I am sure that Kass wouldn't agree with Beyleveld on the instrumental value of human life. David Velleman is also averse to understand human life as an instrumental generic good for agency like Kass, but he is so on different grounds. His most important article about human dignity and end of life decisions is “*A Right of Self-Termination?*” where he analyses the question of a right to choose one's own death for some other good. Velleman does not leave room for dignity as virtue like Kass, but argues more against the self-determination thinking that we can see in Beyleveld.

Velleman wants to argue against the right of a patient to end his life when the reason is that the patient finds his own life no longer worth living, or for the reason that it would be 'better' if the patient dies. Therefore he analyses the question 'what is good for a person?' in the hope to get a better idea whether or not it is possible that what is good for a person can be the termination of that person's life. He finds the answer with Steven Darwall who claims: “that what's good for a person is what's rational to want *for his sake*.”²⁸ He ties the valuation of a person to the valuation of a good, but in a dependant relationship. What is good for a

27 D. Beyleveld and R. Brownsword (2001) p. 254

28 J. D. Velleman, “*A Right of Self-Termination?*” in *Ethics* 109 (April 1999) p. 610

person is only good because we value the person. That what a person desires is not intrinsically good but derives its value from the value we attribute to the person who has the desire. That does not mean that a person's good does not matter, we assume that it does, but we only assume this because we assume that people matter. When Velleman concludes that agents have an interest-independent value that is in an essential way different than the valuation of other goods human dignity cannot be far away, he continues: "A value of this kind, which a person has *in* himself but not *for* anyone, is the basis of Kantian moral theory. Kant's term for this value is 'dignity'."²⁹

As we have seen with the above mentioned authors, it is often the case that human dignity is used for a certain strategy, with Velleman this is also the case. He emphasises an obligatory aspect of human dignity. He states his motivation as: "That's what I miss in so many discussions of euthanasia and assisted suicide: a sense of something in each of us that is larger than any of us, something that makes human life more than just an exchange of costs for benefits, more than just a job or a trip to the mall."³⁰ That sense has something to do with a kind of transcending value in persons, Velleman believes that the value a person has as a person is not only the person's affair. He argues that persons have an interest-independent value by virtue of being one of us, by virtue of being a person *just like we are*. A person cannot discard that value as a person, it is not his to attribute or take away because it is an intrinsic value *in* that person not *for* him. A "value *for* a person stands to value *in* the person roughly as the value of means stands to that of an end."³¹ So a value *for* a person, like we believe that something is good *for* someone, for his own sake, can never be trumped by the value *in* him. In other words the value that a means to an end can have can never be greater than the end, because the value of the means is derived from the end.

At face value we could assume that Velleman would argue against euthanasia, on the account that the value of a person is always greater than the value a person can contribute to a good. So it would be impossible for a person to want to end his personhood for the sake of something else. As I have explained Velleman thinks that we value what that person believes to be valuable only because we think the person itself is valuable. It would be a

29 J.D. Velleman, (1999) p. 611

30 Ibid. p. 612

31 Ibid. p. 613

violation of human dignity, the inherent worth of a person, if that person would value his personal subjective good more than his personhood. The interesting thing about Velleman is that our assumption would be wrong, he argues *for* the possibility that euthanasia is justifiable on grounds of human dignity. The way Velleman envisages this is through the argument of dying with dignity, with that he does not mean that if a person dies dignified everything is all right. It is not about a dignified death, it is rather about the inability to live with dignity. “When a person cannot sustain both life and dignity, his death may indeed be morally justified. One is sometimes permitted, even obligated, to destroy objects of dignity if they would otherwise deteriorate in ways that would offend against that value.”³² So we have to look at when a person can lose his dignity, how can one lose one's dignity according to Velleman? Because Velleman uses a Kantian conception of human dignity he chooses to look at the possibilities Kant's theory permits him regarding death with dignity. As we have seen Kant grounds human dignity in our rational nature, in our moral capacity. So when we irretrievably lose that capacity perhaps we can argue for the possibility to end a life out of respect for that person's dignity. Velleman uses an example where a patient is in so mind-numbing amounts of pain that he is unable to set ends at all apart from the ending of that pain. “It reduces the patient to the psychological hedonist's image of a person—a pleasure-seeking, pain-fleeing animal—which is undignified indeed.”³³ It is important to emphasise that in this example we do not want to end the patient's life because we believe it is good to relieve the patient of that pain but that the pain has deprived the person of his dignity and out of respect for the person and dignity we can justify ending the person's life.

We can see that Velleman uses human dignity to be able to argue against the so commonplace admiration for self-determination, he wants to show that there is something more about humans and human life, something that should prevent us from using our lives as a commodity. But as we have seen that does not mean that there is no possible way we can justify euthanasia. We do not have a right to choose between life and death, not during our early years, nor during the last ones. But there is an ambiguity in Velleman, because he also believes it is possible to end a person's life when there is no dignity left, out of respect for the value of human dignity. There may be a justification for euthanasia if it stops a person

32 J.D. Velleman (1999) p. 617

33 Ibid. p. 618

from deteriorating in a way that would offend human dignity. The question whether or not we have the right to choose our own life and death and how this relates to dignity will be addressed further in chapter three.

Ronald Dworkin and the importance of integrity

Ronald Dworkin is also an influential author in the end of life decisions debate. In 1997 he wrote together with Thomas Nagel, John Rawls, Robert Nozick et al, "*assisted suicide: a philosophers brief.*" That was an amicus brief to advise the supreme court of the U.S. On whether or not dying patients have a right to choose death. In 1993 he wrote "Life's Dominion", in that book he shares his own thoughts about abortion and euthanasia. He also sees an important role for human dignity in that debate. His concept of human dignity emphasises on the integrity of persons. It is a popular concept because it is consistent with other concepts in end of life decisions like the narrative of one's life, and the value we attribute to consistency in character.

The most important question Dworkin asks himself is for us whether euthanasia is wrong because it invariably violates the intrinsic value and sanctity of human life.³⁴ In his book he focuses on a secular interpretation of the idea that human life is sacred and believes that could well be a crucial argument *for* euthanasia. As with the above mentioned authors we cannot start off the bat with a fully developed understanding of human dignity we have to take a detour to make it understandable and to see where he comes from. And he asks himself if it can be in our interest to request our own death. Dworkin distinguishes two kinds of interests to explain the reasons why people do things, experiential interests and critical interests. We act on our experiential interests because we like the experience of doing them, like hobbies or even passions, things like camping, walking to work instead of taking the bus, enjoying good whiskeys and so on. We act on critical interests because we deeply care about them and believe that we *should* care about them, things like being a good father and treasuring friendship, the difference is we do them not just because we like the experience.³⁵

34 R. Dworkin, "*Life's Dominion, An argument about Abortion Euthansia, and Individual Freedom*" (New York, 1993) p. 194

35 Ibid. p. 202

We act on critical interests because we believe them to be good to have in itself, they make sure we do not have the sense that we 'waste' our lives, critical interests are about what kind of life we think is best for us. That appeals to a sense of consistency with character, how we want to understand ourselves as agents, persons or humans. "People think it important not just that their life contain a variety of the right experiences, achievements, and connections, but that it has a structure that expresses a coherent choice among these—for some, that it display a steady, self-defining commitment to a vision of character or achievement that the life as a whole, seen as an integral creative narrative, illustrates and expresses."³⁶ This ideal of integrity is for Dworkin closely related to his concept of dignity. Integrity understood this way plays a role between the tension of understanding critical interests as subjective important goals or as objective standard of the good life. The analysis of critical or experiential interests is similar to the analyses of Velleman when he looks for what is good for a person, like Velleman, Dworkin also wants to find out if it could be in someone's best interest to die, he argues that we need a defined concept of critical interests to answer this question. Experiential interests do not cut it when talking about end of life decision-making. When someone wants to die just to end pain it is in his experiential interest to end his life, as we have seen above with Velleman and Kass it is often considered that these reasons are not enough, it would not do justice to the value we attribute to human beings. And generally we do not think about life and death decisions in a basic hedonistic way according to Dworkin. "We agonize about these decisions, for ourselves when we are contemplating living wills, or for relatives and friends, only or mainly because we take our and their critical interests into account."³⁷ In the end we see that people give different reasons regarding the decisions about life and death, some understand themselves as a fighter and see ending their lives as giving up, others simply aren't able to understand themselves as fully dependent on others and rather end their lives than to live the last years of their lives in such discordance with how their lives were. The overarching concept is that dying with dignity is a dying in accordance with how we wanted to live, in accordance with our critical interests. But still people could argue that even if it is somehow in the patient's interest, the intentional killing of a patient "is a savage insult to the intrinsic value of life."³⁸

36 R. Dworkin (1993) p. 205

37 Ibid. p. 209

38 Ibid. p. 214

According to Dworkin people who argue that it is an insult misunderstand the intrinsic value or sanctity of life. "Someone's convictions about his own critical interests are opinions about what it means for his *own* human life to go well, and these convictions can therefore best be understood as a special application of his general commitment to the sanctity of life."³⁹ If someone wants to make the most of his life he is trying not to waste his life, he takes a responsibility to live a meaningful integer life according to himself. If asking to be made dead is in the patients critical interests, if it fits his understanding of himself, he is asking to end his life in a way that respects (his) life fully, it is out of respect of his life that he wants to end it appropriately. As we can see in probably his most quoted sentence: "Making someone die in a way that others approve, but he believes to be a horrifying contradiction of his life, is a devastating, odious form of tyranny."⁴⁰ He asks the question how do you respect someone's human dignity when you fail to respect his wish to die in accordance with how he has lived his life? Is it not the case that you do more damage to the sanctity of human life if you preserve human life at all costs, even when this goes against someone's understanding of his own life, than if you intentionally end a patient's life at his wish?

What happens in the cases where people are no longer able to choose what is in their critical interest? As I have said before people losing the capacity to choose is an important part of end of life decisions, it also helps us to see the extend of human dignity according to different authors. Especially because Dworkin emphasises integrity as dignity it can get problematic with Alzheimer patients for example. We know an Alzheimer patient had critical interests before she got to the end stages of her disease but how about her interests in those end stages? How do her thoughts about how to shape her life then relate to the Alzheimer patient now? The problem is that when we look at a right to autonomous decisions we would have to accept that demented persons or Alzheimer patients do not have the same capacity to make autonomous decisions. They often do not know what is best for them and they no longer act in a way that expresses a coherent view of their personality. Dworkin argues that on an integrity-orientated account of autonomy, like he favours, there is room for advanced directives. A person's wishes when they are in their right mind, fully rational and autonomously are an expression of the shaping of one's life. Is it justifiable that the decision,

39 R. Dworkin (1993) p. 215

40 Ibid. p. 217

made at that time, to end one's life when Alzheimer sets in, overrules the decision of the contemporary incapable patient on grounds of dignity? Dworkin sees this as a conflict between autonomy of the person in the present versus the best interests of the patient now. We can imagine that this is not easy to solve, he turns to the possibility “that people have a right not to suffer *indignity*, not to be treated in ways that in their culture or community are understood as showing disrespect.”⁴¹

Even if Alzheimer patients do not have the faculty that is necessary to respect oneself and do not have the experiential interest of being clean we feel the obligation to treat them with dignity, to clean them, to give attention to them to give them clean and proper environment. We do not necessarily do that solely out of her best interest but more fundamentally because we have some understanding that that kind of respect is due to persons. If we look to indignity as a violation of experiential interest we understand that “People denied dignity may lose the self-respect that dignity protects, moreover, and then suffer an even more serious form of distress: self-contempt or self-loathing.”⁴² However persons who aren't able to recognize a self-identity wouldn't be able to recognize an insult to the respect or esteem that goes along with a self-identity. So it would be hard to argue that demented persons have a right to be treated with dignity on an experiential account because they aren't able to recognize behaviour that thwarts their dignity. I believe our general opinion however does not support this. Dworkin claims we generally believe that even though someone has no self-respect at all, or misses the competence to develop self-respect, we should not treat human beings like they have none. That people do have a right to dignity, this right entails: “A person's right to be treated with dignity, I now suggest, is the right that others acknowledge his genuine critical interests: that they acknowledge that he is the kind of creature, and has the moral standing such that it is intrinsically, objectively important how his life goes.”⁴³ This definition has a certain ambivalence, on one hand it leaves room for cultural differences on what counts as indignity and thus has some room for relativism, on the other hand it has a certain universality because “the right that all people have—that their society recognize the importance of their lives, expressed through whatever vocabulary it has—is not itself a

41 Ibid. 233

42 Ibid. 234

43 Ibid. 236

matter of convention.”⁴⁴

We can see that Dworkin has different layers of understanding of dignity. In the most basic sense dignity is respecting the inherent value of our own lives, this is expressed by respecting critical interests. Life qua life is not sacred according to Dworkin, it's what we do with it. Critical interests are the interests we have that help shape our lives according to our character, how we want to live and be understood i.e. what we do with our lives. Choices about life and death are such intimate choices that express quite distinctly how we understand our place in the world, these are the choices that define our character. Therefore Dworkin pleads that on an account of dignity people should have the freedom to choose how they want to die, he does not argue for euthanasia, but for the freedom to make this character defining choice yourself and to have that respected.

In this chapter we found and examined the conceptions of human dignity of Kass, Beyleveld, Velleman and Dworkin. We have seen how that concept can play a role in end of life decisions in different ways. But we still need to know how do those different interpretations of human dignity relate to each other . In the next chapter I will explain the similarities of the different accounts so we come to a common concept of human dignity, despite the differences between the individual theories. We will see that a common ground in the concept of human dignity comes with common problems.

44 Ibid. 237

Assessing the similarities and problems

By examining the accounts of the above mentioned four authors we see that the difference between their concepts of dignity is not a matter of entirely different concepts but of interpretation and an emphasis on certain aspects. The similarities are more important, they show that there is a certain common understanding of a concept of human dignity. The first and most important similarity is that human dignity is always understood as inherent, it's not contingent that we have it or ascribe it. It is inherent in a way that everyone has dignity by a certain human virtue of something, whether that is moral capacity, agency, or plain being part of the human family. By looking at our authors we have seen that Kass bases equal dignity in the characteristic human capacities that distinguishes us from animals. Our capabilities of "speech and reason, freedom in doing and making, and the powers of contemplation, judgement and care."⁴⁵ Beyleveld believes dignity comes forth from possessing basic generic rights as a rational moral agent and Velleman too believes, inspired by Kant, that dignity is constituted in our rational nature. For Dworkin dignity is constituted in our ability to shape our lives, to have critical interests. Of the four authors I have covered, all of them, in some way or another, ground dignity in some capacity or ability.

The second similarity is that dignity is not the same as any other concept, it is unique in its overarching moral status, it is not led back to another moral concept like respect for autonomy.

As we have seen with our authors, their interpretation of dignity commands respect for what they believe to be the most important or valuable capacity or ability of human beings or agents, that what should be the most protected. Thirdly dignity also has some sort of active aspect in end of life decisions, you have to *do* something to live with dignity or to die with dignity. When we look at Kass, Dworkin and Beyleveld we get the sense that it is not just about having the capacity but also what you do with it. Furthermore it's not self-evident that we retain our dignity in our dying process, something happens to dignity at the end of our lives, there is the danger that we can lose 'something'. These similarities come with certain problems, for one dignity being inherent can conflict with the possibility to lose dignity. This is closely related to constituting dignity in capacities. The important question is what theory

45 L. Kass. (2004) p. 241

is the most plausible? It would be good to look at the situations where the capacity that constitutes dignity is being compromised to get some insight in the plausibility of the different theories. What is important in a theory about euthanasia is not primarily the situations where everything goes well and a perfectly reasonable person at the end of his life requests to die because there is a one hundred percent chance that he will die in excruciating pain if he continues to live. Of course the question whether or not someone has a right to die should be answered in any case, but what is characteristic about the problems of euthanasia is the deteriorating capabilities of the patients in question. When we look at the three similarities between the theories we see that it is rather important to define what constitutes human dignity. The four authors that I have used constitute dignity in something like an ability or capacity and I think most plausible accounts of human dignity will in some way or another constitute dignity in a similar capacity or ability. One of the more important problems a theory of human dignity in end of life decisions should overcome is the possibility of losing that capacity, what would that do to the dignity we attribute to a person? And how can dignity be inherent *and* based on a capacity that we can lose? In this chapter I will look more closely at the possibilities of constituting dignity in capacities and the tension between inherent dignity and capacity based dignity and the possibility of losing dignity.

Human Dignity and the valuation of human capacities

Let us start at the beginning and ask ourselves a question. The central question is: Is human dignity based on certain capacities? If so, on which capacities? This question can be answered in a number different ways and most basically by a yes or no answer. If we consider that human dignity is *not* based on a certain capacity we would have to constitute it in something else. One possibility is that we constitute dignity in being human in the biological sense, that account would come down to the statement that because we belong to the human species we have dignity. But almost no author would base human dignity solely on the biological fact that we are members of the human species. It is philosophically highly improbable that we could ground such a profound moral status on a purely biological statistic. I believe that this possible answer is not a viable option, apart from the problems you would get from Singer and the like, belonging to a species does not explain what is

special about being human, *why* they have this dignity.⁴⁶ The other possibility, if we do not constitute human dignity in a capacity, is to understand dignity as a social construct. Someone could argue that because of the individualistic tendencies in the modern world we sometimes have nothing more in common with someone than the fact that we are human. Not in a biological sense but more as a social recognition that stops this individualistic alienation of each other. Then dignity would not be founded on something found *in* humans but it would be constituted in something *between* humans. I think this can be an interesting notion, but not one I am able to delve further into in this thesis. However, as we have seen with our authors they tend to believe human dignity *is* founded in some specifically human characteristic capacities. It is not just the fact that we are human that we find special but it is what we can do and feel as humans that excites our moral interest. What kind of capacities can come to mind? Surely not all capacities are relevant—our hand-eye coordination for example is not likely to constitute human dignity—the question remains; what are the *morally* relevant capacities. We could look briefly at the capacities specified by the above mentioned authors and the problems that these raise.

We have seen that Kass does not name just one capacity, he names a whole variety of human characteristics. He sums up “speech and reason, freedom in doing and making, and the powers of contemplation, judgement and care.”⁴⁷ It comes down to that dignity is constituted in “everything high about human life—thinking, judging, loving, willing, acting.”⁴⁸ What could be problematic if we constitute dignity in the full range of human capacities? First of all I find it to be confusing if dignity consists of so many and different human capacities, you would have to overcome certain new problems. Questions like, is there a hierarchy in those capacities or are all human traits equally important to human dignity? What happens if you lose one, or four, are you then in less possession of dignity than someone who has all characteristics? You would also have to explain on what grounds you exclude the other human traits. If you do not exclude anything that is characteristic of the human species I would say that it comes very near to 'specieism'. We could ask ourselves if there is a difference between grounding dignity in a biological category or grounding dignity in the full range of human capacities we believe to distinguish us from other animals. I

46 I'm referring to 'speciesism', that is o.a. argued by Singer

47 L. Kass (2004) p. 241

48 Ibid. 242

personally cannot see how grounding it in all human capacities is anything more than a smoke screen for grounding it in belonging to the human species. Furthermore when we constitute dignity in all the human capacities would we also have to factor in our abilities of jealousy, hatred and our characteristically human ability of self-destructive behaviour, or should we just constitute dignity in our capacities to do good? What happens to our dignity if we act badly in that case? I am not able to answer these questions here but I think that this outlines the problems that arise when you want to constitute dignity in multiple capacities. I do not think most authors will try this strategy. It may however be the case that it is possible to constitute dignity in select group of capacities

When we look at our other authors we see that they constitute dignity in a broad capacity. Either this capacity is what makes our lives valuable and in that way morally relevant such as we find in Dworkin's account or the capacity is obviously morally relevant because it is the capacity to be a moral agent. For Beyleveld and Brownsworth it is the capacity to be a moral agent that constitutes dignity, I believe that this means the capacity to *act* on moral choices. For Velleman it is almost the same and constituted in a Kantian rational nature of man, what comes down to being a moral agent. For Dworkin it is the capacity to act on critical interests that entails that you have a sense that your life matters, to have self-respect, to understand your life as something that is worth living right, in accordance with how you want to understand and express yourself. The problem is not that authors differ in the capacity they constitute it in. The biggest problem with basing dignity on a capacity like moral agency or being able to make coherent life choices is that this capacity will be depending on rationality and having a sense of identity most of the time. What happens to our dignity when we lose rationality or a sense of identity? If we want human dignity to be a useful concept in end of life decisions it should be able to still be useful for patients who lost their sense of identity or their rationality. As I have said the end of life decision debate is distinctively about the large group of patients losing those certain competences that are conditional for human capacities we value.

Losing dignity

First I want to look at the relationship between being able to lose a capacity and capacity based dignity in general. There are only so many answers to the question what happens to dignity if a person loses the capacity that constitutes dignity. Even a smaller number of those answers are plausible. The answers to these question differentiate between authors who believe it is possible to lose dignity and authors who believe it is never possible to lose human dignity. I believe most capacity based accounts of human dignity will accept that it is possible to lose the capacities that constitute dignity. When they do think that, they have two options. Either they accept that it is possible to lose dignity with all the corresponding obligations or, and more likely, they argue for a position that it is possible to lose the capacities that constitute dignity, but not dignity, or the respect that comes with dignity, itself. Almost no author would argue that when a person becomes senile or in a vegetative state we lose all obligations towards them. I believe this is not just because we understand that the people close to that person still value that person and we care for that person out of respect for his relatives. Even if, in the unfortunately not solely hypothetical case, a senile person has no one who knows him, and there are no relatives that value that person, we would still think it a violation of human dignity to not care for him. We still think we have some obligation towards those persons and I think this obligation comes from the respect for human dignity. That is why I believe that most authors who accept that persons *can* lose the capacity that constitutes dignity argue that persons without that capacity are still entitled respect because they *were* beings with dignity. The argumentation is often based on the intuition that even if a person does not have the capacity that is necessary to ascribe him human dignity it would still be a violation of human dignity if we would no longer respect the fact that he was one of us, that he had the capacity. I believe this has something to do with why we value those dignity constituting capacities so much. Authors who argue that dignity is constituted in a capacity do not argue that this capacity is the only reason to respect dignity, they also argue that the capacity explains what is special about humans, why we can ascribe dignity and why we *should*. Therefore it does not follow that if humans lose those capacities we no longer have any obligations to them, because often the respect for those capacities transcends the actualisation of them. People who no longer have those important capacities, did have them and acted on them, they were rational agents and they did shape

their life through making (rational) choices. Even if this is not the case, when they never were able to act on those capacities, there is still a sense that they *look* like us. This intuition is better expressed by authors who think we can never lose dignity, nor the respect that comes with it, like Kass. We have seen that he argues that the mere form of the human body and all of the biological little processes that are necessary to live have an intrinsically moral status, even a sort of sanctity. Because they are the necessary condition for something we value above all, human dignity. Ultimately I do not think this is very far from the account of Beyleveld who sees the difference between the status for partial-agents and ostensible agents. The moral status of the partial-agents is derived from the possibility to harbour human dignity, in a sense, from the biological possibility that the body of the partial-agent can have the dignity attributing capacities.

The influence of the possibility of losing dignity on justifying euthanasia

All of our four authors acknowledge that we can lose the capacities that constitute dignity. I think everyone would agree upon that Alzheimer disease, other forms of dementia, pain, or drugs that suppresses pain can severely impair our rationality for example. They can also compromise a sense of identity over time, being able to formulate a will or set long term ends. And these things unfortunately aren't rare to find.⁴⁹ The point which people don't agree on is if this also means that you are able to lose human dignity. It is no surprise that this is important in being able to justify euthanasia or not. According to Velleman we are able to lose our dignity when, for example, we are in so much pain we can set no other end than making the pain stop. He thinks that because we can damage our dignity in such an irretrievable way we should not prohibit euthanasia because it may be the case that we have an obligation to end a life out of respect for the value of dignity. This respect for the value of dignity also prevents us to justify euthanasia for patients who still have the capacities that constitute dignity. For Velleman dignity is the expression for the respect we owe to ourselves and others as moral beings, that is impossible to combine with euthanasia. In short this is because a person does not have the right to end his life, we value him more than the choices he makes. Only if a person loses that moral capacity, and thus his dignity, we can think about

49 Involuntary euthanasia happens when we do not know what the patient wants because he is unable to formulate his will or has no will, non-voluntary is euthanasia *against* the will of the patient.

ending that person's life out of respect for the value of dignity.

Beyleveld argues that we have to assume that we can never be sure that the capacities that are conditional for dignity are completely gone. We would always have to assume, theoretically, that patients who appear to have lost important capacities that are necessary to be a rational agent are at least partial-agents, on the account of that we do not know what is going on inside someone's head. However they would have to say that we are able to lose our human dignity. They see a difference between having intrinsic moral status and dignity. The intrinsic moral status is derived from the possibility of dignity but does not demand the protection of all the generic needs, having dignity demands that all of your generic needs should be protected. I think they would say that we still attribute intrinsic moral status to partial-agents, but we only attribute *dignity* to ostensible agents. Maybe we could see this as a gliding scale, all agents, partial or ostensible, have intrinsic moral status, however when it is clear that someone is an agent we would have to attribute dignity, on account of the PGC. When it is entirely unclear that someone is an agent we have to assume that he still is a partial-agent and attribute a moral status that is derived from dignity, but that does not entail the full rights of an agent with dignity. Although Beyleveld bases dignity in almost the same capacity as Velleman there is a very important difference, he believes the respect for the moral choice of an agent is paramount. The respect for autonomy and self-determination, that is needed for the valuation of the capacity to choose, determines that we should respect an agent's choice to end his life. Because the agent's life is instrumental for his agency, he has to value it because it is conditional for his agency. If his valued purpose is to end his life he only needs to value his life insofar that it is helpful to act out his valued purpose, to end his life. So Beyleveld's dignity, which is constituted in the capacity of moral choice of agents, dictates that we should have the right to end our lives when it is a valued purpose. The respect for these moral choices also means that if a person would have made the choice to end his life we should help him act out this wish if he can not act on that choice anymore.

But there are also authors who argue that agents can never lose their dignity because there is always something left that is worth dignity. Kass for example thinks that even if important human capacities deteriorate there is always some dignity left. He mentions that being able

“to return a smile or a glance in response to a drink of water”⁵⁰ could be enough for senile patients to have, and show, their dignity. Even if persons cannot manage that, when the capacities are simply gone, there is still dignity in human beings. He argues for example that we could never justify ending life support of patients in a vegetative state because we are “restrained by the human form, by *human blood*, and by what I owe to the full human life that this particular instance of humanity once lived.”⁵¹ That is why Kass believes euthanasia is in all cases unjustifiable, that could confront us with very tragic situations and heart-rending cases. But he says “we should be sympathetic but firm. Our response should be neither 'yes, for mercy's sake' nor 'Murder! Unthinkable' but 'Sorry. No.'”⁵² The dignity of human beings is not compatible with undignified behaviour such as killing persons or asking to be made dead. In other words, human dignity prohibits all kinds of euthanasia according to Kass.

For Dworkin it is a different story, in a sense he would have to say we can lose dignity ourselves, because he argues that for dignity we have to have a sense of identity, self-respect and the valuation of our own lives. Those are all capacities that are compromised in Alzheimer patients for example. But I believe he would say we would not lose dignity all together, because in a way we can still recognize the critical interests of patients who no longer have the ability to act on those interests themselves. Close relatives or friends of a person know how he wanted to shape his life, how he would want to be understood. And out of respect for his dignity act upon that knowledge. He would say we do not lose human dignity because dignity is connected to our life story, the way we wanted to shape our lives. It may well be the case that grandfather is not able to do anything but drool, but it is the same person who made sure there was bread on the table in those hard times in the past. We owe it to his life story to act in his best interests. That may well mean that it is justified to ask that grandfather be euthanised. Dworkin argues that life qua life is not sacred or has dignity, it is making your life worthwhile, it is respecting life through not wasting it, by shaping your life by making important decisions that express your character, that has dignity. The capacity to act on critical interests to shape your life are more important for human dignity than life itself. And when persons aren't able to act on those critical interests themselves we owe it to them to decide in spirit of what we know of their critical interests.

50 L. Kass (2004) p. 253

51 Ibid. p. 254

52 Ibid. p. 255

So we come to the problem how losing the capacities that constitute dignity affects the justification of euthanasia in general. I think it does affect the justification, but not always in a direct way. It is the interpretation of the meaning of the term dignity that makes the difference. If an author uses human dignity as constraint, then he most likely thinks that you can not justify euthanasia because humans have dignity. Let us for example Kass and Velleman as an example. Both authors use human dignity as constraint, but only Velleman believes it is possible to lose dignity and we can only justify euthanasia when someone loses human dignity. According to Kass you can never lose dignity, thus euthanasia can never be justified. With human dignity as empowerment it is less clear how being able to lose dignity affects the justification of euthanasia. Authors who use human dignity as empowerment will most likely argue that euthanasia can be justified. Dignity as empowerment is constituted in self-determination, in acting according to your practical reason, that means that we value the human ability to make moral choices, this includes the choice to be made dead. What happens when we can lose our dignity as empowerment? At first sight I would say that euthanasia can not justified when a person loses his dignity as empowerment. If dignity is the valuation of the ability to make moral choices, essentially when we would lose this capacity, there is no choice to be respected, so there would be no ground to justify euthanasia, let alone an agent to request it. Not surprisingly few authors who argue for human dignity as empowerment would accept this answer. So they have to explain how euthanasia is justified on an account of dignity when the person has all the capacities that constitute dignity, and how euthanasia is still justified when a person has lost the capability to request euthanasia in an autonomous way. One option is to argue that life is no longer worth living if a person has lost that specific capacity that grounds dignity, this probably will not be a popular option because authors tend to stay away from accounts that could justify involuntary euthanasia, let alone non-voluntary euthanasia. Apart from that, deciding if other lives are worth living is rather controversial. Most authors who argue for dignity as empowerment would argue that even if the capacity can be lost we still attribute dignity to the person. Euthanasia would then be justified from the respect that is due to what the person *would have* chosen. Often this comes down to saying that the person who has lost the capacity to act and choose *would have* chosen to not live on in that situation. And human dignity as empowerment, what is an expression of what we value in human beings, such as

rationality and the capacity to act like a moral agent, justifies respecting this choice.

Two different notions of capacity based dignity

We still have to delve further into the tension between inherent dignity and dignity as capacity. We have seen arguments that you aren't able to lose dignity at all and arguments that we do not lose all moral status when we lose the capacity that constitutes dignity. The problem is that authors who justify euthanasia in dignity as empowerment tread on difficult ground, they have to acknowledge that the respect that is due to persons or agents who have lost their dignity constituting capacity is not the same as for persons who still have that dignity. If they argue that the respect that is due to those persons who have lost the morally relevant capacity is derived from human dignity there has to be something special going on. How can someone have the capacities with corresponding dignity and another who does not have the capacities still be entitled the same dignity? The danger here is of course that persons who do not have the morally relevant capacity maybe are not entitled to the same respect. That means there can be a danger of too easily justifiable involuntary euthanasia. We have seen that authors then argue that there is still respect due through the argumentation that this person belongs to a group of beings who are capable to have these morally relevant capacities we value. Because of this ability to have the capacity they have a moral status. The side in this case is the possibility that euthanasia is not justifiable for persons who have lost this capacity because they still have this moral status, with the possible danger that this could lead to heartbreaking situations of unbearable suffering. That is why authors argue that what is really important about dignity is the ability to make moral choices. The respect for human dignity would obligate us to act according to what the person *would* have chosen and that is why we could justify involuntary euthanasia in certain cases. These arguments obviously conflict. It is important to examine the conflict or tension between those two arguments. We have to resolve this conflict to be able to evaluate which explanation of human dignity is more plausible. This is also a good example of authors stretching the concept of human dignity to their own need and making the concept vaguer in the process.

This conflict originated between a difference we can find in capacity based human dignity. The difference of dignity constituted in the possibility of the capacity and dignity constituted in the actualisation of the capacity. Firstly we have the notion that dignity is constituted in the passive possession of the capacity, this is used to argue that euthanasia can not be justified for example. This notion conflicts with the second notion of dignity as the valuation of the *actualisation* of the capacities. This latter notion leaves open the possibility to justify euthanasia if it is in the line of the choices the person would have made. In Kass we see both notions, his equal dignity is like dignity as the passive capacity, his notion of full dignity is the most extreme version of constituting dignity in the active component of a capacity. With most extreme I mean that Kass constitutes dignity in acting on capacities in a preferable way, for example in acting morally good. Maybe that can make sense, is it not more apt to constitute human dignity in acting virtuous?

Human dignity as acting virtuous

As we have seen Kass tries to do justice to the Latin root of dignity. The meaning of *dignitas* is something like “worthiness, elevation, honor, nobility, height—in short, excellence or virtue”.⁵³ He emphasises that it is a term of distinction, “Dignity is not something which, like a nose or a navel, is to be expected or found in every living human being. In principle, it is aristocratic.”⁵⁴ He uses this distinction to help his claim that no one has a right to die with dignity. Dignity properly so called is something to live up to, it is something you have to earn, it is not free. Yes he also claims that the human species have a special dignity, what is understood as equal human dignity. That sense of dignity is the one that is capacity based, but more specifically based on the *possibilities* of human excellence that these capacities provide. What Kass understands as the *right* kind of dignity, the way it is correctly understood, is dignity that depends on the realization of the possibilities of human excellence. He argues that by constituting equal dignity in capacities there could still be distinctions made, “If universal human dignity is grounded, for example, in the moral life, in that everyone faces and makes moral choices, dignity would seem to depend mainly on

53 L. Kass (2004) p. 246

54 Ibid.

having a *good* moral life, that is, on choosing well.”⁵⁵ So dignity is something we have to act upon according to Kass, it comes in degrees and to be attributed dignity properly you have to act virtuous.⁵⁶ But he does try to make it less of an elitist concept, he thinks dignity is not confined to the few, “if we know how to look, we find evidence of human dignity all around us[...]”⁵⁷ Kass attributes dignity to the majority because we see people work hard to feed their children or help their neighbour with the taxes or stand up in the bus for a pregnant lady and so on. Because Kass understands dignity to be something similar to making good moral choices we cannot justify euthanasia, because killing someone is a bad thing and wanting to die is equated with giving up. The proper way to die with dignity for Kass is facing death in a courageous way with friends and a loving wife and with the knowledge and acceptance that your time has come. It is not hard to see the aristocratic roots in such an account. Overall I think Kass’s concept of 'full' dignity is mistaken. First of all universal or equal human dignity cannot be grounded in making good moral choices. It may be the case that we all find it better to act courageous instead of cowardly but that is not an indicator if something is dignified. It may well be the case that Kass is right in his etymological history of dignity, what I indeed believe to be the case, that does not mean that our understanding of human dignity *should have* this conception of *dignitas* from antiquity. Thirdly it is rather strange to argue for a prohibition of euthanasia on the argument that dignity has roots derived from the antiquity. In that time it was not uncommon to take your own life to preserve dignity for yourself or your family. From Socrates to Cicero or Seneca, the thought that it is rather virtuous if you take your own life for the right reasons was prevalent in antiquity.⁵⁸ This shows us that it is not obvious that helping someone to die is morally bad, let alone wanting to die. Virtue ethics is also not compatible with the equally inherent worth of individuals. Authors who claim dignity is based in virtue have to explain on what grounds someone can have more inherent worth than someone else. If some persons have more worth than others then people can be measured against each other, this difference in valuation of humans is not something we should be aiming at. From a more practical reason it would be very hard to form an euthanasia policy on the aristocratic concept of virtue based

55 L. Kass (2004) p. 247

56 This does not mean that people without dignified behaviour should be treated as if they did not have dignity according to Kass, p. 247.

57 Ibid. p. 248

58 L. A. Seneca “*Brieven aan Lucilius*” C. Verhoeven (e.d.) (Ambo/Baarn, 1990) p. 195

dignity. The argumentation would not be compatible with a lot of basic democratic principles.

The active and passive component of dignity revised

I have argued that it would be a bad idea to base dignity in valuing what we do with the capacities that constitute dignity i.e. constituting dignity in making good choices, and that a virtue ethics based dignity would amount to that position. But that position is only a possible explanation of the active component of dignity in end of life decisions. I want to try and make this concept stronger so we are able to weigh the plausibility of the passive and active account. The concept is rather nuanced, instead of the situation that we have to act virtuous, or do the right thing with our capacities it is more about the actualisation of the capacity in itself that is considered valuable. This of course is clear when we look at Beyleveld and Brownsworth's theory, they see no inconsistency that a person could choose to end his life, and thus every future possibility of choice. In other words, it is not problematic that a person can choose against the capacity that makes his choice possible in the first place. But we can also see it in Dworkin because he argues that the intrinsic value in human life lies in acting on critical interests in that life, shaping that life through own choices that define character. But are we able to argue that the actualisation of the capacity trumps the capacity itself? If a person with the capacity to act on his critical interests never would actually act, it is hard to see how in Dworkin's sense that person is making his life worthwhile. In that case he would not acknowledge his own genuine critical interests or believe it is important how his life goes. So he would not act like someone who has dignity. Likewise if an agent would always refrain to act morally, he would avoid other people for example and would just act on his hedonistic impulses, Beyleveld would have a hard time arguing how that person is an actual agent, and by extension how that person has dignity. When we value something we can do, we don't just value the ability that we *can*, we value it because we actually *do* something with it. This thought is the foundation of why they believe that a person's ability to choose to end his life should be more respected than the capacity that makes that choice possible. This is the essential argument that justifies euthanasia. The essential argument that prohibits euthanasia is to value not only the actualisation of that capacity but the brute ability that we have the capacity to be moral agents, it focuses more on the necessary condition than

actualisation. And every being that is capable of having this necessary condition has moral status derived from this capacity we value. Dignity as the actualisation of a valued capacity is able to come up with a convincing argumentation how the problem of involuntary euthanasia is solved. Because respecting the choices the persons who do not have the capacities to choose themselves would have made is still more important than the life that made these choices possible. So if a person would not have chosen to request euthanasia we cannot justify euthanasia because it would go against the respect we are due to his choice. It could just as easily justify euthanasia for persons who would have chosen to request euthanasia. Dignity as the ability of capacity, or passive capacity in the strictest sense is only able to come up with convincing arguments against involuntary euthanasia in the sense that it is still prohibited on account of the above mentioned arguments. In the broad sense it can argue that losing dignity is the only way how euthanasia is justifiable but we still have to know if the person would have consented to this euthanasia, thus it would emphasise what he would have chosen.

How do the authors fit into this picture? When we start with Velleman his argument is problematic. If someone during their lifetime did not have the right to choose against the capacity that makes choice possible how would we be able to act on his consent or choice when that capacity is gone? It may be the case that we have an obligation to respect dignity through not letting it deteriorate even further, but it should not leave the door open for involuntary euthanasia in this fashion. Dworkin emphasises the importance of critical interests and choice, so that he can argue that euthanasia is justified if it is in the persons best interest would he still have the capacity to say so. Beyleveld and Brownsworth have the same emphasis on the actualisation of choice, we know what the patient would have chosen so there is no danger of involuntary euthanasia and no danger of heartbreaking intolerable suffering for years. In theory this can be a convincing argument. Unfortunately it is not that simple, and there is some empiric evidence to the contrary, as we can see by looking at an article by David Shalowitz et al titled; *the accuracy of surrogate-decision making*. Apparently close to one third of surrogate-decision makers in their study, whether the surrogate-decision makers were designated by the patient or next of kin wrongly predicted the end of

life decision of the patient.⁵⁹ That amount is substantial enough to question the plausibility of the justification by Dworkin and Beyleveld and Brownsworth. In the worst case it could mean that one third of the end of life decisions we make in the presumed best interest of the patient can be non-voluntary euthanasia. So we would want to be more cautious with trusting in our supposed knowledge what a person would have chosen. The other extreme is the account of Kass who argues that euthanasia is never justified and that all cases in which persons request euthanasia or in which the next of kin of the patient requests euthanasia unfortunately would have to stay what they are, heartbreaking cases. It would not be justified on an account of dignity to terminate someone's life. This account could be the most consistent if it weren't the case that Kass distinguishes two kinds of dignity and basis the dignity that he believes to be most important on virtue-ethics.

We can see that all authors have some problems with the situation where a person loses the capacity to request death and that this problem has its influence on the justification of euthanasia itself. We will have to try to take the best options out of the theories or show that what the theories have similar does not necessarily lead to a problem with the situation of losing a capacity and still give a convincing argument whether or not euthanasia is justified. One of the more simple and coherent options would be to argue that if we give an overarching and inherent moral status to beings on account of their ability to have certain capacities that we value and that it would be impossible to lose dignity. That account of dignity would not easily justify euthanasia because there cannot be a reason that trumps dignity, as the status we value highest cannot be traded off against something lesser like the relieving of pain. The problem people could have with this account is that it is paternalistic, it does not value autonomy in a way that people are allowed to act against their autonomy. A person may not act against the capacity that made that act possible. The second problem people would have is that this account would have problems to justify euthanasia in cases where it is hard to see how death is not the better option.

Another plausible option is to understand human dignity in degrees of moral statuses that correspond with the degree of actualisation of the valued capacity. We can see this in some

59 Shalowitz, I. Garret-Mayer, E. et al. "The accuracy of surrogate-decision making" (Arch Intern Med, Mar 2006; 166:) p. 493.

way with Beyleveld and Brownsworth. Actual agents have full rights, because they can set actual valued purposes and they have a right that these purposes are not hindered. Partial agents have the same kind of rights as actual agents because it is still derived from the same valuation of dignity but have less rights. To make this more clear with an example, an actual agent has critical interests and can act on those, we respect these choices in such a profound moral way that we acknowledge that people have a *right* to make these choices this is what we understand as the respect for human dignity. Partial agents who cannot set critical interests still have experiential interests and corresponding rights to those interests for example to clean them or quench their thirst. This is derived from the same concept of human dignity but adapted to the number of rights we can acknowledge. This account is able to justify euthanasia and not likely to allow involuntary euthanasia on account that persons cannot lose their dignity. The value attributed to choice still leaves us options to justify the ending of life. If the valuation of human life is measured in the way persons choose to live their life and make it worthwhile we could theoretically justify acting upon the choices a person would have made.

These two options arise from the difference in emphasis on actualization of the capacity or ability of the capacity and these options conflict. The best solution to this conflict is to recognize the option that is preferable. From the analyses of capacity based dignity and the different problems we have the tools to solve this conflict. Ultimately we can argue that the actualization of choice is more valuable than the mere capacity. The emphasis on actualization is to be preferred over the passive possession of the capacity. We can argue this from what we have read in a previous paragraph, for if we argue that a certain capacity gives human beings their moral status of having dignity we would just be paying lip service to the capacity if we didn't value the actualisation more.

Conclusion

The concept of human dignity has over the years become an important topic in bioethics. Because ultimately questions that revolve around human life will have to explain the value of human life and its moral significance. This is the domain where human dignity has its place. But as someone interested in the concept of dignity quickly will see it is not a concept without controversies. The most common critique on human dignity is that it is presumed to be vague and able to cripple bioethical discussions. Because authors often use human dignity as a moral dividing line, it is the concept that protects the most valuable in humans. When someone argues that something goes against human dignity it is often understood as a knockdown argument, a conversation stopper. Therefore human dignity was frequently understood as an argument against certain technological possibilities in bioethics, under which euthanasia.

This use of human dignity gave dignity a bad reputation among the more liberal bioethicists who want to argue for options as euthanasia.

After I explained the theories of human dignity of Kass, Dworkin, Velleman and Beyleveld and Brownsworth we have seen that the four contemporary influential authors all base human dignity in a capacity they believe to be the most morally relevant and valuable in humans. We have ruled out a pure biological foundation of human dignity. The other viable option was human dignity constituted between human beings, a social interpretation of dignity. Unfortunately I did not have the space and time to look further into this option but I believe that this notion is less common than capacity based human dignity. The most apparent problem for capacity based human dignity is the possibility of losing the capacity that constitutes dignity. We have seen that there are two possible answers to this question, either dignity is lost together with the capacity or we retain dignity no matter what. When you argue that dignity can be lost it is hard to argue against the justification of euthanasia on account of human dignity, so in that case the most plausible option is something like the theory of Velleman which I have shown to be problematic. The more plausible options are thus in the answer that we cannot lose dignity. Under capacity based dignity we can distinguish two different notions, one with an emphasis on actualisation of capacity and one on the ability to have the capacity. Both are able to give a convincing explanation how we can

retain dignity when the capacity is lost. With dignity as the ability of capacity it isn't necessary whether or not the capacity is actually there, dignity is attributed because a being is capable of having the capacity we so value, that is what gives the moral status. With dignity as the actualisation of capacity we can argue that dignity can't be lost because in a way choice is never lost, there is always something left to choose *for* someone who have lost the capacity to do so himself. Respecting is human dignity in that case is acting in a way that would correspond to who he was as a person.

In general dignity as the actualisation of capacity argues that euthanasia is justified on an account of dignity and dignity as the ability to have the capacity against the permissibility of euthanasia. Kass and Velleman's understanding of equal dignity is related to the latter notion whereas Dworkin and Beyleveld argue from dignity as the actualisation of a capacity. I have argued that dignity as the valuation of the actualisation of a capacity is more reasonable than dignity as the passive ability of capacity. If we value the capacity of moral agency or autonomous choice we value the fact that those capacities are acted upon therefore the actualisation is considered to be more valuable than the basic possibility. This gives us the possibility to justify euthanasia. On this account of human dignity people can choose against the necessary condition, namely life, of the ability to choose. Respecting this actualisation of a valued capacity is the human right to human dignity. This means we can justify euthanasia on an account of human dignity even when a person has lost the capacity that constitutes dignity, without the situation where *all* patients who have lost that capacity should be euthanatized. Now of course we are left with some questions on the table, one is the apparent inability of one third of surrogate-decision makers to predict what a person would have chosen. Nor is there elaborated whether human dignity can play a role in justifying other people's right to choose for someone as surrogate-decision makers. I think it is this more practical angle where the social dimension of human dignity can be interesting.

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