NOTRE DAME STUDIES IN MEDICAL ETHICS

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The purpose of the Notre Dame Studies in Medical Ethics series, sponsored by the Notre Dame Center for Ethics and Culture, is to publish works that specifically address contemporary issues in the field of medicine. The aim is to foster a systematic and rational discussion of medical ethical problems grounded in Catholic intellectual tradition and moral vision.
Dedicated to Elizabeth,

Who Made My Life Rich
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The subject of human dignity has received a fair bit of attention. Both the report of the President’s Council on Bioethics, *Human Dignity and Bioethics*, and the Vatican declaration *Dignitas Personae* have highlighted the idea of human dignity in the public eye while they have also raised important and difficult questions.1 “What exactly is “dignity”? What is “human dignity”? Do human beings have it innately, or only conditionally? Should human dignity matter to us? In these introductory remarks, I will suggest answers to these questions.

The collection of essays that constitute this book examine ethical issues related to human dignity. The chapters fall into four groupings. Chapters 1–2 treat the dignity of the human person and consider arguments from advocates of animal rights that it is unjust to accord dignity to all human beings while declining to extend the same rights to non-human animals. Chapters 3–8 address the procreation of human life (including issues such as “procreative beneficence”) and the immediate beginning of life (including issues such as ectopic pregnancy and fetal surgery). Chapters 9–11 focus on the end of life (including the issues of
treatment of PVS patients, physician-assisted suicide, and organ donation after cardiac death). The last two chapters attempt to defend the dignity of health care professionals who seek to serve others by following the dictates of their consciences. As a presupposition to treating all of these issues, it is important to ask whether the very concept of “dignity” has a useful place in contemporary ethical debates.

A number of recent works have analyzed human dignity. Perhaps the most polemical contribution is the article “The Stupidity of Dignity” by Steven Pinker, who argues against the usefulness of dignity as a central principle in bioethics. In addition to criticizing the ambiguity of the term “dignity,” Pinker sees three problems with making use of dignity as a principle of bioethics, namely its relativity, its fungibility, and its potential for harm. He therefore rejects the concept of “human dignity” in arguments about bioethics and proposes to rely solely on the notion of “autonomy.” Pinker first illustrates the problematic relativity of the concept of dignity:

First, dignity is relative. One doesn’t have to be a scientific or moral relativist to notice that ascriptions of dignity vary radically with the time, place, and beholder. In olden days, a glimpse of stocking was looked on as something shocking. We chuckle at the photographs of Victorians in starched collars and wool suits hiking in the woods on a sweltering day, or at the Brahmins and patriarchs of countless societies who consider it beneath their dignity to pick up a dish or play with a child. Pinker fails, however, to note that the concept of autonomy is also relative. The importance of autonomy in contemporary discourse can be traced historically to the philosophy of Immanuel Kant, who described it as the self-given law of practical reason shared universally by all rational beings. Kant himself considered it always contrary to autonomy to commit suicide for any reason, to lie with any intention in any circumstance, or to have sexual intercourse outside of marriage. Many contemporary philosophers, however, enlist autonomy as a justification for conclusions contrary to those drawn by Kant. If dignity cannot work as a central prin-
principle in bioethics because it is relative historically, autonomy cannot work as a central principle in bioethics for the same reason.

Pinker offers the fungibility of dignity as his second rationale for dropping dignity from the vocabulary of bioethics. He writes:

Second, *dignity is fungible*. The [President's] Council and [the] Vatican treat dignity as a sacred value, never to be compromised. In fact, every one of us voluntarily and repeatedly relinquishes dignity for other goods in life. Getting out of a small car is undignified. Having sex is undignified. Doffing your belt and spread-eagling to allow a security guard to slide a wand up your crotch is undignified. Most pointedly, modern medicine is a gantlet of indignities. Most readers of this article have undergone a pelvic or rectal examination, and many have had the pleasure of a colonoscopy as well. We repeatedly vote with our feet (and other body parts) that dignity is a trivial value, well worth trading off for life, health, and safety.5

Here again, Pinker fails to notice that autonomy is also fungible. Soldiers give up some autonomy when they enlist for military service. Employees give up autonomy when they sign contracts agreeing to perform certain services and to refrain from activities that constitute conflicts of interest. Police officers, FBI agents, and politicians relinquish autonomy when they swear to enforce the laws of our nation. Lawyers and psychologists give up autonomy by preserving confidentiality. Day care workers, parents of young children, and school teachers likewise diminish their autonomy in order to serve the young. Patients give up all their autonomy—at least temporarily—when agreeing to lose consciousness during surgery. Do the actions of these people reveal that autonomy is a trivial value, well worth trading for money, public order, confidentiality, the rearing of children, or health? Obviously, these considerations do not justify the conclusion that autonomy is a term that is not suitable for use in bioethical debates, so neither should similar considerations lead to the exclusion of the term dignity.

Pinker offers his third rationale for ditching dignity as an ethical value:
Third, *dignity can be harmful*. In her comments on the *Dignity* volume, Jean Bethke Elshtain rhetorically asked, “Has anything good ever come from denying or constricting human dignity?” The answer is an emphatic “yes.” Every sashed and be-medaled despot reviewing his troops from a lofty platform seeks to command respect through ostentatious displays of dignity. Political and religious repressions are often rationalized as a defense of the dignity of a state, leader, or creed: Just think of the Salman Rushdie fatwa, the Danish cartoon riots, or the British schoolteacher in Sudan who faced flogging and a lynch mob because her class named a teddy bear Mohammed. Indeed, totalitarianism is often the imposition of a leader’s conception of dignity on a population, such as the identical uniforms in Maoist China or the burqas of the Taliban.6

Pinker fails here, as well, to note that autonomy, too, can be harmful to society and to individuals. Desmond Hatchett exercised his sexual autonomy by fathering twenty-one children with eleven different women before the age of thirty.7 Similarly, Nadya Suleman, unemployed and unmarried, used in vitro fertilization to add eight more babies to her other six young children at home. Drug abusers exercise their autonomy to harm themselves physically and mentally. Politicians regularly exercise their autonomy to implement unreasonable taxes, unfair laws, and unjust wars for their own political gain. Indeed, misuse of autonomy arguably causes much more harm than misuse of dignity.

These *tu quoque* responses to Pinker are less than satisfactory insofar as serious questions can and should be raised about the definition, role, and importance of the concept of dignity in bioethics. Echoing Ruth Macklin, Pinker highlights the ambiguous ways in which the term “dignity” has been used in bioethical discussions. The ambiguity of the term is an important issue that deserves serious consideration, something that Pinker himself fails to offer.8 He also fails to notice that “autonomy” itself carries many meanings—autonomy as any self-initiated action, autonomy as informed consent, autonomy as the law of practical reason shared by all rational beings, autonomy as control, autonomy as authenticity.9 The difficulty of ambiguous use of words is not unique to the term “dignity.” Indeed, there is no term that cannot be used ambiguously. Admit-
tedly “dignity,” at this stage of common usage, seems even more prone to ambiguous usage than “autonomy,” but that is not sufficient reason to dismiss it entirely or to prejudicially abandon attempts at disambiguation.

How, then, ought we to define dignity? Daniel P. Sulmasy, OFM, has distinguished three ways in which the term is used in contemporary ethical discourse: dignity as attributed, dignity as intrinsic worth, and dignity as flourishing. Attributed dignity is the worth human beings confer on others or on themselves. For example, the dignity of a university president dressed in doctoral robes leading a solemn academic procession might be contrasted to the lack of dignity of the drunken bum sleeping face down on the beach. Attributed dignity comes in degrees and is at issue in many of the examples raised by Pinker.

Attributed dignity is to be distinguished from intrinsic dignity. Intrinsic dignity is described by Sulmasy, who writes:

By intrinsic dignity, I mean that worth or value that people have simply because they are human, not by virtue of any social standing, ability to evoke admiration, or any particular set of talents, skills, or powers. Intrinsic dignity is the value that human beings have simply by virtue of the fact that they are human beings. Thus we say that racism is an offense against human dignity. Used this way, dignity designates a value not conferred or created by human choices, individual or collective, but is prior to human attribution. Kant’s notion of dignity is intrinsic.

The beach bum and the university president both have intrinsic dignity as human persons that cannot be lost as long as they live. Intrinsic dignity is an essential characteristic of being human and does not vary according to race, religion, age, sex, birth, nationality, or handicap, or so I’ll argue later.

Dignity as flourishing consists in the excellence of a human life consistent with, and expressive of, intrinsic dignity. It accords with dignity as flourishing that human beings should be treated with respect, and violates human dignity as flourishing to mutilate and torture someone.
This simple, threefold disambiguation resolves the alleged contradiction of meaning claimed by Pinker. Slavery and degradation are morally wrong because they undermine someone's dignity as flourishing. However, nothing you can do to a person, including enslaving or degrading him, can take away his intrinsic dignity. Dignity as attributed reflects excellence, striving, and conscience, such that only some people achieve it by dint of effort and character. Everyone, no matter how lazy, evil, or mentally impaired, has intrinsic dignity in full measure, but not dignity as flourishing or as attributed. Once the three senses of dignity are distinguished, the concerns about ambiguity expressed by Pinker no longer obtain.

These three disambiguated senses of dignity will be seen to inform the different parts of this book. Some of its questions concern intrinsic dignity, in particular the issue of who has intrinsic dignity. Some concern dignity as attributed, for example, when someone treats another person as if they have no intrinsic worth. A number of questions bear on immoral actions that violate a person's dignity as flourishing. Unless otherwise noted, when I refer to “dignity” without further qualification, I usually mean intrinsic dignity rather than dignity as attributed or dignity as flourishing.

Even if we can successfully disambiguate the term, why is the principle of dignity important? Why should we employ it at all? My answer is that the concept of dignity does a better job than the concept of autonomy in describing and accounting for the intrinsic value of every human being. We are valuable not simply because of our choices, nor do we have value only while we are exercising our autonomy. We have value when we cannot choose due to temporary or even permanent disability. In his 2009 Tanner Lectures, “Dignity, Rank, and Rights,” Jeremy Waldron pointed out that in ancient times dignity was accorded in particular to persons regarded as royalty or nobility. Noble persons were accorded rights, privileges, and immunities in keeping with their elevated rank. At its best, says Waldron, contemporary society does not reduce the noble but rather elevates the commoner, making every single human person equal in rank (with its corresponding privileges and immunities) to the duke or the lady. Although these ideals are often imperfectly realized in our society, Waldron has a point when he writes, “we are not like a society
which has eschewed all talk of caste; we are like a caste society with just one caste (and a very high caste at that): every man a Brahmin. Every man a duke, every woman a queen, everyone entitled to the sort of deference and consideration, everyone's person and body sacrosanct in the way that nobles were entitled to deference or in the way that an assault upon the body or the person of a king was regarded as a sacrilege.”12 The term “dignity” captures the elevated status of the human person, every human person, better than most, if not all, other terms.

Pinker fails to see that autonomy cannot serve to justify the basic ethical principle he proposes: “Because all humans have the same minimum capacity to suffer, prosper, reason, and choose, no human has the right to impinge on the life, body, or freedom of another.”13 If autonomy were the basis for our rights (rather than the capacities named by Pinker), then in addition to denying rights to unborn human beings, Pinker would also have to exclude the severely mentally handicapped, the senile elderly, and newborns. Pinker’s principle that all human beings share the same basic moral immunity from harm is the same in extension, if not also in meaning, as the principle that all human beings have a shared, basic dignity. Unfortunately, Pinker practices an ethics of exclusion according to which some human beings are disposable material for the use of other human beings.

Do we have any reason for ascribing intrinsic dignity to all human beings? There are a number of ways to argue for the proposition that all human beings are endowed with intrinsic dignity and certain inalienable rights. The first is that our dignity should be based on who we are, the kind of being that we are, rather than on how we are functioning in the moment. Dignity should be based on our membership in the human family, rather than on any particular performative activity. Our functioning, whether it be understood in terms of our ability to experience pleasure and pain, our consciousness, or our intelligence, comes in many degrees. If we think that our individual value as persons is based on a degree characteristic, an “accident” in terms of Aristotelian metaphysics, then we cannot secure equal basic dignity and equal basic rights for all persons. We should therefore base our fundamental ethical judgments on the substantial identity of who we are rather than on any accidental
degreed quality. Because all human beings are endowed with the same nature as members of the same kind—*Homo sapiens*—they all share equally basic rights and dignity.

Don Marquis sees a problem with this argument:

Kaczor argues that the right to life must be based upon endowment, not performance. What people are capable of doing comes in degrees. This is incompatible with our commitment to human equality. Therefore, the right to life must be based on our endowment, on the genetics that we have in common with all other human beings . . . . One wonders why the right to life cannot be an equal right that one obtains by meeting some performance threshold, just as all students who pass their junior year[s] in high school have the equal right to enroll for their senior year[s], whether they passed their junior year[s] with flying colors or barely eked out passing grades.¹⁴

Important differences exist, however, between meeting the performance threshold for academic advancement and various performance accounts of personhood. First, in standards for grade advancement, there ought to be a nonarbitrary pedagogical relationship between what is to be learned in one grade and suitable preparedness for the next. By contrast, as I argued in *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*, there is no rational basis for determining which performance characteristic grants personhood to human beings (self-awareness, reasoning ability, sentience?) and what degree of that characteristic gives moral worth.

Second, if a degreed characteristic grants moral status, then it would seem to follow that the more you have of the valuable characteristic, the more valuable you would be. The junior who barely passed and the junior who earned a 4.0 both count equally as seniors, but they do not count equally in terms of their academic achievement as students. Likewise, performance-threshold accounts of personhood can establish that two normal adults both count as persons, but given vast human inequalities in degreed qualities (self-awareness, intelligence, etc.), such accounts cannot establish that any two particular individual adults have *equal moral worth* as persons, and hence equal rights.
Third, threshold accounts arbitrarily exclude some humans from having rights but include others. Take any degree property that allegedly gives someone a right to live, such as self-awareness, sentience, or intelligence. Intelligence comes in many degrees, and the threshold view holds that once a human being reaches a certain degree of intelligence then he or she has a right to life. Due to mental illness and cognitive disabilities of various kinds, the degree of intelligence among individual human beings varies widely along a continuum. Xavier is an adult human being who just barely achieves the threshold degree of intelligence, but because he “barely” or “only just” clears the threshold, he has a right not to be intentionally killed. Yolanda, another adult human being, has only a fractionally lower degree of intelligence than Xavier, but because of this tiny difference she does not have a right not to be intentionally killed. The difference in intelligence between Xavier and Yolanda is infinitesimally small; yet the threshold view holds that we may treat them in radically different ways. This is arbitrary. A trivial difference between the two cannot justify a radical difference in treatment. By contrast, advancing a student who barely passed and requiring the failed student to repeat a grade is not treating the students in such radically different ways. Both continue their education, albeit at different grade levels. We should, therefore, reject threshold views of basic human rights, even if the threshold views makes sense in other contexts where less radical consequences follow.

Another way of justifying human dignity is in terms of the orientation of all human beings towards rationality and freedom. Unlike other species, human flourishing is achieved by means of and partially constituted by human freedom and reason rather than mere instinct. The flourishing of human beings, but not non-human animals, necessarily involves freedom and rationality. The moral goods are also partially constituted by human reason and freedom. Because all of us as human beings are ordered to these moral goods, human beings are also moral agents in a passive sense; that is, they should be respected as moral agents when they are on the receiving ends of actions, even when they are not at that time or even at any time actually performing actions as moral agents.

I presuppose that it is wrong for other agents to intentionally inhibit your flourishing in any significant way. This is true not simply for you
individually but universally for all others who share a flourishing like yours: an ordering to goods such as friendship, knowing the truth, and moral integrity. Because all human beings share the same basic way of flourishing, and because it is wrong (aside from just punishments) to intentionally inhibit this flourishing in you or anyone whose flourishing is like yours, it is wrong to intentionally inhibit the flourishing of any human being. If this judgment is correct, then all human beings—sharing as they do in having flourishing-like-yours—have basic moral status and dignity.

Marquis critiques this way of justifying the thesis that all human beings should be accorded moral status:

Kaczor’s strongest argument appeals to what he describes as the orientation of all human beings toward freedom and reason. The virtue of this move is that it gets our values into the account of the basis for our rights. The trouble with this move is that either this orientation is entirely a matter of the genetics that make us members of the human species or it is not. On the one hand, if it is just a matter of our human genetics, then, perhaps, it may yield the equality of all human beings. The trouble is that some individuals who are genetically enough like us to be counted as humans, such as the irreversibly unconscious, are not capable of freedom and reason. It is true that the irreversibly unconscious are not capable of freedom and reason, but my argument was not based on capability or potentiality either immediate or remote. Capability for freedom and reason is not equivalent, in meaning or extension, to orientation towards freedom and reason. The orientation towards freedom and reason is not abolished in irreversibly unconscious human beings, though this orientation is frustrated by disease or injury. Indeed, it is precisely the orientation to freedom and reason of all human beings that makes it so tragic when injured human beings cannot pursue distinctively human goals. The illiterate man is tragically deprived; the illiterate ape is not. This concept of flourishing plays a similar role in my justification of human dignity and universal human rights as the “future-like-ours” plays in Marquis’s own justly famous essay on abortion. I am disappointed that Marquis did not no-
notice the parallels between his view and my own view (both of which are non-species specific) in the following passage of the book Marquis was reviewing. I wrote:

Aside from just punishments, it is a violation of your rights when someone intentionally undermines your flourishing or what is necessary for your flourishing. To kill you is to undermine . . . your flourishing because being alive is necessary for you to flourish and is itself partially constitutive of your flourishing, so it is wrong to kill you. This is true not simply of you as an individual but of all others whose flourishing is similar to yours. So, it is wrong to kill any other being who shares flourishing-like-yours. This norm then would exclude the intentional killing of all innocent human beings and any other being sharing flourishing-like-yours.¹⁷

My account secures the right to life of irreversibly comatose human beings whose flourishing is like ours, but whose flourishing is greatly compromised by their unfortunate disabilities. If this argument is correct, then it is incumbent upon people of good will to aid, rather than harm, human beings with such disabilities. This choice is relevant for issues to be discussed later in this book including physician-assisted suicide, organ donation, and provision of nourishment to those who are permanently unconscious.

This argument brings us to the overcommitment objection to universal human rights and dignity. Marquis writes:

The claim that all human beings have a serious right to life seems to imply that a human being who is in an irreversibly unconscious state, such as an anencephalic child or someone who has experienced severe trauma to her brain or is totally brain dead, has a serious right to life. It certainly seems counterintuitive to suppose that it would be as wrong to end the life of such a human being as it would be to end the life of you or me.¹⁸

I do believe that human beings who are permanently unconscious retain their intrinsic dignity and basic human rights. “Total brain death” is a
different matter, because if (it remains a disputed matter) brain death truly is death, then there is no human being in such a case, but rather only a corpse with residual activities resembling life. Such entities, being already dead ex hypothesi, cannot (as a matter of metaphysics rather than ethics) have a right to live.

Brain death aside, Marquis is correct that killing you or me is worse than killing a permanently unconscious human being, but one need not deny equal basic human rights to come to this conclusion. In addition to violating the right to life shared equally by all innocent human beings, killing us also thwarts our future plans and makes it impossible for us to fulfill our duties. These additional circumstances add to the depravity of intentionally killing the innocent, but are missing in cases of human beings who are permanently unconscious. In a similar way, an ordinary person has the same right to life as an important politician has, yet political assassination is worse than garden-variety murder. Assassinating a president or prime minister is worse than murdering an ordinary person due to the greater political and social repercussions of the killing, yet the right to life of every innocent person is equal.

Marquis provides no argument to justify his assertion that permanently unconscious human beings should not be respected, but merely appeals to an allegedly shared intuition that permanently unconscious humans do not have an equal right not to be intentionally killed as you or I do. So, let’s change the case. A woman has a right not to have sexual intercourse without her consent. It is obvious, therefore, that a hospital janitor who rapes an unconscious woman does wrong, whatever the duration of her lack of consciousness. But if a permanently unconscious woman retains her right not to be raped, then her neurological condition does not result in the loss of her basic human rights, so she would also retain her right not to be intentionally killed, a right she shares with her brothers and sisters who are in utero or who are in the last stages of life.

Marquis’s critique of the case for universal human dignity does not succeed. It is certainly not, as Marquis describes it, “the Catholic view” in any sectarian sense. It can and has been endorsed by people of good will of a variety of faith traditions and of no faith tradition. It is the view endorsed by the 1948 United Nations Declaration of Human Rights: “Ev-