

## *Chapter 4*

# **EQUALITY, DIGNITY AND DISABILITY\***

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### **INTRODUCTION**

**I**t is an honour and privilege to deliver a lecture in a series bearing a great poet's name. More still for myself as a philosopher, for philosophers among poets are as elephants among birds — heavy and slow-moving with a focused gaze while the bird flies high and takes in all in a swoop. Before we plod through the difficult terrain on which I want to set out, the possibility of dignity and equality in the face of disability, frailty and dependency, we can soar with this poem and glimpse a view godlike.

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**ST KEVIN AND THE BLACKBIRD**

And then there was St Kevin and the blackbird.  
 The saint is kneeling, arms stretched out, inside  
 His cell, but the cell is narrow, so

One turned-up palm is out the window, stiff  
 As a crossbeam, when a blackbird lands  
 And lays in it and settles down to nest.

Kevin feels the warm eggs, the small breast, the tucked  
 Neat head and claws and, finding himself linked  
 Into the network of eternal life,

Is moved to pity: Now he must hold his hand  
 Like a branch out in the sun and rain for weeks  
 Until the young are hatched and fledged and flown.

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And since the whole thing's imagined anyhow,  
 Imagine being Kevin. Which is he?  
 self-forgetful or in agony all the time

From the neck on out down through his hurting forearms?  
 Are his fingers sleeping? Does he still feel his knees?  
 Or has the shut-eyed blank of underearth

Crept up through him? Is there distance in his head?  
 Alone and mirrored clear in love's deep river,  
 'To labour and not to seek reward,' he prays,

A prayer his body makes entirely  
 For he has forgotten self, forgotten bird,  
 And on the riverbank forgotten the river's name.

*Seamus Heaney*

To bring the poem more directly to bear on our subject, think of the blackbird giving birth to one young chick who never flies away, a child with disabilities profound enough to remain forever dependent, and of St Kevin, in his care for the bird, as a metaphor for all those who find themselves 'linked into the network of eternal life' in their unbounded love of a dependent person and their own submission to the demands of such a love.

The image of St Kevin stands in stark contrast to perils of our times, perils to our world and the possibility of equality, dignity and care. We perhaps have never had so much global inequality. How does one talk about care, disability, equality and dignity when in parts of the world small metal coffins are regularly wheeled into hospitals in an awful spectacle of indignity as one infant after another succumbs to AIDS? When bombs daily make of so many able people, disabled people? When care cannot stop the insanity of war, the despotism of tyrants, or the greed of the powerful?

### **A HOPEFUL STORY**

Yet if this is the worst of times for many, it is a time of hope and possibility unparalleled for some who, just a short time ago, have been consigned to the garbage heap of human history. Hope resides in small details. In this same unjust and frightening world, I recently enjoyed a sense of optimism that we can do better than we have done for those who are vulnerable, for those who have been treated with indignity, for those who have been treated without regard for their equal humanity. So it is with a hopeful story that I will begin, and ask us all to hold in abeyance, at least for a brief while, the dark mood of the world at this moment.

A lovely young woman of 32, with bright beautiful eyes, an enchanting smile and wonderful disposition recently moved into one of a cluster of small homes run by an agency priding itself on excellent care and maximising the lives of multiply disabled persons. As she is wheeled out of the bathroom, wrapped only a towel, and brought back to her room, the director of the agency

walks in and is dismayed by what she sees. Although the young woman is entirely draped in her towel, the fact that her room is so close to the public area of the house and that she had to be wheeled out through a corridor that was somewhat far from her room displeased the director. She insisted that a room further back, one that afforded the resident more privacy, be transformed from an equipment room into one that was suitable for occupancy and that the room close to the public area serve instead for equipment storage. The agency head explained that having this young woman wheeled through a corridor where young male residents and staff could encounter her, where the public area near her room was close to the lounge and dining areas, was an offence to the resident's dignity. Her bodily privacy was insufficiently respected, and so her dignity was slighted. In short order, the room was prepared, the young woman moved and respect for her dignity prevailed.

The young woman in question has severe mental retardation and cerebral palsy, cannot speak, walk on her own, or care for herself in even minimal ways. Now at the age of 33 she remains entirely dependent. This very social and affectionate young woman is a great hit at her new residence. She loves music and water play and has, in most ways, a wonderful life. This is Sesha, my daughter, about whom I've already written much, and will no doubt write much more before I stop writing altogether.

As I witnessed the event I described, I marveled at the director's sensitivity, yet wondered what exactly she was thinking when she identified this incident as one in which Sesha's dignity was insufficiently respected. For as Sesha does not walk unassisted, nor talk, nor feed, wash or clothe herself, others constantly manipulate her body. In fact, she experiences little bodily privacy. As she cannot speak, she cannot protest certain actions she is meant to undergo — her means of refusal are few as are her capacities for expressing needs and desires. Nor can she explain her actions to those who are responsible for her. Those who care for her or attempt to teach her cannot be sure what abstract notions she understands, or even exactly what in their speech she com-

prehends. While she is sociable and responsive, her limitations in communication make much of what goes on in her mind opaque to those around her. What they project onto her and what is really her own experience cannot but remain conjectures. Since it is entirely conceivable that *Sesha* may in fact not have experienced the occasion as a slight to her dignity, what exactly, one might ask, did the director see as the violation?

With these questions in mind, I wish to begin a meditation on dignity. Why speak of dignity when the topic of this lecture is equality? Because, it is arguable, that people's demand for equality — whether of rights, resources, opportunity, welfare, capabilities — is, at bottom, a demand to be accorded the equal dignity due to all.

### THE DIGNITY OF PEOPLE WITH DISABILITIES

In the human quest for equality and dignity, those with disabilities have been among the most recent to demand their full measure of both. The exclusion of women and of people of dark skin, first justified on grounds of their 'natural' inequality and their difference from white men, has come to be recognised as artificial; and their putative inferiority itself has been understood as the product of an imposed social and political inequality. Until recently, impairment alone has seemed indubitably a 'natural' source of inequality — quite unlike the arbitrary social disadvantage of class, gender, or race.

Disabled people have convincingly argued that disability is itself a social, not a natural, category. Human beings come in a variety of forms, with different capacities and incapacities, abilities and disabilities, strengths and frailties. Some of the variants are distributed over a lifespan, some are attributes distributed differently by birth or by circumstance. Neither the fundamental equality nor the fundamental dignity of humanity is impugned by these variations. The disability that is associated with bodily impairment derives from a social world which privileges some bodies over others, some minds over others, and in doing so, constructs a

world which allows human capacities to flourish in some but not in others. The idea that disability is the consequence of social prejudice and a failure of social responsiveness to requirements of variant abilities and bodily demands has now come to be known as the social model of disability. Given adequate support and access, people with disabilities can live lives that are as full and as worthy as those whose bodies are not similarly impaired.

People with sensory impairments, those whose bodies do not conform in size or shape to what is 'species typical', persons with AIDS and other debilitating illnesses, even people with mild retardation and certain forms of autism have demonstrated their ability to maintain self-sustaining employment, to live on their own, to have families, to exhibit leadership and to produce objects of artistic merit — in short to live 'normal' lives. They have, in other words, demonstrated that with adequate support, accommodation, lack of prejudice, people with disabilities can live fulfilling and satisfying lives.

If equal dignity is due to all human beings by virtue of their capacity to create themselves, as Pico della Mirandola (1996) maintained, or by virtue of their ability to behave as moral autonomous agents, as Immanuel Kant (2002) argued, or as self-respecting members of a society characterised by just principles of fair social co-operation, as the political philosopher John Rawls (1972) would have it — people with disabilities have manifested their full entitlement to such dignity.

And yet, even the most accomplished individuals who have significant disabilities do not yet feel fully welcomed in this world. To illustrate this point, Nancy Mairs (1996), a writer who has multiple sclerosis and is a wheelchair user writes: 'The world as it is currently constructed does not especially want — and plainly does not need — me in it' (Mairs, 1996, p. 87). She goes on to say that she is ready for the rush of reassurances but that these are not what she seeks just now. Instead, she says 'she wants to change the world.' She continues:

I'm willing to start small. With your house, for instance. . . . To begin with, could I get onto the front porch to ring the door bell? Probably not. I can't even get into my own since there are several steps from the street and several more to the porch itself. [She enters through a side door that they have been able to ramp] . . . Presumably, if I can get into it, you will open your door for me, and I will roll in. Front doors are generally wide enough . . . but interior doors are often not wide enough. Can I for instance fit into the bathroom? . . . But never mind. The toilet will be low and without grab bars I won't be able to transfer on and off anyway. Just don't offer me any liquid refreshments. Well, you get the idea (Mairs, 1996, pp. 87–88).

Despite legal guarantees and antidiscrimination laws afforded disabled people in certain democratic nations, it remains a crucial task to argue vigorously for policies that insure the full measure of equal dignity to people with all forms of disability. (Not being able to use the toilet in homes you might visit is not merely an inconvenience; it is an indignity.) Enabling the exercise and development of the capacities of people with disabilities makes different and sometimes more exacting demands on society than those made by the able-bodied, but any society that is committed to the equal dignity of its members must be committed to providing resources for disabled people to participate in all areas of human life. There is no moral basis on which to refuse the means to live a life with dignity to those who have the appropriate attributes. (See Montagu's discussion of the Elephant Man (1971) based on the case of Joseph Merrick (1862–1890).)

In most cases of physical disabilities, familiar arguments for dignity that are based on the capacity for reason and rational choice suffice to make the argument for the equal dignity of people with these disabilities. Yet there are those, such as my daughter, who are not so easily incorporated into any of the characterisations that usually serve as the ground for demanding equal considerations of dignity. There are people with disabilities such as my daughter's who, no matter what resources are made

available and no matter what prejudices are banished, will be (seemingly, at least) incapable of fashioning their lives as they see fit; who do not evidently exhibit the capacities to engage in moral practical reasoning (Meyer, 1987, 1989); and who cannot function reciprocally in a scheme of social co-operation (Rawls, 1972, p. 302). And yet they can experience human joy, human relationships, benefit from habilitation, from artistic experiences and so forth. They can give and receive love — even if it cannot always be manifested in usual ways. Still people such as Sesha can never be independent and productive and it is not at all clear that they can ever be moral agents. Will the world ever want or need them? In my mind and in the director's it is clear that they ought to be welcome and are due the dignity of persons. But what reasons can I provide?

## TWO CONCEPTS OF DIGNITY

I asked earlier: why speak of dignity when the topic of the lecture series is equality? But one may likewise ask why speak of equality if our subject is dignity? Equality is something that refers us to a measure, to something we may have more or less of. For instance, we can have more, fewer, or equal rights. While we may have to endure conditions that are more or less in violation of our dignity, by equal dignity I mean a dignity that is equally due to each one of us. Dignity on this view is something singular. In contrast to equal dignity there is another sense of dignity and this is a notion of group dignity to which individuals in the group may be more or less entitled.

Human beings, for example, may be said to have dignity as a species. We can point to the extraordinary Oriental manuscripts in the Chester Beatty Library or the Book of Kells which can be viewed in Dublin and say that a being capable of such heights is due a dignity that distinguishes human beings from all other natural beings. But this, of course, does not mean such lofty achievements are within the reach of each and every human. This group-based dignity is at times associated with what has been



called a 'constraint view' of dignity (Beyleveld and Brownsword, 2001, pp. 29–46). Because of the properties that lend dignity to the group, certain things must not be done to *any* member of that group, whether or not they themselves possess the valued properties. Such a concept might also speak against tampering with the genetic properties of the species — even if no particular human being would be injured by the action.

In contrast, the notion of *equal* dignity insists that human dignity inheres in each and every human being to the same degree. If each human being has intrinsic worth in and of oneself, there is no more or less. In the group sense of dignity, it matters little that some persons fail to have the capacity upon which the claim for human dignity is based. But in this second sense, it does matter. At least since the enlightenment, with its call for equality, it is the latter sense of dignity, what I am calling 'equal dignity', that has held sway. Equal dignity has held that an attribute or property — generally taken as one other than mere biological membership — serves as the basis of human dignity and that this must be an attribute possessed by all (at least at some threshold level), and only those to whom dignity is attributed. Moreover that attribute is deemed relevant in some way to the dignity that is being touted and that insofar as possession of the trait is relevant, it is possessed by all to an equal degree. The inherent worth that is identified with dignity is frequently extended not only to those persons capable of exercising the dignity-based capacities, but also to those persons not yet capable of them — who have them only *in potentia*. It is also extended, although with less consistency, to all who once possessed them, but have now lost them — elderly persons with dementia or accident victims in a coma, for instance.

This sense of *equal dignity* is generally aligned with an understanding of dignity as 'empowerment' (Beyleveld and Brownsword, 2001). As dignity is based on a certain capacity or capability, to treat someone with dignity is not merely to refrain from doing certain things to them, but involves allowing them to exercise that capacity or capability.

## THE CHALLENGE OF SEVERE MENTAL RETARDATION

Yet Sesha and others who live in her residence never will and never have had these capacities. Must we still accord persons with such disabilities a full measure of equal dignity? Does dignity in their case mean anything other than prohibiting certain actions that undermine the dignity of humans taken as a group? I believe we do have the obligation to accord equal dignity to Sesha and others with severe cognitive disabilities and that the dignity due her is the equal dignity due to us each. Insofar as human dignity connotes the inherent worth we have as human beings, it must as Vlastos remarks, be a 'concept of value attaching to a person's individual existence, over and above his merit . . . the value persons have simply because they are persons' (Vlastos, 1962, pp. 43ff). This 'individual human worth' each person possesses must be 'performance invariant', and so, I would suggest, must equal dignity be performance invariant (Thomas, 1979, p. 540). The reason why even the most cognitively impaired individual is due such dignity reveals, I propose, a more profound basis for human dignity than those purported by views of the sort discussed thus far, for as Montaigne maintained 'every man bears the entire form of the human condition' (Montaigne, *Essays*, Book III, Ch. 2, cited in Valadier, 2003, p. 54. See the discussion that follows with Valadier, 2003 and also Harris, 1997).

Paul Valadier is a theologian who holds that dignity is understood not in actions of a rational autonomous agency but in instances where one person, for example, the Biblical Good Samaritan, aids another who lacks dignity. He maintains that the one who provides assistance cares little for the presence or absence of attributes such as rationality and autonomy in the one he aids. Yet it is not entirely clear to me that the cases he cites are not ones in which the person giving succor is not projecting such attributes on to the one he aids, holding the person who apparently is without dignity as possessing the potential for the traits conventionally taken as the sources of dignity.

## THE ROLE AND LIMITS OF CHOICE

Similarly, we need to ask in the case of our example whether the director might simply be projecting unto Sesha the feelings a person with the requisite capacities might have — say those of a non-disabled young woman of her age might have under analogous conditions. If so, how would this play out in our considerations of whether Sesha, who may not possess these traits, even as a potentiality, should be said to possess a dignity that ought not to be affronted? To consider this, imagine an analogue of Sesha who does possess the requisite capacities and who may have modeled the director's considerations. Let us imagine that the analogue lives communally in a coed situation. She might well have been embarrassed by having to walk through a corridor where her housemates and their visitors could see her wrapped in a towel. Such might be the image that animated the director's judgement. But can we in fact conclude that this analogue would have felt the sting of indignity in this situation. Perhaps she would not. This young woman, we'll call her Abby, could choose to dress in the bathroom before she came out, or not live with men and women. She might not value bodily privacy much. Only if she valued her modesty highly, had not chosen the mixed male and female accommodations, and had little choice but to make the trek down the hallway draped in a towel, might she have felt her dignity compromised.

Notice how often the capacity for choice is invoked. It appears that we deny people dignity to the extent that we place them in circumstances in which they are denied the possibility of making choices that they may have made in situations more under their control. For a functionally capable Abby the range of choices seems more or less equivalent to their ability to live with dignity.

If the young woman who serves as the comparison case has severe physical impairments, such as quadriplegia, but no cognitive deficits, we could say that her avenues for exercising certain choices would be more limited. Still to the extent that her caregiver's actions transparently reflect her autonomous choices, her

dignity can be recognised and respected. But observe that here her own choice-making capacity depends, first on having someone who can provide her with needed services, and second on such a person not interjecting her own will as they carry out hers. Note that if maintaining dignity (that is to say, having others recognise one's dignity) depends on the possibility of autonomous choosing, the extent to which a caregiver can maintain her own dignity when she must bracket her own needs, desire and will to attend to those of the person for whom she cares is itself an important question to ask — but one that I only flag and do not attempt to address here.

Extreme poverty or a temporary illness may deprive someone of choice-making capacities as well. We sometimes condition ourselves to our circumstances so that we no longer feel the sting of indignity, although a third party may see a violation. Such conditions can be acquiesced to so that they infiltrate our consciousness, or they can remain exterior to our self-understanding. Even where we have to relinquish the possibility of living a life with dignity, we may still *bear* our circumstances with dignity. We bear our circumstances with dignity in the face of our *inability* to make the choices that could alter our condition. But already in the case of the quadriplegic Abby, we see that the availability of choice takes a backseat to some other considerations — ones that still need to be identified — in allowing a person to maintain her dignity.

In Sesha's case, it is not at all clear that making choices has any bearing on her dignity or lack of dignity — at least in this instance. Projecting such choice-making capacity is less likely something that was entertained in Sesha's case than in that of the battered man the Good Samaritan found on the road and attempted to restore. Yet if the capacity (if not the realised capacity) to make choices in the situation in question is crucial for ascribing to someone the right to equal dignity, the director, whether or not she was ascribing such capabilities to Sesha, was deluded in thinking that Sesha had a dignity that could be violated. While Sesha is capable of making choices — the situation we are considering is unlikely to be one in which she could make a choice.

But we should not be too hasty to conclude this. Sesha may desire to tell us her preference, but simply cannot; alternatively, she may have some sense of bodily shame, but it is just a vague discomfort. Again, she may be cognitively and emotionally capable of the awareness but because she is so frequently handled in intimate ways, she has developed a tolerance for such treatment. Still another possibility is that she truly is indifferent — because incapable — of experiencing the shame or embarrassment of being wheeled out in her towel. In all the cases but the last, it seems appropriate to impute to her the thought, ‘This is not how I want to be presented — this situation diminishes me and makes me feel ashamed and uncomfortable’. And so in all but the last, it seems that a rather standard analysis of dignity as respecting people’s choices because they are such beings as are capable of making rational choices will do. But not in the last case — not in the case that she lacks the self-conscious awareness of shame. Either there is no dignity to maintain, or dignity must be based on something other than the capacity to make autonomous decisions (see Goodin, 1982).

Now it may be sufficient to say that the director who objected to her treatment makes a wager. As long as there is any possibility that Sesha understands her situation, is self-conscious of her position, and would choose otherwise, it is worth the added measures to respect the most likely choices one can conjecture she would make. The director wagers that Sesha does understand and would choose as she (the director) says she would.

Perhaps, however, she makes her decision based not on such a conjecture, but on the view that irrespective of what Sesha understands, and by virtue of being a young woman who is capable of being exposed in such ways, it is a violation of her human dignity to be treated in this way. Note that this position is not so very different from the case of the impoverished Abby who no longer sees her condition as lacking dignity. Neither actively judge that their dignity is being affronted, yet a third party comes to make this judgement on their behalf.

Such third party judgements may be justified on what we referred to earlier as the 'constraint' view of dignity. As the constraint view proscribes certain treatment as incompatible with human dignity; that the person affected desires, dreads, or is indifferent to the treatment is beside the point. The constraint view is most uncontroversially invoked in situations where a person is unconsciousness or is no longer alive or in cases where the abstraction of humanity (cloning, for example) — apart from the impact a certain action may have on any given individual — is the subject of the offensive behaviour.

There are times when the constraint view clashes head on with the empowerment view because the persons involved deem the proscribed action to empower them in some significant way. For example, some dwarfs have chosen to engage in a game in which dwarfs are flung from one contestant to another. Many would consider such treatment as denying human dignity to dwarfs, and yet those dwarfs who choose to engage in the practice insist that given the scarce employment opportunities for dwarfs, this activity provides them with income and the satisfaction of employment necessary for them to maintain a life with dignity. In these cases a third party view may be suspect. But it is also true that some of the worst abuses habituate people to mistreatment. The consequence counts as among the worst violations of human dignity. Here we must rely on third party judgements that a harm has been done.

The constraint view may be helpful in explaining why we can invoke dignity in Sessa's case even if she herself might not feel violated. But the question still remains, why place a constraint on certain behaviour or treatment? What can we say about being a human that mandates this constraint? Another question that I raised earlier remains as well: is this the only sort of dignity that is due Sessa or is a dignity that is empowering also possible for her? The two questions are related, for if one lacks the attributes on which the group-based constraint dignity is based, then there are no attributes or capacities that must be empowered on the empowerment view of dignity. For example, Kant, who can be cred-

ited with the empowerment view — he spoke of rational agents as needing to be treated as ends in themselves because they were capable of self-legislation and forming their own good and consequently must not be used as mere means to someone else's ends — also spoke of duties that we have to ourselves even when failing our duties harmed no other person. These constraints on our behaviour, he maintained, are duties that respect the humanity within each of us. Similarly the neo-Kantian position of Rawls might be identified with such a capacity for practical rationality. Rawls speaks of persons as those due equality and he says, 'a person may be regarded as a human life lived according to a plan' (1972, p. 408).

### LIMITS OF NORMATIVE NOTIONS OF HUMANITY

I want to ask once again, 'In what does this humanity consist?' If we answer, as does Kant (or Rawls), in our power to be rational self-legislating agents, then it is not clear that humanity so conceived exists in my daughter and others with her capacities. Such views are not limited to traditional liberal positions. The contemporary philosopher Steven Lukes, who offers a socialist-inspired account of the basis on which we are to be accorded equal respect for our intrinsic worth based on rational capacity to form intentions and purposes (along with self-determination and ability to engage in valued relations and activities), says of the first capability, 'Obviously, not all exercise this capacity to an equal degree, but all, except the mentally defective or deranged possess it' (Lukes, 1975, p. 156). That using this ground as the basis for inherent worthiness excludes those with mental impairments does not provide him with a moment's hesitation in accepting this criterion.

Perhaps philosophers are merely self-absorbed — even narcissistic. We have a tendency to valorise that which *we* do — above all things. Maybe that is why the exercise of reason gets elevated to that which is the essence of what it is to be human in philosophical writings. In fairness to my colleagues, however, we all recognise that intellectual achievement of any sort is what is most

highly respected and rewarded in large segments of our society. Yet when I had my daughter — over thirty years ago now — I came to understand that reason, as fine a faculty as it is, is not what made life worth living, nor what made a life a human life.

One philosopher who has taken to heart the fact that those with cognitive disabilities should be squarely included within the human moral domain — who, while recognising the importance of reason, maintains that there is much more to a human life worthy of dignity — is Martha Nussbaum. She writes, 'Truly human functioning is animal through and through, and what makes for the specifically human dignity of this functioning is the combination of practical reasoning and sociability that infuse it' (Nussbaum, 2002, p. 35). Rather than focusing on our life as rational moral agents, she puts forward a list of capabilities which she maintains are critical for a human life lived with dignity. Nussbaum's views are relevant to the undertaking of this paper, for the capabilities approach, which she develops from the work of philosopher and economist Amartya Sen, is at once a response to the question of human dignity and to human equality.

Nussbaum's capability list is meant as a set of entitlements belonging to us by virtue of the fact that we are human. As such, I think it is a fine list, including things such as play, involvement with the non-human world, the exercise of the sense and the imagination, as well as engagement in political life, affiliation, bodily integrity and sexual fulfillment. She wants to say that we do people an injustice when we do not give them access to what they need to have these capabilities, at least to some threshold level of functioning. The capabilities list also serves as the basis of the human claim to dignity. In other words, it is because humans *can* have these capabilities that their life is a life worthy of a distinctively human dignity. It is the job of a just society to be sure that people can develop the capabilities they inherently have. (Importantly she also maintains that non-human animals have a claim to a distinctive animal dignity — something that St Kevin understood in the poem we began with, and a point with which I concur.)



Can a capabilities list at last include Sesha's life as a human life worthy of equal dignity? Can it recognise her right to equal dignity, not merely to the dignity derivative of group membership? As innovative as Nussbaum's work is, there is a curious way in which it falls short of finding a truly inclusive basis for human dignity, a basis that embraces Sesha and those with very severe cognitive disabilities. The list sets forth *a norm of human species functioning*, which includes items such as political life and practical reasoning among its capabilities. That the list constitutes a norm, I take to be an inference from the following passage:

The capabilities approach begins from a political conception of the human being, and a life that is worthy of the dignity of the human being. A notion of the species and the characteristic activities of a species does, then, inform it. [A]mong the many actual features of a characteristic human form of life, we select some that seem so normatively fundamental that a life without any possibility at all of exercising these, at any level, *is not fully a human life*; if enough are impossible. . . . (Emphasis mine, Nussbaum, 2002, p. 46).

Were the capabilities merely informed by characteristic activities of a species, that alone would not establish the normative nature of the capabilities. What gives it a normative character is rather the claim that without any possibility of exercising *all* of these (at least at some level of functioning), the life would not be a human life.

Furthermore, as Nussbaum makes quite clear elsewhere in the text, she is unwilling to dispense with any of the capabilities in favour of the development of any other. There are no trade-offs and no compromise on the need to realise them all. Furthermore, I would argue, the place of capabilities in Nussbaum's theory of justice requires that they have just that normative character. This norm again reinforces the view that Sesha and other people with very severe cognitive impairments stand outside of that norm. In so placing them outside the norm, their entitlement to the full measure of human dignity is once more thrown into question.

Nussbaum resorts to dealing with cases such as Sesha's by invoking tragedy. Sesha's life is a human life, but a tragic one because her situation is such that she can never achieve functioning of all the capabilities to some satisfactory degree. I believe that were Sesha capable of replying, she would remind us that people with disabilities have worked hard to insist that life with impairments, even serious impairments need not be 'tragic'. What is tragic is the failure of the larger society to include people with variant bodies and modes of functioning. Yes, when Sesha was born I had envisioned a different future for her. Yes, when I learned of her very significant impairments I saw a human tragedy. But I have since learned — from her, from the disability community and from my own observations — that she is capable of having a very good life, one full of joy, of love, of laughter: a life that includes the appreciation of some of the best of human culture, great music and fine food, and the delights of nature, water, the scent of flowers, the singing of birds. No, she cannot participate in political life, she cannot marry and have children, she cannot read a book or engage in moral reasoning, but her life is richly human and full of dignity. We need to work hard to see that her life is not tragic — and the actions of the director of the agency that runs her residence was doing exactly this when she protested a young woman being wheeled out into a public area wrapped only in a towel. (This director subsequently told me that the backdrop to the scene I described was her memory of the showering of residents in the large state institution for the mentally retarded where she worked *circa* 1960, where ten to twelve naked men were marched through the dormitory into a large room and unceremoniously hosed down.)

I believe that positing a norm of human functioning — any norm, you name it, where that norm is to serve as a basis for human dignity — will turn out to exclude certain people from the possibility of a truly human life, a life worthy of human dignity. If so, is it then hopeless to answer the question I posed? That is, is it impossible to provide a basis for human dignity? Is it impossible

to judge whether the director was saying anything meaningful when she insisted on treatment worthy of Sessa's human dignity?

### THE PROMISE OF CARE

I think not, but to find a meaningful answer I urge that we not look for the basis of dignity in attributions we have as individuals, but in the relationships we bear to one another. Philosophers have been on the right path when they have located human dignity in the possibility of a moral life lived out amongst fellow human beings. But I want to redirect that insight and say that it is not in the human capacity of rational practical reasoning that we find the ultimate source of our dignity but in a distinctly moral capacity to care — a capacity so beautifully symbolised by St Kevin's refusal to abandon the nurturing of life in his fellow creatures. Our dignity I want to argue now is bound both to our capacity to care for one another and in our being cared for by another who is herself worthy of care.

When we consider our moral life as characterised by our ability to engage in practical reasoning, we think of moral life only as it can be lived among fully formed and cognitively able adults. But as Alasdair MacIntyre (1999) has argued, we only become moral practical reasoners when we emerge from a period of dependency — one in which we require others to tend to our needs and to bring us to the point when such capacities can be developed. The moral virtues exercised by those who tend to us in our dependency are not always the ones that we are called to exercise as autonomous practical reasoners.

The virtue of care, the asymmetrical, non-reciprocal and partial devotion to another's well-being, which requires that one make oneself transparent to the other's needs, is a distinctive moral capacity. But if caring is not the same as acting according to the categorical imperative or utilitarian principle, it is nonetheless as peculiarly a human moral capacity as the exercise of rational moral autonomy.

This distinct moral power, a power coincident neither with the capacity to form our own vision of the good nor a sense of justice (the two moral powers identified by John Rawls), is inextricable from the fact of our inevitable human dependency and frailty. It is not only the case that few, if any, other creatures lavish the care on the young that humans do. It is also the case that no other creatures devote themselves to the care of the ill, the disabled and the frail elderly that humans do *as a matter of course*. Even if we can attribute the care we give our *young* to the biological imperatives of species survival, our caring for our *sick, elderly* and *disabled* has no such convenient biological justifications. While certain other species do exhibit a degree of caring for injured fellow creatures, the systems of care almost all human cultures have developed far exceeds anything else found in the rest of the natural world. Our caring for our young and for those who are ill, impaired or frail exhibits a moral capacity as characteristically human *and as worthy of human dignity* as moral autonomy, self-creation, or the ability to enter into contracts of reciprocal social cooperation.

Note, in touting care as a peculiarly human moral capacity, one which serves as the fount of human dignity, as I shall argue, I do not mean to say that *only* humans possess dignity. With Nussbaum, I would endorse the view that non-human animals and other living beings can also be said to have dignity. Furthermore theirs is neither a lesser nor greater dignity, for dignity I still insist does not admit of degrees. But the dignity of other beings is a dignity appropriate to their own forms of life. We can and should respect the dignity of other life forms, but that means respecting the distinctiveness of that life form. Respecting the dignity of tigers may mean providing them with the freedom to roam and to hunt for prey, while respecting human beings' dignity requires making certain that they have a sheltered place to live and restricting their predatory behaviour. And the care we give a tiger will of necessity differ from the care we lavish on an infant. St Kevin's care for birds' well-being and dignity required him to remain (painfully) still. Care of an infant rarely is met by remaining still. Thus when I speak of human dignity I mean to signal a spe-

cific form dignity assumes for those who are human, not to exclude other beings from the possibilities of a dignified existence.

What binds us in our caring relations is a deep sense of the irreplaceable and distinctive worth of each human being, of the life form we share, and of the non-fungible nature of the relationships we form with one another. Dignity is a feature that must be perceived in order to be. For dignity is a call upon another to recognise our intrinsic worth. That call requires a response, a witnessing, even if, as in cases of extreme oppression, the only witness is the internal witness that we have developed in ourselves as a consequence of the care we have had to have received in order to survive and thrive as best we might. In our relationships of care, we witness, recognise — and so confer — that dignity in another.

While it is true, as Alasdair MacIntyre has argued, that our capacity as rational practical reasoners is itself a consequence of the human exercise of caring for dependants (we cannot develop into moral reasoners without the extended relations of persons who see us through our youthful dependency and help us to form bonds of human fellowship), we should not reduce the distinctively moral capacity to care to a precondition for a more highly valued moral capacity of practical reasoning. We should also observe that the capacity to give care and to acknowledge the bonds forged through care to one are not merely a precondition for a 'proper' morality — characterised as practical moral reasoning. Giving and acknowledging care invoke a moral power through which we respond to the intrinsic value of each individual. It is the fountainhead of that worth.

### **THE DIGNITY IN BEING 'SOME MOTHER'S CHILD'**

We each have experienced care in our lives — even the most destitute among us — for without it, we cannot reach maturity. To characterise the worth each one derives from the investment of care of a mothering person, I have elsewhere invoked the aphorism, 'We are all some mother's child' (see Kittay, 1999). In the lo-

cutions 'I am also a mother's child' or 'He too is some mother's child' can be heard the claim that we are all equally entitled to what is due a mother's child. We utter these locutions when we want to remind our interlocutor (or ourselves) of the humanity of someone who seems to have been vanquished from our moral domain — the enemy we fight, the evildoer we want to punish, the homeless person living a life that is hardly recognisable as human, the inhabitant of a body noticeably twisted and a brain that only slowly takes in its world. We may say it even of ourselves when we have exerted ourselves on another's behalf and need to remind someone (perhaps ourselves) of our own need for care.

It is herein that I hear a claim to equal dignity, one that is an alternative to conceptions dominating philosophical discourse. It is a claim with both moral and political consequences. Unlike most claims to equality where we invoke some common property we each possess as individuals and from which we make claims to equal treatment, welfare, opportunity, resources, social goods, capabilities, rights or dignity, when I assert that 'I too am some mother's child' I invoke a property that I have only in virtue of a property *another* person has. One is the child of a mother only because another person is someone who mothered one.

Here the objection may be raised that this foundation for dignity may be as exclusionary as the criterion of rationality, for is it not the case that some infants are abandoned by their mother, sometimes to have their care taken up by another and sometimes not? There are, after all, motherless children. In reply, I want to say first, by mothering person I do not necessary mean a biological, or even an adoptive mother. I mean a woman (or man) who devotes herself (or himself) to, or takes responsibility for, the care of a dependent and vulnerable other, and who sees that other's well-being as central and enmeshed with her or his own. Second, I take it that the fact that infants who receive no care die very shortly after birth supports the claim those who survive have been recipients of care.

But, the objection may continue, what should we say about the infant who is abandoned and left to die? I believe we can make

two distinct answers. In the case of an infant who has not yet been taken into the human community, and no human within the community would have been prepared to take care of that infant, I think it is appropriate to say that the infant was not yet a bearer of equal dignity, the strong sort of dignity for which I am arguing, although we still may wish to say that the infant possesses the group dignity of which I spoke earlier. Within the circumstance of our own society, however, we do feel a degree of moral outrage at the abandonment of an infant, even if we can sometimes understand the adverse circumstances that led to the act. We want to say that the infant already had the intrinsic worth and ought not to have been abandoned. I think, however, that we can say this precisely because dignity requires a relation, and where there are those who *would have* cared for that infant — who deemed that neonate a member of the community by virtue of their own willingness to care for and about its well-being, here there was an affront to the dignity of the infant in the refusal of the mother to take up the care and to deny another the very opportunity to forge a relation of care with the infant. Rather than mere potentiality, we can invoke the actual willingness of some to take up the care and of others to care about the one who was denied care. (See Nelson on the concept of ‘holding one in personhood’, 2002, p. 41.) In fact, the counterfactual conditions invoked here can include the abandoning mother herself among the persons who would have cared for the infant were she to have found herself in more propitious circumstances.

Observe that to give the care a mother devotes to a child, or for that matter, any good caregiver devotes to another, is a most peculiar sort of relation. Here one subordinates or defers one’s own direct interests, wishes, desires and makes oneself an affordance for the fulfilment of the needs of another — in a manner that in other circumstances only a slave might do — or a saint who takes pity on a blackbird. One’s giving of oneself is frequently not reciprocated — often it goes without compensation. One gives care because of its intrinsic worth — and the only thing worthy of such efforts is another who in and of her/himself has intrinsic value.

The recognition of that value comes less through the attitude of respect — as in the Kantian kingdom of ends — as through the attitude of loving care. Respect too arises out of love, says Kant. But it is the abstract love of humanity. Care arises from the concrete love of a particular. This love, like its abstract counterpart, also gives rise to a duty — the duty to give care when care is needed. It is no less a moral attitude — though it is imbued with the partiality of a relationship of dependency rather than the impartiality of respect for a fellow practical reasoner. (See Sarah C. Miller, forthcoming. Miller speaks of not only our duty to care but to provide ‘dignifying care’.)

Giving care to another infuses that other with the worth of the one who does the caring — to do damage to the cared-for is also to violate the caring individual. The iconic representation of this fundamental connection between a mothering person and the fate of the individual she has mothered is located in the figure of the *Mater Dolorosa* where the suffering of Christ is imaged through the suffering of Mary. The widespread appeal of this image and of the use of the locution ‘some mother’s child’ cross-culturally is telling. It speaks to the relationship, forged through the care of a vulnerable dependent, and the value that this relationship imparts to the one cared for and the caregiver alike. This relationship is ubiquitous in human society and is as fundamental to our humanity and our dignity as any property philosophers have invoked as distinctly human, and thereby the basis of a distinctly human dignity.

What are the implications of this view of the relationship between dignity and care for the illustrative case we introduced — for Sesha and the instructions of the director with respect to her putative dignity — for disability, and for a notion of equal human dignity? I believe that casting the question of dignity in this way helps us to see the limitation of the choice-based view of dignity. Choice attains an importance in conceptions of dignity where our humanity is seen as embodied in attributes we have as individuals. This dignity emerges only in the exercise of that individual voice, that is, in choice. But a care and connection-based understanding of our humanity underscores patterns of connection that



may not be chosen. It underscores the need for a relation in which value is created through relationship. This is not a dignity that depends solely on the choice of the agent. Dignity instead gets defined outside the parameters of choice. Choice as such takes a less central role and is shown to have an illusory quality under certain conditions. (Notice, however, that this is a dignity that is not just a constraint on behaviour but a dignity that is no less empowering than dignity based on choice.)

Our analysis yields the insight that it is insufficient to see Sesha outside the connections that have infused her life with value — just as it is insufficient to see any of our lives outside these connections. Sesha, as much as anyone, is vulnerable to being turned into the object of a dehumanising stigmatising gaze when presented in a certain way. When we insist that she not be presented so, we recognise a worth that inheres in her — not because she is a being with the capacity for rational practical reasoning, nor even because she is a member of a group who, on the whole exhibit this capacity. To prevent the affront to her dignity is to see her as a being who has become who she is through the loving care of some mothering person(s) — person(s) who also embody intrinsic worth (I too am some mother's child). As we acknowledge her dignity, we forestall an affront to the dignity of those who care for and about her — that is, we validate the value of their care.

Relationships of caring serve as conduits of worth — the worth of the caregiver is conferred on the one to whom she devotes herself. Other relationships — except if they are entirely equal exchanges of regard — are essentially instrumental and the value that is thereby created is itself instrumental. But caring relationships at once confer and acknowledge, and so actualise, intrinsic worth.

The dignity that Sesha acquires when seen in her connection to others through relations of care directs us to a property she shares with all human beings in all their physical and mental variation. In locating the source of Sesha's dignity we may have identified the most appropriate source for the claim to equal human dignity. This is the dignity grounded in our common connection to others

in our need for care, in our dependency and vulnerability and in the worth actualised when other beings with intrinsic worth devote themselves to our well-being. In these terrible times of conflict, violence, devastating pandemics and impending war, perhaps we cannot do much better than to remind ourselves that each one of us, equally, is worthy of dignity, for we are all some mother's child.

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