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Human Dignity, Human Rights, and Global Bioethics

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ABSTRACT

This chapter examines the notion of human dignity in bioethics and focuses, in particular, on the potential contribution of human dignity for global bioethics. It is argued that the notion of human dignity in bioethics should be supported by the concept of human rights in order to establish a so-called cognitivist theory of dignity that can be used in global bioethical discourses. All in all, this chapter offers a systematic analysis of the role of human dignity in bioethics and highlights the pros and cons of the debate.

INTRODUCTION

The notion of human dignity is, without a doubt, one of the most controversial and lively discussed concepts in bioethics. The last seventy years are rife with intriguing approaches on how to understand the nature of human dignity and its relation to human rights in bioethics on many different levels. This includes legal documents, ethical guidelines, books, and research articles. The vast range of different views on (human) dignity is divergent and varies from “incoherent and unhelpful” to “illuminating and important” by virtue of the unclear ontological, epistemological, as well as moral and legal status of the notion of human dignity.

The consequence is that many bioethicists attempt to completely avoid “dignity-talk,” since they argue that this notion is—simply speaking—too vague, reactionary, and redundant to facilitate and enhance the bioethical debate in general and to solve complex cases in particular (e.g., Kuhse 2000, Macklin 2003, Cochrane 2009,

Pacholczyk and Schüklenk 2010). Furthermore, physicians and researchers occasionally claim that the appeal to human dignity (and human rights) complicates ethical reasoning and decision making in end-of-life cases, organ sales, genetic engineering/enhancement, design babies, cloning, and human-animal chimera.

The main goal of this chapter is to facilitate and enhance the debate with regard to a better understanding of the nature of human dignity in bioethics. The notion of human dignity is still vastly undervalued in particular by bioethicists in the English-speaking bioethics discourse (most notably in the United States) and should be examined in more detail in order to disclose its full potential. This chapter focuses on the potential contribution of the concept of human dignity (and human rights) in cross-cultural bioethics or global bioethics. The first part presents Ruth Macklin’s famous and acute critique on the (mis)use of the notion of human dignity in bioethics, while the second part provides different and challenging responses to her viewpoint.

Here, the crucial point is that human dignity is not equivalent to the principle of autonomy and respect for persons as Macklin claims but contains more features than she acknowledges (e.g., Killmister 2010). The third part deals with the vital issue of how the notion of human dignity and human rights can be used for bridging the gap between different and—sometimes very—diverse cultures. The chapter ends with some final remarks.

A CRITIQUE OF HUMAN DIGNITY: IS DIGNITY A USELESS CONCEPT?

The appeal to the notion of human dignity in bioethics has not been unquestioned by philosophers and bioethicists alike. The well-known bioethicist Ruth Macklin has argued in her famous editorial “Dignity Is a Useless Concept” in the *British Medical Journal* (2003) that “appeals to dignity are either vague restatements of other, more precise, notions or mere slogans that add nothing to an understanding of the topic” (1419).

Dignity is a useless concept and “seems to have no meaning beyond what is implied by the principle of medical ethics, respect for persons: the need to obtain voluntary, informed consent; the requirement to protect confidentiality; and the need to avoid discrimination and abusive practices” (2003: 1419). All in all, dignity can be regarded as equal to the principle of respect for autonomy. To support her hypothesis, Macklin refers to the following example:

An altogether different use of dignity in relation to death occurs when medical students practise doing procedures (usually intubation) on newly dead bodies. Some medical ethicists charge that these educational efforts violate the dignity of the dead person. But this situation clearly has nothing to do with respect for autonomy since the object is no longer a person but a cadaver. There may be reasonable concern about how the dead person’s relatives would feel if they knew that the body was being used in this way. But that concern has nothing to do with the dignity of the dead body and everything to do with respect for the wishes of the living. (Macklin 2003: 1419–20)

In her book, *Against Relativism: Cultural Diversity and the Search for Ethical Universals in Medicine* (1999), Macklin defends a human-rights approach based on her particular idea of moral progress. Even though she believes that “appeals to human dignity are not intuitively more clear than appeals to human rights. If anything, they are more obscure” (220), she also claims that “although the concept of human dignity can have a legitimate place in ethical discourse in connection with cloning, genetic manipulations, and other biomedical activities, more precision is required than simply asserting that ‘human dignity is violated’” (221). These statements seem—in general—more conciliatory than the pithy and rather pessimistic or negative in her editorial.

Admittedly, more work needs to be done in order to provide a more satisfactory definition of the notion of human dignity to enhance and facilitate bioethical discourses. The many rapid responses to Macklin’s editorial, however, show that her view has not been unchallenged for different reasons posed by laypeople, professionals, and well-known medical ethicists such as Arthur L. Caplan and Ann Gallagher. The following section examines various responses to Macklin’s position.

HUMAN DIGNITY IN BIOETHICS: A VALUABLE CONCEPT AFTER ALL?

Immediate Responses to Macklin’s Editorial

Admittedly, appeals to human dignity are often *vague* and *unclear*, so that medical ethicists might have the feeling that this concept is rather *useless* to facilitate and enhance debates in bioethics. Practically speaking, physicians and health care workers seem to know what human dignity means, even though they cannot define it in detail. For example, William H. Konarzewski, a consultant anaesthetist, claims that he is:

astonished that Ruth Macklin believes dignity is an unhelpful concept. It is regularly used on our intensive care unit and our doctors, nurses and the patients’ relatives have no problem understanding that a death with dignity means a death in which the patient is allowed to pass away naturally without unnecessary suffering or anxiety and without the encumbrance of tubes and catheters that distort the appearance of the face and body. We shall continue to allow our patients to die with dignity when it is plain that they are beyond the help of modern medicine. (Konarzewski 2003³)

Stanley M. Giannet, an affiliate assistant professor of psychiatry and behavioral medicine, argues:

The shocking reality is that without dignity, clinicians often develop a sterile stoicism towards the suffering and a needless aloofness or alienation from those they serve. Even worse, the absence of dignity as a core value in medical practice can lead to depersonalization where the patient’s identity and personhood are reduced to an insurance account number, hospital room number or a diagnosis. For instance, one of the most shocking

examples of this is when I overheard a nurse refer to a patient as “The urinary tract infection in room 306.” (Giannet 2003³)

Even if one is unable to provide a “perfect” definition of what human dignity really is, it is certainly true that one notices when people act without dignity.⁴ With regard to the cadaver example, Macklin claims that dignity would be the wrong concept on which to rely, since it has nothing to do with the autonomy of the person concerned because there is no person to be concerned with. Rather, there is a “reasonable concern” to consider the feelings and wishes of the relatives with regard to the proper use of the dead family member. I agree with Macklin that the appeal to autonomy is inappropriate in this case, but the important point is that it is not about autonomy but about the dignity of the dead.

It is widely accepted among people within living memory that cadavers can be violated in a way that their dignity is lost—for example, when they are not buried appropriately but exhibited in a degrading way such as in public display. The point simply is that there is a meaningful sense of dignity that has nothing to do with autonomy—for instance, the long history of funeral practices of humankind (see also Killmister 2010).

Arthur Caplan claims that nonautonomous persons (e.g., cadavers) and probably objects have dignity, if dignity reflects a moral status that moral agents assign to others. His general idea, however, is based on social contract theory in the sense that morality itself is based on a mutual contract between people. Dignity is a “moral creation” that concerns only “autonomous moral agents” (if one does not assign a special moral status to, for example, other nonautonomous beings such as fetuses, small children, comatose people, or the infirm elderly).⁵ Whether the notion of human dignity is entirely bound to a decision made by people, as Caplan claims, is not obvious and can be questioned as well. A brief response could be, as Gallagher puts it, that dignity acknowledges the worth of:

humans qua humans regardless of competence, sentience or body form. Without dignity, it seems, there can be little (if any) meaningful discussion about the rights and wrongs of the treatment of those deemed non-autonomous or non-persons. Dignity is not only a useful value it is, in fact, an essential one. (Gallagher 2004⁶)

Why Human Dignity Is Still a Useful Concept After All

Human Dignity Is a “Vague” Concept. Macklin (2003), and most recently Pacholczyk and Schüklenk (2010), believe that the notion of dignity is useless and should be avoided. Pacholczyk and Schüklenk claim in their 2010 editorial in the journal *Bioethics* that “despite the pervasive presence of appeals to dignity in medical ethics and the common use of this term in professional codes, constitutional texts and various human rights instruments, both the moral basis as well as the meaning of this term continue to remain nebulous at best” (Pacholczyk and Schüklenk 2010; Cochrane 2009).

Indeed, much of what has been proposed in the debate about human dignity is problematic by virtue of appealing to unjustified claims, but this does not mean that there is no valid argument that could justify to appeal to the notion of human dignity in bioethical discourses. Even if the notion is still “vague,” it does not necessarily mean that this is a disadvantage given that people usually have a good intuition or awareness about what is at stake without necessarily being in the position to explain the notion(s) they use in a precise way.

For example, to display the dead bodies of soldiers in a degrading way concerns the dignity of these cadavers because we *feel* that something is wrong to treat cadavers in such a way, even if they are not living beings. This line of argumentation has its root in common sense, which is more intuitive and often more vague than (analytical) approaches that use technical, precise, and defined terms and language.

The notion of human dignity, like most normative concepts, is to some extent “vague” and open to distortion. But it is far from being *useless*. Vagueness is not emptiness—it is possible to resist wholesale extensions of important notions, for instance, by using the language of rights, in particular human rights, in connection with dignity (see below). Macklin believes that “if human dignity is a vague concept, its basis for claims about human rights is even more obscure” (1999: 221).

Her point of view is not surprising, but I do think that her claim is premature and needs to be addressed in more detail by virtue of the importance of both notions in current bioethical discourses. A quick response could refer to her own approach with regard to her concept of moral progress. Here, she is more faithful concerning the problem of vagueness. Macklin states the following:

Admittedly, most of the key terms in the principles of humaneness and humanity are vague or denote qualities that are hard to measure, such as “sensitivity to” or “tolerance of” pain and suffering and “recognition of the universal worth or basic autonomy” of every human being. But even if the terms in which these two principles are couched are rather vague, the signs by which we know them in social and political life are clear and unmistakable. Behavioural and contextual evidence, as well as laws and rules that govern behaviour, are the signs. (Macklin 1999: 252)

The notion of human dignity can be known by exactly the same signs, and it seems arbitrary to be generous toward one’s own approach in dealing with vagueness while refusing to show the same patience toward other approaches. Even though this kind of behavior is quite common among scholars and is psychologically understandable to some extent, it is nonetheless inappropriate in a philosophical analysis. Furthermore, “vagueness” can be a true strength by being a universal tool or picklock that can be applied to different ethical contexts when it is done in a reasonable way—that is, by appealing to the notion of prudence (see below).

Human Dignity as “Respect for Persons.” The notion of human dignity is not limited to the idea of respect for persons (or autonomy), even though it is certainly one main point in describing the concept in more precise terms. But, as the above-

mentioned example of treating cadavers with dignity shows, the idea of respect for persons is too restrictive to cover our basic intuitions appropriately.⁷

James Griffin claims, instead, that human dignity consists in personhood or autonomy (and practicalities):

What seems to me the best account of human rights is this. It is centered on the notion of agency. We human beings have the capacity to form pictures of what a good life would be and to try to realise these pictures. We value our status as agents especially highly, often more highly even than our happiness. Human rights can then be seen as protections of our agency—what one might call our personhood. (Griffin 2000)

James Nickel (2007) has rightly criticized Griffin for using a too-restrictive notion of human dignity. He argues that it seems unlikely to generate, for instance, due process rights, rights of nondiscrimination, and equality before the law on the basis of personhood (Nickel 2007: 54). Therefore, Nickel “rejects the view of many that human dignity is found exclusively in human agency or autonomy” (66). He argues:

We can speak of dignity with reference to any particular feature of persons that has distinctive value (for example, their ability to suffer, their lives, their agency, their consciousness and reflective capacities, their use of complicated languages and symbolic systems, their rationality, their individuality, their social awareness). (Nickel 2007: 66)

Indeed, there is no methodological argument why the notion of human dignity should be restricted to the idea of respect for persons. As Robert Andorno puts it:

Beyond all the abusive rhetoric that may surround this notion, a careful analysis of intergovernmental policy documents relating to bioethics, and of the discussion that led to their adoption, puts in evidence that the recourse to human dignity reflects a real concern about the need to ensure respect for the inherent worth of every human being. The concern is far broader than simply ensuring “respect for autonomy” for the simple reason that it also includes the protection of those who are not yet, or are no more, morally autonomous (newborn infants, senile elderly, people with serious mental disorders, comatose patients, etc.). (Andorno 2009: 230)

Whether or not human beings have “an inherent worth” is a question of much debate in philosophy and remains open. The important point that Andorno rightly mentions is that human dignity cannot simply be replaced by “respect for persons” because “respect for persons is just the *consequence* of human dignity, not dignity itself” (Andorno 2009: 230).

Human Dignity and the Task of Sisyphus. The Utilitarian bioethicist Udo Schüklenk—one of the contributors to this volume—poses two main objections against the use of the notion of human dignity in bioethical discourses that can be seen as a fundamental attack regarding concepts such as human dignity and human rights in general and particularly in bioethics (unpublished article). Even though I do not share his extreme view, I do acknowledge that his arguments need to be taken

seriously in order to enhance and facilitate the debate in more proper ways to avoid “dignity’s woolly uplift” (Pacholczyck and Schüklenk 2010).

His first argument,⁸ however, concerns the variety of diverse and different definitions of human dignity in, for example, end-of-life decision making or reproductive cloning. According to Schüklenk, it seems unreasonable to use a notion such as human dignity that is used as a pro *and* contra argument to justify oppositional points of view in (bioethical) debates. It simply does not make any sense to appeal to the same notion and thereby to defending opposite goals.

In this respect he is critical that there is no uniform reading or interpretation of the notion of human dignity. Schüklenk claims that it is rather a placeholder for different definitions and therefore can be avoided altogether. If human dignity means, for example, respect for persons, then one should use the latter term instead of the former.

It is certainly true that there is no uniform reading of the notion of human dignity, but this objection concerns not only the concept of human dignity but also concerns most normative concepts in ethics (e.g., good life, equality, justice, utility). The vital question is not whether the variety of different definitions undermines the whole idea of a particular normative notion such as human dignity, but rather whether there is a proper definition of the normative term that contains objective criteria that are (more) binding.

The differing definitions with regard to the notion of human dignity can, then, be seen as different responses in the search of a more binding definition (see method of specification). Whether this is a so-called wild-goose chase as Schüklenk believes or whether one will find a proper general definition remains to be seen. Giving up the important search in determining proper definitions for normative concepts would finally mean giving up our *moral language* itself, which is a consequence few people might accept. Thus, one should not give up the notion of human dignity but simply be asked to try harder to find (some) objective criteria.

Schüklenk’s second main argument questions the use of human dignity as: (1) a means of ethical guidance and (2) a means of justification. He argues that it is futile to use human dignity as a means of ethical guidance simply because opposite points of view claim to rely on the same notion. This, however, would undermine the very function of a proper ethical guidance (see above). The second point is related to two different possibilities with regard to the idea of justification itself.

This means that human dignity, as a (means of) justification, is either a *primitive* term or a *derived* term. If it is the latter possibility (Schüklenk), one should completely give up the notion of dignity and simply use the definition as, for example, respect for persons (i.e., dignity is redundant). If human dignity is a primitive term, one should be able to provide a proper example. So far, according to Schüklenk, this has not been done successfully: Religion (human beings possess human dignity because of *imago dei*) or Kantian approaches (human beings have dignity because of their rational nature) fail to be adequate candidates—there is currently no (convincing) theory of human dignity.

I agree that both ethical approaches are doomed to failure, but I do think that there is a solution to this problem that Richard Ashcroft briefly addresses in “Making Sense of Dignity” (2005: 680). He refers to a cognitive theory of dignity. That means that the notion of dignity is a “thick” concept that contains a descriptive and an evaluative meaning whose “understanding requires a grasp of both the descriptive and the evaluative components” (2005: 680). Ashcroft rightly points out that the vital point is that the evaluative component of a statement in a cognitivist theory of dignity is not (or not purely) subjective but can be true or false irrespective of what the person believes. He convincingly states:

Nevertheless, such a theory should be able to give us some account of the relationship between moral knowledge and moral argument, and show how claims about moral knowledge can be corrigible or falsifiable. Too much actual argument about dignity tends to collapse into claim and counterclaim about moral intuitions concerning what dignity is, or what has it, or what would affect it. (Ashcroft 2005: 680)

Such a cognitivist theory of dignity would be an adequate example with regard to Schüklenk’s point concerning the idea of dignity as a *primitive* term. Do we currently have such a (sophisticated) cognitivist theory of dignity that is convincing? It seems not; however, this does not mean that it is impossible to develop such a theory in the first place. The following section of this chapter contains some preliminary aspects of such a theory.

Human dignity is a *complex and multifaceted* notion that needs to be thoroughly examined; Beylveled and Brownsword (2004: 42) refer to a list provided by Rendtorff and Kemp (1999: 31) that contains the following six strands:

1. Human dignity emerged “as a virtue of recognition of the other in an intersubjective relationship” and constitutes “a capacity that the person has because of his or her social position.”
2. Human dignity indicates “the intrinsic value and moral responsibility of every human being.”
3. If human beings have dignity a person must “be considered as without a price” and hence “cannot be objects for trade or commercial transactions.”
4. Human dignity is “based on self-other relations of shame and proudness, e.g., in degradation and self-esteem.”
5. Human dignity indicates “that there are certain things that a [civilized] society should just not do.”
6. Human dignity “includes the individual’s openness to the metaphysical dimensions of life, referring to dignified behaviour at the limit-situations of existence such as birth, sufferance, death of a beloved other, one’s own death, etc.”

We have already encountered some of the above-mentioned descriptions, and given the short history of the term in bioethics it is no wonder that there is still much to be discovered. To claim prematurely that the term is too vague and should

be avoided is too simple and a rather lame excuse for not digging deeper. Time will show and recent publications already indicate that the notion of human dignity is useful and will gain a prominent and valuable place in bioethics (Killmister 2010). One point, however, seems crystal clear—even if one cannot currently provide a perfect definition of what dignity actually is, when people act without dignity one has the strong feeling that something is wrong with them.

HOW HUMAN RIGHTS AND HUMAN DIGNITY BRIDGE CULTURAL GAPS IN BIOETHICS

The Concept of Human Rights

Human rights are universal moral rights of high priority that bind all people in all places at all times; they are basic⁹ moral rights, irrespective of whether they are enforced by local laws or not. Furthermore, they are international legal rights, which should be integrated into local law in order to be most effective for human beings. Human rights are usually seen as minimal standards to secure the basic interests and needs of human beings (e.g., Orend 2002, Nickel 2007, Griffin 2008).

Generally speaking, they are concerned with avoiding the terrible rather than achieving the best by being a utopian ideal to create a morally perfect society. To provide a thorough response to all ontological and epistemological problems concerning the notion of human rights is certainly one of the most challenging tasks in philosophy and is definitely beyond of the scope of this chapter (see Gordon 2011). The general idea, however, is to argue in the following that human rights can be seen as a *lingua franca* that is deeply interwoven with the notion of human dignity and is widely shared and best equipped to solve cases in ethics and bioethics.

Some Brief Remarks on the History of Human Rights in Bioethics

Historically speaking, human rights began to play an important role in the bioethical discussion for the first time in the late 1940s and could be seen as the immediate response to the abuse of human beings in medical research during the Nazi regime. The Nuremberg Code (1947), the Declaration of Human Rights (1948), and the Declaration of Helsinki (1964) and its revised versions form the starting point for the implementation of universal moral rights in international law.

The general idea was to prevent misconduct in the area of medicine by international law in the future. Hence, the reason for appealing to the concept of human rights in the first place was to identify questionable practices or experiments on human beings and to punish the responsible people.¹⁰ Again and again during the last century it was revealed that human rights do not offer an absolute protection against abuses (even with regard to those countries that had signed the relevant international treaties, such as the United States) and that some people who were responsible for

atrocities have not always been punished for their immoral deeds. Striking examples are as follows:

Research on human beings in the past

- Medical research during the Nazi regime in Germany
- Tuskegee syphilis study from 1932 to 1972 in the United States
- Human radiation experiments in the United States during the Cold War

Current problems

- Research on human beings (especially in developing countries)
- Female genital circumcision
- Organ sales
- Cloning of human beings; human-animal hybrids
- Poverty and public health
- Informed consent (individual versus community or family consent)
- Pandemia

Following the above-mentioned problems and in the course of the technological development of medicine (e.g., new biotechnology), international agreements have been continually modified, actualized, and extended. The most important documents concerning bioethics in recent history are as follows:

- The Proposed International Guidelines for Biomedical Research involving Human Subjects (1982)¹¹
- The Declaration concerning the Human Genome and Human Rights (1997)
- The European Convention on Human Rights and Biomedicine (1997)
- The additional protocol of the European Convention with regard to the Prohibition of Cloning Human Beings (1998)
- The Universal Draft Declaration on Bioethics and Human Rights (2005)¹²

The basic idea to establish human rights as a universal standard for determining and solving international conflicts or problems did not stem from philosophers but mainly from lawyers, who were influenced by the traditional role of human rights.

Many philosophers (and in particular ethicists) at that time had serious reservations about the use of this concept because the ontological, legal, and moral status of human rights had not been determined appropriately prior to their application. However, in the following decades, authors discussed the concept of human rights in bioethics in more detail (e.g., Bandman and Bandman 1978, Annas and Grodin 1995, Baker 1998, Macklin 1999, Mann et al. 1999, CQHE 2001, Baker 2001, Beylveid and Brownsword 2004, Annas 2005, DWB 2005, Pogge 2007).¹³

Why Human Rights in Bioethics?

There are many different reasons why it is of great advantage to appeal to human rights in bioethics, in particular in global or cross-cultural bioethics when dealing with vital issues that concern all people. *Globalization* is as old as humankind and is a vital reason why human beings share common problems due to mercantilism (e.g., global capitalism) and religious and cultural exchanges and are facilitated by new methods of transportation and technological developments in the media, such as the Internet, books, newspapers, and more that deeply influence and shape our social life.

The world—virtually speaking—has become a village. This is the reason why local problems transcend national borders that also concern the field of bioethics. Pandemics (e.g., HIV), global public health issues, environmental issues of global extent (e.g., global warming), the rise of biotechnology, and more arouse concerns that are universal in nature and need to be addressed by all people.

One promising way to deal with these issues and to find a global solution is by appealing to human rights as a starting point and constraining framework that can be seen as a “lingua franca that can both facilitate and broaden international bioethics discourse” (Knowles 2001: 253). The following incomplete list contains some main reasons why one should use a human rights approach in bioethics:

1. Force of language: The language of human rights has a great *rhetorical, moral, and popular* force (Baker 2001, Knowles 2001). Human rights violations are seen as serious incidents that call for immediate actions. Because of the vulnerability of human beings, bioethical and health-related issues are of great importance; therefore, human beings need special protection.
2. Established legal framework: Human rights instruments already exist within the established framework of international law, including treaties, agreements, and conventions (Baker 2001, Knowles 2001). That means an international so-called biolaw could help to solve ethical conflicts on an international and national level (Beyleveld and Brownsword 2002).
3. Universality: The universality of human rights facilitates the establishment of universal moral norms in bioethics “for analysing and responding to modern public health challenges” (Mann 1996: 924–25, Andorno 2008). A global bioethics necessarily needs to appeal to a (minimal) universal standard or *lingua franca* in order to solve cross-cultural problems.
4. Relation of rights and health: There is a close relationship between biomedicine and the most basic human rights such as the right to life, the right to physical integrity, and the rights to health care and health care resources (Ashcroft 2008; Gordon 2008, 2012; Arras and Fenton 2009; Ram-Tiktin 2012).
5. Additional principles: The notion of human dignity is often unable to provide clear answers in bioethics. Additional and more precise reasons are needed; this can be done by appealing to more concrete principles, that is, patient autonomy, confidentiality, privacy, and protection from discrimination. These principles are usually formulated in terms of rights (Andorno 2008, Baranzke 2012).

The Cultural Gap: The Claws of Ethical Relativism

The first paragraph of Ruth Macklin’s book *Against Relativism* (1999) gets to the heart of the problem of ethical relativism. She writes:

A long-standing debate surrounds the question whether ethics are relative to time and place. One side argues that there is no obvious source of a universal morality and that ethical rightness and wrongness are products of their cultural and historical setting. Opponents claim that even if a universal set of ethical norms has not yet been articulated or agreed upon, ethical relativism is a pernicious doctrine that must be rejected. The first group replies that the search for universal ethical precepts is a quest for the Holy Grail. The second group responds with the telling charge: If ethics were relative to time, place, and culture, then what the Nazis did was “right” for them, and there is no basis for moral criticism by anyone outside the Nazi society. (Macklin 1999: 4)

The *descriptive* thesis that particular moralities differ from culture to culture or within one multicultural society is certainly true (i.e., descriptive ethical relativism or cultural relativity). However, the vital question is whether this has any influence on *normative* ethics.

Normative ethical relativists argue “that different basic moral requirements apply to (at least some) different moral agents, or groups of agents, owing to different intentions, desires, or beliefs among such agents or groups” (Carson and Moser 2001: 2). The most common form of normative relativism is *social normative relativism*, which holds “that an action is morally obligatory for a person if and only if that action is prescribed by the basic moral principles accepted by that person’s society” (Carson and Moser 2001: 2). In other words, there are no universal moral norms that apply to people of different cultures or societies.

That means that the racist system of Nazi Germany, the apartheid system in South Africa, the caste system in India, and the Taliban system in Afghanistan, for instance, cannot be evaluated and disapproved by universal moral standards because there are no such standards. According to ethical relativists, one has to *tolerate* different and diverse moral norms, even if one wholeheartedly disapproves of the moral norms of a particular culture or society. The fact that descriptive ethical relativism is correct and helps to *explain* why people behave the way they behave is nonetheless inappropriate for being a *moral justification*. Explanation is not justification.

Despite the fact that the relativists’ claim of tolerance is itself a *universal* moral norm—and therefore undermines the very idea of ethical relativism—one should give up the view of ethical relativism by appealing to other good reasons that I briefly examine in the following by focusing on the notion of human rights as a paradigm case against ethical relativism (see also Nickel 2007: 168–84).¹⁴

First, the idea of universal moral norms—in particular the idea of human rights—is of Western origin and hence biased in a way that would lead to a *cultural or ethical imperialism, if other cultures or societies are forced to adapt to the Western standard*. This line of argumentation is misleading because of the so-called genetic fallacy that refers to a flaw in reasoning.

The flaw is as follows: “Rejecting an argument, or theory, not on the basis of its own merits but, rather, on the basis of the irrelevant personal characteristics of the person or group who invented it” (Orend 2002: 158). That means that even if the idea of universal human rights is of Western origin, it has nothing to do with the validity of its universal applicability.¹⁵

Secondly, the idea of multiculturalism to respect the traditions, ways of life, beliefs, and more of other cultures is certainly a valuable goal, but it does not follow from this point of view, however, that one is necessarily committed to the (more) extreme claim that *all* beliefs and practices of *all* cultural groups and subgroups must be equally respected. It is more reasonable to assume that some things are relative and others are not.

Macklin is right in claiming that “a convincing argument against ethical relativism need not conclude that *nothing* is relative, only that certain types of actions or practices—chiefly, those that violate human rights—are not” (Macklin 1999: 24). The vital point is, then, that one has to show that some moral considerations from outside the culture’s own value framework are relevant or should be relevant with regard to some traditions and practices within that culture. This is the domain of cross-cultural ethical judgments.¹⁶

Thirdly, I have recently argued in my article “On Justifying Human Rights” (Gordon 2011) that the connecting bond of all human beings consists in universally shared basic needs which, in turn, are related to a small set of human rights that protect these basic needs. My approach is based on a revised version of Kant’s notion of rationality and Rawls’s idea of the veil of ignorance.

The main claim is that one is able to derive moral rights—in particular human rights—from a proper understanding of the notion of rationality. “Rationality itself commands the fulfilment of the basic needs (. . .) All contraventions concerning the fulfilment of the basic needs carry the burden of proof for the particular exception” (Gordon 2011). If traditions and practices violate basic human needs such as the physical integrity of the body (e.g., female genital circumcision), then this particular practice should be abolished (Gordon 2008). Not all traditions and practices of all cultures and subcultures are appropriate—for example, the institution of slavery, gender inequality, *ius primae noctis*.

It might be, at first sight, that (some) cultures seem to be so different and diverse in their traditions and practices that one could hardly believe that there is any connecting bond between the peoples. On second glance, however, one realizes that this is not the case (e.g., Rachels 2001). It is possible to criticize other cultures legitimately and to bridge cultural gaps by appealing to human rights and the idea of human dignity. Eventually, the claws of ethical relativism become dull. In the following section, I examine the relation between human rights and human dignity and answer the question why it is reasonable to use both notions in bioethics, in particular in cross-cultural bioethics or global bioethics.

Human Rights and Human Dignity

The general idea of an ethical approach is to guide people in their decision making and to provide them with a sound justification for why one should use this particu-

lar approach. This explains why a global bioethics or cross-cultural bioethics must also be able to respond to both challenges. In this respect, a *global* bioethics must be universal in its nature because it addresses global problems—such as pandemics, research on human beings in developing countries, (international) organ sales, and female genital circumcision—that people face around the world.

A global bioethics, then, should be able to consider both universal moral claims and cultural differences in such a way that it enriches bioethical discourses (see below). Therefore, it seems reasonable to assume that a global bioethics should appeal to a universal standard or *lingua franca* in order to warrant sound cross-cultural bioethical statements. I have argued in this chapter that a global bioethics should use human rights and the notion of human dignity in order to solve cross-cultural bioethical problems (e.g., Knowles 2001, Thomasma 2001, Andorno 2009).

The notion of human dignity, however, could be seen as an overarching principle by being the starting point and constraining framework of global bioethical discourses. In the following, I hope to clarify further both notions with regard to their potential for global bioethics. But before I examine the notion of human dignity in more detail, I want to briefly introduce six ways in which human dignity and human rights have been related to one another:¹⁷

1. Human dignity as the source of human rights.

According to this common view, human beings have intrinsic worth that should be maintained, respected, and protected by other people. Human beings are vulnerable, and therefore their intrinsic worth might sometimes be in jeopardy. Hence, it follows that their dignity needs to be protected by appealing to strong rights—human rights from those fellow members who disrespect the other person’s dignity and the (unlawful) state. In this context, “human dignity, thus, justifies a protective regime of human rights in a very straightforward way” (Beyleveld and Brownsword 2004: 22).

2. Human dignity—as a species of human rights—is concerned with conditions of self-respect.

Beyleveld and Brownsword convincingly claim that there is a right to the conditions in which human dignity can flourish (2004: 18–21). They believe that the capacity for autonomous action is a distinctive human capacity that should be protected. The institutions of slavery and apartheid, so they argue, are undermining the self-respect and hence dignity of those individuals who are affected by these institutions. They claim: “Over and above such matters, the right to the conditions in which human dignity can flourish presupposes a certain level of self-respect or self-esteem. The deep problem with the institution of slavery, however, is that it invites precisely the opposite perception of oneself—far from cultivating self-respect, this is an institution that brands a section of humans as mere property” (2004: 19).

3. Human dignity defining the subjects of human rights.

By claiming—as it is commonly done—that *only* human beings have human dignity, one is thereby committed to the claim that *only* human beings are protected by human rights. One might rightly object that this kind of reasoning is fallacious by virtue of its contingency on human commitment and acceptance (i.e., the charge of speciesism). Why should only human beings have dignity and thus should be

protected? A supposed way out of this problem was to identify the dignity of human beings with their capacity for autonomous actions; that is, their rationality. By adhering to this view, one—at the same time—extends and limits the group of subjects of beings who are protected by human rights. One extends the protected group by considering other beings that are *rational* beings and are not necessarily humans in the first place. One limits the group of human beings by omitting human beings who lack rationality. In this sense human dignity defines the subjects of human rights.

4. Human dignity defining the objects to be protected by human rights.

Peter Kemp concedes that the (new) extended sense of human dignity is “not obvious” and explains that “if one transforms the idea of dignity as a virtue of the other into a universal principle for understanding the worth of human being as such, then dignity can be ascribed not only to men and women as rational beings, but also to the human being who has not yet, or has no longer, an autonomous will, and who is therefore unable to be a master of his or her own life” (quoted by Beyleveld and Brownsword 2004: 32). If embryonic and fetal life is directly protected by human dignity, then the indirect human-rights-based protection is out of date by having been replaced by a direct dignity-based justification. Beyleveld and Brownsword are correct in claiming that if this were the case, then “it almost certainly signals a much more restrictive approach to early-stage biomedical interventions” (2004: 33).

5. Human dignity as reinforcing rights of individual autonomy and self-determination.

Beyleveld and Brownsword discuss the famous French dwarf-throwing case as an example in which both parties—the dwarfs and legal authorities—appeal to the notion of human dignity (2004: 25–27). To put it in a nutshell, dwarf throwing in local clubs was banned in France, and several people challenged the ban. In particular, one dwarf (Manuel Wackenheim) claimed that he freely participated in the dwarf throwing without being reduced to a mere thing since he was always in control of the situation and it was his profession, providing him with a monthly income. If the ban makes him and others unemployed again, it would undermine the very condition in which he (and others) experienced a sense of dignity by being employed. It was their individual, autonomous decision to participate in this activity (*human dignity as empowerment*). The legal authorities, instead, argued that the dwarf “compromised his own dignity by allowing himself to be used as a projectile, as a mere thing, and that no such concession could be allowed” (Beyleveld and Brownsword 2004: 26). The latter view is called *human dignity as constraint* and limits a person’s autonomy and self-determination.

6. Human dignity as limiting rights of individual autonomy and self-determination.

Several (prominent) bioethicists such as Leon R. Kass in *Life, Liberty and the Defense of Dignity* (2002) and Francis Fukuyama in *Our Posthuman Future: Consequences of the Biotechnology Revolution* (2002) argue that the vast possibilities of the new biotechnology are dangerous and will likely undermine human dignity in various fields (e.g., human-animal chimera, cloning, design babies, genetic engineering and enhancement, and prolongation of life). In this context, people appeal to human

dignity as constraint by limiting other people’s autonomous and self-determined decisions in research and public policy. The freedom of research is restricted by virtue of the supposed undermining effects to human dignity. Here, human dignity has a negative function and serves as a bulwark against abuse.

Despite this list of various ways to determine the relation between human dignity and human rights, I present an alternative account in the following. The notion of human dignity is a twofold “thick” concept. It is twofold because it can be (1) applied to single cases and (2) functions as an important ethical key term concerning the justification of human rights. It is a “thick” concept because it entails a *descriptive* and a *normative* or *evaluative* component.

The following example of a thick concept is illustrative: the notion of *cruelty* or *being cruel*. When people say that a particular action or person is cruel, then they mean: first, that the action or person corresponds with a particular empirical description that is, secondly, conceived of as *abhorrent* or *detestable*. Therefore (a) the action should not be performed or (b) the person should be morally criticized (and possibly be shunned, if not sent to prison, depending on the particular case). To put it in a nutshell, there seems to exist some *empirical features* that (can) make an action or person morally blameworthy.

In this section, I briefly present one argument for each part of the twofold notions of dignity by appealing to a cognitivist reading and show how this interpretation can be valuable for global bioethics.

(1) *Human Dignity Applied to Single Cases*

The notion of dignity is a complex and multifaceted concept that can be described in a much better way by appealing to its “negative” counterpart—the notion of indignity. What does this mean? The basic idea concerns *how* we generally *use* the notion *dignity*. It turns out that *the notion of indignity* is more fundamental than the concept of dignity because cases of indignity and *not* cases of dignity—strictly speaking—are most relevant in ethics and hence bioethics. It is about avoiding and ending cases of indignity and consequentially reestablishing dignity once it has been undermined or jeopardized. This line of reasoning is a better way to understand the complex dynamics of “dignity talk” because it makes it easier to understand how one should act in a particular case.

To torture people for fun, to rape and abuse women and men, to treat cadavers in a degrading way (e.g., to cut off the ears and stitch them to the buttocks) and more are clear cases of indignity and hence such and alike cases should be avoided and the people in question morally criticized and legally punished. Additionally, there are cases in the *penumbra* that make it very difficult to determine whether the notion of (in)dignity can be successfully applied. Examples of the latter type of cases are end-of-life decision making and reproductive cloning. It is unclear how one should act in these cases by appealing to human dignity (e.g., Schüklenk). The vital question is **not whether the notion of (in)dignity should be applied or not, but rather whether a particular case belongs to the first group of cases (clear cases) or the second group of cases (cases in the penumbra).**

Common morality theorists such as Beauchamp and Childress (2009) argue that there is a universal moral core (common morality) that can be distinguished from nonuniversal particular moralities of different societies that stem from different cultures, traditions, and diverse religious beliefs. (e.g., Gordon 2011). I believe that common morality theories try to bridge the gap between ethical relativism and universalism.

In *Principles of Biomedical Ethics*, fifth edition (2001), Beauchamp and Childress refer to the idea of “morally serious persons” in order to determine the content of common morality. Even though they later abandoned this idea with regard to their revised approach (Beauchamp and Childress 2009), I do think, however, that one is able to determine which case belongs to which group of cases by appealing to a line of reasoning in which the notion of prudence is of vital importance by using it as an ethical method in order to determine the relevant factors for each case, so that one is able to decide whether a case belongs to the group of clear cases or to the group of cases in the penumbra. The general idea is that cases in the penumbra are special in the following way.

First, they cannot be solved by appealing to the notion of human dignity, because it is very unlikely that people would agree on a uniform definition in a pluralistic society. What they certainly all would agree upon—despite their different definitions of what *dignity* is—is that all are cases of *indignity* and one should try everything to reestablish dignity, whether this means that in cases of end-of-life decisions *active euthanasia* or *palliative care* are different issues and need to be addressed separately.

It seems, however, that the notion of human dignity is with regard to cases in the penumbra—rather a butcher’s knife than a surgeon’s scalpel—because the relevant empirical features of these cases are normatively less binding concerning a particular outcome by virtue of their nonuniversal nature (e.g. traditional, cultural, and religious beliefs). Here, additional factors are needed in order to make an informed decision in addition to a human dignity approach. Simply to claim that “dignity” will do the job and to hope that everything is clear is inappropriate and should be avoided. One has to make sure that one does not end up in opaque and confusing statements.¹⁸ This would severely jeopardize the human dignity approach in the first place.

Secondly, one should not give up the notion of dignity but simply try harder in order to find some objective criteria that can be vital for a well-informed decision concerning cases in the penumbra. Whether the latter option, however, is feasible remains to be seen.

(2) *Human Dignity as a Foundation of Human Rights—Obscurum per Obscurius?*

It is unquestionable that the human rights movement in bioethics has been challenged despite its successful practical application—for example, in research on human subjects around the world in recent decades.

With regard to the theoretical foundation of human rights, things look a bit different, even though it seems that, step by step, we will arrive at a more informed view about how one should understand the nature of human rights and its connection to human dignity. According to some bioethicists such as Ruth Macklin, it would be a

mistake to ground human rights on human dignity because it “is a vague concept” and “its basis for claims about human rights is even more obscure” (Macklin 1999: 221). Without any doubt, the notion of human dignity—by being an important ethical key term—plays a vital part concerning the justification of human rights, although I do think that one should not ground human rights on human dignity itself (see Gordon 2011, Schroeder 2012).

Roberto Andorno has rightly mentioned that the notion of human dignity is used by international law—and hence also “biolaw”—as an *unconditional* or *absolute* worth that every human being has simply by virtue of being human and that it is the foundation of human rights—even though it remains somewhat unclear what the term really means because there is no precise definition in international law (Andorno 2009: 229). According to Schachter—to whom Andorno is referring—the meaning of human dignity is “left to intuitive understanding, conditioned in large measure by cultural factors” (Schachter 1983: 849). Is this a case of *obscurum per obscurius*?

To avoid this unfortunate consequence, one should give up the idea of grounding human rights on human dignity. This does not mean, however, that the notion of human dignity is futile; on the contrary, it offers many insights in bioethical discourses as we have already seen. Methodologically speaking, both notions are intimately interwoven with each other—for example, all human dignity violations are also human rights violations but not vice versa.

In this sense, human rights can be seen as an instrument or tool in order to protect human beings’ dignity from any kind of practices that degrade and humiliate human beings as such. To be accused of violating a human right is a serious issue, and it should be clear that such conduct is absolutely unacceptable, at least, within decent societies.

CONCLUSION

The main goal of this chapter was to facilitate and enhance the debate with regard to a better understanding of the nature of human dignity in bioethics. To accomplish that goal, it was necessary to examine some important and influential approaches and to review the history of the notion of human dignity concerning its potential contribution for bioethics. Although I do think that the notion of human dignity, which is a complex and multifaceted concept, is an important ethical key term and can be (made) useful for bioethical discourses, I have the strong feeling that it still needs further analysis in order to justify its proper use.

The proponents of human dignity in bioethics and their opponents have provided valuable insights in the debate and pinpointed some challenging problems, in particular in recent publications. It seems obvious that more work needs to be done in order to convince the opponents that the notion of human dignity in bioethics is, indeed, valuable and not merely an “empty slogan.”

Therefore, in the last part of the chapter, it is suggested that the notion of human dignity should be supported by the concept of human rights in order to establish a cognitivist theory of dignity that can be used in bioethical discourses. This new approach has merely been outlined in the most general terms so far, but it is my hope that this is the right track to deepen the analysis for debates to come.

ACKNOWLEDGMENTS

I would like to thank Wanda Teays and the anonymous reviewer for their helpful comments on earlier drafts of this article. Last, but not least, this work was envisaged in the context of my stay at Queen's University Kingston in Canada and was funded by the Heinrich Hertz Foundation (HHS, B41 No. 44/08).

NOTES

1. This work is funded by the Heinrich Hertz Foundation (HHS, B41 No. 44/08).
2. <http://www.bmj.com/cgi/eletters/327/7429/1419#44475>.
3. <http://www.bmj.com/cgi/eletters/327/7429/1419#44696>.
4. As Gallagher explains: "Criticisms of dignity apply also to other values in medical ethics. 'Autonomy' and 'respect for persons' are good examples. They also appear as vague, ill-defined and sometimes sloganistic in codes, reports and in legislation. Whilst theorists make laudable attempts to clarify these concepts, such clarification may fail to make its way into professional documents. This is also the case with dignity. There is now a good deal of theoretical and empirical work to draw on which makes vague references to dignity inexcusable. The rapid responses here are likely to advance thinking on this topic, most significantly, the response of Arthur Caplan. Fairly extensive previous work also deserves attention. See, for example, the work of Spiegelberg in Gotesky and Laszlo 1970; Mairis 1994; Haddock 1996; Moody 1998; Mann 1998; Pullman 1999; Seedhouse and Gallagher 2002; and Nordenfelt 2003." (Gallagher 2004, <http://www.bmj.com/cgi/eletters/327/7429/1419#46594>; accessed February 8, 2010).
5. Caplan claims "that dignity is a moral creation. It refers to the status conferred by those who are moral agents on others—both autonomous and not. It consists of a set of obligations, duties and restrictions on how others and even other objects may be treated by moral agents. There is no inherent property that confers dignity on a human being—it is a social and cultural decision to confer this status (not all human subgroups follow all parts of the Western view of dignity) as part of membership in a moral community. If there are no autonomous moral agents then there is no dignity for it takes a decision by moral agents to create moral standing in others who lack autonomy." (Caplan 2003, <http://www.bmj.com/cgi/eletters/327/7429/1419#44646>; accessed February 8, 2010).
6. <http://www.bmj.com/cgi/eletters/327/7429/1419#46594> (accessed February 8, 2010).
7. Consider the following nonbioethical example of dwarf tossing concerning a nonautonomous reading of human dignity: People may claim that it is the *autonomous* decision of the particular dwarf to be tossed or not, and therefore other people who dislike and

disapprove it should not intervene. This is so because one has to respect or at least tolerate the informed consent of adult human beings, even though one wholeheartedly disagrees with the actions that might follow from it. This line of argumentation is flawed and can be questioned. It is not simply a matter of the autonomous decision of the particular dwarf, whether it is morally unproblematic that he or she can be tossed or not. If the dwarf tossing takes place in public, it is likely the case that this event could be seen by other people, including other dwarfs, who may feel great grief and despair when by accident they watch this humiliating scene (e.g., it simply hurts their feelings). Their self-esteem could be severely diminished by this public display, and most dwarfs would probably feel offended by it. If this is the case, then other dwarfs do have a right not to be insulted by such kind of public displays that diminish their human dignity. Generally speaking, the basic duty to oneself in terms of acting properly to oneself (e.g., Kant) is related to one's own and to other people's dignity (e.g., honor of the family, or group). If a person is diminishing her own human dignity by performing self-degrading actions, she not only fails to see herself as a moral agent but also thereby offends other people when they by accident watch the scene (see also Schroeder 2008: 233–34).

Human dignity can be lost or diminished in at least two ways. First, a person's dignity can be either humiliated by other people through atrocities or certain particular living conditions such as poor housing, poor clothing, or poor sanitation. Secondly, a person's dignity can be diminished or even lost by the person's own actions—for example, in the above-mentioned case of dwarf tossing, or by performing degrading actions that result in exposing oneself to extreme, embarrassing ridicule. The first type of cases concerns human rights, which protect the basic value of human dignity. In this respect, human rights are instrumental.

The second type of cases concerns the basic duty people have to themselves, that is, not to perform actions that are detrimental to one's own human dignity (e.g., Kant: To illustrate this claim Kant analyzes what the violation of four different types of duties would involve. (1) The perfect duty to oneself: The duty to preserve one's life; (2) The perfect duty to others: The duty to make only sincere promises; (3) The imperfect duty to oneself: The duty to promote one's talents; (4) The imperfect duty to others: The duty to help those in need). Duties are apparently not rights, but some basic duties imply human rights. Beyleveld and Brownsword also discuss a French case of dwarf tossing in their own approach on human dignity (e.g., 2004: 25–27 and 33–34).

8. For a discussion of this kind of argument, see also Schroeder (2008).

9. Security rights: They protect people against crimes such as murder, massacre, torture and rape. Due process rights: They protect people against abuses of the legal system such as imprisonment without trial, secret trials, and excessive punishments. Liberty rights: They protect freedoms in areas such as belief, expression, association, assembly, and movement. Political rights: They protect the liberty to participate in politics through actions such as communicating, assembling, protesting, voting, and serving in public office. Equality rights: They guarantee equal citizenship, equality before the law, and nondiscrimination. Social welfare rights: They require provision of education to all children and protection against severe poverty and starvation. Group rights: They include protection of ethnic groups against genocide and the ownership by countries of their national territories and resources.

10. For the ethical dimension, see Annas and Grodin (1995); for the history, see Ebbinghaus and Dörner (2002).

11. Council for the International Organization of Medical Sciences (CIOMS).

12. See Brownlie and Goodwin-Gill (2002).

13. There is now even a so-called philosophy of human rights, which underlines the great importance of this very concept and which foreshadows the possible establishment of a new subarea in philosophy (e.g., Gewirth 1982; Rorty 1993; Shue 1996; Gosepath and Lohmann 1999; Rawls 1999; Alexy 2002; Orend 2002; Reidy and Sellers 2005; Nickel 2007; Griffin 2008; Beitz 2009).

14. Macklin states: "If human rights is a meaningful concept, and if there are any human rights, then normative ethical relativism must be false. Human rights are, by definition, rights that belong to all people, wherever they may dwell and whatever may be the political system or the cultural traditions of their country or region of the world" (Macklin 1999: 243).

15. Orend provides an interesting example. He states: "Perhaps the most notorious real-world example of the genetic fallacy occurred in Nazi Germany, when it was briefly official policy to reject the theory of relativity because it was devised by a Jew, Albert Einstein. This is, obviously, an instance of poor reasoning, since the personal characteristics of Albert Einstein have no relevant bearing whatsoever on whether the theory of relativity he invented offers a true, or at least compelling, account of time, space and the movement of physical objects in the universe" (Orend 2002: 158).

16. See also Donnelly (1989: 109–42).

17. This list stems from Beylveland and Brownsword (2004: 46).

18. Andorno rightly states: "Dignity alone cannot directly solve most bioethical dilemmas because it is not a magic word that provides immediate response to them. Some further explanations are usually required to indicate why some practices are considered to be in conformity (or not) with what is required by the intrinsic worth of human beings. Thus, to be *functional*, dignity needs other more concrete notions that are normally formulated using the terminology of 'rights' (e.g., informed consent, physical integrity, confidentiality, nondiscrimination, etc.)" (Andorno 2009: 234).

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