

SECTION 1 | Dignity and the Case
of Assisted Death



CHAPTER 2 | Human Dignity, Suicide, and Assisting Others to Die

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Introduction

As Sebastian Muders notes in the introduction to this volume, the notion of human dignity is often invoked on both sides of the debate about the permissibility of assisting others to commit suicide. Some claim that human dignity is what is respected when one assists someone to commit suicide when she rationally wishes to die and her death would not wrongly harm anyone else. Others claim that human dignity is what is violated when one assists someone to commit suicide. The topic of this chapter is whether anything can be said in support of this latter claim. I consider whether a case can be made against the permissibility of assisting someone to commit suicide by appealing to the notion of human dignity. My conclusion is that the best arguments of which I am aware that claim that suicide and assistance in suicide are incompatible with respect for human dignity all fail.

My arguments are almost entirely critical. Before I began to write this essay, my impression was that the notion of human dignity often functions in moral and political writing as a rhetorical substitute for argument. My subsequent research has provided little reason to doubt the accuracy of that initial perception.

Before turning to the arguments, I say a few words about terminology. First, I continue to use the traditional phrase “commit suicide,” which can refer both to killing oneself and to allowing oneself to die, despite the pejorative connotations of the word “commit.” The phrase is concise and enables one to reduce one’s use of gender-specific pronouns, as in “kills herself” or “ends his own life.” I hope it will be sufficient just to say

explicitly that I intend nothing pejorative when I refer to someone’s “committing” suicide.

Second, “assisted suicide” is something that is done by those who commit suicide with assistance from others, not what is done by those who provide the assistance. I assume there is no serious debate about whether it is morally better or morally worse to kill oneself with assistance rather than without it, and thus that discussions that are said to be about “assisted suicide” are generally not concerned with the permissibility of committing suicide with assistance but instead with the permissibility of providing assistance to others who wish to end their own lives.

Human Dignity and Membership in the Human Species

One quite general reason for skepticism about the notion of human dignity is that as it is normally deployed in moral argument, it is speciesist. This is of course immediately suggested by the label but is also confirmed by a survey of the ways in which the notion is defined (when it is defined at all, which is rather seldom) in debates in bioethics and about human rights. In these contexts, human dignity is a property we are supposed to have by virtue of our “common humanity” or merely by virtue of our being human. That is, our dignity supervenes upon our humanity, in the biological sense. Human dignity is thus defined by Francis Fukuyama as “the idea that there is something unique about the human race that entitles every member of the species to a higher moral status than the rest of the natural world.”¹ This quotation is characteristic of the literature in which the notion of human dignity is invoked in being unspecific about what precisely it is about being human that endows members of our species with an exalted moral status. This is not surprising, in my view, for as I have argued in previous writings, there is in fact nothing about membership in the human species or in any other biological species that is directly relevant to an individual’s moral status.

Those who invoke human dignity to justify certain moral claims often pass over questions about the application of those claims to individuals whose membership in the human species is inconvenient in the context. I recall, for example, a presentation by Martha Nussbaum at a conference on cognitive disability in 2008 in which she argued that “showing equal

¹ Francis Fukuyama, *Our Posthuman Future: Consequences of the Biotechnology Revolution* (New York: Farrar, Strauss, and Giroux, 2002), 149.

respect for the dignity of citizens with cognitive disabilities requires giving them an equal right to vote, to serve on juries, and so forth.” To deny even the most profoundly or radically cognitively impaired adults these legal rights of equal citizenship is, she argued, an offense against their human dignity, which they share equally with other human beings. Thus, radically cognitively impaired adults who are incapable of having thoughts about politics or criminal justice should be assigned surrogates who could act on their behalf in voting and serving on juries.² During the discussion, I asked whether her claims extended as well to children, newborn infants, including anencephalic infants, and even fetuses. My recollection (admittedly fallible) is that she was unprepared to endorse the necessity of providing surrogates to vote on behalf of fetuses and infants but did not offer an explanation of why it is an offense against human dignity to deny the right to vote to an adult with psychological capacities no higher than those of an infant but not to deny the same right to an infant.

Elsewhere in her work, Nussbaum argues that the possession of various “capabilities” is necessary for a human being to have “a life worthy of human dignity.” Here, dignity seems to be a certain status we have by virtue of being human that entitles us to certain forms of treatment, including being provided with the capabilities or with the conditions for having them. Having the capabilities, moreover, seems to be *constitutive* of what it is to have a life that is *worthy* of human dignity—that is, worthy of someone who has human dignity. Thus, she says, “a life without a sufficient level of each of these entitlements is a life so reduced that it is not compatible with human dignity.”³

Yet among the 10 “central human capabilities” are being able to form a conception of the good and having the bases of self-respect. It is quite impossible for radically cognitively impaired human beings to have these capabilities when, like infants and most nonhuman animals, they lack the capacity for self-consciousness. It seems to follow that their lives are incompatible with human dignity and cannot be made compatible with it, at least until some form of cognitive enhancement is developed that could cause them to develop the capacity for self-consciousness. Yet Nussbaum’s claims about the rights of citizenship presuppose that these human beings do have human dignity. Thus, although they have human dignity, they

² Nussbaum’s talk was later published as “The Capabilities of People with Cognitive Disabilities,” *Metaphilosophy* 40, no. 3–4 (2009): 331–351. The quotation in the text is from p. 333.

³ Martha Craven Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: Belknap, 2007), 278–279.

also have lives that cannot be made compatible with human dignity. It is unclear what conclusion one should draw from this.

Certainly Nussbaum would have to reject the view of David Velleman, who is among those who believe that human dignity forbids bringing about people's deaths just so that they can avoid a future life in which the bad elements, such as suffering, would outweigh the good. This is because Velleman does accept the permissibility of bringing about the death of a person when his life would otherwise become incompatible with or "offend against" his human dignity. "When a person cannot sustain both life and dignity," Velleman writes, "his death may indeed be morally justified. One is sometimes permitted, even obligated, to destroy objects of dignity if they would otherwise deteriorate in ways that would offend against that value."⁴ So Nussbaum's view implies that the life of a human being who lacks the capacity to form a conception of the good is incompatible with human dignity. And Velleman holds that it may be obligatory to destroy a human being whose life offends against, and is thus incompatible with, human dignity. The combination of these views seems to entail that it can be permissible, or even obligatory, to put radically cognitively impaired human beings to death to prevent their lives from continuing to undermine their human dignity.

Of course, neither would accept such an absurd and repugnant claim. The problem results from their having quite different understandings of the nature and moral significance of human dignity—a problem that seems pervasive in the literature in which the notion of human dignity is conscripted to do substantive moral work. Although the notion of human dignity is ubiquitous in writing on issues in bioethics and on the foundations of human rights, it is a highly protean term. As I remarked previously, its function often seems more rhetorical than substantive.

Among the questions that have to be answered are the following: What does "human dignity" mean or refer to? Do you and I really have it? If so, what properties or capacities do we share that are the basis of our having it? That is, on which natural properties does human dignity supervene? Do *all* human beings have these properties while *no* nonhuman animals do? If we do have human dignity, does that make it impermissible to commit suicide? Does it likewise make it impermissible to assist someone to commit suicide? That is, are suicide, assisting suicide, and euthanasia incompatible with respect for human dignity?

⁴ J. David Velleman, "A Right of Self-Termination?", *Ethics* 109 (1999): 606–628, 617.

Character and Rank

In an article from a few years ago, Charles Beitz surveys various ways in which the notion of human dignity has figured in philosophical and legal writing, particularly about human rights.⁵ Following Michael Rosen, he distinguishes four “strands” of thought about the nature of dignity in the history of philosophical and legal thought. One of these strands, according to which dignity is a kind of value, is the subject of the next section. Of the other three, two are irrelevant to the debate about helping people to commit suicide—namely, the strand that understands dignity as a virtue, or manner of character, and that which understands it as deservingness of respect on account of that virtue or character. One reason these are irrelevant for our purposes is that they are concerned with *personal* dignity rather than *human* dignity; thus, these forms of dignity may be possessed by some persons but not others. They are not, in other words, universal among human beings. Moreover, although the Stoics thought that dignity in this sense might *require* suicide in certain circumstances, no one supposes that it is wrong to assist a person to commit suicide because she is dignified in manner or character but permissible to assist someone who is undignified in these ways.

A third strand that is distinguished by Rosen and Beitz may also seem irrelevant to the permissibility of suicide and assisting others to commit suicide. This is the use of dignity to refer to high social *rank*. The philosopher who has done most to elucidate the notion of human dignity by reference to this tradition of thought is Jeremy Waldron, who writes that “the modern notion of *human* dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly accorded to nobility.”⁶ On this basis, he claims that “we are all chiefs. . . . We all stand proud, and . . . look up to each other from a position of upright equality.”⁷

Among the various obstacles to importing this understanding of human dignity into discussions of the permissibility of suicide and of assisting others to commit suicide is that this form of dignity seems to be socially conferred rather than intrinsic. Whether we have dignity in this sense is a matter of social organization and the attitudes of others. And it seems that

⁵ Charles R. Beitz, “Human Dignity in the Theory of Human Rights: Nothing But a Phrase?” *Philosophy and Public Affairs* 41 (2013): 259–290.

⁶ Quoted in Beitz, “Human Dignity in the Theory of Human Rights,” 283.

⁷ Beitz, “Human Dignity in the Theory of Human Rights,” 284.

whether a person has been accorded the highest social standing is irrelevant to whether it is permissible for her to commit suicide or for others to assist her to commit suicide.

Nor is this understanding of dignity applicable to all human beings. No fetus or infant can be a chief or stand proud. An infant can, of course, look up to others, but not, even figuratively, from a position of upright equality. Thus, despite Waldron's claim that the idea of equality of rank is a notion of "human dignity," it is, at most, a notion of *adult* human dignity. And it is probably not even that, as it is difficult even to understand what would be involved in according to radically cognitively impaired adults "the dignity, rank, and expectation of respect that was formerly accorded to nobility."

In an effort to extract some implications for human rights from the notion of dignity identified by Waldron, Beitz observes that one important way in which nobles, during the age of nobility, were different from others is that they had a much greater capacity for self-direction. He then suggests that

if human dignity is an extension of the noble's special status to all then perhaps we should understand the package of entitlements that defines "human" status as those necessary to enable and protect the effective exercise of the capacity for self-direction by everyone.

We might then understand "human dignity as the status of a self-directing agent."⁸

Quite apart from the recurrent problem that many human beings lack the capacities, such as the capacity for self-direction, that are associated with various conceptions of dignity, there is reason to doubt whether what Beitz suggests is even possible. For it is arguable that it was essential to the nobles' exceptional capacity for self-direction that they had a greater capacity to direct the lives of *others*—not just greater than that of their non-noble contemporaries but also greater than that possessed by most people now who enjoy the highest level of social recognition. If so, the vision of everyone having the expectation of respect that nobles enjoyed is unrealistic. We cannot all be kings, as there cannot be kings without subjects.

But even if Beitz's suggestion were feasible, it would offer no basis for a moral objection to suicide or to assisting someone to commit suicide. On

⁸ Beitz, "Human Dignity in the Theory of Human Rights," 286.

the contrary, understanding our capacity for self-direction as fundamental to our moral status suggests instead that suicide should come within the scope of our entitlement to act on our capacity for self-direction.

Another idea one frequently finds in contemporary discussions (for example, in the work of Jürgen Habermas and Avishai Margalit) is that human dignity is that which is violated when a person is unjustly humiliated. Yet again, however, this notion provides no basis for an objection to suicide or to assisting others to commit suicide. One does not necessarily humiliate oneself by committing suicide (which one may, as the Stoics showed, do with great dignity of manner). Nor does one necessarily humiliate another person, or oneself, by helping her to commit suicide. On the contrary, there are circumstances in which suicide is the only means of avoiding humiliation, either at the hands of human tormenters or because of the inevitability of mental or physical deterioration.

Kantian Arguments

Kant's Conception of Human Dignity

The philosophical tradition to which contemporary thought about human dignity is most indebted is that deriving from the work of Immanuel Kant. In his *Groundwork of the Metaphysics of Morals*, Kant writes that dignity is “an inner worth,” an “unconditional, incomparable worth, for which the word *respect* alone makes a befitting expression of the estimation a rational being is to give it.” He contrasts dignity with *price*, which “can be replaced with something else, as its *equivalent*.” Dignity, he observes, is “infinitely above any price, with which it cannot be balanced or compared at all.” He also writes that “*autonomy* is . . . the ground of the dignity of a human and of every rational nature.”⁹

These passages have been interpreted by most contemporary philosophers who have studied Kant's moral philosophy as stating a doctrine of human dignity according to which all human beings have an inherent value or worth that cannot be outweighed by, or even weighted against, other values. Although Kant says that “autonomy” is the ground of dignity in human beings, many Kantian philosophers have used the other phrase that appears in this quotation, “rational nature,” to refer to that which is

⁹ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, edited by Mary Gregor and Jens Timmermann, revised edition (Cambridge: Cambridge University Press, 2012), 4:435 and 4:436; emphases in original.

the basis of human dignity. Other scholars note that Kant sometimes refers to that which grounds our dignity as our “humanity” or “humanity in our person.” Some believe that these terms are roughly synonymous with “rational capacity” or “rational nature.” This is supported by Kant’s writing, at one point, that “*a rational nature exists as an end in itself*” and then, a few lines later, referring to “humanity, *as an end in itself*.”¹⁰ But some, including Derek Parfit, believe that “humanity” refers “not to our rationality, but either to our capacity for acting morally and having a good will, or to ourselves as what Kant calls *noumenal* beings.”¹¹ Parfit may, however, believe the same about “rational nature.”

It is not clear how substantively significant these interpretive issues are. There are, however, some disagreements among scholars about Kant’s understanding of dignity that are highly relevant to understanding the implications of Kant’s philosophy for the morality of suicide and assistance in suicide. Oliver Sensen, for example, has argued that Kant does not understand dignity in anything like the way I have just outlined. On the basis of meticulous attention to Kant’s texts, and issues of consistency among various relevant passages, he contends that Kant in fact has no conception of a value inherent in human beings that grounds a requirement to respect them, that the requirement to respect them is instead a direct command of reason, and that Kant believes that human beings have dignity because they must be respected—*not* that they must be respected because they have dignity. According to Sensen, Kant’s actual conception of dignity is a compound of elements of the conceptions reviewed in the preceding section. On his understanding of Kant’s view, to have dignity is to have an elevated rank or status and also, perhaps, to have a character worthy of that rank or appropriate for those of that rank.¹²

I will not attempt to resolve or even to contribute to these exegetical debates. As Sensen observes, the conception of dignity that he attributes to Kant is traceable to the Stoics, and in particular to Cicero’s ascription of *dignitas* to all human beings because of their elevated place in nature.¹³ Rather than challenging the permissibility of suicide and assistance in suicide, the Stoic understanding of human dignity is that our status as rational beings requires us to choose, if possible, when and how we are to die. Kant apparently had some admiration for this view. Despite his explicit and

¹⁰ Kant, *Groundwork of the Metaphysics of Morals*, 4:429; emphases in original.

¹¹ Derek Parfit, *On What Matters, Volume One* (Oxford: Oxford University Press, 2011), 242.

¹² Oliver Sensen, *Kant on Human Dignity* (Berlin: De Gruyter, 2011).

¹³ Sensen, *Kant on Human Dignity*, 155–157.

repeated denunciations of suicide, he is reported to have said in a lecture that “in the Stoic’s principle concerning suicide there lay much sublimity of soul: that we may depart from life as we leave a smoky room.”¹⁴ (He is referring here to the following words of Epictetus: “Has it smoked in the chamber? If the smoke is moderate, I will stay; if it is excessive, I go out: For you must always remember . . . that the door is open.”¹⁵)

The Lexical Priority Argument

Because Sensen’s interpretation of Kant’s conception of dignity provides no support for the view that suicide and assistance in suicide are impermissible, I will not consider it further. My concern, as I have stated, is with views that understand human dignity in ways that challenge the permissibility of suicide. The more common interpretation of Kant’s conception of human dignity, according to which dignity is a value inherent in human beings that is grounded in their rational nature, is widely held to be a view of this sort.

As mentioned previously, Kant states that dignity is an “incomparable worth” that “cannot be balanced or compared at all” with anything of price—which means, in effect, anything else of value. According to various distinguished interpreters of Kant, the reason why this is so is that our dignity is grounded in or supervenes upon our rational nature, which is, through our rationally willing our ends, the source of all value other than its own.¹⁶ And that which is the source of value, or at least of all value that has a price, must have value of a different kind: namely, unconditional value that cannot be exchanged with other, lesser values. Thus it is that rational nature has dignity, and that we have dignity by virtue of our rational nature.

From this, some contemporary Kantians infer the impermissibility of suicide, or at least suicide committed for reasons other than the avoidance of the degradation of rational nature. David Velleman, for example, begins

¹⁴ Immanuel Kant, *Lectures on Ethics*, edited by Peter Heath and J. B. Schneewind (Cambridge: Cambridge University Press, 2001), 27:628.

¹⁵ Epictetus, *Discourses of Epictetus*, translated by George Long (New York: Appleton, 1904), 70.

¹⁶ For example, Christine Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996); Christine Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996); and Alison Hills, “Rational Nature as the Source of Value,” *Kantian Review* 10 (2005): 60–81. For a related view, see Allen Wood, *Kant’s Ethical Thought* (Cambridge: Cambridge University Press, 1999). For forceful criticism, see William J. FitzPatrick, “The Practical Turn in Ethical Theory: Korsgaard’s Constructivism, Realism, and the Nature of Normativity,” *Ethics* 115 (2005): 651–691, esp. sections IV and V.

with the uncontentious claims that Kant “attributes dignity to all persons in virtue of their rational nature” and that “what morality requires of us, according to Kant, is that we respect the dignity of persons.”¹⁷ He goes on to quote Kant’s formula of humanity from the *Groundwork*, which asserts that the object of respect “must . . . be conceived . . . as an end against which we should never act, and consequently as one which in all our willing we must never rate *merely* as a means.”¹⁸ He then comments that “the violation” that respect must motivate us not to commit “can be conceived as that of using the object as a mere means to other ends.”¹⁹ And precisely this violation occurs, he claims, when a person commits suicide to avoid pain, suffering, or further life that would be, for whatever other reason, intrinsically bad: “To destroy something just because it no longer does one more good than harm is to treat it as an instrument of one’s interests.”²⁰ Thus, to destroy oneself as a means of avoiding harm is to use an entity that has dignity as an instrument in the service of a lesser value, one that has mere price and hence cannot outweigh, or even weigh against, the literally incomparable worth of dignity. Respect for dignity, in other words, always has lexical priority over the protection or promotion of well-being. And to “trad[e] one’s person in exchange for . . . relief from harm” is a violation of the requirement of respect for human dignity.²¹ We can refer to this form of objection to suicide and assistance in suicide as the *lexical priority argument*.

In these quoted passages, Velleman emphasizes the claim that one who commits suicide to avoid an intrinsically bad life *uses* herself (her person, her rational nature, her humanity, etc.) *instrumentally* in the achievement of her end. Both common-sense morality and many contemporary philosophers accept that this mode of agency can be specially morally objectionable. This may be seen in the contrast between two versions of the familiar case of a runaway trolley. In one version, a bystander can divert a trolley that will otherwise kill five people so that it will instead kill only one person on a different track. In this version, the person killed is not used as a means of saving the five but is killed as a side effect of the diversion of the trolley away from them. In the second version, however,

¹⁷ Velleman, “A Right of Self-Termination?”, 611.

¹⁸ Velleman here quotes from Immanuel Kant, *Groundwork of the Metaphysics of Morals*, translated by H. J. Paton (New York: Harper and Row, 1964), 4:437. The quotation is in J. David Velleman, “Love as a Moral Emotion,” *Ethics* 109 (1999): 338–374, 359.

¹⁹ Velleman, “Love as a Moral Emotion,” 360.

²⁰ Velleman, “A Right of Self-Termination?”, 624.

²¹ Velleman, “A Right of Self-Termination?”, 614.

an innocent bystander is killed by being maneuvered into the path of the trolley to serve as a shield of the five. Most people believe that there is a significant moral difference between the two versions, and many believe that the killing in the second version is especially objectionable because it involves harmfully *using* a person as an instrument in the service of the interests of others.

But to kill oneself as a means of avoiding a harmful future life involves a quite different mode of agency. In the second trolley case, the presence of the innocent bystander is necessary for the saving of the five. In general, an instrument must be present to be used. Yet one who commits suicide as a means of avoiding harm does not require her own presence so that she can use herself. Rather, her presence is part of the problem and in the circumstances is presumably the only part of the problem over which she can exert control (for if she could eliminate the threatened harm rather than the potential victim, she would do so).

Warren Quinn distinguishes the form of agency in this case, which he calls “eliminative agency,” from that in the second trolley case, which he calls “opportunistic agency,” remarking that it is natural to suppose that the latter is normally more objectionable than the former.²² Both involve acting with an intention to affect an individual as a means. The difference is that in opportunistic agency one uses someone’s presence as an opportunity to gain a benefit, whereas in eliminative agency one seeks only to eliminate a threat or problem that someone poses.

Although eliminative agency involves intending to affect someone as a means, the eliminative harming of an innocent person is generally regarded, perhaps surprisingly, as *less* morally problematic than inflicting the same harm on the same innocent person as a foreseen but unintended side effect. Suppose, for example, that one’s life is threatened by a person who is wholly lacking in responsibility for the threat he poses. We might imagine, as in one familiar example, that his body has been hurled in one’s direction. One can save one’s life, but only in one of two ways. One can either kill the nonresponsible threatener or deflect him in a way that will be harmless to him but will kill an innocent bystander as a side effect. If asked about this choice, most people, I think, would say that one ought to kill the threatener rather than the bystander. This is because most people, I think, believe that it would be permissible to kill the threatener, whereas

²² Warren Quinn, “Actions, Intentions, and Consequences: The Doctrine of Double Effect,” *Philosophy and Public Affairs* 18 (1989): 334–351, 344.

many believe that it would be impermissible to kill the bystander, even if killing the threatener were not an option.

Killing oneself, or allowing oneself to die, as a means of avoiding a harmful future is thus at least two steps removed from harmful opportunistic agency, which is the form of agency that common-sense morality and many moral philosophers regard as particularly objectionable. For ending one's life in these circumstances is neither harmful nor opportunistic. It benefits the only person who is directly affected and is at most eliminative. I say "at most" because it is in fact only a borderline instance even of eliminative agency. In core cases of eliminative agency, the person who is intentionally affected by the agent's action is herself the source of a threat to or problem for the agent. But a person who commits suicide to avoid a harmful future is not the source of the potential harm. She avoids harm not by eliminating a threat someone poses but, rather, by eliminating the potential victim.

Nothing I have said thus far refutes the lexical priority argument. The foregoing comments do, however, suggest that the argument should be refocused or perhaps just stated differently. For Velleman's references to using people and treating them as instruments are inessential to the argument and indeed are distractions from the central point, which is that because our rational nature is, according to Kant, the source of all values that have price, it has dignity, so that respect for rational nature has lexical priority over all such lower values. The destruction of rational nature, whether as an intended effect or as a foreseen but unintended effect, is a violation of the requirement of respect for human dignity, except in those rare instances in which the destruction of rational nature is required by respect for rational nature itself.²³ Thus, because suicide involves the destruction of one's rational nature, it cannot be justified by the aim or end of avoiding harm, no matter how great the harm would be. This is true whether one uses oneself opportunistically as a means of preventing harm, prevents the harm by preemptively eliminating the potential victim, or destroys one's rational nature only as a side effect of the prevention of harm.

Even when stated this way, however, the lexical priority argument seems to me highly implausible. In part this is because of the metaethics it presupposes. I cannot believe that we, through our rational willing, create all value other than our own. There is, moreover, as the foregoing

²³ See Velleman, "A Right of Self-Termination?", 617.

autobiographical detail indicates, a curious tension within Kantian metaethics. It is anti-realist about all value with price but realist about the dignity of rational nature.

I cannot, of course, offer a defense of moral realism here (or indeed anywhere else).²⁴ There are, however, various other objections to the lexical priority argument that I can present here. The first is, perhaps, less an objection than an observation about the restricted scope of the argument. It is a crucial premise that we have dignity because, through our rational willing of our ends, we are the sources of value in the world. But not all human beings are included within this “we,” for not all human beings are capable of rationally willing ends for themselves. Not all human beings, in other words, have rational nature, and therefore not all human beings have dignity.

Perhaps Kant believed that all human beings have rational nature in the noumenal realm or that their noumenal selves have rational nature even if their phenomenal selves do not (although it seems a mystery not only how one could know this but also how one could know that animals lack such well-endowed noumenal selves). Speaking for myself, I can make no sense of the suggestion that a human fetus has libertarian free will and the capacity for pure practical reason in its noumenal or intelligible form. To his credit, Velleman parts with Kant on this issue, noting that what “morality must regard as sacrosanct . . . is not the human organism but the person, and a fetus may embody one but not the other.”²⁵ What this means, however, is that the lexical priority argument does not rule out euthanasia in the case of fetuses, newborn infants, or even adults whose cognitive impairments (most obviously when they are congenital but perhaps also when they are acquired) render them incapable of rationally setting ends for themselves.

The most important objections to the lexical priority argument concern its implications for various forms of action. I have argued elsewhere, for example, that if the argument is understood to rule out not just suicide and assistance in suicide but also such acts as impairing a person’s rational capacities, subverting a person’s rational capacities through torture, enslaving someone, and consenting to become a slave, it will also imply the impermissibility of ingesting a stupefying analgesic or accepting anesthesia as a means of avoiding suffering, as well as administering

²⁴ There are, of course, many such defenses on offer. The most influential is in Derek Parfit, *On What Matters, Volume Two* (Oxford: Oxford University Press, 2011).

²⁵ Velleman, “A Right of Self-Termination?”, 616.

such therapies to others.²⁶ I will not rehearse those arguments here but will note some other implications that are at least equally absurd.

According to Kant, human dignity cannot be forfeited through wrongdoing.²⁷ Suppose that a person will culpably and without justification cause a large number of people to suffer, or to become paralyzed, unless he is killed. The harms that he threatens to cause would neither destroy nor even impair the victims' rational natures. They would affect the victims' well-being, but that is a matter of price. Despite his imminent and egregious wrongdoing, the threatener retains his human dignity, and killing him would destroy his rational nature. Killing him as a means of protecting values that have only price would therefore be a violation of the requirement of respect for his human dignity. It seems to follow that neither the victims nor third parties may permissibly kill him in defense of his intended victims.

Kant, or perhaps contemporary Kantians, might formulate universalizable maxims intended to show that both self-defense and other-defense would in this case not only be permissible but also be duties. (Unlike some other moral philosophers, Kant insists that there are duties to the self, such as the duty not to kill oneself. He can therefore recognize a self-regarding duty of self-defense.) But the problem is to explain how the recognition of such duties could be consistent with the view that respect for human dignity is lexically prior to the protection of well-being.

The problem of justifying defensive killing may be more tractable in war than in cases of individual self-defense because soldiers tend to pose lethal threats, which are threats to rational nature. But there are other problems that are well illustrated by examples drawn from war. One such example has long been seen as a challenge to the view that suicide is immoral—namely, the example of the soldier who flings himself on a grenade as a means of saving his comrades. Traditional attempts to show that self-sacrificial action of this sort is not within the scope of the prohibition of suicide—for example, because the soldier does not intend his own death and so does not commit suicide at all—tend to be undermined by consideration of the parallel case in which the soldier throws not himself

²⁶ Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press, 2002), 480–481.

²⁷ Parfit writes that “on Kant’s view, as Wood and Herman claim, ‘even the worst human beings have dignity,’ and a person whose will is good ‘is of no greater value’ than someone with an ordinary or bad will” (*On What Matters, Volume One*, 240). His references are to Wood, *Kant’s Ethical Thought*, 133; and to Barbara Herman, *The Practice of Moral Judgment* (Cambridge, Mass.: Harvard University Press, 1993), 238.

but, rather, another soldier on the grenade; for, by parity of reasoning, if the soldier does not intend the death of the one he throws on the grenade, he cannot be guilty of murder. But whether the soldier commits suicide by covering the grenade is not the relevant issue for the lexical priority argument. The problem is, rather, that if the explosion of the grenade would not kill any of the soldier's comrades but would grievously wound them (for example, by tearing the limbs off of a great many of them), his shielding them from these harms would destroy his rational nature but would protect only values of price. In these conditions, his self-sacrificial action would not be noble but immoral.

Similarly, suppose that resources in the health care system are limited and that doctors can either save one person's life or prevent hundreds of people from becoming quadriplegic. If the protection of rational nature has lexical priority over the prevention of any amount of harm that is merely a matter of price, then doctors ought to save the one person's life rather than prevent any number of people from becoming paralyzed.

Finally, there is the problem of risking one's life. Kant himself, after stating the formula of humanity and explaining why it prohibits suicide as a means of avoiding harm, explicitly passes over one question about risk. He writes, in a parenthesis, that "I must here pass over the closer determination of this principle, needed to avoid any misunderstanding, e.g., of amputating limbs to preserve myself, of putting my life in danger to preserve my life, etc.; that belongs to actual moral science."²⁸

The challenge to the lexical priority argument, however, comes not from the possibility of risking one's life as a means of saving one's life, which is to risk one's rational nature for the sake of rational nature, but from the possibility of risking one's life in the pursuit of goods with prices, which we do continually. When one drives to the store to buy ice cream, one exposes oneself to a greater risk of death than one would have been under had one stayed at home. But if one's rational nature has lexical priority over happiness, as Kant seems to say it has and some contemporary Kantians say it has, then it must be impermissible to risk the destruction of one's rational nature for the sake of one's happiness. Just as the notion of lexical priority implies that the value or worth of one's rational nature cannot be outweighed by any amount of happiness, so it also implies that there is no risk to one's rational nature that is sufficiently small that it can be outweighed by some sufficiently large probability of some amount of

²⁸ Kant, *Groundwork*, 4:429.

happiness. Driving to buy ice cream, rather than staying at home and doing without, is therefore a violation of respect for human dignity. I take this to be a *reductio ad absurdum* of the lexical priority argument.

The Mere Means Argument

Kant does not explicitly state or endorse the lexical priority argument. When he discusses suicide in the *Groundwork*, he argues that its impermissibility is implied by two of the formulas of the Categorical Imperative. The argument based on the formula of the universal law of nature does not directly appeal to the notion of dignity and seems to me wholly implausible, even in Kant's own terms.²⁹ For these reasons, I will not discuss it here.

The important argument for our purposes is that which is based on the formula of humanity. That formulation of the Categorical Imperative is:

So act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means.

After stating this principle, he immediately draws out what he takes to be its implications for the permissibility of suicide:

According to the concept of necessary duty to oneself, someone who is contemplating self-murder will ask himself whether his action can be consistent with the idea of humanity, *as an end in itself*. If to escape from a troublesome condition he destroys himself, he makes use of a person, merely as *a means*, to preserve a bearable condition up to the end of life. But a human being is not a thing, hence not something that can be used *merely* as a means, but must in all his actions always be considered as an end in itself. Thus the human being in my own person is not at my disposal, so as to maim, to corrupt, or to kill him.³⁰

It is evident from this passage that in articulating the lexical priority argument by reference to the notion of *using as a means* (that is, opportunistic agency), Velleman is being faithful to Kant's own language. But, as we have seen, a person who kills herself to avoid a future that would be intrinsically bad for her does not *use* herself as an *instrument* in the service of

²⁹ Kant, *Groundwork*, 4:422.

³⁰ Kant, *Groundwork*, 4:429; emphases in original.

her well-being. She does, however, kill herself *as a means* of avoiding misery or suffering. The relevant question for Kant, therefore, is whether, in killing herself as a means, she in fact treats herself *merely* as a means or, as Kant says, as a mere *thing*.

It seems obvious that she does not. Rather, she commits suicide *for her own sake*. Her reason for killing herself testifies to her conviction that she matters in her own right, or for her own sake—that is, that she is an end in herself rather than a mere means.

In a book I published some years ago, I argued that the same is true when a person assists another to commit suicide or kills him at his own request with the intention of benefiting him. There I wrote that, according to Kant,

it may be permissible to treat a person instrumentally provided that what one does is compatible with his status as an end. This should in fact be obvious, for, as others have pointed out, we regularly treat people instrumentally without denying their worth. We do this when we use them for our purposes but in ways that are compatible with the acknowledgement that they matter in themselves just as we ourselves do—that is, in ways that are respectful of their good, their autonomous will, and their status as rational beings. . . . [So], even if to kill a person when this is both what is best for him and what he autonomously desires is to treat him instrumentally in the service of his good, it is also at the same time to treat him as an end. We defer to his will and secure his good precisely because we recognize that he matters in himself. If we kill him precisely in order to promote his good in accordance with his autonomous desire, it is hard to see how we could be treating him *merely* as a means, as if he did not matter in himself.³¹

These points still seem to me essentially correct. When a person commits suicide to avoid a future life that would be intrinsically bad for her, or when another person assists her to do so for the same reason, neither uses her instrumentally and neither treats her as a mere means. Both treat her as a being who matters for her own sake—that is, as an end in herself. It seems to me, therefore, that Kant's appeals to human dignity provide no better grounds for objecting to the permissibility of suicide and assistance in suicide than the arguments considered in earlier sections.³²

³¹ McMahan, *The Ethics of Killing*, 483–484.

³² I am greatly indebted to Bernhard Koch for discussions of Kant's moral philosophy and to Derek Parfit for comments on an earlier draft of this chapter.