Should Human Dignity Be Upheld At All Costs?

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The issue Jecker (2013) addresses, to realize access to health care in such a way that all life stages are properly considered, is one that is likely to become increasingly important in the coming years, given the prospects of the life span of elderly people together with the continuing progress made in the field of medicine. Jecker's account demonstrates a willingness to take seriously the various interests involved in making decisions in this domain. She rightly points out a number of problems with Daniels's prudential lifespan account (PLA), but whether her own alternative constitutes a superior account remains to be seen.

The issue of the costs involved with the care for the elderly must be considered in a discussion such as the present one. Callahan (2012) argues that health care rationing is inevitable. Gruenewald (2012) does not consider rationing by age politically feasible, and proposes focusing on the question of whether health care has any added value for some elderly people, a question that may in his view be most profitably answered by doctors and patients together through shared decisions.

Jecker's account differs from such suggestions. Departing from an equality of opportunity approach as promulgated by Daniels (e.g., Daniels 2001, 2, 3; Saloner and Daniels 2011, 817, 819), and embracing the capabilities approach, she argues that "the capabilities approach can do for us what social contract approaches cannot, namely, support a set of basic entitlements for everyone that make possible a life with dignity" (11).

Philosophically the most interesting issue is the *basis* of the capabilities approach. Like Nussbaum, by whose account she is inspired, Jecker starts with the assumption of (human) dignity. This notion is not critically examined. Since Nussbaum starts from the same principle, it seems worthwhile to consider her exposition, but this does little to remedy this lack of justification. For her, human dignity is an "intuitive idea" (Nussbaum 2006, 70), and "The basic intuitive idea of my version of the capabilities approach is that we begin with a conception of the dignity of the human being, and of a life that is worthy of that dignity" (Nussbaum 2006, 74).

Jecker says: "The capabilities approach identifies an underlying equality that is rooted not in rationality per se, but in a wider range of central capabilities we identify as human" (11). It remains unclear on what basis, if not rationality, this supposed equality should be acknowledged, and which specific human capabilities would serve as criteria to acknowledge it.

The comparison with (nonhuman) animals is usually clarifying for this sort of discussion. Nussbaum maintains that they have dignity, though not in the political sense that applies to human beings (Nussbaum 2006, 382–384). Jecker maintains that "The kind of functioning that is characteristic for a species is what establishes the central capabilities and associated obligations for each species member" (11). The human capabilities Nussbaum lists (Nussbaum 2006, 76–78) are, except for bodily integrity, which humans share with nonhumans, reducible to reason, if this is taken broadly, encompassing, for example, the ability to experience human emotions.

This raises the question of the lower limit: If a person is born without the relevant capabilities, or loses them in such a way that they cannot be restored, should he or she (henceforth) be treated no differently than an animal (at least in theory), or should the fact that the persopn once had these capabilities be sufficient to regard him or her being (fictitiously) endowed with dignity? In the first case, it should be made clear *where* the lower limit is located (at least roughly; since individual cases may be hard to compare, demanding a precise criterion would be disproportionate). In the second case, an arbitrary criterion would obviously be decisive (namely, the [remaining] human *body*), so that the accusation of speciesism would be pertinent.

To be sure, Jecker does refer to bodily integrity as one of the basic capabilities, but the avoidance of the criticism just mentioned necessitates a defense of its inclusion, especially with the case of people who are irreparably cognitively impaired in mind.

In addition, pressing questions with regard to the *extent* of the investments, which feature prominently in alternative positions, remain unanswered. At what point—if any—would it be acceptable to cease spending public means to increase people's capabilities? Jecker speaks of "ensuring that everyone can reach the end of a human life of normal length" (11). She makes it clear that life extension must cease at that point, but such a limit does not exist when ensuring "the threshold level of functioning and capability required for human dignity" is concerned (13).

The problematical nature of "dignity" has already been pointed out. Would it not be productive to exchange such a criterion for one that can be defended, in line with Daniels's PLA, on the basis of the motivation of contracting parties themselves? After all, in a democratic system, any policy must be supported by at least a substantial part of the population, which means that it must be clear what the stake

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of the parties in the distribution of health care may be. To refer to the example Jecker uses to argue that some elderly people cannot qualify their position, namely, people with Alzheimer's disease, it may be argued that contributing to funds to combat such diseases and, generally, realizing health care for the elderly is attractive for younger generations since they may one day be in the same situation.

It is correct, as Jecker observes, that such a stance may bring with it an unbalanced focus on earlier stages of life, but that is a minor problem compared with the difficulties observed here. In addition, the position of those whose condition is so dire that they may not want to continue their lives (apart from those already discussed, namely, those whose capabilities cannot be restored) must be taken into account (is a subjective desire for euthanasia compatible with an objective focus on preserving or restoring dignity?). Forcing people to keep living, whether from the capabilities approach or not, would arguably be undesirable, both for the people just mentioned and for society as a whole.

Jecker and Nussbaum are certainly not alone in their emphasis on (human) dignity, but that does not entail, of course, that including such a notion in one's account needs no justification. Jecker can only use it convincingly if it can be clarified, first, what makes "dignity" a proper starting point and, second, how it can be applied to those individuals whose capabilities are beyond restoration. ■

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