Persons, Agents, and the End-of-life Decisions

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1. Introduction

Extensive discussions about the nature and value of personhood, of metaphysical and normative aspects of becoming a person and ceasing to be one, having been conducted at the very center of the debates on abortion, therapeutic human cloning, embryo experimentation, and so on, for decades have proven notoriously difficult and their insights disappointingly inconclusive. In the paper I would like to turn our attention to the other end of the life span and explore the moral implications of acknowledging to, or witholding from, someone the status of a person, i.e. a rational being, for the choice between prolonging her life and facilitating her death.

The philosophical challenge facing the opponent of euthanasia can then be put as follows: suppose the patient's decision to have her life terminated is both voluntary and prudent; further suppose that neither her decision nor the carrying out of it by a health professional violates anyone's rights or fails to discharge anyone's duties. What else could possibly make the doctor's compliance with the patient's request wrong and what other moral objections could possibly be raised against the proposal to provide a legal protection for such an option for the terminally-ill patients?

2. The "missed encounter" argument

In a series of recent papers David Velleman has tried to provide a solution to the above mentioned riddle. The following quotation introduces his ingenious idea, one which I will be primarily concerned with in this paper.

"I believe that respect for a person's dignity, properly conceived, can require us to facilitate her death when that dignity is being irremediably compromised. I also believe, however, that a person's dignity can be so compromised only by circumstances that are likely to compromise her capacity for fully rational and autonomous decisionmaking. ... One reason for my opposition (to the idea of a legal right to die) is the belief that so long as patients would be fully competent to exercise an option of being euthanized, their doing so would be immoral, in the majority of cases, because their dignity as persons would still be intact" (Velleman 1992a, 667)

We can reconstruct Velleman's argument against the permissibility (and legalization) of active euthanasia as follows:

(1) We ought to respect the dignity of every person (be it in ourselves or in others).

(2) In circumstances where a person's dignity has been irremediably compromised (circumstances of compromised dignity or CCD) and only in those circumstances, the principle of respect for a person's dignity can command us to facilitate her death.

(3) CCDs are identical with, or at least non-contingently coincide with, circumstances in which a person's capacity for fully rational and autonomous decision making is compromised (circumstances of compromised autonomy or CCA).

(3*) One cannot be in CCD, unless one is in CCA.

(4) No violation of the principle of respect for the dignity of persons can ever be morally justified.

(5) Only CCDs are CPEs (circumstances of permissible euthanasia).

Therefore (from 3 and 5)

(6) In CPEs patients will never be fully competent to exercise an option of being euthanized, i.e. as long as they are in CPE, they are not in CFC (circumstances of full competence), and vice versa.

(7) If the circumstances in which the terminally ill patients can fully competently exercise the option of being euthanized, and those in which it is permissible or even obligatory to provide them with such option, can in principle never coincide, then it makes no sense to protect such an option by means of a law.

Thus

(8) It makes no sense to provide terminally ill patients with a legally protected choice between having their life prolonged and being euthanized.

The upshot of Velleman's opposition to active euthanasia is that destroying the life of a person is morally wrong, unless its (her) dignity has been irremediably compromised; in which case, however, the person can no longer make a morally and legally binding decision to die. Let's call this the "missed encounter argument" to celebrate/emphasize the fact that, according to it, circumstances of permissible euthanasia and those of a morally legitimate decision to die can in principle never coincide. Is Velleman's argument sound? My thesis is that it is not. In my rebuttal, I will focus on the crucial premise (3). I will contend that this premise cannot stand closer scrutiny (as will become apparent when we reflect on cases like the one described below), and that we should therefore reject both the intermediate conclusion (6) and the final conclusion (8).

Consider the following situation.

"Diane Pretty, 42, has been left almost completely paralysed from the neck down by motor neurone disease. Due to her condition, she is too disabled to kill herself and the 1961 Suicide Act prevents anyone from helping her. She was diagnosed with this untreatable disease in 1999. Alone in Britain as many as 5000 people may be affected by it. Motor neurone disease is a group of ailments affecting nerve cells along which the brain delivers messages to muscles. This leads to weakness and wasting of muscles, usually first in the arms and legs, but progressively in other areas as well. Intellect, touch, smell and hearing are not usually affected. At present, Mrs. Pretty is still fully mentally competent and uses little power she has in her arm to communicate by using a machine on her wheelchair which prints out text messages. As her disease progresses, however, nerve cells in her brain and spinal cord will further degenerate. The muscles in the diaphragm essential to breathing will become paralysed, leaving her to suffocate. There is no cure for the disease, except a drug called riluzole which can slow the advance of one form. Two in 10 people are alive five years after

diagnosis and one in 10 survives more than 10 years." (from an account of Diane Pretty's legal battle in The Guardian)

Diane Pretty's unfortunate situation, or so I would like to claim, is an example of life (and person) that is pretty much devoid of dignity despite the fact that she is still perfectly capable of making rational and moral choices. As such it demonstrates that not all CCDs (circumstances of compromised dignity) are CCAs (circumstances of compromised capacity for autonomy), as Velleman erroneously maintains. There are CPEs (circumstances of permissible euthanasia) - other than those in which the patient's rational capacities are literally switched off due to "the pain so unbearable that one's whole life is focused on that pain" (the only situation of CCD which Velleman explicitly admits of as providing justification for the destruction of a person('s life), see Velleman 1999, 618) - in which the patient's decision to die is perfectly legitimate and hence binding on others. Velleman's final conclusion is thus simply wrong.

What Velleman overlooks, in his argument, is that the concept of dignity is intimately linked to the concept of (rational) agency and that some patients lacking the capacity for (not only rational) agency (but agency altogether) may nevertheless be fully competent and autonomous decisionmakers. This insight, if correct, can be used to construct a simple argument against Velleman's conclusions along the following lines. According to Kant, "morality, and humanity, so far as it is capable of morality, is the only thing which has dignity" (Kant 1785/1981, 40-1). On one plausible construal of this thesis, only rational agents are capable of morality, and so only (rational) agents can have dignity. Since not all human beings are agents (Diane Pretty is not one), not all human beings will have dignity and not everyone's existence will command unconditional respect.

Now I can think of the two promising ways in which one can question the credibility of the intuition that by complying with Diane Pretty's request to help her die one would no longer violate the principle of respect for the dignity of every person (or that, at least, in her and similar cases, an affront to her dignity would, and should, be morally justifiable - this latter view would commit us to rejecting the premise (4)). One is to deny that Diane Pretty's decision to die is really autonomous and/or competent and hence morally and legally binding; the other is to insist that Diane Pretty has, despite appearances to the contrary, preserved her capacity for rational and autonomous agency (and, consequently, her dignity as a person). Let me take these challenges in turn.

3. Competent and/or autonomous decision-making

Is Diane Pretty's decision to die really competent and/or autonomous? It certainly seems so to her supportive relatives, to various legal representatives and judges (none of them has ever tried to dismiss her motion by appeal to this alleged defect), but is she *really* competent and autonomous? Consult, as a first approximation to a satisfying answer, the list of conditions deemed necessary for someone's competence as a decision-maker. Such criteria normaly include things such as the capacity for understanding and communication, the capacity for reasoning and deliberation, and the capacity for the formation and application of a consistent and stable conception of the good, or set of values. (Buchanan and Brock 1990, 23-5) There is no evidence, either in what we know generally about different stages of the advancing motor neurone disease, or in what we know about her particular medical condition, to suggest that Diane Pretty has lost, up to the present moment, all, most, or even some, of the above capacities, and is hence incapable of making a competent (and, consequently, legally binding) decision about her life.

The distinction I would like to uphold, between being a rational (moral) decision-maker and being a rational (moral) agent, can be drawn within the very domain of autonomy. Beauchamp and Childress (1994), for example, introduce a useful distinction between the so-called decisional and executional autonomy. A person is autonomous in the former sense if she is capable of making personal, informed choices; and she is executionaly autonomous insofar as she can implement those choices. Each of the two capacities is relatively independent - a disease or detrimental effects of ageing may (as it often happens) significantly reduce (or even completely eradicate) the person's ability to implement her personal, informed choices (i.e. impede on her executional autonomy), without at the same time affecting her ability to make such choices (i.e. deteriorating her decisional autonomy). Both aspects of autonomy are, however, or so it seems in the light of the previous discussion, a necessary component of the supervenience base of dignity.

4. Autonomy pertains to decision-making, not action?

One might find my suggestion that dignity does not depend just on one's capacity for rational and autonomous *choice*, but must at least partly be grounded in one's capacity for rational *agency*, plainly false, because it contradicts Kant's treatment of autonomy as attribute of (primarily) human *wills*, not actions. Given this, are we not driven to the conclusion that one has uncompromised dignity, as long as one has preserved autonomous will, whether one is in principle capable of implementing or exercizing it in action or not? Yet such a conclusion is certainly premature. Kant himself defines will as "the power to *act* (my emphasis) in accordance with one's ideas of laws or principles" (Kant 1785/1981). For him, to have will is to have power to *make things happen* for reasons, or according to policies or principles. And his idea of autonomy, as a property of the will of rational agents, is to be understood in terms of the reasons, or principles, for which we *act.* (see also Hill 1992, 84) It is constitutive of ourselves as rational/moral *agents* that we conceive of ourselves as being free - that we deliberate about what to do and make choices about our actions on the assumption that our choices and actions are up to us, i.e. that they are not causally determined by some prior causal conditions over which we can exert no control (desires, inclinations,…). So autonomy, even if primarily a property of the individual's will, is essentially connected with his agency, and its attributions only make sense in the context of practicing agents.

5. Proving too much?

One might find my claim simply too strong. If Diane Pretty were no longer a rational or moral agent, as I contend, would she then not loose her moral standing altogether (with the further implication that considerations other than what she wants would become relevant or even crucial in deciding her faith)? Let me explain. On one plausible reading of Kant, (all and) only moral agents qualify as moral patients, i.e. beings with moral status

(Hayward (1994) calls this "the patient-agent parity thesis"). But my treatment of Diane Pretty's condition as one permitting the termination of her life, my insistence that she no longer qualifies as a rational agent and that she has, consequently, lost the dignity that attaches to every person in virtue of this capacity, then not imply, that she has stopped being a moral patient as well? And if so, why believe that we owe her any compliance, why feel duty-bound to take seriously into consideration what she wants for herself, at all?

This objection, however, misses the point. The loss of the capacity for (rational and moral) agency does not entail the loss of the capacity to generate, by the power of one's will (as opposed to mere wish or desire or whim), valid moral claims on others. All my rebuttal implies is that due to Diane Pretty's condition we are no longer under moral obligation to respect her dignity (since not just her life, but her own self may be completely devoid of it). We may, however, nevertheless well be (since she is still undisputably a rational *valuer* and *decision-maker*) under an obligation to respect her (rational) *will*. To try to dissasociate the principle of respect for a person's dignity from the principle of respect for her will in such a way is neither arbitrary nor ad hoc. Kantians themselves admit that we can occasionally discharge our duty to respect the dignity of a person only by taking her life. What my account of Diane Pretty's situation suggests in addition to this is just that some of these situations will be characterized by another morally relevant feature - the fact that by doing so we will also comply with the person's own will and the judgment that underlies it. Hence even if we deny her the capacity for agency, Diane Pretty's moral status won't automatically reduce to that of a non-rational non-human animal (thereby exposing her to all kinds of morally unproblematic degrading and harmful treatments).

6. Conclusion

Let me recapitulate. In the paper I have argued, indirectly, in favor of a positive, even if qualified, moral judgment on active euthanasia (as well as proposals to legalize it). I have done so by showing that Velleman's argument for the claim that by euthanazing the terminally-ill patient we would violate either the principle of respect for his dignity or the principle of respect for his autonomy, is flawed. Dignity pertains to persons in virtue of their capacity for a rational and autonomous choice and agency. Clear-minded, competent patients like Diane Pretty have their dignity compromised, because the disease has robbed them of their capacity for agency. Unless we acknowledge, and give proper weight to, the intimate link between the concept of (as well as the value in) a person and the concept of an agent (a link that figures so prominently in Kant's moral philosophy, but is plausible enough as such), we will keep misapplying the principle of respect for dignity in all the numerous ways recorded in ethical discussions, past and present.[1]

References

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