

**A Preference Theory of Dignity**

Gavin Amezaga

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## Abstract

In 2006 Ashley was a six and a half year old girl who had profound cognitive and physical impairments. Her parents, who wanted to facilitate her well-being, decided, in conjunction with doctors and an ethics committee, to attenuate her growth through hormone therapies, remove her uterus and breast buds. Her doctors and ethics committee believed that there was reasonable evidence that such procedures would confer sufficient benefits to Ashley to justify the invasive treatments. However, there has been a significant backlash to the treatment – for many reasons - but in my thesis I am focused on Dignity. Parents, philosophers and activists invoke Dignity arguments on both sides of the debate, but their usage of the concept is either unclear or not satisfactory. My thesis aims to provide a reasonable argument for 1) what entities have Dignity, 2) what that means with respect to moral requirements and prohibitions, 3) and finally, how this better clarified concept of Dignity can evaluate and adjudicate the Ashley Case.

*For Melanie*

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## Chapter I: Setting the Stage

The Ashley case is essentially about whether or not making body-altering medical decisions for a child with a profound cognitive impairment (PCI) is morally permissible. Specifically, I will determine the permissibility of Growth Attenuation Therapy (GAT) through the lens of Dignity. Even though the treatment in the Ashley case consists of three procedures, hysterectomy, breast bud removal and GAT, my focus is on GAT. Dignity arguments, on the whole, are poorly understood and unconvincingly invoked in the course of the Ashley debate; focusing on both of these issues is of the utmost importance to my thesis. However, setting the stage for the debate is crucial before discussing the meat of my argument. In the following sections I will detail: who Ashley is, what her case is about, why her parents, doctors and ethics committee made the decision that they did, and how other parents, disability organizations, philosophers and others reacted to the treatment with respect to Dignity claims. Through this set up you will learn: who the parties to the case are, what the dispute is fundamentally about, what the reactions of third parties are, and how Dignity figures into the conversation. All of this will set the stage for the argumentation to follow.

### **The Ashley Case**

Our story begins in 1997, the year of Ashley's birth. On all accounts her birth was "normal"<sup>1</sup>: there were no obvious congenital issues or trauma, nor was there a nuchal cord (umbilical cord wrapped around the baby's neck). Her parents report having no immediate worries about the health or development of their daughter. However, as time progressed they

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<sup>1</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 1, 2007

began to notice that “her mental and motor faculties did not develop”<sup>2</sup> in the way they had anticipated, resulting in worry and a desire to find out why. After consulting with numerous “neurologists, geneticists, and other specialists”<sup>3</sup>, Ashley was diagnosed with “static encephalopathy of unknown etiology”<sup>4</sup>. This diagnosis meant multiple things.

First, it meant that the physicians were unsure specifically what was impacting Ashley’s mental and physical development, even though they knew there was in fact some causal factor. Second, they felt confident in concluding that the nature of the impairment was static, meaning that there was no reason to believe there would be significant improvement over time<sup>5</sup>.

Recently, in July of 2016, physicians have successfully diagnosed Ashley. The diagnosis was reported on a blog which is operated by Ashley’s parents. They write,

In July 2016 and after 18 years of searching we finally obtained a diagnosis to Ashley's condition. By working with Dr. William Dobyns of SCH and through a Whole Exome Sequence Analysis, an SNP (single element mutation) in the GRIN1 gene was detected. It is De Novo (unique to Ashley, not inherited from her parents), Heterozygous (in only one of the two strands) and Non-Mosaic (it came from the sperm or the egg, or much less likely occurred in the zygote). This is consistent with what we were told all along by neurologists and geneticists that her condition is most likely genetic, in a gene that is not studied yet. Apparently, half of the genes in the genome contribute to the formation of the brain and the nervous system... GRIN1 encodes for a subunit of the NMDA receptor, implicated in neurotransmission and neuroplasticity, which is the foundation of learning and memory. So, this is consistent with Ashley's symptoms of not developing mentally beyond infancy.<sup>6</sup>

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<sup>2</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 1, 2007

<sup>3</sup> The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 1, 2007

<sup>4</sup> The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 1, 2007

<sup>5</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 1, 2007

<sup>6</sup> “Updates on Ashley’s Story”, Ashley’s parents, 2018

Despite this diagnosis, Ashley's parents argue that she "is expected to live a full life"<sup>7</sup>. Further, her parents note that, "Ashley's health being in a stable condition is a blessing because many kids with similarly severe disabilities tend to deteriorate and not survive beyond five years of age"<sup>8</sup>. Ashley's parents argue that she has the ability to live not only a long life for someone with her condition, but Ashley is fully capable of many fulfilling reactions, sensations, emotions, and slight bits of communication - though they need to be entirely interpreted by her caregivers (her parents).

Her parents say Ashley is very active: she "constantly moves her arms and kicks her legs"<sup>9</sup>. Ashley is especially active when listening to music. For example:

She loves music and often gets in celebration mode of vocalizing, kicking, and choreographing/conducting with her hands when she connects with a song (Andrea Bocelli is her favorite – we call him her boyfriend)<sup>10</sup>

Beyond her physical reactions to stimuli Ashley often expresses emotional reactions.

Her parents are very observant of her range of emotional capacities. She has been observed to have "a sweet demeanor and often smiles and expresses delight when we visit with her, we think she recognizes us but can't be sure."<sup>11</sup> Another example of her emotional range is that, "[she often] kicks her legs and orchestrates her arms, she makes little happy sounds, her face radiates with smiles"<sup>12</sup>. However, not all of Ashley's emotional range is related to happy

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<sup>7</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 1, 2007

<sup>8</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 1, 2007

<sup>9</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 1, 2007

<sup>10</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 1, 2007

<sup>11</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 3, 2007

<sup>12</sup> "Views of parents of children with Profound Cognitive Impairment", Nikki Kerruish, pg.75, 2016



feelings. The main worry which preoccupied Ashley's parents was: "discomfort" and pain - which was brought into center stage in 2004, when Ashley was 6 and a half years old.

In 2004 Ashley's parents began to see signs of precocious puberty. Precocious puberty is accelerated puberty that is not uncommon among disabled children. Specifically, "when Ashley was 6 years and 6 months old she was 48" (4' 0"), (75th percentile)" for girls at that age<sup>13</sup>. The result of precocious puberty would be continued growth, the beginning of the menstrual cycle and the development of breast growth. All of which represented, to Ashley's parents, possible catalysts with respect to Ashley's discomfort and pain - although here I am focused solely on the effects of growth and subsequent growth attenuation. There has been much written about the hysterectomy and breast bud removal - both of which are put to the side here.

Continued growth represented the following potential problems. If she continued to grow, then she would become more prone to: infections caused by "skin ulceration or bed sores", pneumonia because "increased body weight increases the pressure on the chest and reduces the lungs' ability to expand, causing fluid build up in the lungs that increases the chance for pneumonia and breathing complications", and bladder infections because "increased body weight causes increased pressure on the bladder outlet, resulting in urinary retention and an increased risk for bladder infections"<sup>14</sup>.

Beyond these physical worries, Ashley's parents admit that some of their concerns were focused on their ability to care for Ashley. If Ashley continued to grow, then "it would be untenable for them to care for their daughter at home, despite their strong desire to do so"<sup>15</sup>. The reason being - if Ashley were to continue to grow, she would most likely gain "an additional 50

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<sup>13</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 7, 2007

<sup>14</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 9, 2007

<sup>15</sup> "Ashley Revisited", Douglas Diekema, pg. 30,

pounds [which] would make all the difference in our capacity to move her”<sup>16</sup>. Additionally, they argue that if she continued to grow, the only way to move her would be through “requiring two people or a hoisting harness”<sup>17</sup>. Each of these puts a fundamental strain on the individual parents to care for her alone. Another consideration is with respect to having more help in the family, through in-home caretakers. However, Ashley’s parents argue that “the only additional caregivers entrusted to Ashley’s care are her two Grandmothers”<sup>18</sup>, who would be unable to help care for Ashley if she continued to grow and gain the extra weight.

Her parents were adamant that they would not entrust Ashley to an institution, arguing that her “quality of life is much richer under [her] family’s loving care, versus getting ‘warehoused in institutions’”.<sup>19</sup> They were convinced that they would be able to give Ashley the care she needed if her growth were halted.

Furthermore, Ashley’s parents had an extremely strong desire to keep Ashley close to home. This desire to keep her at home can be interpreted as another prospective benefit to the parents, though it can scarcely be held against them. Ashley’s parents absolutely love their daughter. They have said that, “Ashley brings a lot of love to our family”<sup>20</sup> and

We’re often gathered around her holding her hand, thus sensing a powerful connection with her pure, innocent and angelic spirit. As often as we can we give her position changes and back rubs, sweet talk her, move her to social and engaging places, and manage her entertainment setting (music or TV). In return she inspires abundant love in our hearts, so effortlessly; she is such a blessing in our life!<sup>21</sup>

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<sup>16</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 8, 2007

<sup>17</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 8, 2007

<sup>18</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 8, 2007

<sup>19</sup> “Ashley Treatment”, Ashley’s Parents, infographic, 2007

<sup>20</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 3, 2007

<sup>21</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 3, 2007

Even though they admit that the possibility of having Ashley's growth stopped would give rise to benefits for the caregiver - "mak[ing] it easier to care for Ashley"<sup>22</sup> and allowing her to stay near them, they still argued that limiting her growth would primarily and directly benefit Ashley. These direct benefits to Ashley constitute the main focus of their desire to stop her from growing.

However, many critics argue that the main reason for wanting to stop Ashley's growth is primarily because of the benefits that it yields the caretakers.

Ashley's parents describe this attack as "a fundamental and universal misconception"<sup>23</sup>. Their rebuttal comes in the form of a succinct statement of purpose. Ashley's parents argue that, "the central purpose is to improve Ashley's quality of life"<sup>24</sup>. Her parents believe and have argued that attenuating her growth would significantly mitigate the potential health issues she faces. They will be able to move her with ease and therefore decrease the probability that she gets: bed sores, pneumonia, bladder infections, discomfort from lack of circulation etc.

The benefits that the caregivers will receive do exist, but, they argue, the majority of the benefits are going directly to Ashley. They have characterized the possible improvement to Ashley's quality of life as the main reason for seeking treatment and for providing GAT, if possible<sup>25</sup>. In contrast, they have described the benefits to the caregivers - ease of movement, happiness at having her near - as a "side benefit"<sup>26</sup>, a byproduct of an already moral act.

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<sup>22</sup>"Ashley Treatment", Ashley's Parents, infographic, 2007

<sup>23</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 4, 2007

<sup>24</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 4, 2007

<sup>25</sup>"Ashley Treatment", Ashley's Parents, infographic, 2007

<sup>26</sup>"Ashley Treatment", Ashley's Parents, infographic, 2007

Equipped with their worries and reasons, they began to look for a medical intervention which could help reduce her final weight and height and therefore accomplish their goals. They were able to find Growth Attenuation Therapy. GAT is a “high-dose estrogen therapy using derma-patches that [are] changed every three days. Estrogen accelerates puberty and advances bone age until separate growth plates fuse together”<sup>27</sup>. More specifically,

Normal growth would have resulted in an adult height in the neighborhood of 66" (5' 6"), (Ashley's Mom and Dad, are 5' 9" and 6' 1", respectively). Therefore, the treatment is expected to produce a height reduction of 13 inches (or 20%). Average weight of a 4' 5" woman is 75 lbs, while the average weight of a 5' 6" woman is around 125 lbs, so the treatment is expected to produce a weight reduction of 50 pounds (or 40%).<sup>28</sup>

Dr. Gunther, Ashley's doctor, thought that a smaller size would help mitigate the problems that Ashley's parents were worried about<sup>29</sup>. However, Ashley's parents and doctor did not make this decision alone.

Their decision to use GAT represented a significant body-altering medical procedure for Ashley, so, Dr. Gunther suggested that they consult the ethics committee of the hospital in which he worked and in which the procedure would be done - the Seattle Children's Hospital. This committee meeting was “attended by 11 members of the ethics committee, the parents, the patient, and three of the patient's physicians”<sup>30</sup>. Ashley's parents presented their case to the ethics committee on May 5th 2004, arguing for the ability to choose these treatments. After the committee deliberated among themselves, the “committee chairman along with Dr. Diekema, ethics consultant, conveyed the committee's decision to [Ashley's parents], which was to entrust

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<sup>27</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley's Parents, pg. 7, 2007

<sup>28</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley's Parents, pg. 8, 2007

<sup>29</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley's Parents, pg. 9, 2007

<sup>30</sup> “Ashley Revisited”, Douglas Diekema, pg. 31, 2010

[Ashley's parents] with doing the right thing for Ashley"<sup>31</sup>. However, the decision made by the ethics committee is a controversial one.

A magazine called *Exceptional Parent* magazine, one that provides advice to parents, argues that, "it is an outrage that no court or ethics committee engaged in the soul-searching debate a procedure like 'Ashley's Treatment' should have generated"<sup>32</sup>. Their main objection to the process seems to be that the committee's decision to let the parents choose betrayed a laziness. In allowing Ashley's parents to make the final say, critics, like those at *Exceptional Parent* magazine, question whether the ethics committee did its job or if they side-stepped their responsibility.

Dr. Diekema later elaborated on this point by arguing that,

The committee members carefully explored the family's reasons for the requests and after a lengthy discussion reached consensus that [GAT] offered a reasonable prospect of direct benefit to Ashley that justified any of the foreseeable and potential harms<sup>33</sup>.

We can infer that this statement was meant to show that even though the ethics committee ultimately left the decision in the hands of Ashley's parents, they did so with the understanding that the decision itself was a moral one.

After the Ethics Committee gave their recommendation, Ashley's parents and doctors proceeded with the treatment. The high-dose estrogen treatment was done continuously for around two and a half years, under the supervision of a medical team that tracked Ashley's health and progress.

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<sup>31</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 6, 2007

<sup>32</sup> "When the Slippery Slope Becomes a Mudslide", Joseph Valenzano, pg. 4, 2007

<sup>33</sup> "Ashley Revisited", Douglas Diekema, pg. 31, 2010

There were little to no fears about the safety of the hormone treatment. This hormone treatment was used “on teenage girls starting in the 60’s and 70’s, when it wasn’t socially desirable for girls to be tall, with no negative or long-term side effects”<sup>34,35</sup>. Furthermore, Ashley’s parents noted that, “during this whole period, we have observed no adverse consequences”<sup>36</sup>. Ashley’s Doctor, Dr. Gunther, kept a close eye on her during this process, checking her height and weight, bone age, and estrogen levels, every three months<sup>37</sup>.

Not only did the hormone treatment avoid any negative effects, but it was successful in reducing Ashley’s final height and weight. Ashley’s parents wrote on their blog, in 2007, “Ashley today weighs 63 pounds and is 53 inches (4' 5") tall, unchanged from a year ago when we stopped the estrogen therapy!”<sup>38</sup>. Her height is even with the prediction and she weighs twelve pounds less than the predicted final weight.

The measurable physical results of GAT are only one aspect of its arguable success. Beyond these aspects, Ashley’s parents argue that the reduced height and weight, in fact and in practice, gave rise to many benefits, large and small, for both Ashley and themselves. Her parents have argued that as a result of the GAT, “one person can carry Ashley”<sup>39</sup>, which has made it much easier for them and Ashley’s Grandmothers to care for her. Furthermore, because of the reduction in size, their ability to “keep caring for [Ashley] ... at home”<sup>40</sup> also became a reality.

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<sup>34</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 4, 2007

<sup>35</sup> Note here that I am addressing only the medical fact that there were not negative physical effects. However, I am not condoning that decision.

<sup>36</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 7, 2007

<sup>37</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 7, 2007

<sup>38</sup> “Updates on Ashley’s Story”, Ashley’s Parents, blog, 2007

<sup>39</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 8, 2007

<sup>40</sup> “The ‘Ashley Treatment’ for a Better Quality of Life”, Ashley’s Parents, pg. 8, 2007

However, despite these two benefits to the caregivers - ease of care and at home care - Ashley's parents maintain that the reason for the treatment is not solely, or even primarily for the benefits they enjoy, but rather, "the main benefit of the height and weight reduction is that Ashley can be moved considerably more often, which is extremely beneficial to her health and well being"<sup>41</sup>. In support of this idea, her parents give a list of ways in which they believe GAT has helped contribute directly to Ashley's well being and quality of life.

As a result [of GAT], Ashley can continue to delight in being held in our arms and will be moved and taken on trips more frequently and will have more exposure to activities and social gatherings (for example, in the family room, backyard, swing, walks, bathtub, etc.) instead of lying down in her bed staring at TV (or the ceiling) all day long. In addition, the increase in Ashley's movement results in better blood circulation, GI functioning (including digestion, passing gas), stretching, and motion of her joints.<sup>42</sup>

It can be argued that GAT was a successful treatment. Ashley's parents were worried about multiple aspects related to her diagnosis. First, Ashley's reduced mobility and increasing size posed many health problems - bed sores, pneumonia, bladder infections, and circulation problems. Second, they were worried about their ability to provide Ashley with the best care possible, if she continued to grow. GAT, through its ability to reduce her size without introducing other health issues, presented itself as a possible solution. Ashley's parents have been able to provide sufficiently good care to Ashley and have never had to put her in a care facility. Further, they argue that GAT has, in practice, had a net benefit on Ashley's well-being. Ashley's parents continue to care for her to this day. The most recent update on their blog was on August 25th, 2018, where they note the stability of her scoliosis, and do not note any negative effects.

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<sup>41</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 8, 2007

<sup>42</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 8, 2007

Despite the purported success of the treatment, questions remain concerning the decision to conduct the treatment itself beyond whether it accomplished its goal. The question of whether Ashley was treated with Dignity finds itself nestled among those questions. It seems possible and even plausible that choosing GAT for Ashley, while possibly resulting in a better quality of life for her and an easier time for the caregiver, infringes on her Dignity. We will see that many people feel this is the case. The debate over whether GAT infringes Dignity or supports it is hotly contested. In the following sections I will attempt to briefly recap the positions on each side, including those who believe the water is so muddied that Dignity talk is unhelpful.

### **In Support of GAT: Dignity is Not Infringed**

Throughout the following brief section I will outline the arguments given by Ashley's parents and other parents of similarly disabled children, all of whom believe that GAT supports the Dignity of their children and does not represent any violation or infringement thereof.

Ashley's parents, on their blog, provide the following argument in defense of their choice. They directly address those people who, "have concerns about Ashley's dignity"<sup>43</sup>. In defense of their decision they argue, "she will retain more Dignity in a body that is healthier, more of a comfort to her, and more suited to her state of development"<sup>44</sup>. It seems that their view of Dignified treatment contains multiple facets, some more defensible than others.

First, they are arguing that Dignity is related to health and comfort, such that to treat her with Dignity is to try and provide her with those things - the best quality of life possible. I am

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<sup>43</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 12, 2007

<sup>44</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 12, 2007



entirely sympathetic with this sort of argument. In most cases this sort of thinking will yield beneficial results. Ashley's parents have also been recorded saying, "we care a great deal about our daughter's human dignity and feel that the treatment makes Ashley more dignified by providing her with a better [quality of life]"<sup>45</sup>.

Ashley's parents are not alone in having this view of their children. A mother of a similarly disabled child argues that her daughter "has a right to a happy life" and another parent states that, "I don't think they can accuse us of disrespecting our children. It's the opposite... This is to do with respecting a human being who needs help"<sup>46</sup>. Now, these parents, though they are framing their arguments in terms of rights and respect, are echoing a familiar call, one that is also made by Ashley's parents. Generally, parents who support GAT "are cognizant of issues such as dignity, rights and respect, but feel these more abstract concepts are best acknowledged and respected through attending to the practical [quality of life] issues"<sup>47</sup>. However, the next point Ashley's parents make is one that strikes me as fundamentally problematic.

Second, Ashley's parents argue that her body, being reduced in size, is more "suited to her state of development". In other words, her parents are arguing, given "Ashley's mental age, a nine and a half year old body is more appropriate and provides her more Dignity and integrity than a fully grown female body"<sup>48</sup>. This point is trickier to defend. Dignity, in this view, is related to whether or not your size or the development of your body is consistent with your mental age. My difficulty with this view can be seen with respect to people who have been

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<sup>45</sup>"Views of parents of children with Profound Cognitive Impairment", Nikki Kerruish, pg.77, 2016

<sup>46</sup> "Views of parents of children with Profound Cognitive Impairment", Nikki Kerruish, pg.77, 2016

<sup>47</sup> "Views of parents of children with Profound Cognitive Impairment", Nikki Kerruish, pg.79, 2016

<sup>48</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 4, 2007

diagnosed with either Gigantism or Dwarfism. People with Dwarfism are significantly smaller in stature than those who are average. However, the fact that they are shorter, closer to the size of a child, doesn't seem as though it does or should impact their possession of Dignity. Further, if the size of the body should be consistent with their mental age, then how should we make sense of people with Gigantism?

Despite the weakness of the second part of Ashley's parents' argument, the strength of their first argument shines through. Parents, in general, value the quality of life of their children. Ashley's parents, and parents in similar positions, conclude that if choosing GAT promotes the best quality of life for their children then it is supporting and facilitating their children's Dignity. However, there are parents and organizations who passionately disagree.

### **In Opposition to GAT: Dignity is Infringed**

In this small section I will detail the arguments of parents of children with profound cognitive impairments who believe that GAT is an infringement of the Dignity of their children. Additionally, I will survey both a parenting magazine who takes this position and a statement supported by individuals with disabilities and organizations, finishing with a philosopher who shares this conclusion.

Parents of children with profound cognitive impairments who believe GAT to be an infringement of their child's Dignity argue in the following way. They argue that while quality of life is of fundamental importance to them and to their children, "they do not consider that attempts to maximize [quality of life] should subjugate other important elements of their child's

life, such as their rights or their dignity”<sup>49</sup>. These parents, in contrast to the parents in favor of GAT, question whether it is always the case that quality of life and treatment with Dignity are one and the same. They suggest that it is possible for these two ideas to come apart. There may be actions that improve the subjective experience of their children while degrading or infringing some other, more consequential, value. This concern is well founded and should be taken seriously.

A weakness of this argument and of those given by parents against GAT, in general, is a lack of specificity. This weakness extends into nearly all arguments that use Dignity as a reason to oppose GAT. The closest they get to a specific reason is this: they argue that choosing GAT is “to devalue not only the life of their child but also the lives of others with disabilities”<sup>50</sup>. I think what this comment means is that the act of altering a disabled person’s body in this way is an indication that the child is not valued properly. It represents an instance where the person is being used/physically altered unjustly or improperly and is therefore being treated as not fully human. From this comment we can tease out one requirement - valuing the child in a sufficient way as necessary for dignified treatment. However, this point is not nearly specific enough to fully understand what Dignity is and what it requires. Furthermore, parents who support GAT could argue that they chose GAT for their children because they value them.

A 2007 “Statement of Solidarity for the Dignity of People With Disabilities”, written and signed by many people with disabilities and by organizations, argues that GAT in the Ashley case represents a violation of her Dignity. They write,

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<sup>49</sup>“Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.79, 2016

<sup>50</sup>“Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.79, 2016

We... are in agreement that [GAT] ... is an affront to her human dignity... it is the duty of both caregivers and the hallmark of a progressive, civilized society to provide the means by which all of us can reach our full human potential... we believe that this approach to easing the hardship of caring for a child with disabilities makes the child the problem, and by doing so, makes it acceptable for well meaning people to deny the essential humanity of people with disabilities in the course of caring for them

This statement brings multiple conditions and requirements to the foreground. They argue that to treat someone with Dignity is to allow them to reach their “full human potential” and we must avoid “easing the hardship” of caring for the child with disabilities in a way that makes the child the “problem”. These considerations are valuable. A child with disabilities is still able to grow and develop and should be allowed to grow into the best version of themselves - realizing their full human potential. However, it is very clear to see how parents, in favor of GAT, might argue that this is exactly what they are doing. They may argue that their children cannot achieve their full human potential if they are hampered by unnecessary physical pain caused by increased size and decreased mobility. Further, it seems very reasonable that we should not choose GAT primarily to ease the hardship of caring for a child and we should not make them the problem. However, as we have seen, parents in favor of GAT argue that they are not choosing GAT primarily to ease the burden of care, but rather to facilitate the best quality of life they can for their children. They do not see their children as the problem, but they recognize that their child’s disability increases the likelihood of physical problems and complications. All of which is not to say that the parents against GAT and those who support the previous statement of solidarity are incorrect. I believe that they raise incredibly important considerations. My point is that this debate is necessarily difficult and the arguments raised about Dignity often are hard to use in support of only your side - a problem I will address later.

*Exceptional Parent* magazine makes many strongly phrased statements about GAT and the Ashley case. Specifically, “it is a shame and an affront to the human Dignity of every one of us to permit these procedures on even one child”<sup>51</sup>. The article itself never clarifies exactly what is meant by an “affront to the human dignity” of a person. The article expresses a palpable sense of outrage at the procedure, unfortunately, their argument never proceeds past a statement that an infringement occurred.

The final source I will detail is an argument given by philosopher, and mother of a disabled child, Eva Kittay. She provides one of the best Dignity arguments against GAT that exists in the literature. Her Dignity argument is based on the idea of respecting the body through avoiding treating the body in a merely instrumental way. Using a person’s body as a mere means to an end represents such an instance of mere instrumental use and is therefore a violation of Dignity. GAT, according to Kittay, represents a necessarily merely instrumental use of the body and is therefore always an infringement of Dignity. There are issues with this argument, but those will be made clear in a later chapter. I chose to foreground her argument for multiple reasons. Most importantly, I believe that she possesses a unique insight as a parent of a similarly disabled child.

One of the difficulties with Dignity arguments, as seen in the past two sections, rests on their lack of clarity and the possibility of being adopted by both sides of the argument. For both of these reasons there are philosophers who argue that Dignity arguments are worth very little.

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<sup>51</sup> “When the Slippery Slope Becomes a Mudslide”, Joseph Valenzano, pg. 4, 2007

## **Dignity is Vague and Might Be Useless**

The past few sections have shown that arguments on either side of the aisle are difficult to make. Whether supporting GAT or attacking it, attempting to use Dignity as a reason tends to be slippery. In this section I will further detail the difficulties in using a Dignity argument in this context.

Douglas Diekema and Norman Fost wrote a paper entitled, “Ashley Revisited: A Response to the Critics” meant to refute each and every criticism of the Ashley Treatment. Diekema and Fost respond directly to the objection that GAT and the Ashley Treatment violated Ashley’s Dignity. Diekema and Fost argue that, “most individuals and groups making this claim went no further than asserting that her Dignity has been violated, failing to define Dignity or provide content for the assertion”<sup>52</sup>. Diekema and Fost’s refutations of these attacks on GAT consist primarily in arguing that the term lacks meaning and substance. Diekema and Fost argue that “the assertion that Ashley had her Dignity violated appears to be little more than a statement that the writer is offended or uncomfortable”<sup>53</sup>. These arguments provided by Diekema and Fost show that the conceptions of Dignity, especially those framed against GAT, are weak. Diekema and Fost appear to be content with their counterarguments, resting on the inconclusive, elusive and vague nature of those Dignity arguments formulated against GAT. The next article doubles down on the vagueness associated with Dignity arguments.

The following article was written by a panel of twenty or so philosophers, lawyers and doctors, whose express purpose was to try and come to a compromise about the morality of the Ashley Treatment. Their treatment of the concept of Dignity is vague. The writers of this article

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<sup>52</sup> “Ashley Revisited”, Douglas Diekema, pg. 33, 2010

<sup>53</sup> “Ashley Revisited”, Douglas Diekema, pg. 33, 2010

agree that children with disabilities possess Dignity, even though they accept that it is challenging to settle on “one formal definition of dignity”<sup>54</sup>. Furthermore, they also notice that “it is less clear what respect for dignity requires”<sup>55</sup>. They mention that the argument from Dignity can easily support either side of the debate. Those few sentiments are the bulk of this panel’s attempts to ground, define, and use the concept of Dignity in the pursuit of the discussion of GAT. They conclude, “because dignity... can be employed in arguments both supporting and opposing growth attenuation, the majority of the group believes the issue of Dignity should not trump other ethical considerations”<sup>56</sup>. The following article continues the argument that Dignity is vague in conception.

Adam Schulman questions the usefulness of Dignity. He argues that Dignity suffers from a fatal flaw in conception. He argues that there are many ways in which we can understand the concept of Dignity. We can understand Dignity as based in 1) “higher mental capacities”<sup>57</sup>, 2) the “equal dignity of all human life”<sup>58</sup>, and 3) based on respect for “dignity and autonomy”<sup>59</sup>. It is unclear, to Schulman, which one truly represents what Dignity is and, as such, this uncertainty causes many bioethicists to find the concept unhelpful. However, this problem is not unique to Dignity. If we think of ethical theory, broadly construed, this is the issue of ethics in general. There are many possible bases for ethics and these issues and the subsequent disputes should not

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<sup>54</sup> “Navigating Growth Attenuation”, Benjamin Wilfond, pg. 35, 2010

<sup>55</sup> “Navigating Growth Attenuation”, Benjamin Wilfond, pg. 35, 2010

<sup>56</sup> “Navigating Growth Attenuation”, Benjamin Wilfond, pg. 35, 2010

<sup>57</sup> “Bioethics and the Question of Human Dignity”, Schulman,  
[https://bioethicsarchive.georgetown.edu/pcbe/reports/human\\_dignity/chapter1.html](https://bioethicsarchive.georgetown.edu/pcbe/reports/human_dignity/chapter1.html), 2008

<sup>58</sup> “Bioethics and the Question of Human Dignity”, Schulman,  
[https://bioethicsarchive.georgetown.edu/pcbe/reports/human\\_dignity/chapter1.html](https://bioethicsarchive.georgetown.edu/pcbe/reports/human_dignity/chapter1.html), 2008

<sup>59</sup> “Bioethics and the Question of Human Dignity”, Schulman,  
[https://bioethicsarchive.georgetown.edu/pcbe/reports/human\\_dignity/chapter1.html](https://bioethicsarchive.georgetown.edu/pcbe/reports/human_dignity/chapter1.html), 2008

be considered a reason to deny the importance of an entire field of study nor should it be enough to rule out Dignity arguments. For example, there is a fundamental tension between Deontological ethical frameworks - those based on duties and intentions - and Consequentialist ethical frameworks - those that determine the moral worth of an action based on the results of that action. Ethics, therefore, in general, can be seen as suffering from the same problem that ails Dignity. However, simply because the basis for ethics is up for debate is not a reason to throw out the project of ethical theory as a whole. Rather, it is a reason to work hard to clarify the concepts.

Ruth Macklin provides one of the most scathing criticisms of the concept of Dignity in medical ethics. She argues that Dignity is nothing more than, a “vague restatement of other, more precise, notions”<sup>60</sup> namely, respect for the autonomy of persons. Macklin provides the example of the movement in the 1970s which pushed to allow people to “die with dignity”<sup>61</sup>. This push ended with the legitimizing of advance directives. Therefore, Macklin argues that Dignity is “nothing more than a capacity for rational thought and action, the central features conveyed in the principle of respect for autonomy”<sup>62</sup>. This counterargument almost accomplishes its goals. I won’t spend too much time here arguing against this point, but I will sketch what I see to be the issues with her argument. I concede that there are aspects of Dignity and respect for autonomy that are similar and I will also concede that the capacity for rational thought and action are related to the concept of Dignity. However, these similarities are not enough to completely sink the concept of Dignity. Firstly, Dignity, as I think of it, is much more than the capacity for

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<sup>60</sup> “Dignity is a Useless concept”, Ruth Macklin, pg.1, 2003

<sup>61</sup> “Dignity is a Useless concept”, Ruth Macklin, pg.1, 2003

<sup>62</sup> “Dignity is a Useless concept”, Ruth Macklin, pg.1, 2003



rational thought. Rational thought is sufficient to have Dignity but it is by no means necessary. Respect for autonomy as a principle is similar to what I conceive of as respect for Dignity, however, autonomy is not a quality achievable for all people. Those who are severely disabled and who therefore lack all or most aspects of what we would consider to be necessary for autonomous action would therefore be excluded from this protection. Dignity is a concept that would avoid excluding these vulnerable populations in a way that a principle of respect for autonomy might not.

Despite these criticisms, I believe that vagueness and perceived uselessness are not reasons to abandon the idea of Dignity, but rather, they are reasons to try and save it.

### **Why Dignity?**

Dignity represents a space in the debate of GAT and the Ashley case that desperately needs focused attention. As we have seen, Dignity factors heavily into both arguments for and against GAT. Even when Dignity is not particularly well articulated or understood, it factors into the discussion naturally - it very much is part of what is at issue in a case like this.

Furthermore, Dignity is not only a natural part of this discussion but it seems more reasonable as an evaluative standard than others, such as autonomy or rationality. Each of which are not necessarily achievable for people in Ashley's position and therefore not useful in the evaluation of a case like Ashley's.

The quality of current Dignity arguments has many bioethicists wondering what use the term has and whether or not we should save it. However, the purpose of my thesis is to try and

save a conception of Dignity and show how it can provide guidance in the Ashley Case. Here is the plan for my thesis.

In my second chapter I will attempt to provide a reasonable basis for the possession of Dignity. There are typically two arguments for why entities are considered to have Dignity - the Intrinsic Worth argument and the Mental Capacities argument. The Intrinsic Worth argument argues that for an entity to have Dignity they must be the type of entity that has intrinsic worth. The Mental Capacities argument says that if you have some, or enough mental capacities (emotion, rationality, sensation, etc...) then you have Dignity. Throughout this chapter I will explain and evaluate both arguments with the intention of concluding that the Mental Capacities argument provides better reasons to believe that some entities possess Dignity.

The third chapter is focused on providing the requirements and prohibitions that follow from an entity possessing Dignity. In this chapter I entertain three possible arguments for what Dignity requires and prohibits. The three arguments are: 1) Eva Kittay argues that to treat an entity with Dignity we must avoid treating them or their bodies in a merely instrumental way, 2) Adam Cureton argues that to treat an entity with Dignity we must regard their ends as worthy of assistance and we must try help them facilitate those ends, 3) Martha Nussbaum argues that to treat an entity with Dignity, we must secure their ten Central Capabilities to a minimum threshold - (life, bodily health, bodily integrity, senses/imagination/thought, emotions, practical reason, affiliation, other species, play, control over one's environment). I will fully explain and then evaluate the strengths and weaknesses of each argument before I move on to my own conception of what Dignity requires.

Also, in chapter III, I will present my own conception of Dignity. The requirements of Dignified treatment are as follows and will be explained throughout the chapter.

## A Preference Theory of Dignity:

1. Mental capacities - of an amount sufficient to give rise to preferences - are the basis of Dignity
2. Treating an entity in a way consistent with their Dignity means facilitating their well-being by
  - a. Considering their preferences to be valuable and
  - b. Allowing and/or supporting the entity to pursue those preferences
  - c. Unless, the satisfaction/fulfillment of the preferences will lead to the harm of another entity with Dignity.
3. Further, if there exists a reason to act paternalistically and therefore override the preference of said entity, then the reason must be sufficiently compelling. A reason is sufficiently compelling if and only if the decision to override the original preference brings about a significantly better outcome:
  - a. First, for the entity with respect to other preferences held by that same entity
  - b. Second, for any third party considerations
  - c. There is a lexical priority between (3a) and (3b), such that (3a) must always be satisfied before (3b) can be considered.

Chapter III will present most of my view, however, it should be noted here that the articulation and presentation of my view will be split between chapter III and chapter IV.

My fourth chapter will be dedicated to the Ashley Case itself. I will argue that my Preference Theory of Dignity can provide reasonable argumentation with respect to the Ashley

case, concluding that there are instances in which choosing GAT for a child with severe cognitive impairments can represent a choice that is consistent with Dignified treatment of the child.

My fifth and final chapter will act as an objections chapter where I entertain two objections. First, I will address concerns about discrimination. Second, I will respond to worries about possible slippery slopes.

## Chapter II: What is the Foundation of Dignity?

The Ashley case provides a jumping off point for a discussion of Dignity. Ashley's limited cognitive and physical functioning coupled with the static nature of her disability means that she will forever be severely limited. This does not mean she will not evolve and progress, however, it will be to a very small degree. Ashley represents, to some, a difficult case with respect to determining if she has Dignity. Her limited and static mental/physical functioning is often thought of as a reason that she would lack Dignity. Whereas, the fact that she is a human being/possesses intrinsic worth are usually thought of as a reasons that she would possess Dignity. The challenge set before me, in this chapter, is to try and establish a foundation for the concept of Dignity that can include Ashley. Essentially, I will be trying to answer the following question: What is the foundation of Dignity?

### **What Kinds of Entities Have Dignity?**

Intuitively there are entities which do not possess Dignity and as a result do not obligate us in the ways that a Dignified entity would. The example that I will use here is a pebble or a rock of some kind. It is often accepted that rocks do not have Dignity. Why is this? Rocks are made of molecules and atoms just like humans and they move around the universe constrained and propelled by the laws of nature and yet, they do not possess Dignity. I believe that most people, myself included, have the intuitive sense that rocks lack Dignity because they do not possess mental capacities and therefore cannot experience anything. They cannot feel pain, have desires, believe in things or possess a point of view. Therefore, it seems that if you were to kick a

rock down the street this would not violate their Dignity because there would be no chance that it would be against their preferences. Whereas, if we imagine kicking an animal or a person down the street, we would meet much more resistance and there would invariably be some conflict between the action done to the entity and their preferences.

One of the difficulties with this point of view can be immediately seen in the Ashley case. If it is true that rocks lack Dignity because they have no mental capacities, then it seems as though mental capacities and possession of Dignity become linked in a possibly problematic way. As such, those entities with fewer mental capacities could be argued to possess less Dignity and those with more mental capacities possess more Dignity. Therefore, we can abuse the more vulnerable populations - animals, the elderly, the mentally ill, and the disabled - because they, presumably, aren't as Dignified as other groups. This objection is one that I will continue to contend with and it represents a key motivation behind creating a better understanding of the foundation of Dignity.

In response to this objection there are those who argue for a grounding of Dignity based on intrinsic worth rather than mental capacities<sup>63</sup>. This view would argue that rocks do not have Dignity because they are not the kind of entity that possesses intrinsic worth. However, while I understand the inclination to move to a conception of Dignity that seemingly avoids the issues faced by the mental capacities approach, I will argue that there is no better conception for the foundation of Dignity other than the mental capacities approach.

In sum, I contend that the entities which possess Dignity are those that possess mental capacities - specifically those who possess enough mental capacities to form preferences. Those that either entirely lack mental capacities or those who do not possess enough mental capacities

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<sup>63</sup> "Whose Convenience? Whose Truth?", Eva Kittay, pg. 2, 2007

to form preferences do not possess Dignity. This means that all inanimate objects and plants lack Dignity. However, nearly all animals and people (disabled or not) do in fact possess Dignity - excluding those who are brain dead. However, the ultimate victory of the Mental Capacities argument over the Intrinsic Worth argument deserves much more ink spilled. In the next few sections I will go through both conceptions for the grounding of Dignity and provide an exhaustive look at what each brings to the table. I will provide the arguments for both positions, launch objections, allow the defenders of the positions space to refute, and finally, I will try to lay to rest the positions, gesturing towards the improvements that need to be made and hopefully will be made by my contribution.

### **The Intrinsic Worth Argument**

Eva Kittay will be the sole defender of the Intrinsic Worth argument that I will present. The Intrinsic Worth argument is a response to those who argue that Dignity is based on advanced mental capacities that adult human beings tend to possess; in this section Peter Singer represents this view. I will call this view the Advanced Mental Capacities argument. These advanced mental capacities are typically, intelligence and a capacity for rational thought<sup>64</sup>. Kittay finds that this way of arguing is problematic because it tends to alienate many of the people/entities who should be considered to have Dignity - animals, children, mentally disabled people and the elderly. I will call this the Problem of Exclusion. In response, she proposes a version of Dignity

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<sup>64</sup> Whose Convenience? Whose Truth?", Eva Kittay, pg. 2, 2007

that is not based on intelligence or rationality but rather, her version of Dignity inheres in the intrinsic worth of the individual.

In a blog post Kittay argues that “the source of dignity”<sup>65</sup> is not found in the capacity for rational thought or intelligence, but rather in the fact that “all individuals have intrinsic worth”<sup>66</sup>. This argument is given directly in response to an article written by Peter Singer about the Ashley case, where he argues that Dignity should be based on advanced mental capacities, which here we can take as rationality or intelligence. Singer argues that since we do not consider animals to have Dignity, even though they possess much more advanced mental capacities than Ashley, then we should not consider Ashley to have Dignity either<sup>67</sup>.

Kittay objects to his argument on two fronts. First, she argues that intellectual ability and rationality should not have anything to do with Dignity; arguing that it would seem entirely ludicrous to allot human rights (and we can infer human dignity) based on people’s scores on an IQ test<sup>68</sup>. If we base Dignity on such an idea then we alienate children, mentally disabled people, the elderly and any combination thereof. Secondly, she argues that animals are in fact capable of possessing Dignity. She cites an example of a circus elephant being forced to wear a tutu and dance as an intuitive case where our discomfort at this sight might indicate an infringement of the elephant’s Dignity<sup>69</sup>.

Kittay imagines her intrinsic worth argument as solving each of those problems. First, if you base Dignity on intrinsic worth then you avoid the Problem of Exclusion. The Problem of Exclusion is a fundamental failure of Mental Capacities arguments, in general, and the Advanced

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<sup>65</sup> Whose Convenience? Whose Truth?”, Eva Kittay, pg. 2, 2007

<sup>66</sup> Whose Convenience? Whose Truth?”, Eva Kittay, pg. 2, 2007

<sup>67</sup> “A Convenient Truth”, Peter Singer, <https://www.nytimes.com/2007/01/26/opinion/26singer.html>, 2007

<sup>68</sup> Whose Convenience? Whose Truth?”, Eva Kittay, pg. 2, 2007

<sup>69</sup> Whose Convenience? Whose Truth?”, Eva Kittay, pg. 2, 2007



Mental capacities argument specifically. As the name suggests, it occurs when the argument excludes, from the set of Dignified entities, those who ought to be included. The Intrinsic Worth argument is a way in which Kittay can guarantee that all people, regardless of mental capacity, intelligence or rationality are included in the set of beings that possess Dignity. After all, as Kittay mentioned, it is unreasonable that someone's Dignity would be determined by their performance on a test of rationality.

Second, Kittay sees her argument as providing a similar service to animals of all kinds, giving animals Dignity through an appeal to their intrinsic worth. Though, it might be worth mentioning that she does not concede that they have the same amount of intrinsic worth as people do - this distinction between human and animal Dignity will become known as, what I call, the Hierarchy problem. We will see that this distinction is difficult to justify without appealing to some form of capacity - specifically mental capacities.

I find myself agreeing, up to a point, with each of Kittay's responses to Singer. First, I tend to agree that there is something wrong about arguing that Dignity is based only on the capacity for rationality or intelligence. The problem, and I agree with Kittay, with that argument is that it tends to exclude many people and entities that should be considered to have Dignity. However, I disagree with Kittay that intelligence and rationality should be discounted entirely. If we imagine Dignity as a reason for treating a person/animal in a morally correct way, then there might be good reasons to include their intelligence and rationality into the equation. Given that intelligence and rationality are important properties that a person can possess and therefore might inform what Dignified treatment of that person might look like. Similarly, I would say that there are many mental capacities that might be very reasonable to take into consideration when trying

to determine what Dignified treatment of that person might look like. Such as: sensation, pain/pleasure, self awareness, etc...

Second, I agree almost wholeheartedly with Kittay's argument that Singer is incorrect to believe that animals do not possess Dignity. Kittay argues that both animals and people have intrinsic worth and therefore Dignity, but she argues that they are not of the same amount/type, implying that people have more intrinsic worth and therefore more Dignity. Kittay is not entirely clear about her reasoning about this distinction and I believe she falls into the trap of the Hierarchy problem - this problem will reappear in the Mental Capacities argument section. This problem is one that occurs when there is a hierarchy of Dignity established between animals and people - or people and any other entity - without sufficient grounds to justify such a distinction. A difference in intrinsic worth must be based on some measurable property held by the entities being judged or else the assignment of intrinsic worth would be entirely arbitrary. In other words, a distinction in intrinsic worth between animals and people without reference to their properties, either physical or mental, leads me to believe that this difference in intrinsic worth signals a bias towards people and not a justifiable difference in value between humans and animals.

### **The Intrinsic Worth Argument: Hierarchy Problem**

Through the comparison of a rare rock and a person we can tease out a difficulty with the Intrinsic Worth argument. This difficulty is a version of the Hierarchy problem because Kittay's argument concludes that people have a sort of elevated Dignity without providing sufficient argumentation to justify the distinction - typically the Hierarchy Problem arises between animal Dignity and human Dignity, but it applies here as well.

We can imagine that a rock collector can collect and polish rare and unique rocks without the intention to sell them. She could be collecting them simply because they possess value in and of themselves. Now, it seems as though the Intrinsic Worth argument puts us in a strange situation. These rare rocks now possess the same type of value on which Kittay is attempting to build her theory of Dignity. This might lead one to conclude that both rare rocks and people are both the kinds of things that have Dignity, because they both possess intrinsic worth. However, this conclusion is strange, as rocks are not typically the kinds of things to which we assign Dignity. A further curiosity of Kittay's argument is that she gives no evaluative criteria to make distinctions between entities that possess intrinsic worth. All Kittay argues is that "all individuals possess intrinsic worth" and this is the basis of Dignity. So, it seems reasonable, on these grounds, to conclude that Kittay's argument forces us to accept that both rare rocks and people, in virtue of being individuals that possess intrinsic worth, have the same amount of Dignity. I have no trouble accepting that both people and rare rocks possess intrinsic worth, but I don't agree that this sort of worth can serve as the basis for Dignity.

Kittay might respond by pushing back on the equivalence that I established - insisting that humans have more Dignity than rocks. I can imagine Kittay arguing that even if it is true that both people and rare rocks can both possess intrinsic worth, there is an incredible difference in the amount of worth that each possesses. Rocks possess such a small amount of intrinsic worth that they do not pass the threshold to have Dignity.

This sort of defense is supported by philosopher Harry Frankfurt when he argues, "the fact that a certain object possesses intrinsic value has to do with the type of value the object possess... but it has nothing to do with how much value of that type the object has"<sup>70</sup>. In other

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<sup>70</sup> "The Reasons of Love", Harry Frankfurt, pg. 13, 2004

words, Frankfurt is arguing that, to say an object, like a rare rock, possesses intrinsic value, is to make no comment on the amount of value that the rock possesses. Rather, the designation of intrinsic value/worth only tells us what *type* of value the rock possesses. So, Kittay could argue that the rock, animals and people can all have intrinsic value/worth, but that there can be and are good reasons to believe that they don't all have the same amount of intrinsic value/worth.

However, if I pushed on this - asking: what accounts for the difference in intrinsic worth between people and rocks? I can only imagine Kittay making some comment about differences in mental capacities - capacity for thought, emotion, suffering - because making a distinction in intrinsic worth between entities must be based on the properties each entity possesses. As Harry Frankfurt noticed, intrinsic value "depends exclusively upon properties that inhere in the object itself"<sup>71</sup>. The most important difference between a rock and a person with respect to properties is that people have mental capacities and rocks do not. As we will see later in this chapter, Nussbaum, through her appeal to community membership, provides another way to avoid assigning Dignity to rocks - rocks do not belong to communities, but I will save that for another section.

This problem represents a failure for Kittay's argument for the following reasons. Kittay disputes the mental capacities argument because it excludes people who she thinks ought to have Dignity. So, in response she tries to correct this mistake by basing Dignity on the fact that all individuals have intrinsic worth and this intrinsic worth is the root of their Dignity. She does this instead of basing Dignity on mental capacities. However, my main point is this - intrinsic worth is based on the properties of the entities in question, specifically, it seems as though it is based on mental capacities. Kittay, by arguing for a difference in Dignity between rocks and people,

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<sup>71</sup> "The Reasons of Love", Harry Frankfurt, pg. 13, 2004

commits herself to the idea that the difference must be based on a difference in intrinsic worth and therefore of properties possessed by the rocks and people. Therefore, I argue that she is inadvertently falling into the same trap she tried to avoid – Dignity is ultimately dependent on mental capacities. Next, I will detail the Mental Capacities argument.

### **The Mental Capacities Argument**

The mental capacities argument says that Dignity, if properly understood, is based on the mental capacities that a person, animal or entity, more generally, possesses. For some of these views the only important mental capacities are rationality and intelligence - Peter Singer represents this view. However, for others the range of mental capacities that ground Dignity is much wider, such as the view held by Martha Nussbaum. I would like to focus on two failures of the Mental Capacities Argument. First, this view suffers from a failure to allot Dignity to each and every person/entity that should have it - the Problem of Exclusion. This is one of the risks with this sort of view, if the list of Dignity grounding mental capacities is chosen poorly or sometimes even well, there may be people/entities who are unjustly left out. Second, this view, like the intrinsic worth argument, tries to maintain a hard line between human Dignity and animal Dignity - The Hierarchy Problem.

### **The Mental Capacities Argument: Problems with Exclusion**

The clearest example of this sort of failure is seen in Peter Singer's arguments regarding Ashley. He argues that Dignity should be based on advanced mental capacities, most likely,

intelligence and rationality<sup>72</sup>. He implies that normal functioning adult humans possess the necessary and sufficient mental capacities to be considered Dignified, but that children do not. Additionally, he argues that children, especially those similar to Ashley, possess even fewer mental capacities, of this sort, than animals. Given that we do not grant animals Dignity, then we should not grant Ashley or children, in general, any form of Dignity<sup>73</sup>. This sort of issue of exclusion is a fundamental problem with the mental capacities view. Dignity, thought of generally, is a reason for a certain reverence, respect or moral worth of an entity, and to deny it so fully to a vulnerable population seems wrong. It is better, normally, to protect vulnerable populations rather than not doing so. The number and type of mental capacities chosen determines who and what is included in the set of Dignified entities. This set should be made as large as is reasonable. However, not all mental capacities arguments are this extreme. As we will see, there are those who can argue from a mental capacities based approach while making provisions for those with lesser capacities.

Adam Cureton uses a Kantian definition of Dignity, while at the same time trying to save our direct duties to people in the disabled community. Cureton argues that,

Persons, Kant argues, have rational capacities that make us ends-in-ourselves and give us dignity. This special value of persons is an objective, ‘unconditional and incomparable’ worth or status that must always be respected and never violated.<sup>74</sup>

This view provides Kant, and Cureton, with a theory of Dignity that allows most people to have Dignity in a way that is separate from “gender, race, class, physical or mental abilities,

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<sup>72</sup> “A Convenient Truth”, Peter Singer, <https://www.nytimes.com/2007/01/26/opinion/26singer.html>, 2007

<sup>73</sup> “A Convenient Truth”, Peter Singer, <https://www.nytimes.com/2007/01/26/opinion/26singer.html>, 2007

<sup>74</sup> “Respecting the Dignity of Children with Disabilities”, Adam Cureton, pg.265, 2017

moral virtue or any other characteristic besides rational agency”<sup>75</sup>. This is a very tempting argument, but rational capacities, as we have seen, are not universal. If we accept Kant’s account then we run into essentially the same issue as we did with Singer. There would be those, abled or not, who would not meet this standard of rationality.

Kant does try to save his argument by arguing that we have an indirect duty to animals. Meaning that our duty to treat animals morally is a way of acting out our direct duty to rational agents, a similar argument could be given in favor of having a duty to disabled people. But, this doesn’t strike me as correct because the disabled community should be afforded Dignity - not as an indirect duty to abled people (rational agents) - but as something that they have in their own right.

Cureton argues that his way of fixing this problem, which is slightly different from Kant, is that disabled people should be assumed to have these qualities (rational agency), unless there is “overwhelming positive evidence to the contrary”<sup>76</sup>. However, the difficulty with Cureton’s argument is that there are those people - Ashley for one - for whom there is “overwhelming positive evidence to the contrary” but who still should be afforded Dignity. While I believe his effort to save their Dignity was admirable, I think that ultimately it falls flat. This biggest issue with Cureton’s capacity argument is that it rested its entire weight on rationality and rational agency. Martha Nussbaum, on the other hand, widens her scope to include other important capacities. Her issue, as we will see, lies in a tension stemming from her attempt to support the idea of Human Dignity as something above animal Dignity - the Hierarchy Problem. However,

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<sup>75</sup> “Respecting the Dignity of Children with Disabilities”, Adam Cureton, pg.265, 2017

<sup>76</sup> “Respecting the Dignity of Children with Disabilities”, Adam Cureton, pg.266, 2017

before we get to Nussbaum's argument, let's look at another possible solution to the Problem of Exclusion - namely, the Community Membership argument.

### **The Mental Capacities Argument: Community Membership as a Response to Exclusion**

The move to base Dignity on community membership originates from the concerns of exclusion that appear when Dignity is grounded in advanced mental capacities. In this way the argument would say that possessing Dignity is a function of being part of a specific community. Therefore, all people who are part of the human community - regardless of age or ability - would be considered Dignified. The next question which follows from this line of inquiry is - what about being part of the human community makes us worthy of this distinction of Dignity?

In order for it to make sense that being part of the human community acts as justification for possessing Dignity then there must be some quality or characteristic common among all in the group that would justify this distinction. It doesn't matter which property or characteristic we choose, there is not a single justifiable property that is common among all people within the set of human beings. For example, you could choose rationality, autonomy, sensation, self awareness, etc... However, none of these are common among all people. This lack of homogeneity indicates a weakness in this argument because it cannot include everyone.

Some people might counter this point by arguing that all humans possess the same type of DNA and that is the characteristic that determines the community membership. However, the question that follows is this: what specifically about this strand of molecules justifies possession of Dignity?



They may argue that there is a certain amount of special human potential hidden among the DNA of members of specific groups and it is this pervasive potential that allows us to base Dignity on membership to the human community. However, I don't believe that pointing to our genetic code - this complex strand of molecules - alone is enough to justify an assignment of Dignity. It seems unfair to say that because an entity was born with the wrong strand of molecules they are therefore, undignified.

Even if we accept that DNA is sufficient, in itself, to determine and allot Dignity; Defenders of this view would have to explain how to make sense of the fact that we (humanity) share over 98% of our DNA with our cousins, the chimps. If this is the case, then it is not clear that using DNA, as a way to draw a circle around the set of people who are human, is a successful strategy. Therefore, DNA does not represent a convincing way to divide human communities from some animal communities.

Additionally, I would argue that this community membership argument is, in fact, a veiled mental capacities argument. They talk of hidden human potential which we can infer to mean they are talking about uniquely human mental capacities or even physical capacities. The aspect that they are truly basing their community membership on is not DNA, instead it is the effect of the DNA - the manifestation of mental capacities.

Those making a community membership argument fail to notice that there is a difference between the cause of something and the effect or the result. The defenders of the community membership argument tend to credit DNA as the basis of Dignity, when in fact they are actually implicitly crediting the effect (the mental capacities).

While it might be true that certain groups - animals and people - are predisposed to certain levels and types of mental capacities due to the type of DNA they possess, this is not

sufficient to claim that their Dignity is determined only by their DNA. It is not their DNA (cause) alone that acts as justification for Dignity, but it is their mental capacities (effect) that acts as justification - the qualities that make them uniquely human. In other words, it is not sticks that are rubbed together that keep people warm, rather it is the fire.

Therefore, the people who push for Dignity through community membership determined by possession of a certain type of DNA end up making an argument that is based on mental capacities.

### **The Mental Capacities Argument: Problems with Hierarchy**

Martha Nussbaum gives good reasons to support the mental capacities argument, however, her attachment to the idea of the superiority of Human Dignity introduces the Problem of Hierarchy once more. This problem stems from the distinction between animal Dignity and Human Dignity, as Nussbaum puts it, “dignity appropriate to the species in question”<sup>77</sup>. The Hierarchy problem occurs in arguments that base Dignity on mental capacities when there are cases in which the mental capacities argument allots equal Dignity to both animals and people. As a result, they resort to the idea of a Hierarchy of Dignity as a way of preserving the elevated Dignity of humans.

Nussbaum argues that Dignity should be thought of as something grounded in certain capacities and capabilities that people and animals possess. More specifically, humans and animals possess Dignity because, “they are complex living and sentient beings endowed with

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<sup>77</sup> “Abortion, Dignity and a Capabilities Approach”, Martha Nussbaum, pg. 4, 2011

capacities for activity and striving”<sup>78</sup>. Nussbaum, being well aware of the shortcoming of this sort of view, makes provisions with the aim of protecting as many entities as possible, such as, the disabled community, women, people of historically oppressed races etc... She makes two provisions in an effort to protect these vulnerable populations<sup>79</sup>. She argues that people should be assumed to have these capabilities, unless shown to be brain dead, in a persistent vegetative state or some other such state, and that the Dignity of a person should not be defined by one capacity, such as rationality, but rather Dignity should be based in a plurality of capacities<sup>80</sup>. In this way Nussbaum gives a solid foundation for the idea of Dignity. Her argument avoids the type of problem – exclusion - that the other versions of Dignity run into, however, her argument remains flawed.

The flaw in her argument appears when she attempts to resolve perceived tensions between human and animal Dignity by hanging onto the idea of Human Dignity as something over and above other forms of Dignity - The Hierarchy Problem. The issue that Nussbaum notes is the tension between the animal rights arguments and those defending the rights of disabled children<sup>81</sup>. There is often a comparison made between the two.

For example, we can imagine a world where an animal rights activist makes the following argument: 1) this animal has a, b, and c Dignity grounding mental capacities, 2) this disabled child has the same a, b, and c Dignity grounding mental capacities, 3) Therefore, if these two entities have the same Dignity grounding capacities then we owe them the same moral

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<sup>78</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.255, 2008

<sup>79</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.252, 2008

<sup>80</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.252, 2008

<sup>81</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.254, 2008

consideration. If Dignity is based on mental capacities, this seems like a reasonable argument to make. Nussbaum attempts to resolve this issue by appealing to the idea of Human Dignity through community membership<sup>82</sup>. While I agree that disabled children are, on average, owed more consideration than animals and that this tension must be addressed, I believe that the way in which Nussbaum settles the tension inappropriately sidelines the mental capacity argument, on which she based all of her previous conclusions about Dignity.

### **The Mental Capacities Argument: Community Membership as a Response to Hierarchy problems**

Nussbaum attempts to resolve this tension by appealing to Human Dignity through community membership. She gives the example of a chimpanzee compared with a mentally disabled human child. Similar to the more nondescript example above, it seems as though within the framework of mental capacities there could exist some sense of “rivalry” or equivalence between the two<sup>83</sup>. This rivalry, Nussbaum argues, originates from a comparison made frequently by Utilitarian philosophers. Utilitarian philosophers argue “that we have exactly the same ethical obligations to both” humans with disabilities and animals<sup>84</sup>. This conclusion, Nussbaum notices, often causes “edginess”<sup>85</sup> between the disability rights movement and the

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<sup>82</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.254, 2008

<sup>83</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.254, 2008

<sup>84</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.254, 2008

<sup>85</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.254, 2008

animal rights movement. However, Nussbaum argues that this sense of rivalry can be put to bed with a better understanding of the environments within which each being lives.

Human children are born within a human world and live with human relationships. This means that even though it is possible for an equivalence of Dignity grounding capacities to exist in both a disabled human child and a chimpanzee, “A human child with profound mental retardation has no option of going off to live happily with the chimps in the forest”<sup>86</sup>. Therefore, “[the disabled human child] should have the entitlements of an equal human being, and that means, I think, all the same ones that every other human being has”<sup>87</sup>. This community distinction is meant to elevate people over animals. We can reasonably infer that “entitlements of an equal human being” are different - more comprehensive and most likely better - than those to which an animal is entitled. Let’s remember her previous statement, “dignity appropriate to the species in question”, this surely does not mean that human Dignity is of a kind less than a chimp.

Essentially, Nussbaum is arguing that community membership is the factor which separates human Dignity from animal Dignity. Before I provide my counterargument, I would like to acknowledge that Nussbaum’s argument is explicitly a political one. She does mention that her appeal to the community and environment is with respect to “political entitlements”<sup>88</sup> which is slightly different from the argument I am providing. However, despite this slight difference in focus I still believe that the decision, in general, to shift argumentation from a mental capacities argument to a community membership argument is a poor idea. Further, I

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<sup>86</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.253, 2008

<sup>87</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.253, 2008

<sup>88</sup> “Human Dignity and Bioethics: PCBE”, Martha Nussbaum, pg.253, 2008

believe that a coherent resolution of the problem can be provided through only a mental capacities argument.

The problem with Nussbaum's solution is that it feels a bit like a bait and switch. She begins her argument by appealing to capacities and capabilities as grounding the idea of Dignity. However, when faced with the problem of equivalence across species, she hangs onto the idea of a separation between Human Dignity and Animal Dignity - this is the problem of Hierarchy. Justifying it by appealing to community membership, which seems entirely ad hoc and at odds with the mental capabilities argument she pushes for originally. Her attempt to secure and protect the elevated Dignity of people relative to animals puts her two conceptions of what constitutes Dignity at odds.

If we are to accept that mental capacities and capabilities are the basis of Dignity then we must accept instances of equivalence across species. Refusing to accept this equivalence of mental capacities and therefore Dignity runs against the idea that Dignity is truly based on mental capacities at all. The decision to backtrack and change the grounding of Dignity from mental capacities to the community standard shows a tension in Nussbaum's argumentation, which very obviously is a result of the desire to reinforce a Hierarchy of Dignity between animals and people.

Specifically, the tension arises from the conflict between the mental capacities argument and the community standard. For example, if we have Chimp A and Person B who both have the same mental capacities then on a strictly mental capacities type argument we would conclude that they have equal Dignity. However, a strictly community based argument would disagree, saying that, regardless of the mental capacities of the entity, the person has a higher level of Dignity than the animal based on the community that it is part of. These two standards, while not

necessarily contradictory in every case, are and tend to result in different conclusions. Therefore, I would say that Nussbaum's use of both is evidence of a tension which could lead to conceptual issues.

The difficulties with this view are not too many. Martha Nussbaum argues extremely well for her version of Dignity. However, her attempt to hold onto the superiority of Human Dignity through community membership as something distinct from animal Dignity leads her to base Dignity on both capacities and community membership, which while not always leading to contradictions, it does lead her view to have some internal tension.

### **Brief Recap**

Throughout the previous sections I have argued that both possible responses to the Mental Capacities Argument have failed to persuade. The Intrinsic Worth argument can be understood as a response to the Problem of Exclusion that crops up in the Mental Capacities argument. The intention of the Intrinsic Worth argument is to assign Dignity based on the intrinsic worth and not the mental capacities of the entities in question. However, because this argument falls prey to its version of the Hierarchy Problem it inadvertently is forced to rely on mental capacities to complete its argument. Therefore, it does not succeed in its aim.

Next, I showed that the Mental Capacities Argument, as it stands, suffers from two problems. First, the Problem of Exclusion and second, the Problem of Hierarchy. The versions of the Mental Capacities argument that I present are unable to solve these problems themselves.

Further, I tried to show that the Community membership move is equally unhelpful to solve these problems and it, in fact, shows that the community membership argument not only fails, but in some cases pushes us back towards the Mental Capacities argument.

Therefore, I conclude that the Intrinsic Worth Argument and the Community Membership arguments fail to give a satisfactory basis to the concept of Dignity. Further, I would say that the previous versions of the Mental Capacities argument failed in the already detailed ways. So, I will now argue that my version of the mental capacities argument is able to solve the issues that the Intrinsic Worth, Community Membership and other versions of the Mental Capacities arguments could not.

### **The Preferences Argument: The Ashley Case**

Ashley provides an example of a tricky case when it comes to the assignment of Dignity. Her minimal higher mental capacities, some people think, gives reason to exclude her from the set of entities with Dignity, whereas her obvious membership in the human community/her possession of intrinsic worth gives some people reason to grant her Dignity. However, I will argue that in order for a person to have Dignity they need only enough mental capacities to form a preference. Which - defined broadly - is the disposition to choose among options/to have the inclination to prefer one option or a cluster of options over another. This sort of argument will guarantee that Ashley is considered to have Dignity because she has been observed to have enough mental capacities to form preferences. Furthermore, this sort of argument will help fix the major issues I've identified with the previous arguments such as: problems with Exclusion and Hierarchy.



## **Preferences as Sufficient for Dignity**

My preferences argument is, at its core, a mental capacities argument. Having a preference is contingent upon the possession of mental capacities, however, they need not be very advanced. At base, having a preference, as I think of it, is to have the inclination to choose one state of affairs over another or to prefer one option over another and it requires that the entity have a subjective experience of their choice. This does not require that the entity have second order mental states. In other words, to have a preference does not require that one knows they have a preference. It is perfectly reasonable to believe that a worm, relying on its instincts and drives, prefers to move, eat, defecate, avoid the hot sun, avoid drowning etc... all without knowing that it has preferences. As a result, this worm has Dignity. However, this idea also applies to more complicated entities, such as doctors and lawyers, adults of every kind. They are able to think about their preferences and about their preferences with respect to those preferences. As such, they too have Dignity. Additionally, this basis for Dignity solves the two problems that plagued the previous Mental Capacities arguments. Namely, exclusion of populations that should be included in the set of Dignified entities and the problem of hierarchy.

### **A Preferences Argument: Fixing the Problems with Exclusion**

The biggest issue with mental capacities arguments tends to be with the selection of which mental capacities count as Dignity grounding and which do not. If we choose advanced mental capacities like rationality, self-awareness and intelligence, then we alienate many children, elderly people, disabled people and animals, all of whom should be included. Similarly, even if we widen the scope of the mental capacities to include affection, enjoyment, pleasure and pain, there will still be people who lack those things. My preferences argument was intended to

loosen the requirements so that the entire range of entities could be included into the set of entities with Dignity. As I mentioned in the previous paragraph, under my view both worms and doctors are included in the set of entities that possess Dignity.

My argument can accomplish this feat because the requirement of having a preference is easily satisfied by nearly all humans and animals - and those who cannot satisfy the requirement are not worse off because of it. For example, to have a preference a person/animal could have the most basic subjective experience of pleasure/pain or approach/avoid instincts. A threshold this low is able to include many more entities than any advanced mental capacities argument. The most important implication of this argument is that it fully includes Ashley in the set of entities that possess Dignity.

Ashley has demonstrated sufficient mental capacities to form preferences, therefore she has Dignity. She demonstrates these mental capacities through her overt behavior, which was and continues to be observed by her parents. Ashley's parents argue that Ashley loves to listen to music, kick her legs and move her arms. She often laughs and can vocalize "little happy sounds". Additionally, Ashley expresses joy when her parents walk in the room by smiling and giggling<sup>89</sup>. This overt behavior lends itself to the reasonable inference that Ashley, as she is, possesses sufficient mental capacities to prefer certain things over others. This description shows that she possesses, without doubt, mental capacities. She possesses the ability to sense her loved ones, enjoy their care and affection, and respond in some ways. Each of those is enough on their own to guarantee her Dignity, but all of them together seals the deal. Therefore, the mental capacities account, as I've argued for it, can provide Ashley with Dignity.

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<sup>89</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 3, 2007

But, there are still entities that are excluded from the set of entities that possess Dignity. Specifically, my argument excludes people who are brain dead, rocks and plants. People who are brain dead no longer possess the brain functionality to have any mental capacities at all. They, at the time of brain death, lack all present and future mental capacities and therefore can no longer form either simple or complex preferences. Rocks do not, have not, and will not have any sort of mind, experience, point of view or preference, therefore they do not possess Dignity.

In contrast, plants represent a slightly trickier case. As Christine Korsgaard has argued, it is quite easy to imagine, “[a] plant turn[ing] toward the sun, or its roots grow[ing] down through the dry soil to where there is more water”<sup>90</sup> and interpreting this behavior as an indication of preference. We could say that the plant prefers sun and water. However, I would say that part of having a preference is to have a point of view, having a subjective experience of the preference. As Korsgaard points out, “[T]hese movements may even be reactions to events or conditions in the environment. But these reactions to the environment are not intelligent movements...”<sup>91</sup>. I am wary of the phrase “intelligent movements” because that can be interpreted as an advanced mental capacities argument, but she is right about what is at issue here - at base. If it is the case, as I think it is, that the movements of plants are just reactions to the environment rather than genuine preferences - which require a subjective experience - then plants do not have Dignity.

There are some people who would use this argument to attack my inclusion of the worm and to that I would have to agree with Korsgaard once more, such that “there is not a hard and fast line in nature between mere reaction” and the expression of genuine preference<sup>92</sup>. It is

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<sup>90</sup> “Self-Constitution: Agency, Identity, and Integrity”, Christine Korsgaard, pg. 97, 2009

<sup>91</sup> “Self-Constitution: Agency, Identity, and Integrity”, Christine Korsgaard, pg. 97, 2009

<sup>92</sup> “Self-Constitution: Agency, Identity, and Integrity”, Christine Korsgaard, pg. 97, 2009

possible that a worm lacks a subjective experience, and if that is the case then the worm also lacks the ability to form a preference and therefore has no Dignity.

### **A Preferences Argument: Fixing Problems with Hierarchy**

As we have seen in arguments like Nussbaum's there is often the inclination to expressly protect the sanctity of humanity. There is something unnerving about the perceived rivalry between the disabled community and animals. The rivalry, if we remember, originates from a perceived equal moral obligation to both the disabled community and the animal community. However, the abled human community generates more moral obligation than both the disabled and animal communities. It is because of this perceived rivalry that philosophers, like Nussbaum, switch tactics from the mental capacities argument and move to a community or even species level argument in order to maintain the border. However, as I have argued previously, this move fundamentally weakens the previous mental capacities arguments and, in my opinion, doesn't quite yield beneficial results. Instead, I will argue that the perceived rivalry is misleading and can be put to bed through an understanding of my preferences argument.

There is no hard and fast line separating animal Dignity and human Dignity. I do not see the two as different types or kinds of Dignity. Rather, I view Dignity in a way similar to how I see healthcare. For example, if we imagine that all people and animals deserve health care, as many of us do, then we can say that all people/animals, in virtue of having bodies/minds, are entitled to medical care. However, this does not imply that all animals and all people are entitled to exactly the same medical care. Rather, it depends on the specific health issues that the person/animal faces.

This is how I imagine the relationship between Dignity and the obligations it generates with respect to how we treat the object of those obligations. If the entity has enough mental capacities to form preferences then that means they have Dignity, the specifics of how that obligates others to treat them is dependent on the specific entity and specific situation with respect to those preferences. There is no sense of competition between humans and animals.

Specifically, one worry that crops up is the comparison of disabled humans to animals. This comparison is often used as a way to degrade and demean those who are disabled. However, this is absolutely not the goal of my argument. All people and all animals share the same roots of Dignity. The comparison, if we so desire, is not one that exists exclusively between disabled humans and animals - this would be, on average, a demeaning comparison. In my eyes, the roots of Dignity are that entities have preferences, that they have a subjective experience and so prefer or are inclined to choose between states of affairs that effect them. In this way, we can see that Dignity should not and need not be divided between humans and animals. In other words, the desire to maintain the sanctity of human Dignity through the imposition of a Hierarchy of Dignity is unnecessary.

### **Conclusion**

In sum, this chapter has been aimed at providing a conception for the basis and grounding of Dignity. Specifically, with the intention of arguing that Ashley is a person who possesses it. I argued for this in a few different steps. First, I argued that the reason rocks lack Dignity and people/animals do not, could be for two reasons - Intrinsic Worth or Mental Capacities. Second, I explained what each view argued for and where they failed. The Intrinsic Worth argument

pushes for the idea that all individuals possess intrinsic worth and this is the basis for their Dignity. However, this view holds a distinction between the intrinsic worth of rocks/animal individuals and individuals who are humans, without sufficient argumentation.

The Mental Capacities argument, on the other hand, argued that it is the mental capacities of the animals and people that act as the basis for their Dignity. However, this view runs into issues of exclusion, such that choosing which capacities are Dignity grounding can exclude vulnerable populations that should be included. Additionally, this argument, in the pursuit of maintaining human elevation over animals (the Hierarchy Problem), runs into internal tension, brought on from the move from a Mental Capacities argument to a community membership argument.

Finally, I asserted that an adapted Mental Capacities Argument - the Preferences Argument - could solve both of the problems faced by the other attempts. Namely, the Problem of Exclusion and the Problem of Hierarchy. I tried to show that if we based Dignity off of mental capacities - a sufficient amount to have preferences - then no entity would be excluded from the set of entities that possess Dignity, who ought to be included. Further, the populations that are excluded from the set of Dignified entities are no worse off. The Problem of Hierarchy, which originated from the inclination to maintain a border between people and animals is not necessary. According to my argument, all beings with mental capacities sufficient to form preferences possess the same amount of Dignity. This does not mean that treatment or obligation is exactly the same in every situation, however, it does mean that there is no need to jockey for position.

A further consideration, that I will only just touch on here, is the implication of my argument for the treatment of animals more generally. My argument grants full Dignity to any

animal or entity that possesses the ability to form preferences. As such, my argument may have significant implications for what is considered morally permissible treatment of animals.

The next chapter will effort to explain the requirements and prohibitions that follow from the possession of Dignity.

## Chapter III: What Does Dignity Require/Prohibit?

In the previous chapter I argued that Dignity is possessed by any and all entities that have sufficient mental capacities to form preferences. The logical next question to ask is: what obligations do we have to entities that can form preferences and therefore have Dignity? In other words, what does Dignity require of us and how can we tell when Dignity has been infringed upon? This must happen before we can hope to use a theory of Dignity to shed light on the Ashley case and so, this will be the focus of the following chapter. I plan to accomplish this aim in the following steps. 1) I'll give examples of situations in which Dignity is thought to be violated (as a way to set a baseline intuition), 2) I'll allow the competing theories of Dignity to give their best shot at explaining what exactly Dignity requires and how the Dignity violating examples specifically violate and infringe upon Dignity, 3) I'll provide reasons for why these arguments provide correct conclusions with respect to the Dignity infringing cases, but they each fail to provide fully satisfactory arguments, 4) finally, I'll argue that my version of the requirements and obligations generated by Dignity provides the best argument.

### **Typical Cases in which Dignity is Thought to be Violated**

I'd like to start this chapter with two cases - slavery and abuse - both of which are typically thought to be clear violations of the Dignity of persons. I'm beginning here for two reasons. First, it provides the reader with concrete examples of violations of Dignity and will serve as crucial and easily accessible examples moving forward. Secondly, and more importantly, it serves as a locus of agreement among the competing theories of Dignity (Kittay's,



Cureton's, Nussbaum's and mine). Each theory of Dignity presented in this chapter and in previous chapters, agrees with the conclusion that slavery and abuse violate the requirements produced by Dignity. However, even though each theory of Dignity agrees on, and gets correct, the conclusions in these two cases, that is not enough to conclude that the theories are equal to one another. The initial agreement will serve to highlight the salient differences in how each theory conceives of the specific and unique requirements/prohibitions that constitute Dignified treatment. It is the analysis of these requirements and obligations stemming from the possession of Dignity which will make up the bulk of the chapter. My next step is to fully explain the two situations, along with intuitive first impressions, before moving on to show how each theory of Dignity handles both cases.

Chattel slavery - in which people and their descendants are the legal property of another person - represents an archetypal example of an action that violates the Dignity of the enslaved person. Before I move on with this example I'd like to acknowledge that chattel slavery and enslavement are in many ways a legal designation, such that to be enslaved is to be the property of the person to whom you are enslaved. However, property claims notwithstanding, the focus of this example is on the results and conditions of enslavement and not on the legal status as property. The status as private property leads to the treatment I will describe, but it is the treatment which will concern us here.

Example 1) A person who is enslaved finds themselves fully at the mercy, or lack thereof, of their owner. As such, they are subject to complete domination and control, including but not limited to: type of dress, type and amount of food, type and amount of labor, shelter, medical care, reproduction, free time (if any), etc... An enslaved person is treated as property and therefore they are objectified in the most complete sense of the word. Further, they are used

at the discretion of their owner, unable to exercise their free will and they have no recourse to advocate for themselves. It seems that this situation intuitively violates the Dignity of those subject to this sort of treatment.

Example 2) Imagine that there is a child living in a foster home and the parents of this home refuse to use the money they get from the state to buy the essentials for the child. Instead, they physically abuse the child and force them (the child) to eat dog food and live in filth, happily spending their state funds on beer. Cases of child abuse and neglect create intuitive examples of violations of Dignity.

I would argue that in examples (1) and (2) the conclusion that both the enslaved person and the abused child are treated in a way that violates their Dignity is relatively self-evident. At the very least, our intuitions should be alerting us of some sort of moral infraction. The next step is to see how each competing theory of Dignity explains the previous two cases, noticing two things specifically. First, I'll provide the arguments for what Dignity requires from the point of view of each theory. Secondly, I'll show how both examples violate the standards given by each theory.

### **Eva Kittay on Slavery and Abuse**

Eva Kittay argues that Dignity requires us to avoid treating entities in possession of Dignity as mere means. In other words, we must avoid using entities with Dignity in an merely instrumental way. Thinking of Dignity as requiring this gives a clear answer to the first example and a relatively clear answer to the second. First, slavery is the quintessential example of a person being used instrumentally - they are used as objects of production with no reference to their intrinsic value. Their only worth is measured in what they can do for those that own them.

Second, in the case of abuse, the foster parents are using the child instrumentally during the course of the physical abuse. However, the case becomes slightly muddled with respect to being forced to eat dog food and sleep in filth (which intuitively feels like an infringement of Dignity). The latter details of the second example strains Kittay's notion of Dignity, however, it is not the place to discuss this here. The next move is to describe exactly how Kittay formulates her conceptualization of the prohibitions that stem from Dignity.

### Kittay's Dignity Argument

- 1) All individuals possess intrinsic worth,
- 2) (1) is the basis of our dignity<sup>93</sup>,
- 3) Our bodies are importantly constitutive of ourselves such that "our bodies are ourselves" and "what is done to our bodies is done to us"<sup>94</sup>,
- 4) If (1) and (3), then our bodies are also intrinsically valuable,
- 5) To treat a person with Dignity is to avoid treating both their body and themselves merely instrumentally<sup>95</sup>.

The guiding question in each of the following examples is this: does the situation result in the merely instrumental use of either the body or the person? Simply put, the answer is yes in both examples.

Example 1) We can apply Kittay's argument to see that a person who is enslaved is not being treated with Dignity. 1) A person who is enslaved is an individual and therefore possesses

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<sup>93</sup> "Whose Convenience? Whose Truth?", Eva Kittay, pg. 2, 2007

<sup>94</sup> "Forever Small: The Strange Case of Ashley X", Eva Kittay, pg. 620, 2011

<sup>95</sup> "Forever Small: The Strange Case of Ashley X", Eva Kittay, pg. 616, 2011

intrinsic worth, 2) the enslaved person possesses Dignity, 3) the enslaved person has a body and their body is constitutive of themselves, such that they are their body, 4) if (1) and (3), then the enslaved person's body is intrinsically valuable, 5) to treat the enslaved person with Dignity is to avoid treating both their body and themselves merely instrumentally, 6) a person who is enslaved is being treated and used merely instrumentally for the product of their labor, 7) therefore the person who is enslaved is not being treated with Dignity. This is a fairly airtight conclusion and should give us confidence in Kittay's ability to render the correct answer in cases such as this one.

Example 2) Let's do something very similar to the last example. 1) The child is an individual and therefore possesses intrinsic worth), 2) the child possesses Dignity, 3) the child has a body and their body is constitutive of themselves, 4) if (1) and (3), then the child's body is intrinsically valuable, 5) to treat the child with Dignity is to avoid treating both their body and themselves merely instrumentally, 6) a child who is being abused is being used merely instrumentally by the people abusing them - their body is being used without their permission for ends that are not their own, 7) therefore the child is not being treated with dignity. As in example (1) Kittay gives persuasive reasons to believe child abuse infringes on the Dignity of the child being abused. Eva Kittay has shown that her theory of Dignity is able to give relatively well supported evaluations of both the Dignity infringing cases. However, the main issue with her argument stems from her inability to explain how the following example is an infringement of their Dignity.

Example 2\*) Imagine a foster parent who, through pure negligence decides to feed a child dog food and has the child live in filth. The parent receives no sadistic joy or material benefit, they simply are neglectful.

Eva Kittay's Dignity argument hinges entirely on the prohibition of mere instrumental use which limits the explanatory power of the argument. Her prohibition of instrumental use of the body and person can be simplified into conditional statements. "I" = treating someone instrumentally, "D" = treating someone with Dignity.

(a)  $\sim I \rightarrow D$  and  $\sim D \rightarrow I$

- (i) If you are not treating someone merely instrumentally then you are treating them with Dignity.
- (ii) If you are not treating someone with Dignity then you are treating them merely instrumentally

Interpretation (a) - while likely not what she meant - is unhelpful. (a) doesn't seem entirely right, because there are cases in which you are not treating the person merely instrumentally but still are violating their Dignity. A crucial example of this is the case of dog food and filth. The parents in this example are not using the child's body or the child themselves as a mere means for some end, but are rather engaged in a harmful negligence of the child. Typical negligence cases are those in which there is no explicit instrumental use of the person but there is still an infringement of Dignity.

(b)  $I \rightarrow \sim D$  and  $D \rightarrow \sim I$

- (i) If you are treating someone merely instrumentally then you are not treating them with Dignity.
- (ii) If you are treating someone with Dignity then you are not treating them merely instrumentally.

This small example is meant to show the limitations of Kittay's argument. (b) is perfectly satisfactory in some cases, if you treat someone instrumentally then you are not treating them

with Dignity. This explains the slavery example and the physical abuse of the child perfectly well. However, this argument does not explain why (2\*) - feeding the child dog food or letting them live in filth - in a purely neglectful way - is an infringement of the child's Dignity. Because those actions committed by the foster parents do not strike me as cases of mere instrumental use of the child, but rather they are a result of negligence. Now, some could say that the feeding of dog food to the child and having them live in filth could be examples of instrumental use, if it is the case that the parents are getting some sort of sadistic joy out of this suffering. If this were the case then I would agree, but cases of negligence are not the same as cases of instrumental use because there is no ulterior motive and no use for a larger end. Negligence is a damaging non-use. So, interpretation (b) is also not helpful in evaluating this case because it does not trigger the conditional. Either interpretation of her prohibition leaves us with an inability to explain why feeding a child dog food and letting them live in filth is an infringement of their Dignity.

The next philosopher we will look at is Adam Cureton, who argues, similar to Kittay, that the using of a person as a means to an end (in true Kantian form) is against Dignity. However, he adds that their ends, self-chosen or inferred, must also be taken into consideration.

### **Cureton on Slavery and Abuse**

Adam Cureton makes many arguments about Dignified treatment and so, I've decided to combine them in a way that I believe maximizes the effectiveness of those arguments.

Furthermore, the version of his argument I give here has been generalized so that it can more easily render a judgment on our two current examples. However, later in the thesis, in the chapter

on Ashley, his argument will be given in the way that best applies to Ashley - this includes premises that apply to disabled people, which can be put away for the time being.

With that out of the way and before I give Cureton's argument in full, it is important to look at Cureton's argument as an improvement on Kittay's. While Kittay rests on Dignified treatment entirely on the prohibition of the mere instrumental use of a person and their body (a negative duty), Cureton takes this and adds the positive duty that we must take into consideration and help facilitate the needs, desires and ends, as they are felt by the person in question. This idea, I believe, is correct and is something I utilize in my own argument. Next, I will lay out Cureton's argument step by step and go through each example.

#### Cureton's Dignity Argument

- 1) The capacity for rational agency is the basis of our Dignity<sup>96</sup>,
- 2) Aside from (1), there are no other factors that contribute to or detract from Dignity<sup>97</sup>
- 3) This type of Dignity is uncompromising, such that it must always be respected and can never be traded or diminished<sup>98</sup>
- 4) Children are assumed to have the potential for rational agency and therefore possess Dignity<sup>99</sup>,
- 5) To treat someone with Dignity is to "regard their personal ends as worthy of attention and assistance"<sup>100</sup> and to treat them always as an end in themselves, never as a means. This is what I call his 'Consideration Principle'.

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<sup>96</sup> "Respecting the Dignity of Children with Disabilities", Adam Cureton, Pg.265, 2017

<sup>97</sup> "Respecting the Dignity of Children with Disabilities", Adam Cureton, Pg.265, 2017

<sup>98</sup> "Respecting the Dignity of Children with Disabilities", Adam Cureton, Pg.266, 2017

<sup>99</sup> "Respecting the Dignity of Children with Disabilities", Adam Cureton, Pg.266, 2017

<sup>100</sup> "Respecting the Dignity of Children with Disabilities", Adam Cureton, Pg.266, 2017

His argument, as we will see in its ability to handle the following two cases, yields the same result in example (1) but does offer a markedly better response in example (2), despite the conclusion being roughly the same.

Example (1): 1) The enslaved person has the capacity for rational agency and therefore has Dignity, 2) no other factors detract, 3) this type of Dignity is uncompromising, 4) doesn't apply to this example, 5) here is the crux of the argument, an enslaved person is by definition being used instrumentally, which is an immediate strike against slavery. However, the additional requirement makes even clearer why slavery infringes upon Dignity. A person who is enslaved has no choice with regards to their own ends, desires or needs. The owner of this person has substituted all of their desires and ends for those of the enslaved person, with no thought or consideration to the ends of the enslaved person themselves. This, I would argue, pokes directly at one of the fundamentally horrible things about slavery and why it infringes on Dignity.

Example (2): 1) We can assume that the child has the potential capacity for rational agency, so, therefore has Dignity 2) no other factors detract, 3) this type of Dignity is uncompromising, 4) in this example is functionally the same as (1), 5) This requirement is not met. The physical abuse that the child suffers at the hands of their foster parents is an example of the instrumental use of a person, so that act infringes on their Dignity. However, if we remember, this physical abuse was not the end of the example. In (2\*) this child was also forced to eat dog food and live in filth. One of my criticisms of Kittay's argument was that her reliance on the negative duty to avoid treating the body or person merely instrumentally does not give a satisfactory explanation of why being forced to eat dog food and living in filth infringes on the Dignity of the child, when it certainly does. Here, we see the importance of Cureton's

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Consideration Principle. The reason why this situation infringes on the Dignity of the child is because the child's ends are not being considered. I would guess that the child has as their ends some of the following: food fit for a person, clean clothes, a safe home, etc... The acts committed by the foster parents – though negligent and not sadistic - demonstrate a clear lack of consideration and assistance of the ends of the child.

Cureton's Dignity argument is very strong and gives solid answers to the cases above. His view becomes more problematic with respect to the Ashley Case, however, that will be discussed in the next chapter.

### **Martha Nussbaum on Slavery and Abuse**

One of the difficulties in using Nussbaum's argument in this context relates to the focus/scope of her argument. Nussbaum primarily argues in terms of state duties, or rather, what the state/governing body is required to do in pursuance of the conditions that facilitate Human Dignity. However, it is my understanding that her argument can be, with minimal adjustment and rephrasing, reworked into an argument governing the behavior of individual actors.

The following is how I've reconstructed her argument with a specific focus on giving clarity and flow with respect to her thoughts on Dignity.

#### **Nussbaum's Dignity Argument**

- 1) Human Dignity is based on and "inheres in" a wide range of physical and mental capabilities, such as, "sentience, emotion, affection, physical health, and appetite as well as in rationality"<sup>101</sup>.

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<sup>101</sup> "Abortion, Dignity and a Capabilities Approach", Martha Nussbaum, pg. 5, 2011.

- 2) In order to treat someone in a way commensurate with Dignity, you must
  - a) Develop “the Central Capabilities up to a minimum threshold level”<sup>102,103,104</sup>
  - b) Offer a choice with respect to how we develop the Central Capabilities. The Central Capabilities are not considered secured unless the person is given a choice about how they want to develop their capabilities.
- 3) Any violation of either, (2a) - failure to develop the central capabilities or (2b) - failure to offer a choice in how to develop the central capabilities, results in a violation of the person’s Dignity.

Given this argument, the next move, like the previous two sections is to see how Nussbaum’s argument explains the two examples.

Example (1): 1) The enslaved person possesses a plurality of mental and physical capabilities that ground Dignity - therefore the enslaved person has Dignity, 2a) a person who is enslaved is not in a situation in which all of their Central Capabilities are being developed to a threshold level. In fact, being enslaved most likely results in a degradation of these capabilities, 2b) even if the slave owners can be said to be developing some of their powers, such as having a strong body and living, it cannot be said that they are offering them any true choice in the matter. Any choice the enslaved person is given is a false one predicated on being owned and coerced, 3)

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<sup>102</sup> “Abortion, Dignity and a Capabilities Approach”, Martha Nussbaum, pg. 10, 2011.

<sup>103</sup> The Central Capabilities are: life, bodily health, bodily integrity, senses/imagination/thought, emotions, practical reason, affiliation, other species, play, control over one’s environment.

<sup>104</sup> “ Nussbaum justifies this list by arguing that each of these capabilities is needed in order for a human life to be “not so impoverished that it is not worthy of the dignity of a human being” (SEP - The Capability Approach).

therefore, being enslaved results in a violation of both (2a) and (2b), therefore the Dignity of the enslaved person is violated.

Example (2): 1) The child possesses a wealth of mental and physical capacities, plenty to guarantee that the child has Dignity, 2a) a child who is being physically abused and neglected is not in a situation in which all of their powers are developed to a threshold level, in reality, the physical abuse often goes directly against the development of the child's capacities, causing damage to her bodily health, emotions, practical reason, play, imagination, etc... resulting in either a stunting of these powers or a decrease in their development, 2b) further, even though the child does have food to eat, it is not enough to simply provide food to the child, but as Nussbaum puts it, you must provide "choices regarding nutrition"<sup>105</sup>, where these foster parents clearly are not. Therefore, being abused or neglected both represent situations in which the child is not being treated with Dignity.

Martha Nussbaum gives an insightful account of Dignity, specifically, her arguments concerning the development of capabilities and the importance of choice. However, I would like to note that my Preference Theory of Dignity may be able to provide a clearer evaluation of the Ashley case. It is not immediately obvious to me that Ashley, and children who are similarly abled, would necessarily be able to reach the minimal threshold for each Central Capability that Nussbaum lists. If Ashley is unable to reach these minimum thresholds then, her life, according to Nussbaum would be, "so impoverished that it is not worthy of the dignity of a human being"<sup>106</sup>. A further difference, which I will elaborate on later in this chapter, is Nussbaum's

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<sup>105</sup> "Abortion, Dignity and a Capabilities Approach", Martha Nussbaum, pg. 6, 2011.

<sup>106</sup> "The Capability Approach", Stanford Encyclopedia of Philosophy, Dec. 10, 2020, <https://plato.stanford.edu/entries/capability-approach/>

aversion to the idea of satisfaction - which is closely related to my argument. Next, I will fully describe my positive view.

### **Preference Theory of Dignity**

In this section I will provide a succinct statement of my Preference Theory of Dignity, then I will provide explanations and evaluations of each part of that statement.

#### Preference Theory of Dignity

1. Mental capacities - of an amount sufficient to give rise to preferences - are the basis of Dignity
2. Treating an entity in a way consistent with Dignity means facilitating their well-being by
  - a. Considering their preferences to be valuable and
  - b. Allowing and/or supporting the entity to pursue those preferences
  - c. Unless, the satisfaction/fulfillment of the preferences will lead to the harm of another entity with Dignity.
3. Further, if there exists a reason to act paternalistically and therefore override the preference of said entity, then the reason must be sufficiently compelling. A reason is sufficiently compelling if and only if the decision to override the original preference brings about a significantly better outcome:
  - a. First, for the entity with respect to other preferences held by that same entity
  - b. Second, for any third party considerations

- c. There is a lexical priority between (3a) and (3b), such that (3a) must always be satisfied before (3b) can be considered.

*Premise 1) Mental capacities - of an amount sufficient to give rise to preferences - are the basis of Dignity.*

This condition is the foundation of Dignity and it was the focus of the previous chapter. Therefore I will not spend much time rehashing the work I've already completed. However, the thought here is that there is a connection between mental capacities and preferences and a further connection between preferences, well-being and Dignity. Mental capacities such as: sensation, emotion, rationality, self-awareness, pleasure/pain, imagination, etc... form the basis of preferences, which in turn is the basis for Dignity. Without mental capacities there can be no preference formation. But, there are many different types of mental capacities that can be sufficient for the formation of a preference and not all of them must be particularly complex. For example, if we imagine a dog, this dog does not possess the ability to be a rational individual, but they do possess other mental capacities such as: rudimentary self-awareness, sensation, and ability to feel pleasure/pain. All of which taken together guarantee that the dog can form a preference. Here, a preference is understood as the disposition/ inclination to choose among options or prefer one option over another. Preferences, in my view, require that there be a subject to experience the preference. So, we can also see that this will allow nearly all adult humans and disabled humans to possess Dignity as well. The next question is - how do we treat an entity with Dignity and what do preferences have to do with it?

*Premise 2) Treating an entity in a way consistent with Dignity means facilitating their well-being by*

The purpose of this condition is to establish the way in which we treat an entity that possesses Dignity in a way consistent with that Dignity. We do this when we make choices that help facilitate their well-being. Here, well-being is facilitated through preference satisfaction. My argument takes preference satisfaction as central to well-being and I will remain agnostic about whether there are other conditions that contribute to well-being.

If it is the case that the entity has enough mental capacities to form preferences then it has Dignity. If it has Dignity then we are obligated to help facilitate its well-being - within reason. Well-being is best promoted through preference satisfaction, such that an entity whose preferences are more often satisfied rather than frustrated will be in a better state of well-being/will have more well-being. We can accomplish this goal through (2a) and (2b).

*(2a) considering their preferences valuable.*

In order to facilitate the preferences of an entity we first must consider their preferences to be valuable. This means that when we are considering how to treat an entity with Dignity, we not only make ourselves aware of their preferences but we take those preferences as morally relevant considerations. Their preferences are things that matter when evaluating how to treat them in a Dignified way.

*2b) Allowing and/or supporting the entity to pursue those preferences,*

This requirement is meant to further show how, in practice, we can facilitate their well-being through preference satisfaction. This requirement actually has an implicit premise built into it. In order to allow (not impede)/support (actively promote/pursue) the preferences of the entity in question it is necessary to first divine what those preferences are. This is best done through multiple slightly different types of inferences.

The first inference we can make is one through overt communication. If a person/entity is able to directly communicate their preference through either written or verbal communication then we can infer that their communicated preference is - most likely - their true preference. For example, it is very easy to imagine a person who communicates very clearly their wishes through a written advance directive. Similarly, we can imagine a person who is able to clearly and distinctly communicate through their verbal words what exactly they prefer and what they want. It should be noted that there are instances in which what a person is able to communicate is directly in conflict with their best interest with respect to their well-being, but this will be dealt with by the paternalistic condition to come.

The second inference we can make is one from observed behaviors. If the person/entity is unable to directly communicate through either written or verbal communication then it might be reasonable to infer their preference through observation of their behavior. If they are seen to enjoy certain things or dislike others, if there's a pattern to their behavior etc... We can infer through those overt and discernable behaviors what their preferences might be. For example, we can imagine that a dog is unable to communicate through either written or verbal (aside from perhaps basic whines and noises) what they want. However, we can very easily observe how they react to certain stimuli - walks, treats, belly rubs, medicine, being hit, etc... Through their overt and observable behavior we can reasonably infer what their preferences are and therefore we can conclude how to facilitate their well-being.

The third and final inference - which I call an 'assumed preference' - is one with respect to the type of entity that they happen to be. This inference is one that becomes of use when we think of babies, animals and the severely mentally disabled. In these cases we cannot make inferences based on clear and overt communication, and there are some cases in which even

inferences from observable behavior are unclear or otherwise limited. However, if we come to understand what type of entity we are dealing with we can, in some cases, make reasonable inferences with respect to their preferences. For example, let's imagine a disabled newborn baby who is unable to communicate directly and whose observable responses are so suppressed that making an inference from behavior is challenging. It would be unreasonable to think then, that we can abuse this child because we don't know what they would want. We should infer that it will prefer certain things over others in virtue of its being a baby human. It prefers being fed over being hungry, being treated gently and with love over being hit and neglected. We can make many very good inferences in this way that will, more often than not, lead to the facilitation of the baby's well-being.

*(2c) unless, the satisfaction/fulfillment of the preferences will lead to the harm of another entity with Dignity.*

This condition is meant to act as a check on our obligation to allow/support the satisfaction of the preferences of others. It is possible for a preference to be harmful to another entity with Dignity and it should be morally permissible to avoid fulfilling such a preference. For example, imagine that a person has a preference to abuse their spouse. They prefer this because it makes them feel powerful and they therefore feel pleasure because of it. The purpose of (2c) is to make it morally permissible for the abused spouse to deny or subvert the preferences of the abusive spouse because those preferences are going to result in harm.

*Premise 3) Further, if there exists a reason to act paternalistically and therefore override the preference of said entity, then the reason must be sufficiently compelling.*

While (2c) was focused on preventing the allowance/support of preferences that could result in the harm of others, (3) is set on preventing harm to the person themselves. There are



many situations in which some of a person's preferences may be in conflict with their well-being, measured in terms of their other - more important - preferences. For instance, it is quite possible that a drug addict has a strong preference for heroin. This preference is so strong in fact that they may lose their job, family support, and health (both mental and physical). However, it is obvious that even if this preference is communicated clearly, it is still not in this person's best interest (measured in terms of well-being, which I will explain later) to continue using heroin. Therefore, it must be consistent with Dignity to act paternalistically when acting in such a way is based on a sufficiently compelling reason.

*Premise 3) A reason is sufficiently compelling if and only if the decision to override the original preference brings about a significantly better outcome.*

*Premise (3a) First, for the entity with respect to the other preferences held by that same entity.*

The goal of this condition is to provide a reasonable criteria for determining when paternalistic action is permissible. If the decision to override the preference of the drug user to continue using heroin represents a significantly better outcome - framed in terms of their own preferences - then doing such an action is morally permissible. However, there is debate over what constitutes a "significantly better option". I hope to clear up this issue in the next few paragraphs.

There are very legitimate reasons to be skeptical about the condition for paternalistic action. The skepticism can be distilled into the following question: how can we tell if one option is significantly better than another option?

There are two ways in which an option could be deemed significantly better than another in terms of preference satisfaction. Significantly better could be determined in terms of number

of preferences satisfied or the weight of the preference which is satisfied. Admittedly, there is some overlap between those categories, and the best version is a combination of the two, but I'll save that wrinkle for a little later.

First, we can imagine determining if one option is significantly better than another based on the number of preferences satisfied. If one option satisfies many more preferences than another option, then it can be considered significantly better. For example, let's imagine that a parent of a child who hates vaccines is trying to determine whether vaccination is significantly better than non-vaccination for their child. This parent can count the number of preferences satisfied by each choice and then compare. If the child is vaccinated then they can go to school, play with friends, have fun, be healthy, etc... If the child is not vaccinated then the child can avoid having a vaccine/not be handled by a nurse and therefore satisfy those two preferences. It seems clear that there are more preferences satisfied by the decision to have the child vaccinated rather than not. However, this strategy has two main flaws.

First, it overlooks or minimizes the difficulty in counting preferences. There are conceivably infinite preferences that could be considered and so therefore this method of strict counting might not be helpful in simple decisions and especially as decisions become increasingly complicated.

Second, this strategy overlooks the relative importance of/valuing of preferences - the weight preferences should be given. All preferences are not created equal; therefore, there are preferences that should be considered to have more weight than others. For example, all children can be assumed to prefer being healthy rather than sick, but children also love to eat junk food and avoid washing their hands. These preferences come into conflict for the child. As the parent making a paternalistic decision, this small example can be confusing. Forcing the child to wash

their hands and eat healthy food denies two preferences and only facilitates one - health. So, should the parent cave and let the child do what the child prefers - eat junk food and not wash their hands? Absolutely not. Health as an assumed preference possesses much more weight than the preference to eat junk food and not wash their hands.

In other words, it seems intuitive that some preferences are more important than others. This idea can be broken down further into subjective vs objective preferences. Subjective preference is a way of measuring the weight of a preference based on the subjective experience of the person whose preference it is - the weight of such a preference is often measured in the intensity of this subjective preference for the subject. Objective preferences are those preferences that are *objectively* better for someone - regardless of what they think of them.

Martha Nussbaum provides an argument concerning objective preferences when she argues that treating an entity with Dignity means securing their ten Central Capabilities to a minimum threshold. Nussbaum's list of capabilities includes: life, bodily health, bodily integrity, senses/imagination/thought, emotions, practical reason, affiliation, other species, play, control over one's environment<sup>107</sup>. Nussbaum is essentially arguing that these are the most important capabilities that we have - regardless of how people feel about them.

I argue - like Nussbaum - for a sort of objective preferences test. I argue that some preferences should be weighed more than others based on their ability to facilitate other preferences. So, I would agree with Nussbaum's list because each of those ten capabilities are good examples of preferences that should be weighed more heavily than other more fleeting preferences because of their relationship to other preferences.

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<sup>107</sup> "Abortion, Dignity and a Capabilities Approach", Nussbaum, pg. 16-17, 2011

For example, I would argue that bodily health is a more important preference than a preference for chocolate and not washing hands. Bodily health is a very important preference because being healthy allows for the satisfaction of other preferences, such as working out, feeling happier, having more fulfilling relationships, feeling less anxiety, generally being able to enjoy life more than if you were unhealthy etc... Whereas, the preference to eat chocolate ends with the satisfaction of that preference and the preference to not wash your hands increases the likelihood of getting sick. Which, in turn would limit your ability to satisfy other preferences.

However, my idea of preference weight also makes allowances for unusual cases. We can imagine that someone's preference for chocolate is unusually strong. This person is a chocolatier or a chocolate artist or even perhaps competitive chocolate eater. In any of these cases, their preference for chocolate is central to their identity and so therefore the denial of such a preference - measured in terms of other preferences - would be profound. Therefore, we can see that in unusual cases such as this, a typically fleeting preference whose satisfaction or denial does not extend beyond itself, can accumulate greater significance. This means that there is some give in my argument with respect to the subjective intensity of the preference.

So, when we are trying to determine which option is significantly better than another option it is not enough to look at the number of preferences satisfied, but we must also look at the weight of the preferences satisfied. The method of determining if one option is significantly better than another option should be based on measuring both the number of preferences and the weight of the preferences satisfied. In this way we can fully determine which is significantly better.

Furthermore, the decision to include both metrics is a way to seamlessly add an Epistemic Condition to the act of determining which option is significantly better. An option that

is significantly better than another option should have the character of being clear and distinct. If one option is not clearly and distinctly better, measured in both number and weight of preferences satisfied for the person in question, then the option is not significantly better and the paternalistic action cannot be made. While clear and distinct is not an extremely precise criteria, I would say that there is an element of common sense intuition involved. However, I will provide some examples of clear and distinct vs not clear and not distinct.

Clear and distinct: 1) Having a child vaccinated who does not want to be and 2) having a child's bone set when they don't want it to be.

Not clear and distinct: 1) Forcing a child to have a non-cancerous mole removed from their face for aesthetic reasons, even though they don't want it done. In this example it is not clear and distinct that having this mole removed represents a significantly better option than leaving the mole alone.

Before moving on to premise (3b) I would like to provide a quick recap of premise (3a). Premise (3a) states that you can treat an entity with Dignity while also making a paternalistic decision that involves them. In order for this to happen the decision made for the entity in question must represent a clearly and distinctly better option framed in terms of the entity's own preferences. This condition of clear and distinct is measured in both the number and weight of their own preferences that will be satisfied by the paternalistic choice.

*Premise 3b) Second, for any third party.*

This condition is meant as a way to include the preferences of third parties. It is especially important when it comes to cases like the Ashley case where the caretakers bear a significant burden. Parents, caretakers, and third parties in general - who can form preferences - should also be included in the equation. However, there are restrictions on when this can apply.

*Premise 3c) There is a lexical priority between (3a) and (3b), (3a) must always be satisfied before (3b) can be considered.*

The importance of this lexical priority is such that it prevents third parties from making paternalistic choices on the grounds that it primarily benefits them. For example, let's say that a set of parents needs to decide what to do about their child who is addicted to heroin. Further, let's say we have two choices. Option A) the parents lock him in a basement to break him of his habit for free and option B) The parents spend an incredible amount of money on rehab. The function of the lexical priority is to protect the son from exploitative paternalistic choices. It seems clear that the son needs to be broken of his habit. His heroin addiction is hurting his health and impeding his ability to lead a full life. So, the decision to act paternalistically, in general, appears to be justified. But, if we don't consider his needs and his best interest first, then we might end up justifying option A, which would break his habit and is the best option for the parents, but it no doubt represents a morally reprehensible - or at least questionable - choice. Instead, if we are forced to think of his needs and his well-being first, before the parents', then we avoid an exploitative paternalistic choice. Option B represents such a choice because the rehab's level of care will better facilitate his well-being.

Now, I will show that there are in fact important similarities and differences between my view and the previous views that have been surveyed.

## **Preference Theory of Dignity: Similarities to and Differences from Previous Arguments**

The Preference Theory of Dignity will appear similar to both Nussbaum and Cureton's argument, and to some extent Kittay's as well. These similarities demonstrate a deep agreement and continuity between my argument and those that precede it, however, the differences will, I hope, render my contribution helpful.

Kittay argues that we do not treat people with Dignity when we use them as mere means - I agree with this entirely. The way in which I have included this idea into my argument is through the lexical priority with respect to condition 3a and 3b. In order to avoid treating a person as mere means, you must only make a decision to override their preference if the decision yields a significantly better result for the person themselves. Only after that requirement is met can you begin to consider how the decision would impact any third party. This, I anticipate, will prevent the mere instrumental use of a person. Furthermore, as we will see, I believe that my argument, in contrast to Kittay's, can give a correct and compelling evaluation of (2\*) - the negligence case.

Cureton argues that treating someone with Dignity requires us to "regard their personal ends as worthy of attention and assistance", which as you will most likely notice is very similar to (2a) and (2b). My principles were thought of prior to reading Cureton, however, the similarity is striking. While the principles are similar in phrasing, I would suggest that their meanings differ and their results also differ when taken, not as isolated principles, but as part of a functional whole. These differences will make themselves abundantly clear when evaluating the Ashley case.

Nussbaum's principles - that we should develop the person's capabilities to a minimal threshold and that we should give them the choice to develop themselves in a way that they desire - are in large part related to the ideas driving my own principles (3a and 2b, respectively). Although Nussbaum's argument is supported and shares more similarities with Kantian ethics, it is not difficult to see that we are in fact trying to accomplish a similar goal. She wants the human being to thrive, grow and flourish and to do that the person needs to develop their capabilities, both physical and mental. Additionally, the person should be respected, meaning that they should not be forced to choose one thing, but rather should be presented with choices concerning how they would like to develop. I would argue that my second and third requirements will functionally mimic Nussbaum's requirements. My second requirement lends itself to her principle of choice because it obligates us to facilitate the preferences and choices of people. My third requirement mimics her principle of forced development because it obligates us to act paternalistically if it will help the person's well-being or in Nussbaum's terms – help the person flourish and strive.

However, here I would like to recognize a place where our arguments come apart. Nussbaum takes a hard stance against preference satisfaction as a way of treating a person with Dignity. However, I tend to disagree. Nussbaum argues that,

A focus on dignity is quite different, for example, from a focus on satisfaction. Think about debates concerning education for people with severe cognitive disabilities. It certainly seems possible that satisfaction, for many such people, could be produced without educational development. The arguments that opened the public schools to such people used, at crucial junctures, the notion of dignity: we do not treat a child with Down syndrome in a manner commensurate with that child's dignity if we fail to develop the child's powers of mind through suitable education. In a wide range of areas, moreover, a focus on dignity will



dictate policy choices that protect and support agency, rather than choices that infantilize people and treat them as passive recipients of benefit<sup>108</sup>

Here we can see that Nussbaum is arguing strongly against the idea of preference satisfaction because it goes against her principle of forced development (2a). We are not treating the children with Down Syndrome with Dignity if we do not help them to develop their Central Capabilities. However, I think she might take too strong of a stance. However, I am sympathetic to her concerns. I would say that for the most part it is true that educating children with Down Syndrome is the best choice for them, even if this child does not want to go to school and would rather be pleasantly satisfied at home. Additionally, I think I could also make the argument that it is in the child's interest - thought of in terms of well-being - that they go to school and become more educated.

In contrast to Nussbaum, however, I do allow for an instance where it might not be in the child's best interest to develop one of or some of the ten Central Capabilities. This could be for a number of reasons, three being that: 1) the child is unable to achieve the capability, 2) even if they could achieve it, can make no use of it, 3) that the achievement of the capability or the pursuit of it does not contribute to or actively works against the child's preferences and therefore well-being. Regardless of this difference, I believe that Nussbaum and I share similar goals and we share a few principles.

The benefit of my argument is that it accomplishes the goals of each of the previous Dignity arguments in a singular argument - while also keeping in mind that another benefit of my argument's conception of Dignity is built on much stronger argumentative grounds. Next, I will show how my argument evaluates each of the test cases.

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<sup>108</sup> "Abortion, Dignity and a Capabilities Approach", Martha Nussbaum, pg. 4, 2011.

## Preference Theory of Dignity: Evaluation of Critical Examples

Slavery example: 1) The enslaved person possesses mental capacities sufficient to form preferences, therefore this person has Dignity, 2) however, they are not being treated with Dignity, because (2a) their owner does not see their preferences as worth consideration and therefore, their preferences are not being considered valuable. Further, (2b) the owner does not make themselves, through various inferences, aware of the enslaved person's preferences - that they would prefer not to be enslaved, not to be worked to the bone, beaten, treated as property - and does not allow or support the enslaved person to act consistently with or pursue their preferences, instead the enslaved person is expected to pursue only the preferences of the owner. (3a) Being enslaved does not confer onto the person enslaved personal benefits that significantly outweigh other viable options - freedom, independent farming, working at a store, etc... Because the status of being enslaved does not result in a significantly better personal outcome - measured in terms of their own preference - for the person enslaved then (3b) third party considerations are never invoked. Third party considerations - that the slave master would become bankrupt, that people would be outraged, etc... These sorts of considerations are only to be invoked as a tie breaker for two or more options that are equally, or nearly equally, best for the person.

Similarly, under my argument for Dignity a person would never be able to enslave another. For example, let's take this slave owner and run him through my argument. 1) The slave owner is a person who possesses sufficient mental capacities to form preferences, therefore he has Dignity, 2a) the slave owner's preferences can be considered to be valuable 2b) further, his preferences - that he wants to own people and make money to provide for his family - should be catered to, and supported, 2c) unless, his preferences, if fulfilled/satisfied, result in the harm of another person/entity with Dignity - which slavery inevitably does. Therefore, because his

preferences will result in the harm of another person with Dignity it is not against his Dignity to deny him his preference of enslaving people.

My argument, so far, has given good reasons to believe that being enslaved represents an act that violates the enslaved person's Dignity. The next example, I will actually split into two different examples to best show two different strengths of my argument.

Previously I have used a rather complicated child abuse example, but here I'll break the example into two distinct parts to reduce complexity. In example A, the child is being physically and emotionally abused for the sadistic enjoyment of the parents, whereas in example B, the child is being neglected - left to live in filth and is given only dog food to eat because the parents can't be bothered to get the child human food - all of which does not benefit the parents in any way material, emotional or otherwise.

Child Abuse example A: 1) The child has mental capacities sufficient to form preferences and therefore the child possesses Dignity, 2) however, the child is not being treated with Dignity because (2a) their preferences are not considered valuable by the parents, further, (2b) the parents are not making themselves aware of the child's preferences - not to be physically abused, but rather to be loved and cared for etc - and they are not supporting the child's preferences and are actively working against them for their own enjoyment. The preferences of the child are being entirely discarded and replaced with those of the parents. (3a) The state of being abused does not represent a situation which provides a significantly better outcome for the child - in terms of their own preferences - and so, therefore the (3b) "positive" feelings that the parents get from the suffering of the child do not factor into the assessment of the situation at all. Further, as in the slave owner example, my argument can just as easily prevent the abuse of a child, from the

perspective of the abusive parent. Suffice it to say, that we can treat the parents with Dignity, while also stopping them from abusing a child.

Child Abuse example B: 1) The child has mental capacities sufficient to form preferences and therefore possesses Dignity, 2) however, this child is not being treated with Dignity, because (2a) their preferences are being entirely ignored by the parents, additionally, (2b) the parents, through their negligence, are not making themselves aware of the child's preferences - to not live in filth, but rather to eat nutritious and good tasting food - and are not facilitating the acquisition of the child's preferences. In fact, they are impeding the child's ability to satisfy their preferences. (3a) It is not the case that leaving a child to live in filth and eat dog food is a situation in which their original preferences can be legitimately overridden, as it is not a significantly better option for the child themselves - measured in terms of the child's own preferences. (3b) Third party considerations are never triggered because the child is not taken care of first.

This argument provides a better evaluation of the negligence case than Kittay because it does not rely on only "merely instrumental" use. Even though the parents received no benefit from neglecting the child, it is still clear that their disregard of the child's preferences and the passive neglect - which resulted in unsatisfied preferences - still violated the child's Dignity.

My argument provides good reasons to believe that both slavery and child abuse are impermissible. Furthermore, we can conclude, based on my example of the slave owner and bad parents, that we can treat someone with Dignity while at the same time override their preferences.

## **Conclusion**

This chapter has focused on presenting competing Dignity arguments. Specifically, I argued that each, while able to give good answers to cases in which Dignity is typically thought to be violated, possessed some flaw. Then I presented the statement of my own argument, fully explained each part, demonstrated the similarities and differences between my argument and previous arguments, then I showed how my own argument evaluated the typical cases in which Dignity is violated. The next chapter will use the argument I established here as a way of analyzing and adjudicating the Ashley Case.

## Chapter IV: The Ashley Case

### A Brief Restatement of the Case and an Outline for the Chapter

Ashley was a six year old girl who, for reasons unknown,<sup>109</sup> suffered from severe and debilitating mental and physical deficits. Her parents first noticed these deficits relatively early in her life and became increasingly concerned as time progressed. At six years old she was still unable to hold her head up, walk or speak<sup>110</sup>. These pronounced deficits led her parents to seek medical advice. Upon speaking with the medical “specialists in neurology, medical genetics, and developmental pediatrics, she was given a diagnosis of static encephalopathy with marked global developmental deficits, a term used to describe permanent and unchanging damage resulting from an unknown insult to the brain”<sup>111</sup>.

On top of these mental and physical deficits, there were signs that Ashley, like many children with disabilities, would experience precocious puberty (accelerated and early puberty). Precocious puberty along with the decreased mobility caused by her disability would result in “a greater risk of developing pressure sores, and decrease the likelihood of participation in family events”<sup>112</sup>. These considerations - increased weight and height specifically - raised concerns for Ashley’s parents about whether or not they would be able to continue providing the proper in-home care for Ashley; Her parents believed that Ashley’s, “quality of life is much richer under [her] family’s loving care, versus getting ‘warehoused in institutions’”.<sup>113</sup> So, her parents began

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<sup>109</sup> In 2018, Ashley finally received a formal diagnosis, her deficits were caused by a previously unstudied gene (Pillow Angel Website <http://www.pillowangel.org/updates.htm>)

<sup>110</sup> “The Ashley Case Revisited”, Douglas Diekema, pg. 30, 2010

<sup>111</sup> “The Ashley Case Revisited”, Douglas Diekema, pg. 30, 2010

<sup>112</sup> “The Ashley Case Revisited”, Douglas Diekema, pg. 30, 2010

<sup>113</sup> Pillow Angel infographic, Ashley’s Parents, 2007

to look for medical interventions as a possible solution - they found one in the form of Growth Attenuation Therapy (GAT).

Growth attenuation therapy consists of hormonal treatments (estrogen patches) administered over a period of two years, with the intention of closing the growth plates. This would effectively reduce final weight by 40% and final height by 20%<sup>114</sup>. This procedure was done to help avoid the issue of pressure sores, pneumonia, bladder infections, poor circulation and to allow Ashley to more easily participate in family activities. The decrease in weight and height, allowed her parents to “increase [her] mobility [through] a caregiver... [resulting in] more activities, circulation, stretching” and it “increas[ed] [her] chance of living at home”<sup>115</sup>.

This decision was not made by Ashley’s parents alone. Rather, Ashley’s parents, in conjunction with both her doctors and an ethics committee, decided that GAT was a procedure they could perform that would help mitigate the physical issues that Ashley’s parents were concerned about.<sup>116</sup> Her parents, doctors and the ethics committee believed that GAT, “offered a reasonable prospect of direct benefit to Ashley that justified any of the foreseeable and potential harms”<sup>117</sup>. While it might be a settled issue for the ethics committee, I believe there is substantial work to be done.

The question that stands before us is whether or not Ashley’s parents made a morally permissible decision. Specifically, did her parents violate her Dignity when they chose to proceed with GAT? A related question is: can we ever choose GAT for a Profoundly Cognitively

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<sup>114</sup> Pillow Angel infographic, Ashley’s Parents, 2007

<sup>115</sup> Pillow angel infographic, Ashley’s Parents, 2007

<sup>116</sup> “Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.75, 2016

<sup>117</sup> “Ashley Revisited”, Douglas Diekema, pg. 31, 2010

Impaired (PCI) child while also treating them with Dignity? This will be the focus of the chapter. I will attempt to accomplish this goal in the following steps.

First, I will describe my argument and show how it can provide reasonable and coherent guidelines for how to treat Ashley with Dignity in the course of everyday decision making. Second, I will analyze whether choosing GAT for Ashley is morally permissible in three different scenarios, each of which provides a unique vantage point to view the issue. Asking the following questions: Is it consistent with the Dignified treatment (and therefore is morally permissible) to choose or allow for Ashley to have GAT, if: a) Ashley is able to communicate a positive preference for the therapy?, b) Ashley is unable to communicate any preference/or have any preference about the therapy? Or, c) Ashley is able to communicate a negative preference for the therapy? Third, I will end with a summary section that clearly states the lessons to be drawn from the work in this chapter.

### **Preference Theory of Dignity and Ashley: Everyday Decision-making**

A reasonable place to begin is first to establish exactly what my argument is, how Ashley fits into it, and show how it can guide us in normal decision making for her.

The Preference Theory of Dignity (PTD), in general, argues that treating an entity with Dignity means to promote the well-being of the person/entity in question. Well-being, on my view, is centered on preference satisfaction, such that if someone is able to satisfy their preference, then most of the time they will be in a better state of well-being, than if their preference goes unsatisfied. This can be easily seen in many trivial cases, as well as more important ones. If we imagine a person going for ice cream and this person loves chocolate and



dislikes vanilla, their well-being will be supported if they are allowed to eat chocolate ice cream. Similarly, cases of cancer patients who are considering whether or not to go through the pains of chemotherapy. Their preferences with respect to longevity, quality of life, and tolerance of pain will all be factors contributing to their well-being, and the more preferences of theirs which are satisfied, the greater sense of well-being they will have. There are tricky questions, especially with the Ashley case - unknown preferences and situations in which there are conflicting preferences - but I will save these for a later section. In this section I argue that the Preference Theory of Dignity provides coherent and reasonable guidelines concerning how we should regard Ashley's normal (everyday) preferences. However, before we get to that, I'll lay out the statement of my argument.

#### Preference Theory of Dignity

1. Mental capacities - of an amount sufficient to give rise to preferences - are the basis of Dignity
2. Treating an entity in a way consistent with Dignity means facilitating their well-being by
  - a. Considering their preferences to be valuable and
  - b. Allowing and/or supporting the entity to pursue those preferences
  - c. Unless, the satisfaction/fulfillment of the preferences will lead to the harm of another entity with Dignity.
3. Further, if there exists a reason to act paternalistically and therefore override the preference of said entity, then the reason must be sufficiently compelling. A

reason is sufficiently compelling if and only if the decision to override the original preference brings about a significantly better outcome:

- a. First, for the entity with respect to other preferences held by that same entity.
- b. Second, for any third party considerations.
- c. There is a lexical priority between (3a) and (3b), such that (3a) must always be satisfied before (3b) can be considered.

Premise 1) Mental capacities of an amount and type sufficient to give rise to preferences are the basis of Dignity. Ashley, and those similarly abled, exhibit enough evidence of their possession of mental capacities and their ability to form preferences for us to conclude that they are Dignified entities. Much of the evidence is provided by the parents of these children and so, is subject to some questioning. It is always possible for parents to overestimate the ability of their children or to project their own hopes onto the child, however, it seems fair to grant that the parents are in the best position to know their child. So, I will take their descriptions of their children as true.

The mother of a young woman named Erica who suffers from a profound cognitive impairment (PCI), similar to Ashley, states that Erica, “loves being in our laps... [she] is sometimes fussy around me like a baby if I am not holding her. She lies in our laps and sucks her thumb”<sup>118</sup>. Another parent says that their child, Tom, is “happiest among his family when he is being cuddled”<sup>119</sup>. Ashley’s parents describe more specifically the things that Ashley prefers,

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<sup>118</sup> “Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.74, 2016

<sup>119</sup> “Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.74, 2016

“What is meaningful for Ashley is being able to enjoy those things she can enjoy: being with family, hearing music, cuddling... [she often] kicks her legs and orchestrates her arms, she makes little happy sounds, her face radiates with smiles”<sup>120</sup>. The parents of a child named Charley, notice that there are many “tiny pleasures”<sup>121</sup> that Charley loves and has been seen to enjoy, such as “the taste of chocolate cake, the soft blow of air onto her face, a new sound, a tap on the nose or bounce on the knee”<sup>122</sup>.

These descriptions of the children by their parents leads me to believe that the children possess sufficient mental capacities to form preferences. These mental capacities include but are not limited to: sensation, pleasure- not only in a general sense but rather it includes a wide range of specific things, and they express displeasure at being separated from the ones they love. These testimonials can be interpreted as a set of observed preferences that the children have. The children in those examples are able to demonstrate and communicate their preferences through behavior such as crying, laughing, smiling, fussing etc... The question then becomes, what do we do about these everyday observed preferences? How do we treat these children with Dignity?

Premise 2) We treat these children with Dignity when facilitating their well-being by satisfying the following requirements. 2a) The parents of these children should consider the preferences of their children to be valuable. Which means that their preferences should then be taken seriously as a consideration in the decision-making process of the parent. 2b) This requires that the parent, through various inferences, make themselves aware of their child’s preferences and obligates the parent to facilitate them. Let’s take, as an example, the child’s desire to be held

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<sup>120</sup> “Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.75, 2016

<sup>121</sup> “Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.75, 2016

<sup>122</sup> “Views of parents of children with Profound Cognitive Impairment”, Nikki Kerruish, pg.75, 2016

- which is inferred by their fussy behavior. The parent should support the child's preference to be held. In an everyday situation and given the nature of the request, (2c- harm to others), will not be triggered. Therefore, the parent, prima facie, should grant the request of the child and hold them. However, treating this child with Dignity does not always mean acquiescing to their every desire. There are often situations in which overriding the initial preference of the child will yield a better result.

Premise 3) If there is a reason to act paternalistically and override the child's preference, then the reason must be sufficiently compelling. (3a) This means that the decision to override the preference must yield a significantly better result with respect to other inferred preferences of the person in question. For example, imagine that the child wants to be held, but the parent needs to make the child dinner and cannot do both at the same time. In this case, it seems very reasonable that the initial preference - to be held - is overridden and rather, the parent decides to make the child dinner.

The feeding of the child, framed in terms of their own preferences tends to outweigh the negative effects to their well-being caused by not being held. This is because, in this example, if the child does not eat, then they cannot take their medicine. If they cannot take their medicine then they won't be able to sleep. If they can't sleep they will be groggy and upset the next day. All of those negative effects clearly show how being held does not outweigh eating. In other words, the goal of my Dignity argument is to promote the well-being of the person in question. This is best accomplished, sometimes, by prioritizing other observed or assumed preferences of the person in question over others. Specifically, when doing so would yield much better results in terms of their own preferences. In this example, the decrease in well-being resulting from not

being held for 30 or so minutes while the parent makes dinner, can be easily seen as being outweighed by the benefits that a meal would yield for the same child.

Given that we cannot override the preferences of a person unless the option that we choose to override the initial preference is significantly better - in terms of observed or assumed preferences of the person - then, some might wonder, when does (3b) come into play?

(3b) states that there is a place for third party considerations, which in this case takes the form of the parental preferences. Third party considerations become important as a tiebreaker between two or more roughly equally better options compared to the initial preference of the child. I'll add a slight complication to the current example.

So, the parent has already decided that they cannot both hold the child and make them dinner, and let's say that the child needs to eat on a strict schedule or they'll be very upset because they won't be able to take their medicine and subsequently won't be able to sleep. Additionally, let's say that the parent only has time to make one type of food for both the child and themselves. The parent has two options, they can choose tomato bisque or lobster bisque, both are roughly equally enjoyed by the child, but the parent has a distinct dislike of lobster. In this case, the parental decision to choose tomato bisque is an appropriate use of third party consideration. The parent's preference worked as a tiebreaker between two options that represented two - roughly equal - significantly better options than the original preference of the child. While this example was relatively trivial, I do think it shows how each part of my argument works in isolation and in conjunction with one another.

In this section I have tried to lay out my argument and describe the relationship between my argument and the everyday decision making for parents in cases like Ashley - or for children more generally. The basic idea was this: in order to treat a child with Dignity, the focus of the

parent should be on the well-being of the child, which can be accomplished through the satisfaction of the preferences of the child. Even though there are times in which the parents are justified to override the preferences of the child - times of conflict in the child's preferences, the decision to act paternalistically must always be done with the intention to yield significantly better results (results that positively impact the person in question with respect to their well-being measured in satisfaction of other communicated, observed or assumed preferences). Further, third party considerations can only be considered as tiebreakers for two or more equally significantly better options. The Preference Theory of Dignity can therefore provide coherent and reasonable guidance in the course of everyday decision making for Ashley.

However, everyday decision making is not as difficult as the decision of whether or not to choose GAT for your child. In everyday decisions there is a reasonable expectation that most decisions to be made are relatively straightforward and easily justified in terms of the preferences of the child. Everyday decisions are those concerning food, stretching, changing position, napping, bathroom needs, change of scenery, activities etc.. each of these is either supported directly by a reasonably inferred preference: to be fed, have good circulation, not be uncomfortable etc... or it is directly supported from an observed preference such as: a happy smile while eating a certain food, or a laugh while listening to music and stretching, or a sad fussy noise when ignored. Whereas, a main difficulty in the decision regarding GAT is that we have no way of knowing how Ashley feels about the decision. However, I believe that my argument can provide guidelines for action even when this is the case.

There are three versions of the GAT decision that I would like to consider in pursuit of my goal- these three versions represent all possible preferences Ashley could have regarding GAT. 1) Let's imagine that Ashley could communicate a desire to have GAT done, can we allow

her to do this while still treating her with Dignity?, 2) Let's take the situation as it actually is, we do not know how she feels about it/ she might be incapable of feeling any way about it specifically, can we make this decision for her while still treating her with Dignity? 3) Finally, let's say that we have reason to believe she doesn't want GAT, are there situations in which we can still proceed with the treatment while treating her with Dignity?

### **Preference Theory of Dignity and Ashley: Choosing in Cases of Positive Certainty**

In this section, I am stipulating that Ashley knowingly decides and positively wants this procedure because she sees that the decreased height and weight will allow her to more easily and in greater volume enjoy those parts of her life that she can. My aim in entertaining this scenario is to interrogate and discover whether or not the treatment is, by its nature, against Dignity. If GAT is, by its nature, inconsistent with Dignity, then it seems irrelevant to discuss the Ashley case any further because we could never make that choice for her. However, my inclination is that GAT is not always impermissible, despite the argument that Eva Kittay propounds.

Eva Kittay supports the idea that GAT is not permissible, by its very nature, even if the person themselves would elect the therapy. She argues that the decision to use GAT is necessarily an instance of the mere instrumental use of the body and therefore is an infringement of Dignity. In contrast to Kittay, I will argue that the PTD can and does, conditionally, allow for the use of GAT. If a person elects GAT as one of their preferences and this decision does not either harm another person and a significantly better option does not exist, which can accomplish

the same or better ends, then the decision to use GAT is consistent with Dignity and therefore permissible.

I'll begin with a brief restatement of Kittay's argument, followed by an application of her argument to the case of GAT and I'll provide some reasons to doubt her assessment.

#### Kittay's Dignity Argument

1. All individuals possess intrinsic worth,
2. (1) is the basis of our Dignity<sup>123</sup>,
3. our bodies are importantly constitutive of ourselves such that "our bodies are ourselves" and "what is done to our bodies is done to us"<sup>124</sup>,
4. if (1) and (3), then our bodies are also intrinsically valuable,
5. to treat a person with Dignity is to avoid treating both their body and themselves instrumentally.

The application of Kittay's argument to the Ashley case is relatively straightforward. 1) Ashley is an individual and therefore possesses intrinsic worth, 2) Ashley therefore possesses Dignity, 3) she has a body that is constitutive of herself and what is done to her body is done to her, 4) her body is also intrinsically valuable, 5) the decision to proceed with GAT is a situation in which Ashley, her parents, doctors and the ethics committee all treat Ashley's body as a mere instrument. It does not matter that she, in this hypothetical situation, decided and was happy with the choice she had made, because the decision, to Kittay, represented and always represents an

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<sup>123</sup> "Whose Convenience? Whose Truth?", Eva Kittay, pg. 2, 2007

<sup>124</sup> "Forever Small", Eva Kittay, pg. 610, 2011



unjust use of the body as a mere instrument. Choosing to use GAT as a way to accomplish a “specified ambition or goal”<sup>125</sup> is always an instrumental use of the body.

Kittay uses the example of a young boy who wants to be a champion gymnast to support her point. This child is a talented young gymnast who desperately wants to become a champion. In this example, like my hypothetical Ashley case, this child wants to have GAT done as a way to further their goals. However, Kittay objects, arguing that, “our moral intuition is that when we regard his body as merely instrumental to a specified ambition or goal, we also treat him as a mere instrument”<sup>126</sup>. This example shows, in stark clarity, why the use of GAT would be impermissible in all cases. If we choose to change her body through this hormone therapy with the intention to further a goal or to achieve some ambition then we are necessarily using her body as a mere instrument for the goal. However, I suggest that Kittay’s understanding of mere instrumental use is too strict.

Let’s imagine the following counterexample: there is a boy who, just like the other boy, desires to become a champion gymnast. The difference arises in the way these two boys go about it. This second boy elects to pursue a rigorous training regimen with the intention of training his body to accomplish all of the moves necessary to become a champion gymnast as well as high impact weight training with the intention to stunt his growth so that he will be the perfect size to achieve his goal. My challenge to Kittay is the following, is this not an example of the mere instrumental use of the body?

Kittay could respond in the following way. No, that is not an example of *mere* instrumental use of the body because it represents a dedication and an inevitable consequence of

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<sup>125</sup> “Forever Small”, Eva Kittay, pg. 620, 2011

<sup>126</sup> “Forever Small”, Eva Kittay, pg. 620, 2011

the hard work it requires to achieve the goal. She might argue that the decision to change the body in this way shows a respect for the body that a hormonal treatment does not. GAT represents a “shortcut”<sup>127</sup> through the difficulties of achieving the goal that betrays an attitude of *mere* instrumental use of the body.

The weakness of this response is that it puts more emphasis on the attitude one has towards their body rather than the actual treatment of their body. It seems that we could offer a reversed case that could make the decision to use GAT permissible and the decision to use high impact weight training as impermissible.

For example, let’s say that the boy who desires to use GAT to achieve his goals knows that he has a really good chance of being too tall to become a champion gymnast. All of his family members are over 6ft tall and he most likely will be to. After lots of consideration and discussion about GAT the child and his parents decide to proceed with the treatment. This situation seems to show a deep respect for the body and an appreciation of the gravity of the choice. While it is still true that this is an instrumental use of the body, it does not appear to be a *merely* instrumental use.

Similarly, we can imagine the boy who uses high impact weight training as having the opposite attitude. Instead of treating his body with respect, each workout he punishes his body with disdain and pushes himself because he wants to use his body in a single minded pursuit of glory. The differences between these two situations show that Kittay’s argument does not, as much as it tries, provide fully convincing reasons to think that using GAT to further your goals is, in fact, by its nature impermissible/against Dignity. Furthermore, I think my Preference

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<sup>127</sup> “Forever Small”, Eva Kittay, pg.619, 2011

Theory of Dignity can give a coherent and reasonable explanation of why GAT is not, by its nature against Dignity.

The PTD is able to give a reasonable explanation for why both this specific Ashley case and the boy who wants to be a gymnast do not support the idea that GAT is necessarily against Dignity.

Boy Gymnast Example: 1) This boy possesses enough mental capacities to form preferences and so therefore he has Dignity. 2) Treating the boy in a way consistent with his Dignity means facilitating his well-being by: (2a) considering his preferences to be valuable and (2b) having his parents and doctors, through various inferences, make themselves aware of his preferences - to become a champion gymnast and to have GAT done, to live a healthy life - and support this preference unless it, (2c) results in the harm of another (which it does not), 3) However, there is the opportunity for paternalistic intervention if the decision to override the child's preference will yield a significantly better result for the child in terms of his own preferences.

For example, let's imagine that using GAT was considered a form of cheating and therefore increased the chance of being barred from competition or that GAT poses significant health risks (which it does not, but let's say it does)<sup>128</sup>. The question then becomes is there another option that would yield a significantly better outcome for the child in terms of his own preferences. It is very possible that the money spent on GAT could be better spent on a personal trainer or traveling to more competitions. Or that reducing your final height naturally lends itself to better performance. The point is that in this situation, there is nothing necessarily wrong about the decision to use GAT, if the child expresses a preference. But there are conditions that need to

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<sup>128</sup> "Ashley Revisited", Douglas Diekema, pg. 40, 2010

be met in order for the decision to be considered consistent with his Dignity. This is mirrored in this specific Ashley Case.

Hypothetical Ashley Case: 1) Ashley possesses enough mental capacities to form preferences and so therefore has Dignity, 2) Treating Ashley in a way consistent with her Dignity means facilitating her well-being by: (2a) considering her preferences to be valuable and (2b) having her parents and doctors, through various inferences, make themselves aware of her preferences - to enjoy the pleasures she can and to have GAT done to improve her ability to enjoy them - and obligating them to promote her preferences unless (2c) it results in the harm of another (which it does not), 3) It is possible for GAT to be a poor choice, other than harm to others. If her preference for GAT would not result in her ability to accomplish her preferences, or there is some other option such as hired in person caretakers or mechanized lifts which could achieve her preferences in a way that was significantly better than the decision to pursue GAT, then her preference could be overridden. For example, let's imagine that the use of lifts represented a choice where she could accomplish many more of her preferences, communicated, observed or assumed, then the choice to use GAT would not be the best choice and someone could step in. Therefore, similar to the gymnast case, the choice to pursue GAT, especially if it is a preference voiced by the person, does not, by its nature, violate the Dignity of the person.

In this section, I have tried to answer the following question, is GAT, by its nature, inconsistent with Dignity. Kittay argued that the use of GAT is always an instance of mere instrumental use of the body and was therefore a violation of Dignity. However, I argued that Kittay's argument ultimately did not provide dispositive reasons to believe GAT to be intrinsically a violation of Dignity. Next, I attempted to show that my argument supported the idea that GAT is not intrinsically against Dignity, rather, the decision to use GAT can be made in

a way consistent with Dignity, given that it did not harm others and that there was not another obviously superior option available.

Even though GAT cannot be said to be necessarily against Dignity, there are still many issues with the proposition of choosing GAT for Ashley. In this section, she was assumed to have chosen this option willingly, however, in the actual case Ashley is unable to communicate her preference. The next question to answer is: even though GAT is not intrinsically inconsistent with Dignity, is the epistemic barrier with regard to Ashley's preferences enough to render choosing GAT for Ashley as impermissible and against Dignity?

### **Preference Theory of Dignity and Ashley: Choosing Under Uncertainty**

In the previous section I argued that GAT is not intrinsically inconsistent with the Dignified treatment of Ashley, but this does not mean that choosing GAT for Ashley is never impermissible or inconsistent with Dignity. In the real Ashley case she is unable to communicate her preferences about GAT to either her parents or doctors, furthermore it is in question whether she is capable of having preferences about GAT at all. This is a major difficulty that my argument faces - because it is based on preference satisfaction. My goal for this section is to suggest that even under conditions of uncertainty, with respect to Ashley's preferences, it is not necessarily inconsistent with Dignity to choose GAT for her. I plan to do this in the following steps: 1) I'll use a common situation of choosing to vaccinate a baby as an analog to the Ashley Case. In both examples we do not know the preferences of the child. Yet, in the vaccination case there is less doubt concerning the choice of vaccination, but in the case of Ashley there is significant doubt about whether we can make this choice. 2) I'll offer Adam Cureton's possible

solution to the baby vaccination case and the Ashley case arguing that his position is ultimately unhelpful in deciding what to do in situations of uncertainty. 3) Lastly, I'll provide my own argument for the baby vaccination case and the Ashley case, showing that it can give coherent and reasonable guidelines for how to choose or not choose GAT for Ashley in situations of uncertainty.

Those who are against GAT often say that “we are better off doing nothing under conditions of uncertainty”<sup>129</sup>. However, this sort of argument falls apart when we compare it to a routine case of childhood vaccination, specifically booster shots.

Baby Example A) Imagine that there is a baby and we are trying to decide whether or not we should vaccinate her. She is six months old and needs a few rounds of vaccines. If we were to follow the argument that skeptics of GAT often use - doing nothing in cases of uncertainty - then we would be unable to make a decision, because they argue that if we don't know what she would want then we cannot make the choice - this argument taken in its strongest form also has implications for any choice we might make for a child, resulting in total paralysis of the decision maker.

However, for a baby of this age it is impossible to know their preferences for a specific vaccine and in this way it seems that this case and the Ashley case are similar. In both we do not know the specific preferences for the decision we are trying to make for them. But the fact is, in nearly all baby vaccination cases we make the decision to vaccinate, despite making this decision under conditions of uncertainty. Our reasoning is usually something like the following: this decision is better for them than the alternative. This common sense attitude usually carries the day in the baby vaccination cases, but when it comes to making the decision to choose or not to

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<sup>129</sup> “Ashley Revisited”, Douglas Diekema, pg. 35, 2010

choose GAT, this reasoning tends not to be enough. So, there is more argumentation that needs to be done and Adam Cureton attempts to do just this.

Adam Cureton provides an argument about what to do in cases, like this one and the Ashley case, in which we have to make a choice, but we are unsure of how the person feels about the choice itself.

The following is a restatement of Adam Cureton's argument with a few additional lines. These additional lines detail how his argument evaluates cases of disability and decision making for people under conditions of uncertainty.

1. The capacity for rational agency is the basis of our Dignity
2. No other factors detract to or add to our Dignity
3. This type of Dignity is uncompromising and cannot be traded
4. Children are assumed to have the potential for rational agency and therefore possess Dignity
5. Even people who are mentally disabled/injured should be presumed to have this ability, unless there is "overwhelming positive evidence to the contrary"<sup>130</sup>
6. to treat someone with Dignity is to "regard their personal ends as worthy of attention and assistance"
7. To accomplish (6) in severe cases it is necessary to appoint an advocate who will "take up her point of view and to assess whether our treatment of her is justifiable to her if she were sufficiently rational"<sup>131</sup>
8. If the answer to (7) is yes, then the action is permissible and if no, then it is not.

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<sup>130</sup> "Respecting the Dignity of Children with Disabilities in Clinical Practice", Adam Cureton, pg. 266, 2017

<sup>131</sup> "Respecting the Dignity of Children with Disabilities in Clinical Practice", Adam Cureton, pg. 271, 2017

The issue with this argument raises its head in premise (7). This requirement pushes us to the very edge, if not over the edge, of the usefulness of counterfactual reasoning. The issue can be best seen when viewed through two different examples. (a) A previously healthy forty year old man is struck by a car when he is crossing the street, leaving him comatose and (b) an average newborn - roughly one to two months old.

Let's take vaccination as a simple example. We are trying to decide whether we should administer a vaccine to either (a) or (b), or both. In both cases they have Dignity, our goal is to assist their ends and we need to assess whether the treatment would be agreeable to them were they sufficiently rational. In case (a) it is a relatively clear case of counterfactual reasoning because we can look back at past behavior as well as consult family and friends to make an informed inference about preference. If the man has a history of receiving vaccinations then it is safe to say that, were he sufficiently rational, he would decide to have the vaccination. However, if he had a history of attending anti-vaccination rallies then it would be reasonable to conclude that he would not want it, if he were sufficiently rational. But, (b) is entirely different. This child has never been sufficiently rational. Additionally, there is no history of choices that we can draw on and her friends and family have no more information about the desires or ends than anyone else does. So, it seems like the requirement, "to assess whether our treatment of her is justifiable to her if she were sufficiently rational", is vacuous at best. Attempting to fulfil this requirement would result, invariably, in the substitution of someone else's ends and desires and not hers. As a requirement for the Dignified treatment of people, it tends to work well in cases where the person's desires and ends can be easily inferred, but it doesn't give us good reasons to make any decision with respect to (b). This issue clearly occurs when we consider the Ashley case.



However, before we move to the Ashley Case, Cureton might provide the following counterargument. He might say that given environmental factors we could reasonably infer that the baby might be more likely to develop a certain perspective on vaccination rather than another. He could say that his argument isn't just focused on a history of choice, but also on a reasonably inferred set of future choices. If the child is born into a very conservative anti-vaxx family then they are likely to develop anti-vaccination views. Whereas, if the child is born into a pro-vaccination family with two medical doctors as parents, then they are more likely than not going to develop pro-vaccination views. Despite this possibility, I would argue that there is another way in which the Ashley Case differs significantly from this baby case. Ashley is reasonably thought to not have this ability to develop complex future opinions about vaccinations or GAT, and so therefore we are left in a difficult place with Cureton's argument.

In the Ashley Case there is no history of choices to draw from, no way to extract a preference from her, no way for her to communicate a preference, and no reasonable future prospects. Further, and perhaps most damaging, the requirement, "to assess whether our treatment of her is justifiable to her if she were sufficiently rational", yields no substance. Not only does this requirement open up the opportunity for someone else's ends and desires to be used instead of hers, but it is not clear what it would mean to truly accomplish this requirement. There are many ways in which a person could develop and many ways in which they could possibly feel about something if they were sufficiently rational. It seems likely that people, who are both equally "sufficiently rational", could reasonably disagree on important matters - such as medical decisions. Therefore, we are left desiring a requirement that will give more coherent and less vacuous guidance. This is where I believe my argument comes in.

The PTD focuses on promoting the well-being of the person with respect to the satisfaction of their preferences. These preferences can be communicated, observed, or assumed. In cases like the newborn and the Ashley case, we don't have any explicit information about their preferences concerning the specific decision to choose vaccinations or GAT for them, respectively. However, this does not mean that we are handcuffed into making no decision at all. I'll use my argument to show that there are ways, both in the routine newborn case and the Ashley case where we can choose vaccination or GAT while still acting consistently with their Dignity.

Baby Example A: 1) The newborn baby has enough mental capacities to form preferences - crying when hungry or upset, babbling and smiling when happy - therefore the newborn has Dignity, 2) Treating the baby in a way consistent with their Dignity means facilitating their well-being by: (2a) considering the newborn's preferences to be valuable and (2b) making ourselves aware, through various inferences, of the baby's preferences and allowing/promoting their preferences. This requirement becomes difficult when we do not know their preferences about getting a vaccination, however, there are things we can do to reasonably figure out if we can make the decision anyways. Contrary to Cureton's argument, there is no way to know how they would feel if they were sufficiently rational. Rather, our decision should be framed in terms of the baby's assumed and/or observed preferences. It is reasonable to assume that a baby has a preference for being healthy and for feeling well. The question of whether to choose a vaccine or not hinges on whether the decision to vaccinate the child is furthering their observed or assumed preferences - not their communicated preferences. If the decision to vaccinate the child, furthers their assumed preferences for health and for feeling well, and the decision to vaccinate the child is the best way to accomplish their assumed preferences, then it is

the correct choice. In nearly all cases, the decision to vaccinate the child will reasonably facilitate the preferences of the child enough to justify it. Next, the PTD must assess the real version of the Ashley Case.

The Real Ashley Case:

Premise 1) Ashley has demonstrated and I have argued previously that she possesses sufficient mental capacities to form preferences and therefore she has Dignity.

Premise 2) Treating Ashley in a way consistent with her Dignity means facilitating her well-being by (2a) considering her preferences to be valuable. This requirement is met through the actions of Ashley's parents. Ashley's parents through their blog show that the preferences of Ashley are the primary driving force behind their actions. They have been recorded saying that the "the central purpose" of their actions "is to improve Ashley's quality of life"<sup>132</sup>. Ashley's quality of life is in large part determined by the satisfaction of her preferences. Her parents are very focused on providing Ashley with the activities and situations that promote benefits and mitigate harms. Therefore, I can rest on the reasonable conclusion that Ashley's parents are considering her preferences to be valuable.

(2b) Treating someone with Dignity means making yourself aware, through various inferences, of their preferences and supporting those preferences. This premise then requires two things. First, we must divine what Ashley's preferences are and second, we must allow and promote her preferences.

First, it is necessary to, through various inferences, make ourselves aware of Ashley's preferences. As I've detailed in the previous chapter there are three ways in which we can infer

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<sup>132</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 4, 2007

her preferences. First, through direct written or verbal communication. Second, through overt observable behavior. Third, through an observation of what type of entity she is - what I have called 'assumed preferences'.

Ashley is unable to communicate her preferences directly because she lacks verbal and written communication skills. So, inferences by way of direct communication is off the table.

However, her parents, as noted before, can infer some of her preferences through her behavior. They can infer, through observation, that she prefers listening to music rather than not, she prefers moving and having physical freedom to stretch rather than being confined, and she prefers to spend her time with loved ones (or at least people who take good care of her) rather than being alone. They don't discuss many of Ashley's observed negative preferences, but we can conclude based on Ashley's parent's fear over her "discomfort"<sup>133</sup> regarding the possibility of pneumonia, skin ulcerations and bladder infections<sup>134</sup>, that Ashley has and can demonstrate observable pain behavior.

However, even if she was not able to demonstrate discomfort and pain through observable behavior we can make reasonable inferences and assumptions about her preferences based on the type of entity she is. Ashley is a young human girl with the static mental age of around a three month old child. As such, she is biologically inclined to experience pleasures and pains of a person at that mental age. This information allows us, and Ashley's parents, to make reasonable inferences about what her preferences might be. She can reasonably be said to prefer pleasure over pain, comfort over discomfort, joy over sadness, health over sickness etc...

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<sup>133</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 4, 2007

<sup>134</sup> "The 'Ashley Treatment' for a Better Quality of Life", Ashley's Parents, pg. 9, 2007

A counterpoint that is worth noting regards the possibility that Ashley's able-bodied parents may not be able to fully understand or anticipate the assumed needs of a young disabled girl. When determining reasonable preferences based on the type of entity that Ashley is, it seems clear that two able bodied people may have trouble divining what her assumed preferences are. As a result, it is fully possible that Ashley's parents - though acting with all the right intentions - mistake, poorly weigh, or accidentally ignore preferences that Ashley should be assumed to have based on her status as a young disabled woman. This worry can be easily fixed in future cases. All children whose parents are considering this treatment for their children must be assigned a disability rights advocate - similar, but importantly different from Cureton's premise (7). Preferably a person who is disabled themselves and/or is well versed in disability rights literature. This person will act as a check on the parents of disabled children to make sure that they are paying close enough attention to Ashley's preferences instead of their own. In other words, this advocate will act in Ashley's interest by providing insight into what it is reasonable to assume Ashley's preferences might be based on the type of entity that she is. They will then relay this information to the parents of the child.

This is not a perfect solution, of course, because there still exists the problem of representation. The worry of having Ashley's parents determine the assumed preferences of Ashley rests on the fact that it is easy for able bodied people to make mistakes in this area. However, this same worry crops up when we try to fix the problem. A disability advocate who can communicate and articulate the finer points of arguments concerning assumed preferences and best interests of Ashley, is, in virtue of these complex mental computations, not truly representative of Ashley's experience. It feels similar to the following situation.

If we are trying to determine the best policy for facilitating the preferences of Blind Person A, then it seems odd to consult with Deaf Person A. Though they both have disabilities, it is not the case that all disabilities are the same and it is even less true that all disabled people are the same. But, all of this notwithstanding, it is a good idea on the whole to have a disability rights advocate stand up for Ashley's assumed preferences. Even though the advocate will not be a perfect stand in for Ashley herself, they will be more accurate, on average, than parents who are not themselves disabled and may not be able to make an unclouded decision by their own abled privilege.

A further difficulty of deciding whether or not to proceed with GAT is determining what, if any, preferences Ashley has about GAT specifically. We cannot rely on a direct communication of preference for or against GAT. We can't determine if GAT is something Ashley would want through observable behavior because it is a specific medical procedure that is rather complicated. Her assumed preferences also don't act as dispositive considerations alone. We cannot argue that she is assumed to have a preference for GAT or assumed to have a preference against it. GAT is too complicated of a procedure for that sort of assumption to be made. However, our goal, when treating an entity with Dignity is to promote their preferences. This means, in the case of Ashley, who cannot choose for herself and who does not have a discernible preference with respect to GAT, that we must choose the action that best promotes and facilitates her preferences.

This means that when deciding whether GAT is the correct choice for Ashley, we must consider her observed and assumed preferences and then make the medical choice that best promotes the satisfaction of those preferences. So, the question is not, what is Ashley's preference with regards to GAT specifically? But rather, the question is, does the decision to use

GAT best promote her observed preferences to listen to music, stretch, and spend time with family? Additionally, does the decision to use GAT promote her assumed preferences for pleasure, comfort, joy, and health, while avoiding pain, discomfort, sadness, and sickness? Which, from now on, should be partially informed by a disability advocate. If the answer to those questions is yes, then I see no reason why GAT should not be allowed. Ashley's parents made the decision to proceed with GAT under the guidance of doctors who believed that the treatment would confer and facilitate all of the aforementioned preferences. GAT should be understood as permissible only insofar as it represents the best way to promote the preferences - observed or assumed - of the child in question.

So, did Ashley's parents, doctors and ethics committee make a decision that violated her Dignity? I would argue that their decision did not violate the Dignity of Ashley, though the addition of a disability rights advocate to the process would've been better. They considered her preferences to be valuable, and made a decision that was intended to promote her well-being through the facilitation of her preferences. The result of the procedure has been nothing but positive. Ashley's parents continue to care for her in their home, providing excellent care. Ashley has not suffered from the treatment itself and continues to enjoy those things that she can. On all accounts her preferences are being facilitated and satisfied as a result of GAT. Now, is it possible that they could have accomplished the same end with mechanized lifts, in home caretakers or an out of home institution? I think it is reasonable to say that is a possibility, but I do not have enough information about the specifics of each of those options to make a judgement.

As you can see, this argument does not rely on extreme counterfactual reasoning and it does not require us to know how the child feels specifically about the treatment and the child

themselves doesn't need to have a preference about the treatment at all. The treatments, vaccination or GAT, can be fully justified in their ability to further the observed or assumed preferences of the child. The vaccination can be chosen based on its ability to further the health and well-being of the child, regardless of whether we know how the child feels and regardless of whether the child has a specific preference at all. The same argument applies to GAT.

In this section and the one before I have argued that GAT is permissible both in situations where Ashley is able to express a positive preference for the treatment and when Ashley is unable to express/have a preference with respect to GAT. The next section will argue that it is also sometimes permissible for GAT to be chosen even if the child in question can communicate a preference not to have the treatment.

### **Preference Theory of Dignity and Ashley: Overriding Overt Preferences**

In the previous two sections I have argued that choosing GAT for Ashley can be permissible in situations where 1) she expresses a positive preference for the treatment and 2) under conditions of uncertainty with respect to her preferences. This section will focus on whether we can choose GAT for Ashley, if we have reason to believe she doesn't want the treatment. Furthermore, this section will focus heavily on my third premise, which describes the conditions under which paternalistic actions are acceptable. In order to accomplish this goal I'll: 1) provide a common real world example in which a young boy ages four to six, needs to receive his MMR booster shot. However, like most children he abhors needles and the subsequent pain of getting the vaccination, but his parents decide to have him receive the vaccination anyways. This will serve as a way to describe how my argument handles a rather common paternalistic



situation. 2) I will argue that there are fundamental similarities between the vaccination example and the GAT decision. 3) finally, I will show how my argument correctly outlines the conditions of paternalistic actions and gives good reasons to believe that, in some situations, we can choose GAT for Ashley even when we have reason to believe she does not want it done.

Vaccination example): Imagine a four to six year old boy who is in need of his MMR booster shot. When he was 15 months old his parents decided to give him the first round of vaccinations, even though they did not know how he felt specifically about vaccinations. They did so while also treating him consistently with Dignity. However, now they have more information about his feelings towards vaccinations and they are not positive. He complains that they hurt and he doesn't like being touched by the nurse. Additionally, we can continue to assume that he has the same preferences for health and comfort as most other people do. Beyond these assumed preferences, this little boy loves school and spending time with his friends. Without the MMR vaccination he is unable to go to school or see his friends. Despite these reasons and his parents' attempts to reason with him, he does not relent. Can we vaccinate this child against his wishes, while treating him with Dignity? Yes, we can.

Application of PTD to vaccination example: 1) This young boy has enough mental capacities to form preferences, as evidenced by his aversion to pain and preference to go to school so he can play with friends, therefore he has Dignity. 2) Treating him in a way consistent with his Dignity means facilitating his well-being by: 2a) considering his preferences to be valuable and (2b) through various inferences, making ourselves aware of his preferences and allowing/supporting his ability to act consistently with those preferences - he doesn't want the vaccination, but he does want to go to school and play with friends. Here we can notice a distinct conflict among his preferences, which premise three will solve.

It is possible that (2c - harm to others) is triggered by this example. It is well known that herd immunity is only accomplished if a high percentage of the population is vaccinated. So, deciding not to vaccinate yourself or your child can pose either a direct or indirect risk of harm to others. However, let's put that consideration aside.

Premise (3) states, if there exists a reason to act paternalistically then there must be a sufficiently compelling reason. A sufficiently compelling reason is (3a) one that brings about a significantly better outcome for the child in question with respect to his own preferences.

This boy can be understood as having the following preferences. He prefers not to have the vaccination because it will cause him pain and he doesn't like the idea of the nurse handling him. However, he also has the assumed preferences for health, comfort, pleasure and the observed/communicated preferences for play, school, and interaction with friends. The question is, can we override his desire to not have the vaccination and frame that paternalistic action in terms of his other known or assumed preferences? Does that decision represent a significantly better option? I think that we can. The decision seems relatively clear. If our goal is to promote his preferences, then we should choose to vaccinate him. Without the vaccination he would be unable to play, to go to school, and therefore not being able to spend time with friends. It is true that the child will have two of their preferences unsatisfied. As such, he won't be able to escape the pain of the vaccination or the fact that the nurse needs to hold him so she can do the vaccination well. However, if we imagine the overall number and weight of the preferences that are satisfied, then it becomes clear why this was the correct choice.

Furthermore, even though we can decide to act paternalistically and force the child to get the vaccination, there are better and worse ways to accomplish this. It is not enough to say that the decision to give them the vaccination is in their best interest and so therefore that justifies

giving the child the vaccination by any means necessary or in any manner. Even under circumstances of preference non-satisfaction, we should try to cause the least amount of harm to the person themselves. In other words, we are obligated to make the process of giving the child the vaccination the least traumatic that it can be. Overriding the child's preference can be done in better and worse ways.

There are striking similarities between the vaccination case and the Ashley case, especially with respect to the worries about how Ashley might feel about the treatment. The boy in the vaccination example had many of the same preferences that people attribute to Ashley - desire to avoid pain, bodily integrity, not being handled etc... Many people wonder if Ashley has any preferences with respect to her height. Does she care that she is tall or short? Given that she cannot walk or stand, maybe it is better to ask, does she care about growth in general? If she does care about her height or about her growth, is that consideration dispositive? As we will see, preferences for growth and height are only a few of many, arguably more important, preferences.

Application of PTD to Ashley case: 1) Ashley has sufficient mental capacities to form preferences, and therefore she has Dignity, 2) Treating Ashley in a way consistent with her Dignity means facilitating her well-being by (2a) considering her preferences to be valuable and (2b) making ourselves, through various inferences, aware of her preferences and allowing/supporting her ability to act consistently with those preferences, unless (2c) there is harm to others, which we can rule out here. Her preferences, in this example, are similar to her preferences in other examples. She can be said to have the assumed preferences of health and comfort and further she can be said to have preferences to be with her family, to stretch, eat food, listen to music. However, in this example we have reason to believe that she does not want GAT done. Can we override her preference in this case?

Premise (3a) provides guidance in this case. We can act paternalistically with respect to Ashley if the decision we make yields significantly better results for Ashley in terms of her own preferences. Her preference to continue to grow is only one of many preferences that she can have and does have, it is necessary to weigh preferences against each other. In pursuit of this goal there are two situations I'd like to consider, one that supports the choice of GAT and the other that does not.

In Support of GAT: We can imagine a situation in which choosing GAT for Ashley can bring about a significantly better outcome - the satisfaction of more preferences than alternative decisions. If we choose GAT, then we are denying her preferences for height. However, if she is able to live a life that is full of her other preferences - she is stretched more leading to more circulation and comfort, she has fewer bedsores, more interaction with her family, more activities, time spent outside etc.. then it is easier to see why GAT is the correct decision despite her preference to be tall and to grow. We can make this choice for her, against her wishes, if it will yield much better results in terms of her own known or assumed preferences. This is similar reasoning given by people who choose vaccinations for their children.

Against GAT: There are many possible cases in which GAT is not the right choice for a child. 1) If there are other options that satisfy more of her preferences or satisfy her preferences in a better way, 2) if GAT creates more problems than it solves (hormonal problems, health issues, pronounced social issues), 3) if it does not, in fact, provide her with the preference satisfaction that we thought it would. Each of those are reasons why GAT would not be a good decision.

Premise 3b) Third party considerations would only come into play if the decision between GAT and another option were both equally significantly better than Ashley's original

preference. In that instance, then Ashley's parents could make the choice based on their own preference.

This section has argued that there are parallels between vaccinating a child who expresses a preference against vaccination and a slightly adjusted version of the Ashley case. In both situations we have good reason to believe that the children do not want a certain medical treatment done. The young boy is afraid of needles and dislikes the idea of being handled by a nurse; Ashley wants to grow and to be tall, which is necessarily contrary to GAT. However, in both cases it is possible to treat the child with Dignity while deciding to proceed with the medical decision. Paternalistic actions are permissible on the condition that they are done in a way that will yield a significantly better outcome for the children in terms of their own preferences. In the case of the young boy, even though he would have pain from the vaccination and be handled by the nurse, he would, because of the vaccination, be able to play, go to school, be healthy etc... all preferences of his. In the Ashley case, even though she may want to grow and be tall, choosing GAT for her will allow for the satisfaction of many of her other desires - health, circulation, activities, time with family etc..

The decision to vaccinate the child and use GAT on Ashley are only permissible insofar as they facilitate the preferences of the children in the best way possible. If there are other options which promote their preferences and yield a significantly better outcome than GAT or vaccination, then that decision should be chosen.

In the past three sections I have argued that GAT is permissible. We can choose GAT for Ashley in situations where she 1) had a preference for it, 2) either had no preference or we didn't know, or 3) she had a preference not to have it done, but it represented a significantly better outcome framed in terms of her own preferences.

## **Conclusion**

The purpose of this chapter was to use my Preference Theory of Dignity to adjudicate the Ashley Case. I presented three ways in which we can imagine Ashley feeling about GAT. First, we can imagine that she prefers to have the procedure done, in which case my argument concludes that the decision is morally permissible and can be consistent with Dignity. Second, if, as in the real Ashley Case, we do not know what she prefers, then we can still make a decision. If GAT facilitates her observed and assumed preferences, then the decision is morally permissible and consistent with Dignity. Third, even if we have reason to believe that Ashley does not want the treatment, we can, in some cases, make the decision to use GAT anyways. If the usage of GAT represents a clearly and distinctly better option - in terms of her own preferences - then we can make the decision for her.

Therefore, I conclude that in order to use GAT on a child with profound cognitive impairments a few conditions must obtain. First, it is necessary that their preferences be considered valuable and that their preferences factor as the primary reason for any action taken with respect to them. Second, there must be reasonable effort made to divine their preferences through careful inference. In the case of profoundly cognitively impaired children this takes the form of deliberate and close attention to observable behavior and in depth consideration of assumed preferences. Further, it is advisable that a disability rights advocate be assigned as an advisor to the parents, as they may have a clearer and more accurate understanding of what assumed preferences are reasonable for a person who has a profound cognitive impairment. Third, any paternalistic decisions that are made for the child must represent clearly and distinctly better options for the child themselves - framed in terms of their own preferences. Fourth, the preferences of the parents or any other such third party must never be considered

ahead of or instead of the preferences of the child. The lexical priority that exists between (3a) and (3b) is meant to safeguard and highlight the fundamental importance of avoiding the substitution of the parents' preferences for those of the child. Fifth, all of the aforementioned conditions are chosen with the intention of fulfilling/satisfying the preferences of the child as a way of facilitating their well-being. It is my understanding and my argument that if the decision to use GAT is consistent with these conditions then it represents a choice that is consistent with Dignified treatment of the child because it will facilitate the well-being of the child. The final chapter of this thesis will address two objections that are leveled at my argument.

## Chapter V: Objections

In the previous chapters I presented my Preference Theory of Dignity. Even though I have considered objections to my argument throughout my thesis, here I will focus on two specific objections that arise with respect to GAT itself. First, I will respond to those who argue that usage of GAT, on children with profound cognitive impairments, represents an unjust discriminatory act. Second, I will address slippery slope concerns related to amputation therapy. There are those who are worried that if GAT is considered morally permissible then amputation therapy will also become morally permissible.

### **Discrimination Claim: You Wouldn't Do This to a Non-Disabled Child<sup>135</sup>**

This objection argues that GAT represents an instance of unjust discrimination on the basis of disability. Those who support this claim tend to argue that the fact that such a treatment is given to children with profound cognitive impairments (PCI) and not to children who are non-disabled is evidence of a discriminatory practice. Some say, “if anyone did this to a normal child, I think they would have been prosecuted”<sup>136</sup>.

Douglas Diekema, a physician who worked closely on the Ashley case, addresses this objection in his paper “Ashley Revisited: A Response to the Critics”. In the paper he succinctly counters this common objection.

The underlying argument suggests that if an intervention cannot be justifiably performed on a normal child, it cannot be justified for a child with a disability or a disease. However, what justifies any medical intervention is **not**

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<sup>135</sup> “Ashley Revisited”, Douglas Diekema, pg. 39, 2010

<sup>136</sup> “Ashley Revisited”, Douglas Diekema, pg. 39, 2010



that it would be performed on a normal child, but that it offers net benefits to a particular patient based upon that patient's individual needs.<sup>137</sup>

Diekema points out, correctly, that the way a treatment should be judged is based on the impact that it has on the patient and the benefits it confers on them, not its ability to benefit a different child. For example, let's imagine that a deaf/severely hearing impaired child comes into the hospital for a cochlear implant surgery. A cochlear implant is a medical device that is surgically implanted onto a person's skull as a way of providing partial to full hearing restoration. The doctor who will perform the surgery and who is informed of this child's case believes that the implantation of such a device will confer upon the child sufficient benefits to justify the invasive treatment

A brief note about cochlear implants. There is some controversy about cochlear implants within the deaf community. There are arguments about their benefits both physical and social for deaf/severely hard of hearing people who might make use of such a device<sup>138</sup>. However, these debates are focused entirely on the benefits to be had or not had with respect to the deaf person in question, not phrased in terms of a non-hearing impaired person's ability to make use of such a device.

So, should the child receive the surgery or is this act one of discrimination against the deaf and severely hard of hearing?

If we are to believe those who argue against GAT, then we should not be justified in pursuing the cochlear implant for this child, for reasons related to discrimination concerns. For example, in this case it is clear, or should be clear that we should not implant a cochlear hearing

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<sup>137</sup> "Ashley Revisited", Douglas Diekema, pg. 39, 2010

<sup>138</sup> "Deaf Culture and Cochlear Implants", Lydia Denworth, Time Magazine, 2014, <https://time.com/76154/deaf-culture-cochlear-implants/>

device into a child who does not need one to hear. So, if we cannot use the cochlear implant on a non-hearing impaired child and rather can only use it on children with hearing problems, then this is a case of discrimination.

However, this doesn't strike me as correct. I agree with Dr. Diekema that the judgement of a medical intervention's moral permissibility should hinge on the benefits that it confers on the patient and not on its use on 'normal' children. Specifically, the medical intervention should be based on its ability to facilitate the well-being of the child, measured in terms of the satisfaction of their preferences.

So, my response to this objection is quite simple given my Preference Theory of Dignity. All medical interventions, GAT or otherwise, should be evaluated in terms of their ability to facilitate the well-being of the patient in terms of their own preferences. If this condition obtains then the medical intervention is consistent with Dignity and morally permissible. This concern - evaluating the moral permissibility of medical interventions - arises in the next objection as well.

### **Amputation Therapy**

Those who argue against GAT sometimes cite slippery slope concerns as a reason for considering GAT to be morally impermissible. They argue that if we can justify GAT then we can certainly justify amputation therapy - or even more problematic interventions. Amputation therapy, to these interlocutors, is considered to be morally impermissible because it represents a highly invasive, irreversible and unnecessary surgery.

*Objection 1) If we can justify GAT by appealing to caretaker burden then we can justify amputation therapy in the same way.*

S.D. Edwards provides such a slippery slope argument. He argues that if we accept GAT as justified then we are forced to conclude that other, much worse, outcomes are also justified - namely, amputation therapy. He uses what he calls the “Ashley Principle”. The “Ashley Principle” is the principle he believes was used to justify GAT. This principle states, “It is morally permissible to alter the bodies of (non-autonomous) disabled individuals, when (a) this helps the carers look after them, and (b) it benefits the disabled person” (Edwards 343). This principle, Edwards argues, might force us to accept cutting off Ashley’s legs or maybe even arms to achieve the end of keeping her light and facilitate the quality of care that her parents can provide her.

I would say that the “Ashley Principle” as he has formulated it would, in fact, result in the slippery slope that he has pointed out. If it is the case that our primary goal is to help the caregivers in their capacity as caregivers for Ashley and amputating her limbs represents a way to achieve this, then I would accept that amputation therapy is, on this view, morally permissible.

However, my Preference Theory of Dignity invalidates the conclusion of the “Ashley Principle”. My argument was constructed with the intention of avoiding these sorts of issues. It does this by shifting the focus from Ashley’s parents preferences to Ashley’s preferences. As such, the justification given in the Ashley principle for either GAT or amputation therapy would be markedly morally impermissible on my view. My argument does this through the addition of the lexical priority between (3a) and (3b). As such, justifying a medical procedure is focused on the well-being, measured in terms of preference satisfaction, of the patient themselves and not the caretaker. The preferences of the caretaker are taken into consideration only after the patient themselves have been fully considered and taken care of properly. The next version of the objection uses my own argument against me.

*Objection 2) If we can justify GAT by appealing to the benefits it yields Ashley then we can justify amputation therapy in the same way.*

I find that this sort of slippery slope argument is harder to push against. My Preference Theory of Dignity argues that a medical procedure/intervention must be judged on its ability to facilitate the well-being of the patient with respect to the satisfaction of their preferences. So, let's apply my PTD to an adapted Ashley case with the intention of discovering whether amputation therapy is ever justifiable.

Amputation example: 1) Ashley possesses sufficient mental capacities to form preferences and therefore she has Dignity, 2) treating Ashley with Dignity means that we facilitate her well-being by, 2a) considering her preferences to be valuable, 2) making ourselves, through various inferences, aware of her preferences and allowing/promoting those preferences.

We can infer through observation of her behavior that she loves to kick her legs and move around. She loves to stretch and orchestrate her arms and legs when she listens to music.

We can infer through the type of entity that she prefers comfort, pleasure and joy more than discomfort, pain and sadness.

So, we must determine if it is reasonable to argue that amputating Ashley's legs would promote her preferences? I would argue that in most cases the answer is no. Most of Ashley's observed preferences include but are not limited to moving and kicking, enjoying sensation and experiencing stretching and comfort. Amputation is a process that results in pain and suffering, ghost pains, risk of infection, inability to experience certain sensations<sup>139</sup>. While it might be true that amputation - through its ability to allow Ashley to be moved and changed more easily and

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<sup>139</sup> "Managing Phantom Pain", Amputee Coalition, <https://www.amputee-coalition.org/limb-loss-resource-center/resources-for-pain-management/managing-phantom-pain/>

increase her participation in family activities; there are very few, if any, situations in which the removal of healthy limbs would confer onto Ashley the benefits necessary to justify such a procedure. I am hesitant to say never, but I am confident that it will be an anomaly.

Therefore, this objection is not correct. It is not the case that because we can justify GAT on the basis of benefits to Ashley then we are necessarily forced into justifying amputation therapy. There must be careful consideration of the preferences to be satisfied from such a procedure and in most cases amputation is not an appropriate decision. Eva Kittay would disagree with me, arguing that amputation is never a morally permissible decision.

*Objection 3) Amputating healthy limbs is always impermissible.*

She has argued that “removing healthy limbs is abhorrent, I suggest, because we value bodily integrity as a crucial intrinsic good”<sup>140</sup>. She is arguing that removing a healthy limb is always bad, regardless of outcome. This view of hers is consistent with what we have seen in her past arguments.

I would disagree with her for two reasons. First, bodily integrity, while an important value should not be considered dispositive. Bodily integrity represents a value of respecting the body of another and it adds, implicitly, an obligation not to manipulate or otherwise interfere with another person’s body. For these reasons it should be considered an important preference, however, it is only one of many preferences and as such can be overshadowed by other preferences.

Second, I would argue that there are cases where the removal of otherwise healthy tissue is morally permissible. Top surgeries for transmen represent one of these types of cases. Top surgery “or male chest reconstruction, involves the surgical removal of breast tissue and tailoring

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<sup>140</sup> “Forever Small: The Strange Case of Ashley X”, Eva Kittay, pg. 620, 2011

of the remaining chest skin, when needed, to generate a masculine chest contour”<sup>141</sup> is an example of the morally permissible removal of otherwise healthy tissue.

First, my Preference Theory of Dignity can acknowledge Kittay’s point about the importance of bodily integrity. However, our preference for bodily integrity is only one of many. There are often times when we voluntarily allow for the denial of this preference for the pursuit of other preferences. For example: surgery, chemotherapy, colostomy bags, dental cleanings, etc. It is reasonable to conclude that bodily integrity, while important, is not a dispositive consideration.

Second, the removal of otherwise healthy tissue is not intrinsically bad. The PTD can give a correct answer to the case of a transman. 1) This person has sufficient mental capacities to form preferences and therefore they have Dignity, 2) In order to treat this person with Dignity we must facilitate their well-being by, 2a) considering their preferences to be valuable and 2b) listen to their communicated preferences - that they want to feel like their body reflects who they are, they want to feel comfortable in their body, they are okay with the pain and risks of surgery - and take actions to help promote these preferences - allow them to get the surgery, help them prepare, 2c) harm to others with Dignity does not factor in here, 3) Assuming that the decision to have the double mastectomy does not represent a significant health risk and there is no other clearly significantly better option in terms of their own preferences, then the person should be allowed to proceed.

Therefore, it is not true, on the PTD, that that removal of healthy tissue is always morally impermissible. If it is consistent with the person’s preferences and it doesn’t represent a harm to

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<sup>141</sup> “Top Surgery for Transmen”, Dr. Imborek, University of Iowa Hospitals and Clinics, 2019

another entity with Dignity and it does not conflict with their other preferences in a significant way, then they should be allowed to proceed.

So, in this brief section I have tried to argue that the slippery slope consideration can be put to rest with my PTD.

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