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Dignity in the Biotechnological Revolution

Jessica Miller

DOCTOR OF PHILOSOPHY
THE UNIVERSITY OF EDINBURGH
2014

DECLARATION

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A DEDICATION

For Matthew and Paul.

ABSTRACT

Dignity is the concept most commonly associated with the biotechnological revolution, and almost always used by conservatives in ethics and politics to justify constraining research into novel biotechnologies like cloning, genetic enhancement and life extension. At the same time, dignity is often criticised as inadequate to play such a fundamental role in future-facing bioethics. This thesis is a work at the intersection of applied ethics and politics, and seeks to address two main questions: whether dignity is a useless, hopelessly vague concept, and whether dignity is an inherently political, specifically conservative concept. This problem will be addressed by analysing the concept of dignity as it is found in bioethics policy and in everyday life. Using this conceptual analysis, a structure will be identified that both liberal and conservatives have in common meaning that dignity is not hopelessly vague. Despite having analogous structures, the argument in this thesis shows that the liberal and conservative conceptions of dignity are intractable and both support different positions in many arguments. The implication of this is that dignity will not be useful in building a consensus around policies in future-facing bioethics.

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Introduction

If you are a supporter of the claim that the concept of dignity has a foundational role to play in modern bioethics, then you are a fundamentalist, Christian bigot, ruled by gut instinct. If you are a critic of this claim, then you are a Godless, relativist, materialist naïf. Or at least, this is what one would be tempted to conclude from the tone of the current debate around whether dignity helps or hinders the practice of bioethics.

“Dignity” is an intuitive, powerful concept that is so difficult to grasp, many have despaired of doing so altogether. And yet, despite this imprecision and the fervour of its critics, uses of “dignity” continue to proliferate in applied ethics, and the publication of book-length analyses of the concept is becoming ever more frequent.¹

“Dignity” is being used in healthcare ethics; particularly in nursing of the elderly and terminally ill, as well as in how we relate to the profoundly disabled. There is a long tradition of using the concept of dignity as a foundation for human rights in constitutional and international law; the word is even used to mark out an active principle in case law, particularly in public morality. Finally, we find “dignity”, and “respect for dignity” being relied upon as a constraint in what has been called the Biotech Revolution; those novel biotechnologies, long the subject of dystopian science fiction but perhaps now just over the horizon, which have the potential to profoundly alter the way that humans relate to procreation, ageing, even death. Such is its ubiquity that the concept of dignity has been called a “bioethical Theory of Everything”.²

¹In the last eleven years, for example, there have been several books dedicated solely to analysing the concept of human dignity, notably by Rosen (2012); Kateb (2011); Beyleveld and Brownsword (1998); Foster (2011); Barilan (2012) and Waldron (2007). Many more that make explicit reference to dignity in the title have also been published, in fields as diverse as land rights, social justice, cultural processes of grieving and conflict resolution.

²Foster 2011.

Everywhere we find “dignity”, however, we find an argument that the concept is being misused. The concept is flat-out insulted; called useless, stupid and vacuous, the domain of those thinkers who have no rational arguments to justify their position and worse, who do not feel that any such arguments are needed.

At best, uses of dignity are understood by critics of the concept as the last gasp of an old order of morality that has its roots in religion, clung to by believers who still posit the existence of an immortal soul, but put to one side by the new rationalists. It is seen as a vehicle for political conservatives to smuggle religious ideology into what should be a secular debate. Both sides of the argument over what is picked out by the concept of dignity are equally convinced of the rightness of their position. This provides the primary motivation for my thesis: to judge whether “dignity” deserves its foundational status or its insults, we must understand *why* it is seen in equal measure as vital and useless. As a political liberal and supporter of the aims of social justice, how is it that conservatives have come to monopolize the definition and usage of the concept of human dignity in bioethics? Practically, if we are to appeal to dignity to justify decisions that could alter the path of the entire human race, then we had better understand why so many people reject it. Failing to do so risks basing these decisions on a concept that has only limited support, which *prima facie* appears to be unjust. There is a pressing need to answer the question, can the concept of dignity be formulated in a way that elicits broad support and a wide application in bioethics?

1.1 Aims of this thesis

This thesis is a work at the intersection of applied ethics and politics. My primary aim is to demonstrate that the moral and political split evident in the debates in bioethics really is a problem because it speaks to two fundamentally different political views, two different views about what a human being is, and therefore what kind of ethical implications invoking the dignity of the human being has for bioethics. This is what I will call the problem of intractability. I am not attempting to solve the problem here, which would involve developing a concept of dignity that satisfies incompatible beliefs about what is of value about humanity. I will attempt only to clarify what these two different views mean when they are brought to bear on the concept of human dignity, and adumbrate the more fundamental beliefs that motivate both the concept itself and those that use it.

If I am successful, I will have provided the beginnings of a framework to analyse uses of dignity in bioethics. This cannot solve the problem of intractability, but it will allow us

to move beyond arguing over what human dignity means, or assuming that the concept can only mean one thing, and that there is a choice only to accept or reject dignity as a useful concept in bioethics. Seeing human dignity as part of two fundamentally incompatible traditions allows for us to use it more consciously and therefore for advocates of the usefulness of “dignity” to avoid the charge that the concept itself is fundamentally flawed or ambiguous.

My secondary aim is to distinguish the different political and ethical frameworks in use in debates over dignity. This aim addresses what is probably the single most commonly-cited criticism of “dignity” as a concept, which is that the word can apply to a myriad of conceptions that conflict and cancel one another out. Dignity is understood both as a trait of character we all desire to have, and also as an inalienable, universal and absolute moral status that all humans have in equal measure, whether they have an interest in it or not.³ The concept of dignity has been invoked on both sides of many debates over the development and use of new biomedical technologies. If dignity is to be a useful concept in bioethics, then at the very least we need to clarify whether there are many conceptions of dignity, which can be profitably distinguished from one another and used in their own milieu, or whether the concept is “hopelessly vague”.⁴

This problem is especially pressing in the fields of healthcare ethics and what I will call “future-facing bioethics”, which is concerned with the Biotech Revolution. As biomedical science begins to grant us the ability to exercise control over our the materials of life, over our own individual futures and the future of society as a whole, there is an ever greater need to determine whether we have an obligation to endorse these advancements, to promote them, or to do everything we can to prevent them.

Despite the tide of criticisms of the concept of dignity, it is becoming increasingly popular in policy. Recently many healthcare charities and related government bodies have incorporated dignity into their mission statements and practical guidelines. For example, in 2007 the UK National Health Service published “Caring for Dignity”, which set out specific guidelines for the treatment of elderly and vulnerable patients regarding respect for their dignity.⁵ These documents on medical policy share two main claims about dignity, which are that the concept is very important, and that it cannot be, or does not need to be defined in order for it to play a central role.⁶ I disagree on this second point. Because dignity can refer to so many diverse and contradictory

³Mann 1998.

⁴Schachter 1983.

⁵NHS Commission For Healthcare Audit And Inspection 2007.

⁶“Dignity is a complex concept to define and is open to interpretation based on individual perceptions. Currently, no standard working definition is available, although there have been some attempts to give a meaning to the term.” *Ibid.*, p.15.

things, there is a need for it to be, if not clearly defined then at least adumbrated, which is perhaps the best that can be hoped for with a concept that is so deeply embedded into our culture. Because dignity can be invoked on many different sides of a debate, there is a need to disentangle the threads of its various conceptions and be specific about which one we use. Although my aims are explanatory, seeking to create a taxonomy that can structure our analysis of what the concept of dignity means and how it is used in debates around future-facing bioethics, I am not a political agnostic and I do have strong liberal leanings. As a result, I intend that my adumbration and structuring of the concept of dignity be used to bolster the liberal project in bioethics against the conservative project to make human dignity into a way a impose constraints on those new technologies they see as a threat to their own political values. In exploring the roots of the concept of dignity that bioethical conservatives are using, I hope to expose novel ways to criticise them without condemning the concept as a whole as being without substance.

1.2 Structure of the thesis

My aims can be summed up in the following list. I will:

- Distinguish a structure of dignity that brings together both human dignity and dignity as a quality.
- Show that liberals and conservatives understand dignity as a quality in different ways, and they also understand human dignity in different ways.
- Develop the foundations of the liberal and conservative conceptions of dignity to show that they are inconsistent; that if we accept one, we cannot accept the other.
- Demonstrate this inconsistency by applying the two models to issues in future-facing bioethics.

This argument will be structured over eight chapters, which will be divided into two parts. Part one will be made up of three chapters and corresponds to the problem of conceptual clarity; part two comprises five chapters and addresses the problem of intractability. I will tackle my primary and secondary aims in reverse order, because the work I do in distinguishing between human dignity, the dignity of rank, and dignity as a trait will inform the way I go on to explain how the concept of dignity is developed into two incompatible moral theories by liberals and conservatives. Until I clarify the kinds of dignity that are being used in future-facing bioethics, I cannot explore the underlying beliefs that inform human dignity or offer an argument for why we should attempt to make such a clarification.

In part one, I will argue that there is a distinguishable structure of dignity that has two possible understandings and that these understandings are basically equivalent to liberal and conservative uses of the concept of dignity. In chapter 2, I will review how dignity has been used in bioethics policy over the last fifteen years. I will give an account of the way that the role of dignity in bioethics policy and law changes depending on the political orientation of the government of the day. When conservatives are in power in the United States, dignity is used in a much more thoroughgoing way to support blanket bans on research into and development of novel biotechnologies. When liberals are in government, considerations of welfare and instrumentalisation take precedence over direct appeals to dignity, although dignity is still cited as an essential value. This suggests that dignity is understood differently by liberals and conservatives.

Having established a pattern within practical use for dignity in bioethics policy, I will move on to a conceptual analysis of dignity in chapter 3. I will adumbrate dignity into its basic conceptions, which are the dignity of rank, dignity as a trait and human dignity, and isolate the two conceptions that I will be talking about in the rest of my thesis.⁷ My claim in this chapter is that human dignity and dignity as a trait are interdefinable, that is, we cannot fully separate one from the other. I will offer two conceptions of dignity as a trait, which correspond to two different conceptions of human dignity. These two different conceptions are what correspond to the liberal and conservative patterns of use I identified in the previous chapter. My claim is that these two moral concepts underpin the political uses of dignity.

My aim in chapter 4 is to defend my claim that dignity is structured so that what I call “dignity as a trait” rests on “human dignity”. I will demonstrate this in three ways. First, by using this structure to defend dignity against its critics; second, by showing that this structure is more coherent than a rival formulation; and finally that it can be used to analyse arguments where dignity is used in a practical case study. This will conclude part one.

In part two, I will start to address the problem of intractability by developing the two conceptions of dignity that I sketched in chapter 3, thus filling out the foundations of the liberal and conservative conceptions of dignity. I will develop a Kantian account of dignity in chapter 5 and defend it against some of the most common arguments against using human reason as a justification for dignity in chapter 6, then demonstrate that this account of dignity is naturally aligned with the liberal approach to bioethics, because it is best understood as a kind of empowerment.

⁷The dignity of rank needs to be recognised before it can be walled off from the two conceptions I will be talking about; hence starting with three basic conceptions and then focusing in on just two.

In chapters 7 and 8, I will give an account of the conservative conception of dignity, arguing that it is best understood as a kind of normative essentialism and that it is like Burke's classical conservative conception of dignity in its focus on social institutions. Finally, I will bring these arguments to bear in a discussion of issues in future-facing bioethics in chapter 9, arguing that my accounts of the liberal and conservative positions as I have described them can account for the intractability of the opposing positions in the debate. Using the example of same-sex marriage and potential new developments in artificial womb technologies and in vitro fertilisation, I will show that the way liberals and conservatives see dignity as related to the priority of the right or the good accounts for their opposing conclusions. Using the example of European policy documents on cloning and genetic enhancement, I will show that even when both sides reach the same conclusion, their arguments are predicated on incompatible premises and therefore even in this case, real consensus cannot be achieved.

What I am aiming to show here is not that dignity is a useless concept, or that because it cannot provide us with a lodestone for consensus, it ought to be abandoned as a candidate for a foundational principle in applied ethics, medical policy or the law. My aim is to show that simply drawing attention to the common belief that the dignity of humanity is something that must be protected by all of us, whether we align ourselves more with liberal or conservative conclusions, is not enough to build consensus. As issues in future-facing bioethics will affect the destiny of the entire human race, and since appeals to "dignity" alone will not bridge the political divide, we must be even more thorough and inclusive in our decision-making in this area. Dignity can be a prism through which both sides can understand the other, but not a source of unity.

Part I: Clarifying Liberal and Conservative Conceptions of Dignity

How the Concept of Dignity is Used in Bioethics Policy

The concept of dignity has been a part of bioethics in both America and Europe since the inception of the discipline nearly sixty years ago.¹ Up until relatively recently, however, the concept was restricted primarily to contemporary issues like abortion, euthanasia and the ethics of medical research. It is only in the last twenty years that "dignity" has been applied to issues in future-facing bioethics, as a way to account for the judgement that there is a technological threat posed to humanity by the possibility of techniques like cloning, genetic enhancement and delaying ageing and death becoming widely available to the population.

Bioethics has increasingly become intertwined with politics and ideology.² In this chapter, I will give a brief account of how dignity has been used in bioethics *policy*, in contrast to the academic and clinical fields of bioethics, starting in the 1970s and moving through to the present day. I will show in this chapter that the role set out for the concept of dignity has changed depending on the governing party, thus that dignity has become a subject for partisanship.³ I'm going to focus mainly, but not exclusively, on the various iterations of the US government's main advisory body on bioethics.

There are two reasons for this. One is that taking the same kind of body, designed to advise the US president and make recommendations on bioethical policy, makes it easier to see the differences in uses of the moral concept of dignity as the governing

¹Jonsen 1998; Ten Have and Gordija 2001.

²For discussions of how bioethics and public policy have been politicized, see Goldberg (2012); Charo (2004), and Bishop and Jotterand (2006).

³McGee 2011.

political party changes. The other is that US culture has been starkly divided along political lines for a long time on a lot of levels, which has led to many political and moral debates being able to be classified according to the “culture wars” paradigm.⁴

Although the concept of dignity was used by government-appointed bioethics councils as far back at the first National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research in 1975, it was restricted to arguments around the destruction of embryos.⁵ Dignity was mentioned only a few times throughout the documents produced in the twenty years after that, until the election of George W. Bush in 2000. The increased importance put on dignity as a general principle in bioethics, not just a way to restate the principle of the sanctity of life, was correlated with a swing to the right in the US government after the Presidential elections of 2000. In November 2001, Bush established the President's Council on Bioethics, chaired by the molecular biologist and bioethicist Leon R. Kass, with a mission to “advise the President on bioethical issues that may emerge as a consequence of advances in biomedical science and technology.”⁶ This led to dignity being placed at the core of bioethics policy, especially in discussions of future-facing bioethics; indeed, it immediately puts the focus on the future by using the idea of advances in technology. This was accompanied by an explosion of literature on the adequacy of the concept of dignity for such a central role.

My aim in outlining political uses of the concept of dignity is to demonstrate that both liberals and conservatives use the term as a way to capture some of the issues at stake when we talk about the Biotech Revolution. At this point it will not be clear whether they are using the same word to apply to different concepts, or whether there is a moral distance between uses of the same basic concept; my point here is that there is a clear pattern in political uses of the word "dignity". This will establish that there is a need to clarify what "dignity" might conceivably refer to, which will be the subject of chapter 3.

⁴The “culture wars”, as it is used here, is a term for the ideological conflict between liberals and conservatives. This application was popularised by James Davison Hunter in his 1991 book “Culture Wars: The Struggle to Define America”.

⁵See “Research on the Foetus”, the first report of the bioethics policy body in the US, published in 1975 and available at: http://bioethicsarchive.georgetown.edu/pcbe/reports/past_commissions/

⁶Executive Order 13237, available at http://www.presidency.ucsb.edu/executive_orders.php.

2.1 The Biotech Revolution

Biomedical technology, as a part of medical research, is not a novel field. Medicine has been intertwined with technology for as long as the discipline has existed; societies and individuals have always sought to use the most cutting-edge scientific knowledge to treat our sick and vulnerable, as well as enhance health and wellbeing in general. Medical science, like all science, progresses both in tiny increments and in giant leaps. New inventions can revolutionise the state of the art – the discovery of vaccines, for example, or blood transfusions, suddenly opened up possibilities that were unknown to previous generations. Many of these new discoveries were treated with trepidation, even disgust by the first people to see them.⁷ What has been labelled the Biotech Revolution can be characterised as one of these great leaps.

The first flush of the “Biotech Revolution” occurred between the late 1990s and carried on through the early 2000s. During this time, several “proof-of-concept” experiments were performed and breakthroughs in entirely new technologies were made, many of which sounded like science fiction and were consequently subject to an enormous amount of media scrutiny, popular debate and academic interest. The first embryonic stem cells lines were produced from humans in 1998,⁸ as was the first research into the link between telomere shortening and ageing in humans.⁹ In 2000, the first successful extension of an animal's lifespan using drugs was reported in the journal, *Science*.¹⁰

Of all the breakthroughs that took place around the time, the birth of Dolly the sheep in 1997, the first mammal cloned from non-reproductive adult cells, provoked the most discussion and speculation.¹¹ This is because, according to Princeton molecular biology professor Lee Silver, genetic engineering of any kind would be impossible without mastering the techniques of human reproductive cloning.¹²

These new technologies bring with them the promise, or threat, of changing how we understand what a human life is. How we are born, how we live, age and die are all potentially going to change because of the advent of cloning, genetic enhancement, molecular nanotechnology, gene therapies, developments in psychopharmacology and research into reversing the ageing process. Dolly and the development of stem cells

⁷The smallpox vaccine, for example, was protested against on a large scale (Spier 2001).

⁸Thomson et al 1998.

⁹Bodnar et al. 1998.

¹⁰Melov 2000.

¹¹Wilmut et al. 1997.

¹²Silver, 2007. Genetic engineering, which I am taking to be synonymous with genetic enhancement, is the practice of selecting the genetic makeup of an embryo according to a specific purpose or set of purposes.

provoked a debate on the possibility, and the ethics, of deliberate human cloning from an adult human being.¹³ The creation of embryonic stem cells raised questions of whether stem cell therapies, which were suggested as having the potential to cure a wide range of degenerative diseases and paralysis, could be researched through the creation and destruction of human embryos for their stem cells.¹⁴ Breakthroughs in somatic gene therapy, aimed at treating genetic diseases in affected individuals, in the mid-1990s brought with them the promise, and the fear of germline therapies, where the effects of the therapy would be passed on to future generations with no way to be certain of the results.¹⁵ Ageing research and the discovery of telomeres lead to speculation about our potential for immortality, or at least substantial lifespan extension, and the effects this might have on the generational structure of society.¹⁶ The ability to alter the genetic makeup of individuals and hence, of society as a whole also raises the spectre of eugenics, with all its terrible historical connotations.¹⁷

Some people – transhumanists and Singularity theorists – are embracing this potential as transformative, they claim that we are on the cusp of becoming an entirely new species; transcending our natural limitations so that we can express and develop our freedom in ways we currently can't imagine.¹⁸ On the other extreme, religious and conservative thinkers express deep unease about the path they see the human species going down. This unease is reflected in the general populace; in polls, most people in the US and Europe are in favour of banning cloning.¹⁹

The bioethical conservative Eric Cohen puts the worry that many people express when confronted with novel biotechnologies like this:

Technological problems – from broken machines to bad computer code to medications with side effects – can often be fixed with technological solutions. But

¹³There are a variety of different types of cloning, both natural, as in the creation of monozygotic twins in utero, and artificial. For example, the use of embryo transfer to induce twinning (achieved experimentally in ruminants – Penny et al, 1995) – and the deliberate splitting of embryos created during IVF, can be contrasted with the extraction of an adult somatic cell and then using that cell to create a clone of that adult. Gene and stem cell cloning are also different, as these techniques are not aimed at the creation of a living individual. I will discuss the biology of cloning in more detail in chapter 7.3.

¹⁴Tuch 2006.

¹⁵Wivel and Walters 1993.

¹⁶Rose and Mueller 2000.

¹⁷Fukuyama 2002.

¹⁸Bostrom, 2005. Transhumanists are a group of people who believe that we ought to strive to gain as much control as possible over our biological makeup so that we can extend our physical and cognitive abilities and transcend our current limitations. Singularity theorists discuss the point in time where society and technology is no longer comprehensible to previous generations because of a massive change in how the world is. Often, this change is the development of artificial intelligences that are vastly more powerful than any human.

¹⁹The Centre for Genetics and Society aggregates polling data from all the major polling organisations: see <http://www.geneticsandsociety.org/article.php?id=401> for the latest information.

the problem of technology – our mixed and complicated technological condition – is here to stay. Living well with this condition often requires developing new and better technologies, and we should all be thankful that America produces and nourishes many brilliant and inventive minds. But the practical gifts of the technologist and the empirical knowledge of modern science provide little help in discerning when to mobilise, when to pause, when to retreat, and when to tolerate particular technological ends or means.²⁰

Worries about whether the advancement of science and technology is outpacing the evolution of social, cultural and moral norms around how these advancements are to be used have led to the reassertion of the concept of dignity as a foundation in bioethics policy, as I will demonstrate in the rest of this chapter. Dignity is used to respond to the issues that come with the Biotech Revolution, as a justification for where to draw the line, and as a way to unite cultures and groups with different values under one master-value.²¹

2.1.1 Dignity in policy pertaining to the Biotech Revolution

The explosion of media interest around the Biotech Revolution in the late 1990s led to popular discussion, which in turn led to pressure on politicians to be seen to be addressing the worries of their electorate. My aim in this section is to provide an account of how dignity was used by bioethics committees in documents about issues thrown up by the Biotech Revolution, like cloning and genetic enhancement. I will start my review with the Bush administration for two reasons. One is that the Clinton administration was criticised for not taking a strong enough stance in condemning cloning.²² The other is that Bush's President's Council placed dignity at the heart of almost all of its documents, whereas Clinton's National Bioethics Commission did not.

The first report published by the President's Council, in July 2002, was entitled “Human Cloning and Human Dignity: An Ethical Inquiry”, which immediately set up dignity as a fundamental moral value. A few years later in 2008, perhaps in response to criticism of their use of the concept in policy guidelines, the President's Council produced “Human Dignity in Bioethics”, a collection of papers from President's Council staff and other experts that aimed at clarifying and explaining the concept of dignity as useful and relevant.²³

“Human Dignity in Bioethics” is an example of “dignitarianism” in bioethics, the

²⁰E. Cohen 2003b, p. 4.

²¹Enders 2010.

²²Eiseman 2003.

²³President's Council On Bioethics 2008.

theory that the concept of dignity forms the core of a bioethical “Theory of Everything”.²⁴ Dignitarianism and political conservatism are strongly correlated, as we see from the Republican President's Council's heavy use of the concept in most of its output. More specifically, dignity has been portrayed as a concept that best finds a home within socially conservative ideology. The membership of the President's Council itself was heavily socially conservative in terms of political leanings, so much so that Ruth Macklin describes them as representing a phenomenon she called “The New Conservatives in Bioethics”. Macklin offers an account of how the political term “conservative” has been introduced to bioethics:

What has led to the introduction into bioethics of labels once reserved for a stance on political issues? A possible explanation is that the most conservative wing of the Republican party in American politics, now dominating both the executive and legislative branches of government, is obsessed with matters related to pro-creation, prenatal life, and extracorporeal embryos, and has put those issues high on their political and legislative agenda.²⁵

This account fits with the political situation in the US at the time of the President's Council's creation. Furthermore, accounts from within the President's Council itself are suggestive of a predefined agenda for the Council – Diana Blackburn, Janet Rowley and James Wilson were all critics of the conservative positions on stem cell research from their positions on the President's Council, but all were asked to leave. This led to the accusation that the President was “stacking the council with the compliant”.²⁶

“Dignity” as used by the President's Council and its members has also been criticised as way to smuggle in religious content; many of the contributors to “Human Dignity and Bioethics” that use dignity as a constraint have a background in religious academia.²⁷ So, dignity became of critical import to the direction that bioethics policy took after 2001 because it was given a central focus by the conservative, religious President's Council.

In the rest of this chapter, I will argue that despite the concept of dignity being strongly associated with conservatism in bioethics, especially with the bioethical conservative – biocon – position exemplified by the President's Council from 2001-2009, there is also a recognisably liberal conception of dignity. Eric Cohen states that:

²⁴Foster 2011.

²⁵Macklin 2006, p. 35.

²⁶Scott 2006.

²⁷Pinker (2008). Charles Rubin, Paul Weithman, Gilbert Meilander, Edmund Pellegrino and Daniel Sulmasy are theologians or faculty members at Christian universities; Leon Kass, Peter Augustine Lawler, David Gelernter and Richard John Neuhaus are all strongly religious and have written on religious themes.

These political divides [between liberals and conservatives] are often rooted in differing understandings of certain shared ideals – like human equality – and different understandings of fundamental human experiences – like birth and death.²⁸

I will argue that dignity is one of these shared ideals that conservatives and liberals approach differently. Both are equally concerned to protect dignity, but different sides see different roles for, and descriptions of, the concept. In my first section, I will lay out the basic principles of liberalism and give examples of where these principles have been related to dignity. In my second section I will do the same for conservatism; identify the key features of a conservative conception of dignity and give examples of how it is used. In my third section I return to policy, and analyze how dignity is used in bioethics after the replacement of the President's Council by the Presidential Commission for the Study of Bioethical Issues (PCSB) by the Obama administration in 2009.

2.2 Dignity in liberal bioethics

As Macklin points out, very few people self-identify as adherents to “liberal bioethics”; conservatives have given this label to anyone who does not agree with their stances on the sanctity of life and the nature or gravity of the technological threat to humanity. In this section I will argue that there is a recognisable conception of dignity that fits with principles in so-called liberal bioethics. I will first describe, in broad strokes, the basic principles of liberalism as they can be applied to bioethics. I will then identify examples of bioethics policy documents where the concept of dignity is used alongside these principles, or as a way to justify them. I will conclude from this that there is an identifiably liberal conception of dignity.

2.2.1 Basic principles of liberalism

There are many different conceptions of liberalism, and it is not my aim to argue in favour of one or another. According to Gerald Gaus, all theories of liberalism are derived from the same fundamental principle: a presupposition in favour of freedom. As Gaus puts it:

1. A person is under no standing obligation to justify his actions;²⁹

²⁸E. Cohen 2006, p. 45.

²⁹In this thesis, where I refer to a “person” I am intending to pick out an individual who is capable of normal cognitive functioning and possesses the capacity for autonomous choice and action. In general I will use the word “individual” to reference any human being, regardless of their level of intellectual ability, and reserve “person” for those instances where my discussion makes explicit mention of human cognitive

2. Interference with, or restriction of, an other's action requires justification; unjustified interference or restriction is unjust, and so morally wrong.³⁰

What “freedom” means is a contentious subject among liberals, and gives rise to different ideologies – the negative and positive liberty described by Isaiah Berlin, for example, lead to different ways to safeguard freedom as well as different conceptions of the role for theories of the good life and human flourishing.³¹ The role of private property and the way markets are set up is another important division, corresponding to classical liberalism and a more modern theory of social justice, although not one I will delve into in this thesis.³²

In this section I will briefly explain the basic principles of liberalism, which are the value of the autonomous individual, the need for states to maintain neutrality about the good life, and the moral equality of persons. I will start with the principle of respect for the autonomous individual. As Christman and Anderson explain:

At stake in virtually all of these discussions [about the nature of liberalism], however, is the nature of the autonomous agent, whose perspective and interests are fundamental for the derivation of liberal principles. The autonomous citizen acts as a model for the basic interests protected by liberal principles of justice as well as the representative rational agent whose hypothetical or actual choices serve to legitimise those principles.³³

The picture of the autonomous individual is the central point of value in liberal ethics.³⁴ Although it can be developed along different lines, the core meaning of autonomy is always self-governance and having authority over one's own life. Under normal circumstances, humans have autonomy because they are able to choose for themselves, and to reflect on those choices at a level that means that humans are morally responsible for their actions in a way that no other animal is. In bioethics, a paradigm example of focus on the autonomous individual can be found in discussions of consent, and whether there are some actions that no individual ought to be able to consent to, or that ought to be made illegal despite being consensual.³⁵ Theories of political and

capacities. This distinction is important because when the idea of cloning a *person* is mentioned in the literature, it brings with it the idea of making an exact copy of a human being with all their psychological dispositions as well as physical attributes. As I will explain later in this thesis, this picture of cloning is highly inaccurate.

³⁰Gaus 2005, p. 274.

³¹Berlin 1969.

³²Gaus 2010.

³³Christman and Anderson 2005, p. 1.

³⁴Gaus 1983.

³⁵The famous case of Manuel Wackenheim, the Frenchman with achondroplasia who was denied the chance to work at a “dwarf-tossing” event by the European Court of Human Rights, on the grounds

theoretical liberalism seek to create conditions where autonomous individuals can be allowed to live according to their own abilities and their own conception of the good. Liberalism takes the individual, and how the individual is treated, as the primary measure of success in a society, but liberalism is also strongly identified with the claim that we can and should structure society according to a conception of justice. Societies can have goals, like equality and justice, and it is the task of the instruments of society, like the government and the judiciary, to further those goals.³⁶

The second principle that a liberal theory cannot contradict is *neutrality*. This is of particular importance for institutions like the various branches of government. The principle of neutrality is defined by Bruce Ackerman as:

No reason [for interfering with the actions of another person] is a good reason if it requires the power-holder to assert:

- (a) That his conception of the good is better than that asserted by any of his fellow citizens.
- (b) That, regardless of his conception of the good, he is intrinsically superior to one of more of his fellow citizens.³⁷

This principle is based on the contention that every individual has his or her own unique conception of the good; the ways humans choose to live their lives are diverse, and there is no inherent irrationality or immorality in this. No one conception of the good life ought to be privileged above any other and everyone ought to be free to pursue his own version of happiness. If you have power over another person, whether as the representative of a state or as an individual, you ought not impose your own conception of the good. This can be applied to governments as well as individuals; state policy ought to be sensitive to the diversity of ways autonomous individuals choose to live their lives.

These concepts are also key principles in bioethics, both current and future-facing; for example, the in the UK National Health Service's document, "Caring for Dignity", which I mentioned in the Introduction to this thesis, the authors stress that patients have different interpretations of what it means to be treated with respect, depending on their cultural norms and personal preferences around privacy, independence, habits of eating and so on, and part of ensuring that patients feel as if they are maintaining their dignity is attending to different conceptions of the good life.³⁸

that such employment violated his own dignity as well as disturbed public morality, is one example of a conflict between the autonomous individual's freedom to choose, and the judiciary's concern to protect the principles European society stands for. The most complete account of Mr. Wackenheim's story can be found in Rosen (2012).

³⁶Wolfe 2003.

³⁷Ackerman 1980, p. 11.

³⁸NHS Commission for Healthcare Audit and Inspection 2007; UK Department of Health 2010.

The third key liberal principle is *equality*. As Marilyn Friedman puts it:

The moral equality of all persons includes the idea that all persons count equally as moral agents. As moral agents, all persons are equally entitled to contribute to moral dialogue, to make up their own minds about what is morally right and what is morally good, and to try to act accordingly. Morally equal agents are also entitled to live the non-moral aspects of their lives each as they see fit.³⁹

This corresponds to part (b) of Ackerman's principle of neutrality, that nobody can claim that he is intrinsically superior to any of his fellow citizens. Gerald Gaus describes the basic meaning of equality through a quote from John Locke, saying that all men exist by nature in “a State of perfect Freedom to order their actions ... as they see fit ... without asking leave, or depending upon the Will of any other Man.”⁴⁰ All men are equally free, and so, all men are equal in one important regard. They cannot be imposed on without justification. Theories of justice as fairness like Rawls' seek to promote equality by distributing tangible resources to the benefit of those with the least.⁴¹

In order to understand what it meant by equality in a way that is meaningful to issues in biotechnology, it is useful to contrast it with the concepts of objectification and instrumentalisation. Sexual objectification probably has had the most critical attention and development paid to it as a theory, so we can use it to make sense of objectification more generally. As Carol Hay explains:

The morally problematic kind of sexual objectification occurs only when a woman is treated as sexually attractive in a context where her sexuality is, or ought to be, irrelevant, or when she is not treated as a moral equal because of her sex. This happens when women are treated as if their subjectivity and autonomy – their feelings and experience, and their decisions about what they would like to do or how they would like to be treated – do not matter.⁴²

Objectification is clearly understood as undermining equality because it dehumanises. Being treated like a *thing* and not a *person* means being treated as if others are intrinsically superior to you. This is most commonly associated with Kantian theory;

³⁹Friedman 2005, p. 167.

⁴⁰Gaus 2005.

⁴¹As Leif Wenar (2013) puts it in his Stanford Encyclopedia of Philosophy article on Rawls, “The guiding idea is that since citizens are fundamentally equal, reasoning about justice should begin from a presumption that all cooperatively-produced goods should be equally divided. Justice then requires that any inequalities must benefit all citizens, and particularly must benefit those who will have the least. Equality sets the baseline; from there any inequalities must improve everyone's situation, and especially the situation of the worst-off.”

⁴²Hay 2013, p. 95.

treating people merely as means, rather than as ends in themselves, is incompatible with the claim that all persons are equal and entitled to a basic moral respect and respect for their freedom.⁴³ Kant also relates the wrongness of instrumentalisation to violations of the principle of respect for dignity, as I will show in chapter 5. In my next section, I will demonstrate that instrumentalisation and objectification are related to dignity in policy.

The key question liberals need to ask when they are considering new advances in biomedical technology is, will the advancement be able to service the goals of a liberal society? The Biotech Revolution that came to the forefront of media attention in the late 1990s was seeded in the neoliberal Reagan era, when there was an intense period of investment in, and commercialisation of, life sciences as a whole.⁴⁴ One liberal worry about the Biotech Revolution is that equality, autonomy and neutrality will become subverted in favour of increases in the power of individuals or corporations. We would expect to find the concept of respect for, or promotion of, dignity, as an expression of the goals of a liberal society. This can be as a constraint on inequality – worries about “genetic haves and have nots”, for example, or about whether clones would have a *de facto* lower moral status than non-clones. Or, it could be as a discussion of how to incorporate the new kinds of family forms that advances in reproductive biotechnologies will make possible into a just society.⁴⁵ I will discuss these particular elements of a liberal response to the Biotech Revolution in chapter 9. This very basic discussion has brought out autonomy, neutrality and moral equality as the key features of liberalism. If dignity is used to justify freedom, moral equality and the value of autonomy, it can be called a liberal use of dignity.⁴⁶ In my next section I will give some examples of where dignity has been used in this way in bioethics policy.

2.2.2 Dignity in liberal bioethics policy

I will give examples from two different policy documents that show the concept of dignity being used to support a liberal position in bioethics. The first is from the Clinton administration's National Bioethics Advisory Commission, which was convened between 1995 and 2000. The second is from the Council of Europe Committee on Bioethics' 1998 “Convention on Human Rights and Biomedicine”.

⁴³Neumann 2000.

⁴⁴Cooper 2008.

⁴⁵Silver 2007.

⁴⁶Ruth Macklin has argued that the terms “liberal” and “conservative” are confusing when applied as an attempt to categorize decisionmaking in bioethics policy, but even if she is correct that they do not describe two cleanly separable and highly coherent ideologies, they do provide a basic taxonomy for understanding arguments.

The authors of the Bioethics Advisory Commission document, “Ethical and Policy Issues in Research Involving Human Participants”, are explicit about the relationship between human dignity and freedom:

A credible, effective oversight system must apply to all research, and all people are entitled to the dignity that comes with freely and knowingly choosing whether to participate in research, as well as to protection from undue research risks.⁴⁷

This quote can be interpreted in two ways. First, as a claim that there is “a dignity” in respecting an individual's freedom to choose, which means respecting their autonomy. Preventing a person from choosing by not giving them all the information, or by coercing them, fails to respect their freedom. Autonomy, in this case, is related to dignity; the more freedom we allow a person in making autonomous choices, the greater the respect we show for their dignity.

Second, that there is “a dignity” in allowing an individual to choose to do something they believe to be ethically good. Participating in research is often painful, and time-consuming, and the people who do it deserve moral credit. Allowing an individual to freely choose to participate in research specifically means allowing her to express her conception of the good and her character, in a way that she could not if she were being coerced. Being allowed to make morally good choice like participating in research shows a *dignity of character*; it is an action that is expressive of being the sort of person who would put themselves out, even suffer, for the sake of the greater good, which is arguably something a dignified person would do. Both of these interpretations could be acceptable to the drafters of the document. In chapter 3, I'll look in more detail at the difference between a dignity of character, and respect for the dignity of autonomy.

The Bioethics Advisory Commission took a minimal approach to the role of dignity in ethics. Throughout the documents it produced, the Commission took the stance that dignity is best considered as a religious concept; the only thorough discussion afforded it in any Commission document was as part of a section on religious opposition to research into cloning.⁴⁸ As I showed in the quotation above, where dignity was used, it was accompanied by the demand for respect for freedom and the importance of allowing individuals to strive for their own good, both of which are liberal principles. The use of dignity here is therefore a liberal use of the concept.

⁴⁷National Bioethics Advisory Commission 2001, p. 6.

⁴⁸The Bioethics Advisory Commission tended to take a relatively dismissive approach to dignity as something that other people use in arguments; they did not rely on it in any arguments they endorsed or to justify any policy options they recommended. For example, in “Ethical Issues in Stem Cell Research”, “Those who object to creating embryos for research often appeal to arguments that speak to respecting human dignity by avoiding the instrumental use of human embryos”.

In the European Union, there have been fewer policy and legal documents produced about bioethics than in the United States, and the political structure of the EU is such that changes in the political leanings of one government or another is unlikely to effect the opinion of the EU advisory groups. The aim of organisations like the Council of Europe's Committee on Bioethics is to achieve a consensus amongst a large group of individuals and the governments they represent. I am using the example of the Committee on Bioethics to show that a liberal interpretation of dignity covers both the USA and Europe. This will be useful because it will show that the United States "culture wars" has not caused American liberals to work with a separate, redefined concept of dignity that is no longer useful or intelligible outside this specific political context.

The Council of Europe's Committee on Bioethics uses dignity as a constraint in its "Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings":

[T]he instrumentalisation of human beings through the deliberate creation of genetically identical human beings is contrary to human dignity and thus constitutes a misuse of biology and medicine.⁴⁹

This use of dignity, whilst restricting the freedom of individuals to carry out research into cloning, is nevertheless in accordance with liberal principles. This is because dignity is related to the principle of non-instrumentalisation, which, as I explained in section 2.2.1 is a corollary of the liberal principle of moral equality.

I will discuss the concept of dignity found in the Council of Europe's documents in chapter 9; for now I am only highlighting the link between the liberal principle of instrumentalisation and dignity. The quotation above shows that the Bioethics Advisory Commission document on cloning also invokes this relationship, suggesting a similarity between the US and European understanding of the role of dignity at this point in time.⁵⁰ Both of these documents are examples of how the principle of respect

⁴⁹Council of Europe (1998), Preamble to Articles. Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/168.htm>

⁵⁰The Bioethics Advisory Commission was much more cautious in applying the principle of objectification (which amounts to the same thing as instrumentalisation for our purposes) in its considerations of policy options on cloning. Although "Cloning Human Beings" (1997) states that "Objectification also represents a fundamental breach of human dignity. To treat persons who are the sources of genetic material for cloning or persons who are created through cloning as mere objects, means or instruments violates the religious principle of human dignity as well as the secular principle of respect for persons", the Bioethics Advisory Commission does not sanction this viewpoint, and locates it within a plurality of religious ideas; concluding that "The wide variety of religious traditions and beliefs epitomises the pluralism of American culture. Moreover, religious perspectives on cloning humans differ in fundamental premises, modes of reasoning, and conclusions." This makes the Bioethics Advisory Commission much more modest in the moral import it gives to instrumentalisation and dignity.

for dignity can be cited alongside liberal principles. Liberals can restrict liberty in favour of equality, and in doing so they act to further the goals of liberal society. The concept of dignity, especially when it is linked to the principle of non-instrumentalisation, can be invoked as a justification for the promotion of equality over liberty and the autonomy of individuals.

2.3 Dignity in conservative bioethics

There is less need to illustrate the claim that dignity is used in conservative arguments in bioethics. This is because the new conservatives in bioethics – “biocons”, as I call them – have explicitly made the concept a central part of their philosophy. It's impossible to avoid talk of dignity when we look at the conservative agenda in bioethics in the last couple of decades. Nevertheless, there are some puzzles about what the concept is designed to do, and how to account for its sudden rise to prominence in policy.

2.3.1 Basic principles of conservatism

The first puzzle that most treatments of conservatism as a political movement introduce is between social conservatives and libertarians. The former appear to want to restrict freedom, whereas the latter want to enhance it. As the conservative bioethicist Eric Cohen puts it in his article, “Conservative Bioethics and the Search for Wisdom”: “of course, it is easy to treat these two conservative types as a single caricature – seeing all conservatives as heartless capitalists who care only about embryos”.⁵¹

He goes on to argue, however, that we rarely find both stances in the same person; bioethics is almost completely dominated by social conservatives, many of whom are critics of libertarian ideals.⁵²

Social conservatism is an expression of disquiet at the prospect of radical change to society. Social conservatives equate morality, and especially the virtues, to their worldview and contrast their beliefs to a liberalism they characterise as amoral, individualistic and shallow.⁵³

⁵¹E. Cohen 2006, p. 44.

⁵²Interestingly, it is often argued that the culture prevalent in the biotech industry, which is centred around Northern California's Silicon Valley, is primarily libertarian. Many transhumanists and publicists for the benefits of biotechnology, although not all of them, express strongly libertarian views on the primacy of negative liberty and the importance of individual choice. Many of the famous venture capitalists like Peter Thiel identify as immortalists as well as libertarians, hoping to extend their own lives indefinitely and funding biotech startups that promise breakthroughs in ageing research (Vance 2010).

⁵³Lakoff 2001.

Historically, the most important concept that marked out a conservative approach to bioethics was the sanctity of life. The pro-life movement sought to protect the lives of embryos by restricting the availability of abortion, preventing the creation of extra-corporeal embryos for the harvesting of stem cells for research and seeking to withdraw all public funds for such research.⁵⁴ With advances in stem cell research outside the US demonstrating the feasibility of harvesting without the creation or destruction of embryos, and the development of new techniques like somatic cell nuclear transfer and new insights into the biological basis of ageing, conservative focus extended from the right to life to the meaning of life. We can trace the biocon movement from this split.

In fact, the label “conservative” makes more sense when it is applied to the perception of novel biotechnologies as a threat *per se*. This is because a conservative wishes to preserve things as they are, in an unbroken link to our traditions and past. Indeed, this impetus toward preservation is often cited as the only element that unites the disparate projects and factions of what are now called conservative movements.⁵⁵

2.3.2 Dignity in conservative bioethics policy

The concept of dignity, as Derek Beyleveld and Roger Brownsword have pointed out in their book, “Human Dignity in Bioethics and Biolaw”, can be used to *empower* or to *constrain*; roughly, this means the concept of dignity can be used to allow something to happen, for example by giving an individual the right to act, or it can be used to prevent something from happening.⁵⁶ Conservatives always use the concept of dignity to constrain, but the empowerment/constraint division is too broad to map onto the liberal and conservative uses of the concept. This is because liberals can also use dignity to constrain; if an action entails disrespect for autonomy or the imposition of a conception of the good, it can be constrained on the basis of respect for dignity. In the following analysis, I will count an instance of “dignity” as conservative if it is used to constrain, and this constraint is not justified by dignity’s purported link to any of the liberal principles of autonomy, neutrality and equality I mentioned in the section above.

The first report prepared by the President’s Council after its creation in 2001 was entitled “Human Cloning and Human Dignity: An Ethical Inquiry”. Within the first two paragraphs of the Letter of Transmittal, it becomes clear that the significance of dignity has increased hugely since the time of the Bioethics Advisory Commission:

⁵⁴Curzer 2004.

⁵⁵L. Allison 2009.

⁵⁶Beyleveld and Brownsword 2001.

Man's biotechnological powers are expanding in scope, at what seems an accelerating pace. Many of these powers are double-edged, offering help for human suffering, yet threatening harm to human dignity. Human cloning, we are confident, is but a foretaste – the herald of many dazzling genetic and reproductive technologies that will raise profound moral questions well into the future. It is crucial that we try to understand its full human significance.⁵⁷

This assertion that human dignity is “threatened” by biotech, unqualified by attributions to religion, marks a departure from the modest, scholarly attention that was paid for human dignity by the Bioethics Advisory Commission.⁵⁸

Like the Bioethics Advisory Commission, the authors from the President's Council refer to dignity along with freedom, where they claim that both freedom and dignity are threatened by cloning, but they do not claim that having freedom itself has a dignity. They also relate dignity to non-instrumentalisation in arguments against cloning, because they see cloning as a form of manufacture, and cloned children therefore as objects to be manufactured:

The problem [of cloning] has to do with the control of the entire genotype and the production of children to selected specifications. Why does this matter? It matters because human dignity is at stake. In natural procreation, two individuals give life to a new human being whose endowments are not shaped deliberately by human will, whose being remains mysterious, and the open-endedness of whose future is ratified and embraced. Parents beget a child who enters the world exactly as they did – as an unmade gift, not as a product. Children born of this process stand equally beside their progenitors as fellow human beings, not beneath them as made objects. In this way, the uncontrolled beginnings of human procreation endow each new generation and each new individual with the dignity and freedom enjoyed by all who came before.⁵⁹

Here the President's Council is claiming that dignity is being threatened in two ways. In making the distinction between begetting and manufacturing, the President's Council is using the principles of non-instrumentalisation and objectification; they argue that making a child like one makes an object is objectifying.⁶⁰ Having the option to select

⁵⁷ *Human Cloning and Human Dignity: An Ethical Inquiry* 2002, p. ix.

⁵⁸ “Issues in Science and Technology” (1997) reported that The Bioethics Advisory Commission's report on cloning was criticised by the United States Congress for not going “far enough in providing guidance on the emotionally charged issues of cloning and genetic manipulation.”

⁵⁹ *Human Cloning and Human Dignity: An Ethical Inquiry* 2002, p. 105.

⁶⁰ Although the documents by the President's Council use the term “cloning” to refer to somatic cell nuclear transfer (which I describe in detail in chapter 7.3, the practice of creating a genetically identical human embryo can be done by inducing an existing embryo to split, much like the natural process of twinning. It is not clear how embryos produced for this reason, using induced splitting techniques, would be being instrumentalised or manufactured, and there is no biocon literature dealing specifically with this issue. To avoid confusion, I will continue to discuss “cloning” in terms of somatic cell nuclear transfer as the biocons do.

certain characteristics a child will have is, conservatives argue, different enough to reproduction by sexual intercourse that it present a moral challenge. Conservatives argue that it is the extra control, beyond the partner selection the parents are already able to do, that those involved in the process would have over the genetic makeup of their child that is disrespectful of the cloned child's dignity, as well as the dignity of the prospective parents and of society more generally.⁶¹ Secondly, dignity is being used to restrict the freedom of individuals to make cloned children, because of concerns about the freedom of those children – the last sentence quoted above makes reference to the need to give each generation the same freedom as the one before.

The freedom at stake here, however, is not obviously the individual freedom of the cloned child. As Dieter Birnbacher points out in his critique of cloning policy, the child himself may not be treated like an object or the instrument of another's will, nor might his freedom be restricted by the actions of anyone else. That depends on the reasons the clone was created, not on the technologies used to create him. Creating a cloned or genetically altered embryo is not the same as forcing a child to live a certain way.⁶² The way the concepts of freedom and objectification are being used here are not the same as the way liberals use them to safeguard the liberty of individuals.

The President's Council extended the scope of dignity beyond worries about instrumentalisation and the sanctity of life by applying the principle to more areas of the human life. This is well-illustrated in “Beyond Therapy: Biotechnology and the Pursuit of Happiness”, a wide-ranging report that expressed concern about the effect of genetic enhancement on competitive sports, of “perfect happiness drugs” on the human psyche and virtues, and immortality. Here dignity is afforded to athletics, the rules of sports, excellent human performance and human activity generally, as well as to embodied human individuals.⁶³ Dignity is also mentioned in relation to these without clarification or argument – there is no statement of why sports and games should have a dignity alongside the dignity of persons, or whether losing the dignity of athletic performance versus embodied individuality is worse. In my next chapter, I will explain how this concept of dignity as a trait of character is related to the concept of dignity as the value of all human beings.

In all cases, the President's Council uses dignity to justify the claim that we ought to ban research into novel biotechnologies. It only functions as a constraint on actions that could potentially affect individuals, society and our understanding of human nature. Dignity is related to human flourishing as well as human freedom, a key

⁶¹McKibben (2003), p. 60.

⁶²Birnbacher 2005, p. 52.

⁶³President's Council on Bioethics 2003.

difference that I will discuss further in chapter 3.4.2.

2.4 Dignity in bioethics policy after 2009

So far I have shown that there are two different patterns that the uses of the concept of dignity in policy follow: liberal and conservative. To give a brief historical account, in 1998-2000 the conception of dignity used by the Council of Europe and the Bioethics Advisory Commission in the United States fell into the liberal pattern, in that time there were similarities between the uses of dignity in policy on both sides of the Atlantic. Uses of dignity diverged after the 2000 US presidential elections with the replacement of the Bioethics Advisory Commission with the President's Council, and the publication of "Human Cloning and Human Dignity". Before the President's Council, there was very little criticism of the use of dignity in bioethics policy, and the explosion of criticism that happened after 2001 was almost entirely directed at the conception advanced by the President's Council and influential conservative think tanks.⁶⁴

Just as the Clinton administration's Bioethics Advisory Commission was replaced by George W. Bush's President's Council, when President Barack Obama was elected in 2009 he issued an executive order to instil his own bioethics advisory body, replacing the President's Council and its members completely.⁶⁵ As yet, President Obama's PCSBI has only published three reports, and dignity is only briefly mentioned in two of them, but already it is clear that there is a significant shift back towards the Bioethics Advisory Commission/Council of Europe pattern. Dignity is given the largest role in "Privacy and Progress in Whole Genomic Sequencing":

Respect for persons highlights an individual's autonomy and recognises that we should respect individuals' ability to decide for themselves what they value, and how and when to act on those values ... Forcing an individual to undergo a procedure, even for their medical benefit, would violate that person's autonomy and would fail to demonstrate respect for the individual as a person. Respect for persons also encompasses respect for the individual's dignity and privacy. Therefore, violation of an individual's privacy, such as the misuse or unauthorised disclosure of whole genome sequencing data, demonstrates a violation of the principle of respect for persons.⁶⁶

Genomic sequencing is a relatively new technology that determines the order of

⁶⁴The Ethics and Public Policy Centre, for example, has been very influential in providing a platform for biocons, especially through the journal "The New Atlantis" – see Macklin (2002) for a discussion of this journal's importance to biocons.

⁶⁵Executive Order 13521, available at http://www.presidency.ucsb.edu/executive_orders.php.

⁶⁶Presidential Commission for the Study of Bioethical Issues 2012, p. 45.

nucleotides in a DNA sequence, which allows biologists to work out which genes the individual that donated the DNA sample has. Add this information to what is known about how genes work and which genes are implicated in the expression of phenotypic traits, and laboratories can now produce reports for individuals, offering information about whether they have any genes that are associated with medical issues. In 2014, biotechnology company Illumina announced that their new genomic sequencing system could make whole genomic sequencing commercially available for individuals for \$1000.⁶⁷ This raises issues of privacy, which the PCSBI aimed to address in this document.

Here the PCSBI is using dignity as a part of the principle of respect for persons. Respect for privacy, dignity and autonomy are all cited side by side as parts of this principle; all three of these are also found in the Council of Europe's documentation.⁶⁸ This fits with the liberal pattern of dignity's use. The swing away from biocons and back towards a convergence on a modest, liberal use of dignity in policy raises two important questions over the relevance of the biocon conception of dignity now. These are: was the conservative focus on "dignity" a product of the initial reaction to the breakthroughs in stem cell research that provoked the need for legislation in 1998? And, if so, as the technology has moved on, has the need for the concept of dignity as a foundational principle in future-facing bioethics diminished?

Given that there is such a clear correlation between changes in political climate in the US, the direction bioethics advisory bodies take, and the way the concept of dignity is used, it can reasonably be assumed that the next time there is a rightward political swing, the conservative pattern of using the concept of dignity will once again form the backbone of bioethics policy. Unless we pay attention to the conservative conception of dignity and attempt to reconstruct and analyse it when it is not being used in policy, the same arguments will be rehashed again.

⁶⁷Sterling 2014, p. 18.

⁶⁸The first two clauses of Article 10 of the Convention for the Protection of Human Rights and Biomedicine, for example, read "Everyone has the right to respect for private life in relation to information about his or her health. Everyone is entitled to know any information collected about his or her health. However, the wishes of individuals not to be so informed shall be observed". The Explanatory Report to this Convention, explaining Article 17 (which prevents research on persons not able to consent), reads "The rule prohibiting the carrying out of the research against the wish of the subject reflects concern, in research, for the autonomy and dignity of the person in all circumstances, even if the person is considered legally incapable of giving consent." We can compare this with the Leon Kass' comments in "Biotechnology and the Pursuit of Happiness", in which he claim there is a kind of dignity to be realised in not knowing this genetic information (President's Council on Bioethics, 2003). Here dignity is being used to constrain, in this case access to knowledge.

2.5 Conclusion to chapter one

This chapter has laid the groundwork for the rest of my thesis. I have argued that, although the labels “conservative” and “liberal” were unknown in bioethics until recently, and are chafed against by both sides, they nevertheless do provide a distinction in thinking about dignity, which comes out in how policy advisory bodies on both sides of the political divide use the concept of dignity in recognisably different ways.

I have offered a basic description of what liberalism and conservatism mean, and then showed that there are uses of dignity that fit with both conservative and liberal ways of thinking in bioethics policy documents. In my third section, I argued that although this political pattern has led to a current waning of interest in human dignity as a pervasive justification in bioethics policy, the biocon concept of dignity is still worth scrutinising and comparing to its liberal counterpart. We can only argue for or against the use of dignity in policy if we are armed with a conceptual analysis of dignity.

In my next chapter, I will begin to address the claim that dignity as a concept is too vague or ambiguous to be of use in a secular, academic bioethics. I will adumbrate the concept of dignity into various conceptions and offer an argument, that demonstrates how the concept of dignity as a quality of character rests on an concept of dignity as a moral status that all humans have equally. Understanding the interdependence of these two will allow me to develop liberal and conservative theories of dignity and show that the concept cannot be used to build consensus because each side uses it to capture a different fundamental moral intuition.

Adumbrating Concepts of Dignity

In my last chapter, I outlined a pattern of liberal and conservative approaches to dignity in bioethics. In this chapter, I will step away from the political, and develop a conceptual analysis of dignity by appealing to three different concepts of dignity that we find in philosophy and in everyday life. After I have isolated these concepts, I will use this material to clarify what kind of meaning liberals and conservatives are communicating when they use the word “dignity”.

Almost every analysis of what “dignity” means and how it can be used in applied ethics starts with the claim that people use the word to mean lots of different things.¹ Some of the things people use the word “dignity” to mean, when we look more closely, turn out to be incompatible. For example, being badly treated causes a person to beg for their lost dignity to be returned, yet the equal and inalienable dignity of human beings is cited as the justification for why we ought not treat people badly.² As the first aim in my thesis is to argue that dignity is not hopelessly vague, I therefore need to show that these *prima facie* incompatibilities in the way we use dignity can be explained by seeing them as referring to different conceptions within the concept of dignity. I have two aims in this chapter. The first is to provide an uncontroversial and basic taxonomy of three ways the concept of dignity is used, and to draw out the features of all three by contrast to the others. I will call these three concepts *the dignity of rank*, *dignity as a trait*, and *human dignity*. My aim in this first part of the chapter is not to argue that every use of dignity in philosophy and everyday life can be cleanly defined only as one of these three, but to identify the elements that are specific to each conception. I will

¹Jacobson 2006; Nordenfelt 2004; Burns 2008; Van der Graaf and Delden 2009; Schuklenk and Pacholczyk 2010.

²Debes 2009.

be using examples and case studies of “folk” uses of dignity and indignity to draw out these concepts. Adumbrating dignity into its concepts and conceptions is a messy process; like trying to separate a lot of flour into three piles on a tiny kitchen surface, it's not possible to get a clean break between them.³ Most everyday and philosophical uses of dignity will be positioned somewhere on the slopes between the peaks. When some sort of biotechnology is argued as being an “affront to dignity” or words to that effect, often there are elements of different conceptions of dignity being brought to bear in the judgement. My aim in the second part of this chapter is to substantiate this claim that we cannot carve “dignity” cleanly at its joints. I will then discuss two conceptions of dignity as a quality that depend on human dignity, and argue that they correspond to the liberal and conservative uses of dignity in bioethics that I introduced in chapter 2.

3.1 The dignity of rank

The standard story of how the concept of dignity has developed from its inception back in Roman times, is that the concept was originally used to describe a high-ranking official, and then changed after the Enlightenment until the modern day. We now understand dignity to be a universal, equal and absolute value that each individual has inherently, and that cannot be altered, lost or gained. The dignity of rank, however, still exists in society – every holder of high public office has a dignity, as does every individual who is seen as a leader, whether in their own household, at work or in society in general.

The dignity of rank is best expressed in terms of political structures but it can apply equally to non-political examples of hierarchy within interpersonal relationships. According to “traditional” family values, for example, the father is the head of the household; as such he can be said to have a dignity of rank that allows him to make demands of other family members. The phrase “dignity of rank” describes the social position of one individual relative to others.

The first key feature of the dignity of rank is that it entitles dignitaries to make special demands. The dignity of rank means that a high-ranking person has a special kind of authority over those of lower ranks; they are *elevated* above the common man. Just as the queen was expected to defer to the king in certain matters, however, the authority of any high-ranking person is constrained by that of those of a higher rank. There is a cap, then, on what a person can reasonably demand because of the existence of higher ranks.

The second key feature is that the dignity of rank can be gained or lost. A person can

³Thanks to David Levy for this image.

lose the dignity of their rank when social norms change; if society no longer believes, say, in the legitimacy of an absolute monarchy, then the king and queen will lose their dignity and their authority to make special demands of others. The French Revolution, for example, stripped the aristocracy of their dignity and subjected them to brutal mob justice. The rank that a person holds also brings with it the demand to perform certain substantive duties like attending the opening of court, but also to conform one's character to the ideal of the rank one possesses. I will explain this relationship between respect for rank and assessment of character with an example.

Example 1: Marie Antoinette Marie Antoinette was alternately adored and despised by the court and the population of France, even before the Revolution that was to take her head. Looking at how the opinion of others affected her dignity of rank will allow for a more thorough explanation of this kind of dignity. Marie Antoinette was criticised as failing to live up to her rank as Queen; the French court spread malicious rumours about her sexuality and supposed lack of virtue.⁴

She was used in a scam by a woman called Jeanne La Motte and her husband Nicholas, who, with the aid of a prostitute dressed as Marie Antoinette, convinced a friend of the queen's, the Cardinal de Rohan, to purchase an expensive diamond necklace that had originally been made for the King's mistress, and to give it to La Motte as a go-between. When the queen learned of the scam she demanded that Jeanne La Motte and Rohan be tried on charges of fraud, and more importantly, of "criminal presumption and 'lèse-majesté', for believing that the queen would stoop to dealing with the likes of La Motte and to assigning a nocturnal rendezvous."⁵ Although Jeanne La Motte was convicted, branded and sent to the Bastille, Rohan was acquitted on the grounds that the queen's character was not such that it was unthinkable that she would have done the things the La Mottes convinced him that she did, and therefore that he was just an innocent victim of the La Mottes' scam.

So, because of Marie Antoinette's reputation for not living up to the demands of her rank, the dignity of her person was diminished, which means that the authority she had to demand certain kinds of treatment was lessened. The judgement effectively showed that the queen had no authority to punish Rohan because of her deviation from the ideal of what a queen ought to be like. In this deviation, Marie Antoinette diminished the dignity of her own rank as queen and called into question the legitimacy of her own authority, as well as the authority of the system that has bestowed this authority on her. That people can think this little of the queen, and that

⁴Sheriff 2003.

⁵Maza 2003, p. 82.

her reputation is so tarnished, lead to an increase in anti-monarchist sentiment; respect for the entire system of nobility gets called into question when there is no way for the system to respond to a “bad” example of one of its ranks.

The third key feature is that the respect due to the dignity of rank is owed both to the dignitary and to the position they hold. When we insult a dignitary, we show a lack of respect both for them as a person and also for the rank they hold, since the authority that they have demands that we not insult them.⁶ Again, the example of Marie Antoinette is informative – when a crowd of hunger-marchers gathered at the Bastille, they demanded the queen be handed over with a mixture of threats and insults against her person, not just her rank.⁷ The memoirs of her lady-in-waiting state:

The insurrection was directed against the queen in particular; I shudder even now at the memory of the poissardes, or rather Furies, who wore white aprons, which they screamed out were intended to receive the bowels of Marie-Antoinette... They mixed the most obscene expressions with these horrible threats.⁸

To recap, when we talk about the dignity of rank, we are expressing the elevation of one individual over others, and the extra *authority* that comes from this elevation. Respect is due not only to the rank itself, but to the person who is currently occupying it. Disrespect not only affects the person and the rank, but also the structure that accorded that person their rank. In modern times, the authority a person has to demand, at the very least, that they not be killed by a mob is no longer tied to their social position. The idea of *human dignity*, which is possessed by the queen as much as her citizens, has replaced the dignity of rank as the justification for moral duties. I will describe human dignity in my next section.

Arguments around the dignity of rank do have some role in discussions of the Biotech Revolution, as there is a fear that access to technologies that prolong life and allow for the creation of genetically enhanced, or cloned, children will be unfairly distributed in society, so that the rich are able to enjoy a genetic advantage over the poor. If this is the case, human beings will be sharply divided according to ability and social class, which

⁶Waldron (2012) makes this point clear when he says that “for a large array of cases the idea of respect for someone’s rank was not just a matter of attending to the importance of his office and behaving accordingly: it was a deference due to him, as such, and it mattered over the whole range of ways that one might have dealings with him. It was a diffuse and functionally undifferentiated respect ... In an aristocratic system, the ordinary non-noble individual is not entitled to anything like the generalised person-focused deference that a noble is entitled to. He lacks the dignity that commands respect, according to the system of nobility. Dignity is something to which he has an obligation, but not something to which in any form he has an entitlement.”

⁷Bromwich 1995.

⁸Campan (1900), Project Gutenberg digital edition, found at <http://www.gutenberg.org/files/3891/3891-h/3891-h.htm>.

means that the dignity of aristocracy could have a renaissance as a concept to account for human worth, whereas the current concept of an equal, universal human dignity would be relegated to a historical footnote. This is troubling for both liberals and conservatives alike, but both respond to the threat in different ways, as I will show in later chapters.⁹ Another reason to discuss the dignity of rank in detail, as I have here, is to provide a contrast class for the two concepts of dignity I will discuss next.

3.2 Human dignity

In contrast to the dignity of rank, human dignity is possessed by all individuals regardless of their position in society. This concept is used primarily as a foundation in law and religious doctrine. Human dignity places a limit on the power any one individual can have over others, although the substance of these limits will change depending on what different cultures see as a violation of human dignity. Although the dignity of rank still exists in societies, for example in the monarchy of the United Kingdom, the human dignity that the Queen of England has constrains how the dignity of her rank can operate, by limiting the actions that she has the authority to demand of others.

The key features of the concept of human dignity are that it is inherent, universal, equal and inalienable. In the rest of this section, I will use two examples to bring out these features before discussing them in more detail.

Example 2: The Universal Declaration of Human Rights The Universal Declaration of Human Rights is arguably the most important document in international law. Dignity is mentioned twice in the Preamble to the Declaration:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

...

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.¹⁰

⁹See Fukuyama (2002) for a discussion and literature review of this argument from a conservative point of view, and Buchanan (2006) for a liberal reading of the issue.

¹⁰United Nations 1948.

Dignity is being used here as a foundational concept that underpins the human rights spelled out in the rest of the Declaration. By “foundational”, I mean that dignity is being invoked as an ultimate justification for the claim that human beings have these human rights; appeals to dignity answer the question of why we should accord human beings these special rights.

The United Nations was founded in 1945, and immediately there was pressure to produce some kind of document asserting the existence of, and need to protect, universal human rights. So there began a process of including various groups' input on the structure and content of such a document; each sentence of the Preamble can be traced to a different country's initial report.¹¹ Almost every word of the Declaration was contested to some degree; the drafting process sparked debates into the nature and basis of rights and on how they are to be justified as universal, inalienable, and equal.

There were immense diplomatic struggles over whether rights should be justified by an explicit reference to God or to human nature, with the end result being a Preamble that made reference to neither, opting instead to rely almost entirely on the idea of an inherent human dignity to ground human rights.¹² The idea of human dignity itself, however, does not seem to have been subject to the same level of scrutiny as other terms. It was settled on in part because it can be interpreted in different ways; it does not require belief in a higher power or a specific set of metaphysical convictions, but nor does it preclude such beliefs.¹³ In the Declaration, human dignity and human rights are taken together; it is not specified whether the relationship between the two is foundational, or constitutive. Neither human rights nor human dignity are explained as having any source, other than the existence of the human person. So here, dignity is being invoked to bolster the idea that these rights exist and that they ought to be respected. There is scope within the text of the Declaration for a variety of positions on the relationship between dignity and rights to be taken. It could be argued that having rights constitutes having dignity, meaning respecting human rights just is respecting human dignity. Alternatively, having dignity could mean that an individual is entitled to basic human rights, but dignity comes prior to these rights and can be respected without reference to them.

Example 3: The Catechism of the Catholic Church Dignity is found in secular documents of law as a moral foundation for rights, but it also plays a similar role in religious doctrine. Dignity is mentioned in all the Abrahamic religions, but I am

¹¹Van Aggelen 2000.

¹²Morsink 1999.

¹³McCrudden 2008.

focusing here on Catholicism because of the amount of literature the Catholic Church has created on the subject of human dignity.

The Catechism of the Catholic Church make use of different conceptions of dignity – the adverbial sense of spending one's final hours in dignity, for example, and the dignity of the priestly ranks, but here I am only concerned about human dignity. The first article of the Catechism states the reason that humans have dignity:

The dignity of the human person is rooted in his creation in the image and likeness of God.¹⁴

The image and likeness of God is not generally interpreted purely (if at all) along physical lines.¹⁵ Rather, it encapsulates the idea that there are unique capacities that human beings have, which are shared with angels but not with animals, and that of all the creatures on Earth, only human beings have a soul.¹⁶ These capacities are the ability to have a relationship with God; to exercise free will and to make moral choices. Like the Declaration, the Catechism grounds moral requirements in dignity. The rest of paragraph 1700 explain what having human dignity means for individuals:

It is fulfilled in his vocation to divine beatitude. It is essential to a human being freely to direct himself to this fulfilment. By his deliberate actions, the human person does, or does not, conform to the good promised by God and attested by moral conscience. Human beings make their own contribution to their interior growth; they make their whole sentient and spiritual lives into means of this growth. With the help of grace they grow in virtue, avoid sin, and if they sin they entrust themselves as did the prodigal son to the mercy of our Father in heaven. In this way they attain to the perfection of charity.¹⁷

Freely choosing to align one's actions according to God's will follows from being made in God's image; the source of dignity is *imago Dei*, which has free will as a necessary

¹⁴Catholic Church, paragraph 1700.

¹⁵Unlike some Protestant denominations, the Catholic Church has officially accepted the claim that human beings most probably did evolve from non-human animals through natural selection. In an address to the Pontifical Academy of Sciences in 1996; Pope John Paul II claimed that there is some point along the human evolutionary continuum where God imbues human beings with a soul, which gives them human dignity (Schoenborn 2007).

¹⁶St. Augustine argued that the physical body was merely a vessel for the sacred part of humanity that consisted in the ability to form a morally good will. Our rationality and freedom from inclination is what grounds our dignity (Wetzel, 2001). St Anselm too, took Man's rational freedom as a mark of his similarity to the angels due to their shared ability to preserve “rectitude of will for its own sake”. This means, the ability to see a good will as valuable in itself because it comes from the soul. The body, on the other hand, was not a part of why Man held a special place among God's creatures; in fact it serves only to lead men into temptation and sin (Williams 2007).

¹⁷Catholic Church, paragraph 1700.

element, but this freedom is immediately curtailed by duties.¹⁸ So unlike the Declaration, the Catechism is not silent on the source of human dignity.

Another difference between the Catechism and the Declaration is that the Catechism is focused on the obligations that human dignity gives to each individual and to the state:

“Participation” is the voluntary and generous engagement of a person in social interchange. It is necessary that all participate, each according to his position and role, in promoting the common good. This obligation is inherent in the dignity of the human person.¹⁹

In economic matters, respect for human dignity requires the practice of the virtue of temperance, so as to moderate attachment to this world's goods; the practice of the virtue of justice, to preserve our neighbor's rights and render him what is his due; and the practice of solidarity, in accordance with the golden rule and in keeping with the generosity of the Lord, who “though he was rich, yet for your sake ... became poor so that by his poverty, you might become rich.”²⁰

This focus on duty is in contrast to the Declaration, in which human dignity is invoked to justify the rights individuals have to claim against each other. The concept of dignity is being used to justify a certain standard of treatment for all persons in both cases, but the two documents show that dignity is not restricted only the concept of respect for claim rights.

These two examples make use of a concept of human dignity that is clearly different from the dignity of rank. In both cases, dignity is something that everyone has, and that nobody can take away; it is *impersonal*, not based on any consideration of individual particularities. In both cases, the human dignity we all have is related to morality, either as the justification for human rights, or as the reason humans have certain obligations. In my next subsection, I will explain the key elements that distinguish the concept of human dignity in greater detail.

3.2.1 Human dignity is inherent, inalienable, equal and inviolable

Yechiel Michael Barilan gives a succinct definition of the conception of dignity we find within the Universal Declaration of Human Rights:

[Human dignity is a] universal and eternal value whose authority and content are self-evident – or should be self-evident to all well-intentioned and rational persons. Human dignity is a moral property innate to all humans. Because all humans

¹⁸Bristow 1997.

¹⁹Catholic Church, paragraph 1913.

²⁰Ibid., paragraph 2407.

are equally human, there is no single person whose dignity is superior or inferior to any other. Because humans never metamorphose to something else, their humanness is permanent. Because human dignity derived only from humanness, human dignity is irrevocable.²¹

The conception we find in the Catholic Catechism shares all of these elements.²² Both of the above examples show that, in contrast to the dignity of rank, human dignity is not dependent on the existence of specific social structures. The Declaration makes use of human dignity as a justification for making human rights something guaranteed by the institutions of international law. Catholics use human dignity in both the Catechism and Pastoral Letters from individual countries to argue for changes in the systems of global capitalism to promote equality:

The basis for all that the Church believes about the moral dimensions of economic life is its vision of the transcendent worth – the sacredness – of human beings. The dignity of the human person, realised in community with others, is the criterion against which all aspects of economic life must be measured.²³

There exist also sinful inequalities that affect millions of men and women. These are in open contradiction of the Gospel: Their equal dignity as persons demands that we strive for fairer and more humane conditions. Excessive economic and social disparity between individuals and peoples of the one human race is a source of scandal and militates against social justice, equity, human dignity, as well as social and international peace.²⁴

Individuals have human dignity regardless of their culture or the time period in which they lived, and the existence of systems and structures is supposed to be for the benefit of human dignity, not constitutive of it. Human dignity is therefore a kind of political goal that social institutions ought to serve. Character and virtue are both unimportant to the attribution of human dignity, as John Paul II wrote in an encyclical, “Not even a murderer loses his personal dignity, and God himself pledges to guarantee this.”²⁵ This is true both of personal assessments of one's own dignity, and whether others believe one to be dignified. Dignity is *inherent* in every human being, dependent on no external factors.

Because it does not depend on how a person behaves, or how society reacts to them, we can also say that human dignity is *inalienable*. The dignity of rank can be lost if external circumstances change; a Queen can stop being a Queen if her social order is

²¹Barilan 2012, p. 93.

²²Bristow 1997.

²³United States Catholic Bishops (1986), article 28.

²⁴Catechism of the Catholic Church, 1938.

²⁵John Paul II 1995.

overthrown. Human dignity, however, cannot be lost no matter how badly an individual is treated; if it could, then we would end up with the counterintuitive claim that if we treat a person badly enough, that person will lose the reason we have to respect them in the first place.²⁶ In order to ground the claim that all humans are entitled to equal basic rights, the concept of human dignity used in the Declaration must extend equally to all individuals. All human individuals, no matter how impaired, have the same human dignity.

For Catholics, human dignity is equal in all individuals because of *imago Dei*. The first human was created in the image of God, and we as his descendants can claim the same thing. Being made in God's image means having human dignity, hence the claim that human dignity is possessed by everyone in equal measure.

The final element of human dignity is that it is *inviolable*. This means both that nothing can alter an individual's human dignity, and that the demands of human dignity cannot be ignored for the sake of any greater good. For example, it is often argued that treating a human being as a mere means to an end – instrumentalising him – is incompatible with respect for human dignity. For the best example of this, I will move away from my case studies and into national law. In Germany, the first clause of the first article of the Basic Law of the Federal Republic of Germany reads, “Human dignity shall be inviolable. To respect and protect it is the duty of all state authority.” The role of human dignity in German Law has been described as an “article of faith of a civil religion.”²⁷ It is the primary concept through which people gain legal protection and is perceived as the fundamental justification of all German law.²⁸ Because of its status as a master-value, German jurisprudence has used human dignity as a test for the legality of existing laws. Most famously, the German Air Law, according to which the armed forces were given license to shoot down a hijacked aircraft, was removed from statute because such an action would be contrary to the dignity of the innocent passengers. Despite the potential to turn a hijacked aircraft into a weapon of mass destruction, the dignity of the passengers trumps all other concerns; to kill them in the process of shooting down the aircraft would amount to an instrumentalisation that is contrary to human dignity.²⁹

These four features give us a concept of dignity that is not based on assessing any individual's merit or particular desires. It is based on thinking about the kind of being humans are, and what is unique about this kind of being that entitles them to dignity and the treatment that is due to whatever has dignity.

²⁶Debes 2009.

²⁷Isensee (2006), cited in Enders (2010).

²⁸Enders 2010.

²⁹Lepsius 2006.

3.3 Dignity as a trait

The third concept of dignity is the one we use when we say to someone, “Show some dignity!”, or when we state that, “The actress accepted her Oscar with characteristic dignity.” Unlike the dignity of rank, this kind of dignity is something that can persist even if someone loses all their social status. Unlike human dignity, individuals can differ in how much dignity as a trait they have without losing their basic rights or no longer being a source of duties.

This kind of dignity can be adverbial, that is, it can describe an action a person takes, or it can describe a trait that an individual has. Here I'll be discussing “dignity” exclusively about dignity as a feature of persons, not a feature of actions. In this section I will describe the concept of dignity as a trait that individuals can have and distinguish two separate elements, which are presentational dignity and dignity as a quality.

Presentational dignity is the appearance of being dignity, whereas dignity as a quality is a character trait.

Aurel Kolnai offers a clear description of what it means for an individual to have dignity as a trait of their character in his groundbreaking article, “Dignity”, which remains one of the clearest analyses of the concept:

First – the qualities of composure, calmness, restraint, reserve, and emotions or passions subdued and securely controlled without being negated or dissolved (*verhaltene Leidenschaft* in German) – and dignity can be found in the way a person conducts themselves in everything that they do. Secondly– the qualities of distinctness, delimitation, and distance; of something that conveys the idea of being intangible, invulnerable, inaccessible to destructive or corruptive or subversive interference. Dignity is thus comparable, metaphorically, to something like “tempered steel”.³⁰

The first element of Kolnai's description, presentational dignity, is acting decorously, in a “dignified manner”. The second element, that internal quality that Kolnai compares to tempered steel, is dignity as a quality.

Kolnai is describing a set of dispositions that an individual can have. We can understand more about what it means for an individual to have dignity as a trait by referencing what Alistair Cochrane calls “paragons of dignity”.³¹ The most ready source of paragons of dignity is in the list of people who have been imprisoned and ill-treated because they stood up for what they believed in. For someone to be seen as a paragon of dignity, they have to have been able to maintain their dignified bearing despite

³⁰Kolnai 1976, p. 253.

³¹Cochrane 2012.

hardships. They also have to have endured these hardships in pursuit of a morally worthy goal. Aung San Suu Kyi exemplifies both of these characteristics, and is widely talked of as a modern paragon of dignity.

Example 4: Aung San Suu Kyi Her refusal to sanction violence, combined with the strength of her resolve and her willingness to sacrifice her own wellbeing is what makes Aung San Suu Kyi a paragon of dignity. Suu Kyi had left Burma as a teenager to study abroad, and was married with two children by the time she returned in 1988, initially to care for her dying mother. Once there, she witnessed the rule of the military junta, which had seized power in a coup in 1962, and began speaking at rallies to demand democratic rule and proper respect for human rights. She was put under house arrest in 1989, with the promise that if she agreed to leave Burma permanently she would be set free. Suu Kyi remained, however, and refused to leave the country until the military returned Burma to a civil government. The junta tried to coerce her into leaving by refusing to allow her family to visit, but even when her husband Michael was diagnosed with terminal cancer in 1997 she refused to give up her struggle. She was not released from house arrest until November 2010.³²

No matter how much pressure she came under, Aung San Suu Kyi remained committed to peace, empowerment and equality. In a video interview, she explains that own conception of dignity is of something we all have to live up to:

Power is something that comes from within ... and for you to be empowered from within you need to believe in your own dignity as a human being. If you have not upheld that dignity, you will not have the clear conscience that will enable you to feel empowered. So I think the basic connection between dignity and empowerment is the human connection: are you a dignified human being? Have you lived up to your human dignity? And if you feel you have, you naturally feel strong, because you are confident in what you have done and what you stand for, and that empowers you.³³

This is an example of dignity as a trait and human dignity being invoked at the same time – in order to fully realise one's dignity as a trait, one has to understand that one's human dignity comes with an obligation to live up to.³⁴

What Suu Kyi represents is the combination of never publicly losing control of her emotions or resorting to violence with inner fortitude and unfailing respect for all

³²Popham 2011.

³³Transcribed from an interview with Nicolai Prydz, 2012.

³⁴I will explore the relationship between human dignity and fully realised dignity in chapter 5.

other human beings.³⁵ Suu Kyi is claiming that human dignity is something that we all have, but it is also something that we can live up to, meaning that human dignity can give us an idea of what developing dignity as a trait entails. I will discuss this further in section 3.4.

Through this example, we can see that there are two elements to dignity as a trait. One is in how a person acts; the bearing she has through life, even in the face of hardships. The other is a quality of a person's character. These correspond to the first and second parts of Kolnai's description of dignity as a trait. It also fits in with the way the concept is used in anthropology – a “dignity culture”, as distinguished from an “honour” or a “face” culture, is one where individuals believe that others will be motivated to follow social rules by an internal sense of guilt if they transgress, not the threat of being shamed by others.³⁶ I now want to argue that these two elements of the trait of dignity can come apart, and that presentational dignity is a bogus sense of the concept. This means I will only be talking about dignity as a quality. I will do this by introducing an example of false dignity, and then an example of how presentational dignity can be irrelevant. These examples are designed to elicit intuitions about what counts as “true” dignity as a quality, as distinguished from bogus, or false dignity.

Example 5: The Mafia Don Many films about the Mafia show their Dons to be well-dressed, erudite, self-contained men who are able to fit into high-class society. They have a dignified bearing like Kolnai describes; they are comfortable exercising power and show high levels of self-control; indeed, many are so concerned with their personal honour and dignity that those who insult the Don are assassinated. When we think about the Don, we can recognise that he has a dignified bearing, but we only esteem him for it until we realise the truth about what he does for a living. When we realise that the Don is essentially immoral, the perception of his dignity changes: his dignified bearing now appears like a patina and is no longer worth respecting. That someone as unconcerned with morality as a Mafia Don can exhibit behaviour that we recognise as dignified shows that having a dignified bearing is not sufficient to have the kind of dignity that we are concerned with here. What matters is having a dignified character, and although this is usually manifested in the same dignified bearing as the

³⁵Margalit (1996) distinguishes between dignity and autarchy, which he describes as a kind of spiritual self-rule. Although Suu Kyi does exemplify a kind of quiet self-sufficiency and refusal to be humiliated, her example is better understood as a paragon of dignity than of autarchy because her sacrifices come from her deep commitment to the importance of human rights. Such a commitment would not be found in an example of autarchy, for such a person would accept all situations with equanimity. Suu Kyi's struggle demonstrates how deeply she was affected by the problems in Burma, so she is better described as a paragon of dignity than autarchy.

³⁶Kim and Cohen, 2010; Leung and Cohen, 2011.

Don has, it is not defined entirely by behaviour. If it were, we would continue to see the Don's behaviour as dignified when we learned of his occupation.

The Mafia Don is one example of how presentational dignity can be distinguished from dignity as a quality because a person can lack dignity as a quality, but have a bearing that suggests the converse. The Don's actions are in accord with presentational norms of dignity, and the Don's own belief is that his actions are conforming to his own ideal of dignified conduct. Nevertheless, the dignity of a Mafia Don is a false dignity because of the things he does to other people.

Example 6: Warning Presentational dignity can be abandoned without dignity as a quality being lost. In fact, it is possible for a person to believe that the norms of presentational dignity we have as a society are restrictive and wrong and should be disregarded without being seen as an undignified person. For example, the famous poem by Jenny Joseph, “Warning”, begins with the lines:

When I am an old woman I shall wear purple
 With a red hat which doesn't go, and doesn't suit me.
 And I shall spend my pension on brandy and summer gloves
 And satin sandals, and say we've no money for butter.
 I shall sit down on the pavement when I'm tired
 And gobble up samples in shops and press alarm bells
 And run my stick along the public railings
 And make up for the sobriety of my youth.³⁷

Joseph's poem has been described as being about “dignity and resistance” and is about her desire to shake off the trappings of decorum and do more of what she wants, despite what other people think.³⁸ This is a gentle challenge to the primacy of presentational dignity; acting that way is a choice that the old shouldn't have to make if they don't want to. Joseph's narrator wants to assert her identity, which isn't necessarily going to be in accord with fashions or norms; she'll wear clothes that don't suit her because she wants to, and sit on the pavement because she's tired.³⁹ Joseph is deciding willingly to ignore presentational dignity, but intuitively, this does not lead to the conclusion that she no longer has dignity as a quality of her character.

So, not only can presentational dignity come apart from dignity as a quality, presentational dignity is not morally relevant. Having dignity does not consist merely in looking dignified, it is a judgement about an individual's character. We should

³⁷Joseph 1992.

³⁸Cole, Rothblum, and N. Davis 2014.

³⁹I will return to the dignity of identity in my next chapter.

disregard a person's presentational dignity when we judge whether they are a dignified person in the sense that matters morally. Presentational dignity can perhaps be fully captured by the more archaic idea of a “noble bearing”, which lacks the rhetorical pull that the morally-charged word “dignity” has whilst maintaining the intuitive sense that presentational dignity is about exercising a degree of emotional control that allows an individual to conform to social norms of respectable conduct.

Dignity as a quality is used in academic bioethics and in bioethical policy. For example, in chapter 2.2.2, I showed that the word “dignity” was used by the National Committee to describe what could be seen as good about choosing to participate in research – one reason was it made a person more dignified by making him more virtuous. We are now in a position to see that in this case, the National Committee was making use of dignity as a quality, whereas elsewhere (for example, in suggesting cloning be subject to a ban) it makes use of human dignity.

Dignity as a trait is part of a key thread in arguments around constraining research into and development of novel biotechnologies, as Allen Buchanan points out. Buchanan identifies a set of arguments against allowing biomedical enhancements he calls “character-based arguments”, because they are centred around the claim that an individual deciding to undertake a particular enhancement either is evidence of their undignified character, or would lead them to lose the dignity of their character.⁴⁰ This means that it is important to offer an account of dignity as a trait. In the rest of this chapter, I will demonstrate that dignity as a trait is also understood and weighted in different ways by liberals and conservatives.

I will now argue that dignity as a quality is morally relevant, and that dignity as a quality rests on human dignity.

3.4 Two conceptions of dignity as a quality

In the rest of this chapter, I will give evidence for my proposition that useful, coherent conceptions of dignity as a quality always rest on conceptions of human dignity; that is, they are not two completely separate meanings of “dignity”. To start my argument, I will introduce two different conceptions of the concept of dignity as a quality, each of which rests on a different claim about why humans have a special moral status. One is from a liberal, Michael Meyer, and one from a conservative, Daniel Sulmasy. These will be useful, as I will show, because they point to two intractable positions in debates on issues in the Biotech Revolution.

⁴⁰Buchanan 2011.

3.4.1 Michael Meyer's "Dignity as a Modern Virtue"

Michael Meyer has written extensively on the concept of dignity: as we find it in human rights, as Kant understood it, as well as how it is understood as a trait and how this sense is best incorporated into debates in applied ethics.⁴¹ In "Dignity as a (Modern) Virtue", he argues for a conception of dignity as a quality that is only genuine when it is accompanied by a belief in moral equality.

Meyer talks specifically about dignity as a *virtue*, but the way he describes it is close enough to how Kolnai describes dignity as a quality. Meyer describes a virtue of character as "a more or less settled disposition, and attendant attitudes, that over time contributes to the constitution of a good moral or ethical temperament".⁴² The same can be said about dignity as a quality; an individual who manifests the quality of dignity has a kind of unshakeable, settled inner core that people do in fact see as required for a good moral character. So I am taking Meyer's dignity as a virtue to be interchangeable with Kolnai's dignity as a quality.⁴³ In his article, Meyer first rules out presentational dignity, the dignity of rank, dignity as an equal moral status shared by all humans, and the subjective feeling of having dignity. He argues that dignity as a quality is different from human dignity, but that it is related to human dignity:

I do not wish to suggest that having the moral status of "human dignity" is grounded upon a person actually acting in a virtuous way in general or by possessing the more specific virtue of human dignity ... In the analysis to follow I will take the "virtue of dignity" to have its conceptual home within the notion of "human dignity".⁴⁴

Meyer returns to the distinction between human dignity and dignity as a quality in the final section of his article, after introducing and defending the possibility of dignity as a "specifically modern virtue". He introduces the idea of dignity as a quality through looking at examples; first, two examples of the corresponding vice to the quality of dignity, and second, two paragons of the quality of dignity.

Meyer uses the analogy of willingness to claim one's legitimate rights to make out the contrast cases to dignity as a quality. Like Aristotle's Doctrine of the Mean, Meyer claims that the vices associated with dignity are having too much humility and not enough of

⁴¹On human rights, see his introduction to "The Constitution of Rights: Human Dignity and American Values" (Meyer, 1992). On Kant's conception of dignity, and Kantian topics, see Meyer (1987) and (2001). On dignity as a trait, as well as the paper I am discussing here, see Meyer (1989) and (1995).

⁴²Meyer 2002, p. 197.

⁴³For clarity, I will refer to dignity as a quality in place of dignity as a virtue from now on, except where I am directly quoting Meyer.

⁴⁴Meyer 1987, p. 197.

it. Having misplaced humility, or servility, makes a person unwilling to claim the rights that are legitimately his. Having too inflated a sense of one's own nobility also leads a person to be disinclined to claim his rights because doing so is beneath him.

These two examples are contrasted to the way that Martin Luther King and Mahatma Gandhi claimed their rights in the face of oppression. They demanded no more than they believed to be their dues, and did so soberly, without violence. Meyer claims that soberly standing up to claim what is rightfully theirs is an example of King and Gandhi behaving with dignity. This is because they are claiming the right amount of respect for themselves, whilst also respecting others. So, Meyer is claiming that dignity as a quality is related to the kind of respect due to ourselves and to others.

Meyer also claims that dignity as a quality is related to how one responds to humiliation. The overly humble man humiliates himself rather than claims his rights; the overly noble man feels humiliated by claiming any rights at all because he believes they ought to be given to him freely. He quotes a story from Gandhi's autobiography, in which Gandhi meets with an indentured Tamil worker:

Balasundaram entered my office, head-gear in hand. There was a peculiar pathos about the circumstance ... A practice had been forced upon every indentured labourer and every Indian stranger to take off his head-gear when visiting a European ... Balasundaram thought he should follow this practice even with me ... I felt humiliated and asked him to tie up his scarf. He did so, not without a certain hesitation, but I could perceive the pleasure on his face. It has always been a mystery to me how men can feel themselves honoured by the humiliation of their fellow-beings.⁴⁵

In this example, Meyer points to two elements of Gandhi's response to Balasundaram that are evidence of him manifesting quality of dignity: he is able to recognise the dynamics of the situation as humiliating, and he immediately acts so as to stop any further humiliation. He claims:

Gandhi's clarity of observation and action in this case is a prime assertion of that sense of human equality at the heart of the idea of the virtue of dignity.⁴⁶

To conclude this part of my reconstruction, I have shown that Meyer claims that there is such a thing as dignity as a quality of character, which is exemplified by a willingness to respectfully claim rights and equal treatment. He claims that, because humiliation is opposed to equality, humiliation is also opposed to dignity. Therefore, that a belief in and genuine commitment to equality is part of the quality of dignity.

⁴⁵Meyer 2002, p. 199.

⁴⁶*Loc. cit.*

The reason Meyer claims that dignity is a specifically modern quality, is that it is incompatible with aristocratic and moral hierarchies that existed in centuries past. He gives the example of Stevens, the butler to Lord Darlington in Kazuo Ishiguro's "The Remains of the Day" as an example of a person whose dignity depends on pre-modern aristocratic hierarchies. Stevens' presentational dignity and sense of having dignity depends on the deference of his staff to him, and his own deference to his "betters". Meyer argues that the example of Stevens is inadequate to describe the quality of dignity compared to King and Gandhi, because:

Their service was grounded in a vision of both human liberty and equality that was not generally available in the pre-modern world, which is represented by the butler and the Lord of Darlington Hall.⁴⁷

Meyer is claiming that the quality of dignity can only fully exist in the context of liberty and equality; whilst Stevens does carry himself with presentational dignity, he can only give us a partial demonstration of the quality of dignity because of the hierarchy he lives in.⁴⁸ The institutionalised deference that comes with aristocratic hierarchies and their tendency to produce humiliation, as well as those hierarchies' promotion of unvirtuous conduct on the part of those in power, are all incompatible with expressing the quality of dignity. Liberty and equality, then, are needed to ground dignity as a quality in its fullest sense, and this is why King and Gandhi exemplify it where Stevens cannot:

The life work of King and Gandhi is emblematic of the virtue of dignity in large part because it was a work on behalf of the liberty and equality of human beings as against the ideology of aristocracy.⁴⁹

I would add Aung San Suu Kyi to the list of paragons of the quality of dignity as Meyer conceives it; her steadfast refusal to become humiliated by, or resort to hatred and violence against, the Burmese authorities whilst never abandoning her task of promoting democracy and human rights for her people make her comparable to King and Gandhi in exemplifying dignity as a quality, which again demonstrates that Meyer's conception fits with my characterisation.

This is why Meyer claims that dignity "has its conceptual home within the notion of human dignity" at the start of his article. Human dignity, as Meyer describes it, is

⁴⁷Meyer 2002, p. 204.

⁴⁸The story of "The Remains of the Day" shows Stevens gradually coming to realise this himself; as he journeys from Darlington Hall to Cornwall he becomes increasingly aware of the false deference and personal deprivation that comes with accepting the very idea of an aristocratic hierarchy, and the way he has deceived himself into believing the dignity of professionalism is all there is to the good life (Marcus 2006). By the end of the novel, Stevens' beliefs come closer to the ideals of liberty and equality.

⁴⁹Meyer 2002, p. 206.

something that all humans have equally. An individual can only have dignity as a quality in the fullest sense of the concept if she believes in the equal moral status of all humans, does not humiliate others or show misplaced servility towards them, and does not place herself within an aristocratic hierarchy. This suggests that the conception of human dignity Meyer is working with is based on *liberty and moral equality*. I will now move on to discussing a different conception of dignity as a quality, which I will argue is based on a different conception of human dignity.

3.4.2 Sulmasy's conception of inflorescent dignity

The second way to conceptualise dignity as a quality has to do with human flourishing, not with human virtue. In order to draw this distinction, I will first offer an example of an individual with a good moral character who would nevertheless be judged by some people to be doing something contrary to her dignity as a quality.

Example 7: Monica Monica has been increasingly unhappy about the way she looks. She has noticed that the showers of attention she used to gain so easily from men when she went out on the town have been drying up, and she is starting to feel invisible, unattractive, and old. After seeing an advert on television she begins to consider, and eventually books herself in for, a Botox treatment in one of her lunch hours. Although most of her co-workers compliment her on her new fresh face, she notices one or two of them reacting with something close to disguised repulsion, as if she had done something undignified. We find the charge of being “undignified” anywhere an ageing celebrity – male or female – reappears with obvious signs of having had cosmetic procedures done; the word appears in many mass-media articles on the issue, especially in conservative-leaning newspapers like the Daily Mail in the UK.⁵⁰

Why might people claim that the choice to get Botox, or other enhanced cosmetic procedures like it, is specifically *undignified* rather than, say, selfish or simply vain? We can find one answer in the way conservatives in bioethics approach cosmetic surgery.

In choosing to have Botox, biocons claim that Monica is demonstrating a kind of arrogance because she is expressing a wish to bypass the ageing process, which in turn, can be seen as a wish to have a different kind of life from the human archetype, a *better* life by Monica's own lights. Dennis Weiss and Rebecca Kukla discuss the argument that the desire for cosmetic surgery as part of a race towards the “inhuman”, attributing to Leon Kass the claim that such procedures are evidence of a deep disregard for the

⁵⁰See, for example, Davis (2007), Estridge (2013).

natural and hence the meaningful in life.⁵¹ Relatedly, biocons also make the argument that in committing to the claim that she is a better judge of the way her life ought to go than nature is, and she deserves somehow to not go through the ageing process when millions of her forebears did, Monica is demonstrating an undignified degree of hubris.⁵² This shows that Monica's actions are widely seen as harmful to her dignity.

Monica's case is not covered by Meyer's analysis of dignity as a quality because it doesn't relate to whether she appropriately claims what is rightfully hers, but it nevertheless is a lack of dignity as a quality, not presentational or human dignity. To explain Monica's lack of dignity, I will use Daniel Sulmasy's conception of dignity as a quality, which is defined in terms of human flourishing.

Sulmasy takes the same basic approach to dignity as a quality as Meyer, in that he claims that dignity as a quality is related to human dignity.⁵³ The most important difference between the two for my purposes is that the conception of human dignity that they each rely on is fundamentally different. I am discussing both in order to make the point that there is an interdependence between dignity as a quality and human dignity that persists regardless of the conception of human dignity being used. This will be important for my next section, in which I relate Meyer and Sulmasy's respective conceptions of human dignity to the liberal and conservative conceptions I discussed in chapter 2.

In his article, "The Varieties of Human Dignity: a Logical and Conceptual Analysis", Sulmasy distinguishes between three types of dignity, which are the attributed, the intrinsic and the inflorescent, and aims to show that inflorescent dignity logically depends on the existence of intrinsic dignity.⁵⁴ Attributed dignity encompasses the dignity of rank, as well as elements of presentational dignity and self-respect:

For instance, we attribute worth or value to those we consider to be dignitaries, those we admire, those who carry themselves in a particular way, or those who have certain talents, skills, or powers. We can even attribute worth or value to ourselves using the word this way. We use the word in this attributed way, for example, when we say that extreme poverty creates degrading and undignified living conditions.⁵⁵

Attributed dignity is deliberately conferred on a person by others in his community;

⁵¹I will return to this link between dignity, naturalness and meaning for biocons like Kass in chapter 7.

⁵²Weiss and Kukla 2009.

⁵³Human flourishing is different from dignity as a virtue, because human flourishing can take in elements of the biological human life, whereas dignity as a virtue has to do solely with a disposition of character. An individual can be virtuous without fully flourishing, although he cannot fully flourish without being virtuous.

⁵⁴D. P. Sulmasy 2012.

⁵⁵*Ibid.*, p. 938.

Sulmasy claims that it therefore always involves a choice. This distinguishes it from the other two conceptions of dignity. Intrinsic dignity is not subject to human choice:

Intrinsic dignity is the value that human beings have simply by virtue of the fact that they are human . . . Used this way, “dignity” designates a value not conferred or created by human choices, individual or collective, but a value that is prior to human attribution.⁵⁶

This is the kind of dignity that is often referred to as *Menschenwürde*, the intrinsic worth of humankind.⁵⁷ I referred to this conception of dignity in section 3.2 above simply as *human dignity*.⁵⁸ Finally, Sulmasy's conception of inflorescent dignity represents his major contribution to the analysis of dignity as a concept, because it captures and offers a logical argument for a relationship between dignity and human flourishing that is largely left unexamined both in conventional bioethics and by biocons. Here Sulmasy describes the etymology of the concept:

By inflorescent dignity, I mean the way people use the word to describe the worth or value of a process that is conducive to human excellence or to describe the worth or value of a state of affairs by which an individual human being expresses human excellence. “Inflorescent” is not a commonly used word, but it is the adjectival form of the noun “inflorescence”, which means the process of flowering or blossoming. I am employing it to convey the value that comes from flowering or flourishing. That is to say, “dignity” is used in an inflorescent way to refer to individuals who are flourishing as human beings – living lives that are consistent with and expressive of the intrinsic dignity of the human.⁵⁹

Inflorescent dignity is Sulmasy's interpretation of dignity as a quality. A human being who is flourishing just is manifesting the quality of dignity, along with other qualities that are essential features of a good character. To return to Meyer's distinctions, we would not judge a servile man as flourishing, or one who is haughty and overbearing. Inflorescent dignity contains dignity as a quality, but it covers more than just dignity as a quality. Therefore I will maintain the distinction between inflorescent dignity and

⁵⁶Ibid., p. 938.

⁵⁷Kant is the most famous user of this term to denote the “absolute inner worth” of human beings, it is always translated as “human dignity” in his work. See Jacobson (2006), p. 294 for a survey of uses of this term in the literature on dignity.

⁵⁸I continue with Sulmasy's use of “intrinsic dignity” instead of “human dignity” in my discussion because Sulmasy suggests that non-human animals may have it: “While there may be other members of the class that consists of the kinds of things that properly can be said to have intrinsic dignity (viz., angels, intelligent extra- terrestrials, or, arguably, porpoises), in ordinary discourse a human being is the paradigmatic example of the kind of thing that is said to have dignity by virtue of its being the kind of thing that it is.” Sulmasy's view of dignity is anthropocentric, but not speciesist on his terms.

⁵⁹D. P. Sulmasy 2012, p. 938.

dignity as a quality whilst pointing out that they are part of the same class of conceptions.

An individual has inflorescent dignity whenever she is flourishing as a human being; this means inflorescence is a way to describe an individual's life. Inflorescence is also a value term, a kind of good that comes from being an excellent example of the human life. Monica, by contrast, is not flourishing because she is trying to hold on to her youth; something which is ultimately fruitless and a demonstration of vanity.

Sulmasy argues that inflorescent dignity is a species of dignity, rather than a description simply of flourishing because the value of human flourishing depends on the existence of intrinsic dignity.⁶⁰ I will summarise his argument here.

He starts by relating intrinsic dignity to individuals, by claiming that:

To say that an entity has intrinsic dignity is to say that it has the value called dignity by virtue of its being the kind of thing that it is . . . Thus, to say that some individual entity has intrinsic dignity is to say that it is a member of a particular kind that has the value called dignity.⁶¹

If individual human beings have intrinsic dignity, then, they have it because they are members of human-kind, a kind that has intrinsic value. Not because of any particularities of the individual itself. Then he describes a condition for claiming that an individual is flourishing – we can only know whether an individual example of a kind is flourishing if we know some details about the kind the individual belongs to. So, in order to claim that an individual human person is flourishing, we have to know something about what it means for a human being to flourish. We therefore need to know what sort of a thing a human being is as a biological organism; what about it can be excellent, and what needs must be met in order to attain that excellence. Without this knowledge, we cannot judge whether an individual human being is an excellent example of humanity.

The next thread in Sulmasy's argument is about value. He claims that:

Therefore, to say that a particular entity (e.g., a human being) has inflorescent dignity entails that the entity is an excellent example of a kind of thing (i.e., human-kind) that has, as a kind, intrinsic dignity. In other words, one does not speak of the inflorescent dignity of an entity unless one has already picked that entity out as a member of some kind that has the value of dignity intrinsically. For example, the photoluminescence of a certain kind of bacterium or the flowering of a rosemary bush can both be beautiful, but we do not speak of flourishing bacteria or

⁶⁰D. P. Sulmasy 2012, p. 941.

⁶¹Ibid., p. 940.

rosemary bushes as manifesting dignity. One does say, when appropriate, that a particular human being carried himself or herself with dignity, but only because the entity that is flourishing is a member of the human natural kind, a kind that has the special value we call dignity by virtue of its being the kind of thing that it is, relative to other kinds of things that there are in the universe.⁶²

Here Sulmasy reiterates that if an individual has inflorescent dignity, it can only be because she is a member of a kind with intrinsic dignity. Taken together, Sulmasy can be summarised as claiming that the substance of inflorescent dignity can be derived from facts about the human kind, and the value of human flourishing can be derived from the value of the human kind.

Inflorescent dignity, then, is a way to describe an individual's life, but it is only accurate if the person is living in accord with human excellence more generally. This means that, like Meyer, Sulmasy's conception of dignity as a quality has its conceptual home within the concept of human dignity. Sulmasy's conception of dignity is a *humanity-based* conception of dignity, in contrast to Meyer's *autonomy- and equality-based* conception.

Although Sulmasy claims that acting with dignity belongs to attributed dignity, he brings the presentational sense of dignity back in here, and relates it to human excellence. Sulmasy claims that acting with dignity is only rightly called inflorescent dignity if the actions are a part of genuine human flourishing, he therefore agrees with my claim that presentational dignity can be false. Sulmasy's inflorescent dignity plays the same role as dignity as a quality does in my example of the Mafia Don; it is related to having a good moral character and needs to be present for actions to be expressive of genuine dignity.

Sulmasy's conception of inflorescent dignity and the way he relates it to intrinsic dignity is important because it currently represents the most thorough and clear-minded analysis of the philosophical underpinnings of biocon thought on this subject. His claim that there is a relationship between flourishing and intrinsic dignity is echoed by other conservative bioethicists, notably Leon Kass, who claims that:

There is, finally, no opposition between the dignity of human being (or "the sanctity of life") and the dignity of being human. Each rests on the other. Or, rather, they are mutually implicated, as inseparable as the concave and the convex. Those who seek to pull them apart are, I submit, also engaged in wanton, albeit intellectual, violence.⁶³

I will return to Kass and other biocons' conception of flourishing and the dignity of being human in chapter 7.

⁶²Ibid., p. 940.

⁶³Kass 2008, p. 326.

Meyer and Sulmasy are both referring to dignity as it applies to individuals; they are both using “dignity” to describe aspects of particular people; I could have more or less dignity as a virtue, or more or less inflorescent dignity depending on how I act. Their conceptions of dignity both rely on statements about humans as a kind, not as individuals, to do the normative work of distinguishing true and false examples of dignity. However, Meyer and Sulmasy's conceptions of dignity as a quality depend on different conceptions of human dignity. Meyer focuses on liberty and equality as the conceptual basis of human dignity as an equal moral status, whereas Sulmasy uses intrinsic value and natural kinds to draw the same links.

3.4.2.1 Meyer as liberal and Sulmasy as conservative

In this section I will argue that Meyer's conception of dignity as a virtue fits with the liberal pattern I outlined in chapter 2.2.1, and Sulmasy's conception of inflorescent dignity fits with the conservative pattern.

Meyer's conception is liberal because it fits with two liberal principles: autonomy and neutrality. In other works, Meyer has emphasised the importance of self-control and the ability to choose for oneself.⁶⁴ This also relates to how dignity is introduced in the Declaration as something humans have along with freedom. Freedom and responsibility are not intended just as descriptions for individual actions. They are also traits that humans have as a kind, which inform Meyer's claim that an individual can only express dignity as a quality in the fullest degree if she believes in the equal moral status of all human beings.

Second, Meyer's claim that dignity as a quality cannot exist alongside a belief in the legitimacy of hierarchies also suggests that one person restricting the freedom of another (or, in the case of Stevens the butler, an individual internalising restrictions on himself because of his place in the hierarchy) is contrary to equality and therefore to dignity.

Thirdly, in Ackerman's description of the principle of neutrality that I quoted in chapter 2.2.1, the third point of which is that no one person can believe himself to be intrinsically superior to any other. The kinds of hierarchies that Meyer claims are inimical to dignity as a quality make a belief in the superiority of one person to another concrete in society. A belief in the legitimacy of these kinds of hierarchies stands opposed to this part of the liberal principle of neutrality. Therefore, Meyer's conception of dignity fits with the principle of neutrality.

⁶⁴In Meyer (1989) he relates responsibility to dignity.

In chapter 5 I will argue that a Kantian formulation of the principle of autonomy, which I discussed in relation to liberalism in chapter 2.2.1, is the foundation for a liberal concept of human dignity. Meyer's conception of dignity as a quality depends on a belief in moral equality because all humans are equally entitled to live a life of their own choosing. Having autonomy, at the most basic level of definition, means being able to govern oneself rather than have one's life controlled by another. Social hierarchies almost by definition restrict the autonomy of individuals; they prevent people from governing themselves. For now, I will move to explaining how Sulmasy's conception of dignity fits with the conservative principles I outlined in chapter 2.3.

Sulmasy's conception of human dignity is based on the intrinsic value of being a human; the kind-specific dignity-conferring trait he uses is humanity itself, not something that humanity is able to do that entitles them to a special moral status. Sulmasy's conception of dignity can be seen as a conservative conception because it is related to human nature and to human flourishing. The President's Council relates human dignity to flourishing in "Human Cloning and Human Dignity":

Precisely because the stakes are so high, precisely because the new biotechnologies touch not only our bodies and minds but also the very idea of our humanity, we should ask ourselves how we as a society want to approach questions of human dignity and flourishing.⁶⁵

And again, in more detail, in "Beyond Therapy":

If there are essential reasons to be concerned about these activities and where they may lead us, we sense that it may have something to do with challenges to what is naturally human, what is humanly dignified, or to attitudes that show proper respect for what is naturally and dignifiedly human. As it happens, at least four such considerations have already been treated in one place or another in the previous chapters: appreciation of and respect for "the naturally given," threatened by hubris; the dignity of human activity, threatened by "unnatural" means; the preservation of identity, threatened by efforts at self-transformation; and full human flourishing, threatened by spurious or shallow substitutes.⁶⁶

Human flourishing here is being related to what is naturally human, and to human dignity. And, the phrase "naturally and dignifiedly human" suggests that there is a link between what is natural and what is dignified; human nature itself has a dignity, and this dignity is challenged by activities that threaten full human flourishing. Sulmasy also relates human dignity to human flourishing, and both to human nature – when he claims that we need to know something about the kind of thing human beings are in

⁶⁵President's Council on Bioethics, 2002, p. 113.

⁶⁶President's Council on Bioethics, 2003, p. 286.

order to see human flourishing as valuable. In chapter 7, I will argue that the bioconception of dignity that comes out in the President's Council's reports is best understood as a kind of normative essentialism, meaning that we need to appeal to a normative conception of *human nature* in order to understand the substance and the value of *human flourishing*.

To conclude, Meyer and Sulmasy are making use of different conceptions of human dignity to underpin their different conceptions of what it means to respect human dignity and dignity as a quality. These conceptions are used by liberals and conservatives respectively. Liberals use the value of autonomy and moral equality to make arguments about how the Biotech Revolution ought to progress, whereas conservatives use the idea of flourishing, and what it means to be “truly human” to justify their appeals for blanket constraints. In the rest of my thesis, I will argue that these two conceptions of human dignity lead to two intractable positions in debates on future-facing bioethics.

3.5 Conclusion to chapter two

This chapter has laid the groundwork for my claim that there are two incompatible conceptions of dignity at play in debates about bioethics, which can both be described as a complex of dignity as a quality and human dignity. My disambiguation of dignity has shown that although the concept is ambiguous, it does not resist specification and is therefore not hopelessly vague. I have argued in this chapter that dignity as we find it in bioethics policy is best understood as a complex of both individual and human elements; to have true dignity as a quality, we have to appeal to a concept of human dignity. This makes my taxonomy of dignity substantially different from the usual approach because it is a lot less fine-grained; human dignity is usually distinguished from dignity as a quality in both importance and in kind, whereas I am claiming that the two are fundamentally interdependent as I showed in my reconstruction of Meyer and Sulmasy's conceptions of dignity as a quality. In my next chapter I will make the case that this way of disambiguating dignity is profitable to practical ethics.

Profitably Distinguishing Between Conceptions of Dignity

In my last chapter, I distinguished between the dignity of rank, dignity as a trait and human dignity. After walling off the dignity of rank, I introduced two different elements of dignity of a trait, which are presentational dignity and dignity as a quality. I argued that presentational dignity does not have any moral weight because it can be false. I then introduced two different conceptions of human dignity; one based on equal autonomy, and the other on humanity. I argued that the former is in accord with liberal principles, and the latter is conservative.

In this chapter, my aim is to argue that the two levels of distinction I made in the previous chapter, between dignity as a quality and human dignity, and between two conceptions of human dignity, can be used profitably in future-facing bioethics. I will take a comparative approach; comparing my concept of dignity with that of a prominent critic of the way the concept is used in bioethical discourse, and with a rival concept of dignity. I will then move from comparison to interpretation, using my disambiguation of dignity into autonomy-based and humanity-based to interpret discussions of an issue in bioethics where dignity is being used on both sides.

4.1 Stephen Pinker's "The Stupidity of Dignity"

In this section I will address what is surely the most vitriolic assault on the use of the concept of dignity in bioethics to have yet been published – Stephen Pinker's "The

Stupidity of Dignity”.¹ I have chosen to focus on Professor Pinker's article in particular, rather than one written by an academic philosopher, because its publication was heralded by non-academic transhumanists as a definitive answer to the question of how to understand the argument that the transhumanist project threatens human dignity. It was extensively republished on transhumanist websites and greeted with universal approval, yet as I will explain, Pinker's article represents an inadequate interpretation of the arguments biocons have put forward around dignity and biotechnological enhancements.

In his article, Pinker claims that dignity is being used to justify “an obstructionist bioethics” on the part of the religious right and hardline bioethical conservatives, but in fact dignity is unsuitable as a foundation in bioethics because it is a “squishy, subjective notion”, which yields contradictory conclusions:

We read that slavery and degradation are morally wrong because they take someone's dignity away. But we also read that nothing you can do to a person, including enslaving or degrading him, can take his dignity away. We read that dignity reflects excellence, striving, and conscience, so that only some people achieve it by dint of effort and character. We also read that everyone, no matter how lazy, evil, or mentally impaired, has dignity in full measure.²

I will first demonstrate that where Pinker uses “dignity”, he should be interpreted as referring to *presentational* dignity, not dignity as a quality or human dignity as I have described them. Presentational dignity has no moral weight for biocons, meaning that Pinker's critique of dignity does not apply to their position.

4.1.1 Reconstruction of Pinker's concept of dignity

Pinker starts his analysis of the concept of dignity by claiming that it is *relative*. By this, he means that what a person judges to be dignified will change depending on both the cultural context that person is in – he gives the example that “In olden days, a glimpse of stocking was looked on as something shocking”. Also, that a person's own individual preferences will determine whether he sees a given action as undignified, even if those preferences are not widely shared in society.

The examples Pinker gives of relative dignity show that he is working with a presentational sense of the concept – the nobles who considered it beneath them to

¹Pinker, 2008. Although his article was originally published in The New Republic, it is no longer listed on their database. As a result, the paragraph numbers cited here refer to the transcript available on Pinker's personal website at <http://philpapers.org/rec/PINTSO-2>.

²Pinker 2008, para. 19.

pick anything up off the floor are concerned with appearing undignified in front of others. Presentational dignity is relative; different cultures will have different ideas of what dignity looks like. Dignity as a quality, by contrast, picks out something specific to an individual's character. Different cultures may place different importance on this quality of dignity relative to other traits, but what the quality of dignity picks out – that inner core of “tempered steel” – remains the same. When he claims that dignity is relative, Pinker must be referring to presentational dignity rather than dignity as a quality. The second quality that Pinker describes dignity as having is that it is fungible, meaning that it can be lost or gained. Pinker gives examples of instances where we choose to give up our dignity for the sake of some other value like our health or pleasure:

Most pointedly, modern medicine is a gauntlet of indignities. Most readers of this article have undergone a pelvic or rectal examination, and many have had the pleasure of a colonoscopy as well. We repeatedly vote with our feet (and other body parts) that dignity is a trivial value, well worth trading off for life, health, and safety.³

That dignity is so easy to give up, Pinker argues, contradicts the biocon claim that “dignity is a sacred value, never to be compromised”.

Pinker is making use of the idea of presentational dignity when he discusses dignity's fungibility. It is true that in our society, we sometimes have to choose to do things that we feel are undignified, because this is the only way to get what we want – Pinker gives examples of how dignity is traded for pleasure, health and safety, but it can also be traded for more dignity or dignity in the longer term.⁴

By contrast, dignity as a quality is not fungible in the way that Pinker describes – we don't give up the dignity of our character when we subject ourselves to medical procedures, just our presentational dignity. The paragons of dignity I discussed in chapter 3.3, Aung San Suu Kyi, Martin Luther King and Gandhi, were all able to withstand hardships and attempts to humiliate them without losing their essential dignity as a quality.

Finally, Pinker argues that dignity can be harmful:

³Ibid., para. 22.

⁴Pinker states that “[d]offing your belt and spread-eagling to allow a security guard to slide a wand up your crotch is undignified”, but that we allow it to happen for our safety; I would contend that a major reason we allow such intrusion into our privacy, at least in the UK, is that “making a fuss” in front of a crowd of strangers is seen as even more undignified than the TSA's “enhanced pat-down” procedure. A similar argument can be found in Meyer's (1989) “Dignity, Rights and Self-Control” where he gives the example of a “bumptious man” who does not appear to be dignified despite repeatedly and loudly claiming that he is, and that his dignity entitles him to rights.

Every sashed and be-medaled despot reviewing his troops from a lofty platform seeks to command respect through ostentatious displays of dignity. Political and religious repressions are often rationalised as a defence of the dignity of a state, leader, or creed: Just think of the Salman Rushdie fatwa, the Danish cartoon riots, or the British schoolteacher in Sudan who faced flogging and a lynch mob because her class named a teddy bear Mohammed. Indeed, totalitarianism is often the imposition of a leader's conception of dignity on a population, such as the identical uniforms in Maoist China or the burqas of the Taliban.⁵

If dignity can be harmful, and ought to be given up when it threatens the safety, wellbeing or freedom of individuals, then dignity cannot be a foundation for bioethics in the way that Pinker characterises the biocons as claiming. Once again, Pinker is making use of presentational dignity, not dignity as a quality. Having dignity as a quality, whether it is understood as Meyer's dignity as a virtue or Sulmasy's inflorescent dignity, depends on having a good moral character. Such a person would not become a despot, or impose a totalitarian regime. The only kind of dignity such a person can have is presentational, because it does not depend on anything about the person's character.

In all cases, Pinker is discussing presentational dignity, not dignity as a quality or human dignity. I will now argue that he is mistaken to attribute this kind of dignity to Kass and the biocons.

4.1.2 Critique of Pinker

The conception of dignity that Pinker offers corresponds to what I have called presentational dignity. In chapter 3.3, I argued that because presentational dignity can be false, it is a bogus sense of dignity. Furthermore, this is not the conception of dignity that we find in biocon or Catholic thought, as I will now show.

In chapter 3.2, I used the Catechism of the Catholic Church as an example of human dignity. The concept of dignity we find in the Catechism is possessed equally by all humans, cannot be lost or gained or willingly abandoned no matter how badly a person is treated, and is possessed intrinsically, without reference to any capacities an individual might have. It is not relative and not fungible. Nor is it the kind of dignity that the despot is making use of when he imposes matching uniforms on his citizens, so it is also not harmful in the sense Pinker is meaning. Pinker does relate Catholic doctrine to dignity, however:

[T]he Church's franchise to guide people in the most profound events of their lives – birth, death, and reproduction – is in danger of being undermined when

⁵Ibid., para. 23.

biomedicine scrambles the rules. It's not surprising, then, that "dignity" is a recurring theme in Catholic doctrine: The word appears more than 100 times in the 1997 edition of the Catechism and is a leitmotif in the Vatican's recent pronouncements on biomedicine.⁶

Pinker acknowledges that the biocon contributors to "Human Dignity and Bioethics" do not directly make use of Catholic doctrine, but he does point out that there is a strong association between being Judeo-Christian in outlook and being a biocon, which suggests religion is informing their arguments. Now I will argue that when the biocons are considered by themselves, they are also not making use of presentational dignity. Leon Kass, for example, makes use of dignity as a quality and human dignity on the conservative conception.

The single quote from Kass that Pinker offers does appear to show him making use of presentational dignity:

Worst of all from this point of view are those more uncivilised forms of eating, like licking an ice cream cone – a catlike activity that has been made acceptable in informal America but that still offends those who know eating in public is offensive ... Eating on the street – even when undertaken, say, because one is between appointments and has no other time to eat – displays [a] lack of self-control: It beckons enslavement to the belly ... Lacking utensils for cutting and lifting to mouth, he will often be seen using his teeth for tearing off chewable portions, just like any animal ... This doglike feeding, if one must engage in it, ought to be kept from public view, where, even if we feel no shame, others are compelled to witness our shameful behaviour.⁷

It is puzzling, here, why Pinker chooses this particular quote from Kass to represent his thought on dignity, when he has written so extensively in documents for the President's Council. This quote actually comes from a book called "The Hungry Soul: Eating and the Perfecting of our Nature", published in 1999, which Amazon lists under the Cooking section of its store.⁸ Furthermore, Kass never mentions the word "dignity" in relation to his points about eating in public. In assuming that Kass must be talking in terms of dignity when he talks about public shame and acting in an animal-like way, Pinker is perhaps demonstrating his conflation of presentational dignity and dignity as a quality. Only dignity as a quality can be seen as part of Kass' arguments around the subject in bioethics. Restricting our inquiry to Kass' contribution to "Human Dignity and Bioethics" and his work through the President's Council yields a different conception.

⁶Ibid., para. 17.

⁷Ibid., para 12.

⁸Kass 1999.

Pinker discusses Kass in relation to the book “Human Dignity and Bioethics”, which he mentions in the first paragraph of his article. Kass' most important point in his contributing chapter of this book is his distinction between “two equally important but sometimes competing ideas of human dignity: the basic dignity of human being and the full dignity of being (actively) human, of human flourishing.”⁹ He claims, as I argued in my last chapter, that the latter rests on the former. Some arguments emphasise one at the expense of the other, and “defenders of one aspect of dignity sometimes ignore the claims made on behalf of the other”, but both are important for a robust conception of dignity that can respond to issues in future-facing bioethics.¹⁰ The basic dignity of human being is what I have called human dignity; not the kind of dignity that is relative or that can be lost in an individual. It is related to the intrinsic worth of the natural human life:

The account of human dignity we badly need in bioethics goes beyond the said dignity of “persons” to embrace the worthiness of embodied human life, and therewith of our natural desires and passions, our natural origins and attachments, our sentiments and repugnances, loves and longings.¹¹

He articulates his fear about the technological threat to humanity in terms of dignity:

At stake are the kind of human being and the sort of society we will be creating in the coming age of biotechnology. At stake are the dignity of the human being – including the dignity or worth of human activity, human relationships, and human society – and the nature of human flourishing.³⁰²

The crux of Kass' problem with advances in novel biotechnologies is that he sees the pursuit of happiness as potentially coming at the cost of something that, if we had thought about it in time, we would have seen as more valuable than happiness. This is “the dignity of being human”. The dignity of being human corresponds to dignity as a quality, specifically as inflorescent dignity. This kind of dignity can be lost; if human beings are deprived of their natural desires, origins and attachments, they will lose this kind of dignity.

Elsewhere, Kass argues that the dignity of human relationships is not purely presentational, nor are our natural desires and origins. Childbirth, for example, is a natural process, but it clearly lacks presentational dignity:

⁹Kass 2008, p. 299.

¹⁰Ibid., p. 304.

¹¹Ibid., p. 313.

³⁰²kassbioethics

What is so dignified in the fact that we rise from the union of egg and sperm, grow as an embryo and foetus in the darkness of a womb, or enter the world through the birth canal ... However physically undignified the sex act or the deed of childbirth, there is something deeply noble in the self-sacrifice that is the inner meaning of sexuality itself.¹²

Being physically undignified, then, does not make the natural process of conception and birth something we ought to avoid; it is part of the “natural facts of begetting”, which are essential for humans to live fully flourishing lives. Kass is concerned with the quality of human lives, not with their appearance.

Neither Kass nor the Catholics are concerned with presentational dignity, but, although he does not make this distinction or use the term explicitly in his article, it appears that Pinker has something like presentational dignity in mind when he charges dignity with being “hardly up to the heavyweight moral demands assigned to it.”

To conclude this argument, I have shown that Pinker's criticism of dignity as a concept loses its force when we pay adequate attention to the difference between presentational dignity, dignity as a quality and human dignity. This is because the biocons are not making use of the conception that Pinker is criticising. Kass' conception of dignity is about human flourishing, not merely whether individuals can maintain their presentational dignity.

This shows that my disambiguation of dignity is a profitable way to analyse the concept, because it allows us to identify errors and omissions in the way critics of the concept characterise the meaning of dignity. It also allows us to be more charitable towards dignity more generally, which is a point in my favour if I am to offer a reconstruction of how dignity is used in debates. As I will show in later chapters, adopting a liberal interpretation of dignity does not lead to rejecting the transformative potential of the Biotech Revolution.

4.2 Nordenfelt's alternative dignity of identity

Having established that my disambiguation of dignity is profitable in addressing criticism of the concept of dignity, I will now move on to demonstrating that it is more useful in future-facing bioethics than an alternative; Lennart Nordenfelt's “the dignity of identity”. Nordenfelt is the first ethicist to develop a separate conception of the dignity of identity, which shares features with both human dignity and dignity as a trait. He developed it as part of a project called “Dignity in Older Europeans”, as a way to

¹²Kass 2002 para. 34, found at <http://www.unav.es/cdb/unbrave.html>.

account for the ideas that ageing and disability are threats to dignity *per se*, and that even the very cognitively impaired and senile individual's dignity can be violated by disrespectful treatment, despite them not being able to understand or notice.

Nordenfelt's theory can be seen as similar in structure to my own because he relates dignity as a quality, rather than the mere feeling or experience of dignity, to an objective value. However, where I am taking dignity as a quality to refer to a specific kind of trait an individual has – see the quote from Kolnai in chapter 3.3 – Nordenfelt claims that an individual's *identity* is what has a dignity.

Nordenfelt's theory is important because he relates dignity to integrity and autonomy, a relationship we also find in bioethics policy documents. For example, Article 1 of the Council of Europe's protocol on human transplantation states:

Parties to this Protocol shall protect the dignity and identity of everyone and guarantee, without discrimination, respect for his or her integrity and other rights and fundamental freedoms with regard to transplantation of organs and tissues of human origin.¹³

Here dignity is related to identity and integrity in a way that is not made explicit in Meyer or Sulmasy's conceptions of dignity as a quality, or in my definition of human dignity. It would therefore be profitable for me to demonstrate that my disambiguation can accomplish a more satisfactory account of the appropriate issues than Nordenfelt's. This is what I will attempt here, first by reconstructing Nordenfelt's position and then by claiming that respect for the dignity of identity is better conceptualised as preserving individual feelings of self-respect related to integrity and identity, and also respecting human dignity by treating everyone equally in certain regards. There is no need to further conceptualise dignity by introducing identity and integrity as a separate locus.

Nordenfelt starts with a discussion of humiliation, and claims that in order to account for the wrong of humiliation, we need to appeal to the idea that identity has a dignity:

So if there is a case of dignity here it is neither the dignity of merit nor the dignity of moral stature. It must be a dignity attached to the person's integrity and identity as a human being.¹⁴

Nordenfelt refers to the dignity of identity as “the dignity that we attach to ourselves as integrated and autonomous persons, persons with a history and persons with a future with all our relationships to other human beings.” By “objective dignity of identity”, I

¹³Council of Europe 2002.

¹⁴Nordenfelt 2004, p.75 para. 3.

am taking Nordenfelt to mean that an individual's identity – understood in the social sciences context of having a persistent and recognisable self, not the analytic philosophy context – has an intrinsic value (dignity) that should be recognised by everyone, even if the subject themselves does not recognise it. The value of a subject's identity is not contingent on any beliefs a subject has about themselves, hence it is objective.

After accounting for how we can be wronged as the motivation for his discussion of the dignity of identity, Nordenfelt goes on to argue for its objectivity. He claims that although humiliation can be understood as a feeling, like the loss of respect for oneself, appealing to the dignity of identity means that the actions that cause a person to feel humiliated can be accounted for without reference to feelings at all. Nordenfelt substantiates this point by describing the wrongs that are done to a person when they are treated cruelly:

The cruel person can succeed in certain things apart from humiliating us. He can intrude into our private sphere; he can physically hurt us; he can restrict our autonomy in many ways, for instance by putting us in jail. All these changes are extrapsychological. They do not just entail feelings of worthlessness or of humiliation. Intrusion in the private sphere is a violation of the person's integrity. Hurting a person is not only violation of integrity; it also entails a change in the person's identity ... The person's autonomy can be tampered with, when the person is prevented from doing what he or she wants to or is entitled to do. Finally, insulting, hurting or hindering somebody entails excluding this person from one's community.¹⁵

This gives us four features of wrongdoing that Nordenfelt is relating to the dignity of identity:

1. Violation of physical integrity;
2. Restriction of autonomy;¹⁶
3. Restriction of access to social relations;
4. Change in our identity.

The first three items in this list rest upon the last. The central claim that Nordenfelt is making, which defines his concept of the dignity of identity, is that dignity is lost when identity is changed in any of the ways listed above. Nordenfelt then goes on to give examples of how individuals can lose the dignity of their identity when they are the victims of certain kinds of circumstances, even when there is nobody to blame and no cruel treatment has happened. Nordenfelt is claiming that dignity is not just a principle that can be violated by deliberate action, it can “come and go ... as a result of changes

¹⁵Ibid., p.75 para. 6

¹⁶Prima facie it is not clear how privacy has anything to do with dignity, so I am assuming that Nordenfelt intends to relate privacy to autonomy.

in the subject's body and mind".¹⁷ The first example is of a victim of an accident.

When one has had one's face badly damaged in a car accident, one's physical identity has been shattered. When, in the same kind of case, one has lost one's legs, one's physical identity is radically transformed and one's autonomy has been extremely diminished. A disabled person is almost per definition a person with restricted autonomy.¹⁸

The first reason Nordenfelt is giving for his claim that disablement can violate the dignity of identity is that it entails the disruption of a person's physical integrity. Someone who has lost their legs is very definitely physically different after the accident than they were before. Similarly, someone who has been facially disfigured physically no longer looks like they used to. Secondly, in many cases autonomy in the sense of practical independence is restricted; a person cannot do what they were able to do before, or what non-disabled people are able to do. In relating the dignity of identity to autonomy, Nordenfelt can be understood as claiming that individuals who have more autonomy have identities with more dignity. Those whose autonomy is restricted, whether by disability or cruel treatment, are forced to suffer a loss of their previously dignified identity.

A couple of paragraphs further down, Nordenfelt brings in the concept of integrity:

Disability and restricted autonomy has a further consequence for a person's identity and thereby dignity. The sick and the old who cannot move about and take care of themselves are relegated to other people, the carers. The risk of intrusion into one's private sphere, i.e. of a violation of one's integrity, then becomes high.¹⁹

Nordenfelt restates his point that a loss of autonomy means a less dignified identity, and then goes on to claim that the dignity of identity is also at risk because of the higher chance of violation of one's integrity. Like with autonomy and identity, we can see Nordenfelt as arguing that an individual whose integrity has been violated has less of the dignity of identity than an individual whose integrity remains intact.

At this point there are two separate conceptions of integrity at work: physical integrity and privacy. Nordenfelt uses both in the final example he uses to argue for the existence of the dignity of identity:

Consider further the case of the unconscious or the late stage senile. These persons are not aware of what happens around them. Nevertheless, we would say

¹⁷Ibid., p.80 para 1.

¹⁸Ibid., p.76 para. 3.

¹⁹Ibid., p.76 para. 5.

that their dignity could be violated. They could be, and unfortunately often are, treated disrespectfully. This disrespect is not noticed by the client. The client does not suffer for this reason. The assumption of an objective identity allows us to explain why the dignity of the client is still violated. The carer may have left the client nude for some time when others could observe him or her. Then the client's privacy and integrity have been tampered with.²⁰

Nordenfelt argues that whether dignity is violated does not depend on whether an individual is capable of having a sense of dignity, or of personal identity, as a late-stage senile person would have neither. He argues that if a client's privacy and integrity are “tampered with”, that person is disrespected, and this disrespect can be accounted for as a violation of dignity. The “assumption of an objective identity” allows us to account for disrespect in this way, meaning that there is a connection between having an objective identity and there being something disrespectful to dignity about having one's privacy and integrity tampered with.

Nordenfelt's argument takes the form of an appeal to intuition: he gives examples of people who appear to have lost something valuable, which he claims is their dignity, and who appear to have also lost their identity, and argues that identity must be the dignity-conferring element that has been lost. People who have “unshattered” identities appear to have more dignity than those who have lost their identities, therefore there is a dignity of identity.

I will now critique Nordenfelt's argument on three points. First, I will argue that Nordenfelt rests the dignity of physical integrity on an appeal to autonomy. Second, I will argue that Nordenfelt's conception of autonomy is problematic and finally, I will argue that the connection between dignity and identity is inadequately justified.

Nordenfelt claims that a violation of integrity is one of the features that make up a violation of the dignity of identity. One reason that becoming elderly and infirm leads to a loss of dignity is that it increases the risk of a violation of integrity.

He restates this relationship in the next paragraph, about the late-stage senile subject (see the quote above). The way to account for lost dignity in these cases is to claim that physical integrity has been violated, in this case by being left naked.²¹

So, Nordenfelt can be interpreted as claiming that *an objective loss of physical integrity entails a loss of the objective dignity of identity*. Whether a person believes themselves to have lost integrity and dignity or not, the relationship holds:

²⁰Ibid., p.77 para. 1.

²¹Charles Foster (2012) gives a similar example in his book on human dignity and bioethics, but he accounts for the sense that the intellectually disabled person has lost dignity in being left naked in terms of human dignity, not identity.

(W)hen a person's integrity and autonomy are tampered with this is typically associated with a feeling of humiliation or loss of self-respect on his or her part. But ... this feeling is not a necessary element in the dignity of identity.²²

I will now argue that this claim is too strong. People can have their integrity disrupted without a loss of dignity. Most people allow others into their “private sphere” when they judge it to be in their best interests. Anyone who has had surgery has allowed another person to disrupt their privacy and their physical integrity because they have decided that there is some good reason for it. These reasons do not need to be related to health or the preservation of integrity over the long term; people have surgery for cosmetic reasons and in some cases, they radically alter their appearance just as much as if they had been the victim of a disfiguring accident. If the patient consents to the violation of physical integrity, it cannot count as violating their psychological integrity or failing to respect their autonomy.

My second claim is that disruptions of integrity, whether temporary or permanent, can be empowering as well as disabling. It is a sad fact that women who have surgery to enhance the size of their breasts often find themselves with more attention, feeling more “visible” in society and better able to get what they want. Society favours those who conform to ideals; tall people have been shown to be more successful at job interviews, for example, so if I were able to have surgery to make me six foot tall, I would be increasing my power to be successful in choosing the life I want, and in social relations too.²³ Nordenfelt does not address the topic of consensual surgery, focusing only on acts that are, in a sense, beyond consent – accidents and ageing are not something that can be changed by withholding or giving consent.

Furthermore, identity and integrity can come apart. Not all losses of physical integrity are losses of *identity*. A woman who is obsessed with her looks is not losing her identity when she gets cosmetic surgery; not subjectively, and arguably not objectively either – we don't see a woman after elective surgery as a different woman; she goes home and is still recognisably the same person.

In his argument that extreme body modification is not a threat to dignity, Thomas Schramme gives the example of a female archer electing to have one of her breasts removed so that she can excel at her sport.²⁴ Some people even choose to physically disable themselves because they want to align their body with the identity they want to have.²⁵ Simply stating that our identity is related to the way our body looks is not

²²Ibid., p.76 para. 1

²³Judge and Cable 2004.

²⁴Schramme 2008, p. 8.

²⁵Bayne 2005.

enough to justify the claim that when our bodies change significantly for any reason, our identity is changed, and this change in our identity entails a loss of dignity.

Nordenfelt could still argue that despite the gains that individuals like the female archer could be seen to have in control over their lives, there is still a loss of objective dignity that accompanies the disruption of physical identity even if the subject does not see it. Stalking Cat, for example, became famous in body-modification subcultures because of his self-described “spiritual quest” to physically appear as much like a tiger as possible. For him, disrupting his physical integrity was related to feelings of empowerment and aligning his outward appearance to his sense of identity. Nordenfelt could point to a case like Stalking Cat and argue that it illustrates the difference between objective and subjective dignity of identity – although Stalking Cat himself might feel more dignified and have an enhanced sense of identity by getting whiskers implanted in his face, objectively he is less dignified.²⁶

If this is the case, however, it would appear that Nordenfelt is relying on a culturally relative conception of a dignified identity. This is insufficient to ground the claim that the dignity of identity is *objective*; at best, it is not defined separately by each individual, but it still rests on an appeal to cultural norms, which are not universal and need not be recognised by people who don't share the same culture. Stalking Cat, for example, claimed that his quest to physically appear like a tiger was motivated by the spiritual beliefs he has as a member of the Huron tribe of Native Americans. There was a tradition, he claimed, of taking on attributes of one's spirit guide, and his modifications were a part of this tradition. Stalking Cat's claims point to the differences between changes in physical identity that are seen as legitimate and empowering, and those that cause a loss of dignity. Different cultural and political groups define the relationship between dignity and control over one's physical body in different ways, therefore, Nordenfelt's appeal to objectivity to ground the dignity of identity is inadequately justified.

Nordenfelt could avoid this conclusion by claiming that physical integrity only diminishes the dignity of identity when it also diminishes autonomy in some sense. Doing so, however, would mean he could not use integrity to account for his example of the late-stage senile patient, because such patients do not have autonomy.

Nordenfelt claims that there is an objective harm to the dignity of identity going on, if we mistreat these late-stage senile patients by disregarding the boundaries of their integrity:

The assumption of an objective identity allows us to explain why the dignity of the client is still violated. The carer may have left the client nude for some time when

²⁶Casavant 2005.

others could observe him or her. Then the client's privacy and integrity have been tampered with.²⁷

These patients, as Nordenfelt points out, do not have autonomy in the sense of being able to choose and advocate for themselves and their interests. As I argued above, disruption of integrity is only a harm to dignity if it is not consensual; i.e. if it bypasses a person's express wishes – this is why elective surgery is not a harm to the dignity of identity, but an accident is. Consent can only matter morally if consent is possible; we can justify this by appealing to the claim that ought must imply can. However, since they have no autonomy, consent is not possible for late-stage senile patients. Therefore, disruption of these patients' bodily integrity cannot be consensual or non-consensual. This means that it cannot be a harm to their dignity in an objective sense.

Nordenfelt could counter this by saying that we can look at what the patients would have consented to if they could – what can we reasonably expect given basic background assumptions. This may be of use in some ways because some personal boundaries are practically universal, like the desire to be clean, but more nuanced judgements would require caregivers to know details about the patient's subjective identity. This is in contrast with Nordenfelt's claim that the dignity of identity is objective.

I will now argue that Nordenfelt's application of the concept of an objective identity to the late-stage senile patients collapses into human dignity, which he refers to as *Menschenwürde*.²⁸

Nordenfelt describes the dignity of identity as objective in the introduction to his argument, but later refers to identity in particular as objective, as in the quote above where he states “The assumption of an objective identity allows us to explain why the dignity of the client is still violated”. This is to contrast the salient sense of identity from feelings of identity and beliefs about the way others see us; the late-stage senile person has no such feelings, but Nordenfelt uses the concept of identity to explain why their dignity can be violated.

The concept of an “objective identity” is not defined by Nordenfelt in his argument. Given that the phrase is only used in Nordenfelt's discussion of the late-stage senile, it could be interpreted as a claim that humans have the objective identity of *human being*, which persists whether they are senile or not, meaning that an objective identity is something that we all can be recognised as having just because we are biologically human, and not because of any ability we have as individuals. The problem with this is

²⁷Ibid., p.77 para. 1.

²⁸Ibid., p.69 para.1.

that the shared possession of such a fundamental identity is Nordenfelt's justification for *Menschenwürde*, a type of dignity that cannot be lost or violated, and grounds “basic rights (in relation to our fellow human beings) with regard to integrity and autonomy.” Nordenfelt clearly states that he intends the dignity of identity and *Menschenwürde* to be separate concepts, so they cannot share a definition. In the case of the late-stage senile, appealing to this basic shared humanity obviates the dignity of identity.

The idea that an individual's identity matters in terms of their dignity in a weaker, subjective sense, however, is defensible. Nordenfelt's examples of the car crash victim and the ageing woman are undoubtedly suffering from a diminished *sense* of their own dignity that has to do, in part, with feeling that they are in a state that they cannot control. Being newly-disabled in an accident does often bring a sense of powerlessness that can lead to a loss of the sense of oneself as a dignified human being.²⁹ It would be more practically useful to dispense with Nordenfelt's claim that the dignity of identity must be objective, and instead see the demand that an individual's dignity be respected in terms of attending to those unique needs and attributes of each individual that make up their personal, subjective *sense* of identity. If we do this, then the concept of the dignity of identity illuminates an important facet of patient care, about the need for cultural and individual sensitivity in preserving a patient's personal sense of integrity, identity and self-respect.³⁰ If we modify Nordenfelt's concept in this way, however, it is no longer usable in the case of many late-stage senile patients who no longer appear to have such self-concepts.

This concludes my argument about Nordenfelt's conception of integrity. I will now move on to arguing that his conception of autonomy is flawed. This is because he equates autonomy with a substantive power for personal independence, which is an inadequate conception of autonomy.

Nordenfelt claims that autonomy is one of the “facts that ground the dignity of identity”, and that the definition of restricted autonomy is “when the person is prevented from doing what he or she wants to or is entitled to do.” Becoming disabled restricts autonomy because it restricts the number of things a person can do that she might want to do, as in the example of someone who has lost their legs whose autonomy has been deleteriously impacted. Autonomy, then, can be understood as a

²⁹Brian Clark's (1978) play, “Whose Life Is It, Anyway?” illustrates this through the character of Ken, a sculptor who finds himself paralysed from the neck down. Ken feels stripped of the artistic abilities and personal independence that he defined himself and his sense of self-respect with, and argues that the only way for his dignity to be respected is to be granted his request for passive euthanasia.

³⁰There is some debate over whether an individual's sense of their own importance as a person is best captured by the concept of dignity or of self-respect. Daniel Statman (2000) argues for the latter, whilst Avishai Margalit (1996) defends the former.

substantive personal power to do what one chooses.

Simply seeing autonomy as the power to get what one wants does not account for how restricting autonomy diminishes the dignity of identity because some such restrictions are not seen as dignity-violations, whereas others are. There are instances where giving up one's personal independence is seen as dignified even when it is accompanied by a loss of, or change in identity. For example, choosing to spend one's life caring for a disabled child, at the cost of one's own financial and personal goals, is not seen as lacking in dignity even though it can represent a painful change in identity – many parents of disabled children are confronted with a grieving process for the life they wanted to have, as well as the life they wanted for their child.³¹ The parents are faced with either restricting their autonomy, or not taking care of their child. In this case many people would judge the latter course to be the least dignified. In a similar way, victims of disabling accidents are faced with the loss of the life they had planned, but they also have the choice to accept their new limitations and redefine themselves.

In fact, nobody gets to choose everything they would choose to do in ideal circumstances. Everyone is dependent, and everyone has physical, economic and psychological limitations. On some definitions of autonomy, disability merely redraws the circle of actions a person can do, it does not prevent self-governance. Independence is not the same as autonomy; someone who has a personality disorder preventing them from making friends, who has to rely on themselves for everything, does not have *more* autonomy. Their identity as an independent person is no more dignified than a housewife who is dependent on their family for everything. In fact, it could be argued that the housewife is more autonomous at the second-order of preferences, because she has chosen to surrender her control and independence, whereas the pathologically lonely man has not. So when Nordenfelt claims “A disabled person is almost per definition a person with restricted autonomy”, he is mistakenly equating autonomy with independence. More independence does not lead to more of the dignity of identity, so Nordenfelt should not be construed as claiming that restricting autonomy diminishes the dignity of identity.³²

To summarise, I have argued that the importance of physical integrity for identity is contingent on autonomy, meaning that only those violations of integrity that have not been freely chosen can be called violations of the dignity of identity. I have argued that Nordenfelt's conception of autonomy is flawed because it reduces to substantive

³¹Copley and Bodensteiner 1987.

³²See Christiansen (1974) for a groundbreaking discussion of the role of interdependence in maintaining the experience of dignity for elderly people, and Agich (2007) for an argument that an extreme focus on dignity as independence is inadequate for making policy decisions in healthcare.

independence, and having more of this does not track having a more or less dignified identity. The way he uses these concepts fits with a subjective feeling of self-respect much more coherently than with an objective conception of the dignity of identity; people do feel more dignified when they have a sense of cohesive, authentic identity and when they feel that others around them respect this identity. . Nordenfelt's arguments about the late-stage senile patients are better understood in terms of the dignity he calls *Menschenwürde* than as relying on an objective identity. Finally, the idea of an identity that is objective is reducible to a statement about cultural norms and values rather than universal ones, so it does not hold up.

Under my disambiguation, the dignity of identity is related to dignity as a quality; the ability to develop and express a dignified character that is underpinned by a belief in the equal moral status of all human beings. I would argue that respect for human dignity gives us a prima facie duty not to treat senile people in an inhumane way. Dignity as a quality can provide an argument for this too, because people who are late-stage senile can still flourish as the kind of individuals they are, even if they cannot be a normal adult. There is also a duty to treat these patients with respect simply because our own dignity as a quality in part depends on how we treat others who are in our care – recall my example of the Mafia Don from chapter 3.3, which showed that we cannot be cruel or unvirtuous whilst maintaining dignity as a quality.

My disambiguation can account for why some disabling accidents appear to bring with them a loss of dignity in normal adults too; when we are made to feel vulnerable, we feel unequal to others, which is related to human dignity. Also, when individuals are in an accident or realise they are losing their physical capabilities due to ageing, this can make them feel dependent on others, which is incompatible with many cultures' conceptions of dignity as a quality – it is difficult, though not impossible, to be like “tempered steel” when one is paralysed from the waist down.³³ I can conclude that dignity as a quality is not best understood as a dignity of identity, and the dignity of identity is not a more coherent or defensible conception than my own.

4.3 Two conceptions of human dignity: the case of Ashley X

In this final section, I will argue that my distinction between two conceptions of human dignity – one based on autonomy and equality, and one based on humanity – is

³³Seeing dignity as a quality as the important concept here, rather than an objective dignity of identity can also explain why some cultures see ageing as a loss of dignity for a person, whilst others perceive it as dignifying. Getting older can be seen as getting wiser and more virtuous as the fires of youth are dimmed, or it can be seen as a slow slide into powerlessness. In both cases, a set of virtues (or criteria for flourishing) are referenced.

profitable because it allows us to analyse arguments in bioethics. I have chosen one example in particular that highlights human dignity in particular.

The case of Ashley X spawned a great deal of critical literature at the time because it represented a new and especially invasive direction in the care of the severely intellectually disabled, giving parents unprecedented control over the biological life of their child.³⁴ Understanding the case of Ashley X as an argument between the two conceptions of human dignity establishes these conceptions as a valid way to look at debates in bioethics.

Example 8: Ashley X In Seattle in 1997, a girl was born with a multitude of profound physical and intellectual disabilities. Her prognosis was that she could live out a normal lifespan, but that she would never develop mental abilities above that of a three month old baby. This girl was named Ashley, and was taken home and cared for by her parents, who nicknamed her their “pillow angel”.³⁵ When Ashley began showing signs of early-onset puberty, her parents enlisted the help of doctors who performed a number of procedures including a hysterectomy and oestrogen therapy. The motives of Ashley's parents and her surgical team were twofold – minimising Ashley's pain and making her care at home easier. Reducing Ashley's overall weight using oestrogen therapy would prevent pressure sores and removing her womb would prevent her from having menstrual cramps, so the chances of her being in pain and unable to make it known would be greatly reduced. Making Ashley smaller through the oestrogen therapy and making her care easier through removal of her breast buds would make it easier for her parents to transport her and care for her at home, so that she would not have to be moved into a group care facility.

When news of the “Ashley Treatment” made it to the public, the reaction was polarised. One side saw the treatment as a way to increase Ashley's quality of life, and the other saw such an interference with her physical development as a violation of her civil rights, an injury to her dignity, and to the idea of equal dignity for disabled people and the able-bodied.³⁶

The first thing to establish is that Ashley can only have human dignity; the special moral status shared by all humans equally, regardless of what they can do. She can't have access to any kind of dignity that is related to how a person acts. Lacking the cognitive

³⁴Newsom 2007.

³⁵Ashley's parents have written a blog about their experiences and their response to critics, which can be found at <http://www.pillowangel.org>.

³⁶See Diekema and Fost (2010) for an analysis in favour of Ashley's treatment, and Kittay (2011) for a survey of the arguments against it.

abilities to form beliefs about equality, she cannot express dignity as a virtue in Meyer's sense. She also cannot have the same kind of inflorescent dignity as people without severe intellectual disabilities; Ashley can be given an environment where she can be the best she can be, but she'll never meet the standards of an excellent example of humankind because of her limited abilities. Claims about whether Ashley's treatment is undignified, then, can only be claims about Ashley's human dignity. As George Dvorsky puts it, "If the concern has something to do with the girl's dignity [*as a quality - JM*] being violated, then I have to protest by arguing that the girl lacks the cognitive capacity to experience any sense of indignity."³⁷ This is why I have selected this case study; it allows us to focus more precisely on how there are two different conceptions of specifically human dignity at work.³⁸

4.3.1 Autonomy-based Dignity and the Ashley Treatment

The Disability Rights Education and Defence Fund, a California-based non-profit organisation campaigning for equality in law for disabled people, claimed in a press release that the Ashley Treatment ought to be condemned because the "personal and physical autonomy of all people with disabilities [should] be regarded as sacrosanct."³⁹ and that Ashley's treatment violates her autonomy and integrity, as well as failing to respect her personhood.

In this section, I will look at how the arguments around the permissibility of the Ashley Treatment use the principle of autonomy, and how this is related to dignity. Recall from chapter 3.4 that Meyer's conception of human dignity, which I characterised as a liberal conception, is based on the idea that all human beings have equal human dignity because they have equal freedom and autonomy.

The first question to ask is whether Ashley's treatment is undignified because she cannot *consent* to treatment. In medical ethics, securing informed consent is of paramount concern, in part because of the invasive nature of medical treatment, and in part because consent represents a levelling-out of the power imbalance between a doctor and her patient.⁴⁰ Whilst the doctor has greater knowledge and is able to inform her patient, she cannot override the patient's authority over the way his life health go

³⁷Quoted in Liao et al, 2007, p. 19.

³⁸Although Ashley's parents appear to believe that her treatment does increase her dignity. They claim, on their website (see footnote 13) that "Furthermore, 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." As they offer no description of dignity, I cannot suggest a reconstruction.

³⁹Available at:

<http://dredf.org/public-policy/medical-ethics/modify-the-system-not-the-person/>.

⁴⁰Beauchamp and Faden 1986.

and his capacity to make such decisions.

Securing informed consent prevents a doctor from violating her patient's dignity by bypassing his autonomy. In a recent book, Jürgen Habermas argues that altering an embryo's genetic makeup for therapeutic reasons, to remove the gene for Huntington's Chorea, for example, could be permissible if we could reasonably presuppose consent; if the person that embryo became would have consented to the alteration.⁴¹ Using a similar thought, some supporters of Ashley's treatment have claimed that it can be seen as respectful if it was done after considering whether it is something that Ashley herself would have consented to, if she were able. Proponents of Ashley's treatment argue that the benefits to her comfort and wellbeing are such that the risks would be seen as worth taking to any rational person, just as we could reasonably presume that an adult would consent to an intervention in the embryo he developed from to remove the gene for Huntington's.

There are two differences between Ashley's case and Habermas's example. Firstly, Ashley's treatment is not curative like removing a gene for Huntington's, it is palliative. If the treatment were aimed at giving her increased functioning, or better yet, the capacity to consent, the claim that what was being done amounts to a gross indignity may be mitigated. Secondly, because Ashley will never be in a position to offer an opinion, asking what she would have wanted or what we would want in her situation is ungrounded. Eva Kittay criticises the relationship between dignity and autonomy for this reason.⁴² Using the example of her own profoundly disabled daughter, Sesha, Kittay says that it is often impossible to really know what a disabled person's preference would be. It could be that, in Kittay's example, Sesha would not have minded being wheeled from the shower room to her bedroom wrapped in a towel. She may, on the other hand, have found it deeply embarrassing and disrespectful.

Now it may be sufficient to say that the director who objected to her treatment makes a wager. As long as there is any possibility that Sesha understands her situation, is self-conscious of her position, and would choose otherwise, it is worth the added measures to respect the most likely choices one can conjecture she would make. The director wagers that Sesha does understand and would choose as she (the director) says she would. Perhaps, however, she makes her decision based not on such a conjecture, but on the view that irrespective of what Sesha understands, and by virtue of being a young woman who is capable of being exposed in such ways, it is a violation of her human dignity to be treated in this way.⁴³

Similarly, Ashley herself cannot tell us whether she would have wanted her own growth

⁴¹Habermas 2003, p. 52.

⁴²Kittay 2005.

⁴³Ibid., p. 105.

stunted and womb removed; we cannot respect her by trying to consider the choices she would have made if she could, only by seeing that there may be something about her that makes having this treatment wrong.

In fact, it is not obvious that Ashley would want whatever made her the most comfortable. It is possible that she might have wanted to develop normally for the sake of being seen to have equal dignity, despite the pain and hardship it would entail. If the possibility that Ashley might value the natural development of her body because she believed it was necessary for her personal dignity were taken seriously, it would be impossible to tell whether her treatment is what she would choose. Therefore we cannot reasonably presuppose Ashley's consent to her treatment. Habermas' way of extending consent does not work in her case.

Kittay goes on to detail how her own daughter has changed from a child to an adult in recognisable ways, for example her musical tastes developed along “normal” lines, and she developed a new ability to grieve. She concludes that it is possible to claim that despite her global developmental disability, Ashley's doctors and parents are still depriving her of the right to an open future.⁴⁴

A proponent of autonomy-based dignity, could argued that allowing Ashley's mind to develop as normally as possible is respectful of her dignity, because her dignity is based on equality. If any humans have these rights that are based in dignity, all humans must have them, as I showed in my description of the Universal Declaration of Human Rights in the previous chapter. Ashley's future is no less important than anyone else's because of her disability, therefore she ought to have the right to develop into an adult. If the growth attenuation treatment does alter Ashley's brain so that it cannot develop along normal lines like her body cannot – and we have good reason to believe this would be the case because of the role of hormones in maturation – then respect for autonomy dictates that the treatment ought not be permissible.

Finally, despite its importance for the principle of autonomy, consent is not the crucial factor in dignity. We can bring the way that consent fails to account for wrongness out by thinking of a person with all the physical problems Ashley has, but none of the intellectual disability. For example, the idea of a person with a disability like tetraplegia requesting that his legs be removed in order to make him weigh less and be easier for his carers to physically manipulate is also argued as undignified.⁴⁵ The indignity of

⁴⁴The right to an open future is a classical liberal principle first introduced by Joel Feinberg (1992), and later developed by the bioethicist Dena Davis (2001), as part of a description of the specific rights children should be accorded. I will discuss how the right to an open future impacts arguments around the Biotech Revolution in chapters 6 and 9.

⁴⁵Floris Tomasini (2009, p.200) argues that Kantians would see elective amputation as contrary to re-

such a request is not presentational, because it may decrease the need for some invasive personal care; it must be related to dignity as a quality. If consent does not remove the judgement that the radical alteration of the body is undignified whether they are disabled or not, then it seems that consent, and therefore the autonomy it is supposed to guarantee, alone cannot give a complete description of this judgement.

Although trying to consider what Ashley would have wanted does not equate to respect for her dignity, there are other principles that can be used that do amount to it. The principle of beneficence, to name one; Ashley's potential for living a happy and pain-free life is itself a reason to perform the treatment. Respecting autonomy is the paradigm case of respecting human dignity on this conception, but it is not the only important principle, especially where autonomy is absent.⁴⁶ I will now move on to discussing the Ashley case through the lens of the humanity-based conception of dignity.

4.3.2 Human nature and the Ashley Treatment

So far I have examined the claim that part of the reason that Ashley's dignity is being seen to be violated is that she is not being treated equally, with full respect for the dignity of her autonomy. This is only one of the underlying principles at work in the argument that her treatment is morally wrong, however. The other is based around the idea that we are committing to seeing Ashley as not just unequal, but “less than fully human”.⁴⁷

In an article for the American Journal of Bioethics, Douglas Diekema and Norman Fost point out that the charge that Ashley's treatment is somehow disrespectful to or deleterious of her dignity is a common one, although the precise connection between the specifics of growth attenuation and prophylactic surgery has not been clearly spelled out in the literature. Nevertheless, the authors bring out two features that have been identified by critics of Ashley's treatment. Firstly, the treatment is disrespectful of dignity because it prevents Ashley from reaching her potential as a human being or as a woman. Secondly, they identify the claim that such a significant interference in Ashley's physical form just is an affront to her dignity.

In their discussion of dignity and the Ashley treatment, Diekema and Fost dismiss the charges for lack of evidence. For example, they state that:

spect for dignity; Dennis Baker (2009) has made the same claim without referring to a specific conception of dignity.

⁴⁶As I will argue in chapter 6, we can extend human dignity to all human beings regardless of whether they have autonomy, without claiming that autonomy is not the reason we have human dignity.

⁴⁷Coleman 2007.

Others have suggested that her dignity was compromised by interrupting her potential to become a woman, without specifying what it is about becoming a woman that would be of interest to Ashley. Most of the usual features that distinguish a woman from a girl – the opportunity to marry, procreate, work, lead an autonomous life – would not have been available to Ashley with or without a uterus, fully developed breasts, or normal stature.⁴⁸

We can introduce the humanity-based conception of human dignity to profitably understand the relationship between being allowed to develop to full physical maturity and respect for human dignity. Having as close to a normal trajectory as possible is important because the source of human dignity is being a part of the human natural kind. Deliberately choosing to cause a deviation from this standard amounts to a lack of respect for Ashley's human dignity.

We can see these arguments as different in kind from the autonomy-based considerations I advanced in the previous section. They have to do with the dignity of Ashley as a member of the human natural kind, to paraphrase Sulmasy. The idea behind them is that there are some elements of being a human that consist in having a human body and living a human life – being born, coming to physical maturity, ageing and dying.

The scope of an individual to alter her body whilst keeping her respecting her dignity is limited.⁴⁹ Daniel Sulmasy claims that “human” is an evaluative term as well as a description of a natural kind; that which is human has dignity just because it is human in a simple biological sense. As we saw with the case of Monica in chapter 3.4.2, having a natural human life is seen as constitutive of being fully human, so that any deviation from the archetypal developmental trajectory is classed as a wrong even if it is aimed at an individual's wellbeing.

By keeping her physically small and preventing her development, Ashley's parents make it so that their child deviates from the human archetype in a much more troubling way than the case of Monica in chapter 3.4.2; she is permanently precluded from a normal ageing and development process. On this interpretation, Ashley's parents have wronged her just by changing the path of her development away from the one nature had set out for her.

⁴⁸Diekema and Fost 2010, p. 34.

⁴⁹Charles Rubin (2008) makes a similar argument against the extreme body modifications undertaken by Stalking Cat, who became famous after media picked up on his goal to transform his body as far as he could into that of a tiger. Rubin claims that such extensive modification is inherently undignified because it represents a desire not to be human. However, cf. Thomas Schramme (2008), who argues that dignity based on the principle of respect for autonomy would permit such extreme body modifications. This suggests that, like Meyer and Sulmasy, Rubin and Schramme are using distinct conceptions of dignity.

This relationship between the human form, the trajectory of a human life and human dignity is found elsewhere in the literature. Dennis Baker, for example, states that, “If a surgeon amputates a patient's legs to prevent gangrene spreading, this maintains a patient's dignity, but if she amputates them merely because she doesn't want her legs anymore, she would violate the dignity of the patient”.⁵⁰ Conservatives in particular are concerned with the relationship between the human body and human dignity, as evidenced by the claims of religious conservatives that the elective surgery transgender individuals have is a violation of human dignity.⁵¹

When it comes to consensual harm or alteration to one's physical body, dignity and liberty are often claimed to be in tension, with the former trumping the latter in legislation on issues like sadomasochism.⁵² Surgery for gender reassignment or body identity disorder is consensual, so these examples highlight the distinction between the autonomy-based and humanity-based conceptions of human dignity. Conservatives claim that, as a human being, there are certain things that other human beings ought not be allowed to do because of human dignity.⁵³ It may be that introducing physical differences could provoke an alteration in the “family resemblance” that we use to recognise one another as human and entitled to dignity.⁵⁴ By contrast, transgender individuals see access to the elective surgery many feel they need as a matter of respect for their human dignity and their liberty as autonomous individuals, and this relationship is increasingly being enshrined in law and social policy.⁵⁵

Understanding the biocon claim that respect for dignity consists in preserving as close to a normal trajectory of life as possible gives us a way to understand the claim that the

⁵⁰Baker 2013.

⁵¹For example, the Illinois Family Institute states that, “Society cannot promote the dignity of persons and at the same time approve ... elective amputations of sexual anatomy, for those very acts efface human dignity” – Higgins (2012).

⁵²Baker 2009.

⁵³I will explore this idea further in chapter 7.

⁵⁴This idea of recognition forms the basis for extreme body modification as performance art. According to Erik “Lizardman” Sprague, who has altered his body with tattoos, implants, tongue splitting and piercings to resemble a reptile, the reason for his modification project is that “(1) Wittgenstein suggested that one way in which we are able to apply one term to many different objects is because they share a sort of ‘family resemblance’; (2) Focusing on how this principle related to the use of terms like ‘human being’, ‘person’, etc in the sense that people identify others as humans more based on observation of surface physical characteristics and behaviours I decided to modify those aspects of myself in manner which would significantly differentiate me from other ‘human beings’ (3) In order to achieve this differentiation I chose to use permanent body modification procedures because I felt that a permanent commitment to the artistic statement was preferable if not necessary.” It is interesting, and perhaps a validation of Lizardman's project, that Charles Rubin picks up on another case of extreme modification, that of Stalking Cat, as a paradigm case of indignity.

⁵⁵For example, the Council of Europe's issue paper on human rights and gender identity states that “Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.” (Council of Europe, 2009).

Ashley treatment is wrong because it fails to respect her human dignity on this conception. Biocons would argue that deviating from the natural archetype robs Ashley of her dignity because it makes her less human. This gives advocates of the treatment an argument to critique, rather than claiming, as Diekema and Fost do, that dignity is being used as a stand-in for feelings “that the writer was offended or uncomfortable with what was done to her”.⁵⁶

The humanity-based conception of dignity as it is understood by biocons, constrains doctors from carrying out the Ashley Treatment under any circumstances. This conception also illuminates how critics of the treatment use the concept of dignity. On this conception, Ashley's parents have done her a great wrong in subjecting her to such a complete alteration of her condition, and depriving her of the chance to develop along normal human lines. Her welfare, that is, whether she is likely to spend more time in pain with the treatment or without, is of secondary importance to her dignity as a human being.

To conclude, my aim in this discussion was to support my claim that there are two different conceptions of human dignity, and that these conceptions are related to autonomy and to humanity respectively. In this case, we can see that arguments about Ashley's dignity do follow this pattern, meaning that the autonomy and humanity-based conceptions of dignity allow us to group together reasons for and against growth attenuation. This grouping allows us to see their underlying similarities and foundations and demonstrates that in this case, despite Diekema and Fost's claims to the contrary, dignity is not a useless concept, nor one that is a mere stand-in for feelings of offense.

4.4 Conclusion to chapter three

In this chapter I have offered three arguments in favour of adopting my disambiguation of dignity into two separate conceptions of human dignity, both of which ground a different conception of dignity as a quality. I argued that the structure I use, of positing two different theories of human dignity that correspond to and ground two different conceptions of dignity as a quality, is profitable because it allows us to address critics, is preferable to the best alternative, and also allows us to make sense of arguments in a case study. This concludes the first part of my thesis.

I am now in a position to develop the central claim of my thesis, which is the problem of inconsistency. I will argue that each conception of dignity – as a virtue that requires

⁵⁶Diekema and Fost 2010, p. 34.

the belief in equal moral status, and as a descriptor of a flourishing human nature – correspond to the liberal and conservative conception of dignity respectively. Liberals use dignity to justify the demand to treat everyone as equals, and conservatives use dignity to justify their argument that there are some things nobody should be allowed to do simply because they would alter biological humanity and/or alter change human nature. Furthermore, when both theories are offered side by side, it will be clear that they come from fundamentally different moral foundations. Dignity cannot be used to build a consensus between liberals and conservatives in bioethics.

Part II: Developing Liberal and Conservative Conceptions of Dignity

In my last part, I offered an argument that dignity ought to be disambiguated into liberal and conservative conceptions so that we can better understand how it is used in future-facing bioethics. In this part, I will develop a liberal and a conservative conception of dignity. This is important if we are to make the case that dignity is a coherent and useful concept, because it has been argued both that dignity transcends politics and that it is a way for biocons to smuggle in political and religious ideology into ethical debates.⁵⁷ The following questions will frame the discussion in my next four chapters:

Questions for liberals

Most liberals have historically been concerned with arguing against the use of the concept of dignity as a foundational principle in bioethics, because they see it as a fundamentally constraining, illiberal concept that is the same as a taboo.⁵⁸ Ruth Macklin has argued that dignity is a useless concept that can be replaced with respect for persons or their autonomy, with no loss of content.⁵⁹ In chapter 3.4.1, I offered a conception of dignity that relates both human dignity and dignity as a quality, which brings in much more than respect for autonomy. However, dignity as a quality seems to be optional in an important sense. Of course, generally people would like more Aung San Suu Kyis in the world, but living a life dedicated to pleasure at the expense of dignity is just as valid a choice. For this reason conservatives tend to describe liberals as moral relativists, uninterested in creating a dignified society.⁶⁰ Liberals, on the other hand, stress the demand that respect for dignity entails respect for individual plans and projects, and emphasise the difference between the obligations individuals have to their own dignity and that of others, and the principles of equality that dictate the way a society ought to treat its citizens.⁶¹ These puzzles can be distilled into the following three questions for liberals:

- Is there a role for dignity that distinguishes the concept from “respect for autonomy” or “respect for persons”?
- How can we create a policy that could reconcile promoting dignity as a quality in individuals with the liberal principle of state neutrality?
- If dignity is based on autonomy and requires a belief in the moral equality of persons, how can we reconcile the claim that everyone has equal dignity with the

⁵⁷Macklin 2006.

⁵⁸Birnbacher 1996.

⁵⁹Macklin 2003.

⁶⁰Rubin 2008.

⁶¹Wolfe 2003.

existence of humans with no capacity for autonomy?

Questions for biocons

I have argued that the biocon conception of dignity relates dignity as a quality to the concept of flourishing, and that for biocons, flourishing makes essential reference to biological form of the human life as well as to our cognitive abilities and personal preferences. Critics of dignity, however, have argued that the concept has no place in a secular field because it is impossible to understand biocon dignity without seeing it in a Judeo-Christian context. On this argument biocons are seen as against abortion, prolonging life and the alleviation of suffering through psychopharmacology all because these run contrary to the Christian ideal of dignity. They tend to be socially conservative because they believe that religion ought to have a central role in politics and society. If biocons are making theological arguments, however, their concept of dignity can (and arguably, should) be sidelined in secular societies; what biocons mean by dignity and what liberals mean are different concepts using the same word.

Biocons criticise liberals for not paying sufficient attention to where the current research into biotechnology could take society. At the same time, liberals like Macklin criticise conservatives for using human dignity to constrain research into techniques that could prevent individuals being born into a life of suffering or dying of genetic diseases.⁶² They ask how biocons can assign such a low priority to the welfare of individuals whilst being so concerned about the life of embryos and the state of society. These puzzles can be distilled into the following three questions for biocons:

- Is it possible to construe the concept of human dignity without reference to religious authority?
- Is there a relationship between political uses of dignity and the way the concept is used in bioethics?
- How can claims about bioethics threatening individual flourishing be justified in the face of the diversity of individuals and cultures?

I will address these questions in part two of my thesis. In chapters 5 and 6, I will develop a Kantian, equality-based conception of dignity that incorporates dignity as a quality and human dignity; satisfies the conditions for a liberalism and is defensible against the AMC. In chapters 7 and 8, I will argue that biocon dignity can be formulated without reference to God, through seeing biocons as normative essentialists. Biocons can also be understood as using dignity to ground political conservatism about

⁶²Macklin (2006), p.39

the role of social institutions in individual and human flourishing. By the end of these four chapters, I will be in a position to demonstrate that structuring dignity as liberal and conservative, leads to the conclusion that there is a fundamental intractability in the arguments in future-facing bioethics where dignity is a focus. The difference is not in the priority given to dignity, but in the conception of dignity in use.

Developing Autonomy-based Dignity

In this chapter, my primary aim is to develop a conception of dignity that can account for the pattern of liberal usage of the word. I have already claimed in chapter 3 that for liberals, dignity is based in freedom, and we cannot have dignity as a quality unless we are committed to the equal freedom of all human beings. Here, I will argue the case for adopting a Kantian interpretation of dignity for use in arguments around the Biotech Revolution.

The influence of Kant on contemporary conceptions of dignity is undeniable. During the Enlightenment there was a paradigm shift in the understanding of the concept of dignity, from an almost entirely aristocratic conception to a conception of dignity as equal moral status. Kant's philosophy is often cited as the critical turning-point in the philosophical understanding of dignity.¹

As I have claimed, the concept of dignity is not identified as playing a central role in liberal thought on future-facing bioethics often, but where it has been used, it is generally in relation to the principles of respect for individual autonomy, and non-instrumentalisation. The principles of respect for individual autonomy and non-instrumentalisation are often explicitly referred to as Kantian principles, and the concept of dignity that justifies these is seen as Kantian dignity. This suggests that there could be a Kantian foundation to liberal dignity.

When we look at the kinds of duties Kant claims we have as a matter of fact, however, it appears that he is better characterised as hospitable to the biocon position rather than as a liberal. Kant is widely criticised as sexist, classist and homophobic, and of advocating

¹Rosen 2012.

a very Puritanical, Christian set of moral obligations, most of which modern liberals categorically reject.² On the other hand, biocons like Leon Kass³ and Francis Fukuyama⁴ have criticised Kantian and, in fact, all deontological accounts of human dignity because they are not grounded firmly enough in claims about human nature. There is, therefore, a need to give a clear account of Kantian dignity and to determine whether it is more hospitable to liberals or biocons. Kant's conception of dignity, and in fact all of his ethical principles, suffer from the same problems as the concept of dignity in general; there are myriad interpretations of Kant, many of which are incompatible, and Kant is criticised as providing an inadequate account of ethics that needs adding to if it is to be defensible.⁵ The different interpretations of Kant together with the appearance of both liberal and conservative commitments in his work suggests there is a need to determine which side of the Biotech Revolution debate can claim Kant as a source of their conception of dignity.

In this chapter, I will address the question of whether liberals or conservatives – or neither – are more adequately justified in making use of Kant as a source of the conception of dignity. I will argue that Kant's conceptions of human dignity and dignity as a quality do fit with the liberal pattern and can provide a framework for understanding how having dignity is related to autonomy, equality, and freedom. I am going to argue that although Kant is strict and seems illiberal because he wants to constrain people, this constraint comes from his conception of what he sees as the facts of human nature, whereas human dignity provides the form of moral obligation. To provide evidence for this argument, I will reconstruct Kant's conception of dignity before offering a liberal and conservative interpretation. I will start with Kant's conception of human dignity, and then move on to his conception of dignity as a quality.

5.1 Kant on human dignity

Kant uses the word “dignity” to refer to a variety of things, not just all human beings. He uses the idea of the dignity of rank, as Michael Meyer explains; Kant was a part of a hierarchical society in which he relied on having a good standing in the nobility for his work to be published and patronised, and some of his uses of dignity can be traced to

²Louden 2006.

³Kass 2012.

⁴Fukuyama 2002.

⁵For example, Henry Allison (1986) argues that Kant's link between freedom and morality requires extra premises to become defensible. More practically, Barbara Secker (1999) argues that Kant's conception of personal autonomy is inadequate as a principle in applied bioethics.

the classic idea of having a noble position in society.⁶ He also uses dignity in a modern way, to refer to the special moral quality that all humans have.⁷

Kant's conception of dignity has been widely studied by Kantian philosophers and has been given a wide variety of different interpretations and roles within his philosophy.⁸ My reconstruction of Kant's dignity will be largely based on recent work by Oliver Sensen, because the position he has developed is supported by a close analysis and interpretation of Kant's original texts, which draws together all of the contexts in which Kant uses dignity and all of the obligations that he claims are derivable from it.

Sensen argues that interpreting Kant's use of dignity as an expression of *elevation*, that is, as the priority or importance of one person, concept, or characteristic over another means we can see Kant's dignity as a coherent concept. Under the traditional interpretation of dignity as an expression of intrinsic value, Kant's comments about the dignity of nobles would be incongruous as he would be using two separate conceptions of dignity without making a distinction between them.

5.1.1 Dignity, autonomy, and liberalism

It is a relatively commonplace claim that Kantian theory and liberalism are intimately connected. The prominent liberal philosopher John Rawls, for example, sees his liberal project as built on Kantian foundations, although he has criticised the concept of dignity as ill-suited for a foundational role because he claims that justice must be normatively prior to dignity. Rawls also suggests, however, that dignity is one of the prerequisites for the Original Position. As I understand him, Rawls is distinguishing between human dignity as a kind of *value* and justice as a principle of *right*. In fact, Kant's position as I describe it in this chapter is closer to Rawls' own, where he says that:

We can say if we wish that men have equal dignity, meaning by this simply that they all satisfy the conditions of moral personality expressed by the interpretation of the initial contractual situation. And being alike in this respect, they are to be treated as the principles of justice require. But none of this implies that their activities and accomplishments are of equal excellence. To think this is to conflate the notion of moral personality with the various perfections that fall under the

⁶Meyer 1987.

⁷Although it is often claimed that Kant cannot be coherently interpreted as claiming that human dignity extends to human beings who lack autonomy, in a recent article Sensen has argued to the contrary. He claims that “Kant conceives of respect as a maxim of not exalting oneself above others. One should adopt this attitude independently of what the other is like. Differences between normal human adults and marginal cases are important for how one should treat them, but ultimately not for the question of why one should treat them with respect.” (Sensen 2014).

⁸See Sensen (2011) for a discussion of different interpretations of Kant's conception of dignity.

concept of value.⁹

This quote from Rawls shows how he distinguishes between a conception of human dignity that broadly correspond's to Kant's, and dignity as a quality. I will explore Kant's own connection between human dignity and dignity as a quality in section 5.2.

Gerald Gaus argues that liberalism requires not just personal freedom, but Kantian moral autonomy.¹⁰ In this section, I will explain what Kant meant when he used the concept of autonomy in his work, and demonstrate that Kant's conception fits with the conception of autonomy-based dignity I outlined in my previous chapter. Although a thorough exposition is beyond the scope of my thesis, I will fill in the salient points so that I can then be in a position to explain how dignity differs from autonomy, and how autonomy ought to be respected.

Having autonomy means being self-governing; having power over yourself. This can be a substantive power to act on the decisions you make, or the power to make decisions for yourself. On this second reading, which is how Kant understood it, autonomy is a feature of the human will. That is, it is a way of making choices, of using one's brain to decide how to act. As Kant understood it, autonomy is not a way to describe an action by itself, but a feature of the underlying principles that actions represent. Every human has autonomy as a formal principle of their will, although some individuals will not be able to set autonomous ends for themselves.¹¹

The reason that autonomy is so important is that only a free, autonomous will can be bound by morality. A heteronomous will – meaning, a will determined by features external to itself, like emotions or the will of other people – cannot legislate universal law, as its maxims will be bound up with the contingent desires or fears of the agent herself. Only an autonomous will that transcends such desires can partake in morality in this way, because only this kind of will can adopt maxims that pass the universalisability test.

Autonomy is dignified over our “sensuous impulses”. It makes us subject to the moral law, which is elevated above all other imperatives, and also above all values.¹² The dignity that the moral law has means that it must be obeyed. Robert Stern argues that obligations are best seen as having a dignity, which is what gives them the status of a command rather than a recommendation; elevating our moral obligations to the status

⁹Rawls [1971] 1999, p. 329.

¹⁰Gaus 2005.

¹¹My discussion of Kant's autonomy in this section is influenced by a number of books on the subject, most strongly by Guyer (2006).

¹²GMM 435. The complete references to all of Kant's texts cited here are contained in the Appendix to this chapter, in the Back Matter.

of laws means that we see them as demanding to be obeyed whether we want to or not. The Categorical Imperative has a dignity, through which it becomes a command that is generated by and binds every autonomous will. The feeling of respect for this dignity, in the sense of what Kant calls *Achtung* also serves as a *motivation* for obeying the commands of the moral law, as well as as an account of how they come to be commands.¹³ So, autonomy has a dignity because the moral law itself has a dignity, and humans have dignity because they have autonomy. Kant explains the link between autonomy and dignity in a particularly dense passage of the *Groundwork*:

What then is it that entitles the morally good disposition, or virtue, to make such lofty claims? It is nothing less than the share which such a disposition affords the rational being of legislating universal laws, so that he is fit to be a member in a possible kingdom of ends. Thereby is he free as regards all laws of nature, and he obeys only those laws which he gives himself. Accordingly, his maxims can belong to a universal legislation to which he at the same time subjects himself. For nothing can have any worth other than what the law determines. But the legislation itself which determines all worth must for that very reason have dignity, i.e. unconditional and incomparable worth; and the word "respect" alone provides a suitable expression for the esteem which a rational being must have for it. Hence autonomy is the ground of the dignity of human nature and of every rational nature.¹⁴

Kant is saying here firstly that freedom consists in obeying only self-legislated laws. These laws can only be universal if they are in accordance with the Categorical Imperative, as this is the test to determine whether a law would be equally valid for all agents. A morally good agent would only make laws that could be part of a universalisable set of laws in this way, because laws that fail this test fail to take into account the fact that all persons have an equally rational nature. They are therefore not genuine laws at all. Kant then goes on to claim that the law itself must have a worth that is elevated – dignified – above all others, in that it alone is deserving of being valued and respected regardless of inclinations. Hence autonomy is the reason that we as humans have worth, as it means that we are able to legislate the moral law. Kant restates this later in the second section of the *Groundwork*, where he claims that:

Our own will, insofar as it were to act only under the condition of it being able to legislate universal law by means of its maxims – this will, ideally possible for us, is the proper object of respect. And the dignity of humanity consists just in its capacity to legislate universal law, though with the condition of humanity's being at the same time itself subject to this very same legislation.¹⁵

¹³Stern (2012). It should be noted that Stern disagrees with Sensen on some aspects of how the form of the moral law should be interpreted.

¹⁴GMM 436

¹⁵GMM 440

Here Kant is claiming that being able to legislate universal law is the reason that humans have dignity. There is, therefore, a relationship between autonomy, which is a property of humanity, dignity, which is an expression of the idea of elevation, and the formal principle of the moral law, which is the Categorical Imperative. Dignity is therefore best understood as a kind of elevation, which fits with the language he most often uses to accompany it – as Sensen points out, dignity is referred to several times in Kant's writings as a “prerogative”, as related to the autonomous will being “sovereign”.

I have explained at this point that the moral law and the autonomy that is required for it both have a dignity. Since humans are the only kinds of creatures on Earth that have the capacity to legislate the moral law, then, Kant says that humans themselves have dignity. Humans, in having an autonomous will and therefore being capable of legislating the moral law, have a prerogative over the rest of nature:

[A]lthough in the concept of duty we think of subjection to the law, yet at the same time we thereby ascribe a certain dignity and sublimity to the person who fulfils all his duties. For not insofar as he is subject to the moral law does he have sublimity, but rather has it only insofar as with regard to this very same law he is at the same time legislative, and only thereby is he subject to the law.¹⁶

Here Kant contrasts the idea of being a mere subject of the moral, and therefore not having dignity, to being a legislator of the moral law and therefore being accorded an elevated status. He is drawing a parallel with the elevated rank of the legislative authorities in a society and so can be understood as using dignity and sublimity to indicate a relative elevation of status. Unlike the dignity of rank, Kant's dignity is attached to a transcendental property of humanity; he is not claiming that those persons who fulfil all of their duties are more dignified than those who do not or that they are therefore more worthy of respect as persons. This means that Kant's dignity is universal and inalienable.

This does not mean that Kant was committed to the claim that humans have an intrinsic value in themselves, just because they are human. Rather, humans are elevated above non-humans in terms of their dignity. Furthermore, all humans are elevated to an equal level of moral considerability because we are all in possession of the same capacity for an autonomous will. Kant is using the concept of dignity to mark out the moral status of all humans, not to claim that all humans have an equal moral value.¹⁷

¹⁶GMM 40

¹⁷See Meyer (2001) for a discussion of moral status and moral value in Kant.

5.1.2 Respect for autonomy

Now that I have explained what dignity and autonomy meant for Kant, I can explain the duties that dignity and autonomy give us. I will focus on the principle of non-instrumentalisation because of its importance in debates around the Biotech Revolution, especially around the use of reproductive biotechnologies. Although Kant only mentions dignity specifically in relation to the Formula of the Kingdom of Ends, his Formula of Humanity is the clearest statement of what it means to respect others. This is the formula from which the principle of non-instrumentalisation is derived:

So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.¹⁸

In the discussion following his statement of the Formula of Humanity, Kant makes two important points about what it means to respect the dignity of persons. The first is most clear; it takes the form of a discussion of what accepting the obligation to respect humanity must logically entail. Kant argues that since we have an obligation to respect humanity, committing suicide can never be in accordance with the moral law because it would amount to a person destroying the humanity in his person in order to avoid suffering. This is incommensurable with the claim that we must always treat humanity as an end in itself.

The claim that dignity gives us an obligation not to degrade ourselves is cited as a justification for the law prohibiting certain acts. For example, the famous case of M. Wackenheim, which I mentioned in chapter 2 revolved around the charge that in allowing himself to play the part of a projectile in “dwarf-tossing” competitions, the plaintiff was not respecting his own dignity and therefore the practice ought to be banned. Dignity comes with an obligation to respect oneself.¹⁹

The second point Kant makes is that in order to respect the dignity of persons we have to act in such a way that we do not make ourselves any more, or less, important than any other person. Every person, having an equally autonomous will in the transcendental sense, occupies the same elevated status as every other one, and we are therefore obliged to take every person as equally important. Respecting dignity and respecting autonomy cannot be teased apart; autonomy can be described as having a dignity in virtue of which it must be respected, and the same can be said for all human beings. We cannot respect the dignity of an individual human without respecting his autonomy.

¹⁸GMM 429

¹⁹Hursthouse 2000.

This formula leads to the principle of non-instrumentalisation. To instrumentalise means for one person to make another (or for him to make himself) into a mere tool, something that makes it possible to get something the instrumentaliser wants. As humans have rational wills, and are ends in themselves because of this, humans living together must regulate their own actions through considering the rational will of everyone else. Using someone as a means entails not considering them as subject to the same law as you; it is therefore contrary to the impartial co-willing of the moral law that allows rational humans to live together.²⁰

5.1.3 Intermediate conclusion: Kant's liberal conception of human dignity

I have so far focused only on Kant's conception of human dignity, which is related to the form of the moral law, and to how we can legislate moral obligations so that they are valid for all persons. In this section, I will demonstrate that this concept meets the adequacy conditions for a liberal conception of human dignity. These are, autonomy, equality, and neutrality.

Kant claims that humans have a dignity, which means that we are elevated over the rest of nature. We have this dignity because we have autonomy, and autonomy is what is required to legislate the moral law for ourselves. Every human has autonomy *a priori*; whether they are able to exercise it or not, the kind of freedom that is required for autonomy does not depend on an individual's social situation.²¹ Autonomy for Kant is therefore a source of moral *equality*, which suggests that it can be characterised as the foundation of a liberal conception of dignity.

In the *Metaphysics of Morals*, Kant takes a different approach from that of the *Groundwork*, which allows us to see him as committed to the principle of neutrality. Rather than looking at duties that follow formally from the principles of the moral law, he looks at what is required for a person in the material world to respect oneself as fundamentally equal to everyone else:

This duty with reference to the dignity of humanity within us, and so to ourselves, can be recognised, more or less, in the following examples. Be no man's lackey. Do not let others tread with impunity on your rights. Contract no debt for which you cannot give full security. Do not accept favours that you could do without, and do not be a parasite or a flatterer or (what really differs from these only in degrees) a beggar.²²

²⁰Green 2001.

²¹H. Williams 2006.

²²MM 6:435

These are substantive examples of how to avoid making yourself less important than others, and also how to avoid being dependent on others. Kant can be interpreted as claiming neutrality is important because in claiming that everyone must see themselves as equally important, we must remain neutral when we legislate the moral law because we cannot prioritise our own point of view over anyone else's.

To sum up this section: given that Kant is making use of autonomy, equality and neutrality in his conception of human dignity, there is evidence to justify the claim that his is a liberal conception of human dignity. This means that, when it comes to discussions of future-facing bioethics, Kant's thought could be a useful resource for liberals to draw on to combat the biocon assertion that only their stance on the issues can protect the dignity of human beings.

5.2 Tracing dignity as a quality in Kant

In my last section, I argued that Kant's conception of human dignity is best seen as an example of a liberal, autonomy-based conception of human dignity. In chapter 3.3, however, I claimed that human dignity and dignity as a quality were interdependent. This means that I need to show that Kant's conception of dignity as a quality can also fit in with the liberal principle, if I am to use Kantian dignity as the foundation for a liberal, autonomy-based conception of dignity. If it does not, then my argument will be much weaker; Kant's dignity could be seen as neither liberal nor conservative. In this section, then, my aim is to outline Kant's conception of dignity as a quality, and show first that it too is in accord with the liberal principles of autonomy, neutrality and equality, and second that it can fit with the pattern of dignity as a quality being grounded in human dignity that I argued for in chapter 3.3.

5.2.1 Initial and realised dignity

The central focus of Kant's conception of dignity as a quality is the good will, which, as he states in the first line of the *Groundwork* is the only thing that is good without qualification. What Kant means by “good” here determines whether he really can be understood as supporting a principle of neutrality. In this section I will explain how developing a good will is not the same as imposing a conception of the good – in this case, what a good or worthy character is like – on everyone.

In his book, “Kant on Human Dignity”, Oliver Sensen argues that Kant adheres to a paradigm of dignity that first arose with the Stoics, which he calls the traditional

paradigm. According to this conception, dignity is something that all humans have universally, but having this *initial* dignity gives all persons a duty to act to *realise* their dignity:

According to this paradigm, human beings are distinguished from the rest of nature in virtue of certain capacities they have, particularly reason and freedom. The term “dignity” is used to express this special position or elevation. Only in a further step does human dignity gain moral relevance: Through the introduction of a further moral premise, one is said to have a duty to realise fully one's initial dignity.²³

Only humans with a good will can fully realise their dignity. A good will is good because having a good will means being disposed to act from proper moral motives. An action is morally right if it is in line with the moral law, and the person performing the action is morally good if she is motivated to act from duty.²⁴ Realising one's dignity – developing a good will – means using one's freedom in accordance with the moral law; doing the right thing for the right reasons:

The dignity of human nature lies only in its freedom [...]. But the dignity of one human being (worthiness) rests on the use of his freedom.²⁵

Sensen claims that interpreting Kant's thought on dignity this way allows us to understand it on both a formal and a substantive level; a fully realised dignity in a person is only possible when they strive to eliminate heteronomy and act in accordance with the Categorical Imperative in everything to do with their moral duties.

Failing to develop, or try to develop, a good will, or allowing oneself to be oppressed does not lead to a loss of this initial dignity, just to a failure to realise it. Carol Hay makes a similar distinction in different terms, between the respect-worthiness of humanity and the dignity of personality, based on Kant's claims that an individual who fails to respect the humanity of others, or his own humanity, “becomes an object of contempt, worthless in the eyes of his fellows and worthless in himself,” and his “actions must be in keeping with humanity itself if he is to appear in his own eyes worthy of inner respect”.²⁶ Such strident claims about the loss of worth motivate Hay to consider Kant as arguing that dignity can be lost when a person fails to act morally – when he loses *personality* – but that this loss of dignity cannot mean that he is no longer worthy of respect:

²³Sensen 2011b, p. 153.

²⁴Stratton-Lake 2006.

²⁵Quoted in Sensen (2011b), p.81.

²⁶[LE 118, 119, 121, 125], quoted in Hay 2013.

It seems strange, to be sure, to suggest that one's dignity is something that could come and go according to whether one acts according to one's inclinations instead of according to universalisable maxims. But, remember, the respect owed to people is not contingent upon their actions, because people are ends in themselves in virtue of their humanity rather than their personality. Because of this, we can retain the intuitive thought that our behaviour toward others is constrained regardless of how they act.²⁷

Both Sensen and Hay interpret Kant as arguing that dignity is something we can lose, in a sense, without thereby losing our moral status; in failing to realise our dignity we have lost something of great value, but we nevertheless deserve the same respect as any other human being. Sensen and Hay disagree on the meaning of the word “dignity” in Kant's work. Hay follows the traditional view that dignity means intrinsic worth, but that individual humans only have intrinsic worth when they act morally; they are entitled to respect no matter how they act, but they only have dignity when they do the right thing.²⁸ Sensen argues that this traditional equation of dignity with intrinsic worth is mistaken because it would commit Kant to the claim that the moral law is derived from the good; a possibility Kant expressly rules out.²⁹ Instead, “dignity” simply expresses the *elevation* of one thing over another.

Sensen's argument has an advantage over Hay's insofar as he is able to extend the claim that dignity is a kind of elevated moral status, rather than an intrinsic value, to all uses of the concept of dignity in Kant's work. For example, where Kant discusses the dignity of the nobility, Sensen claims he is best interpreted as claiming that the nobility are socially elevated over the rest of the population. He could not be interpreted as claiming that the nobility has more intrinsic worth than the rest of the population. Thus, Sensen's argument is more parsimonious.

To link up with my own distinctions, we can see realised dignity as a kind of dignity as a quality, although one that is tied to what it means to be an autonomous individual rather than a dignified individual in appearance. Kant does not stipulate any presentational aspect to having a good will, in fact, he claims that it is impossible to know whether anyone really has one since we can never be sure whether our actions are from duty or inclination.³⁰

²⁷Hay 2013, p. 171.

²⁸Richard Dean (2006) argues along similar lines; he claims that possession of a good will is the source of intrinsic value, which he equates with dignity, but we ought to treat all individuals with respect because we cannot know who among us truly has a good will.

²⁹See Chapters 1 and 2 of Sensen's book, “Kant on Human Dignity”.

³⁰“It is indeed sometimes the case that after the keenest self-examination we can find nothing except the moral ground of duty that could have been strong enough to move us to this or that good action and to such great sacrifice. But there cannot with certainty be at all inferred from this that some secret impulse of

The initial dignity that comes from having autonomy as a formal principle of the will cannot be lost or gained, but realised dignity can be, because it is dependent on each individual striving towards having a good will. Whenever we give in to sensuous impulses, or fail to treat others as ends in themselves, we could be seen to be failing to realise our dignity, but we are not losing our dignity.

This also fits with Meyer's description of dignity as a quality that I described in 3.4.1. True dignity as a quality in Meyer is like realised dignity in Kant. Where Kant claims that we can only realise our dignity if we align our actions to the formulas of humanity and universal law, Meyer claims that our actions only express genuine dignity if we are committed to moral equality. The objective principles of Kant's categorical imperative are used to ground a duty all individuals have to themselves to develop a good will. So Kant's conception of dignity fits with my claim that dignity as a quality is grounded by human dignity.

5.2.2 Kant's dignity, neutrality, and happiness

The difference between initial and realised dignity allows us to see how Kant can be committed to neutrality whilst claiming that there is such a thing as a good will that everyone has a duty to strive towards. By distinguishing between happiness and a good will, we can see how Kant's obligation to develop dignity as a quality is not the same as imposing a conception of the good.

Kant claims that the state should be *neutral* regarding the good, and allow its citizens to pursue their own conceptions of happiness so long as it is in accord with others doing the same:

No one can coerce me to be happy in his way (as he thinks of the welfare of other human beings); instead, each may seek his happiness in the way that seems good to him, provided he does not infringe upon that freedom of others to strive for a like end which can coexist with the freedom of everyone in accordance with a possible universal law.³¹

Happiness, then, is something that we can all have in different ways, and freedom is necessary for everyone to strive for their own happiness. This is not the freedom to do absolutely anything, however, it is curtailed by the existence of other people and the equal freedom they have. Williams goes on to argue:

self-love, merely appearing as the idea of duty, was not the actual determining cause of the will." [GMM: 407]

³¹MM: 291 8.290

Political liberty can for Kant then lead to the realisation of a rich diversity of choices. From the perspective of the state individuals should be encouraged to show the greatest possible independence in disposing over their lives and what is theirs. For the leaders of a state to attempt to decide for individuals what kind of lives they should lead and how they should attempt to fulfil their desires would “represent the greatest despotism thinkable.”³²

The political freedom to choose one's own way of happiness should be contrasted with the moral freedom to develop a good will. Having a good will does not relate to being happy, although Kant does claim that ideally, happiness should be proportionate to virtue.³³ A good will means aligning one's dispositions to act in accordance with duties and from the motive of duty. Realising one's dignity is not the same as being free to be happy.

The arguments in this section have shown that Kant's conception can meet the adequacy conditions for a liberal concept of dignity because realised dignity is not a conception of the *good* that Kant demands we accept, it is a way to develop an individual's personality so that they become more likely to do the *right* things for the right reasons.

5.3 A conservative reading of Kant

At this point, I have made the case for a liberal reading of Kant's conception of dignity. Because Kant claims that dignity is an expression of the elevation of our autonomy over our sensuous impulses, and that all humans have an equal amount of autonomy, we can conclude that his view is in accord with autonomy and equality. And, because Kant uses dignity to express the importance of autonomy and the duty to develop a good will rather than to express the infinite worth, or good, of all human beings, he can be seen as committed to neutrality. Therefore, there is strong evidence that a liberal could use Kant's conception of dignity to develop an autonomy-based conception of human dignity that can be used in arguments around the Biotech Revolution.

I will now turn to the counter-argument, which is that when we look beyond the arguments put forward in the *Groundwork*, it becomes increasingly clear that Kant held

³²H. Williams 2006, p. 367.

³³This claim leads to an argument that in biotechnology could affect the proper relationship between happiness and virtue. This is a conclusion that both liberals and biocons could share. For example, Leon Kass (2003) considers the idea of drugs that are able to brighten our mood beyond the therapeutic use of anti-depressants and concludes that a life lived under the systematic influence of such drugs would be a life without meaning. Happiness for Kant is not intrinsically valuable. It would lose its value when considered separately from morality, which is the only thing that has absolute inner worth. For Kant, then the use of the kind of “perfect happiness” drugs Kass and the other authors of “Beyond Therapy” posit would be wrong because they would create in a happiness in an individual that contained no moral element, being unrelated to whether he has a good will, and is therefore not truly valuable (Morioka 2012).

some strikingly conservative views, and that where he talks about duties, he tends towards a strictly constraining account of what counts as morally permissible. From this we have reason to believe that he would be against permitting advances in biotechnology, which suggests that his conception of dignity is more hospitable to biocons.

Kant makes many claims about how to behave at an individual level that are not *prima facie* acceptable in a modern liberal society. For example, selling one's hair, having homosexual relations, or giving birth outside of marriage are all listed in Kant's *Doctrine of Virtue* as morally wrong. Such a socially conservative position seems at odds with my claim that Kant's conception of dignity can be labelled as liberal.

There are two main loci of discussion about Kant's illiberal views.³⁴ One is from the point of view of political equality; Kant appeared to rule out equal participation in democracy. The other is social; Kant's positions on the status of women, children born outside wedlock, homosexual relations and suicide run contrary to most liberal positions.

In this section, I will argue that Kant can still be seen as a liberal even though he clearly does hold socially conservative views. I will first argue that Kant's claims about the right to participate in collective law-giving are, for the most part, misunderstood and that he can be seen as a liberal about independent citizenship. Second, I will argue that although it is undoubtedly true that Kant explicitly rules out some ways of living and actions that modern society sees as unproblematic, we can draw a distinction between those he rules out because they violate the logical form of the Categorical Imperative, and those that are grounded in Kant's conception of human nature and the natural. Kant's conceptions of human nature and the natural human body are not necessary to understand his concepts of initial and realised dignity, a point that distinguishes his thought from that of biocons.

I will conclude that although Kant's social conservatism and his extreme views on objectification do pose a problem for liberal Kantians, his claims do not provide sufficient evidence to reject my characterisation of Kant as adhering to the liberal principles of autonomy, equality and neutrality. Furthermore, I will also argue that Kant's conception of dignity as an expression of the elevation of autonomy in our persons, rather than a conception of what it means to have infinite worth, means that liberals can show that dignity and human nature come apart for Kant. This means that a

³⁴Note here that I am not making the claim that if Kant is not a liberal on this topic he must therefore be a *conservative*; I am just claiming that if the argument that Kant was not committed to liberal principles here is strong, there is a much greater burden of proof to show that his conception of dignity can still be classed as liberal.

liberal can use Kant's conception of dignity without needing to bring with it any of Kant's conceptions of human nature or what is good for human beings.

5.3.1 An illiberal Kant on citizenship

The first area I will look at is Kant's imposition of conditions for citizenship. Kant claims that independence is a condition for political liberty; an individual can only be a part of a political society if he is a citizen, and can only be a citizen if he is independent in society. Without independence, an individual cannot act on the ends he sets for himself.

In the *Metaphysics of Morals*, Kant gives the example of women and labourers as types of people who aren't independent, and are therefore excluded from *political* citizenship. This means that all humans have dignity because all humans have autonomy, and autonomy is not something that can be gained or lost through social position or even mental ability. Although it would appear that if not everyone is equal politically, then it appears that Kant cannot be seen as a liberal, I will argue that this is too quick. A more thorough examination of why Kant cannot extend political equality to everyone allows us to preserve his liberalism.

Howard Williams argues that Kant's essays are the best way to understand how his concepts of freedom and autonomy relate to political liberty. Concepts of, and requirements for, social and moral equality are distinguishable in Kant's political thought. He quotes Kant's "On the Common Saying: That May Be True In Theory, But Is Of No Use In Practice":

[The] ... uniform equality of human beings as subjects of a state is, however, perfectly consistent with the utmost inequality of the mass in the degree of its possessions, whether these take the form of physical or mental superiority over others, or of fortuitous external property and of particular rights (of which there may be many) with respect to others ... [An individual can] be considered happy in any condition so long as he is aware that, if he does not reach the same level as others, the fault lies either with himself (i.e. lack of ability or serious endeavour) or with circumstances for he cannot blame others, and not with the irresistible will of any outside party.³⁵

Social inequality is acceptable to Kant so long as it does not take the form of one individual imposing his will on another – differences in ability between individuals are not a threat to moral equality. Inequality should not take the form of an aristocratic hierarchy, where some individuals are given wealth and power at the expense of others through nothing more than the circumstance of their birth.³⁶ This is because this kind

³⁵H. Williams 2006, p. 370.

³⁶Varden 2006.

of inequality is contrary to independence. Howard Williams argues that this takes Kant's theory of equality close to the liberal political statements of Thomas Paine and Mary Wollstonecraft, who argued that true dignity inheres in a person's character and is natural (Wollstonecraft used the term "native dignity"), not a product of social status.³⁷

The kinds of equality that matter are moral equality, which come from the *a priori* freedom that all humans have, and political liberty, which extends to all citizens in a society. An individual can be a citizen in Kant's picture of an ideal society only if he has substantive, economic independence as well as the formal freedom of the will that grounds autonomy. Williams argues that although Kant's conditions for political citizenship appear "elitist, discriminatory and snobbish", because they exclude so many people on the grounds of their sex or their way of earning a living, they are intended to "encourage, rather than disbar". Kant claims that even if citizenship is impossible meaning an individual does not count in the political act of law-giving, every individual with autonomy counts as a moral co-legislator of society's laws:

It follows only that, whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to an active one.³⁸

From his thoughts on equality that I discussed about, I conclude that Kant is working with a concept of equality that would be acceptable in Meyer's scheme of dignity as a modern virtue. We have dignity because we have autonomy, and our autonomy means we have an equal moral status. Our equality means that society should not be arranged so that some people are seen to be inherently better than others. Kant cannot therefore be seen as illiberal in this matter.

5.3.2 Kant's conservative social views

Kant has been criticised, for example by Francis Fukuyama in "Our Posthuman Future", as tacitly relying on a conception of human nature to justify moral claims, without paying the right kind of attention to what human nature means. Fukuyama claims that "perhaps the most revealing weakness of deontological theories of right is that virtually all philosophers who attempt to lay out such a scheme end up reinserting various assumptions about human nature into their theories. The only difference is they do it

³⁷Michael Meyer (1987) questions whether Kant knew about or engaged with the discourse on dignity that was triggered by the beginning of the French Revolution, whereas Howard Williams claims that Kant probably wrote "On the Common Saying..." in response to it.

³⁸MM 6:315

covertly and dishonestly, rather than explicitly...”³⁹ In this section, I will argue that in fact, Kant is very clear about the role for human nature in justifying the substantive duties we have; they are the matter of the moral law, whereas the Categorical Imperative is its form.

Although, as I showed in the previous section, the claim that people who do not happen to have substantive independence ought to be excluded from citizenship is not illiberal *per se*, it can still be claimed that Kant's arguments around this topic highlight his social conservatism and illiberal commitments. This is because the argument that Kant gives for excluding women from citizenship is based on *natural*, not economic, premises.

In “Observations on the Feeling of the Beautiful and Sublime”, Kant claims of women that “They do something only because it pleases them, and the art [of moral education] consists in making only that please them which is good ... I hardly believe that the fair sex is capable of principles ... in place of it Providence has put in their breast kind and benevolent sensations.”⁴⁰ By contrast, all individuals, regardless of independence, are subject to the moral law. As Kant puts it, “[this] dependence on the will of others and this inequality is, however, in no way opposed to their freedom and equality as *human beings*.”⁴¹

So here Kant is still claiming that all humans have human dignity, but that our obligations towards women are different because women have a different *nature* from men. Here we see the beginnings of the kind of conservative interpretation of Kant that biocons could accept, based in purported facts about the kinds of beings humans are, which would be potentially problematic for my claim that the liberal and conservative conceptions of dignity are intractable.

In contrast to the *Groundwork*, where Kant mainly concentrates on the form of the Categorical Imperative and on how we come to believe that we are bound by moral obligations, in the *Metaphysics of Morals* he offers an account of what our duties amount to in the real world. Where Kant lists the substantial duties that we have to one another, he moves beyond the form of the Categorical Imperative to encompass non-moral facts, which are facts about human society and human nature.

The most common justification Kant gives for his list of substantial duties to the humanity in our own persons is to appeal to the “ends we have by nature”. Some ends we have by nature yield duties, which means that Kant is using a conception of human nature to justify his claims about which actions are morally permitted.

³⁹Fukuyama 2002, p. 120.

⁴⁰OBS 77

⁴¹MM: 6:315

For example in the subsection of the *Metaphysics of Morals* entitled “On Defiling Oneself by Lust” Kant states that, “just as love of life is destined by nature to preserve the person, so sexual love is destined by it to preserve the species; in other words, each of these is a natural end.”⁴²

The idea of a “natural end” is not given by the form of law, it is given by our constitution as embodied beings. Kant defines ethics as the process of working out which of the ends we have are also duties, that is, which of them can be pursued in accordance with the moral law. We have a duty to act according to these natural ends, as Kant goes on to explain:

What is now in question is whether a person's use of his sexual capacity is subject to a limiting law of duty with regard to the person himself or whether he is authorised to direct the use of his sexual attributes to mere animal pleasure, without having in view the preservation of the species, and would not thereby be acting contrary to a duty to himself.⁴³

Here Kant is asking whether it can ever be morally right for an individual to engage in sexual acts that are not aimed at procreation. Kant goes on to claim that it cannot be, as this would mean a person using himself merely as a means, therefore to engage in sex merely for pleasure is to lower oneself even below the beasts.⁴⁴

This illustrates Kant's relationship between the nature of the human being as embodied, and the structure of the moral law. Our ends are not set for us by the Categorical Imperative, they are given to us by our situation as real human beings living in a community, but what our duties are with regard to these ends is determined by the moral law. In this case, as Alan Soble puts it, Kant is arguing “as if acting contrary to nature's sexual end would itself be to corrupt one's humanity ... one might violate a duty to the humanity in one's own person by engaging in certain types of sex”.⁴⁵ Kant appears to be claiming that acting *unnaturally* just is violating a duty to oneself. In this, Kant agrees with political conservatives, who tend towards constraining non-monogamous, non-heterosexual sex outside marriage. Kant's argument can also be interpreted here as able to be extended to other non-standard methods of reproduction like cloning and genetic enhancement.⁴⁶

Despite Kant's assertions about natural ends, we can still see him as a liberal about dignity. He can still be seen as adhering to the principles of neutrality, equality and

⁴²MM 6:425

⁴³MM 6:425

⁴⁴MM 6:426

⁴⁵Soble (2003), p. 58.

⁴⁶See Gunderson (2007) for a discussion of Kantian arguments both in favour of prohibiting and allowing the future practice of genetic enhancement.

autonomy. This is because at no point does he use dignity to claim that others ought to be prevented from acting immorally by violating these kinds of duties towards themselves. He can be understood as still adhering to the principle of neutrality for two reasons. First, there is no political dimension to Kant's claims that means the state ought to intervene. For example, Soble quotes Kant as claiming that illegitimate children ought to be simply ignored by the state:

Legislation cannot remove the disgrace of an illegitimate birth ... A child that comes into the world apart from marriage is born outside the law ... and therefore outside the protection of the law. It has, as it were, stolen into the commonwealth (like contraband merchandise), so that the commonwealth can ignore its existence (since it was not right that it should have come to exist this way), and can therefore also ignore its annihilation.⁴⁷

Second, Kant does not relate the idea of a natural end to the claim that acting in accordance with these ends contributes to human happiness, therefore he cannot be seen as advancing one conception of the good above others. His statements are therefore consistent with my interpretation of Kant as committed to the principle of neutrality. He cannot be construed as claiming that people who engage in recreational sex or have children outside of marriage are entitled to less respect for their initial dignity than anyone else.

We can determine the importance of human nature for Kant with a test. For example, in the *Metaphysics of Morals* Kant ends his list of perfect duties to ourselves and to others with an “Episodic Section” on the duties we have regarding non-humans. One of the most famous of these indirect duties concerns animals. Kant claims that we have an indirect duty not to be cruel to animals because in doing so we make it more likely that we will find it easier to be cruel to other humans. Our duty to animals is indirect because it is in fact a duty to ourselves. We have a duty not to do anything that makes it more difficult to act according to the moral law, and making it easier to be cruel makes it more difficult to be morally good.

In this discussion, we can see how Kant is using what he takes to be non-moral “facts” about human nature to provide the grounds for duties – in this case it is the relationship he perceives between animal cruelty and human cruelty. If he were to believe that human nature was not like this and there was no such relationship between causing animals suffering and human cruelty, there would be no grounds for an indirect duty towards animals. This means that although it is the moral law that provides the ultimate justification for all duties, facts that have no direct reference to the form of the moral law can be the grounds of specific duties.

⁴⁷MM 6:337

To give another example, Kant claims that it is immoral for a person to sell her organs for a profit, but he allows that selling one's hair is permissible. This is because selling one's organs is an example of using one's body as a mere means to an end. We can assume that what makes the difference between organs and hair here is that hair can stay short, or grow back with no loss of function. Organs, on the other hand, don't grow back and do affect function and lifespan. These are facts about the human body. But if we imagine that the facts are different, and that organs could grow back with no loss of function, then we should conclude that Kant would probably permit us to sell those too. If the facts about the human body were to change, then the substance of the moral obligations we have about which parts of our body we can sell would change, but the underlying form of the moral law would not.

So we can see that Kant does not use a picture of human nature as it is now to justify the claim that we ought not make ourselves into a mere means to an end, only to justify the claim that selling one's organs is an example of it, where selling one's hair is not. Knowing the facts about human nature and the human body is necessary to understand why the Categorical Imperative rules out cruelty to animals or organ-selling. But knowledge of these facts is not sufficient to understand why we have duties of this type in the first place. Nor are these facts necessary or sufficient to justify the claim that we ought not instrumentalise others. Liberals can therefore conclude that the relationship between the moral law and what Kant calls human nature is contingent for Kant.

I will now move on to discuss equality. Although it does appear that Kant is deeply sexist, a liberal can wall off Kant's sexism because he does not claim that women are not subjects of the moral law, just that they cannot be citizens in political society. He does claim that women are equal in their autonomy, but unequal because they have a different nature – they are unable to understand and act according to their obligations even though they are possessed of an equal measure of autonomy. We can apply the same test as in the paragraph above here. If we imagine that Kant did not hold these beliefs about women, and instead believed that women and men were equally able to achieve independence and a good will, the claim that autonomy and equality were necessary for independence would not change, but the substantive judgement that only men were capable of independence would.

The other line of argument that Kant uses to support his extreme views – and the final one I will look at in this section – is that every human has a categorical duty to avoid making herself subject to the will of another. This comes from the Formula of Humanity Kant puts forward in the *Groundwork* and developed in the *Metaphysics of Morals*, that an autonomous individual must be treated as an end, not as a mere means

to an end.

Kant argues, for example, that sex outside marriage is immoral because it amounts to one person using another's body for pleasure, which Kant defines as an instance of use as a mere means. He uses the same argument to rule out suicide and selling one's organs. Here there is no reference to human nature, only to the form of the moral law. Kant claims that if we have a duty to treat others as ends in themselves, we also have a duty to treat ourselves as an end in ourselves, and therefore not to allow anyone to degrade our status by using our body as an object. In so far as extra-marital sex and organ-selling are examples of allowing our body to be used as an object, they are immoral.

This conservative interpretation of Kant is less easy for a liberal to dismiss because it is bound up with his definition of dignity and autonomy through the Formula of Humanity. Kant, however, does not give a reason why consenting to use our *bodies* in certain ways, which do not destroy or critically impair them, amounts to a disrespect of the dignity of our *autonomy*. It is our autonomy that gives us dignity, not our possession of a biologically human form.⁴⁸ We do not have to accept that Kant is right about what he takes to be human nature – we can see his statements about the morality of sex, the use of one's body, and so on as prejudiced and culturally-bound, but when we see them as only contingently related to his conception of dignity and the moral law, it becomes clear that we do not have to accept them to accept Kantian dignity as a promising liberal conception of use in future-facing bioethics.

The Biotech Revolution will offer us new ways to exercise control over the physiology of living beings, including ourselves and our children, however it is not obvious that exercising control over a genotype amounts to using an individual as a mere means.

The motivations of parents in genetically enhancing their children, for example, may be an entirely selfish desire to create a child that will be able to make enough money to support her parents in their own age, or it could be a desire to give that child as many possibilities to develop their talents and good will as they can, either by augmenting their abilities or ensuring that they do not suffer from genetic diseases. These motivations are also found in parents of children born today, with very little direct control over genetics. There is no reason a liberal Kantian should accept that genetic enhancement is a direct threat to human dignity, or dignity as a quality as such, as there is the potential for it to be done according to principles that can be universalised.

⁴⁸See, for example, Thomas Schramme's (2008) argument that Kant does not supply adequate justification for Kantian claims that his theory can be used to constrain the practice of extreme body modification.

5.4 Conclusion to chapter four

To conclude this chapter, I have explained that Kant's concept of dignity is a liberal concept, because it aligns with the standards of equality, neutrality and autonomy. We have dignity because we have freedom, which leads to autonomy, which elevates humans above the rest of life on Earth. Dignity is the name given to the special moral status that any being with autonomy has, because all beings with autonomy are able to understand and legislate the moral law. The moral law is elevated above humans, and contemplation of this elevation provides humans with the motive to act morally.⁴⁹ Autonomy is something that all humans have equally, therefore when we decide what to do and how to attain happiness, we have to pay attention to whether our actions privilege ourselves over anyone else, and whether we are coercing anyone else or restricting their freedom.

To return to my questions for liberals that I posed in the introduction to this part of my thesis, I have showed that Kant answers the first question and adequately distinguishes respect for dignity from respect for autonomy, by relating dignity as elevation to the structure of moral obligations and to the duty that we have to develop a good will.

I also argued that Kant makes a distinction between the dignity that we have impersonally, as autonomous beings all of whom are subject to the moral law in the same way, and the dignity we have personally, as individuals who are able to develop a good will and choose to act from a motive of duty. This separation between initial and realised dignity corresponds to the distinction between human dignity and dignity as a quality that I argued for in chapter 3, but does not count as Kant advancing a conception of the good that he intends to impose on individuals. This answers the second question by making space for a conception of dignity as a quality that does not violate the principle of neutrality.

Kant did rely on substantive claims about what human beings are like to fill out the matter of the moral law, but I argued that since human nature does not alter the form of the moral law, human nature is incidental to Kantian morality and to dignity. That we can change certain facts about the human body and human nature without changing the central claim that all humans have dignity, and that dignity gives us a duty to develop a good will, suggests that a Kantian conception of dignity could apply to human-animal chimeras and to genetically or cybernetically enhanced humans.

In my next chapter I will address the third of my questions for liberals, which is how to reconcile the claim that human dignity requires a belief in moral equality, with the fact

⁴⁹Stern 2004.

that individual capacities and rational abilities vary hugely within the human species.

Defending Autonomy-based Dignity

In my last chapter, I discussed a Kantian conception of autonomy-based dignity and argued that it met the adequacy conditions for a liberal conception of dignity. “Dignity” is the name given to the elevation of autonomy as a source of obligations, and the elevation of human beings as bearers of autonomy.

Because, on this construal, dignity is not a conception of the good, it is compatible with the liberal idea that we all ought to be free to pursue our idea of the good life, even if that does not include striving for dignity as a quality. So long as a belief in moral equality is maintained, individuals and societies are not bound to any objective standards of “dignified” behaviour. The only substantive duty that our dignity gives us is to develop a good will.

My aim in this chapter is to explore the practical significance of Kantian, autonomy-based dignity to debates around the Biotech Revolution. I will argue that liberals can use the concept of dignity to argue that there is an obligation to promote the kinds of equality in society that facilitate individuals realising their dignity by developing a good will. I will also argue that autonomy-based dignity leads to the claim that certain kinds of “therapeutic” enhancements are permissible, when they give individuals better access to the capacities and social goods needed to develop a good will. However, this does not mean that society ought to allow, or that governments are obligated to facilitate, any and all kinds of genetic enhancement.¹

¹By “genetic enhancement”, I am referring to the process of adding new DNA sequences (genes or chromosomes) into either an individual's somatic cells, gametes, or the cells of a developing embryo, with the purpose of modifying their phenotypic traits. The rationale behind this can either be to cure the individual (or resulting individual/s) of some deficiency, or make that individual more capable than they otherwise would be. For examples, see <http://www.genome.gov/10004767>.

This argument will start with a discussion of the most commonly-cited challenge to any conception of human rights or human dignity, which are gathered under the term, “Arguments from Marginal Cases” (AMCs). AMCs are intended to demonstrate that the concept of an equal human dignity grounded in autonomy and extended to all and only humans is impossible. This is because some humans do not have autonomy, or indeed any high-level cognitive capacities. If not all humans have autonomy, then, according to some AMCs, not all humans are entitled to human dignity. Furthermore, if autonomy is the source of dignity (and therefore, of certain kinds of moral obligations), then it appears *prima facie* unjust to claim that severely disabled humans have it, whereas animals with greater cognitive abilities do not. This is only important if we relate having human dignity to being entitled to special moral consideration, such as being afforded rights.

After giving an account of how an AMC can be formulated specifically about human dignity in 6.1, I will offer an account of how we can extend human dignity to all humans without committing to the claim that all humans must be equally capable of exercising autonomy. In this chapter, I will be discussing human dignity specifically because this AMC pertains only to those individuals who are incapable of developing dignity as a quality.

In my second section, I will discuss the nature of obligations to marginal cases, specifically whether the Biotech Revolution gives us the obligation to enhance human beings who otherwise would be born without the ability to develop a good will. I will conclude that such duties can be derived from the liberal conception of human dignity, but that they are narrow in scope and do not lead to a wholesale commitment to a transhumanist project.

6.1 Arguments from Marginal Cases

The phrase “marginal cases”, as distasteful as it is, is used to refer to those individuals who are not capable of making the kinds of decisions that mark humans out as different from the rest of life on Earth. Marginal cases cannot understand moral obligations, they don't have the ability to foresee the consequences of what they do for themselves or for those around them, so they lack substantive autonomy. Ashley X, my case study from chapter 4.3, is a paradigm example of a marginal case, her mental age was judged to be that of an infant.² Ashley cannot be held responsible for her actions so she's not seen as subject to the moral law in the way that people without these kinds of disabilities are.

²Cf. Kittay (2011) on whether we should be using the idea of a mental age to express the abilities of the severely intellectually disabled at all.

People in comas or with severe dementia are also considered marginal cases, but since cases where an individual has never, and could never develop the intellectual capacities needed to exercise autonomy could be seen differently from cases where those capacities have been lost or suspended, I am only explicitly considering cases like Ashley's in this discussion.

Marginal cases are used in a variety of arguments against positing autonomy as the capacity that makes humans morally considerable. One such argument is that autonomy ought not be the only criteria that makes the difference between being morally considerable – having human dignity – and not, because there are more relevant abilities we should take into consideration, like the ability to set goals for ourselves. Another argument is that autonomy is unsuitable as the capacity on which the ascription of dignity depends because human dignity is equal and inalienable, but autonomy is variable and can be lost. These arguments can be taken separately, or together.

The most famous exposition of an AMC from a deontologist³ comes from the animal rights philosopher Tom Regan, who sums up the first argument like this:

If an animal has characteristics *a, b, c, ... n* but lacks autonomy (or reason or language) and a human being has characteristics *a, b, c, ... n* but lacks autonomy (or reason or language), then we have as much reason to believe that the animal has rights as the human.⁴

Although Regan is talking about rights and not about dignity, we can extend his argument to human dignity. Human dignity is like basic human rights insofar as everyone has it in equal measure, regardless of individual circumstances, and, as I explained in chapter 3.2, human dignity is also used as a foundation for human rights in some contexts, meaning that if rights are absent, human dignity will be absent and *vice versa*.⁵

So the quote from Regan can be reformulated as a claim that it is unjust to extend human dignity to only humans, when animals share so many of the same characteristics, because having human dignity entitles an individual to a special kind of moral considerability – rights, on Regan's construal. In the quote above, Regan is saying that humans and animals with the same capacities ought to be treated in the same way;

³I am looking specifically at deontologists because of my focus on Kant and deontological concepts of liberal dignity; the current most famous philosopher working on AMCs as a major focus is Peter Singer, a consequentialist.

⁴Quoted in Dombrowski (2006).

⁵Recall that in chapter 3.2.1, I remained agnostic on the precise nature of the relationship between human dignity and human rights. I am not intending to make the case that having dignity is important only because having rights is important – as I showed in chapter 5, dignity is primarily a source of duties to oneself.

it would be unjust to withhold rights from an animal and extend them to a human if they have the same characteristics. As Helga Kuhse puts it in her consequentialist critique of dignity, “it would not be enough to say that human life has dignity because it takes the form of a featherless biped or because humans have opposing thumbs.”⁶ This assumes that merely being human is not a morally relevant characteristic, which is an assumption we also make on the autonomy-based conception of human dignity.

In this section, I will first argue that the concept of human dignity does not necessarily rule out theories of animal dignity, animal rights or obligations towards animals. This kind of AMC states that, given that an autonomy-based conception of dignity requires an equal possession of autonomy, and given that many people with intellectual disabilities appear to lack autonomy, then there is a question over how the claim that all humans have dignity is to be justified.

6.1.1 Extending dignity to animals and marginal cases

There is scope for both liberals and conservatives to extend certain kinds of dignity to animals, which would mean that AMCs involving animals, like Regan's, can be dealt with. The biocon Daniel Sulmasy claims that animals can have both intrinsic and *inflorescent* dignity; they can flourish as the kind of things they are:

While there may be other members of the class that consists of the kinds of things that properly can be said to have intrinsic dignity (viz., angels, intelligent extra-terrestrials, or, arguably, porpoises), in ordinary discourse a human being is the paradigmatic example of the kind of thing that is said to have dignity by virtue of its being the kind of thing that it is. ... Therefore, to say that a particular entity (e.g., a human being) has inflorescent dignity entails that the entity is an excellent example of a kind of thing (i.e., human-kind) that has, as a kind, intrinsic dignity. In other words, one does not speak of the inflorescent dignity of an entity unless one has already picked that entity out as a member of some kind that has the value of dignity intrinsically. For example, the photoluminescence of a certain kind of bacterium or the flowering of a rosemary bush can both be beautiful, but we do not speak of flourishing bacteria or rosemary bushes as manifesting dignity.⁷

Here Sulmasy is claiming two things. First, that inflorescent dignity only has any moral weight if the creature that has it also has intrinsic dignity, which is the relationship I described in chapter 3.4.2. Second, that non-humans like porpoises can have both intrinsic and inflorescent dignity. If human inflorescent dignity is related to the sort of beings humans are, and has moral weight because of human intrinsic dignity, then the

⁶Kuhse 2000.

⁷D. Sulmasy 2000.

inflorescent dignity of, say, a porpoise will be related to the kind of beings porpoises are, and has moral weight because of the intrinsic dignity of the porpoise. Since porpoises and humans flourish in different ways, if we have obligations to promote inflorescent dignity where it is accompanied by intrinsic dignity, we will have different substantive duties to all the kinds of beings that have it.

Michael Meyer also claims that we can extend a kind of dignity to animals without rendering the concept of human dignity incoherent. In his article, “The Simple Dignity of Sentient Life”, Meyer argues that although only humans with autonomy have an equal human dignity, all living things can still have “simple dignity”, a moral value that comes solely from being a living creature:

When I suggest that nonhuman animals should be understood to have “simple dignity,” I claim that any being that has “simple dignity” has an intrinsic moral worth and an independent moral status. The idea of dignity itself links considerations of moral status with those of moral worth.⁸

Meyer has developed the point that the kind of human dignity that Kant endorsed need not be the sole basis of moral obligations. He argues that much of the problem with human dignity on the Autonomy model comes from the erroneous beliefs that this kind of dignity is the only possible reason to respect anything, and that it only creates the obligation to respect humans with dignity and makes it impossible to justify treating animals and humans without the capacity for autonomy well. Through arguing against these claims, Meyer states, we can accept that not all human individuals have the capacities needed to have human dignity, because this does not amount to a denial of all moral status and all duties of care towards them.

In arguing for this conclusion, Meyer distinguishes first of all between accounts of the basis of obligations that purport to be *complete*, meaning they provide all the grounds for justification of an action, and ones that are *partial*, meaning that they can justify actions only when taken together with other reasons. He argues that human dignity is erroneously seen as the only possible account of the status and value of everything on Earth that is accessible to an adherent of the Autonomy model of dignity like Kant, when in fact it is a partial account and only functions as a complete account of the status and value of *persons with rational autonomy*. He claims that the indirect arguments Kantians use are only partial accounts of why we have obligations towards creatures that do not qualify for dignity under the autonomy-based conception:⁹

⁸Meyer 2001, p. 122.

⁹Kant's indirect duties view can be summed up as the claim that we do have obligations to treat animals well because treating them cruelly makes people more likely to be cruel. These obligations are therefore

Roughly, a complete account of an obligation is a statement of all the theoretical grounds for that obligation, whereas a partial account of an obligation provides at least one but not all of the theoretical grounds for the obligation..... the fact that an indirect duty view is a good partial account of moral obligations regarding animals (because, for example, on virtue-based theories it would provide good reasons for those obligations) hardly qualifies it as a complete account of those obligations.¹⁰

This basic moral value of all sentient creatures, which can form an account of why we ought not treat them in certain ways, is what Meyer calls “simple dignity”. Human dignity rests on top of this simple dignity, such that all humans have simple dignity but only rational humans have human dignity as well. Meyer explains that whilst human dignity is egalitarian and incommensurable, simple dignity doesn't have to be a clear conception of dignity with well-defined elements to successfully answer the challenge of speciesism.

The general concept of dignity clearly seems adequate to the task of embodying a hierarchy of moral status and worth without the result being that the moral force of that concept is in any way undermined. And the fact that the more specific conception of human dignity may not by itself easily accommodate hierarchies including human beings does not show that the more general concept of dignity will suffer a loss of moral force if it does.¹¹

It is probable that respecting the simple dignity of animals will require different actions depending on the species, and will be markedly different to respecting human dignity in autonomous individuals.¹² Meyer argues that we can accept the conception of simple dignity without damaging the concept of human dignity, provided we clarify which concept we are using.

Meyer is making the point that moral obligations can have varying bases – it is possible to come to see ourselves as being under a moral obligation for more than one reason. It is possible to see human dignity, or human rights as one basis of obligations without seeing it as an exhaustive account of all possible obligations. Meyer shows that it is at least possible to be committed to the claim that we ought to value all sentient life, but

owed to ourselves and to our fellow humans, not to the animals directly, although the interests of the animal is an ineliminable part of the process. See Skidmore (2001) for a review of prominent neo-Kantians' attempts to elucidate Kant's intuition.

¹⁰Meyer 2001, p. 116.

¹¹Ibid., p. 122.

¹²For some substantive works on what respecting the dignity of animals might consist in, see papers by Rolston III (1988), Fox (1990), and Balzer (2000). The dignity of animals is also used in an institutional context, separately from considerations of the dignity of human beings, for example in the Swiss Constitution. See the ENCH and SCAE Joint Statement (2001) for an account of how this works in Swiss law.

also that only humans have human dignity. The assumption, then, that a commitment to the claim that there is something morally special about human beings automatically entails commitment to human moral exceptionalism is misplaced. Neither the liberal nor the conservative conception of dignity I advanced in chapter 3 is without resources to afford animals moral considerability.

We can now return to discussing human beings. “Marginal cases” of human beings, those who lack the capacity for autonomy, pose a problem for autonomy-based conceptions of human dignity. The existence of marginal cases suggests that not everyone has the same substantive freedom; we are not all equally autonomous. This would mean that not everyone has the feature that grounds human dignity, and therefore that not everyone is equally morally considerable. To condense the options we have in answering AMCs based on differences in substantive freedom, we can say that if autonomy is the source of dignity, and if every human being has human dignity, then either:

1. Every human must have the kind of autonomy that confers human dignity, or;
2. We can extend human dignity to everyone, even though some individuals will never be able to act autonomously, without weakening the relationship between autonomy and human dignity or;
3. Autonomy is not the only source of human dignity, and either something else is, or nothing is at all.

From my last chapter, we can see that Kant's answer to this puzzle would be (1), that autonomy is a formal feature of the will and therefore persists regardless of whether an individual is ever able to set autonomous ends for herself. In my next chapter, I will look at a humanity-based conception of human dignity, which takes the positive version of (3) as a starting-point – proponents of this conception claim that it is a more complete picture of being human, not a thin principle of the human will, that gives us human dignity.¹³

In this chapter, however, I will outline an argument for (2), which is that we can transfer the human dignity that comes from being an autonomous, morally responsible person to those individuals who are not able to take responsibility or act autonomously. I will describe and use two principles in this argument, which are the principle of genetic equity and the broken chair analogy.

My reason for moving away from a strictly Kantian account of the properties of a human being is pragmatic; I am taking Kant as a source of an autonomy-based

¹³Helga Kuhse, Ruth Macklin and Stephen Pinker can all be classified as making arguments for the negative version of (3) in their critiques of dignity.

conception of dignity that liberals in the Biotech Revolution debate can cite, and Kant's account of the difference between the noumenal and phenomenal world is widely seen as unacceptable.¹⁴ Kant's solution for how it can be that all humans are equally autonomous but unequal in cognitive capabilities posits far too much metaphysical apparatus that most liberals would reject out of hand. There is therefore a need to fashion a separate account of how autonomy can confer universal dignity without being a universal property.

6.1.2 The argument from Species Continuity

In this section, I will discuss a criticism of the claim that all and only humans have human dignity, which is that it requires us to be able to draw the kind of bright line between humans and the rest of life on Earth that cannot be maintained by evolutionary science.¹⁵ This is the Argument from Species Continuity.

The Argument from Species Continuity is informed by theories of evolution and natural selection. Prior to Charles Darwin's publication of *On the Origin of Species...*, the idea that there was a radical separation between humans and every other species was prevalent throughout the Western world, supported by the doctrine of imago Dei in Christianity and Judaism.¹⁶ With Darwin's work came the increasing belief that differences between human beings and the rest of the animals were differences “in degree, not in kind”; humans have evolved from other species, and so it made sense to see them as a part of the natural world and not radically separated from it. Nowadays, it is common knowledge that we share between ninety-eight and ninety-nine percent of our DNA with chimpanzees, so the idea that interspecies differences are a matter of degree is easy to understand.¹⁷

The Argument from Species Continuity has been used to justify Regan's AMC, as it allows us to see the overlap between the capacities of severely disabled humans and some of the higher animals as a spectrum. Proponents of this argument claim that since some persons with intellectual disabilities and, say, some of the great apes have similar cognitive abilities, they can be said to occupy the same place on the continuum and therefore, they should be entitled to the same treatment. To say otherwise indicates a belief in the kind of radical separation that theories of human evolution seem to speak

¹⁴For a comprehensive explanation of Kant's Transcendental Idealism, see Derk Pereboom's article in the Stanford Encyclopedia of Philosophy, available at <http://plato.stanford.edu/archives/fall2014/entries/kant-transcendental>.

¹⁵See Dennett (2008) for an explanation of this argument.

¹⁶Lorberbaum (2001). See my discussion of human dignity and imago Dei in chapter 3.2.

¹⁷Wildman et al. 2003.

directly against. To go back to the quote from Regan, the only way to argue that a human and a non-human with the same capacities deserve different treatment is to claim that just being biologically human matters morally. Regan argues that this is unsupportable.

Conservatives have used this claim that humans are a part of nature, still evolving, and therefore imperfect, to argue against optimistic claims that the technologies that form the Biotech Revolution count as “progress”. They claim that the classical liberal belief that human beings are capable of deciding how to adapt to our environment and how to change in a beneficial way, is essentially hubris, because human beings are limited and incapable of taking a long view and seeing the consequences of our actions in generations to come.¹⁸ In my next subsection, I will illustrate how the Argument from Species Continuity is used to justify the argument that marginal cases are unfairly accorded human dignity and the moral status that goes with that, and then introduce a counter-argument.

6.1.3 Addressing the argument from species continuity

Accepting the Argument from Species Continuity is often written about as if it were inescapable for anyone who takes science seriously – failing to understand the idea of a species as a kind of point on a continuum means we must be clinging to anachronistic theories of what a human being is or that we must be using something intangible like the possession of a soul to draw a bright line between all humans and the rest of life on Earth.¹⁹

This is not necessarily the case. Here I will give support for an alternative conclusion, which is that there is a way to distinguish human beings from the rest of nature using our shared genetic code. We can argue that there are bright lines between humans and other animals without therefore arguing that humans are biologically or spiritually separate. This means that we can extend human dignity to all humans, even if they do not have the capacity for autonomy. Animals may still matter morally and may still have a dignity that is properly their own, but the concept of human dignity is reserved for all and only humans

¹⁸Buchanan 2009b.

¹⁹For example, see Dennett (2008); Dennett argues that there is no way to draw such a bright line without appealing to something like the soul.

6.1.4 The principle of genetic equity

In an article in the journal, *Nature*, John Harris and John Sulston argue for a principle they call “genetic equity”, which I will explain and modify slightly in order to use it as a way to argue against AMCs based on the different cognitive capacities found between human individuals. This principle is intended to build on scientific discoveries like the increased understanding of the relationship between genotype and phenotype, and the sequencing of the human genome, and use these discoveries to capture a principle of what they call “common sense morality”:

Humans are born equal; they are entitled to freedom from discrimination and equality of opportunity to flourish; genetic information may not be used to limit that equality.²⁰

The authors claim that there are already provisions in law preventing certain kinds of genetic information being used to justify unfair treatment – they cite gender, colour and sexual orientation as examples of this – and intend their principle to extend and formalise this:

Societies have a fundamental obligation to ensure the protection of life, liberty and health of each citizen impartially, and to provide access to beneficial health care and to the fruits of research on the basis of individual need, so that each has an equal chance of flourishing to the extent that their individual genome and personal health status allows. This equal chance of flourishing should be protected by the state regardless of such arbitrary features as race, gender, genome, degree of disability, wealth and power, religious belief and skin colour.²¹

Although Harris and Sulston use the word “genome” to identify a feature of an individual in the quote above, it should be noted that “genotype” would be a profitable substitution to make. The definition of the genome of a species is the complete set of genes that can be found in that species. An individual's genotype is a subset of genes from the genome of the species. Genetic equity can be explained as a claim that an individual's genotype should not be a justification for unfair treatment. By definition, all humans have a human genome, so having a human genome cannot be considered an arbitrary feature that could be used to discriminate. Having one set of genes in one's genotype rather than another, by contrast, could be so used. The principle of genetic equity should cover genotypic information, not genomic information.

Harris and Sulston relate their principle of genetic equity to human dignity, which they define as consisting in “equal standing in the community and in equal respect for

²⁰Harris and Sulston 2004, p. 796.

²¹Ibid., p. 798.

rights and interests.”²² They claim that genetic information cannot morally be used as a justification for extending human dignity to some individuals and not others. Respecting human dignity requires treating all individuals as equal regardless of any genetic information about them.

This is where the principle of genetic equity can be useful in defending autonomy-based human dignity from AMCs, with some modifications that I will state here. First, the authors do not explicitly claim that possession of a human genotype is sufficient to be accorded human dignity, but adding this premise does not detract from the central claim of their principle, which is that genetic information should not be used to limit equality. That all human beings share in the human genome could be seen as a reason that they are at least basically equal in the first place; a human genome is something that all and only humans have, and having a human genome just is being human.

Harris and Sulston also do not relate human dignity to autonomy, but their principle can be used alongside the liberal claim that human dignity is grounded in the capacity for autonomy. The human genome is unique because it contains genetic information that, in the right circumstances, can result in an individual with autonomy and the capacity to develop a good will, which is what we consider normal cognitive functioning.

In order to justify why having a human genome bestows human dignity on all individuals, even the ones who don't have autonomy, we can take the principle of genetic equity and add the idea of “species-typical functioning”.²³ Although there is much variation within the human genome, there are some capacities that count as typical for that species; phenotypic traits that are fixed and highly prevalent throughout the population. In humans, being autonomous and able to develop a good will is one of these species-typical functionings. We see a lack of this function as a disability, rather than a natural variation.

Tibor Machan makes the argument that marginal cases ought to essentially be ignored because of their marginality, and that species-typical functioning is all that ought to be taken into account when considering whether an individual has human dignity. Machan defends the idea of a crucial threshold that differentiates humans from the rest of the animals, which is that only human beings have the free agency needed to be morally responsible, making his position apt for classification as an equal moral status

²²Ibid., p. 800.

²³I am following Ruth Macklin (2002) in my use of the term “species-typical functions”; she attributes it to Norman Daniels (1985).

based in autonomy, which I have called human dignity. Machan argues that we do not normally hold animals responsible for their actions, and we do not see them as having moral duties:

One way to show this is to recall that broken chairs, while they aren't any good to sit on, are still chairs, not monkeys or palm trees. Classifications are not something rigid but something reasonable. While there are some people who either for a little or longer while – say when they're asleep or in a coma – lack moral agency, in general people possess that capacity, whereas non-people don't. So it makes sense to understand them having rights so their capacity is respected and may be protected. This just doesn't work for other animals.²⁴

Although Machan's response to the AMC is insufficient – we do withhold moral blame from individuals that we do not judge to have *mens rea* – the argument he uses to conclude that all humans ought to be treated as equals provides a valuable adjunct to the principle of genetic equity. Machan is making use of a strategy of arguing from similarity, which is commonly illustrated with an example of a chair. If I sit on a chair and it breaks, I do not stop seeing it as a chair. Rather, it is a chair that is unable to fulfil the function of a chair because of some defect it has. The argument goes, that just because a human being is severely disabled, we do not therefore see them as a different kind of life, we see them as a human with a disability. The “family resemblance” that allows us to recognise different individuals as humans persists, and cannot be reasoned away by pointing to a lack of certain cognitive capacities because it is a kind of spontaneous perception of humanness.

The broken chair analogy isn't itself an argument that we *should* see disabled people as equally morally considerable, it's a way to explain how it is that we *do* see them as people who are equally entitled to the respect that comes from having human dignity.

We can also use my arguments based on the principle of genetic equity to show that it is not merely being human, or possession of a human genome *per se* that entitles all humans to human dignity. The human genome contains the information to build the normally autonomous human brain. Possession of that genome is valuable because of its relationship to autonomy, not human nature taken more generally. We can therefore distinguish between autonomy-based and humanity-based conceptions of human dignity, whilst maintaining that all human beings have basic human dignity.

Within the human genome, there are genes, combinations of genes, and ways that the environment effects the structure of genes (for example, environmentally-induced

²⁴This argument has been fully developed in Machan's (2004) book, “Putting Humans First”, but he most clearly explains the broken chair analogy in a blog post, available at <http://www.strike-the-root.com/4/machan/machan43.html>.

methylation) that can result in a loss of species-typical functioning like autonomy when they are present in an individual's genotype. The principle of genetic equity, when related to human dignity, acts as a justification for why individuals who lack autonomy do not therefore lack human dignity. It is simply a matter of luck that I can develop a good will where Ashley X cannot, and basing the ascription of human dignity on a matter of luck is unjust. In my next subsection, I will give a related argument in favour of extending human dignity to all individuals regardless of their genotype or phenotype.

Although the capacities that make humans capable of morality are only present in normal adult humans, they nevertheless form a part of the settled dispositions that make up human nature and when we recognise a human being of any level of disability, we see them as sharing in human nature. We recognise human beings because of their family resemblance – that unique combination of features that allow us to judge that this person and that person are both humans with the disposition towards autonomy. The principle of genetic equity gives us a concrete reason why we should see all humans as equal, as we are all in equal possession of a human genotype.

Marginal cases, then, do not pose a problem for the attribution of human dignity to the whole human species, because they are still recognisable as being a part of the human family and they share a genetic code. The fact that they are marginal, that is, not like the vast majority of human beings, means that they can be seen as anomalous cases of humanity rather than requiring a change in the concept of human dignity.

Marginal cases can be accommodated within a liberal theory of autonomy-based human dignity, but respecting human dignity entails giving as many people as possible the resources to develop their autonomy to the greatest possible extent. In political terms, this can be seen as the impetus to develop liberal theories of social justice – creating the conditions where people can get the healthcare, resource security and education they need to develop their capacities to make decisions for themselves. This is in accord with the liberal project in social development more generally.²⁵ In Kantian terms, human dignity gives us a duty to develop a good will, which means everyone has an obligation to strive to do the right things for the right reasons, thus creating a society where people are free to develop a good will is respectful of human dignity.

In section 6.2, I will argue that the Biotech Revolution has the potential to expand the scope of the obligations we have to create the conditions for people to realise their dignity. New technologies like pharmaceuticals and drug delivery systems, as well as neural implants and gene therapies could allow a greater number of disabled

²⁵Wolfe 2010.

individuals to become autonomous, which raises the question of how society ought to regulate these technologies. This means we will be moving past the AMC and into a more general discussion of how the capacity for autonomy and the dignity it entitles us to can be respected.

Before that, I will address another question that is made more salient by the advent of the Biotech Revolution: can the equal moral status encapsulated by the notion of human dignity be extended to non-humans?

6.1.5 Extending the AMC upwards

Developments in nanotechnology and cybernetics, plus the ability to transfer genes from the genome of one species to another, raise the possibility that we might create an individual that is definitely not human on a biological definition, does not possess a human genome, yet still has the capacity for autonomy and the development of a good will.²⁶

Accepting that the human capacity for autonomy, rather than any other features of our genetic makeup, is the grounds of human dignity allows liberals to accept, in principle, that non-humans may have inherent, equal, universal, inviolable dignity. A liberal theory of dignity could extend to any autonomous creature, including extra-terrestrial species or non-human species yet to be created by the Biotech Revolution, because it does not depend, as the biocon conception does, on *biological* facts about embodied humanity.

In chapter 5.3.2, I outlined a test to determine the importance of human nature to the matter and form of the moral law. I argued that if the substance of an individual's duties changed when the facts about human nature or the physical human body changed, but the form of the moral law did not change, this showed that the relationship between human nature and the moral law was contingent. I will now discuss this in more detail, because it can lead to the claim that the moral law will apply equally to any rational creature including enhanced and cloned humans, but that our duties to different rational creatures will be contingent on facts about their nature and their biology. This has the implication that even if human life as we know it were to change immeasurably

²⁶Nanotechnology in this case specifically refers to the medical uses of nanoscale materials to rebuild or create new tissues in a human body – see Hall (2005) for a discussion of the nanomedicine in terms of future-facing bioethics. Robotic technology that interfaces directly with humans is called cybernetics, and covers everything from replacement limbs to devices implanted in the human brain to enhance or restore functioning (see Grey 1995). Gene transfer is already commonplace in lab experiments, and the creation of human embryos with some genes from animals for research has been proposed and summarily banned (for discussion, see Karpowitz, Cohen, and van der Kooy (2005)), so there is at least the possibility for a human to be created with non-human DNA.

as the result of the Biotech Revolution, our morality would not necessarily change with it. So long as we continue to recognise these beings as being potentially possessed of autonomy, we can recognise that they are entitled to the special moral status of human dignity, and that we cannot realise our own dignity whilst failing to respect their equal moral status. I will now give an example to illustrate this.

Example 9: The Old Ones H. P. Lovecraft's novella *At The Mountains of Madness* illustrates the importance of reason for the attribution of humanity. It takes the form of a letter warning others not to make expeditions to the South Pole, for something terrible and destructive has been found there. The creatures the expedition found – thick, tentacled, monstrous beasts – were found encased in ice, presumed dead, but as they thawed out it became clear that they were only in a state of suspended animation, and on waking up they killed scientists and sled-dogs before making off towards the continental interior. What makes this story relevant is the narrator's experience; leaving the camp, he discovers where the creatures had come from, and as he explores the ruins of their city he comes to the conclusion that “Radiates, vegetables, monstrosities, star spawn – whatever they had been, they were men!”.²⁷ The creatures, Old Ones, had created a vast, lush, beautiful civilisation before being wiped out. When they came to after millennia in the deep freeze, it was to a post-apocalyptic wasteland, with nothing left of who they were. They had not mindlessly and brutally murdered everything alive at the camp, they had acted out of curiosity and even performed autopsies on the dogs and men. The narrator had no doubt in his mind that the Old Ones had a kind of humanity, despite the huge physiological differences. Body shape was irrelevant to whether he judged the creatures to be “men”, their civilisation and culture was what marked the similarity between us and them.

What the narrator recognised in the Old Ones is a *morally relevant* similarity. They are not human beings with a human nature, but their mental abilities are similar enough to be recognised. The nature of Old Ones is not a human nature; you have to be human to have a human nature. It is, however, still worthy of whatever kind of respect that is due to beings with autonomy. This means that the family of “beings with dignity” could potentially be expanded to cover all species with the capacity for autonomy including, if evidence shows it to be necessary, animals like the great apes and cetaceans. Just because we owe creatures like the Old Ones respect does not mean that our obligations to them are precise analogues of what we owe to fellow humans, but the key feature that our rational nature shares with these fictional beings is moral autonomy.

²⁷Lovecraft 1964.

This takes us back two questions of how we are to understand the concept of respect for human dignity. The first concerns our ability to understand human dignity in a way that will allow us to derive substantive duties, and second is how we are to understand dignity as a quality as based on human dignity. There is a Kantian division possible in the answer to the first question; we saw in chapter 5 that the moral law applies to all human beings because of our autonomy, and in this section I have suggested that all autonomous individuals, human or not, would be similarly bound by the moral law.

The second question of dignity as a quality can also be brought back into the picture at this point; we would expect the dignity as a quality of one of the Old Ones to present differently from that of a human being, because of our different life cycles. Just like different human cultures have different ideals of dignity as a trait, we can expect different species to have different models of dignity as a quality. Different people will be dignified in different ways, depending on what they are naturally able to do – we can extend the liberal principle of neutrality to presentational dignity as well as happiness – if this is so within the human species, it can be so between humans and other rational species.

If we were to create human-animal chimeras, for purposes other than embryonic research, for example, the resulting creatures could be free to define their own conception of dignity as a trait because of differences in their physiology, and our duties to those creatures would also depend on such differences. However, humans with non-human elements in their genetic makeup would still have dignity so long as they were in possession of the capacity for autonomy.

At this point, I will conclude my discussion of Arguments from Marginal Cases, and move on to the second part of my development of a conception of liberal dignity, which is to evaluate the claim that liberals are committed not just to the permissibility of reproductive biotechnologies, they are also morally bound to use them. Biocons use this characterisation of the liberal position to make their own arguments more appealing. This is because many people are disquieted by the thought of genetic enhancement. In this section, I will argue that these arguments are weak and that liberals have no prima facie duty to support every instance of enhancement, although there could be such an obligation if certain conditions are met.

6.2 Obligations to enhance

The Biotech Revolution brings with it the potential to exercise control over our own, and our children's cognitive capacities at a level undreamt of just a few decades ago.

With pre-implantation genetic screening, we can get information about the genetic makeup of embryos we have created and potentially manipulate them to remove genes for traits we don't want, and add genes for traits we do.²⁸ With gene therapy and cybernetics, we have the potential to enhance and alter our own capabilities by changing the way our brains work on the smallest scale. In this section I will discuss whether Arguments from Marginal Cases can be seen as leading to obligations to enhance our children. I will argue that any such obligation is not likely to be global, or to come at the cost of the destruction of embryos.

Even though the principle of genetic equity allows us to extend human dignity to all human beings, it could still be claimed that we ought to use technologies from the Biotech Revolution to manipulate the population so that there are no more marginal cases, because only autonomous individuals can fully realise their dignity by developing a good will. Francis Fukuyama suggests that liberals might be committed to the claim that there is a duty to “raise the bottom”, to provide state-sponsored genetic enhancement to those who could not afford it themselves, so that all future children were born “more intelligent, more healthy, more 'normal'”.²⁹

On the autonomy-based conception of dignity that I have outlined, we have a duty to develop a good will, which equates to a duty to create the conditions where we can do the right things for the right reasons.³⁰ In what follows, I will give a brief example of a situation where a parent feels obligated to exert some direct control over the genotype of his child, and then examine this example in the light of a biocon critique of liberal approaches to enhancement.

Example 10: Talim Talim is a young man who has suffered his whole life with episodes of uncontrollable rage. When provoked, his anger consumes him to the point

²⁸Scientifically, the idea that there are “genes for” high-level traits like intelligence, or empathy, is a gross oversimplification. Whilst we have isolated individual genes that are correlated with certain behavioural traits, for example the so-called “Warrior gene”, just having this gene is not enough to exhibit a trait (Fallon (2014) provides a fascinating personal case study of this). Factors like the presence of other genes, which can have a promoting or silencing effect, the developmental environment of the embryo and the nurturance of the resulting child all have an influence over the presence of a trait (Spector 2012, p.8). Nevertheless, biocons and many bioethicists do in fact talk about genetic enhancement as if it were a single process where a modification at the genetic level results in a change in the resulting child, so I am mindfully using this simpler language of genetic enhancement.

²⁹Fukuyama 2002, p. 158.

³⁰It should be noted that I don't mean to claim that there is a duty to see doing the right thing *in terms of* having the right reasons (as opposed to in terms of having the best outcome), just to develop a sensitivity to something being the morally right option as a reason for doing it. There is, for example, no duty to install magnets in the brains of consequentialists, even though a recent experiment showed that the application of electromagnetism to the brain appears to cause a shift from broadly deontological thinking about morality to broadly consequentialist thinking! (Young, 2010)

where he “blacks out”, and is unable to control himself or remember what he did until the next morning. His opportunity to develop dignity as a quality is restricted. He is also more likely to disrespect other people when he is angry. As a child, Talim's rage got him into trouble, until his parents took him to a psychologist who diagnosed his problem as genetic and prescribed intensive therapy and medications. Now, Talim is an adult who functions as a normal, responsible citizen, but who struggles internally with controlling himself. He has a partner and they plan on having a baby, but Talim is worried that his child will have to go through the same problems he did. So, he turns to a biotechnology company for help. Scientists at the company are able to create an embryo, and then if the embryo tests positive for genes related to episodic aggression, they can remove them and substitute genes for even-temperedness.

Talim believes he has a duty to give his child the best chance of making the right decisions for the right reasons, and this means not having to develop the same kind of intense self-control as he has had to. A genetic predisposition to episodic rage is a roadblock to developing a good will and Talim sees this as a chance for his child to avoid his problem and live a more dignified life. Whilst education and medication can help, removing the genes before they are expressed in a child is a much less painful, and more effective method.

The argument that there could be an obligation to alter an embryo's genetic makeup so that it does not suffer from the kinds of disabilities that would limit its potential to develop a good will has been challenged by biocons, as I will explain in the next section.

6.2.1 Cohen's critique of liberal bioethics and enhancement

In his 2002 article for “The New Atlantis”, called “Bioethics in Wartime”, Eric Cohen argues that the focus on equality means American liberals have no way to argue that we should prevent genetic enhancement.³¹ In this section, I will reconstruct Cohen's argument, and then in my next section I will show that contrary to his conclusions, liberals do not have an obligation to permit any and all enhancements, although they are also not obligated to impose a blanket constraint on enhancement projects at an individual or state level.

Cohen starts by asking why this point in time – 2003 – is so important for a discussion of biotechnology. He argues that because of the recent developments in research, biotechnology is gaining a potential to move outside the traditional medical scope of

³¹E. Cohen 2003a.

treating and curing disease:

What matters is that biotechnology makes these transformations of human life both more plausible and more irreversible. It points to a *post-medical* age, where doctors serve desires rather than treat disease. It points to a *post-sexual* age, where the differences between men and women are no longer essential to reproducing the species, and where modern technique is a “better” way to make babies than having sex. And it points to a *post-personal* age, where individuals can remake their memories and temperaments to become the person(s) they always wished to be but never really were, and perhaps never really are.³²

This widening scope, Cohen goes on to claim, aggravates traditional political divides in American culture and politics. First, he claims that greater regulation is desired by “naturalists and social conservatives” because of a threat to human nature, and by “Orthodox believers” because of religious principles:

Such people make rational arguments in the public square – often more rational than secular scientists, who defend the morality of their experiments with largely emotional appeals – but they are moved to argue by their belief in God and His commandments, especially regarding the sanctity of life and the dignity of human procreation.³³

By contrast, “libertarians and quality-of-life-liberals” and “secular liberals” believe:

[T]hat the new biotechnology serves a more perfect freedom from all suffering and restraints, or a more perfect equality for the sick, disabled, and dissatisfied.³⁴

This desire for a perfect equality between people and the potential for biotechnology to achieve it, Cohen argues, is the reason that the debate over biotechnology “cuts to the very foundation of the American project”. Although Cohen does not explain in detail what he means by the American project, we can assume that it concerns the most famous line of the Declaration of Independence, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

Cohen starts with enhancement, pointing to the inequality in “genetic equipment” between an Olympic athlete and a normal person and claiming “those who oppose biological enhancement often argue, I think rightly, that the dignity of an Olympic

³²Ibid., p. 28.

³³Ibid., p. 29.

³⁴Ibid., p. 29.

runner would be lessened if that person were genetically or biologically enhanced”. His discussion moves quickly from enhancing normal humans to the more traditional sphere of medical ethics:

These natural inequalities, which seem inherent to being human, are even more pointed when it's a matter not simply of mediocrity but disease; when one thinks of sick or dying children; when one comes to believe (understandably, but perhaps falsely) that such diseases are an injustice that we have an obligation to correct by any means possible.³⁵

“By any means possible” is a reference to the use of human embryos to enhance human wellbeing; Cohen moves onto this point in the next paragraphs. Here he gives two arguments that are intended to describe the Christian conservative and secular liberal position on what he sees as the problems of human limitation. He starts by explaining how Christians can appeal to Biblical teachings to justify their opposition to “aborting ‘imperfect foetuses’, or destroying embryos in the pursuit of health”:

Biblical religion teaches that there is an inherent dignity that comes with creation, a dignity that all human beings possess at all stages of life, simply by virtue of being one of God's creatures. And while people may suffer in this life – with disability, disease, imperfection, and death – they can be saved in the next one. Their wretchedness is a pilgrimage.³⁶

Cohen's argument goes like this: Christians oppose abortion and embryo destruction of any kind because the Bible gives them answers to the problems of biological human limitation. These answers are that all humans have intrinsic dignity, that their suffering provides an opportunity for growth, and that life on Earth is but a prelude to eternal life. Given this, there is no obligation to try to overcome the “problems of human limitation, suffering and mortality”, and therefore no obligation to use embryos in research, or to abort embryos that have been diagnosed with disabilities.

Cohen contrasts this to how he characterises the liberal position on biotechnology:

Modern liberalism, by contrast, has a more difficult problem trying to explain why people are born with great natural inequalities; or why, later in life, we'll all be unequal to the vigorous selves we once were. Without such answers, the temptation to become liberal eugenicists or libertarian seekers of eternal youth is very great.³⁷

Liberals are opposed to inequalities because inequality is an injustice, and there is an obligation to prevent or ameliorate injustices. This applies to societies as well as

³⁵E. Cohen 2003a, p. 29.

³⁶Ibid., p. 29.

³⁷Ibid., p. 30.

individuals. However, not all humans are biologically equal; some people are more able and talented than others, and some people are born with or acquire debilitating impairments and diseases that prevent them from reaching the same level of excellence even as normal people. Cohen argues that this biological inequality is an injustice, and therefore that liberals consider themselves to be under an obligation to work to end biological inequality. Given that biotechnology promises to do this at the individual level with genetic enhancements, and at the social level by allowing genetic testing and selective abortion of embryos with disabilities, Cohen concludes that liberals must consider themselves to be under an obligation to support biotechnology. This concludes his argument from biological inequality:

Maybe we're going to make ourselves biologically more equal – especially more equal to pursue happiness. This seems to be the guiding sentiment of liberal humanitarians, both scientists and politicians, who defend research on embryonic stem cells. They want children born with grave diseases to live full lives – like everybody else. They want justice where fate or genes or both has denied it. They revolt as Job did – “The Lord denies me justice!” – but they do not look where Job looked for an answer.³⁸

In the rest of the article, Cohen make an argument for the need for bioethics to focus on providing an account of meaning in biological human life. He concludes that such an account would adequately justify constraining research into biotechnology, but does not mention liberals. I will now move on to discussing Cohen's arguments in the light of my Kantian, liberal conception of dignity.

Ruth Macklin critiques Cohen's article in “The New Conservatives in Bioethics: Who Are They and What Do They Want?”. Specifically, she takes Cohen to be arguing that it is not permissible to alter the genotypes of embryos so that they avoid disabilities:

Why is it acceptable (or is it?) to alter the physical environment to benefit individuals with disabilities (such as public accommodations for wheelchairs) but not their biological attributes? Does Cohen reject a conception of justice that would seek to reduce disparities between the less fortunate who have congenital or acquired disabilities and people without such physical or mental impairments?³⁹

Talim, whose example I discussed above, would agree with Macklin on this point: in changing his child's genome, he sees himself as altering the antecedents to the child's behaviour and setting him up to navigate through life with the fewest possible problems. From my reconstruction of his arguments above, I would contend that this is

³⁸Ibid., p. 30.

³⁹Macklin 2006, p. 41.

exactly what Cohen would reject; the claim that biological limitations can be described as an injustice, rather than as a God-given opportunity. He runs together two arguments, that the sanctity of life makes it immoral to use embryos for research or abort them if they will develop into a disabled full-term foetus, and that we ought not want to alter the human body using biotechnology because suffering and mortality are part of a fully human life, which makes sense once we appeal to religion.

Cohen's argument that liberals must be committed to genetic enhancement is an Argument from Marginal Cases, or rather, a conceptualisation of how a liberal might respond to an AMC. Cohen is arguing that liberals see social inequality as an injustice, and that biological inequality is now like social inequality because biotechnology is making it possible to intervene in society to make individuals more equal, like politics makes it possible to make societies more equal. Therefore biological inequality is an injustice.

We can assume that, given his link between the American project and equality, Cohen would argue that liberals are concerned with equal freedom. The marginal cases; the sick, disabled, comatose and the very elderly, mean that it is impossible, on Cohen's construal, to say that everyone is equally free. Some people are able to achieve more than others because of their biological makeup. This makes those people more free. Others are constrained by defects in their genes and will never be able to have the same freedom that the excellent athlete, or even the non-disabled individual can have.

Cohen argues that creating greater equality means making everyone more free to pursue happiness. Those people who are not free ought to be made free, and those who are not equal ought to be made equal. The obligation to enhance is therefore an extension of the obligations to create greater social equality. The more freedom and equality people have, the more just the society. If genotypes can be altered to make individuals more free and more equal, then liberals have an obligation to do this.

Secular liberals cannot have access to principles like the sanctity of life and intrinsic human dignity, Cohen claims, because these are religious in nature. This means that, on Cohen's view, there is no recourse for liberals to argue that embryos ought not be destroyed to enhance or cure other people; no counterbalance to the imperative that we correct injustices in the world. I will demonstrate in the rest of this chapter how a liberal conception of dignity can yield a secular principle that, in some circumstances, constrains the pursuit of equality.

Cohen moves between two kinds of enhancement – therapeutic and non-therapeutic – without acknowledging that there could be an ethical distinction to be made between the two. The Nuffield Council on Bioethics explains:

The way to distinguish between those interventions which count as “therapies” and those which count as “enhancements” is by reference to the condition that is to be altered: therapies aim to treat, cure or prevent diseases and to alleviate pathological conditions which place someone outside the normal range, whereas enhancements aim to improve already healthy systems and to advance capacities which already fall within the normal range.⁴⁰

This distinction places changing one's athletic ability to rival an Olympic athlete into the category of enhancement, and classifies altering an embryo's genome to remove the possibility of a resulting baby being born with a syndrome like Ashley X as therapy. Human dignity on the liberal conception does not yield the obligation to enhance people so that they all have equal athletic abilities because this kind of equality is not related to whether an individual is able to develop a good will, or exercise autonomy. Autonomy is restricted to an individual making her own decisions about morality, not about the number of careers or experiences that are open to her because of her physical prowess.

Although Cohen is wrong to claim that liberals have no recourse to argue that genetic enhancement ought to be constrained, he is correct in claiming that a liberal conception of dignity would not rule out every single instance of enhancement. In order to make this argument, I will reconstruct an example of a liberal conception of dignity that has been used to distinguish between permissible and impermissible instances of enhancement, from Roger Brownsword.

6.2.2 Brownsword's “dignity as empowerment”

The context of Brownsword's discussion in his article, “An Interest in Human Dignity as the Basis of Genomic Torts”, is a theoretical exposition of the role of tort law in the kinds of claims that might become common as the Biotech Revolution takes hold. Dignity tort is an established part of tort law, and given the relationship between dignity and the Biotech Revolution, Brownsword claims that dignity tort will be of paramount importance in settling claims about who is entitled to compensation when there is a dispute around genetic enhancement.⁴¹

One example of such a claim is, if a child is deliberately given genes for deafness because her parents are part of the Deaf community, but the child grows up to resent

⁴⁰Nuffield Council of Bioethics (2002, article 13.41, p.144.). The bioethicist Allen Buchanan, by contrast, has argued that this distinction collapses because there is no clear link between something being an enhancement and being morally problematic (Buchanan 2006, p.26-27).

⁴¹Dignitary torts are a class of civil wrongdoing, which traditionally cover acts of assault, battery, and false imprisonment (McBride and Bagshaw, 2013).

her deafness and sues her parents for putting her at a disadvantage outside the community they live in. Brownsword argues that the child would have a claim in this case.⁴² Another example Brownsword gives is, parents being able to recoup compensation for the failure of an enhancement project – a parent might choose to have a baby with blue eyes, or a predisposition towards musicality, but end up with a brown-eyed, tone deaf child. In this case, Brownsword claims that the parents may have a case if they decide to sue, but the child herself would not.⁴³

In assessing whether genetic enhancement is in accord with human dignity in a more general sense, Brownsword introduces a liberal conception of human dignity that is based on autonomy. He calls this “dignity as empowerment”:

Three substantive claims are distinctively associated with the idea of human dignity as empowerment. First, there is a demand for recognition as one who has the capacity to make one's own free (and informed) choices. As Joseph Goldstein has aptly remarked, to treat one who has such capacity for autonomous decision-making as an incompetent “constitutes the ultimate disregard of ... human dignity.” If we want to talk about an “affront” to human dignity, this is as deep an affront as there can be. Second, there is a demand that one's own particular free choices be respected. Third, there is a claim to the conditions in which an autonomous life can be lived.⁴⁴

Brownsword makes a key distinction between permissible and impermissible kinds of genetic enhancement; an enhancement of capacities that make an individual a more capable, more autonomous agent is a permissible use of the technology, but an enhancement of capacities that are not relevant to an individual's agency is not permissible. He cites Bruce Ackerman's variation on the liberal principle of neutrality to justify this distinction:

Bruce Ackerman, for example, has argued persuasively that the fundamental liberal principle of (what he calls) “neutrality” militates against recognising a parental right “to design their children in the way they find most pleasing (i.e., in accordance with the parents' own conception of the good).”⁴⁵

Brownsword is specifically talking about tort law, so he is concerned with the question of when it could be lawful for one party to sue another over genetic enhancements – he argues that parents who choose to design certain talents into their children could sue because they have a right to have their projects respected – but his argument can be

⁴²Brownsword 2003, p. 442.

⁴³Ibid., p. 444.

⁴⁴Ibid., p. 420.

⁴⁵Ibid., p. 421.

extended to apply to whether it is morally permissible to perform these enhancements in the first place. The principle of neutrality states that those in power ought not impose their conception of the good on the people they have power over. This, as the quote from Ackerman states, can extend to the claim that parents cannot design their child to conform to what they think a good person is, in a non-moral sense:

In other words, enhancement that tries to make a future agent's choices for it is off bounds, but not enhancement that is geared to improving a future agent's ability to make its own choices. In this sense, enhancement must be consistent with the liberal principle of neutrality; or, as some might prefer to put it, enhancement must leave the agent-to-be with an "open future." So, for example, it might be consistent with human dignity as empowerment to positively enhance for intelligence, but not for a particular talent such as musical ability – even though parents, with greater or lesser success, might continue to sit their infant children in front of a piano from an early age.⁴⁶

The three elements of dignity as empowerment are “(i) respect for one's capacity as an agent to make one's own free choices; (ii) respect for the choices so made; and (iii) respect for one's need to have a context and conditions in which one can operate as a source of free and informed choice.”⁴⁷ If an embryo is diagnosed with an intellectual disability that can be treated with genetic therapies before being implanted and brought to term, it could be argued that there is an obligation to that child to do so. Failing to do so is a failure to respect the child's human dignity, but it does not take away his dignity. Along the same lines, if there is the opportunity to prevent an embryo developing into a child with Ashley's syndrome, or blindness, or a predisposition to childhood leukaemia, there could be an obligation to take it because all of these things generically disadvantage individuals compared to others.

To go back to the Kantian conception, the core duties that equal human dignity gives humans are to respect the dignity of their own humanity and develop a good will. Enhancements that make an individual better able to think about decisions in terms of morality, and to act on those decisions once made, would be in accord with respect for human dignity on this construal. As I argued in my last chapter, Kant's writing on happiness show that he was committed to the principle of neutrality, so his concept of respect for the dignity of persons would rule out enhancing children according to their parents' conceptions of the good.

I will now use Brownsword's conception of liberal dignity to criticise Cohen's claim that liberals have an obligation to make everyone equal using genetic enhancement.

⁴⁶Ibid., p. 443.

⁴⁷Ibid. p.416.

Cohen argues that there could be an obligation to enhance all persons so that they are able to perform like an Olympic athlete, but this is an example of an impermissible enhancement because it assumes that the enhanced child will think it is good to be able to excel in athletics, rather than, say, to spend extended periods of time sitting down in front of a computer. Every choice that a parent makes over the genotype of their child is to choose one trait and not another; to choose the propensity for lean, toned muscles over a large amount of fatty padding, or to choose an ability for music rather than tone-deafness. We are not more free to pursue happiness *per se* if we are enhanced, only the kind of happiness our parents have laid out for us. Liberals do not accept that; Cohen's characterisation of liberalism is too blunt.

Liberals can argue for an even stronger claim than Brownsword's, which is that it is difficult to offer a neutral definition of agency from which we can decide what counts as agency-relevant enhancements, and what kinds of capacities we ought to be enhancing. Autonomy, for example, is a contentious issue as theories of relationality stand at odds with theories of substantive independence. When we are in the position to enhance an embryo, does making it more susceptible to group pressure make it less autonomous, or more likely to value the norms of groups in decisionmaking? Would making an embryo less inclined towards accepting authority mean it was better able to make decisions fully for itself, or would it make it more difficult to be educated and therefore at a disadvantage?

If there are different conceptions of what makes an individual fully autonomous, then *prima facie* the principle of neutrality would rule out designing one conception into a child at the expense of another. This would restrict the range of permissible enhancements to the therapeutic, altering generic physical and cognitive impairments like blindness or Rett's Syndrome. On this conception, liberals can permit very few enhancements, and nothing outside the strictly therapeutic. This shows that Cohen is mistaken to claim that a commitment to liberal principles entails accepting an across-the-board obligation to enhance.

6.3 Conclusion to chapter five

These last two chapters have answered the three questions for liberals that I posed at the beginning of part two of this thesis. In my last chapter, I developed a Kantian, liberal conception of human dignity as equal moral status that can be distinguished from respect for autonomy and is not a conception of the good.

In this chapter, I have argued that a liberal conception of autonomy-based dignity,

which is based on the claim that all humans have equal moral status, can be formulated so that it avoids falling to AMCs. Marginal cases can be argued as having equal human dignity in spite of their lack of substantive capacities for autonomy, because we recognise them as equally human. All humans have the same basic genome, and the human genome contains genes that give expression to unique morally-relevant capacities that ground our human dignity. We cannot take away the fact that an individual is human, so we cannot claim that only normal humans have human dignity.

I then argued that the duty to develop a good will can be applied to genetic enhancement. Human dignity means more than respect for autonomy, because it gives us the duty to develop a morally good will as a quality of character, not just to respect our own capacity for self-governance. Liberals can use dignity to navigate the duties that come from having more control over the antecedents that eventually lead to whether an individual can develop a good will. One way they can do this is by distinguishing between agency-relevant and agency-irrelevant enhancements, and applying the principle of neutrality.

In my next chapter, I will look at the conservative conception of dignity and address the three questions that I posed for them at the beginning of part two. I will apply the conservative conception of dignity to issues in future-facing bioethics, which will then allow me to claim that the liberal and conservative conceptions are intractable.

Developing Humanity-based Dignity

In my last two chapters I developed and defended a conception of human dignity that is based on autonomy and argued that it was best understood along liberal lines. This chapter will do the same for dignity based on human nature and conservatism in bioethics. In chapter 3.4.2 I argued that biocons use a conception of dignity as a quality that is described as human flourishing, and that human flourishing only has moral significance if all humans have an intrinsic value. In this chapter, I will show that human dignity and dignity as a quality are much more closely meshed together than they are under the liberal conception, so I will be using the word “dignity” to refer to human flourishing unless I specifically mention human dignity.

In chapter 3.4.2, I explained how Daniel Sulmasy argues that being biologically human is sufficient to have human dignity. This biological account of humanity provides the basis for the biocons' conception of human dignity; on this definition humanity is something we all share, it is not dependent on any particularities of individuals. However, one distinction marks the way biocons use this characteristic to ground human dignity as unique – humanity faces a technological threat; advances in biotechnology could mean that our humanity is *lost*. Biocons are unique in conceptualising the Biotech Revolution as a direct threat to the existence of human dignity; they stress that the advances in biotechnology that are the subject of arguments in future-facing bioethics are not merely disrespectful of human dignity, they could remove it altogether.

Seeing human dignity as something that can be lost when humanity is lost introduces an ambiguity into the biocon conception of dignity. This ambiguity is between dignity as a quality, conceived as inflorescent dignity, and human dignity. Although I argued in

chapter 3.4.2 that inflorescent dignity is a conception of dignity as a quality, which is usually attributed to individuals only, biocons also apply the concept of inflorescent dignity to the human species as a whole as well as societies and cultures within it.

Biocon dignity is an expansive and expandable concept.

The concept of dignity that biocons use has been widely criticised as justifiable only by religion, because it contains an essentially evaluative element about the way a human life ought to be lived without relying on formal moral laws to justify such claims, and because it extends to all human beings regardless of any difference in capacities. Dieter Birnbacher explains this criticism:

The dignity of mankind has been defined, in all traditions which have made use of the generic concept, as consisting in the capacity to transcend natural limits. The idea of respecting the order of nature as we find it, or even to regard it as sacrosanct, is more typical of the theological tradition of seeing the order of nature as divinely sanctioned.¹

However, Eric Cohen captures the problem with basing a critique of biocon dignity on the claim that it must rest on appeal to religious authority:

As a sociological matter, it is surely the case that most citizens who hold conservative views on bioethics are traditional Christians, Jews, and Muslims. But as a philosophical matter, the idea of the human person (or ethical animal) that informs conservative bioethics does not require any particular faith in any particular God, even if living in accordance with its ideals is often bolstered by faith . . . But what is most unfortunate in bioethics today is that defining a position as “religious” is sometimes used as a tactic by nonreligious intellectuals to avoid confronting the rational arguments of people who happen to believe in God. It is a secular form of philosophical laziness, no less commendable than believing something simply “because Jesus says so.”²

With this statement Cohen shifts the burden of proof to critics of biocons, to show that they are justified in their claim that dignity is unavoidably religious. In this chapter, I will support Cohen in claiming that we can construe the biocon position on dignity without relying on appeals to religious authority, which is important if we are to criticise the conclusions biocons draw about the Biotech Revolution. I will argue that a key distinction between liberal and conservative conceptions of dignity is in the priority and moral role they accord to the good life. I will first describe the key features of the biocon conception of dignity, and then argue that it is best interpreted along normative essentialist lines.

¹Birnbacher 2005, p. 54.

²E. Cohen 2006, p. 46.

I will conclude that the source of the conception of human dignity used by conservatives in bioethics, and the source of the autonomy-based conception used by liberals are in basic contrast to one another. The former defines the right in terms of the good. This means that the way to respect dignity is to act in a way that protects or promotes the good, in this case the good of human flourishing. Liberal theories of dignity place the right normatively prior to the good. Respecting dignity means doing the right thing morally; good actions are those that are done for the right reasons, and we respect the dignity in ourselves and others when we act in the right way, developing a good will. There is, therefore, little prospect for dignity to be used as a common ground on which we can build consensus between liberals and conservatives in bioethics.

7.1 A description of biocon dignity

Dignity is used by conservatives in bioethics as a way to encapsulate the idea that being biologically human, rather than being a rational or autonomous person, is a source of intrinsic value. As Leon Kass puts it:

The account of human dignity we seek goes beyond the said dignity of persons, to reflect and embrace the worthiness of embodied human life, and therewith of our natural desires and passions, our natural origins and attachments.³

This quote from Kass, which is paradigmatic of biocon thought in general, suggests two different readings of the source of human dignity.⁴ The first corresponds to our human nature; the natural “desires and passions” humans have, as well as our relationships. The second is about the dignity of essential biological features – our origins, as Kass puts it. The two are related; our natural attachments are defined by our origins, for example, sexual reproduction gives rise to parental love. This kind of theory, as Kass points out, stands in stark contrast to the Kantian theory of dignity, which takes the moral law to be the central locus of dignity, with humans sharing in this dignity in virtue of their capacity for morality, without the need to reference biological facts.

Kass' conception of dignity takes facts about the human life as we find it to be the starting point for the concept, rather than the idea of morality itself. There are two

³Kass 2002b, p. 17.

⁴I am focusing on Leon Kass in this chapter, even though in chapter 3.4.2 I introduced biocon dignity using the work of Daniel Sulmasy, because Kass has had the most prominent roles and greatest political impact of all the biocons, and has written prolifically on dignity and conservatism in bioethics since the 1970s. In his role as chair of the President's Council on Bioethics, Kass edited “Human Dignity and Bioethics” and is still active in promoting a conservative ethical agenda through think-tanks.

separate conceptions of dignity embedded within the one concept Kass advances. One is the idea that the human life is sacred at the individual level; that each one of us is absolutely valuable and entitled to morally decent treatment. However, not all ways that individuals choose to live are worthy of dignity because only some ways of living promote human flourishing.

The other is that being “truly human” has a dignity, which, as I will explain, means that human nature and the shape of a human life have a special value that demands respect, outside the respect demanded by people considered as individuals. Being truly human requires relating in a certain way to our physical bodies and the process of birth, ageing and death, as well as flourishing as an individual.⁵

In the next section, I will argue that biocon positions on human dignity like Kass' are best framed along normative essentialist lines. I will start by explaining what normative essentialism is, and then explain how it can be related to human dignity, by seeing the idea of human dignity as a kind of capsule term for whatever is considered essential for the human life. I will also demonstrate that criticisms of essentialism in other areas, specifically natural law and gender theory, can be applied to the variations of biocon essentialism that make claims about human nature and human dignity. There are also some problems with reconciling the claim that all human beings have an equal human dignity with the claim that being “truly human” is a source of dignity. Finally, I will look at a position I call “weakly normative essentialism” as a solution to both of these problems. Weakly normative essentialism allows us to relate being truly human to having dignity as an individual, although if I am right that biocon thought it best described this way, it does come at the cost of claiming that being truly human has the same kind of dignity as individual human lives do.

7.2 Defining normative essentialism

Normative essentialism is a species of essentialism. It is a theory that there are certain features of an individual or of a type of thing, which cannot be taken away from that thing without meaning that it is no longer an example of that type. Although essentialism is often seen as a statement about an object's hidden, true nature, which gives rise to the charge that all essentialists have to adhere to a kind of metaphysical realism, essentialism can be understood without the requirement that the essence of a

⁵Use of the phrase “truly human” is one of the hallmarks of the conservative position in bioethics. In “Human Dignity and Bioethics”, variations on this phrase are used in every article from biocons – Leon Kass, Charles Rubin, Gilbert Meilander and Daniel Sulmasy all use it at least once; Kass uses it three times. Ruth Macklin (2006) likens the use of this phrase to “religious believers who assert that theirs is the ‘one true religion’.”

thing is not directly observable or discernible.⁶ We find essentialism in psychology, particularly in theories of child development, in gender theory, in politics and linguistics.⁷

As humans, we tend to look for the underlying similarities between objects; we're adept at distinguishing patterns and categorising things into species, groups, and suchlike. Essentialism is the claim that what constitutes a kind of object can be described with reference to static and universal features; features that are not found in any other form. No two kinds of thing can have exactly the same essential features.

Essentialism is easiest to describe in terms of objects. The essential features of a car, for example, are that it has an engine, brakes, and wheels. If a vehicle doesn't have any one of these, it can't be a car. Other features may be common to all cars, like a painted metal chassis, but as we can imagine a car made of carbon fibre, or even paper, and still classify it as a car, a painted chassis cannot be seen as essential. The essential *features* of the car are those that relate by necessity to its primary *functions* of driving.

Normative essentialism is a species of essentialism that takes the claim in the sentence above and adds the idea of goodness. A normative essentialist believes that once we have identified the essential features of a type of object, we can evaluate how good one object is at being an object of that type by measuring how far that one object instantiates these essential features. Heikki Ikäheimo gives the example of a chair. The essential feature of a chair can be called "sittability", that is, a chair that one can't sit on can't really be a chair. She states that, "When something exemplifies this feature or significance to a very high degree, it inspires essentialist judgements in satisfied sitters of the kind 'now this is what I call a chair!'"⁸ This suggests that goodness and "chair-ness" are related, what makes something a chair is what makes it a good chair, if it is instantiated to a high enough degree.

The normative essentialist view of a human being is that there are certain essential features of a human being, which are related to the functions humans have, and that be expressed to a variable degree. A human being has more of what we call goodness, just in case she expresses these essential features to a higher degree. Whatever we see as making a human being good is what we also see in making her a human being.

Where it has been used in ethics, normative essentialism is often swept to one side because of its link to politically conservative positions and morally problematic on issues like the role of women and the permissibility of homosexual acts, as we shall see

⁶Nussbaum 1992.

⁷Fuss 1989.

⁸Ikäheimo 2011, p. 157.

in section 7.4.1.⁹ Gender essentialism makes a statement about what every woman ought to be like, because it understands what it means to belong to a category in terms of statements about the essential characteristics of a category member, and these statements are drawn from a culture's concept of an idealised woman. In this case, the normative component of essentialism is not just a statement of good, it is a kind of obligation. If the “ideal” woman is supposed to wear makeup, then an individual woman who chooses not to wear makeup can be seen by certain individuals as making the “wrong” choice.¹⁰

Essentialism about human dignity is the idea that there are certain essential features that go into being a human being, which also constitute human dignity, like the natural origins and attachments that Kass talks about in the quote above. We find normative essentialism wherever we find the phrase “truly human” being used in a normative way. Biocons argue that there is something about being a biological human being that entitles all humans to a special moral status; this is what marks them out as using a humanity-based conception of human dignity. They do not claim that this feature is related to autonomy or rationality in any form; rather they see the aim of bioethics as to “wrestle truthfully with the meaning of our biological humanity”.¹¹

7.3 Biocons as normative essentialists

In this section I will focus on Leon Kass' position and argue that he uses dignity in a normative essentialist way. I am taking Kass to be exemplary of the biocon position because he is the single most influential figure in the development of conservative ethics and policy, both in government and in academia. When expounding their position, biocons often deploy a variety of different kinds of argument. Kass often uses the example of Aldous Huxley's dystopian “Brave New World” to illustrate what he fears might happen to society if we allow research into the creation of human clones; making arguments based on the *consequences* of cloning and claiming that it is wrong to start down the path of creating a human being this way because of the ramifications it will have. We cannot class the biocons as consequentialists in their moral theory, however, because their worries about the consequences of biotechnologies are worries about what they will cost us “in coin of our humanity”, and in this they take certain actions to be wrong even when they lead to increased wellbeing because of what they

⁹Phillips 2010.

¹⁰See *Jesperson v Harrah's Operating Co.* – 444 F.3d 1104 (2006). In this United States Supreme Court case, a twenty year old casino employee was fired by the casino company she was employed by, for refusing to wear makeup and nail polish every day.

¹¹E. Cohen 2003b, p. 32.

see as the fundamental meaning of life.

Allen Buchanan claims that biocons can be read as normative essentialists, and that this means they can be criticised as conflating two distinct claims, which are that a certain state of affairs is best for us and that it is right for us.¹² I will argue that whilst Buchanan is right to characterise biocons as normative essentialists; an adequate explanation of what that means will show that the normative essentialist position is characterised by the claim that what is best for us and what is right for us are interdefinable. Our essential features determine both.

Biocons believe that our humanity and therefore our human dignity is at stake if we allow reproductive biotechnologies like cloning. This is because, they claim, the development and use of these technologies are in themselves constitutive of a kind of denial of or lack of care for our humanity. If cloning, for example, represents a kind of reproduction that is not best for us, this is because it precludes the instantiation of our essential features – in this case, our “natural origins and attachments”. Cloning therefore cannot be permissible for biocons, because having these essential features is the source of human dignity. The two terms are not conflated, they are inextricable under normative essentialism.

In order to argue that biocons are best understood as normative essentialists. I will first recap the criteria a theory must meet if it is to be classed as normative essentialism. I will then focus on two areas of biocon thought – human cloning and death – and give an account of how the argument can be described as essentialist for each one.

If they are to be called essentialists biocons must be committed to the claims that:

- There are elements of the human life that are ineliminable; that some things cannot be taken away from a human being without him losing his ability to be recognised as a human.
- At least some of these essential characteristics can be identified and distinguished from the non-essential characteristics that all humans share.¹³
- These essential characteristics are static; they would be identifiable to anyone, in any culture, at any time. These are the natural desires, passions, origins and attachments Kass cites as missing from the autonomy-based account of dignity

¹²“Some of the harshest critics of enhancement, including Leon Kass and the President's Council on Bioethics which he chaired for a time, embrace what might be called *normative essentialism*: they believe it is possible to derive substantive moral rules from reflection on human nature.” (Buchanan 2009).

¹³For example, all humans are born with one of a set number of eye colours. The set is understandable to anyone who has access to information about different cultures, and has been static across time. Were a child to be born with vivid orange as a natural eye colour, the child would be recognisably different from every other human that has ever existed, but still recognisable as human. Having brown, green or blue eyes is not essential to being human.

that I have advanced in the previous two chapters.

As a normative essentialist, a biocon must also be shown to be making the argument that these essential characteristics are related to a concept of the good. This concept is human dignity. Human dignity is what is morally special about being a human, and we can only have human dignity if we preserve the essential features that make us human. Normative essentialism therefore gives us an obligation to promote human flourishing as well as describing a kind of value that humans have.

Biocon normative essentialism will differ from the paradigm theory described by Ikäheimo in one important respect. Ikäheimo defines normative essentialism as essentialism:

with two added elements: that it is possible for a thing to instantiate the features or structures essential to it in different degrees, and that the more it does the better in some relevant sense of goodness.¹⁴

To explain this in relation to biocon dignity, we can say that although some elements of the biocons' definition of the source of human dignity does fit in with this claim – we can instantiate more natural desires and attachments by having less unnatural ones – others can only be defined negatively. Our natural *origins* are not something we can instantiate more or less, although we can act so as they will be instantiated more or less in the future. If we allow cloning, we are committing ourselves to a future where our natural origins will not be instantiated by everyone. We can see every human being alive now as fully instantiating our natural origins, and therefore fully and intrinsically good. This intrinsic goodness is human dignity. In the future, the biocon argument goes, this may not be the case.

I am going to make the case for biocons as normative essentialists using two examples, which are cloning and death.

On Cloning

Cloning is one of the major areas of biocon writing, covered in policy by the President's Council, in law and in ethics. It has been the subject of arguments in favour of paying attention to the untutored emotion of disgust that it is said to invoke in lay people, as well as arguments about the unintended bad consequences of condoning a cloning enterprise as a society.¹⁵ There is a variety of methods that can be called cloning, so it is expedient for me to offer a brief definition of what they are.

¹⁴Ikäheimo 2011, p. 156.

¹⁵See Kass' (1998) article "The Wisdom of Repugnance", and Buchanan's (2009) chapter "Unintended Bad Consequences".

Cloning in biology simply means making a genetic copy of something. Cloning happens in nature; single-celled organisms and some plants reproduce by cloning. In mammals, twins can be called clones of each other, because both have budded from a single embryo. Artificial cloning means deliberately producing genetic copies. This can refer to gene cloning, the division of embryos created during IVF, and the cloning of complete organisms and embryos from the cells of existing individuals.

Gene cloning is used to create multiple copies of a gene for research and cannot result in a complete cloned organism.¹⁶ Embryo splitting is most commonly used during IVF to increase the number of embryos available for transfer and therefore the chances of a successful pregnancy. These embryos are clones of each other – like monozygotic twins that occur naturally – and are deliberately created, but are not clones of any other existing individuals.

Biocons focus most closely on cloning with the aim of producing viable embryos and therapeutic cloning. Both of these are done using a procedure called somatic cell nuclear transfer. This is a procedure where the nucleus of a cell from an adult's body is inserted into an empty donor egg, allowed to divide into a blastocyst, and then implanted into a womb and brought to term.¹⁷ The resulting baby will have the same genotype as the adult the original somatic cell came from.¹⁸ Therapeutic cloning is the creation of a cloned blastocyst, using the same nuclear transfer procedure as somatic cell cloning, only with the aim of harvesting that blastocyst for stem cells rather than implanting it.¹⁹ The embryonic stem cells can then be cloned themselves, creating the possibility – although not the reality, since the technique has never been used – that multiple clones of an embryo could be created and implanted in gestational surrogates.²⁰ The following arguments I describe will focus on somatic cell cloning, and distinguish other types where necessary.

Allen Buchanan describes the arguments on cloning by somatic cell nuclear transfer in “Beyond Therapy” as normative essentialist. He claims that:

The Council clearly advances the claim that human reproduction is sexual as a normative claim, as the claim that sexual reproduction is the only form of reproduction that is fitting for human beings or in keeping with the dignity that their nature bestows. So, on the Council's view, any attempt at enhancement that in-

¹⁶Griffiths et al. 2000.

¹⁷Implantation could be into the womb of the donor of the somatic cell, or into a gestational surrogate.

¹⁸Seidel 2001.

¹⁹Koh and Atala 2004.

²⁰This technique was described by Wu Sook Hwang in two landmark papers in the journal *Science*, however both were retracted when it became apparent that the findings had been fabricated. See Augoustinos et al (2009) for a discussion of these events.

volved cloning would be impermissible.²¹

In this example I will give further reasons for accepting Buchanan's characterisation, before introducing critiques of the biocon conception of dignity. Sexual reproduction is considered by biocons to be the only morally right way of procreating that promotes human flourishing, as contrasted to cloning. Biocons give a variety of reasons for advancing this claim, which I will reconstruct here. Some of these reasons can be categorised as worries about the potential for unintended bad consequences of cloning, like Kass' rhetorical question, "What will happen when the adolescent clone of Mommy becomes the spitting image of the woman with whom Daddy once fell in love?" and the ever-present example of "Brave New World", but these claims are backgrounded against the idea that cloning is unnatural and therefore always wrong.²²

The reasons that human cloning ought to be prohibited, according to biocons, are that it reduces the cloned individual to the status of a manufactured object or thing, that allowing parents to choose the characteristics of their children gives parents too much control over their children, that such a level of parental choice also makes it impossible to realise the central goods of becoming parents in the first place, like accepting the our offspring as "gifts".²³ Although some of these concerns can be shared by liberals, like the worries about the "right to an open future" I discussed in chapter 6.2.2, the underlying beliefs that motivate biocons to express these arguments are not, because they stem from a normative essentialist account of what it means to have human dignity. Kass articulates all of these in an article, originally printed in *The New Republic*, entitled "Preventing a Brave New World":

How does begetting differ from making? In natural procreation, human beings come together to give existence to another being that is formed exactly as we were, by what we are – living, hence perishable, hence aspiringly erotic, hence procreative human beings. But in clonal reproduction, and in the more advanced forms of manufacture to which it will lead, we give existence to a being not by what we are but by what we intend and design.... The problem is that any child whose being, character, and capacities exist owing to human design does not stand on the same plane as its makers. As with any product of our making, no matter how excellent, the artificer stands above it, not as an equal but as a superior, transcending it by his will and creative prowess. In human cloning, scientists and prospective "parents" adopt a technocratic attitude toward human children:

²¹Buchanan 2009a, p. 145.

²²Kass 2002b, p. 159.

²³A thorough exposition of biocon arguments for the claim that cloning children is inherently immoral and ought to be prohibited can be found in chapter 2 of the President's Council on Bioethics' 2003 report, "Beyond Therapy: Biotechnology and the Pursuit of Happiness".

human children become their artifacts. Such an arrangement is profoundly dehumanizing, no matter how good the product.²⁴

In what follows, I will reconstruct a critique of biocon thought on cloning and dignity and use it as an example of how normative essentialism makes statements like the above quote from Kass clearer; a benefit because such clarity will also make such critiques more successful.

In his article “Human Cloning and Human Dignity”, Dieter Birnbacher recognises that there are two separate lines of thought in the biocon appeal to dignity as the justification for prohibiting human cloning; the dignity of the individual clone and the more abstract principle of the dignity of humanity.²⁵ The worry about individual dignity is that in creating a clone, we are treating the clone as a thing instead of a person. Birnbacher argues that it is impossible in principle to violate the dignity of a clone that has not yet been created; the clone would be an intentional object and not a human person, and therefore it cannot be the case that cloning is wrong because we are treating the clone as a thing:

Does human reproductive cloning involve “instrumentalising” a human embryo in the sense of making it a mere means to purposes beyond its survival and development? Clearly not. The embryo produced by cloning is produced precisely with the intention to survive and to develop into a full-blown human being, however unusual the materials from which the life of the embryo is expected to evolve. Neither the production of the embryo nor its cultivation can be classified as violations of human dignity.²⁶

Birnbacher then considers, and rejects, the idea that cloning might be a violation of the dignity of the human species taken as a whole. He rejects it because he claim that this line of thought is little more than an appeal to repugnance; that we might actually create monsters. He claims that human dignity cannot be used to justify this claim because “the dignity of mankind has been defined, in all traditions which have made use of the generic principle, as consisting in the capacity to transcend natural limits”. Therefore, he argues, dignity cannot be used here to justify keeping within these limits. He concludes by stating that:

If the rejection of cloning is based, at least primarily, on a principle of monstrosity or perversity, and the monstrosity in question is assigned to the procedure rather than to the results, then the underlying principle should be identified with a principle of naturalness rather than a principle of dignity.²⁷

²⁴Kass 2012, p. 324.

²⁵Kass often refers to human cloning as “a radical form of child abuse”, for example on p.150 of “Life, Liberty and the Pursuit of Dignity.”

²⁶Birnbacher 2005, p. 53.

²⁷*Ibid.* p.54.

Seeing biocons as normative essentialists allows us to make sense of how they construe the relationship between dignity and what is natural, in a way that Birnbacher is missing in his critique of the biocon position. Birnbacher is claiming that biocons are mistaken in conceptualising their concerns about human cloning in terms of human dignity when they are making arguments based on their beliefs about the natural being good. However, my reconstruction of biocons as normative essentialists allows us to see that for biocons, what is natural and what is able to promote human dignity and human flourishing are co-extensive.

Kass does argue that in creating a clone, it would be impossible to avoid instrumentalising him:

The problem is that any child whose being, character, and capacities exist owing to human design does not stand on the same plane as its makers. As with any product of our making, no matter how excellent, the artificer stands above it, not as an equal but as a superior, transcending it by his will and creative prowess.²⁸

Kass is not claiming that in creating a clone, however, we would automatically treat it as if it were an object; although he worries that the expectations placed on a clone would be damaging, this is not the crux of his argument. Rather, creating a clone changes the way humans see each other on a fundamental level. We find each other as equals because we all come from the same place, Kass argues, we all have the same *natural origins* that give us our dignity, and in changing this relationship we are essentially dehumanising some individuals by taking away these natural origins and introducing a split within the human race.

Natural human origins are a source of human dignity according to Kass, therefore if cloning removes these origins, it violates any potential clone's dignity. If this is the case, biocons would argue, we do not have to wait until a clone is created to know that cloning, in general, is disrespectful of dignity. That there is no existing person whose dignity is being violated is not important for the biocon argument. Human dignity is understood both as the sanctity of human individuals and as the claim that the human life itself is worthy of admiration and demands respect. Cloning may not directly affect any human individual yet, but striving towards cloning is itself disrespectful of human dignity because it seeks to alter an essential element of the human life itself.

The biocon line of thought in “Beyond Therapy” is normative essentialist because it gives us a moral obligation not to alter our natural origins, and this is because these origins are necessary for a human life to be dignified. The good life for a human,

²⁸Kass 2002b, p. 160.

which is the dignified life and truly human in an evaluative sense, is determined by having these essential elements of being human. Cloning removes at least one of these essential elements and changes the status of the clone to something other than human.

Even if an individual clone could have inflorescent dignity – if he could grow up to be an excellent, virtuous individual – this by itself is not enough for biocons to accept the claim that cloning could be permissible even under the best possible circumstances.

Kass separates the idea of dignity as a quality from the dignity of being truly human, but then claims that the two are conceptually interdependent:

There is, finally, no opposition between the dignity of human being (or “the sanctity of life”) and the dignity of being human. Each rests on the other. Or, rather, they are mutually implicated, as inseparable as the concave and the convex. Those who seek to pull them apart are, I submit, also engaged in wanton, albeit intellectual, violence.²⁹

This is a key point in understanding the biocon conception of humanity-based dignity. Recall in chapter 3.4.2, I described Daniel Sulmasy's conception of dignity as a quality as human flourishing, in which he concludes that something's flourishing is only intrinsically good if that which is flourishing is an example of a kind of thing that is intrinsically good. Inflorescent dignity can only be extended to humans because only humans have intrinsic dignity (which I refer to as human dignity, and Kass refers to in the quote above as “the sanctity of life”). If a clone can be argued as no longer human, then it must be argued that clones have an intrinsic dignity that is separate to human dignity if the flourishing of clones is to matter. The capacity for a clone to flourish is not a reason to permit cloning.

In seeing biocons as normative essentialist about cloning, we can see them as making claims about naturalness that are related to dignity, rather than using the latter to disguise the former as Birnbacher claims. Birnbacher refers to cloning as the transgression of “one more natural barrier” in a list of those we have already transgressed, but biocons can make the claim that the barriers that relate to the essential features of being human have not yet and ought not be crossed. The distinction can be made through appeals to normative essentialism; if we isolate the essential features of a human being and constitute dignity in their instantiation or preservation, biocons can argue that these barriers are not just another kind of medical breakthrough, they have a special moral significance.

For biocons, what is natural for humans is what gives us our dignity, so it is disrespectful of the dignity of the human life to even attempt to create clones. Seeing

²⁹Kass 2008, p. 326.

biocons as normative essentialists means we can understand their stance on cloning as wrong in itself, rather than seeking an argument in the potential consequences of creating a clone or some sense in which the cloned individual's rights would be infringed.

On Ageing and Death

Much of biocon thought on death focuses on the consequences of the development of technologies that promise dramatic life-extension and immortality. Biocons point to death as part of a natural cycle that, despite being dreaded, allows us access to goods that would be out of reach if we were immortal. These goods are, according to Kass:

I suggest that living with our finitude is the condition of many of the best things in human life: engagement, seriousness, a taste for beauty, the possibility of virtue, the ties born of procreation, the quest for meaning . . . the pursuit of perfect bodies and further life-extension will deflect us from realising more fully the aspirations to which our lives naturally point, from living well rather than merely staying alive.³⁰

Like their arguments around human cloning, biocons give reasons based on the purportedly bad consequences of permitting anti-ageing and immortality technology, and on the metaphysical effects that the technology would produce; this latter is framed in terms of a loss of humanity. Seeing death as a natural part of life rather than a kind of misfortune or a disease that we could cure is in itself good for us, it allows people to subjectively feel better about their own and others' mortality. The biocon Bill McKibben describes it thus:

Some of us have seen our own parents go, and seen that the fact of their grandchildren playing at the foot of their beds made it somehow okay and right. Life at peace with itself.³¹

Understanding death as part of a natural cycle gives people the ability to deal with it in a way that they would not if this cycle were disrupted. This natural cycle is therefore for our good, it promotes individual wellbeing. Biocons also make arguments about what would happen for future generations, if the current generation remained young forever; the wellbeing of people in the future would be negatively affected by immortality, even if they themselves were not immortal.³² These are arguments about the unintended bad consequences of immortality and life-extension. There are also claims about the value of life, that only a natural life of a finite length can allow for

³⁰Kass 2003a, p. 23.

³¹McKibben 2004, p. 230.

³²Kass 2002b; Fukuyama 2002.

certain kinds of goods; taking away mortality will prevent individuals from realising these goods. As Kass puts it:

A flourishing human life is not a life lived with an ageless body or untroubled soul, but rather a life lived in rhythm with time, mindful of time's limits, appreciative of each season and filled first of all with those intimate human relations that are ours only because we are born, age, replace ourselves, decline, and die – and know it.³³

This quote suggests that for biocons, death is therefore something that we need if we are to have inflorescent dignity as individuals; without it there would be no way to moderate the scope of our desires. To borrow a term from Buddhism, without the structure to our lives that death brings, we would become “hungry ghosts”; driven by endless material wants and unable to live in the moment and be satisfied with what there is.

Seeing biocons as normative essentialists about death allows us to make the link between what is the natural way for humans to live and die, and what is the right way, the only way that is respectful of dignity. Human life is given shape by death, and therefore without death we would not be truly human. If being truly human just is good, as the biocons take it to be, then making ourselves immortal would be wrong, not just because it deprives us of natural goods and certain meaningful experiences, but because it represents a denial of the inherent good, the dignity, of the human life as we find it. Thus transcending death is not only disvaluable because death allows us to secure goods that we need to live the best possible life, it is also wrong just because human beings that did not die would not be truly human at all.

Furthermore, Kass argues that changing the normal ageing and dying process would affect “all our important social institutions and fundamental beliefs and practices.”³⁴ Our “natural origins and attachments” – the way people relate to each other as well as how their lives are structured – would be altered irreversibly. As we have seen from Kass, having these features and these relationships are necessary to have human dignity as well as to flourish as an individual. We can locate a normative essentialist line of thought in biocon work on ageing and death despite their primary focus on the good life and human flourishing.

Dignity as a quality, understood as inflorescent dignity, is an important element of biocon thought about the need to use restraint in researching novel biotechnologies, but it is not the whole picture. This comes out when we look at biocon thought on

³³Kass 2003a, p. 27.

³⁴Kass 1983, p. 173.

euthanasia. Presumably, a terminally-ill patient, with a disease like Huntington's Chorea, which will leave them unable to speak, think or move and an overarching desire to end her own life while she can still say goodbye cannot be said to be flourishing, and the potential for her to live a flourishing life are practically nonexistent. Especially in the final days of such an illness, the patient not only suffers greatly, but is mentally impaired to the point where she cannot make sense of her own suffering.³⁵ Despite this lack of opportunity for an individual to flourish, Kass maintains that physician-assisted euthanasia is wrong in all circumstances because it is not aimed at the good.³⁶ If individual flourishing were the extent of Kass' conception of the good, this position would be contradictory. Through seeing a natural death as good using normative essentialism, we can make sense of it.

A natural death may not be experienced as good by the person dying, but biocons claim that it is in accord with an objective conception of human nature, here understood as the claim that the human life has a certain natural trajectory, and interfering with that trajectory is unnatural, therefore not in accord with human dignity. This demonstrates that individual human flourishing, which I argued is related to dignity as a quality, can come apart from the objective conception of the human good, which is related to human dignity.

To conclude this discussion, I have looked at two areas of biocon thought and shown in each case how the conception of dignity is related to what is natural; to clone a human being, or try to transcend death are both disrespectful of dignity just because they represent a profoundly unnatural transcendence of the shape of our human lives. This claim, that there are some elements of the human life that cannot be removed without both constituting a profound wrong and making us (either as individuals or as a group) less than human, corresponds to the first and second criteria of essentialism as I defined it above – humans have some distinguishable essential features. These features are related both to a conception of human flourishing and to a normative claim that possessing these features just is having human dignity. When Kass uses the term “human”, or “truly human”, he is making an evaluative statement.

7.3.1 Two loci of dignity

From my discussion of the two areas above, I can conclude that there are two distinct elements of human dignity, both of which can be seen in essentialist terms; they are

³⁵Kass (1974) admits that whilst it is possible for a person to flourish in her final days of life, of course, this takes a certain set of circumstances; the nature of the illness, and character of the person and her relationships with others, to name a few.

³⁶Kass 1989.

essential features of human beings at different levels of abstraction. At the most basic level, there are essential characteristics about the biological human life, which are shared by every human being. The way that humans are created – born from the random combination of two sets of chromosomes, developing throughout childhood, ageing and eventually dying are all essential features of a human being, and failing to instantiate any of these features will make a person less than human in a sense that is vital to understanding their arguments.

At the more abstract level, there is the claim that humans have a nature, which dictates how we ought to behave as well as describes how we do behave. Human nature is also a description for a set of essential dispositions that are universal and static across all human individuals; when we think of human nature we tend to see it in terms of psychology rather than physiology; it is human nature to love one's children, to want to share one's life with others, to feel jealous when one is passed over for promotion and so on.

Biocons take a monolithic view of the concept of human nature, arguing against scientists like Paul Ehrlich who contend that what we refer to as human nature is malleable, shaped by evolutionary, cultural and social forces for different societies at different times.³⁷ There is an interplay in biocon thought, which comes out much more clearly when we look at death than at cloning, between the idea of the dignity of human nature and that of the natural human body.

In making the argument that death functions as a kind of cap on what humans can desire for themselves, Kass is suggesting that it is human nature to tend towards becoming a hungry ghost; our natural desires and passions are not self-regulating, they are regulated by the external fact of our mortality. Human nature in itself, then, is not the sum total of our good; we also need the human life to have a certain natural shape, and, as I will argue in chapter 8, the right kind of social institutions, in order to live a dignified life. From these two loci of human dignity, biocons derive a picture of dignity as a quality.

7.3.2 Biocons and “transcending our nature”

As I claimed in the introduction to this chapter, a common criticism of biocon conceptions of dignity is that they neglect its “true” source, which leads on to the

³⁷Francis Fukuyama dedicates considerable space in his book, “Our Posthuman Future” to arguing against the claims Ehrlich makes in “Human Natures: Genes, Cultures and the Human Prospect” (Ehrlich 2000). If Ehrlich's arguments are successful in demonstrating that all humans do not share a human nature despite sharing certain biological facts, then the biocon case for a normative essentialist picture of human dignity will greatly weakened.

claim that biocon dignity is either a restatement of the religious tenet of the sanctity of life or of natural law. I quoted Birnbacher above as claiming that dignity is more commonly associated with the human capacity for transcendence of our nature than with the obligation to preserve it. This sentiment is echoed by many transhumanists, including Nick Bostrom.³⁸

Birnbacher and the transhumanists are correct to say that many theories of dignity locate our moral specialness in the uniquely human ability to transcend things; in transcending our animal instincts and freely acting for reasons we choose, we are able to understand concepts like moral obligations and justice. Transhumanism expands the idea of transcendence from the moral into the realm of the biological and intellectual:

For transhumanism is more than just an abstract belief that we are about to transcend our biological limitations by means of technology; it is also an attempt to re-evaluate the entire human predicament as traditionally conceived ... Transhumanists view technological progress as a joint human effort to invent new tools that we can use to reshape the human condition and overcome our biological limitations, making it possible for those who so want to become "post-humans". Whether the tools are "natural" or "unnatural" is entirely irrelevant.³⁹

Biocons like Kass, however, look to the idea that human nature is dignified, and in looking at human nature they find a number of essential features rather than just one. It could be argued that one of these features is a kind of transcendence. There are also essential physical and psychological features of being human that cannot be removed. This holism is typical of biocons; Kass criticises Kant, for example, for neglecting the embodied reality of human beings.⁴⁰ Charles Rubin argues that we cannot understand dignity without understanding how humans relate to each other; dignity is about "giving people their due", and this cannot be understood without a conception of how we recognise and relate to one another as humans.⁴¹ Biocon positions on dignity do not necessarily neglect that transcending natural boundaries is a part of human nature; what they are committed to is a bright line between natural boundaries that ought to be transcended, and those that ought not be. As I will argue in the next section, although it might appear that this ability is a practical advantage for applying biocon principles in future-facing bioethics, in fact where the biocons draw this bright line amounts to unjustly privileging one set of cultural norms and values over others.

³⁸Bostrom 2005.

³⁹Bostrom 2001, p. 7.

⁴⁰Kass 2008, p. 313.

⁴¹Rubin 2008, p. 168.

7.4 Critiques of essentialism

So far I have given an argument that dignity based on human nature as it is expressed by bioethical conservatives is best understood as a type of normative essentialism. I now want to take this claim and argue that it provides a way to criticise biocon thought.

I will argue that the two loci of dignity I discussed in section 7.3.1 – dignity as human nature and dignity as constituted by biological humanity – are both vulnerable to criticisms. I will demonstrate that at the level of human nature, normative essentialism is incompatible with the idea that our nature is historically, or culturally defined. At the biological level, it suggests the possibility of denying dignity to an individual who is able to demand it, which would be unjust. Between the two, it would seem that normative essentialism comes at a cost. A concept of dignity that is at odds with justice cannot be acceptable.

I will start with the claim that normative essentialism cannot account for individuals who fall outside the normal range in some way. Traditional critiques of essentialist thought in ethics centre around gender and sexuality. In this section I will argue that we can apply these criticisms to the biocon conception of essentialism about human beings. Gender and sexuality essentialism have both been widely developed and criticised, and I want to borrow some of this thought and apply it in a novel way to dignity. Doing so will allow me to argue that if we see the human archetype as constitutive of dignity, we are committed to potentially denying dignity to individuals who are human enough to demand it, which is unjust.

Gender essentialism is traditionally a species of essentialism about kinds.⁴² A gender essentialist identifies key functions of being male or female, and relates these functions to unique features that men and women have. This classifies men and women into kinds; if an individual has the essential features of a kind, it can properly be called a member of that kind. The identity of a man or a woman is dependent on their essential properties; gender essentialism claims that “the experience of being a member of the group under discussion is a stable one, with a clear meaning, a meaning constant through time, space, and different historical, social, political, and personal contexts”.⁴³ As with essentialism about the kinds of things that cannot have a lived experience, like cars and chairs, normative essentialism adds in the claim that instantiating the essential features of the kind an individual is an example of is good, and the more fully these features are instantiated, the better the individual is. So, for a gender essentialist,

⁴²For an analysis of theories of gender essentialism that are not about kinds, see Witt (2011).

⁴³Grillo 1995, p. 19.

whatever the essential feature of being a woman is, an individual woman is considered to be more good, the more of that feature she has.

Gender essentialism has both biological and identity-based elements. One key criticism of gender essentialism is that it cannot adequately account for individuals who cannot be easily categorised as male or female.⁴⁴ In cultural terms, this applies to tomboys and androgynous men, to women who do not want to have children, to men who prefer hairdressing to sport and so on. The traditional gender roles cannot accommodate those individuals who combine traits of both, or neither, and this can lead to a devaluation of these traits and the people who express them. Strictly biological definitions of gender have also been criticised as essentialist, because of the existence of intersex individuals; often an intersex baby is socially labelled as a boy or a girl (albeit, one with a disability) and raised as such, rather than being understood as intersex and allowed to develop their own identity.⁴⁵

The normative essentialism biocons use is like gender essentialism in that it relies on there being a fixed, shared experience and common features that all humans have, and the closer an individual comes to instantiating these features and this experience, the closer that individual comes to flourishing. These common features can be strictly biological, or descriptive of a shared set of basic dispositions and tendencies – our natural origins, desires and passions, as Kass puts it. The same kind of labelling in terms of “normal” and “deviant” we find in regards to those people who do not fit neatly into an essentialist picture of gender also happens in biocon writing on the Biotech Revolution.

Individuals who might not fit into the traditional picture of the archetypal human life cannot be as good, according to normative essentialism, as those who do. Furthermore, biocons argue that people like Monica, my example from chapter 3.4.2, who expressed a desire to step outside the normal ageing process in her choice to get Botox, are making an undignified choice.

The inadequacy of biological and cultural gender essentialism to account for the diversity of human beings makes it a poor framework for understanding gender at all. This criticism can be applied to essentialism about dignity at the individual level and the level of the human species, as the discussions in these next two subsections will show.

⁴⁴Witt 2011b.

⁴⁵Turner 1999.

7.4.1 Human function and the human good

Like the cultural construct of gender, it has been argued the idea of human nature is something that can be understood differently by different societies. A behaviour that is believed to be natural and good in some cultures can be taboo in others. If a specific definition of human nature is not a fixed and essential feature of having a flourishing human life, then biocons are making unsound arguments. In this subsection I will illustrate the claim that human nature is not a monolithic concept by giving an example of one part of human behaviour that is subject to normative judgements of being natural or unnatural, yet at the same time varies a great deal between cultures – sexual mores. I will demonstrate that sexual essentialism is indefensible because it relies on a myopic picture of what is natural.

The range of human relationship structures and sexual norms is vast and mutable. Writing about homosexuality, John Finnis claims that only heterosexual sex is good, or right, or should be socially acceptable, because only heterosexual sex conforms to the points, or the functions of sexual activity, which are to create children and to unite two individuals in one common good. Homosexual sex, then, ought to be considered morally wrong and socially unacceptable.

The union of the reproductive organs of husband and wife really unites them biologically ... reproduction is one function and so, in respect of that function, the spouses are indeed one reality. So their union in a sexual act of the reproductive kind (whether or not actually reproductive or even capable of resulting in generation in this instance) can actualise and allow them to experience their real common good ... But the common good of friends who are not and cannot be married (for example, man and man, man and boy, woman and woman) has nothing to do with their having children by each other, and their reproductive organs cannot make them a biological (and therefore personal) unit.⁴⁶

Finnis and the gender essentialists are guilty of imposing a conception of the good on observations of human behaviour, and then using the idea of normative essentialism to claim that only some of these behaviours count as instantiations of the right kind of womanliness, or sexuality, or humanity. The charge against Finnis and the essentialists in natural law is that of self-selecting the “point” of a human activity and then arguing that we should prohibit everything that doesn't aim at this point. There is a parallel between Finnis's thought and essentialism about human nature; if only some of our desires are “natural” and therefore dignified, it follows that our unnatural desires are undignified. There is a burden of proof on the essentialists, however, to demonstrate that their claims about the “point” of sex and the “right kind” of womanliness (or

⁴⁶Finnis 1997, p. 8.

manliness, for that matter) are strong enough to justify them being imbued with normativity. In fact, many people do disagree about what the right way to understand the meaning of sex for humans is, and the right way to understand the way that biological sex and gender identities intersect.

Leon Kass appears to adopt the same line of reasoning, conflating procreation and sexual activity, here:

Because to say “yes” to cloning baby manufacture is to say “no” to all natural human relations, is to say “no” also to the deepest meaning of human sexual coupling, namely, human erotic longing. For human eros is the fruit of the peculiar conjunction of and competition between two competing aspirations conjoined in a single living body, the impulse to self-preservation and the urge to reproduce. The impulse to self-preservation is a self-regarding concern for our own personal permanence and satisfaction; the urge to reproduce is a self-denying aspiration for something that transcends our own finite existence, and for the sake of which we spend and even give our lives.⁴⁷

There appears to be an underlying idea about human function as related to the human good, which is why we can class this thought as essentialist. The idea that human erotic longing is a natural urge to procreate, and therefore has a deeper meaning is essentialist because it relates the instantiation of a natural element of human activity to the good. Kass is explaining why erotic longing that is aimed at procreation is meaningful, which is due to the moral significance he accords procreation.

Taking claims about the natural ends of the human biological life as moral claims about how we ought to act can also lead to an over-reaching of the normative power of the claim that something is natural. Those essential, natural elements of the human being that are necessary for function are good; this requires an argument, as Kass understands and shows in the quote above, that relates the purportedly essential element to meaning in human life and human functions.

Without such an argument, biocons end up proclaiming that almost anything that deviates from any norm of human existence is morally suspect. For example, as I have already mentioned, Charles Rubin writes in favour of conservatism in bioethics in his contribution to “Human Dignity and Bioethics”. In his article he uses Stalking Cat, whose extensive body modification project I discussed in chapter 4.2, to exemplify what he sees as the kind of:

libertarian relativism that follows naturally from this obsession with freedom (or that prompts it), where the spirit of enhancement and modification is essentially

⁴⁷Kass 2002b, p. 19.

“anything goes” so long as it is freely chosen (some would add “and safe and effective”).⁴⁸

Although it is no doubt difficult for most people to understand the extremities Stalking Cat went to to achieve what he saw as self-expression through body modification, his beliefs were not informed by transhumanism in the same sense as Nick Bostrom, or by a kind of “anything goes” belief about his own body but by what he saw as a tradition from his Native American tribe, the Huron. His quest was informed by a spiritual experience he had; as such it can be understood as of a piece with human nature and human flourishing, rather than an example of mere will being privileged above these things.⁴⁹

That Rubin takes Stalking Cat to be emblematic of problems with the “futuristic” conception of dignity he associates with transhumanism illustrates the difficulty with isolating a conception of what is natural for a human being and what human flourishing means, with which biocons can generate the kind of constraints over potential future developments they want, whilst avoiding the charge of relativism. In describing Stalking Cat as undignified, Rubin is relating dignity to a natural human body, not to any argument about the meaning behind changing the natural human body or to the range of human activities that represent our essential functions. Descriptions of human nature can include both our spiritual connections with animals and our desire to modify and decorate our own bodies as expressions of our identity, but Rubin gives no truck to these in his discussion of Stalking Cat. I cannot presume to know what most Huron think of Stalking Cat, but if we assume that his quest is an authentic, albeit extreme, interpretation of an ancient tradition it becomes difficult to make out how Rubin's criticisms of him are based in human dignity. His claims are normative essentialist but restricted only to the human body rather than human nature. This is culturally insensitive, relating inflorescent dignity to some cultures and some norms rather than others.

⁴⁸Rubin 2008, p. 164.

⁴⁹I have been unable to find any philosophical writing that endorses the kind of perspective that Rubin, Kass and other biocons worry so much about. There are individual examples of extreme body modifications like Stalking Cat, or voluntary amputations for apotemnophiliacs, but I am yet to find an direct adherent of the principle of unfettered autonomy that the bioethical conservatives worry so much about. I would suggest that perhaps, as with Stalking Cat, what looks like “anything goes” is merely the extreme end of a set of rules that biocons either don't fully understand or don't agree with.

7.4.2 The dignity of clones

So far I have discussed two criticisms of normative essentialism; that it cannot account for the range of natural human behaviours, and that it conflates what is biologically natural with what is an expression of the diversity of human nature. My final criticism is about what it means for the dignity of humanity to be found in different degrees. At the biological level, although right now there are no individuals who were not born from two parents, it is possible to imagine that they could exist in the future. Let's imagine that somehow, someone has managed to clone a human. For the sake of argument, we'll say that the scientist who accomplished the feat, along with all his research, was killed in an accident, leaving only his lab with a vat containing an adult clone of indeterminate origin in suspended animation. When the clone is released, he is fully mentally competent and able to integrate into society.

Allen Buchanan criticises Kass because his conception of the dignity of being truly human appears to commit him to the claim that such a clone would be less than human and therefore, of a lower moral status than the rest of us despite being functionally indistinguishable. Buchanan says:

It is one thing to claim that a certain way of procreating is best, or even that other ways of procreating are in some way defective. Such judgements are controversial enough and normative essentialists typically do not take up the burden of providing plausible justifications for them. It is even more problematic to assert that anything other than this particular way of procreating is less than human, incompatible with human dignity.⁵⁰

Buchanan goes on to criticise Kass' conception of dignity along the lines of the exclusion argument; that some way of human life can be seen as less than human, as historically, many minorities have been, is deeply prejudicial. Claiming that a clone is less than human appears to give us license to treat him in an inhuman manner. This would set dignity up against justice – if dignity is what gives an individual the authority to demand that they be treated in a certain, proper, way, and an individual is making this demand, then it seems unjust to deny them their authority just because they are a clone. That an individual is a clone seems to be of minimal importance when they are looking into your eyes and demanding their dignity.

Kass could point to his distinction between the sanctity of individual life and the respect for life itself that constitutes the dignity of being truly human to argue that although it is true that a clone would not be truly human because he would have no parents, he would nevertheless be human enough for his life to be sacred.

⁵⁰Buchanan 2009a, p. 146.

If this is the case, however, we are in want of an explanation how these two kinds of dignity relate to one another, because it would mean that there would be a case where having human dignity would not be defined in terms of being truly human. One way to argue this would be to claim that although the act of cloning would be wrong because it would constitute a kind of disrespect for the dignity of life itself, the clone's life would still be sacred. It could be that respect for life itself requires that we act in ways that do not express a desire to master our own birth, ageing and death, but for one's life to be sacred requires some other set of essential characteristics like practical reason or the ability to make moral decisions. The key distinction is between the biocon, normative essentialist claim that dignity is constituted in being *human*, and Kant's conception that only requires that an individual be *human enough* to have the necessary mental capacities.

To conclude this section, I described two criticisms of a normative essentialist theory of dignity. Both are related to the idea that seeing human dignity as constituted by instantiating features of the human life leads to injustice. At the level of human nature, normative essentialism is incompatible with the idea that our nature is historically, or culturally defined, which leads to positions like Rubin's. At the biological level, it suggests the possibility of denying dignity to an individual who is able to demand it, which would be unjust. Between the two, it would seem that normative essentialism comes at a cost. A concept of dignity that is at odds with justice cannot be acceptable. In my next section, I will describe a position I call weakly normative essentialism as a way to avoid these criticisms whilst retaining the fundamental insight that biocons are normative essentialists.

7.5 Weakly normative essentialism

The idea that we ought to understand biological, natural life as we find it as sufficient for our needs is typical of biocon thought. This claim can be seen as normative essentialist; it takes the claim that there are some elements of the human life that are related to the good, and that cannot be removed without a loss of what is good about being human – which is what Kass means when he talks about what biotechnology will cost us “in the coin of our humanity”. Yet, as I have shown, there are difficulties in claiming that instantiating the essential features of a human being just is having dignity; the criticisms I outlined in the last section make parts of the biocon position and what it entails unappealing.

Kass could justify his claim that human dignity and “the dignity of being truly human”

are related with the argument that being truly human entails cultivating an attitude of reverence for the shape of a natural human life, and a kind of humility in the face of one's own limitations. This kind of attitude makes it possible for the dignity of individuals and of life itself to be respected. We can call this argument *weakly normative essentialism*. The difference between normative essentialism, and weakly normative essentialism is that weakly normative essentialism does not claim that the dignity of being human just is instantiating essential features of the biological human life and human nature. Rather, it claims that there is an inextricable link between human dignity and human nature, but not all human goods are definable by how well a human being expresses their essential features.

I will now argue that weakly normative essentialism is something that we can meaningfully attribute to biocons. Then I will argue how it is beneficial to understanding their position, and therefore to formulating more profitable critiques. I will reconstruct biocon arguments as weakly normative essentialists in this next section.

Changing the essential elements of a natural human life – being born of two parents, ageing and dying – will give rise to a society where dignity is less respected. The novel biotechnologies that Kass and the biocons talk about will make people less than truly human because it will permit actions that represent a desire to master what, Kass argues, ought to be seen as beyond our power to control, and the development of a society that has these desires at its core. Such a society would not be organised in response to the natural desires, passions, origins and attachments that Kass sees as the essential features of being human, and therefore would also be less likely to foster the belief that each individual human is sacred. As Kass argues in his work on cloning, the relationship of manufacturer to manufactured object is significantly different to that of fellow human beings, and fundamentally unequal:

In natural procreation, human beings come together to give existence to another being that is formed exactly as we were, by what we are – living, hence perishable, hence aspiringly erotic, hence procreative human beings. But in clonal reproduction, and in the more advanced forms of manufacture to which it will lead, we give existence to a being not by what we are but by what we intend and design. ... The problem is that any child whose being, character, and capacities exist owing to human design does not stand on the same plane as its makers.⁵¹

The belief that every human being has an equal, universal and fundamental moral specialness would, Kass could claim, be difficult to maintain if cloning were to become a mainstream method of creating humans. Biocons claim that only by organising a

⁵¹Kass 2002b, p. 160.

society that reflects human nature and the human biological life can we attain respect for the dignity of individual human beings and for life itself, which is the dignity of being truly human. The essential features that make up human nature and biological life, then, would be weakly normative because they would get their normativity from their relationship to a different good, which is not defined fully in terms of the instantiation of essential features. Under classical normative essentialism, an individual instantiating the essential features of its kind is considered good because good is defined in terms of how well these essential features are instantiated. In weakly normative essentialism, an individual instantiating the essential features of its kind is considered good because these essential features are considered necessary for the realisation of the good. Being born of two parents, on weakly normative essentialism, is not just good because it is natural, it is also good because it promotes dignity by promoting relationships and social structures that are meaningful and dignifying.

A classical normative essentialist account of the good would be a claim that instantiating our essential features and thereby fulfilling our function is an account of all possible routes to human flourishing and a dignified life, whereas a weakly normative essentialist would claim that fulfilling our functions in this way need only be a partial account of flourishing and dignity. Simply put, there are some unique elements of being human that are not in accord with human flourishing, and some essential elements that appear to be in contradiction with each other. Human dignity is best explained as a subset of natural, essential elements of our nature, not as its sum total.

Weakly normative essentialism means that we can see some instances of a function not being fulfilled as having no impact on our humanity, and other instances of the same function not being fulfilled as compromising our dignity. For example, whilst it may be that the “natural end” of sexual activity is procreation, using weakly normative essentialism we can argue that this could mean that we ought not allow human cloning, and not that homosexual activity is therefore inherently undignified and wrong. Furthermore, there is a role for human culture as well as our genetic nature in determining what counts as being “truly human” and respecting human dignity. Social institutions of the right kind are needed to create the conditions for the best of human nature to thrive, for biological humanity to be preserved and for individuals to flourish in their dignity.

Characterising biocons as weakly normative essentialist is not intended to inoculate them against criticism *per se*; rather it is intended to show that a more nuanced interpretation of biocon thought shows the extent to which their arguments are based on specific cultural norms. Although biocons do claim that respecting certain

biological features of the human body do contribute to the realisation of inflorescent dignity, their arguments depend on their conception of human nature and human culture. If we can criticise these conceptions, we will be able to argue against the strong constraining position that biocons place on novel biotechnologies.

7.6 Conclusion to chapter six

My aim in this chapter was to develop a conception of dignity based on human nature, especially in reference to the concept we find in biocon thought. I have shown that it shares the central features of normative essentialism, and that seeing biocons as normative essentialists allows us to clarify some of the trickier elements of their concept of dignity. Biocons argue that there are elements of the human life that are ineliminable, and that these essential characteristics are required for us to be both biologically human, and human in an evaluative sense. The relationship between instantiating these natural elements of human beings and living a dignified human life is what makes biocons normative essentialists.

As an ethical theory, normative essentialism has been criticised as relegating those individuals who do not conform to current conceptions of human nature or human biology to having a lesser moral status; gender essentialism and natural law have both been argued as leading to unjust oppression of people who cannot or do not want to conform to certain behavioural and biological norms. I also argued that it is important to hold the principles of the dignity of humanity, and of the sanctity of life separate, as Kass does, because conflating them leads to the criticism that biocon dignity is something that comes in degrees, and therefore that moral status is not equal between all human beings. As a result of the pervasiveness of these criticisms, I have argued that biocons are better characterised as adhering to a position I have called weakly normative essentialism. This means that whilst the biological human life, and human nature are bound up with dignity, they are not the sole set of facts on which we can base our moral obligations.

Here, then, is the root of the difference between the autonomy- and humanity-based conceptions of dignity. The difference is not between two applications of the same basic concept of human dignity as elevation; whilst the two conceptions differ on the question of what is being elevated and what that means in practice, they also differ at a more profound level over why this elevation exists.⁵²

In my next chapter, I will look at the role of social institutions in biocon arguments.

⁵²I will explain this further in the next chapter.

Kass argues that we need human culture to shape human nature, which has lead him to recently offer support for the conservative position on equal marriage. I will develop the argument that the biocon position on human dignity is an extension of a more thoroughgoing conservative position on the relationship between morality and human nature with a comparison between the way Kass uses dignity in his work on future-facing bioethics and the way it was used by Edmund Burke in his “Reflections on the Revolution in France”. Although it appears that there is a major distinction between the conceptions of dignity that are being invoked here – Burke is often cited as a paradigm of the dignity of rank, whereas Kass explicitly uses the term “human dignity” across his work – I will argue that there are striking similarities between the two, which allow us to situate the biocons within a more comprehensive conservative ideology.

This political angle will show why I am claiming the “culture wars” has spilled over into identifiably liberal and conservative concepts of dignity that are irreconcilable, even though historically both liberals and conservatives have argued primarily in favour of constraint when it comes to formulating policy on the Biotech Revolution.

Conservatism and Humanity-based Dignity

In my last chapter, I argued that the conservative approach to bioethics was best understood as a kind of normative essentialism, because its central tenet is that instantiating key features of the archetypal human life is necessary for, but not wholly constitutive of, dignity. I will now demonstrate how this claim can be used as a base to make a wider point about the place of biocons like Kass in ethical thought.

According to Ruth Macklin, biocons are engaged in a project to bring religious thought into secular bioethics, and therefore rely on mysterious, emotive arguments like Leon Kass' claim that there is wisdom in repugnance.¹ In this chapter, I will argue that we can engage in a much more profitable way with the new conservatives in bioethics if we see them not as a religious lobby or representative of a knee-jerk reaction of disgust to the idea of “designer babies”, but as part of a larger historical pattern that begins with the Enlightenment and particularly, the French Revolution. The biocons can be cast in the same role as played by Edmund Burke in the explosion of discourse that accompanied the French Revolution; through examining Burke's “Reflections on the Revolution in France”, I will demonstrate that there are deep comparisons to be made between the moral anxieties expressed then and those being expressed in response to the Biotech Revolution. In particular, there are shared conceptions of human dignity and human flourishing, which are informed by the importance of society and human nature to morality.

My argument will be in two parts. In section 8.1, I will draw similarities between the

¹Macklin 2006.

way that Burke characterises the French Revolution, and the way the biocons approach the novel biotechnologies that promise a revolution in the way we understand human biological life. I will identify five areas where Burke and the biocons make strikingly similar arguments, and use these to show that the similarities between the approaches to the two Revolutions are strong enough to justify my claim that the positions of both Burke and the biocons can best be seen as part of a pattern.

In section 8.2, I will look more closely at how Burke and the biocons use the concept of dignity in their work. I will extend my comparison between the two to show that, like Burke, the biocon conception of dignity that I argued as a species of normative essentialism in chapter 7 is best understood as a special case of the dignity of rank. Both can be understood as instances of the humanity-based model of human dignity, and both can be seen as incorporating elements of dignity as a trait, understood in the inflorescent sense. I will recap the key features of my definition of the dignity of rank from chapter 3.1, and then show that both Burke's and the biocon conception of dignity conforms to these features.

In my final section, I will argue that the role of human culture in understanding biocon thought on how dignity should be promoted and respected mirrors that we find in Burke. Biocons can be seen as arguing that human *society* can have inflorescent dignity as well as human individuals, when society is structured so that its institutions reflect the essential features of the human life. This means that if there are good reasons to believe that this structure is self-contradictory, or unjust, or that it ought to be replaced, then appeals to dignity cannot in principle give us a reason not to sweep it away.

If I am right, then I will be able to apply this distinction to the issues in future-facing bioethics I discuss in chapter 9, and show that the conservatives and liberal in bioethics are arguing from fundamentally opposing moral traditions, as well as using completely different conceptions of human dignity to justify their arguments.²

8.1 The French Revolution and the Biotech Revolution

On the surface, it might seem like there are very few similarities between an eighteenth-century political revolution, and twenty-first century worries about a potential revolution in reproductive biotechnology, other than that both represent an overturning of the established order and the installment of a new, untested system in its

²My aim in this chapter is to situate the biocon conception of dignity within a political theory, not to analyse the concept of dignity specifically. I am therefore not going to stipulate whether biocons or Burke are using dignity as human dignity or as a quality or as an expression of rank except where the distinction is necessary. I will use the term “dignity” throughout.

place. Given that the Biotech Revolution is yet to be completed, there is no analogy to be made between the way the two upheavals unfolded; nothing in the present suite of reproductive technologies could be compared to the Reign of Terror, for example, and nothing in eighteenth-century France could equate to the possibility of immortality that the Biotech Revolution gives us. Nevertheless, similarities do start to emerge when we look at both at a more abstract level, both in what the revolutions represent and in the lines of arguments used both by those in favour and those against it.

In this section I will identify five areas of similarity between how Burke characterised the Revolution in France and how the biocons characterise the revolution in reproductive biotechnology. These are worries about the destruction of institutions, the role of theory and reductionism, and a moral theory that places emphasis on the moral sentiments and the relationships between people, and with the state.

Before I begin my comparisons, I will make a brief historical point of analogy. Europe in the period during which Burke wrote his *Reflections* can be characterised as being in the midst of a “culture war” of its own, centred around arguments about whether the Revolution in France should be welcomed or condemned. On the conservative side, Burke condemned the unchecked zeal of the Revolutionaries and expressed deep concerns that such feelings may make their way over the Channel. More sympathetic to this possibility were Thomas Paine and Mary Wollstonecraft, both liberals who saw the happenings in France as an opportunity to create a state based on liberal, Enlightenment values, most especially the equal freedom of all persons.³ Both sides were critical of each other for failing to understand the core values the other held, very much like the climate of modern day culture wars, where liberals and conservatives are often said to be talking past each other, and have even been declared different at the neurological level.⁴ The Biotech Revolution is only one, very modern, area of schism between liberal and conservative patterns of thought; the French Revolution was another. I believe this pattern is related to how liberals and conservatives understand fundamental moral concepts like dignity in ways that are intractable.

Before the Enlightenment, noble birth or ecclesiastical merit were the only ways an individual could be said to have dignity. During the Enlightenment, there was a shift in beliefs about dignity towards the claim that because all persons have freedom and

³See Meyer (2004) and Conniff (1999) for a description of the dialogue between Burke and Paine and Bromwich (1995) for an analysis of the ways Wollstonecraft addressed Burke's conservative thought.

⁴For example, George Lakoff (1996) has advanced the theory that liberals and conservatives differ at the linguistic level, as indicated by the metaphors they use for morality as well as politics. On the neuroscientific side, some studies have shown that certain differences in brain structure are correlated with political identity in young adults (Kanai et al, 2011), and that there are patterns in genetic differences between individuals on both sides on the divide (Hatemi et al, 2011).

reason, all persons are equal in a more profound sense than the merely social. The fact that we are all the same was argued as being a better justification for the belief in the elevation of persons than the feudal systems of the time could provide.⁵ Jeremy Waldron refers to this change in beliefs about dignity that was part of the Enlightenment as a “transvaluation”, meaning that:

One begins with an idea of dignity associated with the high rank of some humans (compared to others), and then one reverses the ordering ironically or provocatively to claim that the high rank of some is superficial or bogus, and that it is the lowly man or the virtues of very ordinary humanity that, as Robert Burns says “bear the gree”.⁶

Burke resists this transvaluation in the *Reflections*, arguing instead that the system of nobility works for everyone, in generating a class of person that is seen as superior – and in many ways would have been superior. Having access to the best of education, medicine, and training in the manners of the day; the young Marie Antoinette really would have appeared to be *better* than a peasant girl by most of the current standards. This gives ordinary people a kind of humility through knowledge of their proper place in the world, which Burke links to his conception of dignity. Society functions better and has more dignity if the traditional power structures and institutions remain in place. Analogously, Kass and the biocons resist what he sees as the modern slide towards individualism, relativism and hubris.⁷ In “Life, Liberty and the Defense of Dignity”, he argues that the traditional institutions of marriage and family life are being inexorably debilitated, and whilst he does not use the word, his arguments amount to resisting a kind of transvaluation.

Even more important, changes in the broader culture make it now vastly more difficult to express a common and respectful understanding of sexuality, procreation, nascent life, family and the meaning of motherhood, fatherhood and the links between the generations. Thirty years ago abortion was still largely illegal and thought to be immoral, the sexual revolution (made possible by the extra-marital use of the Pill) was still in its infancy, and no one had ever heard about the reproductive “rights” of single women, homosexual men, and lesbians ... Then I could argue, without embarrassment, that the new technologies of human reproduction – babies without sex – and their confounding of normal kin relations ...

⁵I am using the term “persons” instead of “human beings” because dignity was not yet extended to individuals who were not considered to have the capacities required for legal personhood. Whether women were as rational as men, for example, was a point of conflict within the Enlightenment.

⁶Burns (1872), quotes at Waldron (2012), p. 220.

⁷President's Council on Bioethics (2003), p.20. Charles Rubin is especially concerned with moral relativism, which he mentions several times in his article in “Human Dignity and Bioethics” (see pages 160-165).

would “undermine the justification and support that biological parenthood gives to the monogamous marriage.”⁸

Kass argues that the moral character of a person's life choices used to come from the nature of those choices themselves, not just whether they were freely made. Monogamous heterosexual marriage, for example, used to be the only institution in which it was considered morally right to raise a child.⁹ Now, however, any family situation is permitted (or rather, all family situations are stripped of inherent moral character) because morality is concerned only with whether an action has been freely chosen, and whether it harms anyone else.¹⁰

Autonomy and rational choice have, according to Kass and his fellow biocons, become the only standard of whether an action is in accord with human dignity, which neglects the inherent relationship between human nature and the structure of human relationships.¹¹ They claim that the Biotech Revolution promises to further cement the separation between sex, heterosexual monogamy and procreation and the transvaluation of moral rightness from the natural to the freely chosen, which is the focus of many biocon claims that we ought to constrain research.

8.1.1 The destruction of institutions

The Revolution in France was a radical removal of almost all of the existing social order. Even before the Reign of Terror, the absolute monarchy of Louis XVI had been demolished, the August Decrees had abolished feudalism, the National Assembly had replaced voting by Estate with a single assembly, and the traditional French provinces had been replaced by *départementes*, which required data on the inhabitants so that they could be made equal in power and population. The Church had also been stripped of almost all of its power and wealth, and with the Civil Constitution of the Clergy, its members were no longer a separate body but were to be considered servants of the State. Burke locates his antagonism towards the events in France in the way the revolutionaries so quickly abolished the old order:

The dislike I feel to revolutions, the signals for which have so often been given from the pulpit; the spirit of change that is gone abroad; the total contempt which prevails with you, and may come to prevail with us, of all ancient institutions, when set in opposition to a present sense of convenience, or to the bent of a present

⁸Kass 2002b, p. 143.

⁹Ibid., p. 144.

¹⁰Rubin 2008, p. 164.

¹¹Kass 2002b, p. 63.

inclination: all these considerations make it not inadvisable, in my opinion, to call back our attention to the principles of our own domestic laws ... that we should continue to cherish them.¹²

This is because he saw the existing order as having a value in part just because it is the existing order; that is, because it comes out of the history of our society and therefore not only is it uniquely suited for the temperament, or nature of the people, it also represents a link between ourselves and generations past:¹³

We wished at the period of the Revolution, and do now wish, to derive all we possess as an inheritance from our forefathers. Upon that body and stock of inheritance we have taken care not to inoculate any scion alien to the nature of the original plant ...

This idea of a liberal descent inspires us with a sense of habitual native dignity ... by this means our liberty becomes a noble freedom. It carries an imposing and majestic subject. It has a pedigree and illustrating ancestors. It has its bearing and its ensigns armorial.¹⁴

This relationship both lends us a sense of our own dignity as a quality, through being able to see a line of inheritance from our “illustrating ancestors” and ourselves, and it gives the institutions a greater power by being seen as unassailable; Burke argues that if one generation permits itself to scrap everything that has gone before and reforge society from scratch, there will be no reason that subsequent generations will not do the same, so that every institution seems transient and therefore will lack power.

We can understand biocons as making an analogous argument about the archetypal human life. Kass argues that the natural shape of a life is something within which we can find meaning and value as individuals and as a species, and attempts to destroy this archetype will lead to a loss of meaning.¹⁵ Birth, procreation and death are all inherently meaningful events in life that are shared throughout society; they create a shared experience of life for all humans.¹⁶

Kass talks about our natural origins and attachments as necessary for embodied lives to have meaning; cloned children, for example, will literally have no parents and will

¹²Burke 1790, p. 35.

¹³Rakove (2003) explains that Burke's contrary position on America, as laid out in a speech he gave suggesting they should be able to develop their own system of republican, constitutional government and reject the imposition of the British model, was justified by his belief that the American people were uniquely suited for this kind of government.

¹⁴Burke 1790, p. 44.

¹⁵President's Council on Bioethics 2003, p. 185.

¹⁶Ibid., p. 252.

therefore be unable to define their identities in the same way children do now.¹⁷ For Kass, cloning is in itself a form of child abuse for this reason; but cloning also represents a “fracture of the once-respected and solid bonds among sex, love, procreation and stable marriage”, which gives Kass' argument a social dimension as well as a natural one.¹⁸

As well as the physical elements of a human life, biocons also talk about the need to preserve social institutions like marriage and the relationship these have with wellbeing and meaning in our lives.¹⁹ In a similar vein to Burke's argument that these institutions have developed along natural lines, and therefore must be best suited to our nature, Kass argues that cloning and other reproductive biotechnologies will have a negative impact on the natural institutions of marriage and family structures, as I argued in chapter 7.3.

Burke dedicates much of the first half of the *Reflections* to a careful explanation of how the English Civil War differed from the French Revolution, as both of them toppled the monarchy from absolute power. Burke argues that in England, the shift from an absolute to a constitutional monarchy represented an alteration of an existing institution; a massive shift to be sure, but not a destruction of one tradition to replace it with a wholly different one.²⁰ The justification for the change in England was that it was ultimately aimed at making the institution better rather than replacing it.²¹

An example of the way that conservatives see a moral difference between the altering of an existing system and radical reform can be found in the way that Leon Kass' position on IVF changed as the technology became established. Originally, Kass criticised the idea on the grounds that any non-sexual procreation threatened not only to harm the embryo but also to harm the institutions of marriage and of sexual reproduction and in so doing, make us less human in an evaluative sense. Kass changed his position, however, when it became clear that IVF was a therapeutic tool to treat infertility rather than a way to manufacture babies, as it were. Because IVF is still sexual reproduction, it still gives children the “natural” relationship with two biological parents, unlike cloning.²²

He now supports the use of IVF, but only to treat intramarital infertility. This caveat is

¹⁷Kass (1998), p. 690. Scientifically, however, this claim rests on a mistake. Clones created by somatic cell nuclear transfer do have DNA from two individuals; nuclear DNA from the donor of the cell to be cloned, and mitochondrial DNA from the donor of the enucleated ovum. Cloning cannot create exact copies of individuals, as I explained in chapter 5.

¹⁸Kass 1998a, p. 85.

¹⁹Kass 1998b, p. 682.

²⁰Burke 1790, p. 22.

²¹Ibid., p. 29.

²²Kass 1998a.

important as it points to the significance of the distinction between alteration and radical destruction. The institution of marriage is not threatened by IVF so long as the procedure is used therapeutically; nor is the sense of inheritance, of “having a child of one's own”.²³ Both of these are institutions that need to be preserved, and through IVF, in the case of childless married couples, they can be preserved in an altered form. As I said in chapter 7.3, Kass draws the line at human cloning, because he argues that it represents a severing of the institutions of begetting, bearing and coming to know one's own children that are necessary for us to be called truly human. Cloning represents to Kass what the principles of the Enlightenment on which the French Revolution was philosophically based represented to Burke; a radical break with the existing institutions that threatened to undermine the deepest and most meaningful parts of our lives.

8.1.2 The role of theory

As an addition to the inherent suspicion with which he viewed the sweeping away of existing institutions, Burke was particularly disquieted by what he saw the replacement to those institutions to be: a system of government motivated by theories and principles – for example, in 1789 the Declaration of the Rights of Man and the Citizen was published by the National Constituent Assembly, which set out a claim that every man has certain natural rights that could not be taken away from him no matter the disparity in power between him and his fellows.²⁴ Although Burke is often painted as a critic of the Enlightenment, the root of his anxiety is the elevation of theories like Rousseau's social contract above tried-and-tested systems of government rather than in the substance of the theories themselves.²⁵

Burke was not against the idea of rights, but believed that theories of rights alone were not sufficient to form a society; institutions are needed that relate the current situation to the past, which set standards of good conduct in interpersonal relationships as well as in the relation between the people and the state.²⁶

Burke criticised the Revolutionary zeal to replace the existing system wholesale. In a letter, he noted that “You are now to live under a new order of things; under a plan of Government of which no man can speak from experience.”²⁷ He was distrustful of the

²³Taken from an interview with Kass on PBS, first broadcast in 2002. Transcript available at <http://www.pbs.org/thinktank/transcript1001.html>.

²⁴Anderson (1908), pp.59-61. The original French text of the Declaration has been digitised and can be found on the website of the Bibliothèque Nationale de France, at <http://gallica.bnf.fr/ark:/12148/bpt6k495230.image.f499.langFR>.

²⁵Burke 1790, p. 255.

²⁶Ibid., p. 91.

²⁷O'Brien 2003, p. 217.

Enlightenment idea that rational reflection and theory alone ought to dictate how we live our lives and arrange our governments, noting early in the *Reflections* that “the circumstances are what render every civil and political scheme beneficial or noxious to mankind.”²⁸ He saw the need for change clearly as I explained in section 8.1.1, but could not endorse wanton destruction of the existing system to clear the way for something new and untested that works only in theory:

This policy [of the heritable crown and peerages] appears to me to be the result of profound reflection; or rather the happy effect of following nature, which is wisdom without reflection, and above it. A spirit of innovation is generally the result of a selfish temper, and confined views.²⁹

Conor Cruise O'Brien sees Burke as a “prophet against the tyranny of the politics of theory”, because he was concerned to keep in mind what he believed to be human nature, and the natural disposition of some humans towards greed and selfishness. He quotes a letter Burke wrote to a French friend, Depont, in which he explains that:

Never wholly separate in your Mind the merits of any Political Question from the Men who are concerned in it. You will be told, that if a measure is good, what have you to do with the Character and views of those who bring it forward. But designing Men never separate their Plans from their Interests; and if You assist them in their Schemes, You will find the pretended good in the end thrown aside or perverted, and the interested object alone compassed, and that perhaps thro' Your means. The power of bad Men is no indifferent thing.³⁰

In neglecting what people are actually like whilst destroying the way they have lived because of assurances that an untested method is better, Burke saw the revolutionaries in France as both making a mistake and laying themselves open to future tyranny – in the latter, at least, he was proven right. One principle that Burke was especially suspicious of was utility, or convenience as he called it; whilst he held that general utility was a principle on which law and many of the elements of social living like free trade were founded, he argued that only utility that came from the natural law, and that the principle of equality was fixed as prior to, could be right:

What the law respects shall be sacred to me. If the barriers of law should be broken down upon ideas of convenience, even public convenience, we shall have no longer any thing certain among us.³¹

²⁸Burke 1790, p. 7.

²⁹Ibid., p. 47.

³⁰O'Brien 2003, p. 218.

³¹Quoted in Stanlis, 2003.

We find the same suspicions in biocon thought. Leon Kass argues that allowing the theory of wellbeing to dictate the kinds of biotechnological advances we ought to permit will have the effect not only of laying the most intimate areas of our lives open to exploitation by market forces and social pressures, but also of undermining the reason that wellbeing was seen as so important in the first place.³² Like Burke's worry about utility, the biocons argue that if we give wellbeing primacy over other considerations, we will lose the meaningfulness in life that the principle of wellbeing is supposed to enhance. We want to be healthy so we can lead good, meaningful lives, so myopically focusing on health at the expense of meaningfulness is self-undermining.³³

On a more abstract level, Kass criticises Kant's conception of dignity as respect for persons (meaning, respect for autonomy) for reasons that echo Burke's criticisms of the ideological basis of the French Revolution in his letter to Dupont:

Yet this [Kantian] view of dignity is finally very inadequate, not because it is undemocratic but because it is, in an important respect, inhuman. Precisely because it dualistically sets up the concept of personhood in opposition to nature and the body, it fails to do justice to the concrete reality of our embodied lives, lives of begetting and belonging no less than of willing and thinking.³⁴

Here Kass is arguing that Kant is trying to separate the person in ways that he ought not be separated; introducing a split between a formal theory of personhood that is based on reason alone, and the concrete reality of our embodied selves and lives in an analogous way to how Burke argued that it is impossible to separate a theory from those people who expound and stand to gain from it. In both cases, we must take a holistic view and understand that desires and irrational factors also play a role in the way people act. Failing to do so not only privileges insubstantial theory, it is also a form of reductionism.

8.1.3 Reductionism

On March 4, 1790 the National Constituent Assembly of France completed the dissolution of the historic provinces and replaced them with 83 *départements*, which were devised so as to be roughly equal in terms of population and wealth, so that the old system of the larger and richer provinces being more powerful could be done away with. In order to complete this task, it was necessary to gather data about the inhabitants of each prospective *département*; the number of people who lived in the

³²Kass 2012, p. 319.

³³Kass 2002b, p. 75.

³⁴Kass 2008, p. 313.

area, their occupation, wealth and so on. Alan Wolfe picks up on this as an early example of social science; of seeking to learn about people so that they can be categorised and used to make plans and policies.³⁵ In order that the state could become more democratic, Wolfe argues, social science was needed to devise ways of measuring public opinion and of getting the right kind of data to those who needed it. However, this increasing drive to classify and categorise people was a cause of some worry to Burke, because he believed that it represented a kind of reductionism; that seeing people in terms of the categories they can be placed in automatically neglects the whole person and the relationships they have with one another.

Burke's worries about reductionism inform his thoughts about the principle of utility. In reducing judgements on the value of something into statements of its convenience, we can reduce everything in morality to a question of whether it is useful at the present time. And, as Burke explains, creating a system of government this way paves the way for instability.³⁶

Kass is also concerned with reductionism in his work. One field where he has developed several arguments against reductionism is genetic counselling, specifically about the way that we are increasing knowledge about and power the human genome and the genotypes of individuals.³⁷ This knowledge is being used therapeutically, in genetic testing for diseases in adults, in pre-implantation diagnosis of genetic disease in IVF candidate embryos, and in *in vitro* diagnosis of disability in foetuses, and research is also being conducted into genetic enhancement as part of human reproductive cloning.³⁸

In "Beyond Therapy" Kass and the rest of the President's Council argue that developing more genetic tests is tantamount to reducing an embryo to its genotype; the upshot of this is that the medical profession focuses on the disabilities they find and not on the life of the person the embryo may grow up to be, which, he argues, has already lead to a dramatic increase in the number and the relative mildness of disabilities that are now believed to warrant what he calls "eugenic abortion".³⁹

I have already discussed Kass' worries about neglecting the idea of a life worth living, and the goals we have in mind when we do bioethics in favour of claims about health in section 8.1.2, but this can also be seen as a point about reductionism; reducing the substantive notion of a life well-lived, of being truly human in an evaluative sense, to

³⁵Wolfe 2003.

³⁶Burke 1790, p. 51.

³⁷President's Council on Bioethics 2003, p. 37.

³⁸President's Council on Bioethics 2002, p.107.

³⁹President's Council on Bioethics 2003, p. 36.

thin, measurable concepts of healthiness and the length of a life.

To conclude these three sections, the points about the role of institutions, the reliance on theory and the threat of reductionism are intended to be taken together, as a deconstruction of Burke's claim that the Revolution in France was flawed because it destroyed existing social institutions and replaced them with a theory to which every individual was expected to conform. I took each of them in turn because, as Wolfe points out, it is possible to agree with Burke's worries about the role of theories whilst disagreeing with his conservatism about social institutions. Foucault, for example, stressed the importance of interpersonal relationships when we do social science, but could also be classed as a radical about the need to completely abolish, or reform beyond all recognition, some of our institutions.⁴⁰ Similarly, it may be possible to agree with Kass about the need not to lose sight of the meaning of life and reduce it to something like how healthy a person is or how many of their rights are respected without committing to the claim that there is relationship of necessity between social institutions like marriage and human flourishing. I will develop this point further in chapter 9.4.

My next two points follow the same pattern, they are interrelated and intended by Burke to be taken together, but can also stand on their own. I will argue that for both Burke and Kass, the institutions of the state and the archetypal human life are necessary to provide standards of interpersonal conduct because they are necessary for morality to develop at all.

Burke claims that even though the Revolution in France is said to be founded on principles of liberty and equality, in destroying these institutions the Revolution puts the very idea of virtue at risk.⁴¹ In a similar way, I have shown in chapter 7 that conservatives in bioethics argue for a link between the archetypal human life and the evaluative term “truly human”, meaning that if we allow substantial deviation from the human archetype we will no longer have this kind of value. Furthermore, biocons relate the natural way a life is lived, for example our need to reproduce sexually, with the attainment of certain goods that would be lost if we were to replace this natural method with, say, cloning. I will argue that biocons claim that this would make it more difficult for individual humans to flourish, for the human species to flourish, and potentially would rob flourishing of its intrinsic value.

Both Burke and Kass use the idea of moral sentiments as important compasses for virtuous behaviour – Burke talks about the need to look to those nobler than us to have

⁴⁰Wolfe 2003.

⁴¹Burke 1790, p. 59.

our sentiments aroused, whereas Kass talks about the “wisdom of repugnance”. Both value what Burke calls “the happy effect of following nature, which is wisdom without reflection, and above it.”⁴²

8.1.4 The role of the sentiments

In recent years, Leon Kass has become the spokesman for a controversial line of biocon thought that relates feelings of disgust to judgements of immorality. Many people react with revulsion when they are confronted with concepts like human cloning. Biocons claim that this emotional reaction is indicative of there being something fundamentally wrong with the technology rather than merely a response to the “shock of the new”.

Although he was not the first to advance such an idea, Kass' 1997 “New Republic” article on “The Wisdom of Repugnance” has become probably the most widely cited and criticised of any of the arguments biocons put forward on this subject.⁴³

This belief in the role of feelings, or sentiments as a moral guide is another area of comparison with the conservatism we find in Burke. Burke argues that, as a “man of untaught feelings”, he finds himself naturally experiencing a sense of respect and awe when in the company of men of high rank.⁴⁴ This feeling, because it is natural, is something that we ought to take as a foundation for society.

Shame, for example, is an integral part of how Burke construes public morality, and manners are how it is positively constructed. As David Bromwich puts it, “This thought about the tacit yet compelling authority of manners pervades the *Reflections* ... The agreement that cements a tranquil society is all the more real for being tacit. It betokens a standard so far beyond challenge that it need never be positively recorded.”⁴⁵ Burke argues that sentiments are the way that we are moved to moral actions, and that these sentiments need to be provoked for a gentleman to be motivated to do the right thing. He claims that morality is a kind of habit of acting when one's sensibilities have been piqued. Once we have acquired the habit of morality, our moral decision-making is governed by our sensibilities. In particular, by compassion and by a sense of chivalry.⁴⁶

Kass also brings up a point about the need to leave certain parts of the human life

⁴²Ibid., p. 47.

⁴³For examples of such criticism and discussion of disgust as a moral reaction more generally, see Macklin (1997, 2006); Cahill (2005); Schnall et al (2008).

⁴⁴Burke 1790, p. 129.

⁴⁵Bromwich 1995, p. 621.

⁴⁶Burke was especially moved by the situation of Marie Antoinette when the King and Queen were attacked at the Palace of Versailles on the 6th of October 1789. He saw in Marie Antoinette a paradigm example of how a gentleman's moral sentiments are aroused by the image of a beautiful noblewoman's suffering.

unanalysed. Both Burke and Kass talk about the importance of feelings that have not been explicitly taught, which they argue are more natural for not having been rationally chosen. As Kass puts it:

Repugnance ... revolts against the worst excesses of human wilfulness, warning us not to transgress what is unspeakably profound. Indeed, in this age in which everything is permitted so long as it is freely done, in which our given human nature no longer commands respect, in which our bodies are regarded as mere instruments of our autonomous rational wills, repugnance may be the only voice left that speaks up to defend the central core of our humanity.⁴⁷

Repugnance, then, plays the same role for Kass as it does for Burke. It is an untaught sentiment that arises naturally and ought to be heeded precisely because it is prereflective and comes from an intuitive understanding of a deeper truth; in Burke's case, that men of high rank deserve to be dignified, in Kass', that elements of the natural human life ought to remain unaltered.

Whilst Kass is more commonly associated with the claim that we ought to pay attention to repugnance, he also uses something like the idea of social shame:

Today, defenders of stable, monogamous marriage risk charges of giving offence to those adults who are living in "new family forms" or to those children who, even without the benefit of assisted reproduction, have acquired either three or four parents or one or none at all. Today, one must even apologise for voicing opinions that twenty-five years ago were nearly universally regarded as the core of our culture's wisdom on those matters.⁴⁸

This quote illustrates the role of shame in informing Kass' position. Twenty-five years ago, "our culture" could be more easily defined as one that supported the institution of marriage as the only permissible situation in which to have sexual intercourse and raise children.⁴⁹ Individuals who did not, or could not, raise children within marriage were either pitied or shamed and any children they did have were considered to be at a disadvantage; often correctly due to the social stigma of these different "family forms".

It is informative that he complains about needing to worry about giving offence to "those adults" only now – twenty-five years ago he need not have worried about them, they were a hidden minority and besides which, they were well used to being told they were in the wrong by the vast majority of people and therefore lacked the power to make any offence known to the public. Kass could be interpreted here as lamenting that

⁴⁷Kass 1998b, p. 687.

⁴⁸Ibid., p. 681.

⁴⁹It should be specified that by "our culture" Kass means predominantly white, Judeo-Christian, relatively affluent and well-educated men.

social shame is no longer as strong a normalising force in society as it once was, which is also a point that Burke makes, as I will explain in the next section.

8.1.5 Human flourishing, interpersonal relations and the state

Both Kass and Burke argue for a holistic approach to morality, which is predicated on the ideas that society is vital in instilling virtue in individuals, and individual relationships are vital for human flourishing. Burke claims that society ought to be based on two pillars, religion and the “code of a gentleman”. These have a role to play in an individual's own sense of right, in how that individual relates to others and in how society as a whole is organised. For Burke, morality is something like a habit.⁵⁰ As a habit, it is impressed upon an individual by his upbringing into society.

The way that society is organised, then, plays a key role in how human beings determine right from wrong. Taste and decency are central to Burke's worries in *Reflections*; he worries that with the Revolution, men will no longer be guided by the tacit codes of chivalry he calls “the spirit of a gentleman” and “the spirit of religion”. Those of noble rank, the “natural protectors and guardians” of these codes, will be “trodden down under the hoofs of a swinish multitude”; thus robbing society of its moral centre.⁵¹ The “natural” order of things is something that ought to be preserved because of its relationship to morality:

All the pleasing illusions, which made power gentle, and obedience liberal, which harmonised the different shades of life, and which, by a bland simulation, incorporated into politics the sentiments which beautify and soften private society, are to be dissolved by this new conquering empire of light and reason. All the decent drapery of life is to be rudely torn off. All the super-added ideas, furnished from the wardrobe of a moral imagination, which the heart owns, and the understanding ratifies, as necessary to cover the defects of her naked shivering nature, and to raise it to dignity in our own estimation, are to be exploded as ridiculous, absurd, and antiquated fashion.⁵²

Burke worries that with a total revolution, the traditional ways of keeping ambition and self-interest in check will cease to function.⁵³ Without them, there will be nothing to cement the kinds of social relations that are needed to develop the habits and sensibilities that make up moral judgement. Without the established relationship between the nobility and the common people, “a king is but a man; a queen is but a

⁵⁰Bromwich 1995, p. 622.

⁵¹Cited in Richey 1992, p.818.

⁵²Burke 1790, p. 114.

⁵³For a discussion of how Burke saw property as playing a modifying role, see Mosher (1991).

woman; a woman is but an animal; and an animal not of the highest order.”⁵⁴ Burke's conservatism is not a desire to preserve social institutions merely for their own sake, but for their role in allowing the existence of dignity and morality.

As I have already mentioned, one of the worries that Burke and Kass share is that a revolution will draw a bright line between the past and the present, and make it the case, as Burke puts it, that “no generation could link with the other. Men would become little better than the flies of summer.”⁵⁵ One reason for this is that the world after the revolution would share little with the world our ancestors grew up in, but another is that allowing one change paves the way for even faster and greater change. Kass discusses this in the introduction to “The Wisdom of Repugnance”: “Thanks to modern notions of individualism and the rate of cultural change, we see ourselves not as linked to ancestors and defined by traditions, but as projects for our own self-creation.”⁵⁶

Kass and other biocons talk about the potential for society to change completely before people even realise the implications of what they are doing, and about the slippery slope between therapeutic cloning and dystopia:

Just give us the technological imperative, liberal democratic society, compassionate humanitarianism, moral pluralism, and free markets, and we can take ourselves to a Brave New World all by ourselves – and without deliberately deciding to go. In case you had not noticed, the train has already left the station and is gathering speed, but nobody seems to be in charge.⁵⁷

Burke is more focused on the implications of fast-paced and constant change for the education of children:

Who would insure a tender and delicate sense of honour to beat almost with the first pulses of the heart, when no man could know what would be the test of honour in a nation, continually varying the standard of its coin?⁵⁸

Kass makes a similar point: “Once it becomes possible, with the aid of human genomics, to produce or to select for what some regard as ‘better babies’ – smarter, prettier, healthier, more athletic – parents will leap at the opportunity to ‘improve’ their offspring. ... Never mind that, lacking a standard of ‘good’ or ‘better,’ no one can really know whether any such changes will truly be improvements.”⁵⁹

⁵⁴Burke 1790, p. 144.

⁵⁵Ibid., p. 141.

⁵⁶Kass 1998b, p. 683.

⁵⁷Kass 2002b, p. 6.

⁵⁸Burke 1790, p. 142.

⁵⁹Kass 2012, p. 326.

In order to protect both the continuity of our inheritance and the pillars on which society is built, we cannot allow society to be destroyed and then rebuilt upon a theory, because doing so threatens to subsume individual relationships and the virtues that come from them under the general will:

The murder of a king, or a queen, or a bishop, or a father, are only common homicide; and if the people are by any chance, or in any way, gainers by it, a sort of homicide much the most pardonable, and into which we ought not make too severe a scrutiny.⁶⁰

Burke is arguing that the murder of a father, the head of a household, is worse than common homicide because of what it means to the family he rules. Without the dignity of rank, Burke is arguing, there will be no way to justify seeing some individuals as more important than others, and this does not extend only to the noble classes but to individual families as well. The noble classes are needed, Burke argues, to represent the code of chivalry that every person ought to hold themselves to.

At this point, I have argued for my claim that the political conservatism we see in Burke's *Reflections* finds a counterpart in the ethical conservatism of Kass and the other biocons warning us against the nascent Biotech Revolution. In both cases, the promise of a sweeping, radical change in the way we see ourselves and our place in the world has caused a wave of panic and a surge in support for preserving our institutions. In both cases, the real worry is a moral one, not a purely political or even a religious one; because of the relationship between the development of interpersonal morality and the way that our institutions are organised, a change in one threatens a change in the other.

8.2 Dignity in Burke and in biocon thought

Thus far, I have shown that Burke and the biocons criticise their respective Revolutions along the same lines. I argued that they are best seen as working from the same theory of political conservatism. Now I will argue that they are also using a similar conception of dignity. First I will describe how Burke uses dignity in the *Reflections*, then do the same for Kass, before comparing and contrasting the two. From this comparison, I will demonstrate that Kass and the biocons are best seen as thoroughgoing conservatives and that there is an identifiably conservative conception of dignity that can be considered apart from religion.

⁶⁰Burke 1790, p. 66.

8.2.1 Burke on dignity

Although Burke is often taken as a paradigmatic user of the dignity of rank because of his support for the aristocracy, I will show here that his conception of dignity is more subtle. Dignity is something that is primarily attached to social rank, but Burke also uses dignity as a quality and applies this to all people in a society. The role for dignity, for Burke, is in producing the right sort of society.

For Burke, dignity as the elevation of those in authority is something that we need in order to have a just and moral society – “the dignity of every occupation wholly depends upon the quantity and the kind of virtue that may be exerted in it.”⁶¹ Not only do some people have to have power in society for government to function, but the people in power also have to be able to act in the right way.

In his argument against the dissolution of the old system of the Three Estates and the monarchy in France, he argued that the elevating of ordinary individuals to the office of government is a bad idea because these individuals are unused to “sentiments of dignity”. Having no good reputation to lose, Burke argues, these people “could not be expected to bear with moderation, or to conduct with discretion, a power, which they themselves, more than any others, must be surprised to find in their hands.”⁶²

This shows that dignity is not constituted just by holding office, it comes from being the right sort of person to hold the office they are given. Dignity is a quality of character as well as an expression of social rank. We see this later in the Reflections, where Burke criticises those noble-born individuals who support the reforms:

When men of rank sacrifice all idea of dignity to an ambition without a distinct object, and work with low instruments and for low ends, the whole composition becomes low and bare. Does not something like this now appear in France? Does it not produce something ignoble and inglorious – a kind of meanness in all the prevalent policy, a tendency in all that is done to lower along with individuals all the dignity and importance of the state?⁶³

Having nobles in positions of rank is important, then, but the dignity of rank is also important because having a sense of respect for one's own rank can be generalised to a respect for all ranks in society, as this quote shows:

One of the first symptoms they discover of a selfish and mischievous ambition is a profligate disregard of a dignity which they partake with others. To be attached

⁶¹Burke 1790, p. 188.

⁶²Ibid., p. 37.

⁶³Ibid., p. 40.

to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in the series by which we proceed toward a love to our country and to mankind.⁶⁴

“They” – the ordinary citizens who have been elevated to positions of authority in France – become greedy and tyrannical because they are not moderated by respect for anyone's dignity, not even that of their own rank.

When traditional institutions are dissolved, Burke argues, dignity as a quality suffers. Burke offers several reasons for this. The first is that traditions endow us with a sense of being part of a long line of illustrious and honourable people, whose legacy we are charged with keeping. This gives the current generation the motivation to be virtuous:

Always acting as if in the presence of canonised forefathers, the spirit of freedom, leading in itself to misrule and excess, is tempered with an awful gravity. This idea of a liberal descent inspires us with a sense of habitual native dignity which prevents that upstart insolence almost inevitably adhering to and disgracing those who are the first acquirers of any distinction.⁶⁵

Burke is arguing that dignity doesn't come from freedom, as liberals have it, freedom gains dignity when it is properly used. Without traditions to inform and motivate us in the virtuous use of freedom, human nature will use it badly and to excess. Traditions also allow the development of standards of conduct that we can educate the noble youth into, so that they become suited for the power they are destined to hold. These standards include dignity as a virtue, as Burke claims in his impassioned discussion of the treatment of Marie Antoinette. He describes her as acting virtuously, bearing her suffering “with the dignity of a Roman matron”,⁶⁶ and laments that the Revolution in France threatens the virtues of the nobility:

Never, never more shall we behold that generous loyalty to rank and sex, that proud submission, that dignified obedience, that subordination of the heart which kept alive, even in servitude itself, the spirit of an exalted freedom.⁶⁷

Here Burke is using the concept of dignity as an expression both of nobility itself, and of the virtues that the nobles have. The continued existence of noble classes is the only way to maintain the existence of these virtues. These virtues are not available to everyone because Burke does not consider human nature to be good in itself.

⁶⁴Ibid., p. 39.

⁶⁵Ibid., p. 29.

⁶⁶Ibid., p. 112.

⁶⁷Ibid., p. 63.

The “moral imagination” has given us the trappings of noble traditions, which are now “to be dissolved by this new conquering empire of light and reason”.⁶⁸ Reason alone cannot allow us to raise human nature to dignity – on this point Burke is commonly contrasted to the Enlightenment thought of Thomas Paine, who argued that man has a “natural dignity of character” that is not dependent on traditions, but through virtuous use of reason.⁶⁹ Unlike Kass, Burke cannot be said to attach dignity to normative essentialism.

To destroy the noble class is to destroy their dignity as social rank, but also to remove dignity as a quality from society, because nobles like Marie Antoinette are exemplars of these qualities. Burke also claims that the existence of the noble class is the only way for men of humble rank to attain dignity. In an argument that the wealth of a state ought to be used in part to secure luxury for noble individuals, Burke claims that seeing such inequality is a way to motivate the low-born to virtue:

It is the public ornament. It is the public consolation. It nourishes the public hope. The poorest man finds his own importance and dignity in it, whilst the wealth and pride of individuals at every moment makes the man of humble rank and fortune sensible of his inferiority and degrades and vilifies his condition. It is for the man in humble life, and to raise his nature and to put him in mind of a state in which the privileges of opulence will cease, when he will be equal by nature, and may be more than equal by virtue, that this portion of the general wealth of his country is employed and sanctified.⁷⁰

Here Burke is arguing that seeing material inequality will put the poor and humble man in mind of Heaven, and the judgement that comes with death. This, he claims, will motivate him to raise his nature and promote virtuous conduct, so that he can be more than equal to the nobles in spiritual wealth. Dignity is something that everyone can partake in, although the poor and humble cannot have the dignity of rank and the authority that goes with that, they can share in dignity as a quality of a character by contemplating those in authority.

This concludes my description of Burke's concept of dignity. As well as a description of the elevation of some social positions above others, dignity is a kind of virtue that is possessed only by those of noble ranks. Traditions and institutions are required to foster it. Without such traditions it cannot exist. For example, Burke refers to “the awful dignity of a handful of country clowns who have seats in that assembly”, suggesting that this is an example of an undeserved dignity that does not rest on traditions.⁷¹ This

⁶⁸Burke 1790, p. 114.

⁶⁹Meyer 1987, p. 325.

⁷⁰Burke 1790, p. 82.

⁷¹Ibid., p. 72.

mirrors my example of the Mafia Don in chapter 3.3. Burke understood the French Revolution to pose a threat to the existence of dignity in French society, given that the existing social order was being dismantled. I will now move on to an explanation of how Kass uses dignity.

8.2.2 Kass on dignity

I will begin this discussion by distinguishing the conception of dignity I am comparing with Burke's. Kass identifies two loci of dignity, which correspond to dignity as a quality and human dignity. Recall that the stated aim of Kass' interpretation of the concept of dignity is to:

“[t]ry to show the relationship between two equally important but sometimes competing ideas of human dignity: the *basic* dignity of human *being* and the *full* dignity of being (actively) *human*, of human *flourishing*.”⁷²

In chapter 7 I argued that the basic dignity of human being can be explained as an intrinsic value that all humans have simply because they are biologically human. This does not correspond to anything we find in Burke's Reflections – although as a Christian, Burke will have had a conception of the sanctity of life, he did not refer to this as a kind of dignity. The dignity of human flourishing, however, is something we can compare to Burke's conception of dignity as a noble virtue. Kass applies the idea of flourishing to individuals, societies and to the human race as a whole, and he sees the Biotech Revolution as a threat to all of these.

Kass does not claim that human nature is intrinsically good – being biologically human has an intrinsic value, but humans are naturally vulnerable to being immoral as well as virtuous. This is what led me to conclude that biocons are weakly normative essentialist in chapter 7.5. Kass sees human culture as providing the motivation for individuals to act according to the better elements of their nature, which is the set of essential features that confer inflorescent dignity. Laurence Vogel explains the need for culture in his comparison of Kass and other conservative theological bioethicists on the subject of sexual morality:

In short, “the right ordering of loves” requires revelation, for “natural sexual impulses will not by themselves establish the proper institutional forms”... human nature requires cultivation in we are to have any hope of understanding or actualising our potential.⁷³

⁷²Kass 2008, p. 299.

⁷³Vogel, 2006 p.42; quotes are from Kass, 2003.

Culture can only supply this benefit to inflorescent dignity, however, when it is in accord with the better parts of human nature. I will illustrate this cornerstone of conservative thought with an example. In an almost-forgotten article for a “Public Interest” special edition on the “culture wars”, Kass laments the passing of traditional courtship rituals and their substitution for college attendance and sexual liberation:

For the first time in human history, mature women by the tens of thousands live the entire decade of their twenties – their most fertile years – neither in the homes of their fathers nor in the homes of their husbands; unprotected, lonely, and out of sync with their inborn nature.⁷⁴

According to Kass, the inborn nature of a woman is to get married whilst she is at her most fertile so that she can conceive children, and traditional mores of courtship allowed this to happen. Living according to one's nature is important for flourishing, as Kass is arguing in his description of single female college students as “sad, lonely and confused; hoping for something more, they are not enjoying their hard-won sexual liberation as much as liberation theory says they should”.⁷⁵ Kass argues that cultural institutions like courtship, and the early-in-life, monogamous marriages they lead to, have been degraded, leaving young people unable to live the same kind of meaningful lives their parents' generation did. This means, on the biocon conception, they will have less inflorescent dignity.

Kass also sees the natural shape of a human life, and the institutions that have grown up around this, as conferring inflorescent dignity as a kind of humility. This comes out of his discussion of delayed ageing and immortality, as I showed in chapter 7.3. The natural shape of a human life, bounded by death, limits an individual's potential for achievement and gives his life meaning. The desire to transcend death is hubris; an arrogance that is inimical to flourishing. This is similar to the argument Burke gives about material inequality giving the common man the impetus to raise his own nature. Individuals need to be reminded of their natural limits so they can avoid becoming unvirtuous.

Both Kass and Burke claim that traditions and institutions are important for dignity. Whereas Burke claims that the result of the Revolution in France will be that the common man will lose his dignity by losing his sense of place and his ability to contemplate those people who are his betters, Kass sees the relation as an internal one. The common man will lose his dignity in the face of the Biotech Revolution because he will no longer contemplate the nobler elements of his own human nature – in being

⁷⁴Kass 1997, p. 42.

⁷⁵Burke 1790, p. 41.

encouraged to strive only for more health, longer life, and free choices, he will lose the ability to think about what is really meaningful. This is the motivation for Kass' preoccupation with the example of "Brave New World"; fictional though it is, the society Huxley creates represents the terminus of what Kass sees as the liberal project of giving us endless choices to make our lives feel better whilst carelessly stripping away the structures within which relationships – parent to child, wife to husband – can exist and form the foundation of a life with dignity.⁷⁶

Like Burke, Kass sees "true" dignity as the elevation of that which is noble; he refers to acting in a dignified way as honouring oneself.⁷⁷ Both thinkers worry about the effect that social change will have on the dignity of individuals and of humanity as a whole. Whilst, for Burke, nobility is personified in the clergy and the high-born, for Kass our nobility is to be found in our human nature. This would seem to place the structure of Kass' conception of dignity at odds with Burke's, since for Kass every human can live an equally dignified life whereas for Burke the disparity in dignity is a necessary part of the structure that allows dignity to arise in the first place. In fact, the way that the two philosophers rely on the dignifying role of social structures makes their conceptions of dignity partial analogues of one another.

For both Burke and Kass, dignity as flourishing depends on the way that we relate to one another. For Kass, at the personal level, finding meaning and dignity can be found in the way that we face suffering and death, as well as in the commitments of marriage and procreation. At the societal level, creating institutions that allow for these natural, personal parts of life to develop and be protected is said to foster and respect both human dignity and dignity as flourishing.

Kass' worries about what cloning will do to society are worries about human dignity as well as about the physical and psychological harms that he sees as potentially threatening clones, their creators and society in general. Human dignity can be taken by itself without reference to society; indeed it is often used as a justification for why we ought to alter some social practices that are instrumentalising or unequal, but the inflorescent dignity that represents the highest realisation of our humanity cannot be so taken. The embedded role of social institutions and the threat posed to these by revolutions makes biocon dignity and Burke's dignity both part of conservatism in ethics as well as politics.

In both cases, dignity demands constraint; for Burke the dignity of rank requires that we preserve the system of nobility, which allows society to be run according to the

⁷⁶Kass 2012, p. 320.

⁷⁷Kass 2008, p. 309.

codes of religion and chivalry rather than the whim of the populace. Kass argues that a preoccupation with being healthy and able to make our own choices, whatever they are, makes it more difficult to see what makes a meaningful life; the dignity of being truly human requires that we preserve the archetypal human life and human reproduction, which allows individuals to build meaningful lives and set achievable goals that are circumscribed by their own mortality. A society that is structured so that these essential features of the human life are believed to be morally right and an important part of its shared values is a dignified society.

8.3 Conclusion to chapter seven

I have argued in this chapter that Kass' conception of dignity is used as part of a wider conservative ideology. Many of the criticisms Burke made of the liberal ideology around the French Revolution, modern-day conservatives are still making about liberalism as a political and philosophical position. Burke's argument about the importance of social institutions, which we have seen is mirrored by Kass' focus on the importance of the idea of the archetypal human life, speaks to a larger criticism of liberalism as overly individualist.

The reason the debates around the Biotech Revolution is so intractable is because it is based on whether the right is prior to the good. Burke shows us that the argument between liberals and conservatives follows this distinction generally, as well as specifically in terms of the way dignity is used. I am not arguing for or against the priority of the right over the good here, only that I hold this issue responsible for the intractability. In my next chapter, I will focus on two issues in future-facing bioethics to illustrate that this is indeed the root of the dichotomy between liberal and conservative conceptions of dignity.

Given the comparison between Burke and Kass' conservatism in the face of revolution, and their reliance on structures that legitimise dignity, there is scope for me to argue that just as the institutions of the *ancien regime* were shown to be incapable of supporting the idea that all humans are equal, if the institutions of the archetypal human body, and human sexual reproduction can be found wanting then there is a justification for endorsing the Biotech Revolution.

With the Enlightenment ideas of liberty, equality and brotherhood came the belief that a new society was needed to allow for these things to flourish. With the belief that human dignity is something that humans have because they are capable of morality could come the belief that enhancing this capacity and thereby transcending the human

archetype is needed for it to truly flourish. Understanding these beliefs allows us to criticise biocons as a species of ideological conservative more generally. The claim that society ought to be structured so that individuals are only permitted to live in those ways that are in accord with the dignity of humanity, and promotional of human flourishing, is suggestive of an elitist ideology because it rests on the belief that individuals are not best seen as the protectors of their own dignity, or that societies respect dignity when they allow individuals to live in a diversity of ways. These are the arguments I will be canvassing in my next chapter, in which I will apply the theory I have sketched in my last two chapters to problems in future-facing bioethics.

Examples from Future-Facing Bioethics

Having developed the foundations of liberal and conservative conceptions of dignity in greater detail, I will now come full circle and show how these developed conceptions can be applied to practical issues in applied ethics and to analysis of existing policy documents around the Biotech Revolution. In this chapter, I will pull together the arguments in this part so far, and apply them to current issues in future-facing bioethics. First I will demonstrate that the distinctions can be used to support criticism of an existing policy document whilst preserving human dignity as a potentially useful concept. Then I will show how my interpretations of liberal and conservative dignity can be used to generate arguments about novel biotechnological advances. In both cases my conclusions will support the claim that liberal and conservative conceptions of dignity are intractable.

In section 9.1, I will take a second look at the Council of Europe's Convention on Human Rights and Bioethics. I argued in my first chapter that the Convention follows a broadly liberal interpretation of dignity, but now I will analyse the Convention in more detail and distinguish both a liberal and a conservative conception of human dignity within the text. I will demonstrate that there is an ambiguity within the Convention that is attributable to the difference between the liberal and conservative conceptions of human dignity.

My second issue, marriage equality, has generated much less literature that could be called future-facing bioethics, although it is currently of great importance in the politics of many countries around the world. I have already mentioned the biocon stance on the meaning of marriage as an institution, but recently Kass has argued specifically against marriage equality. In section 9.2, I will pose the question of

whether new developments in IVF technology, which could allow two people of the same sex to have a baby that is a combination of both partners' genetic material, would make a difference to the biocon position on marriage equality as it would allow procreation within a monogamous coupling.

By this end of this chapter, I will have shown through these two issues that the two conceptions of dignity are fundamentally in tension, even when they are both used in support of the same claim. Further, that the way I have characterised dignity, as comprising interdependent elements of inviolability and of character, and separable into liberal and conservative conceptions, is a useful way to disambiguate the concept.

9.1 Return to the Convention on Bioethics

I initially looked at the Council of Europe's Convention on Bioethics in chapter 2.2.2, where I identified a liberal conception of dignity in the text, even though the Convention bans research into human cloning.

In this section, I will go back and look at the Convention, its Additional Protocols and Explanatory Reports in more detail, and show that there are tensions within these documents. These tensions have been identified by Daniela Cutas, who criticises the drafters of the Convention for appealing to an essentially ambiguous concept of dignity. I will argue that this ambiguity can be explained by distinguishing between the autonomy-based and humanity-based conceptions of dignity that I have isolated. In this section I will expand the arguments Cutas puts forward in her critique of the way human dignity is used in the Convention, after clarifying exactly what kind of biotechnologies it was designed to prohibit.

The Preamble of the Protocol on Cloning mentions cloning by embryo splitting, which they acknowledge can occur naturally, and by somatic cell nuclear transfer. It states that:

1. Any intervention seeking to create a human being genetically identical to another human being, whether living or dead, is prohibited.
2. For the purpose of this article, the term human being "genetically identical" to another human being means a human being sharing with another the same nuclear gene set.¹

This suggests that cloning both by deliberate embryo splitting and by somatic cell nuclear transfer would be prohibited under this Protocol, since human embryos are not

¹Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, available online at <http://conventions.coe.int/Treaty/en/Treaties/Html/168.htm>.

explicitly ruled out of the class of “human being(s), living or dead”. This means that induced embryo splitting to produce more embryos for IVF implantation would be banned, as well as attempts use somatic cell nuclear transfer to clone an adult or child who has already been born.

Cutas asks the following questions in the abstract to her article:

Is the concept of dignity proposed in the two documents coherent? Is it morally legitimate? Is it, as some might assume, of Kantian origin? Does it have any philosophical roots?²

In order to answer these questions, I will first outline the claims Cutas makes about the Convention and the general account she gives of human dignity, before discussing her characterisation of the way the drafters of the Convention use the concept of dignity. I will argue that Cutas is correct in her distinction between dignity as applied to individuals and to the human species, but that her account does not adequately distinguish the two conceptions of dignity – autonomy-based and humanity-based – that are at work in the Convention and causing the inconsistencies she points out.

9.1.1 Cutas' discussion of the use of dignity in the Convention

In the article I am discussing, Cutas is looking specifically at chapters I and IV of the Convention, along with the Explanatory Reports to these. Article IV is concerned with the human genome, therefore it covers the prohibition of cloning and genetic enhancement, as well as the genetic screening of embryos for non-therapeutic reasons and the discrimination of any existing individual because of their genetic heritage.

She identifies dignity as the “essential value to be upheld” because of the principle of the “primacy of the human being”:

Further, the Report also mentions that respect is due to the individual per se and as a member of the human species (paragraph 15), from the moment life begins (paragraph 19), and repeats the couple “dignity and identity” in several places.³

She points out that the Convention does not specify which other values are to upheld, or that dignity is intended to provide a foundation for. Dignity is the value that is said to be threatened by the kinds of technological interventions in reproduction that chapter IV is designed to prohibit.

²Cutas 2005, p. 303.

³Ibid., p. 305.

Although the drafters of the Convention relate dignity to instrumentalisation, the Explanatory Report to chapter IV also acknowledges the potential for applications of reproductive technology that are not instrumentalising yet nevertheless ought to be prohibited. This leads Cutas to claim that there are at least some Kantian elements to the conception of dignity used in the Convention.

In the second section of her article, Cutas moves on to a brief history of the concept of human dignity. At the outset, she dismisses the dignity of rank, which she argues as exemplified by Burke, as “certainly not [the] meaning that the drafters of the Bioethics Convention had in mind”, as the drafters claim that all humans have human dignity. She then moves on to a discussion of pre-Kantian dignity focused on Giovanni Pico della Mirandola's “Oration on the Dignity of Man”, in which he claims that the reason humans have a unique dignity is because they are set apart from the Great Chain of Being and can choose for themselves whether to be closer to the angels or the animals:

The nature of all other creatures is defined and restricted within laws which We (God – *JM*) have laid down; you, by contrast, impeded by no such restrictions may, by your own free will, to whose custody We have assigned you, trace for yourself the lineaments of your own nature . . . We have made you a creature neither of heaven nor of earth, neither mortal nor immortal in order that you may, as the free and proud shaper of your own being, fashion yourself in the form you may prefer.⁴

Cutas identifies in della Mirandola's work the foundation of the relationship between liberty and dignity, which she also attributes to Thomas Paine. She argues that the drafters of the Convention could not have understood the concept of dignity through this prism:

If we read the Convention and the Protocol in the light of the words of Pico della Mirandola, then the only conclusion that we can draw is that the drafters of the two documents took upon themselves the job that God thought improper, that is to define what humans should be like, what they are allowed to do of themselves, and what they can become.⁵

Cutas then moves on to a discussion of Kant, and claims that “Kant's ‘legacy’ seems to constitute the core of the conception of human dignity as understood by the drafters of the Bioethics Convention and its Cloning Protocol.”⁶ She isolates three features of Kant's account of dignity; that it gives individuals duties to themselves, that it is related to the capacity for rationality, and that it makes humans subject to the principle of

⁴Pico della Mirandola 1998, p. 5.

⁵Cutas 2005, p. 307.

⁶Ibid., p. 308.

non-instrumentalisation; all of which I identified in chapter 5 as definitional of Kantian dignity. Cutas then goes on to discuss two different ways to distinguish conceptions of dignity; first between those conceptions that apply dignity to all human beings simply *qua* humans and those that stipulate a cognitive capacity, and second between what I have called dignity as a trait and human dignity. She concludes:

As it can by now be noticed, the meanings of human dignity as used in the literature are various: it is either a characteristic of very few people, or of some people (that have certain capacities, such as a certain degree of reason or a capacity to make claims), or of all people, it has degrees or it has no degrees, it can be lost or is intrinsic and cannot be given away. This being the case, it is not surprising that the talk in terms of dignity can be misleading, and that the necessity of very precisely explaining what is the particular meaning one operates with is quite clear.⁷

The ambiguities within dignity, Cutas is arguing, make it difficult to argue that the Convention is using the concept coherently given that the drafters do not specify a tradition or a theory of dignity of which they are explicitly making use.

As well as ambiguity, Cutas claims that dignity is being used in a way that sets it up against pluralism. This is a problematic charge for the drafters of the Convention; as an institution of the European Union, the Council of Europe almost by definition is comprised of a plurality of European cultures and values. Cutas cites Derek Beyleveld and Roger Brownsword, prominent authors on both human dignity and consent in bioethics and law, claiming that “The two authors warn against the tendency manifested in this account to overlook the pluralism of the societies that it is supposed to cover, and thus to impose restrictions of a particular cultural orientation against those not sharing the same values.”⁸

Cutas also argues that there is a tension between dignity and autonomy, as well as between dignity and individual choice. Dignity gives us a duty to ourselves, but this duty is a constraining one, meaning that there are some things we cannot do to ourselves if we are to respect our own dignity. Cutas sees this as a problem because:

[C]onstraints against one's own behaviour regarding only himself or herself are likely to raise more controversy. As long as solid rational arguments are not offered to support the account of dignity as constraint, there is a strong question mark as to the imposition of constraints on what one can consent for.⁹

The tension between individual liberty and dignity is also a tension between rights and dignity. These values of liberty and respect for rights, “held in the contemporary

⁷Ibid., p. 310.

⁸Ibid., p. 311.

⁹Ibid., p. 311.

societies to which the Bioethics Convention and the Cloning Protocol are addressed”, are supposedly founded on dignity, since dignity is the essential value to be upheld, but in practice dignity provides a justification for constraining these rights and freedoms.

The final criticism that Cutas makes is that the Convention sometimes makes use of dignity as if it pertained to the human species as a whole, and sometimes as if it pertains to what individuals ought to be allowed to consent to regarding themselves:

Although it is claimed (in the very Preamble of the Bioethics Convention) that the documents are motivated by “the need to respect the human being as an individual and as a member of the human species” (as quoted in the very beginning of this article), the human species as understood by the drafters of the two documents takes precedence over the individual, and our duties as defined by other instances (in this case, the Council of Europe) takes precedence over our personal autonomy.¹⁰

Cutas argues that between these two loci of tension – freedom and dignity, and individuals and humanity – the conception of dignity that drafters use in the Convention is problematically ambiguous. I will now examine these claims and argue that the Convention uses the liberal, autonomy-based conception of dignity in some parts, and the conservative, humanity-based conception of dignity in others.

9.1.2 The liberal conception of dignity in the Convention

In chapter 6.1.2, I argued that there are resources for a Kantian to extend dignity to everyone; marginal cases are still contiguous with the rest of humanity and therefore still can be described as having the same essential properties of the will.¹¹

Cutas is correct where she claims that it would over-extend the Kantian interpretation to make it cover the “the dignity and identity of the human being” as it is used in the Convention. The drafters of the Convention link dignity and genetic identity at various points in the text, and in the Cloning Protocol and Explanatory Reports. As I discussed in chapter 4.2 with my reconstruction of Nordenfelt, we also find the dignity of

¹⁰Cutas 2005, p. 311.

¹¹Dieter Birnbacher (2005) argues for a similar conclusion in his critique of the way dignity is used in the institutional context of cloning. He claims that the drafters of the Convention drastically over-extend the scope of non-instrumentalisation as a principle by applying it to embryos; his mistake, however, is scientific. In “Human Cloning and Human Dignity”, his argument is that cloning cannot be instrumentalising because it is aimed at the survival and healthy birth of the embryo: “If the cloned child falls victim to instrumentalisation, the source of its being made a mere means cannot be the very process that brings it into being.” However, there is never just one embryo created as part of the process of cloning and enhancement; the technique requires many embryos to be produced to maximise the chances of one successful and healthy child being born.

identity in healthcare ethics more generally. The conception of identity the drafters of the Convention are using is not the same as the one Nordenfelt uses in his conception of the dignity of identity. Nordenfelt attaches the dignity of identity to individuals; each person's identity has an objective value so that dignity is lost when identity is changed. The Convention, at least in the articles that are concerned with cloning and enhancement, pertains to people who have not yet been born, and who do not have an identity that is under threat.

Liberal conceptions of respect for dignity, defined as respect for autonomy and equality, and a commitment to neutrality on the part of the state, can only account for the idea that an individual's human dignity is violated simply by being genetically identical to another on an unrealistic understanding of the cloning process. Going back to Ackerman, the right to an open future can be interpreted as not being subject to the imposition of one conception of the good on one's genome. A conception of dignity that grounds the right to an open future bears comparison with the conception that Cutas attributes to della Mirandola; humans have dignity because they can choose for themselves, and so, if cloning meant creating carbon copies of existing individuals, creating a clone that has many of its choices mapped out for it and expected of it is disrespectful of that dignity.

Having a genetic identity that has not been played out before, so to speak, is required for an open future. If we are to respect the liberal conception of dignity as empowerment, we have to provide a child with the context she needs to make her own decisions, which biocons we argue that we cannot do if she is a clone.¹²

Biocons could argue that despite this biological reality, we can still imagine that the reason a parent may want a clone is because of some feature of the clone that the parent believes is worth repeating. If we clone Gandhi, it is because we *expect* to get a person with a strong potential to become a new Gandhi; if we clone Scarlett Johansson, we expect a beautiful daughter with a talent for acting. By itself this is not an adequate argument for banning human cloning, however, as governments would have a responsibility to ensure that everyone involved in the process was fully informed about what they were consenting to, including the impossibility of creating a perfect copy of an individual. Parents that expected a clone of Gandhi could either be disabused of the notion, or screened out of the process because they cannot give fully informed consent.

This does not rule out all types of human cloning, however. It would not rule out deliberate embryo splitting, since the aim of this process is to increase the chances of a

¹²This also accounts for why twinning is not a threat to identity – twins start out with the same genotype, but both have the same open future.

successful IVF implantation and subsequent birth of a child. The aim of deliberate embryo splitting is not to create multiple copies of a child, only of embryos. Even if more than one of the deliberately cloned embryos was successfully carried to term, the genetic identity of both would not have been played out before and both would have an open future.

It would also not rule out cloning by somatic cell nuclear transfer. As I explained in chapter 7.3, this method does not amount to the creation of an exact copy of an existing human being. Epigenetic factors influence the individual's genotype from the moment of conception, and these factors would be different for a clone than they were for the donor. Genotype determines phenotype, so the physical characteristics of the clone would be different in unpredictable ways from those of the donor. Even a clone of a living adult would have a unique genetic identity, and therefore would not be denied an open future. Especially if they were given all the educational and parental support needed to develop their own personal sense of identity, apart from their genotype.

Even if a convincing argument could be made for banning the cloning of adults, based on considerations of the right to an open future, such a ban would still not rule out all types of cloning, or all instances of somatic cell nuclear transfer. Cloning by inducing twinning in embryos would not count as replaying an existing identity. Cloning by somatic cell nuclear transfer is currently permitted in animals, and some grieving pet owners have taken advantage of this technology to clone their dead pets.¹³ Grief is also a potential motivator in humans; one of the most commonly-expressed sentiments in the parents of children who died in childbirth or very early infancy is the sadness that they will never get to find out what kind of person their child could have been. Their genotype could never be expressed. This could provide a case for allowing cloning of a human being who has already been alive; it could be permissible to clone a baby who died because there are no expectations attached to the clone, nobody to compare to. The clone of a dead baby would have the same open future as any other baby. Under these circumstances, a liberal conception of dignity could be compatible with cloning.

To sum up these arguments, the reasons given in the Convention to justify the ban on cloning are best interpreted as hinging on the idea of an open future, which is considered as being precluded by having a genotype that has already been in a living being. I have argued that, firstly, cloning does not create a complete copy of a genetic identity, because of the role of epigenetics and secondly, even if cloning could completely reproduce a genotype, there are still examples of a clone still having access to an open future.

¹³Fiester 2005.

Having an open future depends more on the context a child is raised in than the genotype she is born with, as it requires that the child has access to as many ways to develop her identity as possible. Her genotype is one constraining factor on the number of paths her future can take, but it is not the only one. If it is possible to want to create a clone for the right reasons, without instrumentalising her, and to raise her in the same context as a non-cloned child, then it seems that the Convention would be imposing a conception of the good on those people who might want to use cloning as their preferred method of reproduction. The ambiguities in the Convention are best understood as stemming from too basic a definition of cloning. Looking at how the liberal principles that ground dignity, which are respect for autonomy and neutrality, are used in the Convention, we can see that it is not the concept of dignity itself that is ambiguous. Rather, the ambiguities are within the conceptions of cloning and identity the drafters of the Convention are using.

9.1.3 The dignity of the individual and of the human species

I will now move on to discussing the second area of ambiguity the use of dignity in the Convention, between a conception of dignity that applies to human individuals and one that applies to the human species as a whole. I will first claim that the drafters of the Convention apply the concept of identity to both individuals and the human species, and then connect this use of identity to the conservative conception of human dignity.

The “dignity and identity” of the individual is only one application of the principle laid out in the Convention. The drafters also make explicit reference to the dignity and identity of the human *species*. It is at this point that the foundations of the conception of dignity used in the Convention start to become unclear. Previously, I have shown how dignity has been applied to individuals and used in terms of non-instrumentalisation and respect for the uniqueness of individuals. This kind of dignity cannot apply at the species level. In Articles 14 and 89 of the Explanatory Report to the Convention, it is stated that some developments in biomedicine pose a “risk to”, or threatens to “harm” the human species as well as or instead of individuals.¹⁴ I will now discuss and support Cutas' claim that the drafters of the Convention move illegitimately between applying dignity to individuals and to the species as a whole.

It is unclear what the drafters intend to pick out when they write about the identity of the human species, but two potential meanings present themselves. The first is recognition: it is of great benefit for humanity to be able to recognise itself, that is, for the human species to remain one species and not be able to be distinguished into

¹⁴See Appendix to this chapter.

sub-species or to speciate altogether. It is widely recognised that polygenism in so-called “racial science” was used as a justification for the institution of slavery, for example, but once it was recognised that black and white people were not different species, abolitionism made increasing gains.¹⁵ In a similar way, enhanced or cloned humans might be seen as categorically different from those without such enhancements, which might breed the same kind of prejudice. Clear though the practical benefit of remaining one species are, it is unlikely this is what the drafters had in mind: a biological speciation event is not something that any genetic scientist is aiming at, and besides, cloning is directly contrary to this goal.

The second possible interpretation is that the human species itself is taken as having an inherent value and a normative status of its own, considered separately from the value or dignity of any particular individual. This interpretation is given weight when we look at the use of the term “human being” in the Convention, for example in the Explanatory Report to Article 2:

The whole Convention, the aim of which is to protect human rights and dignity, is inspired by the principle of the primacy of the human being, and all its articles must be interpreted in this light.

Most likely, the drafters are connecting the idea of the dignity of the human species to an evaluative notion of humanity rather than a biological one. At this point it becomes clear that we have moved away from autonomy as the basis of human dignity and are in territory best understood using human nature. The worry could be that if we allow cloning and genetic enhancement, some of the traits that define us as human will change, which will be wrong regardless of any consequences that may ensue.¹⁶ If genetic uniqueness, for example, is a feature we use to define what it means to be a human being, permitting cloning will alter our definition and make us inhuman in some way.¹⁷

¹⁵As Frederick Douglass put it in 1854: “By making the enslaved a character fit only for slavery, they excuse themselves for refusing to make the slave a freeman. A wholesale method of accomplishing this result, is to overthrow the instinctive consciousness of the common brotherhood of man.”

¹⁶It is not clear why the fact that each human has a unique genetic identity at birth is the grounds for claiming that each human has human dignity. All life on Earth that reproduces sexually has this trait. The fact that our species has a unique human genome would be a clearer candidate for as a source of human dignity, but then we would be in need of an argument for why altering that genome, or cloning a genotype within it, would be wrong. Alterations would not alter the human genome's uniqueness, only add or remove specific genes. Seeing biocons as normative essentialists allows us to understand this better by seeing how they argue that being “truly human” could be argued as a source of dignity, but this does not explain why all humans need to have a unique genetic identity.

¹⁷Buchanan (2009) argues that this line of reasoning, which he correctly identifies as the logical terminus of biocon thought, is also likely to lead to the position of a normative difference between those non-enhanced “true” humans, and the not-quite-human enhanced.

Likewise, allowing genetic enhancement could eventually mean allowing children to be born with abilities that are far outside the range we currently think of as normal for humans; changing our definition of what humans are and what they can do. This means that dignity can be used as a constraint on what individuals can permissibly do by looking at the effect these actions have on the species as a whole, not just on those whose wellbeing might be directly affected.

Here the liberal and biocon positions can be clearly distinguished, using the arguments I attributed to Roger Brownsword in chapter 6.2.2. Brownsword's distinction between agency-relevant and agency-irrelevant enhancements gives us a liberal framework for assessing whether a specific enhancement could be morally permissible. If we could make ourselves better able to understand and carry out our moral duties, this could be in accord with the principle of dignity as empowerment even if it alters the human species at the genomic level, for example by inserting synthetic genes, or genes from other species.¹⁸

In establishing the dignity of the human species as a justification for the complete prohibition on cloning and genetic enhancement, however, the drafters of the Convention show that they are not adhering to Brownsword's conception of dignity as empowerment. It shows, rather, that they are committed to the claim that there is something inherently valuable about the human species simply for what it is rather than what it can do, and that altering humanity is wrong in itself. According normative weight to a biological definition of the human species, as I argued in chapter 7, is characteristic of the biocon approach to human dignity; it is not something we can get from looking at human dignity based on autonomy. This is because, as I showed in my example of the Old Ones from chapter 6.1.5, autonomy is only contingently related to being genetically human.

The liberal, autonomy-based conception of dignity can get us to a point in understanding dignity in the Convention but can only provide an incomplete understanding. This is because it cannot account for the claim that identity and integrity are valuable in themselves. The conservative, humanity-based conception of dignity remains in the background and is the only way to understand the drafters' particular concern to protect the dignity of the human species. The drafters of the Convention, then, are making use of two incompatible conceptions of human dignity, which accounts for Cutas' conclusion that it is unsatisfactory.

¹⁸Potentially, Brownsword's arguments could even permit the introduction of non-human genetic material for the purpose of increasing agential competence, which would alter humanity at the biological as well as the cognitive level.

The drafters of the Convention could defend their use of dignity in the documents by arguing that although it is correct to claim that there are two conceptions of human dignity at work here, it does not make the Convention itself unclear; having a plurality of conceptions of human dignity at work is to be expected in a work of consensus and so long as no clashes are produced, there is no demand to use a universal locus or source of dignity. This would be right if it could be shown that there are no instances where interest in the identity of the human species were being used to trump those of human individuals or vice versa. Due to the nature of future-facing bioethics, however, no such promises can be made. We already have the ability to create human-animal embryo chimeras and, theoretically at least, we could create viable hybrids that may not differ in cognitive ability from normal humans. In the future, such hybrids could be created with enhanced or novel skills due to the inclusion of non-human genes, which would clearly make those individuals non-human, but not deprived of open futures. This means the question of agency-relevant enhancement, whether using animal genetic material or not, as wrong for the species but right for an individual could arise.¹⁹

It is not clear that invoking the right to an open future would prohibit the creation of such hybrids; making humans better able to make decisions, healthier or likely to live for longer is unlikely to count as an oppressive imposition of a conception of the good. It is not enough, then, to accept that documents like the Convention need to accommodate more than one conception of dignity for the drafters to be able to say everything they want to say; either we accept autonomy-based conception of human dignity with its *prima facie* inability to justify a complete ban, or we accept a conception of dignity based on human nature and give up on dignity as a way to account for the primacy of human freedom. If we accept the human nature-based conception used by biocons, we would therefore be faced with the question of whether dignity or freedom ought to take priority. Liberals, by contrast, define dignity in terms of freedom.

To conclude this section, I have shown that the distinction between the two conceptions of human dignity, and its complementary categories of liberalism and conservatism in bioethics, shows us that even when a consensus is reached about the conclusion to an issue, as with the prohibition on cloning and genetic enhancement, it is impossible to use both conceptions of dignity to argue for it.

The way the drafters use human dignity in the Convention is flawed because they extend dignity both to the human individual and the human species; using autonomy to justify the former and the biological definition of human nature for the latter. The

¹⁹Savulescu (2003, 2005).

inconsistency does not disappear even when both sides agree, as they do in their assertion that cloning ought to be banned; the difference is insurmountable because it pits the individual against the human species and because it conflicts a theory that prioritises the right over the good with one that prioritises the good over the right.

9.2 The Biotech Revolution and same-sex marriage

Marriage equality is a current issue in politics, not something ordinarily considered part of the Biotech Revolution. The issue has been discussed by social conservatives because they believe that it destroys the “point” of marriage, which they claim is to have children. However, recent developments in IVF technology could bring the issue into the spotlight for biocons specifically, because of the possibility of allowing two adults of the same sex to have a child that is completely biologically their own, without the need for a surrogate. As I discussed in chapter 7, normative essentialism about sex informs biocon judgements about cloning and enhancement, as well as conservative judgements about marriage more generally. In this section I will discuss how advances in IVF could affect biocon judgements about marriage equality. The aim here is to show how the disambiguations I have made within the concept of dignity can help us in understanding issues at the intersection of future-facing bioethics and politics.

Example 11: Ryan and Chris Ryan and Chris are a same-sex couple, who have been together for many years and are materially and emotionally committed to spending the rest of their lives together. They would very much like to get married and, in an ideal world, they would have a child. They have recently read about developments in IVF technology that could allow them to have a child that belongs, biologically speaking, to both partners equally. They both believe that children ought to be raised within a marriage, and so at the present time they are unable to fulfil their wish. As members of the Conservative party, they attended a Party conference in 2011 and heard their leader, David Cameron, make an impassioned statement supporting marriage equality:

Conservatives believe in the ties that bind us. Society is stronger when we make vows to each other and we support each other. I don't support gay marriage in spite of being a conservative. I support gay marriage because I am a conservative.²⁰

Although Cameron's viewpoint represented a minority of Conservative party members in the UK at the time, it is nevertheless representative both of a specifically conservative

²⁰Cameron 2011.

viewpoint about the importance of institutions and of the prevailing winds of social change across many parts of the world in recent years. There has been much debate around marriage equality, with legislation being passed or very nearly passed in the Netherlands, Belgium, Spain, Great Britain, Norway, Sweden, Portugal, Iceland, Denmark, France, Brazil, Argentina, Uruguay, South Africa, New Zealand, Canada, and nineteen States of America.²¹ Where dignity has been used in legal debate over same-sex relations and marriage, it has been overwhelmingly used to support the values of liberty and equality.²²

There is scope for a conservative to support marriage equality without compromising dignity. As we saw in chapter 8.1.1, conservatives like Burke were not averse to any change in an institution *per se*. If the change was a beneficial and necessary one, aimed at preservation, like Burke saw the move from an absolute monarchy to a constitutional one, then conservatives can see it as beneficial. In extending the institution of marriage to cover same-sex partnerships, David Cameron could be seen as making such a necessary and beneficial change, allowing more of the citizenry to partake in an important social covenant that has a stabilising effect on communities and contributes to the wider good.

In the United States, however, Leon Kass has been a vociferous critic of marriage equality, briefing as a friend-of-the-court in the Supreme Court case of *Hollingsworth v Perry*.²³ The debates in the US have tended to be split much more clearly along political lines, with conservative Republicans generally against any alteration to current marriage law.²⁴ Were Ryan and Chris Republican, there is little chance their desire to marry would find any acceptance within their party.

Conservatives believe that marriage itself is important for social stability, which is something that both David Cameron and Leon Kass would agree on, and both would agree that it therefore forms part of the good for people living in society – living in a stable, predictable world has benefits for how we make plans, raise children and so on. This dispute goes deeper than whether marriage is part of an objective conception of society's good; it is about the relationship of marriage to the archetypal human life as

²¹Data from the Freedom to Marry Coalition. Global data available at <http://www.freedomtomarry.org/landscape/entry/c/international>; data for the United States available at <http://www.freedomtomarry.org/states/>.

²²Siegel 2012.

²³This case, originally filed in 2009, challenged the constitutional validity of California's Proposition 8, which banned same-sex marriages. The Court eventually ruled against the legality of the proposition, restoring marriage equality in California in 2013 after several appeals.

²⁴Current polls show a distinct swing towards acceptance of marriage equality amongst young and self-described “moderate” Republicans. See <http://www.freedomtomarry.org/resources/entry/marriage-polling> for details.

well as to the way we organise ourselves. For biocons, equal marriage is a threat to dignity.

Although there are likely to be as wide a variety of reasons for a conservative to reject marriage equality as there are species of political conservatism, I want to focus specifically on the arguments Leon Kass puts forward.²⁵

9.2.1 Biocons on marriage equality

Kass argues that same-sex couples should not to be allowed to marry because, tautologically, same-sex union ought to remain outside the way we define the concept of marriage. Kass makes two arguments supporting the current legislation that prohibits same-sex marriage in a paper with Mansfield that distills the main points raised in the *Hollingsworth* friend-of-the-court brief.²⁶ I will discuss them both in this section.

The first is that there is a paucity of evidence that children raised in same-sex marriages do as well as their peers raised in heterosexual marriages. This purported lack of evidence means that we would be doing an experiment on children if we allowed them to be raised by same-sex couples, testing a theory that may prove wrong. This, Kass claims, would be unfair and potentially risky for the children involved. This claim about the paucity of scientific study on child welfare can be discounted straight away because since the authors perceive there to be some risk in allowing same-sex couples to raise children, they would presumably not allow any data to be generated. It effectively collapses into an assertion that it is better not to alter an existing legal institution in such a profound and, as they see it, radical way. This is a circular argument.²⁷

The second argument is somewhat more difficult to discern because of Kass' focus on welfare. It is related to the more general biocon attitude to social institutions, that they represent “our culture's wisdom” and have developed in order to make it possible for human beings to flourish.²⁸ The assumption that heterosexual marriage is the best kind of relationship in which to raise a child is backgrounded against Kass' weakly normative essentialism – the reason Kass and Mansfield argue that marriage equality is “just a

²⁵Kass speaks on American values to Republican party gatherings, and held positions in George W. Bush's government, but he was actually educated into liberal values, and considered himself a progressive thinker and man of the left. It is not easy to pigeon-hole him into a political position, although the concept of dignity found in his work is strongly conservative in the political and semantic sense. See Levin et al (2012) for an illuminating background to Kass' life and personal politics.

²⁶Kass and H. Mansfield 2013.

²⁷In actual fact, data does exist on the outcomes for children born and adopted into non-heterosexual unions, although not yet on specifically *married* same-sex and same-gender couples. See Wainright et al (2004).

²⁸Kass 1998b, p. 681.

theory” is because they see a categorical difference between heterosexual marriage and same-sex marriage.²⁹ This is because of the biocon belief that social institutions are related to human flourishing because of their relationship to the archetypal, biological human life.

The institution of marriage dignifies those who partake in it because of the connection between marriage and the instantiation of essential human functions. By “dignifies”, I mean that conservatives claim that marriage is something that helps humans to *flourish*; it promotes inflorescent dignity, and is therefore respectful of the human being.³⁰ Since being gay does not make Ryan and Chris inhuman or lacking in intrinsic value as human beings, and since marriage equality would not mean straight people are less valuable, biocons are not talking about human dignity, only inflorescent dignity.

Inflorescent dignity is only possible when the essential functions of a human life that make the human life good are being performed to their fullest. Procreation within morally appropriate contexts is one of those functions – raising children within marriage is said to be an essential part of human flourishing. In this case, the human function that marriage is built around is procreation; according to conservative ideals, people get married because they want to raise children, and a marriage is intended to be a stable unit containing everything that is needed to conceive and raise a child.

Here we see the biocon argument that culture ought to perfect our nature by giving us the right context in which to raise our children so that they can flourish and we can take proper care and responsibility. The link is reciprocal; biocons argue that raising children within a marriage is good for the children and their parents, and this benefit strengthens the place of marriage within a society. In turn, this cemented role means that society sees marriage as the only appropriate, context in which to raise children, which leads to more children being born within marriage.

Biocons would argue that allowing couples like Ryan and Chris to get married severs the link between the institution of marriage and the act of procreation and therefore robs marriage of the connection with human functions that it needs in order to contribute to the inflorescent dignity of society and of humanity more generally. More moderate conservatives like David Cameron can still see marriage both as vital for society's stability and also as the best context in which to raise children without yet committing to the negative biocon position on marriage equality; it is only when marriage is

²⁹See chapter 8.1.2 to explain the conservative perception of the threat that organising institutions based solely on untrammelled theory poses to the proper organisation of society.

³⁰Recall from chapter 3.4.2 that “inflorescent dignity” is the term for dignity as a quality used by Daniel Sulmasy; I am using it here because it specifies the kind of dignity as a quality biocons are using. Biocons relate manifesting dignity as a quality to human flourishing.

related to the activity of procreation, of a couple having a child that is biologically their own through sexual intercourse, that the biocon position comes into view.

9.2.2 Advances in IVF

So far I have explained that biocons are against marriage equality for weakly normative essentialist reasons: they argue that the institution of marriage is important for human flourishing because of its links to the human function of procreation. Marriages in which procreation is impossible, therefore, cannot be related to the good in this way and ought not be permitted for fear of undermining this relationship, even if increasing access to marriage would increase the effect it has on social stability.³¹

In recent years, however, reproductive biotechnology has begun to move towards the point where any two individuals could potentially combine their DNA together to create a child, meaning that Ryan and Chris could fulfil their desire if they were allowed. I will give a brief outline of the ways this is becoming possible before arguing that despite this potentially allowing same-sex partners to procreate within marriage, it would not allow biocons like Kass to change their minds on the permissibility of marriage equality.

The most relevant new technology to same-sex procreation is the ability to create stem cells from normal adult cells. In 2012, a research team at the Kyoto University Institute for Integrated Cell-Material Sciences successfully created oocytes from induced pluripotent cells in mice, which are cells from adult individuals that have been chemically treated to effectively turn them into stem cells.³² If this technology can be developed for humans, there is the potential to be able to create an egg from an adult man's cells, or spermatozoa from the cells of an adult woman, meaning that gay men, lesbian couples, single individuals, post-menopausal women and infertile couples could have children that are fully biologically their own, rather than relying on gamete donation as is the present situation for many of them.³³

At the present time for two men to create a child, they would still need to bring in a woman to carry the embryo to term as a surrogate; although the embryo would contain

³¹In arguing that IVF is permissible for married couples, Kass extends the sphere of marriages in which procreation is possible. This being said, biocons should not be taken as arguing that infertile people ought not get married – his definition of possible in this case should be taken as a dispositional one, where a couple could have children were it not for some medical issue preventing it.

³²Saitou, Kagiwada, and Kurimoto 2012.

³³In 2004, Dr Panayiotis Zavos claimed to have already created the first cloned human embryo using this method. His results were published in the journal *Archives of Andrology*, however as his results have not been able to be repeated or verified, the opinion of the majority of the scientific community is that the experiment probably never happened (Haran 2007).

none of this woman's DNA, this could still be seen as bringing in someone from “outside the marriage”. However, artificial womb technology is a definite possibility for the future, which would remove the need for a surrogate.³⁴ For convenience, I will refer to the creation of oocytes from induced pluripotent stem cells and the development of artificial womb technology as “advanced IVF”.

By definition, gamete donation relies on bringing people from outside the marriage into the procreative act, which Ryan and Chris see as a betrayal of the commitment to monogamy that constitutes the marital vows. If a same-sex marriage can provide everything needed to conceive and create offspring, however, then this line of argument at least can be put to one side, leaving the only questions as whether children brought into the world in this way and raised by two parents of the same sex do as well as those in traditional nuclear families, and whether there is anything inherently wrong with using reproductive technology to allow married couples of the same sex to create children together.

I have already suggested that the question of welfare be left open, because it is primarily an empirical one and also one that, if the biocons were to be successful in their campaign to prohibit marriage equality and advanced IVF, we would have no data from which to draw our conclusions. Biocons are not against the idea of IVF and related technologies in themselves; cloning is absolutely not acceptable, but the creation of an embryo from two parents' genes is not the same thing.

As I mentioned in chapter 8.1.1, Leon Kass changed his view on traditional IVF from one of total opposition to qualified support; his revised position is that IVF can be a valuable addition to reproductive medicine as a way to allow infertile married couples to produce children of their own. This leaves us with the specific question: given that same-sex marriage is not permissible because it would sever the link between marriage and procreation, would biocons accept the techniques pioneered by the Kyoto University team as a way to create this link, and therefore make marriage equality for a couple like Ryan and Chris possible?

As yet, nobody from the biocon tradition has addressed this possibility directly, so I will reconstruct an answer on their behalf from the literature on both marriage equality and reproductive technology. I will show that the biocon position can be explained by their

³⁴Artificial wombs have been an area of research for several decades because of their potential use in cases where there is danger of transmission of diseases or addiction to the developing foetus, or where the fetus is alive but the mother is not (Gelfand and Shook, 2006). In their report on the state of the art for the *New York Annals of Sciences*, Bulletti et al (2011) claim that at this point in the development of artificial womb technologies, partial ectogenesis – where the fetus is transferred into the artificial womb at no earlier than 14 weeks of gestation – is currently within reach.

priority of their weakly normative essentialist conception of the good over the right, which will allow me to contrast this with a liberal position on the meaning of marriage and the possibility of same-sex reproduction. Biocons cannot allow developments in IVF technology to impact on their position on marriage equality, whereas both marriage and the possibility of same-sex procreation are permissible for liberals.

9.3 Conservative responses to advanced IVF and marriage equality

The argument that I will be discussing, and explaining why biocons would reject, takes the following form:

1. Biocons claim that the point of marriage is to have children;
2. A same-sex couple cannot have children, therefore marriage for them has no point;
3. Therefore same-sex couples ought not be allowed to marry.
4. However, advanced IVF technology can allow a same-sex couple to have a child that is biologically theirs;
5. Kass claims that IVF is permissible if it allows a married couple to have children;
6. If we allow same-sex couples to marry, we should allow them to have children within that marriage using advanced IVF.
7. Therefore same-sex couples ought to be allowed to marry.

In this section I will explain why biocons do not accept the conclusion that if advanced IVF is permissible, and can be used to allow same-sex couples to have children, then marriage equality ought be permissible too. I will start by explaining the normative essentialist position on the point of marriage, which pertains to human dignity.

In order to understand why biocons would not accept that using advanced IVF to procreate could make marriage equality possible on weakly normative essentialist lines, we need to look in more detail at the way biocons address the meaning of procreation. It is not simply the case that, as normative essentialists, biocons claim that having children is good because reproduction is an essential human function. Rather, we have to look at the extended concept of humanity, which has evaluative as well as biological facets, if we are to be able to distinguish between the kinds of procreation that are expressive of the meaning of human life and constitutive of human flourishing.

Biocons argue that the reason that advanced IVF ought not be extended to couples of the same sex, even if they are married, is because the process of IVF has an impact on the point of sex rather than on the point of marriage directly. They claim that robbing the sexual act of the meaning it gets from being related to procreation, by introducing a

way to create children without it, just is a way of making us less human and less able to flourish.

Leon Kass has argued that the sexual act itself is invested with an inherent meaningfulness that contributes to our good; in engaging in sex for the purposes of procreation, two people transcend their individual lives and join together in the creation of something entirely new. It is not the mere fact of procreation, then, but the way that procreation is linked to sex, and to love, such that it invests the sexual act with a depth and significance that would otherwise be absent from it. Allowing procreation to happen outside of sexual union divests intercourse of this link to our humanity in the extended, evaluative sense, meaning that since a couple like Ryan and Chris can never partake in this meaning, allowing them to marry would only dilute the connection between sex, childbearing and marriage, even with advanced IVF technologies. Just having babies is not enough for a person's life to be called fully human and meaningful, so just being able to have babies using advanced IVF is unlikely to be able to give marriage any more meaning for two people of the same sex. Kass argues that:

The soul-elevating power of sexuality is, at bottom, rooted in its strange connection to mortality, which is simultaneously accepts and tries to overcome. Asexual reproduction may be seen as the continuation of the activity of self-preservation . . . Sexuality, by contrast, means perishability and serves replacement; the two that come together to generate one soon will die. Sexual desire, in human beings as in animals, thus serves an end that is partly hidden from, and ultimately at odds with, the self-serving individual.³⁵

Marriage is only contributive to human flourishing when it is aimed at securing the point of procreation. The institution of marriage contributes to our inflorescent dignity, but this contribution depends on whether it is properly connected to our biological as well as evaluative humanity. So, the conservative understanding of the relationship between social institutions, human dignity and human flourishing does follow a conservative pattern laid down by Burke – in this case, moderate conservatives could argue that extending marriage equality is a necessary step we must take to preserve the institution in any form, whereas biocons would argue that because marriage is only part of our inflorescent dignity because it is related to the good of sexual procreation and thereby to our potential for inflorescent dignity, marriage equality is not a mere adjustment in scope but a radical deracination of the concept.

In looking at the distinction between moderate conservatives and biocons, we can see how the biocon position is best characterised not only as conservative, but as weakly

³⁵Kass 1998b, p. 692.

normative essentialist, as the good that marriage contributes is not measurable purely in terms of social stability but in how it is related to the inherently meaningful act of sexual procreation. The institution of marriage is important to securing human dignity because it is related to the sexual act of creating a child, which is why Kass' essentialism is weakly normative; both are considered as aimed at our flourishing. So it becomes clear that a biocon like Kass could never support the argument that if we can use advanced IVF to allow a same-sex couple to have children of their own, we can also allow marriage equality (or vice versa).

9.4 How inflorescent dignity informs the conservative position

As conservatives who believe that marriage and child-rearing are integral parts of a meaningful life, Ryan and Chris could argue that being denied the opportunity to marry and have children by IVF equates to being prevented from attaining inflorescent dignity. Ryan and Chris both believe that the natural shape of a human life involves growing up, finding a partner to love, marrying them, having children, ageing and dying. They believe that being gay is not something they chose for themselves, and that their preference for the gender of partner to marry does not equate to opting out of the natural human life. For them, being gay is a non-optional part of their identities, and whilst it is physiologically possible for them both to have children with women, the fact that they are in love and committed to spending their lives together causes them to feel like this would be adultery, and that it would be so inauthentic and loveless that any children they produced would not be conceived and born in the morally best way.

Ryan and Chris' belief that they have genuine inflorescent dignity in their lives depends on being allowed to marry and access advanced IVF that would allow them to conceive and raise a child of their own. In denying them the chance for this, biocons must be committed to one of two claims. Either, it is not true that Ryan and Chris will have more inflorescent dignity (or a better chance at inflorescent dignity) if they are allowed to marry and bear children, or although Ryan and Chris would have inflorescent dignity if they are allowed to marry and bear children, doing so would compromise the inflorescent dignity of society, or humanity as a whole.

The first option entails denying the possibility of inflorescent dignity to any individual who falls outside the biological norms, regardless of how they believe life ought to be lived and whether other people judge them to be flourishing in their lives. Ryan and Chris believe that denying them the possibility of raising children within a marriage robs their life of meaning, and biocons agree that marriage and children are part of a

meaningful life. Being gay does not make Ryan and Chris different from other humans in any other regard, so the essential features of a meaningful life would be connected to their inflorescent dignity in the same way. Whether they believe it or not (and they do), a life lived with marriage and children is essential for Ryan and Chris' inflorescent dignity, according to the biocon position.

Biocons argue that it is not disrespectful to the dignity of same-sex couples to claim that only heterosexual people ought to be married – biocons often express frustration at the “misplaced tolerance” of liberals; Charles Rubin's essay in “Human Dignity and Bioethics” is especially firm on this point.³⁶ For biocons, it is not an injustice that marriage is restricted to heterosexual couples because of the link between marriage and natural procreation. The restriction is not an arbitrary one; nature has made it impossible for same-sex couples to have children, therefore same-sex marriage would not serve the same dignifying purpose as heterosexual marriage.

However, biocons are still denying the possibility of inflorescent dignity to same-sex couples by relating marriage and child-rearing to human flourishing. If Ryan and Chris are not permitted to marry and raise children, and if doing these things is an expression of inflorescent dignity, then it is unavoidable that biocons are walling off the possibility of same-sex couples having inflorescent dignity to the same degree as heterosexual couples.

Kass is opposed to marriage equality because he argues that the institution of marriage must reflect the “point” of marriage. Society's institutions ought to promote human dignity and the inflorescent dignity of human beings. This is what it takes for society itself to be dignified. Kass and the biocons are claiming that dignity is related to public morality; that society can be judged as flourishing or not depending on either whether most people within society can flourish, or whether the institutions of a society are designed to promote norms associated with a natural human life.³⁷

The second option is compatible with the claim that Ryan and Chris are being denied the chance at inflorescent dignity if they are being prevented from marriage and child-rearing by biocons, but that denying them this chance is nevertheless the right thing to do. There are two potential reasons for this. Either, allowing Ryan and Chris the chance at marriage and children is incompatible with respect for human dignity,

³⁶Rubin 2008.

³⁷Dignity has been related to public morality in law, for example in the famous case of *M. Wackenheim v the European Court of Human Rights*. Lawyers for the ECHR argued that the public has an interest in continuing to believe that the state will protect the dignity of its citizens, even at the cost of preventing one individual from a kind of employment that was widely considered to be degrading. This case is discussed in almost every book on dignity; to my mind the most thorough treatment is from Michael Rosen (2012).

that is, for the intrinsic value of human beings, or it is incompatible with the inflorescent dignity of society or of the human race as a whole, or both. These kinds of dignity trump the inflorescent dignity of individuals, so Ryan and Chris ought to be denied the chance of having full inflorescent dignity.

9.4.1 Changing normative essentialism to create a new conservative conception of dignity

In my last section I demonstrated the extent of the restriction that biocons are committed to. From my analysis of their position I have shown that they must be committed to the claim that some people cannot have inflorescent dignity because of their sexuality; they can do the best they can with what they have, but they are unable to attain full human flourishing. Society can also have inflorescent dignity, but only when it is structured in a way that allows individuals to express the natural features and functions of a human life. In this section I will argue that it is possible to take a normative essentialist approach to dignity and the human life without automatically being committed to the biocon position on the Biotech Revolution.

Biocons believe that having children is an essential feature of a flourishing human life, so in order to have inflorescent dignity as a society, we ought to create institutions that support having children. They also believe that the meaning of sex is, essentially, to create children. However, normative essentialism does not automatically entail the belief that procreation is the morally-significant essential function of sex. All animals procreate, yet very few mate for life, and only humans do so with the conscious will to commit to another despite the knowledge that circumstances will change and life will eventually end. Although having children is an essential function of sex, it is not a complete description of all the meaning we invest in the sexual act.

Concerning marriage, conservatives like Kass believe that monogamous, committed, lifelong relationships are one of the essential features of human beings, and that society ought to promote these wherever possible. Marriage is the only context in which sex is morally right and in accord with our inflorescent dignity, because marriage is the morally right context in which to raise a child, and the point of sex is to create children. Once again, it is possible to be normative essentialist about marriage whilst also agreeing with marriage equality. If, instead, we focus on the uniquely human capacity to love and trust one another, and build relationships that provide comfort and security as the point of marriage, and we focus on the point of sex as deepening these bonds and sharing the experience of making oneself completely vulnerable, then there is no reason not to have marriage equality. In some ways, knowing that they are not going to

be tied together by pregnancy and childbirth makes the desire that LGBT people have to enter into marriage all the more human in an evaluative sense.

We can apply Kass' claim that human culture perfects human nature to this more permissive normative essentialist conception of humanity. Societies ought to be structured so that the best parts of human nature – the parts that are necessary for the inflorescent dignity of individuals and the species as a whole – are promoted by institutions; so that there is a strong pressure towards instantiating the best parts of what it means to be human. If the ability to willingly make a lifelong monogamous commitment to another person is one of these excellent parts of human nature, society ought to make it easy, and beneficial to do this. This is the rationale behind the UK Conservative stance of marriage equality.

Whether we accept Kass' conclusion on marriage equality depends on whether we accept his specific claims about what the essential, unique and meaningful features of the human biological life are. The biocon conception of dignity, and the arguments they make against developments like marriage equality, cannot be adequately characterised without understanding their claims about the intrinsic value of biological humanity, and their specific cultural values. The concept of inflorescent dignity need not be constraining, but it does lead to constraint when it is used in biocon rhetoric. Defining inflorescent dignity in terms of the essential features of humanity yields strong constraints only where humanity is biologically defined, or defined in terms of the Western, Judeo-Christian values that biocons as a group happen to hold.

9.5 The liberal position on marriage equality

Liberals have been traditionally much more hospitable to the idea of marriage equality. In general, liberal arguments about marriage equality follow liberal arguments about most things in focusing on two areas; harm and rights.³⁸ As with Kass' arguments about the welfare of children raised by LGBT parents, we can wall off questions of harm because of a paucity of data, and because such arguments do not tend to touch on the idea of dignity. This leaves us with rights, and less commonly, with duties as the starting-point of a liberal argument about marriage equality.

In particular, the right at issue here is that of equality of opportunity to pursue, and non-interference with the pursuit of, one's own conception of the good.³⁹ Liberals claims that there is an objective point to getting married at all would be to impose a

³⁸Charlesworth 1993, p. 16.

³⁹Ball 1997, p. 1875.

conception of the good on others and therefore violate the principle of neutrality. Liberals stress that marriage should be an option for anyone who includes it in their conception of the good; marriage can mean different things to different people and imposing one definition of the meaning of marriage means defining it illiberally. As Chai Feldblum puts it:

[A]dvocates of same-sex marriage neither assert, nor raise the fear, that once a right to marry is achieved, gay people will legitimately be expected by society to marry. To the contrary, while liberal advocates of marriage for same-sex couples may refer to the status of domestic partnership for gay couples as “second-class citizenship”, such liberal advocates would also presumably support the right of gay people to *choose* such a status over marriage.⁴⁰

Human dignity can be used as a way of expressing the idea that because everyone has an equal basic moral status, everyone ought to be able to choose whether to participate in an institution that can contribute to their conception of the good life. Respecting every person's right to have a context in which they can act freely and pursue their own goals means everyone ought to be treated as equals in their access to social goods.⁴¹ This means that, given Ryan and Chris' conservative views, they ought to be allowed to get married. Not to do so prevents them from living their conception of an upstanding, morally right lifestyle.

A similar argument can be made about advanced IVF; given that heterosexual married couples are permitted to pursue technological assistance in procreation and therefore to do something they believe gives their life purpose and meaning, to claim that homosexual married couples ought not have access to this same assistance is *prima facie* unjust.⁴² Instrumentalisation, the great conservative force in the autonomy-based conception of human dignity, is silent on both marriage equality and the possibility of same-sex couples having children of their own, as there is little to suggest that such children would be used merely as a means; if heterosexual couples cannot be charged with this, then same-sex couples cannot be either. Ryan and Chris' desire for a child is not instrumentalising in itself, and they would love any child they had together to the same degree as any heterosexual married couple.

⁴⁰Feldblum 1998, p. 487.

⁴¹Not every liberal subscribes to the principle of neutrality, however Ball (1997, p.1883) has argued that for perfectionist liberals like Raz, same-sex marriage can be supported because of its contribution to the good.

⁴²This is where empirical evidence about harm could make a difference in the argument; if it turns out that for some reason, the life chances of children of same-sex couples are drastically reduced then it could be argued that the child's right to an open future trumps the prospective parents' right to IVF. I am not aware of any studies that draw this conclusion.

To go back to my discussion of Kant's dignity in chapter 5, there are two questions that Ryan and Chris would have to answer in order to show that using advanced IVF to have a child is in line with the principle of respect for dignity. The first is, whether the maxim behind the use of these biotechnologies can be universalised so that there are no logical inconsistencies. This means, if every same-sex male couple wanted to marry and have children using advanced IVF, would there be anyone being prevented from doing so by the actions of others, and would anyone else be prevented from being treated equally if these couples were allowed to use advanced IVF? Although the technology is still in the realm of conjecture, it seems clear that its use does not contradict the Categorical Imperative; it allows for every individual to have his or her autonomy respected equally and does not privilege any one group over another, including the children that would result from allowing advanced IVF to be used.

The second question that a Kantian liberal would have to address is, in allowing them to use advanced IVF technology, are we impinging on anyone's dignity as a quality? That is, would allowing this technology to be used prevent anyone from developing a good will; striving to align their motives with the Categorical Imperative. The answer to this would also seem to be negative; there is no obvious difference between Ryan and Chris wanting to have a child, and any other couple wanting the same thing. Were they to be successful in having a child, it would also not be prevented from developing a good will provided it was loved and cared for in the same way any other child was.

Respecting dignity in this case is best defined as empowerment as Roger Brownsword describes it in chapter 6.2.2; respect for the ability of rational adults to make choices about what they want out of life. In the legislative context, this means a commitment to legal marriage equality and equality of opportunity for advanced IVF, if and when the techniques become viable. In making these commitments, legislators are providing the context for members of the LGBT community, and others who may benefit, to make decisions without constraint, just as their heterosexual peers can. Furthermore, in publicly committing to equality, the state is sanctioning a society where everyone is treated equally regardless of their sexual or gender orientation.

The distinction between the liberal and conservative response is a clear demonstration of whether respect for human dignity demands that the priority of the right or the good being the fundamental issue at stake. It is not whether dignity is more important, for example, than justice or tolerance; both liberals and conservatives can place respect for dignity at the centre of their arguments and generate entirely different conclusions. Liberals could accommodate many different family forms without sacrificing a commitment to dignity, so long as the individuals within those families did not

privilege themselves over anyone else, or compromise anyone else's autonomy for the sake of their own.

Biocons argue that the good is something we discover, not something we create *ex nihilo*; therefore if we want to protect the ability for humanity to flourish both in our individual lives and in society, we have to protect those components of our biological human life and of our social institutions that are necessary for us to flourish. We must do this even at the expense of abstract goods like equality; Kass has argued that there is a natural inequality to human beings that gives rise to institutions like patriarchy and marriage, and that respecting this inherent difference between man and woman is essential for us to flourish.⁴³ Such a claim would be rejected as a basis for policy by liberals because it is *prima facie* at odds with both equality and neutrality. Such a claim of “natural inequality” would be seen by liberals as basically opposed to the principle of respect for dignity.

My argument in these last three sections has mapped the way that liberals and conservatives can come to precisely opposite conclusions on an issue despite both sides being concerned with respect for dignity. The key issue comes out as being the priority of the right to the good, and relatedly, whether there are certain things we ought not do because they are incompatible with human flourishing. For liberals, marriage and procreation are only linked through forming parts of individual conceptions of the good; the one does not dignify the other by necessity. Respecting human dignity as a liberal means allowing individuals to access as many of the experiences that help them to develop a good will and lead personally fulfilling lives as possible.

Biocons, by contrast, relate the institution of marriage to inflorescent dignity through the idea of there being an objective good that is secured by procreation. Once again, there is no way to take from both sides and reach a consensus. We can, however, see that a commitment to liberty and respect for the diversity of human experience leads to rejecting the biocon position.

9.6 Conclusion to chapter eight

This chapter has brought together the conceptions of liberal and conservative dignity I have developed in chapters 5, 6, 7 and 8 of this thesis, and used them to interpret two major issues in future-facing bioethics.

In both cases, I have shown that my thesis that the liberal and conservative conceptions of human dignity are founded on different answers to the question of the priority of

⁴³Vogel 2006.

the right over the good can help make sense of why the arguments in these two issues are intractable. This intractability, I think, is unresolvable – no amount of conceptual analysis, reconstruction of the historical roots, or exposing of dignitarians' underlying motivations will allow for the creation of one conception of human dignity that can provide a source of consensus. Only by understanding the traditions from which human dignity is being drawn can be make sure that where the concept is used, it is done so clearly and without confusion.

Conclusion

The increasing use of the concept of dignity in law, policy and bioethics has been one of the most controversial topics in practical ethics within the last fifteen years. Dignity has been criticised as an inadequate principle for addressing the potential moral minefield that is the Biotech Revolution. It has also been criticised as a way to smuggle politics and religion into what has traditionally been, and ought to remain, a secular and apolitical field. This thesis is the first side-by-side analysis of conceptions of dignity that are political from the ground up. Getting clear about the differences between how liberals and conservatives understand and use the concept of dignity will be vital to answering the question of whether it is a useless, or an inherently biased, concept.

In this concluding chapter, I will first restate the aims of my thesis, and then show how each chapter addressed the questions I posed. In section 10.2, I will move the ideas I introduced in my thesis forward by showing how they can be used to answer some of the more general questions about dignity's fitness for use in policy and bioethics more generally. Finally, sections 10.2.3 and 10.2.4 will deal with the limitations of the biocon and liberal conceptions of dignity against the background of the Biotech Revolution.

10.1 Restatement of aims and structure

My project has aimed at clarifying and giving structure to a multivalent, sprawling debate around the role of dignity as a foundational moral concept in bioethics, particularly the future-facing bioethics that is concerned with the Biotech Revolution. To recap, the specific stated aims for my thesis were to:

- Distinguish a structure of dignity that brings together both human dignity and dignity as a quality.
- Show that liberals and conservatives understand dignity as a quality in different ways, and they also understand human dignity in different ways.
- Develop the foundations of the liberal and conservative conceptions of dignity to show that they are inconsistent; that if we accept one, we cannot accept the other.
- Demonstrate this inconsistency by applying the two models to issues in future-facing bioethics.

I addressed the first two aims in part one, and the second two in part two. In chapter 2, I started my thesis with a review of how the concept of dignity has been used in bioethical policy within the last two decades, focusing in particular on the various commissions created by the government of the United States. I demonstrated that the most important difference between how dignity was used, and the importance accorded to it regarding issues in bioethics was which political party was in power at the time. Commissions created by the Democratic Party produced documents that did not make use of dignity in their core policies, whereas commissions created by Republican Party placed dignity at the centre of most documents they produced, and gave it a fundamental role in the moral justification of their ethical position.

From identifying this pattern, I posited that there could be a determinate liberal and conservative conception of dignity in ethics. Although Ruth Macklin, among others, criticised the biocons for introducing political distinctions into bioethics, I argued that these distinctions were already present and in fact, could be of use in understanding the roots of disagreements over the content and scope of dignity.

At this point, I was leaving the concept of dignity unanalysed because I was focusing on its applications. In chapter 3, I moved on to distinguishing between concepts and conceptions of dignity. This allowed me to identify two conceptions of dignity that I aligned with liberal and conservative ideologies. I showed that the liberal and conservative conceptions were structurally analogous. I first separated dignity into three concepts: the dignity of rank, human dignity and dignity as a trait. Next, I split dignity as a trait into presentational dignity and dignity as a quality, because presentational dignity can be false.

After isolating dignity as a quality, I began my argument that there are recognisably liberal and conservative conceptions of dignity. I gave two separate accounts of dignity as a quality, the first from Michael Meyer, and the second from the biocon Daniel Sulmasy. Both made the same point, that dignity as a quality depends on a conception of human dignity, but each used a different conception of human dignity, giving us two

separate models to work with. I showed that Meyer claimed that human dignity must be based in equality and *autonomy*, whereas Sulmasy claimed that it must be a statement of the intrinsic moral worth of *humanity* – that each individual has dignity simply by being human.

I then analysed both and argued that Meyer's autonomy-based conception fitted with liberal principles, and Sulmasy's humanity-based conception fitted with the principles of conservatism. So, then I had two rival conceptions of dignity, which shared the same basic structure and could be divided along political lines.

In chapter 4, I demonstrated three ways that my disambiguation of dignity could be profitable in bioethics. First, I used the distinctions between dignity as a trait and human dignity; and dignity as a quality and presentational dignity to illustrate shortcomings in Stephen Pinker's popular article, "The Stupidity of Dignity". I then showed that my structure of resting dignity as a quality on human dignity was more coherent and defensible than the argument in Lennart Nordenfelt's "The Dignity of Identity", which also sought to bring together elements of dignity as a trait and human dignity. Finally, I looked at the case of Ashley X, one of the most ethically problematic and widely-discussed cases in recent medical ethics, and showed that seeing dignity as either autonomy-based or humanity-based could make sense of the way dignity was being used in radically different arguments. This concluded part one.

Having established a structure to work within, I dedicated the first four chapters of part two to developing liberal and conservative conceptions of dignity in much greater detail, addressing the third of my aims. In chapter 5, I offered a conception of autonomy-based dignity that fit with the principles of liberalism. I used Oliver Sensen's interpretation of Kant's dignity, because Sensen characterises Kant as positing the same structure of dignity as a trait and human dignity as I advanced in chapter 3. For Kant, all humans have human dignity because we have autonomy, and this gives individuals a *duty* to develop dignity as a moral quality. Kant's conception of dignity meets the criteria for a liberal conception that I developed in chapter 2. Chapter 6 was a defence of this liberal, autonomy-based conception of dignity, against a class of Arguments from Marginal Cases. I argued that the challenge of these AMCs could be met by extending human dignity of all human beings without sacrificing the claim that we have dignity because we have autonomy, through the principle of genetic equity. The liberal conception of dignity also allows an equal moral status to be extended to non-humans who could have autonomy.

Through these arguments, I demonstrated that there is a coherent conception of dignity available for liberals to use in arguments around the Biotech Revolution. Liberals focus

on justice, and a conception of dignity that is in tension with justice cannot be *prima facie* acceptable for a liberal. I demonstrated that the Kantian conception of dignity – both human dignity and dignity as a quality – is not at odds with justice because we can only develop dignity as a quality if we try to align our conduct with what morality requires. This will be important, going forward, because the Biotech Revolution will create new kinds of situations that demand novel thought on what justice and dignity requires.

Chapters 7 and 8 developed the conservative conception of dignity. In chapter 7, I addressed the criticism that biocons use the concept of dignity to “smuggle” religious principles into secular debates, because they are using a conception of dignity that can only be justified on theological grounds. I argued that this is mistaken; in fact, biocons are best interpreted as using a kind of normative essentialism to justify their claim that respecting human dignity and dignity as a quality is only possible when we live in accordance with the best parts of our human nature.

If we see biocons as normative essentialists, we have access to a well-established set of conceptual resources we can use to critique their position. These resources come from critiques of normative essentialism in other spheres and revolve around whether there are essential features of the human kind, and whether we should measure flourishing through the instantiation of these supposed features. The most important criticism is that biocons relate dignity to human flourishing, but the concept of flourishing they use amounts to living in accordance with Western, Judeo-Christian cultural norms. The Biotech Revolution threatens to diversify the ways people can choose to live, love, and reproduce, so it is easy to see how biocons set dignity up in direct opposition to this project.

I built on this conclusion in chapter 8, in which I moved away from future-facing bioethics and looked at traditional political conservatism in more detail. In this chapter, I argued that the way biocons – Leon Kass in particular – use dignity, and their overall approach to issues in the Biotech Revolution strikingly mirrors the way Edmund Burke used the concept, and his approach to the issues posed by the French Revolution. Burke's reactionary conservatism and Kass' “wisdom of repugnance” are definitionally conservative; both seek to maintain the relationship between human nature and social institutions in the face of a great upheaval in the way the world is organised, and both see this upheaval as a direct threat to dignity. In particular, the threat is to dignity as a quality, understood by both as a kind of human flourishing.

By the end of these four chapters, I had developed and defended two definitive conceptions of liberal and conservative dignity. In chapter 9, I used these conceptions

to make sense of how dignity is applied in discussions of issues that have come from the Biotech Revolution. I first used the existence of the two conceptions to highlight inconsistencies within existing policy documents on cloning; bolstering work done by Daniela Cutas by offering support for her claim that dignity is inadequately justified and internally inconsistent within the Council of Europe's Convention on Bioethics. In the second part of this final chapter, I took the issue of marriage equality and demonstrated how advances in IVF technology could be responded to using my characterisation of liberal and biocon dignity. This showed, once again, that the distinction along political lines is a profitable one, and renders dignity useful in interpreting and anticipating both sides' positions on issues.

Having recapped the arguments in my thesis, I will now look at some of the issues that have emerged from the arguments I made. I will first look generally at the role of dignity going forward in the Biotech Revolution, and then discuss some of the limitations of the liberal and conservative conceptions.

10.2 Discussion of emergent issues

The main point I hope to have made throughout this thesis is that although dignity is often used without clarification, this does not mean that clarification is not possible. Through developing both a liberal and a conservative conception of dignity I hope to have shown that it is possible to analyse and interpret uses of dignity where we find them in politically charged debates. Through distinguishing between autonomy-based and humanity-based conceptions of dignity, I have shown that although dignity is ambiguous, this ambiguity can be remedied by specifying the conception in use.

10.2.1 Is dignity useless, or inadequate?

It was my intention to make the case that dignity is not useless or inadequate as a concept that can inform our judgements about issues raised by the Biotech Revolution. This is an important task because outside academic ethics, most people agree that dignity is something that we do, in fact, want. There is plenty of data on how important people take dignity to be, especially in situations where they feel that dignity is being threatened. Chochinov's work on surveying older hospital patients' experience of dignity, for example, has been useful because it asks people about something they personally believe to be important, as well as giving data on where medical caregivers

are lacking.¹ Claiming that it ought to be abandoned means neglecting this element of real people's experience. Humans want to be treated in a manner that respects their dignity, whatever that means to them. We want our loved ones, no matter their age or level of functioning, to feel that they are able to live the most dignified life possible, in accordance both with their equal moral status as a member of the human species, and an individual with the ability to flourish and develop a good will. This is unlikely to change with the progression of the Biotech Revolution, but the technologies that will be developed may create new ways that we can fail to treat persons with the respect for their dignity that they deserve. The concept of dignity is not useless for the simple reason that it is used every day as a way to describe certain kinds of disrespect.

The concept of dignity is inadequate as a justification in bioethics when it is cited without qualification, as I argued in my section on the Council of Europe's Convention on Bioethics in chapter 9.1, because it is often used without specification. Dignity is a concept that can be used in lawmaking, diplomacy and politics, and like other concepts the inherent ambiguities have been argued as part of the reason for its use in these fields. Ambiguity can be problematic if it leads to difficulty in implementing a principle, as Drazen Pehar argues:

Because both parties have the right to interpret ambiguities in their own irreconcilable ways and that is a right they will certainly, sooner or later, start exploiting. That is also why ambiguous agreements may quickly lead to arguments, and turn into disagreements, as, precisely due to ambiguities, conflicts in interpretation will necessarily break out ... For that reason implementation of an ambiguous agreement is very likely to fail.²

Derek Beyleveld and Roger Brownsword claim that this kind of “diplomatic ambiguity” is a benefit of the widespread use of human dignity in practical ethics; it means that different sides can interpret dignity in different ways, and agreement can be reached.³

Dignity can only be made adequate as a useful concept in bioethics if it is made specific before it is used. I have given the concept a basic structure, identified two separate conceptions and developed these conceptions into the liberal and conservative

¹Chochinov (2002); Chochinov (2003); Chochinov (2004). He has developed a novel form of “dignity-based psychotherapy” aimed at restoring dignity to the elderly and seriously ill. The therapy is still new, but early studies suggest there are beneficial effects (Julião *et al* 2013).

²Pehar 2001, p. 172.

³Beyleveld and Brownsword (2001), p.39. Pehar also points out that there are good reasons to preserve ambiguity as a tool for diplomacy; once the implementation of a treaty or principle is agreed-upon, conflict between the parties can be channelled into disputing the meaning of the ambiguous concepts. This allows for practical progress in implementing the treaty. We do see something like this in the amount of debate around the way that dignity is singled out for criticism in biocon thought; one could argue that whilst ethicists are debating the adequacy of dignity as a concept, legal and policy documents are being created and implemented.

interpretations of dignity. Dignity is not simply inadequate; the concept need not be completely jettisoned simply because of its ambiguity or multivalence.

I argued in chapter 9 that the autonomy-based, liberal conception of dignity and the humanity-based, conservative conception are intractable. This means that there is no way to synthesise a conception that has elements from both sides even though, as I showed in my example of the Council of Europe's Convention on Bioethics in chapter 9.1, political liberals and conservatives can use their respective concepts of dignity to argue in favour of constraint on biomedical research.

In terms of policy, intractability means that there is unlikely to be any way to reach a consensus over the role and extent of dignity, because both sides are using a different and incompatible conception of dignity. This could be a reason for the lack of specificity around dignity; if we are specific about the conception of dignity we are using in a policy document, there is the potential for the problematic alienation of certain groups. Some sections of society could feel like the concept of dignity being used does not fit with their own understanding; religious groups, for example, may not accept a concept of dignity based in freedom rather than *imago Dei*. Liberals cannot accept a conception of dignity based on a normative essentialist conception of human nature, and biocons are vocal about their disdain for the “anything goes” attitude they mistakenly ascribe to liberals. For all that ambiguity can expedite the policymaking process by bypassing these problems, the lack of coherence this relies on can make the consistent application of policy more difficult as a variety of different applications could be justified. As I showed with my discussion of the Convention in chapter 9.1, the concept of dignity is used to ban all human cloning, but a liberal interpretation of dignity is compatible with allowing cloning under certain circumstances.

10.2.2 The importance of dignity as a quality in the Biotech Revolution

Human dignity is the basic moral worth of human beings. As I showed in chapter 3.2.1 it is a foundational moral concept used in ethics and in law to justify, for example, human rights and the obligations we have to ourselves and each other. Generally, the term “human dignity” is used much more frequently than “dignity as a quality” or its equivalents when the concept is invoked in future-facing bioethics. The reason for this is primarily from the progress of reproductive biotechnology: early stem cell extraction and cloning technologies directly entailed the destruction of human embryos, which is why biocons and more traditional pro-life conservatives, and some liberals have claimed it was an affront to *human* dignity. This is based on the claim that human dignity is respected by preserving life and not objectifying or instrumentalising it;

deliberately destroying embryos is therefore not respectful of human dignity so long as we accept the claim that embryonic life counts as human life.⁴

The Biotech Revolution is still progressing, however, and already stem cell technology has developed from requiring the creation and termination of human blastocysts to being created from any adult human cell, meaning that there is no deliberate loss of human life in the process. Scientists hope that the processes of cloning and genetic enhancement will also be developed with very low embryo loss and a very low risk. This means that it will no longer be as clear how biocons can justify their belief that technologies like cloning, genetic enhancement and life extension are a threat to human dignity.

If the Biotech Revolution reaches a point where the technologies involved will no longer threaten human life in this way or any other, then biocons will drift further from their traditional moorings within the pro-life movement in arguing against these technologies. This is why I included chapter 8 in my thesis; I made the case for biocons to be considered as classical conservatives but did not focus on their arguments around the destruction of embryos.

Even without concerns over the loss of embryonic life, it is still a matter of fact that the public does tend to express disquiet about almost every area of technology that can be called the Biotech Revolution. People, in general, are not in favour of permitting human cloning, and worry about what the future of humanity will be like.⁵ As John Harris states, “appeals to human dignity, and to the moral obligation to protect it, have been a feature of responses to cloning” since the public first learned about Dolly the sheep.⁶ Although some of these concerns can be seen in terms of human dignity, specifically the obligation not to instrumentalise others, many are better captured in terms of worries about dignity as a quality – the desire to live a dignified life and to live in a society that promotes the ability of all its citizens to develop a good will and flourish. In relating dignity as a quality to human dignity, I have identified a structure that can be used by both liberals and biocons to examine any claim that dignity has been violated.

This focus on dignity as a quality is also important for the political debates around the Biotech Revolution. At the time of writing, there is very little specifically liberal work on the concept of dignity as a quality, other than the criticisms I canvassed in the

⁴Although it is not often mentioned by biocons, it should be noted that all reproduction, including by heterosexual intercourse, involves some loss of embryonic life.

⁵The Centre for Genetics and Society keep records of public opinion polls on research cloning, reproductive cloning, germline modification and sex selection at <http://www.geneticsandsociety.org/article.php?id=401>.

⁶Harris 1997, p. 754.

introduction to this thesis. Biocons have somewhat of a monopoly on the use of dignity as a quality in future-facing bioethics.⁷

As I have argued in chapter 3.3, dignity is something that most people want, so if biocons can convincingly argue that a new technology is an “affront to dignity”, and liberals are lacking the resources to argue that it is not, then the mere use of dignity could be enough to weight the case in favour of the biocons. Liberals, then, are in need of a clear and cogent concept of dignity that they can use in arguments. In chapter 5, I developed such a conception at the level of general principles – I showed how a Kantian conception of dignity as the elevation of autonomy, the belief in equality for all autonomous beings, and the obligation each person has to use that autonomy in order to develop a good will, meets the liberal criteria I laid out in chapter 2. In chapter 6, I further developed this conception of dignity and gave it some practical applications, showing how it can be used to justify genetic enhancement in some circumstances.

In chapters 7 and 9; I made the case against adopting a biocon conception of dignity, arguing that it amounted to an unsubstantiated claim that certain facts about human biology, but not others, determine the human good. We ought to take liberal dignity seriously because it gives us the resources to approach the Biotech Revolution without blanket constraints, but with the aim of promoting liberty, equality, and happiness. Relatedly, I argued that biocons conflate a specifically Western, Judeo-Christian culture with the idea of a “human culture”, and in doing so privilege their own viewpoint as the only one that can respect human dignity and promote human flourishing. If we see human nature as essentially pluralistic and responsive to selective factors, in contrast to the monolithic concept the biocons use, and if we see human culture as both determining and determined by these human natures, then there is no clear reason why we should accept the biocon claim that their culture is the best context for promoting human dignity and dignity as a quality.

10.2.3 Further issues for liberals concerning dignity

On examining policy documents from the US Government's bioethics committees, as I did in chapter 2, it may seem that dignity is no longer a serious issue. The PCSBI, President Obama's bioethics committee, has taken a different rhetorical tack than its predecessor, barely making mention of dignity in any of its documents so far. The critical literature on dignity is also such that any use of the term draws immediate

⁷Nick Bostrom's contribution to “Human Dignity and Bioethics” is one notable exception; however as Charles Rubin points out in his response in the same volume, Bostrom's conception of dignity as a quality is closer to presentational dignity than to virtue or flourishing.

suspicion from “secular, liberal” bioethicists like Ruth Macklin. Add to this the scientific progress made in the past decade – stem cells need no longer be harvested from blastocysts; cloning can take place without the creation and destruction of so many embryos – and it would be tempting to conclude that the concept of dignity as a foundation for future-facing bioethics, and biocon rhetoric, have had their day in the sun. Noting the political pattern, however, as I did in chapter 2, suggests that we can expect to see the concept make a return as and when the Republicans get back into office. There is, therefore, a need for political liberals to address the concerns that biocons put forward and develop a positive conception of dignity.

Despite liberal, autonomy-based dignity being a promising and coherent conception, as I have argued, when we look to the literature biocons still have a monopoly on dignity. Other than Roger Brownsword, there are almost no identifiably liberal philosophers working to develop a conception of dignity; liberals criticise biocons for using the concept and voice worries about its link to desiderata like human rights, but they do not attempt to substitute the faulty conception of dignity for a more coherent one.⁸ This is a problem, potentially, because of the importance many people put on the concept, both in healthcare and in the sense that is believed to be threatened by technologies like cloning.

With arguments like “The Wisdom of Repugnance”, biocons link dignity to simple emotions like disgust.⁹ This move has been criticised for reducing dignity to something that cannot be rationally argued over.¹⁰ Unless a recognisable conception of dignity can be advanced by liberal bioethicists to argue against elevating such emotions to justifying constraint in scientific research, people who do think of the risks of new biotechnologies in terms of dignity will be immediately drawn to the biocon position. In refusing to engage with the concept of dignity, liberal bioethicists risk being seen as taking a devil-may-care attitude towards the risks the Biotech Revolution poses.

The biocon position highlights the penumbra of the liberal project – with Kass' fixation on Brave New World, for example, we are forced to confront the possibility of social “progress” being informed by a conception of the good, put in terms of pleasure and comfort, which is justifiable to everyone, but that leads us incrementally further from the chance at meaning in life. This idea of life's meaning can be easily captured by taking a normative essentialist point of view, according to which our good is given to us by our nature. Or, it can be understood more pragmatically; most people do balk at the society from Brave New World, and desire to preserve that which they believe to be

⁸See Schroeder (2012) for an example of this critical approach.

⁹Kass 1998b.

¹⁰Macklin 2006.

meaningful in our lives even at the expense of comfort and freedom from suffering. Biocons like Kass claim that liberals have no way to defend against this dystopian vision because of their commitment to neutrality over advancing a substantive conception of human flourishing.

However, liberals are by no means in favour of the kind of society Aldous Huxley describes, and contrary to Kass's assertions, liberalism and liberal conceptions of dignity can provide ample resources to guard against it. By developing Brownsword's idea of dignity as empowerment as I did in chapter 6.2.2, and especially his third demand that an individual be given a context in which she can make free and rational decisions, liberals of the type I have described can defend against the charge that they could preside over a slide into meaninglessness, which I will describe in the remainder of this section.

The people of the Brave New World are deprived of freedom, and unequal at a fundamental level. They are unequal by design and are restricted from developing a good will from birth. The liberal, autonomy-based conception of human dignity requires that everyone is accorded an equal moral status and given equal consideration in how they are treated. Having a proper respect for dignity as a quality would mean, for the leaders of the Brave New World, allowing as many citizens as possible the opportunity to act autonomously and develop a good will; allowing them to face moral choices and align their conduct with principles of right. This is patently not how people are treated; through being deliberately created with limited intellect, to being brainwashed as children, the inhabitants of the Brave New World are systematically prevented from thinking of anything except short-term pleasures.

Furthermore, the conception of happiness that the designers of the Brave New World impose on the populace would not be acceptable if they were to understand the long-term effects; it may be that the society promotes the sensation of happiness as pleasure, but it deprives people of fulfilment by depriving them of certain kinds of relationships. Nothing in liberal principles suggests simple pleasures ought to be privileged over more complex, long-term feelings of fulfilment. Brave New World is an affront to the liberal conception of dignity as well as the biocon conception, and biocons are mistaken in claiming that only policies founded on their specific conception of dignity can prevent it.

Another important issue that liberals must address is how society, and the state, address the issues raised by biotechnology in terms of preserving and promoting respect for dignity. One of the core elements of liberal ideology, according to Alan Wolfe, is that society is purposive; it can be constructed with a view to securing goods that its

members see as valuable.¹¹ The technologies that could come from the Biotech Revolution have the potential to help more individuals become autonomous and have opportunities to develop a good will, but they have to be dispersed in such a way that social equality will be increased, not diminished. Roger Brownsword's conception of dignity as empowerment gives us the beginnings of a framework for determining *which* kinds of enhancement could be permitted, there is still a need to answer the question of *how* to control the disposal of these biotechnologies.

10.2.4 Further issues for biocons concerning dignity

The first charge that biocons need to answer if they are to develop a nuanced picture of how human dignity relates to the Biotech Revolution is that they misinterpret the technologies of cloning and genetic enhancement, resting their argument on some mistakes about what it would mean to clone or genetically enhance a human being. As I argued in 7.3, in failing to take factors like epigenetics into account, biocons offer an impoverished definition of biotechnology that distorts the issue. As such, we should reject the biocon position that novel biotechnologies like cloning and genetic enhancement are a threat to dignity. They do not offer an adequate enough definition of these technologies to give sufficient weight to this inference.

The core problem for biocons is in how they conceive of the link between social institutions and natural parts of the human life, and in their claim that certain social institutions promote dignity because they promote these natural life events. Social attitudes are changing even before the Biotech Revolution really starts. Marriage equality is becoming law in more countries than ever before; countries like India are beginning to legally recognise transgender individuals; and the perception of a family unit has widened to take in step-parents, single parents, same-gender parents and extended family caregivers.¹² Some of these changes are being supported by political conservatives like David Cameron, as I argued in chapter 9.2 this is because conservatives see a link between social institutions and social good, so expanding the scope of institutions promotes cohesion and therefore adds to the public good.

Biocons, by contrast, set their position out as a kind of last bastion against the forces of moral relativism; as if the threat to human dignity as they see it comes not from an alternative conception of dignity but from a collective decision to give up on it altogether. For Kass, the good is not something that individuals define for themselves; it is a matter of “cultural knowledge” of our human nature. Biocons claim that there

¹¹Wolfe 2010.

¹²Rellis 2008; Lansford et al 2001

are some parts of human nature that contribute to the human good regardless of whether someone happens to believe this about them or not; death, for example, is feared and many of us would seriously consider avoiding it altogether if the technology were there to allow it, yet Kass argues that in shaping our individual lives and the course of our society, death is a kind of good and immortality would be bad.¹³ That altering some parts of our lives is not to our good is something that Kass claims we all ought to know, or at least be able to know.

Biocons can end up oppressing people with their insistence on an objective link between human biology and the human social institutions they pick out as dignifying, as I explained in my discussion of Ryan and Chris in chapter 9.2, who would be prevented not only from marrying, but also from having a child of their own due to the biocon assertion that only heterosexuals ought to be allowed to do these things.

Like Burke's hierarchy of the peasants and nobles, biocons could be seen as claiming that, in the case of same-sex marriage for example, although same-sex couples cannot marry, the existence of the institution of marriage by itself affords everyone a kind of reflected dignity, just as Burke argued that although peasants could not have wealth or power, the existence of the wealthy and powerful provided a spur for them to reflect on their own dignity. This line of argument is injustice disguised as wisdom and demonstrates a lack of perspective on the way that different people live their lives.

As I argued in chapter 8, the biocons are best understood as reactionaries in the classical conservative style; they are motivated by the belief that when social institutions are threatened, society, individuals and (in the biocons' case) the entire human species is at risk. The way things have “always been” – whether that is understood as the collection of social institutions like the nobility, as the set of natural events in life like reproduction, or an admixture of both – is considered necessary for the perpetuity of dignity as they understand it, which is as the chance for human beings to flourish as the kinds of beings they are.¹⁴ I described how dignity as a quality, understood as human flourishing, and human dignity were both related to humanity as a natural kind in my discussion of Daniel Sulmasy's work in chapter 3.4.2.

The major problem for the cogency of these arguments is that some institutions are not the result of a profound reflection, nor are they representative of a fit between our nature and the state. In many countries, institutions reinforce inequality and oppression, for example by failing to act against racist or sexist bias. If, for example, we accept a conception of human nature that is inherently historical, that is, best

¹³Kass 2002a.

¹⁴See Kass' discussion of marriage equality in chapter 9.2.1.

understood as the accretion of discoveries and definitions of our past, and also subject to re-definition by different cultures at different times, then it becomes clear that there could be reasons to radically reject our existing institutions. To borrow once again from gender theory, feminists have long argued that the inherently patriarchal – acknowledged or otherwise – nature of many of our social institutions are suited only to the interests and the needs of men, neglecting or distorting those of women.¹⁵

Critics of the biocon viewpoint that mistakenly see the concept of dignity itself, not specifically the biocon conception of it, as the root of the problem are liable to miss the mark in their criticisms; the real problem is how the biocon conception of dignity is underpinned by normative essentialism, and how this essentialism combines with an incomplete description of the potentials of biotechnology to create an argument in favour of complete constraint on almost all of the Biotech Revolution, and even in favour of taking retrograde steps – Kass even laments the widespread use of the Pill, mentioning it in several articles on the perceived threats of new biotechnology.¹⁶ As liberals, there is an evident need to counter this conception of dignity because it leads to a priority of one conception of the good life and human flourishing above others. Liberals who embrace, at least in principle, the kinds of biotechnologies that create more opportunities to exercise control and choice in our lives, because more freedom leads to more chances to develop a good will and become a fully dignified human being, have a duty to argue against biocon claims that the liberal project is a slippery slope to a Brave New World.

It is prudent, perhaps, to argue that these new kinds of families and new ways of creating life, which will give rise to new institutions, ought to be constructed with a view to what human relationships really are like and the problems they can have; with one eye, as Burke says, on the power of bad men (and women); but biocons are not convincing in their argument that no change at all is best for the dignity of everyone. It would not, for example, enhance the lives of Ryan and Chris if we were to ban research into advanced IVF. Although many members of the public, and indeed many ethicists, embrace their instinctual revulsion to the idea of human cloning and genetic enhancement, by itself this is not a good enough reason to ban them outright.

Another reason to be suspicious of the biocon claim that the way we live now ought to be, as Bill McKibben puts it, “enough”, is that in the future, environmental effects like

¹⁵Perhaps unsurprisingly, we find a supporter of patriarchy in Leon Kass (2003, quoted in Vogel 2006, p. 36.), who claims that “Patriarchy properly understood depends on marriage rightly understood, [and both are] essential element[s] in promoting holiness and justice. [But] they are hardly the natural ways of humankind. They have to be learned – to begin with, somewhat against the grain.”

¹⁶For example, Kass (1997), p.45; Kass (1998), p.681.

climate change are likely to change the way everyone lives their lives.¹⁷ Allen Buchanan points out that humans may not be able to live the same kinds of lives as we do now if the worst warnings about the risks posed by global warming come to pass.¹⁸ It could be that we need to rely on changing our own genomes so that we can adapt to these new conditions we have created for ourselves. If we don't, we would no longer be able to have the same chance of living dignified lives; of guaranteeing access to basic human rights like food and clean water, and of flourishing. The need to preserve our human dignity may ultimately require that we overcome the revulsion Kass and the biocons express and embark on modification projects to allow us to adapt our biology to the environment we have created.

Another issue is that eventually, technology will allow us to do things that are in accord with “natural desires and passions”, even though they are not desires for natural things. It is natural for a mother to want the best for her child; the millions spent on classical music and educational toys for toddlers show that parents want to set their child up to develop as many good qualities as possible. Liberals and biocons take it for granted that, given the chance, many parents will want to genetically enhance their children so that they're more likely to be successful in society. A liberal could, with certain constraints I discussed in chapter 6.2.2, allow for genetic enhancement, but biocons claim that this is a danger to human dignity. If parents are to be constrained from doing what they believe to be the best for our children, they effectively being held back from our natural desires by considerations of our natural origins and biology.

Whereas it might make sense to talk about human nature, as Fukuyama does, as “species-typical behaviour”, this is not the same as species typical origins or biology. There is not yet a clear argument for why some issues require prioritising our origins over our desires and passions, when both are stated in the biocon definition of human nature. This is another reason to reject their humanity-based, normative essentialist conception of human dignity.

Although biocons often sound as if they alone are working with the “true bioethics”, and only their insights can unite the concepts of meaning in life and human dignity with the issues raised by the Biotech Revolution, I hope to have shown here that biocons do not have a monopoly on either of these concepts. Liberals are as concerned with respecting dignity and allowing people to live full, meaningful lives as biocons, but they differ on how to do this. Where biocons see dignity and meaning as

¹⁷McKibben's book, called “Enough” is an argument that our current biology affords us all the opportunities we need to flourish. It is a paradigmatic example of the argument that the conviction that we ought to pursue biotechnology is automatically a sign of bad character.

¹⁸Buchanan 2009a.

essentially tied to the archetypal human life, liberals see meaning in the unique way that human beings can make choices about how they live, love and die, and respect for dignity in creating the conditions for individuals to express themselves to the fullest. This is what I explained in chapters 5 and 6, where I discussed how the obligation to develop a good will stems from our human dignity, and how this leads to the demand that every individual have an open future.

Both liberals and biocons have more work to do in developing their respective conceptions of dignity, especially if they are to apply it to the leading edge of biotechnology. In this thesis, I hope to have provided a structure that can be filled out with further argument, and applied to different problems as the Biotech Revolution progresses.

I started this project with a fervent belief that dignity was a useless concept and that both critics and dignitarians were wasting their resources. I can report that through looking into the roots of both positions in the debate I have at least changed my own mind; what the debate around dignity shows us just is that dignity is at the foundations both of our moral obligations and to living meaningful lives and that because it works at the deepest levels, any debates over what kind of conclusions it demands we draw will be debates about the most fundamental questions of morality. Whether this exploration is in itself a waste of effort over a hopelessly vague concept, I will leave the reader to decide.

Back Matter

11.1 Glossary and abbreviations

AMC

Arguments from Marginal Cases – a collection of arguments centred around charges of unjust anthropocentrism.

Autonomy-based conception of dignity

A model that takes having a rational nature and the ability to put oneself under moral obligations as the source of dignity. Related to *dignity as a virtue*.

Biocon

Also described as the “new conservatives in bioethics”; a position that is strongly critical of research into most novel biotechnologies, and of liberalism in bioethics.

The Biotech Revolution

Term for the developments in biotechnology over the last twenty or so years, which have opened the possibilities of transcending many of our natural limitations and increasing our abilities.

The Convention

Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (ETS No. 164).

Comprised of the Convention on Human Rights and Biomedicine and the Additional Protocols on the Prohibition of Cloning Human Beings, concerning

Transplantation of Organs and Tissues of Human Origin and concerning Genetic Testing for Health Purposes, plus Explanatory Reports.

Bioethics Advisory Commission

National Bioethics Advisory Commission. US government bioethics policy advisory body. Established by the Clinton Administration, existed between 1996-2001.

Dignity as a Quality

An internal disposition of an individual's character. An inner core of self-governance and strength, like “tempered steel”.

Dignity as a Trait

Assessment of an individual's character. Comprised of *presentational dignity* and *dignity as a quality*.

Dignity as a Virtue

A kind of dignity as a quality. Having a dignified character, which is conducive to a morally good disposition.

Future-facing Bioethics

Bioethics that is particularly concerned with issues raised by the Biotech revolution, such as cloning, genetic enhancement and life-extension.

Human nature-based conception of dignity

A model that takes being human, in a biological or evaluative sense, as the source of dignity. This can apply to individuals, to society or to the species as a whole. Related to *inflorescent dignity*.

Inflorescent Dignity

A kind of dignity as a quality. Whether a person, society or the human species is judged to be flourishing.

PCSBI

President's Commission for the Study of Bioethical Issues. US government bioethics policy advisory body. Established by the Obama administration, 2009 to present.

Presentational Dignity

Whether an action or pattern of actions is perceived as “dignified”; being fully dressed at all times, for example.

President's Council

President's Council on Bioethics. US government bioethics policy advisory body. Established by the Bush administration, existed between 2001-2009.

11.1.1 Kant abbreviations

GMM Groundwork for the Metaphysics of Morals. Edition used is Cambridge University Press, "Cambridge Texts in the History of Philosophy" (2012), edited by M. Gregor and J. Timmerman. Appears as Kant (2012) in Works Cited.

MM Metaphysics of Morals. Edition used is Cambridge University Press, "Cambridge Texts in the History of Philosophy" (1996), edited by M. Gregor. Appears as Kant (1996) in Works Cited.

Refl. Reflections. Quote translated by Oliver Sensen and is taken from Sensen (2011) in Works Cited.

OBS Observations on the Beautiful and Sublime. Edition used is Cambridge University Press, "Cambridge Texts in the History of Philosophy" (2011), edited by P. Frierson and P. Guyer. Appears as Kant (2011) in Works Cited.

LE Lectures on Ethics. Citation found in Hay, 2013.

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11.3 Appendix to chapter eight

Excerpts from the Explanatory Report to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine

Explanatory Report to the Preamble 14. Starting with the preamble, however, it was necessary to take account of the actual developments in medicine and biology, while indicating the need for them to be used solely for the benefit of present and future generations. This concern has been affirmed at three levels:

- The first is that of the individual, who had to be shielded from any threat resulting from the improper use of scientific developments. Several articles of the Convention illustrate the wish to make it clear that pride of place ought to be given to the individual: protection against unlawful interference with the human body, prohibition of the use of all or part of the body for financial gain, restriction of the use of genetic testing, etc.
- The second level relates to society. Indeed, in this particular field, to a greater extent than in many others, the individual must also be considered to constitute part of a social corpus sharing a number of ethical principles and governed by legal standards. Whenever choices are involved in regard to the application of certain developments, the latter must be recognised and endorsed by the community. This is why public debate is so important and is given a place in the Convention. Nevertheless, the interests at stake are not equal; as indicated in Article 2, they are graded to reflect the priority in principle attached to the interests of the individual as opposed to those of science or society solely. The adjective “alone” makes it clear that care must be taken not to neglect the latter; they must come immediately after the interests of the individual. It is only in very precise situations, and subject to the respect of strict conditions that the general interest, as it is defined in Article 26, would take priority.
- The third and final concern relates to the human species. Many of the current achievements and forthcoming advances are based on genetics. Progress in knowledge of the genome is producing more ways of influencing and acting on it. This knowledge already enables considerable progress to take place in the diagnosis and, sometimes, in the prevention of an increasing number of diseases. There are reasons to hope that it could also enable therapeutic progress to take place. However, the risks associated with this growing area of expertise should

not be ignored. It is no longer the individual or society that may be at risk but the human species itself. The Convention sets up safeguards, starting with the preamble where reference is made to the benefits to future generations and to all humanity, while provision is made throughout the text for the necessary legal guarantees to protect the identity of the human being.

Explanatory Report to Article 13 – Interventions on the Human Genome. 89. The progress of science, in particular in knowledge of the human genome and its application, has raised very positive perspectives, but also questions and even great fears. Whilst developments in this field may lead to great benefit for humanity, misuse of these developments may endanger not only the individual but the species itself. The ultimate fear is of intentional modification of the human genome so as to produce individuals or entire groups endowed with particular characteristics and required qualities. In Article 13, the Convention provides the answer to these fears in several ways.

Full text of the Convention and all associated Explanatory Reports is accessible at <http://conventions.coe.int/Treaty/EN/Reports/Html/164.htm>

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