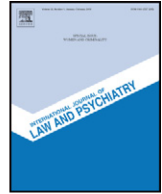
International Journal of Law and Psychiatry 41 (2015) 12–17

Contents lists available at ScienceDirect

International Journal of Law and Psychiatry



Respect for dignity and forensic psychiatry

Alec Buchanan

Division of Law and Psychiatry, Yale University Department of Psychiatry, 34 Park St., New Haven, CT 06519, United States

ARTICLE INFO

Available online 15 April 2015

Keywords:
Dignity
Ethics
Forensic
Autonomy
Vulnerability

ABSTRACT

Respect for persons is one of forensic psychiatry's ethical principles. It is a principle that is usually laid down without conditions, raising the question of what aspect of someone's "personhood" might deserve our unconditional respect. This paper nominates dignity. One argument against respect for dignity as a principle is that anything it stands for can be subsumed into respecting people's autonomy. This seems not to be correct. Another argument has been that the term dignity has too often been used loosely and vaguely. This does not mean that the term itself is necesarily without value. Dignity seems to refer to something close to the moral meaning of "worth". Respecting dignity has a role in protecting the vulnerable. Respecting a client's dignity is an important aspect of the ethical practice of forensic psychiatry.

© 2015 Elsevier Ltd. All rights reserved.

1. Introduction

One response of forensic psychiatry to the charge that working in a legal setting renders medicine's usual ethical standards at best difficult to apply and at worst irrelevant (Stone, 1984) has been to articulate alternative ethical approaches. These alternatives to the Hippocratic, "first, do no harm", address the dilemmas that arise when psychiatrists work with lawyers and the courts. They typically emphasize two principles, truth telling and respect for persons (see Appelbaum, 1997). The ethical obligation to show respect for persons raises, in turn, the question of what it is about people that requires the automatic respect of forensic psychiatrists.

It does not seem to be a person's wishes. Forensic psychiatrists do not routinely seek to oppose the wishes of those they evaluate. But where respecting someone's wishes conflicts with other demands, such as telling the truth, doing what the person asks will usually give way. The same seems to apply to feelings. Feelings should presumably be respected in the sense that they should be taken in to account and responded to. But the feelings of the people they evaluate seem not to govern the behavior of forensic psychiatrists when other important considerations are in play, and it is difficult to see how the psychiatrist could properly assist the court otherwise.

As an ethical principle, therefore, respect for persons seems to be "defeasible". We seem both to believe that respect for persons is necessary and to believe that there are instances where respecting some aspects of personhood, such as wishes and feelings, should take second place. Mapping the boundaries of these exceptions, in order to establish which aspects of our respect for persons can be impinged upon and when, seems a necessary next step. More specifically, the defeasible quality of respect for persons raises the question of whether there is any single aspect of respecting someone that should govern the behavior of forensic psychiatrists at all times and in all circumstances. It is argued here that respecting human dignity is one such aspect.

2. The origins of respect for dignity

The word dignity derives, by way of the Latin *dignas* and *dignitas*, from Greek and Roman antiquity. Then it seems to have meant something close to worthiness of honor or esteem and to have been a mark of social rank (Radden & Sadler, 2010). Some authors detect elements of this "dignity of the nobles" in modern references to technological weaponry as reducing the dignity of the soldier and reliance on nutritionists and fitness monitoring as reducing the dignity of athletic competition (Schulman, 2008; see also the discussion by Beyleveld & Brownsword, 2001 at 50). But there is something old-fashioned, even "undemocratic" (Kass, 2004 at 15), about social rank. An ethical value suited to our times, it seems, should sit more comfortably than do notions of honor and esteem with principles such as tolerance, freedom and equality.

In a second school of thought, however, dignity was unrelated to social rank. The Stoics objected to moral value being ascribed to any attribute that was a consequence of heredity and luck (Nussbaum, 2008). They held that anyone could attain dignity if they used what separated mankind from the beasts: the capacity to reason and thus live in a thoughtful and reflective way. A related idea, that everything necessary for happiness and peace of mind lay within a person's control, meant that, to the Stoics, nobody could be deprived of dignity unless they chose to allow this. Nussbaum, however, concludes that the usual conception of Stoic dignity is an unsatisfactory rock on which to build a modern conception of ethical obligation to others.

E-mail address: alec.buchanan@yale.edu.

http://dx.doi.org/10.1016/j.ijlp.2015.03.002
0160-2527/© 2015 Elsevier Ltd. All rights reserved.

First, she argues, if dignity separates us from other animals, then presumably it is not be found in those faculties, such as the experience of emotion, which we share with animals. This implies that we should respect the dignity only of that residual part of ourselves which is uniquely human. Second, internally generated dignity does not obviously require things of other people. The Stoics did not object to slavery on the basis that the slave's soul could remain free, and it is unclear on what basis they would object to other forms of maltreatment while this internal freedom remained. In Nussbaum's view, the Stoic belief that we wish to respect a type of worth that is inalienable, that persists, "when the world has done its worst", is of value (at 357). But it is also the case that human capacities require a supportive environment in order to develop and be expressed. A modern conception of respect for human dignity should take this into account.

A third very old strand of meaning that, like the Stoics, treats dignity as inalienable and not related to social standing derives from the Jewish and Christian belief that mankind has been made in the image of God (see Riley, 2013). Philosophers identify two elements to this conception. Both elements relate to religious obligation.

The first concerns the sanctity of human life. The sense that human life is sacred seems to derive, in turn, from the idea that man carries with him some of God's qualities (Henry, 2011; Horton, 2004) and from earlier Jewish beliefs in a people chosen by God to be His witnesses on earth (Thomasma, 1999 at 55). The second element to the religious conception of dignity is a belief that kinship ties, extending beyond immediate relatives and derived from tribal and religious beliefs in God as the head of a human family, generate obligations between people and require "covenantal reciprocity" (Weisstub & Thomasma, 2010 at 318). Marcel, similarly, finds the foundation of human dignity in the "affirmation of a fraternity" (Marcel, 1964 at 171; see also Plourde, 2010).

Elements of each of these three strands of meaning are evident in the way dignity is understood today. But other conceptions of dignity that are based, like that of the Stoics, on the capacity to reason but also invoking human rights entered western thought during the during the Enlightenment of the 17th and 18th centuries (Loewy, 1996). Kant described all human qualities as having either a relative or an intrinsic worth. Pleasures, skills and diligence in the workplace had relative worth because they could, at least in theory, be priced. Moral qualities such as dignity, on the other hand, along with fidelity and "principled benevolence", had intrinsic worth. Intrinsic worth had no equivalent and was thus, "beyond price" (Kant, 1785; see also Shell, 2008).

Rationality and autonomy are recurring themes in Kant's conception of dignity. Kant referred to, "the dignity of a rational being who obeys no law except that which he himself also gives" (Kant, 1785 at 53). Being engaged in a moral universe, both making moral laws and following them, required people to treat others as ends in themselves, and not use them as means to other ends. In *Foundation of the Metaphysics of Morals* Kant described autonomy as, "the basis of the dignity of both human nature and every rational nature" (Kant, 1785 at 54; see also Henry, 2011). Kant's writings remain influential not only in relation to dignity but also in the doctrine of informed consent (see Nussbaum, 2008; Schaub, 2008; Shell, 2008). Their focus on rationality and autonomy, however, has led some to point to the difficulty of applying them in circumstances where a person's capacity to make rational and autonomous choices is limited or absent (see Schulman, 2008).

3. The case against respect for dignity

The existence of these multiple strands of meaning creates challenges for any argument that points to the role of respecting dignity in the proper conduct of a forensic psychiatric evaluation. One difficulty is that respecting human dignity may mean no more than treating other people in a way that can be described better using other concepts. The most frequent claim of this type is that respecting human dignity means no more than respecting each other's autonomy (Macklin, 2003; see also Shell, 2008).

After all, respecting someone's autonomy and respecting human dignity are often linked. People seem to be able to acquire greater dignity, for instance, when they act autonomously to promote social wellbeing (Thomasma, 2004). It may also be that they acquire dignity most effectively when they lack external motivation for these good works. Also, it is difficult to imagine how taking an important decision on someone else's behalf in circumstances where they are able and willing to take that decision for themselves could be respectful of dignity. Yet there do seem to be some instances when we distinguish respecting autonomy from respecting dignity.

Our sense that slavery is, among other things, an affront to human dignity does not seem to derive solely from the slave's lack of choice. In certain circumstances a slave, perhaps a slave of an enlightened master in a society where privation is the norm, might have more options and live in better physical conditions than a non-slave. Dan-Cohen asks: if we can conceive of a slave and a non-slave who enjoy the same levels of choice and welfare, where does our sense that slavery is wrong come from? His answer is that slavery is wrong because it denies a person's equal moral worth. Slavery is thus an, "affront to human dignity" (Dan-Cohen, 2000 at 770) irrespective of the slave's living conditions or the effects of slavery on his or her ability to make autonomous choices.

There are also more recent examples also of respecting dignity being distinguished from respecting autonomy. In the 1990s the French courts declined to reverse a local ban on "lancer de nains" (approximately, "dwarf throwing"), holding that the local municipal authorities had the power to prohibit any spectacle that represented a threat to human dignity (CE Ass. & Oct. 27, 1995). Respect for dignity had been invoked by both sides in the case (Beyleveld & Brownsword, 2001). One of the people being thrown, Manuel Wackenheim, had argued that he freely participated and that the activity brought him an income. To deprive him of the opportunity to do this would undermine the conditions under which he experienced a sense of his own dignity. The municipal authorities, on the other hand, argued that the spectacle of dwarf throwing was, in itself, undignified. Dignity was being violated by the particular use to which autonomy was being put (O'Mahony, 2012; Walter, 1999).

A similar pair of arguments had been addressed in the 1980s in Germany by a Federal Administrative Tribunal asked to decide whether to license a "peep show". The Tribunal's decision included a description of the way in which it saw dignity and autonomy as interacting:

> "The consent of the women concerned can only exclude a violation of human dignity if such a violation is based only on the lack of consent to the relevant actions or omissions … However, this is not the situation here because in the case at issue … the human dignity of the women is violated by the exposition typical of these performances. Here, human dignity, because its significance reaches beyond the individual, must be protected even against the wishes of the woman concerned".
> [BVerwGE (1981) at 277–9; trans. Beyleveld & Brownsword, 2001]

In both the French and German cases dignity is being treated as a constraint on the autonomous choices that people are allowed to make (see Beyleveld & Brownsword, 2001).

A different distinction between respecting autonomy and respecting dignity arises in relation to the competence of patients to take decisions about their care while suffering from the symptoms of a mental disorder. When a person is clinically and legally competent to make those decisions, not allowing them to do so seems disrespectful of human dignity. When the symptoms or signs of mental disorder prevent them from being competent to do this, however, following someone's stated wishes does not seem to be what is required, yet respecting dignity still is (see Loewy, 1996 at 67). Respecting dignity when people are not competent to make their own choices seems to require us to do things other than simply respect their decisions. It seems to include,

Download English Version:

https://daneshyari.com/en/article/6554628

Download Persian Version:

https://daneshyari.com/article/6554628

Daneshyari.com