

# Toward a New Philosophical Anthropology

## The Limits of Human Rights in Bioethics

CORINE PELLUCHON

**Abstract:** Human rights have played an important role in bioethics since the Nuremberg Code. They, however, are not sufficient to provide adequate guidance both at the micro-level of the patient-physician relationship and at the macro-level of policy decision making. The impact of new medical practices calls for a reflection on our societal priorities. This reflection reveals the limits of human-rights thinking and requires an examination of its philosophical foundations. The author presents some alternatives to modern humanism that point out the necessity of changing the paradigm of our ethics. Such a need for a new anthropology reveals the possibility of a reinvention of political philosophy.

**Keywords:** human condition, humanism, human rights, negative freedom, ontology, virtue ethics

### BIOETHICS IN LIGHT OF POLITICAL PHILOSOPHY

**T**he impact of medical practices confronts us with choices and calls for a reflection on our societal priorities. This article will attend to the chief moral-political category liberal societies employ to handle bioethical issues: human rights. The question is whether human rights, together with their underlying philosophical anthropologies, provide adequate

guidance in the bioethical and biotechnological fields. Do they need to be grounded in a more adequate view of what it is to be human? How could they be coupled with a heightened sense of responsibility, so that they perform their genuine function of protecting human life and promoting human dignity?

Modern rights are a precious intellectual and political attainment, but the specifically modern philosophical anthropologies underlying them are poor. We need, however, not only to put into question our inherited liberal understanding of man as the bearer of rights, but also to elaborate categories that can help us respond more effectively to the new challenges that biotechnologies pose to democracy and to humans.

The path our reflections take runs as follows: a first look at the centrality of human rights—frequently found in declarations of patients' rights—in contemporary medical practice reveals theoretical and practical difficulties. For years, Edmund Pellegrino has insisted on the necessity of supplementing any rights-and-duties-based approach in medicine with virtue ethics. Distinctive moral traits, he argues, are required to be a good physician and to be able to practice one's art for the patient's sake. But if virtue ethics is necessary, we also need to understand bioethics in light of the priorities, values, and choices of society that underlie each democracy. This implies a path that travels from ethics to political philosophy, where the question of the kind of society in which we want to live is at stake.

To study bioethical issues in light of political philosophy first implies examining the modern philosophical foundations of human rights—that is, negative freedom and the conception of humans as individual moral agents that underlies human rights. A return to Hobbes's prototypical modern conception of rights reveals in stark outline the problematic character of modern right: alone in an indifferent, even hostile, universe, each person must make his

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or her own way to safety and security. Nature is so bleak that a person must become the artificer of his or her own humanity and salvation. The necessary instruments are a new political science and natural science, both technically conceived as *scientia propter potentiam* (science for the sake of power). As Leo Strauss put it,<sup>1</sup> Hobbes's political philosophy is essentially rooted in a conception of humans and of the world that justifies the technological project of conquering and mastering nature. Westerners have pursued this path and program, but its consequences require us to put into question the philosophical anthropology that supports the project of technological civilization. One can wonder whether it is possible or desirable to eliminate all inquiry into human excellence and any notion of the good when we want to know whether some new medical practices and biotechnologies mean progress or degradation.

However, those who study bioethics in light of political philosophy have an ambition other than criticizing the inherited modern assumptions of today's ethics and politics. The point is to connect bioethical issues with the choices of society, priorities, and values that make sense in our society. This implies considering not only the norms, but also the sources of morality. A vocabulary that only revolves around equality and rights does not adequately help us know what to do (and why) in the bioethical field. But the challenging task is to connect political decisions to some conceptions of the good without imposing a religious view of the world. What credible "image of man" can be opposed to that of science in a pluralistic secular society? A description of the sources of morality and values that support our institutions is necessary, but we also may have to supplement this approach by a deeper reflection on what is essentially human.

For example, one can ask whether the predominant notion of human dignity—that is, as autonomy that serves to protect the subject of experiment and vulnerable populations from malpractice and abuses—is sufficient to help us appreciate whether new medical practices are morally good and politically desirable. Leon Kass argues that we have to understand human dignity in light of what is admirable in a person considered as a psychosomatic whole if we want to know whether human cloning and genetic engineering are morally dubious or legitimate. This includes not only taking into account reason, but also passions and affections, as well as a sense of beauty and repugnance. The ability to make an autonomous choice and rationality as the conditions for personhood may not be the sole criteria for a true understanding of human dignity. This necessity of supplementing the philosophy of the subject not only stems from the ethical dilemmas posed by the duties we have toward the comatose patient and the subsequent generations who are not yet persons. The primacy of autonomy and reason over other dimensions of humanity proves also to be insufficient when confronted with the ethical and even metaphysical concerns linked to new medical practices, as those who care about dying patients and deal with the suffering at the end of life know well.

My final suggestion is that the ally of political philosophy is ontology. The latter is an inquiry into the relationship to Being that is characteristic of some beings, such as humans.

It includes anthropology but goes beyond any empirical knowledge about people and reveals the structure of their existence by describing their way of being in the world (the core of Heidegger's philosophy in *Time and Being*). Apart from the issue of equity, the only argument that could prevent us from agreeing to any and all biotechnological changes and using, for instance, genetic engineering to improve the future physical and intellectual capacities of a baby and then its offspring, is ontological. If the notion of human nature still has a meaning, or rather can be reinterpreted, as in Leon Kass's work,<sup>2</sup> we then can oppose a more substantive "image of man" to that of science and its endeavors to mold men and make them fit its ideal of perfection and productivity. The challenge is to reveal the components of this philosophical anthropology without referring to some arguments that either presuppose faith or derive from a conception of nature that is no longer relevant, because it implies, for instance, the Aristotelian cosmology.

I will briefly present some alternatives to modern humanism that point to the necessity of changing the paradigm of our ethics. Those who were confronted with the necessity of overcoming the "philosophy of the subject" often encountered Heidegger. Some of his heirs, such as Hans Jonas, used phenomenology to overcome the anthropocentric foundations of our ethics. Emmanuel Lévinas and Paul Ricoeur sublimated Heidegger's teaching concerning human openness, what he called *Care* (*Sorge* in German). Lévinas's understanding of the meaning of the suffering as passivity and vulnerability,<sup>3</sup> that is, openness to the other, and Ricoeur's notion of the "broken cogito" (*cogito brisé*)<sup>4</sup> can help us formulate a more credible ontology and establish the conditions for a more balanced use of technology and for wiser and more appropriate decisions in bioethics. Can certain experiences of man's vulnerability better reveal his humanity than any discourse on his ability to make autonomous choices? Does Ricoeur's alternative to modern humanism better highlight the meaning of our being in the world than Heidegger's *Care* with its focus on authenticity? Does Lévinas's phenomenology of passivity, where "otherness" not only refers to the other human being, but to one's own body and to our facticity, help us better understand our being with others and our moral responsibilities?

## GOING BEYOND HUMAN RIGHTS

Human rights have played an important role in bioethics since the Nuremberg Code. They continue to be important in such areas as the protection of subjects of experimentation, as well as preventing discrimination against minorities. In their name, for example, one can condemn the coerced abortion of female fetuses in China. I, however, do not believe that human rights are sufficient to provide adequate guidance in bioethics today, either at the microlevel of the patient-physician relationship or at the macrolevel of policymaking.<sup>5</sup> As we think through the issues raised by the application of biomedical research and the impact of new medical practices on society and nature, we are confronted with a choice of societal priorities—if not ends—that cannot be simply reduced to the protection of rights. This sort

of issue and deliberation reveals limits to simple human rights-based thinking.

The patient's rights listed in the 1981 Code of Ethics of the American Medical Association and the requirement of informed consent in the Declarations of Geneva and Helsinki define the minimal requirements of medical ethics. Such a legalistic ethics applies human rights to the medical field. It revolves around the protection of the patient and affirms the key principle of autonomy. It, however, does not suffice in the frequently complex and therefore unpredictable circumstances of medical decision making today. Even if the obligation to practice "with conscience and dignity" present in the Declaration of Geneva goes beyond what law can define, one still has to determine what these words mean and require. This inherent limitation of such terminology appears to be acknowledged in a concomitant legal acknowledgment of physician *duties*. To be sure, the fulfillment of duties mentioned in professional codes—kindliness, promise keeping, confidentiality, compassion, and responsiveness to the special needs of those who are ill—gives some content to health care benevolence and beneficence and goes beyond any minimalistic ethics. And yet, as Edmund Pellegrino has noted, to know *how* to sensitively address issues such as truth telling in the physician-patient relationship, as well as *how* conflicts among principles—patient's autonomy, physician's beneficence and expertise, compassion, truth telling—are to be resolved in the patient's best interest, depends on the physician's excellence of character and his or her prudence and practical wisdom (in the sense that Aristotle gives to these terms in *The Nicomachean Ethics*).

Moreover, the practice of moral virtue applied to matters of health and illness may turn out to be the sole barrier to a physician's succumbing to temptations arising from the commercialization of today's medicine, as well as from the bureaucratic conditions of its exercise. How can a physician effectively resist the temptation to profit from a patient's illness when he or she participates in "investment in and ownership of for-profit hospitals, hospital chains, [and] dialysis units tie-in arrangements with radiological and laboratory services," not to mention the "escalation of fees for repetitive, high-volume procedures, lax indications for their use, especially when third party payers allow such charges"?<sup>6</sup> Principles of legal justice and nonmaleficence do not adequately ensure the patient's best interest. The physician has to be virtuous and exercise the appropriate character traits. We are in a domain not touched by rights talk.

Pellegrino raises in the clinical setting the issue that Alexis de Tocqueville raised in *Democracy in America*: if we only have rights and if the social bond is only constituted by interests and constructed by contract, then other components that support civic life—what he generically called *mores*—cannot make their contribution to individual and societal life. We risk becoming a society of egoistical individuals. In that case, though, even rights are bleached of substantive meaning. They tend to be equated with an individual's desires and demands, and they tend to become subject to merely subjective determination and interpretation. The state of nature returns.

How, then, is it possible to preserve democracy from these inner dangers and make human rights more than empty words? In the clinical context, Pellegrino says that a reconstruction of medical ethics is necessary. He suggests making "beneficence" a key principle—that is to say, that the physician's altruism and his or her focus on the patient's best interest must be at the core of the practice of medicine. It would connect a theory of rights with correlative duties in the exercise of a patient-centered medicine. The rights-and duties-based approach is itself insufficient. Some duties are not simply correlatives of rights and yet they play a large part in the practice with "conscience and dignity" of medicine.

To be sure, the physician's obligation to provide the patient with all required information concerning the disease and possible treatments is correlative of the patient's rights. However, to effectively communicate this information and to genuinely respect the autonomy of the sick person implies taking into account the patient's denial, fear, and other transforming effects of illness. This may be the appropriate, even necessary, way of showing respect for him or her. Such a virtuous middle way between paternalism and indifference requires the physician's personal involvement in the relationship with a patient he or she considers a unique individual. This ability to engage a patient in the decision-making process presupposes that the physician is also able to overcome his or her own fears of death and sometimes to acknowledge the limits of his or her capacity to heal. The conditions through which the physician makes it possible for the patient to exert autonomy do not derive from the patient's rights. To simply apply the principle of the respect for the patient's autonomy without establishing the conditions of a real dialogue that helps the patient understand what is going on could be equated with indifference and with abandoning the sick person. Because the physician must have moral traits to fulfill professional duties, the latter are not simply correlative of rights. But the level at which the necessity of supplementing human rights is more obvious and urgent is the macrolevel, where the possible consequences of science and technology on society confront us with the fundamental issue of the kind of society in which we want to live.

Human rights do not adequately help us know what kind of society we want to promote or avoid. Nor do they help us understand our responsibilities toward others. The reason why they fail to provide adequate guidance in bioethics is that they are typically based on a negative conception of freedom: freedom from. In the typical or original human rights optic, we are free *from* tyranny and slavery, but we are not as clearly free *for* building a world that corresponds to our deliberate priorities—priorities that can address the new challenges posed by science and technology.

The consequences of technology and science do not concern only us and the present, but also subsequent generations of human beings who will bear the burden of our decisions (including failures to decide and act). Hans Jonas argued in *The Imperative of Responsibility* that the awesome power that today's scientific technology provides obliges us to consider the full range of its use and impact, including on subsequent generations and nature itself. To repeat: this

does not mean that human rights in their previous form are simply outdated or irrelevant. They are still necessary, because the idea of the equal dignity of each person is still not accepted by all cultures and states. And they may even be endangered within our liberal societies, as those who fear “liberal eugenics” (e.g., Habermas) warn.<sup>7</sup> But we still must question their philosophical foundations—that is, the notion of man as a moral agent underpinning human rights and especially the notion of human freedom they imply and affirm. In Hobbes, for example, *jus* is extended to rightful power over others and nature to the point of mastery for some and slavery for others. This cannot be the basis for today’s advance of human freedom and dignity.

### THE FIRST MODERN RIGHT

Earlier critics addressed “the false humanism of human rights.”<sup>8</sup> Michel Villey argues that human rights have become the mere instrumental means of selfish desires—and antihuman goals—because they deny any objective, that is, any Aristotelian, conception of justice.<sup>9</sup> He bases a good deal of his case on an examination of Hobbes’s prototypical doctrine. The positivistic theory of subjective rights that Hobbes articulated (following Grotius and Pufendorf) not only is the result of his nominalism—which means that it is built on the shifting sand of human will and consensus—but it also makes right the quality or mere property of the individual as such. It presupposes and generates a radical individualism. Right becomes the power of an individual preoccupied with his or her own preservation, a mere means of personal will to survive and prosper. This is clearly seen in *Leviathan*, chapter 14: “The right of nature is the liberty each man has to use his own power as he will himself for the preservation of his own nature, that is to say, of his life; and consequently, of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto.”<sup>10</sup> One should note that “right” equates to “liberty” and “one’s own nature” to “his life.” As for “aptest means,” they include the subjugation of other human beings, as well as total dominion over nature.

To be sure, even here “right” remains in some sense a *dictamen rectae rationis* (a dictate of right reason), as it does with the scholastics. But both its content and the faculty of reason are dramatically recast—they no longer are the object and source of objective moral knowledge, as is the case with Cicero’s *jus civitatis* or Aquinas’s first principles of practical reason and synderesis of conscience. Nor does it aim at reforming our passions, except by putting them under the sovereign sway of the rational passion: fear of violent death. The fear of being killed by another human being explains why men and women stop seeking in unlimited ways precedence and glory, with their necessary consequences of conflict, war, and short life. Fear replaces vainglorious reason, tempers human aspirations, and engenders more modesty in human beings. But one has to ask how such a passionate basis can prevent a human being from doing whatever he or she can—or pleases—simply to live longer, free from disease and insecurity, even if this requires creating embryos and clones from which to harvest

organs that could then prolong a person’s life. How can such a negative basis set a moral limit to the exploitation of nature, so that other species and generations of human beings are not adversely impacted? If death, insecurity, and dissatisfaction are the sovereign evils and self-preservation is the main goal whose pursuit is only limited by safety, there is little to prevent some humans from using others as a means to their thoroughly selfish desires.

There is an indirect but obvious link between the Hobbesian foundations of modern liberal politics and contemporary nihilism. This is because individuals have lost their bearings and lack the ability to distinguish between what is right and wrong. Hobbes’s conception of humans as individuals who are mainly preoccupied by their own preservation not only serves to establish the liberal foundation of the state—where the individual is the *terminus a quo* and *terminus ad quem* of the state and of political decisions—but it also paves the way to materialism. That is because personal welfare and material goods are so important that there is no place for anything else, as Tocqueville says. Among the ideals that characterize the utopianism of moderns, Leo Strauss enlists the idea of human life as an absolute good.<sup>11</sup> This idea, along with the materialistic turn of mind from Hobbes’s radical Enlightenment, made us reject the Socratic inquiry into the good life and its focus on human excellence. For many today, life is considered to be an absolute good, be it a virtuous life or not. The criteria of personal welfare and satisfaction do not set any limit to the individual’s “rights” to use science and technology to do whatever he or she wants. This appears in the medical field: in the last few decades, physicians have noticed that the meaning of medicine has changed because patients ask physicians to satisfy desires. Patients not only understand their rights to include the right to legitimately refuse a treatment they consider inappropriate and to fight against medical malpractice, but they also have come to think that they are entitled to any technological and medical practice that could make them happier.

There is a link between the individualistic and materialistic foundations of the liberal state and the tragic situation of our democratic societies based on relativism and skepticism<sup>12</sup>: apart from security and welfare, there is no overriding end that can help define the good and the common good, and reason—which in Hobbes cannot master passions—is no longer the source of a universalized morality. This acceleration of modernity—which suggests the collapse of the Enlightenment ideal—urges us to further examine the older bases of human rights to find a more credible anthropology. Otherwise rights themselves are at risk. Nor should the contemporary proliferation of rights deceive us. As Chantal Delsol puts it, without a credible anthropological basis, “the sacralization and multiplication of rights” will end up undermining the very human dignity that the concept of human rights is supposed to promote.<sup>13</sup> We have reached a point where human rights need to be regrounded and reformulated to address the ambiguities that contribute to their dangerous misuse. Otherwise we face the prospect of entering into some version of Aldous Huxley’s *Brave New World*.

Huxley’s dystopia provides an opportunity to highlight ambiguities found in the central, if not basic, modern right:

the right to happiness. To begin, one can contrast ancients and moderns. As is well-known, Aristotle connected happiness to human *telos*. He understood a flourishing—that is, excellent—human life to be the realization of a person's nature as a rational and political animal, one capable of deliberate choice in the light of objective measures of nobility, justice, and the common good. This sharply contrasts with modern notions by which happiness becomes the indeterminate object of a right whose content depends on individuals' views and desires. In the contrast we see that the link between personal flourishing and political life—happiness and the common good—has become almost imperceptible today. Yet even within modern and contemporary parameters, a riddle surfaces. In Locke the state provides only some of the external conditions for the individual's pursuit of happiness, and certainly does not determine its content. But there is still an important difference between the way Locke's "An Essay Concerning Human Understanding"<sup>14</sup> limned the elements of a rational pursuit of happiness, and the way many individuals in current liberal societies ask medicine to remove unpredictability and imperfection from their lives, as if there were no limits to their individual fancies and desires. This is reminiscent of the prohibition of sadness in Huxley's novel. Happiness is thus conceived and pursued in a hyperindividualistic and hyperperfectionistic manner.

But how can we—as individuals and a society—reconcile such an individually defined search for personal satisfaction and perfection (and the misunderstanding of human condition it betrays) with real happiness—happiness which often requires renouncing particular desires, not to mention sacrifice? Should we not draw lines and at least sketch what is humanly desirable in light of the values that we still cherish, so that we can continue to be faithful to the spirit of the Declaration of Independence and its famous affirmation of the right to the pursuit of happiness?

The ambiguities we currently experience in connection with the right to happiness do not necessarily lead to a return to Aristotle's conception of human nature and excellence—much less to some substantial notion of the human good linked to religion. We can, however, examine what has not been adequately examined: what we take for granted when speaking of human rights. Sorting out the anthropocentric limitations of our ethics can help us better understand our responsibilities toward subsequent generations and toward other species. An inquiry into "the human condition" can help us understand better the broad contours of the relationship of the self to others. This puts us on a path that travels from philosophy and political philosophy to ontology, where, as Heidegger put it, the question is what it is for *Dasein* "to have, in its being, a relationship towards Being."<sup>15</sup> I will first present some alternatives to modern humanism that give us some clues to addressing our unprecedented situation.

### THE ALTERNATIVES TO HUMANISM

In a text titled "Reflections on Liberty," Claude Lévi-Strauss argues that the conception of man as a moral

agent—which is the current basis of all known declarations of rights—blinds people to the limits that need to be imposed on rights. He argues that we should be free so long and so far as our actions do not infringe on the survival conditions of other species. He further suggests making humankind as a species—not the individual human being—the new foundation of a right to liberty. These rights of humanity as a species would encounter their natural limits in the survival of other species and would impose themselves on all human beings, private or public, without distinction. This and other positions that aim to provide alternatives to modern humanism belong to a broad effort to avoid the destructive consequences of a too-narrow understanding of human freedom. Partisans of these efforts to change the paradigm of our ethics and politics maintain that we have to give a content to human freedom in the light of our responsibilities—responsibilities that arguably go beyond the duties we have toward fellow human beings.

Lévi-Strauss also argues that the current version of human rights makes them legally vulnerable, as well as conceptually fragile. He notes of the 1948 declaration of human rights that it formulates "each individual right by subordinating its application to what the laws of the countries authorize—a limit that is not precisely defined, and that can be redefined at any time. . . . The legislator never grants any freedom without reserving the right to curtail it or even to abolish it."<sup>16</sup> Human rights in their current form do not sufficiently protect every man and woman of every country. But even within liberal societies where the state does not coerce women to sterilization or abortion, human rights do not help us know what kind of society we want to build—or avoid—in today's technological circumstances. Human rights are silent concerning the question about common life and other issues that imply the choice of a kind of society, a choice that necessarily involves competing—and hence debatable—conceptions of the good. To illustrate: are we today ready to accept a society where it is possible and legitimate to use prenatal diagnosis and then obtain an abortion simply when the sex of the fetus does not please someone? This could be a consequence of an unlimited right of reproduction.

Concerning certain medical practices—such as preimplantation genetic diagnosis, prenatal diagnosis and selective abortion, and cloning—the philosophical question does not stop at whether the practices are morally right, wrong, permissible, or licit. The further question concerns what sorts of moral habits and human attitudes such practices promote.<sup>17</sup> Will they reinforce our ability to behave as moral—that is, reflective and responsible—agents or will they erode the beliefs and habits supportive of democracy as a collective moral and civic enterprise (and not simply as a set of formal procedures for rule and decision making)? More pointedly, do genetic engineering and drug enhancement express or engender a drive to mastery that is opposed to essential traits of the human condition, such as the unpredictability of human beings, the possibility—as Hannah Arendt put it<sup>18</sup>—that somewhere, sometime, somebody creates something new? Arendt provocatively linked the sense of "natality" and nativity to political freedom. Such connections are lost

to merely rights-focused thinking. Will the generalization of prenatal screening and the desire for perfect children—“designer kids”—tend to blind us to the humanity of disabled persons, those who may escape such screening, or those who become handicapped after birth? Will the habits generated by these and other practices undermine efforts to fight against discrimination and to provide a more ample, less stereotyped concept of “normality”?

Questions and concerns such as these suggest that we should thoughtfully and creatively connect, or reconnect, human rights to the traditions and practices that sustain them; as Rousseau put it, to the “morality, customs and beliefs which form the real constitution of a state and keep a people in the spirit of its institution.”<sup>19</sup> In other words, we need to connect human rights to what Charles Taylor called “strong evaluations,”<sup>20</sup> that is, to some conceptions of the good and the common good that continue to make sense in a society where human rights necessarily and desirably play a large, but not exclusive, role. As Taylor has further argued, this involves a retrieval and dialectical sifting of the various sources of morals, so that we can thoughtfully deliberate *en pleine connaissance de cause* (with full knowledge of the reason). But such efforts to describe the values that sustain our society and to connect any bioethical—or political—decision to these “strong evaluations” and choices of what a society does not only entail a deliberate inquiry into the sources of our morality. They also require that we have some knowledge of humans and the meaning of their existence. A new anthropology that corrects what is wrong in modern humanism is the necessary task of political philosophy.

### TOWARD A NEW PHILOSOPHICAL ANTHROPOLOGY

Lévinas’s conception of the irreducible transcendence of the other is helpful in understanding his phenomenology of the face. It provides an alternative to any utilitarianism that assumes that one can compare human lives and say, “Some people would be better off dead because their lives are unproductive.” For Lévinas, the other is not simply another “I,” as if I could understand him by way of analogy and imagine he has the same feelings, the same ideas as I do. But he is not to be understood by way of analogy; the other certainly cannot be reduced to any function. He is neither an object nor the correlate of a desire. He resists a person’s power to determine him. He *is* this resistance, which Lévinas calls transcendence. In this way Lévinas goes further than Husserl in describing the encounter with another human being, because he says that the difference between people is positive. This distance is often considered the reason why we fail to understand one another. But it makes the relationship precious and helps distinguish proximity from familiarity. The other is a mystery to another person. Lévinas says that a person actually is closer to me when I come to see that the he or she escapes my power to assimilate, much less constitute, him or her. The recognition of the otherness of the other is a condition for intimacy, Lévinas writes in *Time and the Other*. The denial of this multifaceted transcendence blinds the observer to whom the person is.

We easily find examples of this denial in daily life, when we think that we can predict the behavior of the other or when familiarity prevents us from genuinely listening to the other. In the clinical setting, this notion of the otherness of the other impels us to doubt the legitimacy of any proxy judgment concerning the quality of life of a comatose or disabled human being. Who knows what happiness means for the other?

The baby who is not responsive and whose future nobody can know, the loss of memory of the senile person who does not recognize her children, the silence of the comatose patient—these examples may reveal even more radically the transcendence of the other and the other’s mystery. This notion makes sense in our relationship with the person we love and whose mystery we paradoxically are more prone to acknowledge when we risk losing the person or when we stop considering him or her as the correlative of our desires and needs. Why should it not make sense when we look at those who are not able to formulate or express choices? They escape even more radically our power to understand and constitute them. The one who cares about comatose or elderly patients suffering from Alzheimer’s disease and who does not treat them like mere bodies experiences an encounter where intimacy and respect go hand in hand with the awareness of the responsibility toward them.

Lévinas’s phenomenology of the face highlights the ethical dimension of our relationship to the other. This not only means acknowledging the otherness of the other who always transcends what I know of him or her. It also implies that any attempt at denying this transcendence shows disrespect for him or her. The absolute lack of respect is murder. To kill another human being is a transgression. A person understands the meaning of the murder as well as the extent of the responsibility for the other when his or her face is visible. It is possible to read on the face of another human being this injunction: “Thou shall not kill.” The originality of Lévinas’s ethics is to show that the interdiction of murder derives from the understanding of the ethical dimension of our relationship with the other. It is not a categorical imperative coming from reason. Nor does it presuppose religion. The phenomenological description of—for example—my encounter with another makes me understand that the other is the one I could kill and the one for whom I am responsible. Such ethics implies the rejection of euthanasia and the imperative of a humanized medicine that cares for the patient. It implies that medical principles be reconfigured in light of the physician’s responsibility for somebody who calls for help.

The deeper novelty of Lévinas’s thought lies in the primacy of responsibility over freedom. For Lévinas, as we have seen, I am not essentially a free will in search of recognition, as with Hegel. I am open to the other in his or her transcendence. Often the other is the one who is vulnerable and who calls for help. The other is the one for whom I care, the one whom I must not abandon. Nor can I let him or her die alone. In these ways there is an asymmetry in my relationship to the other. This leads Lévinas to say (in *Outside the Subject*) that I am the hostage of the other. This asymmetry changes the meaning of liberty. In

Hobbes, everyone is preoccupied with his or her own preservation (and glory). The state exists to guarantee equality and security. It protects rights, but rights do not suffice to affect a genuine “being together.” In contrast, the primacy of responsibility over liberty implies that fraternity binds human liberty and equality.

This new way of understanding liberty goes hand in hand with a critique and reformulation of human rights. They now are to be understood in light of a freedom that is not the negation of another’s freedom. The new understanding involves other reformulations as well. Lévinas writes that “[t]he justice that is not to be circumvented requires a different ‘authority’ than that of the harmonious relations established between wills that are initially opposed and opposable [as in Hobbes and Hegel].”<sup>21</sup> Lévinas suggests “goodness” as the authority that gives the rights of the other a basis that is capable of turning sociality into fraternity, one that avoids the real threat of indifference. In our societies, the same individuals who are prone to praise human rights and to preach activism, denouncing the violation of human rights in China or in Russia, often forget their neighbor and neglect to help their young colleagues. This contradiction, which made Tocqueville underline the importance of affections and bonds between citizens and generations, is in part due to the abstraction of human rights and to the fact that we do not take into account what they presuppose. In contrast, Lévinas urges “a freedom in fraternity, in which the responsibility of the one-for-the-other is affirmed, and through which the rights of man manifest themselves *concretely* to consciousness as the rights of the other, for which I am answerable.”<sup>22</sup>

This “phenomenology of human rights” gives another dimension to our freedom and enriches the notion of rights with an ontology that goes beyond what still remains self-centered in our conception of ourselves. For Lévinas and his predecessor Franz Rosenzweig, genuine subjectivity awakens by answering the call of the other. This is why Lévinas says that the patient-physician relationship—truly understood—is the model of our relationship with the other and particularly displays its ethical dimension. The individual who witnesses the distress of the other, who sees and empathizes with his hunger or his loneliness, is not preoccupied with himself or his own preservation. He experiences in this “transcendent” event that he is primordially open to a relationship with the other. The meaning of the subject has changed thanks to the primacy of responsibility over liberty; here fraternity reconfigures equality and prevents it from becoming a mask for resentment, as can happen in democratic life (as Tocqueville indicates in his discussion of equality as a levelling passion in volume 2 of *Democracy in America*).

But the one who needs the help of others also enters this ethical dimension of experience. The meaning of suffering, Lévinas says, is not only its passivity, but also its vulnerability. The human being who experiences pain and suffering knows in his flesh and in his heart that he needs the other. He intimately understands himself as open to the other. In some sense, he is this openness.

The behavior of patients who are experiencing excruciating pain and the cry for consolation that lies behind most

requests for suicide illustrate this openness to the other. Consolation (*cum-solo*) means being with the one who is alone. This etymology confirms what we may experience when caring for patients: when the pain is alleviated through an appropriate treatment that involves the personal collaboration between a patient and the professional care team—when the dying person is listened to, understood, and treated as unique as it happens in palliative care—he or she stops asking for physician-assisted suicide and prepares for death. Vulnerability and the acceptance of one’s vulnerability make someone understand better the meaning of life. It is then possible to die with dignity. This contrasts with the defense of autonomy found in euthanasia proponents: that dignity means to have the final control of one’s death and the decision when one will die. Vulnerability may teach us dignity better than any focus on control. We may be closer to our humanity when we are vulnerable. When our egoistical structure is broken, we may be more sensitive to our limits, to the importance of the others, and to the value of our mortal existence.

Lévinas sublimates Heidegger’s form of human openness—care—which because of its defining orientation to one’s own death continues in the modern path of isolated self-concern. Lévinas is not the only thinker who tries to overcome Heidegger on his own ground. Hans Jonas employed categories and insights from Heidegger’s existential analytic of *Dasein* in his analysis of organic life—organic form or soul. Especially in *The Phenomenon of Life* Jonas’s philosophy of organism attempts to lay the groundwork for a more ample understanding of life and human life via an analysis of the fundamental vital activity of metabolism. He explicitly wants to overcome the Cartesian dualism so characteristic of much contemporary thought and language, as well as one of the founding tenets of technological science. He thus provides an alternative to the philosophy of the subject that can help us better understand and articulate our duties toward other species and toward nature as such. His way of reestablishing the dignity of nature, as well as of reintegrating humans within nature, helps us acquire a critical stance toward technology and its consequences; it invites us to change our attitudes and our behaviors. It is not only a matter of guaranteeing the survival of other species and future generations, but this new “image of man” breaks with the dualism of humans and nature and implies that we should change some habits inherited from the Enlightenment. Nature deserves our respect; it is vulnerable (to our technological powers and manipulations); it needs to become the subject of our responsibility. Animals are sentient creatures and as such should not be sacrificed in futile experiments or treated and used as machines in industrial farms. Moreover, Jonas’s reflections on metabolism indicate that human-rights thinking is inadequate to help us understand our duties in these and other areas. His organism-based ethics is linked to a kind of anthropomorphism, because the cell prefigures the freedom that we find in its fullness in human beings—but it is not anthropocentric, because Jones gives some dignity to nature. To be sure, this ethics does have consequences in the way we use certain “human materials” such as embryos

and gametes. In general it provides fresh vistas for considering our relationships and duties toward what we have not chosen. A broader view of the natural human condition and an understanding of finitude lie at the bottom of many bioethical issues.

In this connection, Jonas's articulation of the mortality inherent in "the adventure of life" is particularly important.<sup>23</sup> Technological progress and the modern foundation of human rights link to a conception of human freedom that makes us think that we decisively shape our lives and ourselves. Aging and death are enemies to conquer. They are not considered essential parts of life. The prosecution of the Enlightenment project has led to medical advances and to an expansion of our life span. However, this progress has not entailed being better prepared to grow old and die peacefully. On the contrary, many people do not face the reality of death. Nor do they accept senescence gracefully. Yet many will die later in life after years of chronic and debilitating diseases and illnesses. In this connection, a reconsideration and renewal of ancient wisdom may be in order. Cicero's conception of life stages can help us come to grips with our physical, psychological, intellectual, and "agential" decline, as well as death's reality. Such ancient wisdom can help us develop the relevant virtues of aging, such as courage, good humor, and the ability to enjoy life day by day without being paralyzed by fear, resentment, or undue nostalgia.

To appropriately resolve certain bioethical dilemmas requires facing the reality of death and abandoning a negative image of the elderly. It is not possible to give a plausible answer to the question of whether it is right or wrong to continue treating an infection in a ninety-year-old woman suffering from Alzheimer's disease who did not leave any advance directive if we do not consider aging and death parts of life. The fact that there are so few advance directives—despite the exhortations of the medical community—is also linked to our denial of death. Last, a reflection on the meaning of aging will help us understand our societal and political priorities: Is it wise to give funds for programs whose aim is simply the extension of life? Is it wise to spend so much money at the end of life, when there are so many women who cannot afford neonatal care? Such a repartition of health care resources may betray a skewed understanding of the stages of life and of the human condition.

## PHENOMENOLOGY, ONTOLOGY, AND POLITICS

Paul Ricoeur has written very important pages on the meaning of "passivity" for understanding the human condition, as well as for reinvigorating the notion of "responsibility." Like Lévinas and Jonas, Heidegger is one of his influences. He too provides the contours of an ontology that is an answer to Heidegger.

Whereas Heidegger did not make any place for the wound (*la blessure*) in his effort to describe *Dasein* and thus to overcome "the philosophy of the subject," Ricoeur took from his former teacher Jean Nabert the idea that the experiences of loneliness, suffering, and sin reveal the fundamental inadequacy that lies inherent in our being beyond any social,

psychological, or empirical masks.<sup>24</sup> We are constitutionally "wounded." Nabert was a reader of Fichte, and he tried to understand the meaning of the gap between the will and aspirations, actions and attainments, and people and others. Ricoeur interprets this inadequacy in light of Heidegger's existential analysis of the *Dasein*. He speaks of a "broken cogito" (*cogito brisé*). He says in *Oneself as Another* that this broken cogito is open to Being. He is this relationship toward Being. It is because of this wounded cogito, revealed in the manifold experiences where we fail to be in tune with ourselves, that people are open to others. This wounded cogito is what discloses the real basis of ethics. Heideggerian Resoluteness (*Entschlossenheit*) and Care (*Sorge*) do not entail any wounded cogito. Nor does Heidegger's analysis of "authentic existence" reveal any interest of *Dasein* in fair or just institutions. On the contrary, Ricoeur's notion of the wounded cogito is what links private existence and interest in politics. We call this basis of ethics and politics the "break" or "fracture of autonomy."<sup>25</sup>

What is illuminating in Ricoeur, especially in the last chapter of *Oneself as Another*, is the kind of ontology he associates with this hermeneutics of the self. Heidegger does not take into account the public dimension of the self apart from what he says about our "fallenness" in anonymous and inauthentic existence (*Verfallen in das Man*). His analysis gives birth to a call for resoluteness that fosters creativity and private involvement. But Ricoeur argues that this kind of "moral situationism" merely serves to fill the emptiness of Heidegger's notion of an undetermined call. Although this undetermined call cannot be equated with nihilism, it does not explain why the other's fate is our fate. On the contrary, the goal of the author of *Oneself as Another* is, by analyzing the existential structures of the self, to highlight its being with the other, its concern for fair institutions, and its meaning as *attestation* (*Bezeugung*).

As Ricoeur puts it in the preface of *Oneself as Another*, attestation is "the certainty of its being oneself acting and suffering," its self-evidence or testimony.<sup>26</sup> It is the confidence I have to be myself and to know what I am doing here and for whom: "It prevents the question *Who?* to be replaced by the question *What?* or *Why?*"<sup>27</sup> This certainty and the sense of responsibility it suggests are far from any philosophy of the cogito (Descartes) and are opposed to any suspicion (Nietzsche). It is different from Descartes' ideal of self-knowledge and from the Enlightenment conception of a person who can wholly shape his or her fate. But it is also an answer to Nietzsche, who destroyed the conditions of ethics. For Ricoeur, attestation means that it is possible to see one's life as a whole and then to understand one's duties. It, however, implies that I have acknowledged the otherness of my being in the world, of the other human being, and even of my own body, because this "passivity" opens me—as another—to essential concerns where I do not simply focus on my own preservation. I am not only preoccupied by my own fate, but my liberty and identity suppose that the society I live in is just and that others too can thrive. Ricoeur suggests that such an understanding of my being in the world and with others derives from the recognition of my own vulnerability.



For Ricoeur, there is a way of understanding the otherness of the self—as *ipse*—that avoids Heidegger’s interpretation of otherness and is closer to Lévinas’s *Otherwise than Being* than he acknowledges in *Oneself as Another*. To speak of oneself as another implies that we do not simply equate the meaning of otherness with the otherness of the other human being. There is a wound that constitutes the self as *ipse*, a call revealed in experiences of passivity. Nabert, as we saw, describes experiences where the individual learns from loneliness and failure the meaning of his or her vulnerability. Ricoeur develops this analysis and says that passivity is not to be understood as mere exteriority (and then equated with the otherness of the other human being). Nor is it to be reduced, as in Heidegger, to the facticity of our being in the world, to the fact that we have not chosen to be born and that our arrival in the world is contingent. Ricoeur instead connects the passivity of our own body or flesh, which Husserl called *Leib*, as well as the otherness of our own affections stem from our facticity, to the fact that we are *dahingeworfen* and sometimes feel as strangers in the world. A phenomenology of suffering—lacking in Heidegger—and a taking into account that in moral consciousness (*Gewissen*) the self (whose structure is reflexive) fails to be in adequate attunement with itself—needs to be connected with an ontology. This ontology, along with the phenomenology of passivity, provides the contours of a philosophy oriented toward considered action.

In *Otherwise than Being: Or Beyond Essence*, Lévinas uses the word “substitution” to speak of responsibility for the other. This way of suffering for, and with, the other, which reminds us of some of the descriptions of pity in Rousseau, is linked to the recognition of the other as a sentient and vulnerable being, and of my own vulnerability. This way of emphasizing the responsibility for the other, which goes farther than in *Totality and Infinity* and in the phenomenology of the face, is because I have flesh. Subjectivity is sensitivity, as Lévinas stresses. And because of this vulnerability I not only understand but also feel the other’s pain and suffering. And I feel guilty; I become a hostage. I have only duties and will do my best to alleviate the sufferer’s pain. This experience, which Lévinas calls “substitution,” is an event. It does not depend on my will. On the contrary, I lose my power and sovereignty and my identity becomes deeply connected to the other. As we see in *Otherwise than Being*, Lévinas is close to Ricoeur’s own attempt to build a phenomenology of passivity. However, he does not draw the political conclusions of such ethics—as Ricoeur does.

Such a philosophy would better grasp the meaning of human responsibility than any focus on authentic existence. Moreover, to resist the temptation to give a name to the otherness suggests philosophizing without speaking of God—which does not mean or imply the rejection of God, as shown by Ricoeur himself. Ricoeur, a Protestant, believed in God, but he tried as a philosopher to find a way of understanding the human condition without presupposing any religion. The point is to develop a strictly philosophical anthropology that gives a deeper understanding of human life and of the broader range of human responsibilities.

This arguably goes beyond current generations, as Jonas (to whom Ricoeur refers) maintained. And yet we do not see the face of future men and women. Nor do they have any voice. We need to recognize and hear them. This assuredly calls for new modes of thinking. Such an orientation toward a new ontology, which necessarily involves “our interpreting and reinterpreting of the past,”<sup>28</sup> could help us see better what it means to “live well with and for the others within fair [just] institutions.”<sup>29</sup>

The originality and the strength of Ricoeur’s attempt to provide the contours of an ontology from which we could draw a relevant philosophical anthropology result from his complex method. The fact that this ontology is intertwined with hermeneutics and phenomenology has several advantages; first, it escapes the critiques addressed to those who refer to a religion or to the sacredness of life to oppose a normative “image of man” to that of science. Be that as it may, such an anthropology implies that we readdress the notion of human autonomy. Ricoeur’s understanding of oneself as another means that the autonomy of the individual is not *the terminus a quo* or *the terminus ad quem* of all moral and political decisions. This is why he can help us pose the foundations of a politics of finitude, one that contemporary democracy needs.

It also helps us avoid the dead end we find at the other extreme in procedural ethics: the recourse to mere formal rules and the idea of a primacy of justice over the good that Rawls and Habermas advocate. Procedural ethics is not an adequate answer to the ethical and political dilemmas posed by current medical practices and biotechnologies. Pluralism does not condemn us to a contentless bioethics. That is a counsel of despair. We need to trust human beings and their capacity to give reasons to one another, to debate, deliberate, and rationally decide. This is more in keeping with “the promise of democracy.” I do not believe that any minimalistic ethics can preserve democracy from its inner dangers (of the sort limned by Tocqueville) or prevent us from using medical technologies in ways that erode the habits and moral dispositions that sustain democratic institutions. We are in need of a richer ethics—based on a new anthropology—if we want to adequately consider what kind of society to promote. I have tried to indicate some promising avenues and thinkers for this urgent task.

Along with retrieving and reformulating the “strong evaluations” that make sense in the moral tradition of political liberalism and that sustain the humanizing exercise of morality and citizenship in our democracies, such philosophical reinvigoration could provide a more adequate guidance for policy decision making. It could help us make wiser and more appropriate decisions in bioethics. Far from being the rejection of human rights, such philosophical rediscovery could be the opportunity to reinvigorate human rights.

#### NOTES

1. Leo Strauss, “Die Religionskritik des Hobbes,” in *Gesammelte Schriften*, vol. III, ed. H. Meier (Stuttgart: J. B. Metzler, 2001), 348–69.

2. Leon Kass, *The Hungry Soul* (Chicago: University of Chicago Press, 1994). See also Hans Jonas’s idea of metabolism in *The Phenomenon of*

*Life* (Chicago: University of Chicago Press, 1966). Kass overtly refers to Jonas's book.

3. Emmanuel Lévinas, *Entre Nous: The Thinking-of-the-Other* (London: Continuum International, 2006).

4. Paul Ricoeur, *Oneself as Another*, trans. K. Blarney (Chicago: University of Chicago Press, 1984).

5. I borrowed this idea of three levels of judgment in medical ethics from Paul Ricoeur, "The Three Levels of Judgment in Medical Ethics," in *The Just 2*, trans. D. Pellauer (Chicago: University of Chicago Press, 2003). The first level is the particular relation between a patient and a physician; the second level, which Ricoeur calls deontological, refers to the norms mentioned in the codes and the texts written by professional associations. The obligation of confidentiality we find in the Hippocratic Oath, and also in the patient's rights that were mentioned in the 1981 version of the Ethics of the American Medical Association, represent these norms. The teleological level concerns the priorities and traditions of morality that explain some choices in the way we distribute the health care resources in a country. This level, which pertains to political philosophy, makes us understand the policies concerning health and biomedical research.

6. Edmund Pellegrino, "The Virtuous Physician and the Ethics of Medicine" in *Virtue and Medicine: Explorations in the Character of Medicine* (Dordrecht: Earl E. Shelp, 1985) 248–53.

7. Jürgen Habermas, *The Future of Human Nature*, trans. H. Besiter and M. Pensky (Cambridge: Polity, 2002).

8. Jacques Maritain, *Christianity and Democracy* (New York: Scribners, 1945). Maritain uses the expression multiple times in this book.

9. Michel Villey, *Le droit et les droits de l'homme* (Paris: PUF, 1983).

10. Thomas Hobbes, *Leviathan*, ed. C. B. MacPherson (New York: Penguin, 1983), 189.

11. Leo Strauss, "Kurt Riezler," in *What Is Political Philosophy? And Other Studies* (Chicago: University of Chicago Press, 1988), 233–60.

12. Hans Kelsen, *Vom Wesen und Wert des Demokratie* (Aalen: Scientia and Verlag, 1981).

13. Paul Seaton, "In Search of Contemporary Man: Chantal Delsol's

Spiritual Sociology," *Society* 43 (Nov/Dec 2005): 92–97. See also Chantal Delsol, *Icarus Fallen: The Search for Meaning in an Uncertain World*, trans. R. Dick (Wilmington, DE: ISI Books, 2003).

14. John Locke, *Essay Concerning Human Understanding*, (Amherst, NY: Prometheus, 1994), book II, chapter XXI, art. 29; and XX, article 16.

15. Martin Heidegger, *Time and Being*, trans. J. Stambauch (New York: State University of New York Press, 1996), 12.

16. Claude Lévi-Strauss, "Reflections on Liberty," in *The View from Afar*, trans. J. Neugroschel (New York: Basic Books, 1985), 281.

17. Michael Sandel, *The Case against Perfection* (Cambridge, MA: Harvard University Press, 2007).

18. Hannah Arendt, *Human Condition* (Chicago: University of Chicago Press, 1959).

19. Jean-Jacques Rousseau, *The Basic Political Writings*, trans. Donald A. Cress (Indianapolis, IN: Hackett, 1987), 172.

20. Charles Taylor, *Philosophical Papers*, vol. 2 (Cambridge: Cambridge University Press, 1985).

21. Emmanuel Lévinas, "The Rights of Man and the Rights of the Other" in *Outside The Subject*, trans. M. B. Smith (Stanford, CA: Stanford University Press, 1994), 123, 126.

22. Emmanuel Lévinas, *Outside The Subject*, 126. Emphasis in the original.

23. Hans Jonas, "The Burden and the Blessing of Mortality," in *The Hasting Center Report*, vol. 22, January/February 1992, 34–40.

24. Jean Nabert, *Elements pour une éthique* (Paris: Mouton, 1962) and *Essai sur le mal* (Paris: PUF, 1955).

25. Most of the ideas that are only suggested here will be developed in my forthcoming book *La brisure de l'autonomie: Une philosophie confrontée aux défis de la bioéthique* (*The Broken Autonomy: A Philosophy of Vulnerability for Today's Bioethical Challenges*).

26. Paul Ricoeur, *Soi-même comme un autre* (Paris: Seuil, 1990), 35.

27. *Ibid.*, 35. Emphasis in the original.

28. *Ibid.*, 346.

29. *Ibid.*, 406.