

### Autonomy, Beneficence and the Permanently Demented

Ronald Dworkin's *Life's Dominion*,<sup>1</sup> addresses the debates about abortion and euthanasia that have divided American politics. His book, and his earlier articles on these subjects,<sup>2</sup> issue innovative philosophical suggestions. Dworkin's primary aim is to urge us to transcend portraits of these issues that paint irresolvable conflicts of rights. Instead, he suggests that we should reconceptualize these debates to reflect a recognition that what propels them is an essentially religious disagreement about the characterization and importance of the intrinsic value of human life.

A human life, Dworkin thinks, has a certain subjective or personal value, which is a function of the interests its bearer takes in that life. Dworkin also contends that we all share the conviction that, independent of its subjective value, human life is intrinsically valuable, that is, it is valuable in itself. It may be valuable even when its bearer does not take an interest in her life; independent of her attitudes, the life is miraculous and we regard it as in some way "sacred" or "inviolable". Dworkin regards the consensus that life has intrinsic value as a shared, but essentially religious idea. Thus, he sees the social disagreement over our characterization of this intrinsic value as a religious dispute.<sup>3</sup> Some of us, he says, locate the intrinsic value of each life in its being the product of divine creation or in its being a product of natural processes of evolution; others attribute the bulk of its intrinsic value to its being a certain kind of complex, vibrant product of a cultural, social or individual human achievement.<sup>4</sup>

Those who regard the natural or divine contribution to life as paramount may regard abortion and euthanasia as manifesting deep disrespect for life's sanctity, because they end lives that are the outcomes of these processes. By contrast, those who regard the human investment as the critical locus of value

believe that abortion and euthanasia may not threaten or disregard the intrinsic value of human life, given, respectively, the relatively minor investment represented in the fetus and the negligible contribution to this process made by the comatose or by those in constant pain. In Dworkin's view, a reconceptualization of these debates as religious disputes will justify liberal approaches ceding the ultimate decision-making authority over these problems to individuals rather than the state. Principles of freedom of conscience and government neutrality about religious matters make it inappropriate for the state to take positions as to the circumstances in which human life has intrinsic value, how much value it has, and how best to respect that value. Likewise, it would be inappropriate for the state to restrict personal liberty to protect that value. Its involvement in these issues must simply be driven by the aim to protect the rights and interests people have in their lives and in living out their convictions. Consequently, Dworkin believes that while it is perfectly legitimate for the government to encourage serious thought and reflection among its citizens about the sanctity of life, the government may not force any single view about spirituality on the citizenry.<sup>5</sup> So, for instance, Dworkin contends that the government may encourage such serious reflection about the value of human life by educating its citizens (read women) about abortion and demanding that they come to a definite decision about their pregnancies by a particular date,<sup>6</sup> but it may not enforce any particular view as to how the sanctity of life may best be respected, e.g., by banning the option of abortion outright.<sup>7</sup>

Dworkin's philosophical and legal views about the connection between the abortion issue and the sanctity of life are rich and thought-provoking; consequently, it is no surprise that they have sparked a significant amount of critical attention and commentary.<sup>8</sup> His views about the connection between respect for autonomy and control over the end of life, while arguably more provocative, have generated less scrutiny. In this essay I will mainly discuss the proper liberal approach to the problem of advance directives in the case of people who have become permanently demented. In §1, I provide an overview

of Dworkin's liberal analysis of the problem of the permanently demented. In §2, I argue that the justifications for respecting the autonomy of the fully competent fail to generate persuasive grounds for concluding, as Dworkin does, that the range of autonomous control over self-regarding life-and-death decisions enjoyed by competent people extends to include prospective control over what should happen to oneself once in a stage of permanent dementia. I will also argue that Dworkin's conception of autonomy is flawed and that it leads him to disregard the autonomy that demented people may be capable of exerting. In §3, I will argue that Dworkin's complementary analysis of our duties of beneficence to demented people does not and cannot emerge from a neutral stance toward the sanctity of life. If I am right about the relevant considerations of either autonomy or beneficence, then there may be reason to question seriously whether we should abide by advance directives in the case of dementia. At the very least, I aim to show that Dworkin's argument as it stands is incomplete and that more needs to be said if we are to implement these directives with any degree of moral confidence.

## I

Dworkin argues that decisions concerning the prolongation of life and euthanasia, like abortion decisions, properly rest with individuals. The government may not adopt or enforce any particular view as to how we should pay tribute to the sanctity of life by dictating, *e.g.*, that respect for life entails prolonging it as long as possible or that respect for life is best shown by preventing its degeneration into an dependent, uncharacteristic and unfruitful state of horrific pain, dementia or permanent vegetation. Rather, people should be encouraged to make provisions for such circumstances, by writing advance directives that direct what should be done should they become terminally ill, fall into a persistent vegetative state, or become demented. In Dworkin's view, those considerations that are appropriate for the state to consider, chiefly considerations of beneficence and respect for individual autonomy, dictate that we respect individuals' judgments about the value of their lives; thus, we should implement these

directives, whether they direct us to continue or to curtail the lives at stake.

Specifically considering the situation of permanently demented people, Dworkin argues that their rights of autonomy and to beneficence entail that we should respect the decisions their *past* competent selves have made about what should be done should they become demented. Dworkin's conclusions depend upon his view that we make an error if we conceive of the demented person as a person with rights of autonomy and interests of her own, which are distinct and separate from those of her previous competent self. Rather, in Dworkin's assessment, *qua* demented person (abstracting entirely from her connection to her past competent stages of life), such a person has no rights of autonomy at all because she lacks the requisite capacities for the attribution of such a right to make any sense.

With respect to the question as to what lies in the best interests of permanently demented people, the argument becomes more complicated. Dworkin distinguishes between what he calls one's *experiential* and one's *critical* interests. Something is in one's experiential interest if one enjoys the experience of doing it, like listening to jazz, and runs counter to one's experiential interest if it provides an unpleasant experience such as discomfort, boredom, pain or nausea. Dworkin believes that although we have a great yen to satisfy our experiential interests, generally, the fulfillment and frustration of these interests, considered by themselves, do not make a life better or worse; we do not, he observes, think a person's life has been a worse life if she has undergone a great deal of painful dental work.<sup>9</sup> Critical interests are interests the satisfaction of which make a life a genuinely better one and the frustration of which makes a life worse. What lies in one's critical interests are things that will contribute to one's good life and that one *should* want, such as interests in accomplishment, in having close relationships with one's children and in living a morally decent life. Importantly, these interests are the kinds of interests about which people may be sadly mistaken. Such mistakes themselves can make a life go worse.

Dworkin maintains that a demented person *qua* demented person lacks a critical interest in continuing to live. Demented people may have experiential interests in their lives--they may have good or bad experiences within them; they can, for instance, enjoy comfort and reassurance or feel pain and fear.<sup>10</sup> They cannot, however, take a view of their lives as a whole and, hence, they cannot form opinions about their critical interests. That is, they cannot assess what renders their lives a success or a failure and what, within a life, pays proper heed to the sanctity of life.<sup>11</sup> Moreover, Dworkin thinks that not only are demented people incapable of understanding what is in their critical interests, they cannot do anything to further their critical interests. He claims they are incapable of the acts and attachments that give life value. Value, he notes, "cannot be poured into a life from the outside; it must be generated by the person whose life it is, and this is no longer possible for [the demented person]."<sup>12</sup>

But, for Dworkin, we take an improper view of such a demented person, if we regard her solely *qua* demented person. She must be understood as a person whose history features mostly stages of clarity and competence and who has become demented. The autonomy rights and interests of this whole person — who should be viewed in the light of her life history that encompasses far more than her period of dementia — can be affected by what happens to her in her demented state. Just as a competent, but terminally ill, person may regard the final painful stage of a terminal disease as not worth living and perhaps as a stage which tarnishes the image of her vital life, the person prior to her decline into dementia may have considered carefully the effect of a demented stage at the end of her life upon the value of her life as a whole and decided that "a life ending like that is seriously marred," for it would degrade the previous accomplishments and deliberative direction which previously characterized the life.<sup>13</sup> As a result of her deliberations, she may exercise her autonomous judgment and sign a living will directing that she be denied medical care and nutrition should she become demented. Others with alternative conceptions of the proper value of life and its sanctity might think their appreciation of life is

best paid tribute by persevering through life to the end, even with diminished capacities; to secure that their fundamental interests concerning their lives are met, they may direct that they be permitted to live on during dementia (assuming there are available funds for maintenance and care).<sup>14</sup> Thus Dworkin thinks that previously issued judgments by those who have become demented reflect their assessments of their critical interests, and that these judgments must be honored if we aim to respect these people and to protect their interests.<sup>15</sup> In his view, both considerations of autonomy and beneficence counsel us to respect and implement advance directives to terminate or prolong the lives of permanently demented people, even when we profoundly disagree with the contents of these directives and even when the demented people's expressed contemporary wishes contradict these directives.

These are striking views with heady implications for the lives and deaths of demented people. In what follows, I will not examine or challenge Dworkin's views about the rights of conscious and competent individuals to refuse treatment or to orchestrate their demise by recourse to more positive and active means. I agree that we should take seriously the idea that conscious and competent individuals have a right to die (as well as a right to live, no matter how wretched the existence). I am troubled, however, by approaches that treat the situation of permanently demented people as of a piece with these cases -- that is, analyses that extend the right of competent individuals to choose their deaths while competent to include a right to dictate what should happen to them if they become demented. I do not intend to offer a knock-down argument against such approaches, but I want to present some concerns about the legitimacy of implementing advance directives about dementia. These concerns grow out of doubts about Dworkin's analysis of autonomy and beneficence.

## II

This section focuses on assessing what reasons are provided by respect for autonomy to follow advance directives concerning the cessation or the continuation of the life of a demented person,

especially when the demented person now expresses some will to the contrary.<sup>16,17</sup> Primarily, my aim is to scrutinize Dworkin's analysis of autonomy and to suggest that it is overly narrow. A fuller understanding of autonomy jeopardizes Dworkin's conclusions about the binding force of advance directives in the case of dementia. Contrary to Dworkin's contention, the demented's *qua* demented exercise of the will may well engage some autonomy values. I will concurrently argue that Dworkin's own analysis of autonomy's value fails to provide the requisite justification for demonstrating the legitimacy of advance directives in cases involving permanent, involuntary, and significantly degenerative personality change.

There are three important questions to press concerning the argument for the legitimacy of honoring advance directives in cases of dementia:

1. Does respect for autonomy provide us with a reason to implement advance directives?
2. Does respect for autonomy provide us with *no* reason to respect the wishes of the demented?
3. Is Dworkin's analysis of our duties of beneficence to permanently demented people persuasive?

I address the first two questions in this section and the third in the following section. I will argue that with respect to the moderately demented and the severely demented, the answer to the first question is no. With respect to the second question, I will argue that the wishes of some permanently demented people concerning the continuation of their lives do have some autonomy value worthy of our respect, even if these wishes do not express a reflective, unified character. The severely demented who are almost vegetable-like or who have radically self-contradictory wishes may not be able to convey any clear wishes at all, in which case it may be true that they may not exert autonomy. Still, even in the case of the severely demented, if my first argument is correct, the advance directive issued by their prior selves may not exert much moral pull *qua* its autonomy value. In such a case, we should not be guided by the advance directive but rather, we are left with the difficult task of divining what is in such patients'

best contemporary interests. Unfortunately, but as I will argue in the following section, Dworkin's rendering of beneficence does not offer plausible guidance and is in fact in tension with the major theme of the book.

Before proceeding to discuss autonomy in greater depth, it is worth getting clearer about the subjects of our concern. Dworkin limits his discussion to consideration of those who have become *permanently* demented, i.e. those people who suffer from an acquired,<sup>18</sup> persistent and irreversible impairment of intellectual function, characterized by compromised language skills, memory skills, visual and spatial skills, emotional reactions, personality expression, or cognition.<sup>19</sup> There are different stages of dementia which correspond to different levels of functioning. The mildly demented suffer a moderate level of memory loss, some spatiotemporal disorientation, and have enhanced difficulties handling problems. Still, they exert generally good judgment, may still perform many tasks inside and outside of the home and generally retain the capacity for independent living with some assistance and prompting.<sup>20</sup> For the moderately demented, independent living may be hazardous and assistance may be required for personal care. Though they have sustained, severe memory loss, they retain some highly learned material, and often indicate recognition of close friends and family members. They can be taken outside the home, but their social judgment is impaired and their interests are quite restricted. Many of the moderately demented are in denial with respect to their condition, but some indicate awareness that they are behaving abnormally and are undergoing a progressive intellectual decline.<sup>21</sup> Moderately demented patients, even in the moderately severe stage, can engage sporadically in effective communication and may still enjoy living.<sup>22</sup> The severely demented possess only memory fragments, require continuous supervision, cannot maintain personal hygiene, are largely incoherent or mute and are incapable of making judgments or solving problems.

Unfortunately, it is unclear to which of these stages Dworkin intends his conclusions to apply. On

the one hand, Dworkin declares early in his discussion that his attention is restricted to those in the late stage of dementia who have lost all memory and sense of self-continuity, cannot attend to their own needs and functions, are incapable of sustaining projects, plans or desires of even a very simple structure; but who may harbor a desire to live.<sup>23</sup> Later, however, he elaborates, arguing that

When a mildly demented person's choices are reasonably stable, reasonably continuous with the general character of his prior life and inconsistent only to the rough degree that the choices of fully competent people are, he can be seen as still in charge of his life and he has a right of autonomy for that reason...But if his choices and demands, no matter how firmly expressed, systematically or randomly contradict one another, reflecting no coherent sense of self and no discernable even short-term aims, then he has presumably lost the capacity that it is the point of autonomy to protect.<sup>24</sup>

I will discuss Dworkin's views about autonomy later, but for the present I am interested in this passage for what it reveals and fails to reveal about the subjects of Dworkin's conclusions. The passage suggests at one point that the test to determine whether advance directives should trump the patient's contemporary wishes turns upon whether the demented's judgment is discontinuous with the judgment of his past selves. Only a few sentences later, the test becomes whether the contemporary judgments are themselves radically self-contradictory, a rather different criterion. Dworkin's articulated standards leave it unclear whether Dworkin intends to extend his conclusions to those moderately demented people who may express occasional firm preferences that are not themselves radically self-contradictory, but are not continuous with her past character, are less consistent than the choices of the fully competent and do not flow from a clearly defined, continuous and reflective character. Further, despite Dworkin's pronouncement that he will limit himself to the severely demented, the cases he discusses involve people who appear moderately demented. One patient, Margo, maintains persistent desires and projects, however simple---she pretends to read, attends art classes, and loves sandwiches; her medical-student

attendant declared that she was 'undeniably one of the happiest people I have ever known.'<sup>25</sup> Such examples appear to indicate a willingness on Dworkin's part to extend his conclusions to a broader category than those in late-stage dementia. In any case, whether this interpretation correctly gauges Dworkin's intention, his account of autonomy and beneficence seem subject to such extension and are therefore worth examining.

To simplify syntax, I will refer to the subjects of my concern in the following way. I will refer to a person when in a stage of competence as P1. I will refer to the person occupying the same body as P1, but when in a stage of dementia, as P2. I will assume for the purposes of this paper that P1 and P2 are not different people but rather pick out different selves or different stages within the same person's life.<sup>26</sup>

In Dworkin's view, if prior to the onset of dementia, I sign a living will dictating that should I mentally deteriorate to a particular stage, my life should be terminated, then no matter how much I enjoy my life, and insist upon its continuation, nonetheless others will show fundamental respect for me by permitting me to die (or by killing me, depending on the contents of the directive). In this example, P1 issues the directive that P2 is to be killed and P2 pleads against this directive. Alternatively, if, when competent, I direct that I must continue living during my demented stage no matter what--even if I am in utter pain and begging for relief--then others will show me respect by allowing me to continue my life and would disrespect me by providing lethal relief.

Dworkin's justification for his conclusions about these cases runs as follows. He believes that we must, when deliberating about what action to take concerning the continuation of the lives of demented people, consider their rights of autonomy as well as their rights to our beneficence. Considerations about respect for autonomy, he thinks, come out clearly in favor of adhering to advance directives. Dworkin arrives at this conclusion by way of an analysis of two main justifications for respecting autonomy. The first, the *evidentiary account*, stresses that we should respect the decisions of others and

refrain from interfering with others' lives without invitation, because individuals generally make the best judgments about what is in their own best self-regarding interests.<sup>27</sup> Respecting another's autonomy, is, as a rule, the best way to promote her welfare, and not simply because among her various desires is the desire for control. Basing respect for autonomy on these grounds gives us little reason to respect the expressed wishes of demented people, because it is less plausible to think that they generally make the best judgments about what is in their best interests.

Dworkin finds the evidentiary account inadequate, however, or at least incomplete, for two reasons.<sup>28</sup> First, the evidentiary view cannot explain why respect for autonomy would direct us, as he thinks it does, to permit someone to behave in ways that she herself acknowledges as contrary to her best interests or as akratic. Second, it neglects those cases in which one justifiably and understandably uses one's autonomy to further the interests of others, even at one's own overall expense. These considerations lead Dworkin to posit that some other justificatory ground must support respect for autonomy. He suggests that an appeal to 'integrity' may supply this missing ground. Dworkin contends that autonomy commands respect because it protects the capacity to express one's character through one's actions, to create and fashion a distinctive personality that propels one's life, and thereby to structure a life around one's own values. Dworkin argues that this view does not assume that every action a person performs will reflect consistency or structure, but that autonomy "encourages and protects people's general capacity to lead their lives out of a distinctive sense of their own character, a sense of what is important to and for them."<sup>29</sup>

Appeal to the *integrity account* clearly addresses the second shortcoming of the evidentiary account. I may wish to lead a life structured not only around furthering my own self-regarding interests, but also devoted to fulfilling interests of others. I may also reasonably devote myself to other forms of value, even if such pursuits are ultimately to my detriment or only indirectly serve my self-regarding interests.

Less clear, though, is how an appeal to the integrity-based view could justify protection for acknowledged akratic behavior. One might, of course, be in some peculiar and precious way dedicated to living a rakish, imprudent life driven by a misguided but beguiling romanticism. But for those for whom akratic action is entirely out of character or unintentional, it is unclear how the integrity-based account lends support for respecting those actions. Dworkin might argue that the freedom to perform actions that are out of character is necessary for developing the ability to perform actions within character, but then, if this instrumental move works to support the integrity account, why couldn't similar arguments be made to support the evidentiary account? Perhaps the appropriate argument here is that without the freedom to deviate from one's value structure, the value of one's accomplishment in creating and sustaining a life guided by certain values is lessened. Perhaps we should also say that all self-propelled actions contribute to the project of producing a self-fashioned character and life, although the sum of these actions may produce a different product than what one hopes or intends to create.

In any case, Dworkin argues that neither of these two accounts would compel us to respect a permanently demented patient's requests, expressed preferences or decisions, because the demented person lacks the capacities of character-structuring presupposed by the integrity account and the capacities for savvy deliberation presupposed by the evidentiary account. Both accounts point us toward following the directives issued by that person whilst she was in full command of her capacities. Suppose, however, that although P1 directed that she be killed were she to become demented, that P2 is happy and expresses desires to continue living while exhibiting terror at the prospect of her death. Shouldn't her contemporary wishes supersede her past decision? Doesn't respect for autonomy dictate that we should refrain from acting contrary to P2's expressed wishes?

Quite the contrary, says Dworkin. Keeping the demented person alive where her precedent self has asked that she be killed in such a state "violates rather than respects her autonomy."<sup>30</sup> He justifies this

fairly chilling conclusion by asking us to reflect upon the case of a temporarily deranged Jehovah's Witness. He regards the case as analogous to the situation of the demented. Dworkin persuasively observes that it would be wrong to provide a transfusion to a demanding, yet temporarily deranged, Jehovah's Witness. Dworkin does not believe that it is impossible for agents to reverse or retract previous decisions they have made. Agents may change their minds, but only under the proper conditions. The deranged Jehovah's Witness, Dworkin observes, lacks the necessary capacity for a fresh exercise of autonomy and his demands, therefore, cannot overturn his previous resolve. His former decision remains in force because no new decision by a person capable of autonomous deliberation has annulled it. On the integrity-based value of autonomy, we respect the autonomy of the Jehovah's Witness by respecting his decisions about the character of his life made when he was in full control of his deliberative capacities. Likewise, Dworkin believes that the integrity-based view of autonomy supports the idea that we should not indulge the deranged since they lack the necessary capacities to make decisions that contribute to the aim of building and expressing a coherent and distinctive character. Given his analysis of the Jehovah's Witness case, Dworkin thinks that it follows that we respect the autonomy of the demented person best by allowing her to die as per her previous directive, despite any contemporary protestations or signs of happiness.

I am skeptical about the analogy between the Jehovah's Witness case and the demented patient's situation. My unease over this case can, I think, be traced to a suspicion that Dworkin neglects an important aspect of the grounds for valuing autonomy. This aspect may be uncovered by examining the force of the Jehovah's Witness example and identifying some of the disanalogies with the case of the demented.

It seems important to Dworkin's example that the derangement of the Jehovah's Witness is temporary and further, that if the life is saved, the Jehovah's Witness with full capacities will re-emerge

and will regard our decision to deliver a transfusion with horror and revulsion. Dworkin rightly insists that the prospect of the Witness's regret cannot be what motivates us to respect the Jehovah's Witness's prior decisions against treatment, because we should accede to a lucid Jehovah's Witness's request for treatment even if we know that person will later regret her decision. Anticipated regret, then, cannot be the salient feature restraining us from providing treatment; if it were, it would cut against respecting autonomous decisions in cases in which we agree they merit respect.<sup>31</sup> There is an important asymmetry, however, between the Jehovah's Witness case and the cases of dementia Dworkin considers. In the Jehovah's Witness case, the Witness's capacity for full-blown autonomy (a capacity to render decisions which is characterized by a stable, developed character and a fully rational intellect capable of assessing options and of engaging in self-reflection) has not been permanently lost but rather lies in abeyance. We may regret that we cannot accede to the deranged Witness's request for treatment, but we refrain from doing so because we have evidence of the Jehovah's Witness's true autonomous decision. We know that she will reemerge with this full capacity and our action will have frustrated its aim. In the case of permanent dementia, though, the capacity for full-blown autonomy is lost and will not be recovered.

This places decisions and requests of the demented person in a different light. It is one thing to refuse to listen to a person who has temporarily lost her senses and acts extremely out of character, but who will, or can, in time, return to her senses and will have to live with our action. We might think metaphorically about her deranged behavior in terms of an alien self who has temporarily commandeered her body. We decline to obey her because a rather different personality with a different form of judgment will have to live with the effects of her temporary yet powerful reign. It is both that she will regret the decision *and* that the decision was made under conditions that were not true to herself. In the case of the permanently demented, however, the "real" self will not return and be forced

to live with the consequences of a temporary period of insanity. This may make some difference. In the Jehovah's Witness case, P1 will return, is the more capable decisionmaker, and will have to live with the judgments for a long period of time. Where more permanent dementia sets in, the two factors come apart. P1 may be the more capable decisionmaker, but P2 will have to live with the consequences of the decisions and not P1. Given that the fully capacitated self has been ushered from the scene, our reason for overriding the expressed will of the deranged self diminishes. Since she is now operating with all of her possible decision-making capacities characteristically in force, limited though this set may be, there may be a reason to treat her expression of her will as a retraction of her previous decision.

Dworkin contends that there is nothing about P2's judgment that commands any respect. Her decisions do not promise to teach us much about what is in her best interests. Further, she cannot reflect upon her critical interests at all and hence, she is not capable of making the kinds of decisions which the integrity-based view recognizes as exercises of autonomy. Keeping in mind the Jehovah's Witness case, however, it may be apparent that Dworkin glosses over an important dimension of autonomy's importance: the basic value of being in control of one's experience and in not having experiences forced or imposed upon one when one's will is to the contrary. The value of basic control over and self-direction of one's experiences, even momentary and slight ones, is an important ground for respect for autonomy distinct from the two foundations Dworkin discusses. Certainly, the evidentiary and integrity accounts identify strong and important reasons for respecting autonomy, but the value of self-determination is not fully captured by the values pegged by these accounts. Understanding that one's choices generally best promote one's welfare or express one's character may isolate what is noble and most prized about the achievement of leading an autonomous life. Yet, these values do not exhaust why we think people have some strong rights of control over their lives. There are many cases in which a person does not choose what is in her best interests, and in which her choices will not contribute

substantially to the conscious creation or expression of a distinctive character structured around a set of values, yet there is still *some* (much!) reason to respect that person's choice and to refrain from forcing a contrary decision upon that person. We value and respect autonomy in part because we recognize that one's life is solely one's own and that one must bear and endure singly one's own conscious experience. Given this, the right and ability to select for oneself the contents of this experience is fitting and appropriate. To a certain extent, one is wronged if one's self-regarding experience is dictated or imposed by another. Respecting another's decisions is not simply a way to promote another's welfare or to facilitate the valuable process of creating and expressing a distinctive character. In a more basic way, I believe it serves as an acknowledgment of the moral importance of the uniqueness and separateness of persons and the deep, irreducible fact that one's life is the only life one has. Importantly, these facts do not just amount to the fact that one's *character* is distinct from that of others--there is more to one's mental life than is properly regarded as one's character (take, for instance, pain). Moreover, even when misdirected or confused, a life determined from within — driven by that person's will — is more valuable and distinctively human than one manipulated and steered by others.

Notably, the dispute that I am pursuing here with Dworkin is not a dispute about whether autonomy has intrinsic or extrinsic value. Many discussions concerning the value of autonomy revolve around that question.<sup>32</sup> My challenge is not to the type of evaluation Dworkin assigns to autonomy (its intrinsic value) but to his identification of what it is in virtue of which autonomy has value. I mean to suggest that Dworkin has identified its intrinsically valuable features too narrowly--it is not just in virtue of autonomy's expressive nature that it is intrinsically valuable but also in virtue of its being a manifestation of individual control.

I do not dispute the integrity-based account or its relative importance. I simply wish to stress that this broader dimension of control merits recognition and exerts some moral force. Drawing attention to

it will also call into question the conditions under which one's autonomous control extends into the future. It is difficult to elaborate fluently upon what exactly this other moral foundation consists in or why it is important, other than to gesture at what I take to be basic facts carrying moral significance: one's life and one's conscious experience are one's own, distinct from others, and that the simple exercise of control over one's experience has some value independent of what it accomplishes. Rather than repeating these invocations of the ineffable significance of separateness and self-determination, I will attempt to render the thought more appealing by way of two routes: first, via an investigation into the motivations behind the integrity account and second, by considering some overlooked aspects of the case of children, to whom demented patients are often compared.

Dworkin's integrity-based account of autonomy locates the justificatory ground for respect for one's chosen action in the capacity to have a distinctive character and act out of one's personality. Only where this capacity exists over an extended and continuous period of time does one have the requisite abilities to participate under the banner of integrity and only then can one claim rights to autonomy. But suppose we probe deeper and ask why it is important to be able to *act* out of a distinctive personality once it is formed---why exactly is the integrity-based account compelling at all? The suggestion that seems correct to me, at least in part, is that autonomous action attempts to synchronize one's inner and outer life. Autonomous action permits one to try to fashion a life or even just happenings and feelings that accord with one's subjective aims, desires and visions of oneself and one's experience. Autonomy, then, facilitates a sort of unity between one's will and self-consciousness, and one's endured experience and life, more broadly conceived. When autonomy's exercise proceeds at its best, the unity one achieves will result in a distinctive, self-fashioned personality that coordinates with the life lived. This is a valuable and important accomplishment in itself, but it is hard to believe that it is a prerequisite for autonomy's having any intrinsic value, or that its value is substantially different in kind from the value of

exercises of self-control that are not closely connected to the expression or creation of a distinctive character. If I am right about its elaboration, then the deeper layer of rationalization supporting the integrity account would point us beyond this account and toward the broader, "control" account of which the integrity account is a prominent, but only partial component.

This further elaboration of the justification of the integrity account raises some difficulties, though, for the defense of advance directives in the case of dementia. On the one hand, if autonomy's value derives from the importance of unifying one's experience with one's projected vision of oneself and one's personality, then why would we think that autonomy rights should extend control to include stages of one's life in which one's personality has abruptly ended? For in such a case, the unity cannot be achieved and the personality expression is mostly illusory and insufficiently genuine.

On the other hand, if my suggestion is right about the underlying motivations behind the appeal to integrity, then the value of autonomy may be reduced in cases in which one's capacity to form and express a personality has diminished, but it will not be extinguished. Even if a person lacks a coherent character structured around an ordered scheme of values, she may well have desires, aims and preferences that could be synchronized with her life. There seem to be two components of the value of autonomy on this account: on the one hand, there is the value of unifying one's subjective desires and visions with one's lived experience, and on the other hand, there is the value of effecting this unity through one's own action. Those with normal capacities may be capable of both and may actively contribute to the achievement of a rich and complex personal unity. Demented people may lack the abilities to effect this unity (and hence some forms of paternalism may thereby be justified to help them bring about what it is they want). Further, that which can be unified may be more paltry and dilute. Still, to the extent that they can express their will, some of what is of value about autonomy is at stake here. They surely can attempt to control the nature of their lived experience and to experience (although

perhaps not effectuate on their own) a unity between their subjective aims regarding their experience and its reality.

Even where people incapable of carrying out or expressing their will but we can discern their preferences, acknowledging the importance of this kind of unity distinguishes a type of substituted judgment from a 'best interests' approach. The typical form of substituted judgment (what I will call SJ<sub>1</sub>) discussed in the medical ethics literature refers to an attempt to assess what a person would want in some circumstance were she able to assess the situation competently. This corresponds quite closely to Dworkin's understanding of what lies in an agent's best interests.<sup>33</sup> A distinct sort of substituted judgment (SJ<sub>2</sub>) attempts to glean what the person, as she is currently capacitated, actually does want, though she may be incapable of expressing her desires. The former type of substitute judgment, though a popular conception, is given no support by the analysis of autonomy's value where competence will not be restored. To the contrary, given the challenge to the moral significance of prior commands where there has been significant, permanent personality change, the significance of the results of SJ<sub>1</sub> should be called into question. There are, however, autonomy-based reasons to attend to the results of SJ<sub>2</sub>. The fact that one cannot *express* one's will does not take away from the value of there being some unity between one's will and one's experience. SJ<sub>2</sub> is simply a means of discovering what it would take to achieve this unity.

Of course, both forms of substituted judgment are not fully 'substitutable' for the first person exercise of autonomy, though. Absent from both forms is the control over one's life that is achieved through self-implementation.<sup>34</sup> On both the integrity and the control accounts of autonomy, there is a special significance to one's engaging in processes of *self*-creation and *self*-direction. These accounts may recognize autonomy value in some types of substituted judgment, but they may still exhibit a principled preference for actual or first personal judgments.

The point I am trying to make can be approached from a different direction. As I remarked earlier, demented people are often analogized with children in order to make obvious the permissibility of paternalism toward the demented. But the case of children should perhaps set off some alarms. If we accept the evidentiary and integrity accounts as the sole underpinnings of the value of autonomy, then shouldn't we begin to wonder why we respect children's decisions as often and in the ways we do? Much attention is paid to the permissibility of paternalistic interference for children; it is emphasized that children lack proper deliberative capacities for autonomous decision-making. Strangely, there is little attention to the fact that paternalistic interference is not continuously or even regularly exercised over most aspects of children's lives. Further, many paternalistic actions are often exercised with a measure of reluctance and regret (albeit outweighed by the good we are accomplishing), as though we are both impeding and overcoming something of value.

Why do we respect so many of children's decisions and preferences about their own lives? Often, the evidentiary or the integrity accounts will not supply a persuasive answer. First, children do not always or consistently know what is in their best interests. Moreover, few of them conceive of or have the capacity to conceive of their actions as expressing a sense of self or a character constructed to reflect a chosen structure of values. As in Dworkin's description of the demented, many of their decisions may not flow from or reflect any coherent character, fit a consistent theme or be part of a reflective project to construct such a character around a system of values. Nonetheless, absent great risk or substantial miscalculation of possible benefit, children's decisions and preferences exert substantial moral weight and command our respect (though how much of this weight is recognized varies from parent to parent), even though their deliberative and reflective capacities are diminished and insufficiently developed to be convincingly assimilated into the evidentiary or integrity models of valuable autonomous behavior. Even where we override their preferences, we feel the residual need to justify our control and

interferences. Our justifications are not simply educatory but apologetic and justificatory in tone and content.

Surely, some of why we respect children's decisions can be explained by the thought that decision-making helps them to develop the proper skills and capacities required for 'true' autonomous action later. This, however, cannot be the full explanation, and it certainly is not the simplest and most straightforward explanation in all cases. Not all of the everyday, picayune decisions children make are necessary for this learning process nor pertinent to the development of their characters. Further, it would not explain the residual justificatory obligation in cases in which justified paternalism takes place. Most pertinent to my claim, though, is the reaction we have to a terminally ill child who we know will not grow into adulthood and will never have the fully developed intellectual and intentional capacities and the moral sensibilities associated with 'full autonomy' and its richest realization. This case provides a more germane analogy to the case of dementia than analysis of our general treatment of children with full futures supplies. In this case, I do not think that our conviction that we should accede to many of the child's plans and demands would wane, even in cases where we thought the plans were seriously (though not dangerously) flawed. Respect for the fact that the child's life is hers would exert force over us even where her capacities were not fully developed and could not become fully developed through practice. Our reactions to this case show, I think, that we recognize that there is some value simply to expressing one's will and thereby determining the nature of one's experience, even where such control does not reliably maximize one's interests or contribute to the conditions necessary for a life with full Dworkinian integrity and unity.

Dworkin argues that showing respect for autonomy of a person who has become demented requires respecting her *precedent autonomy*, i.e., the decisions she forged before the decline into dementia. He also argues that precedent autonomy surmounts any interests to the contrary the person might have. I

wish to contest both of these claims. First, as I have been suggesting, the decision that is the product of precedent autonomy may conflict with the preferences that the demented person currently exhibits or expresses. The precedent decision may direct that a person be killed or allowed to die should she become demented, although while demented she resists this decision and affirms a willingness to live; alternatively, prior to dementia, she may direct that no assistance be given to her to enable her to die although during her dementia while in pain and distress she articulates a will to die. Dworkin insists that respect for autonomy entails following these precedent decisions because the person cannot retract this decision through a fresh exercise of the will. I am less sure of this conclusion. It strikes me that there is some value to the will demented people express which may command our respect as exercises of autonomy, albeit etiolated ones, and which may suffice to nullify previously made decisions. Exercise of this type of autonomy might not command respect where fuller capacities for autonomy were present but suppressed (as in the case of the temporarily deranged). But, if this control autonomy is the only type available, given the person's capacities, there may be better reasons to take heed of it. Unlike the Jehovah's Witness case, a self with an altogether different will is not going to have to live with the results of the action undertaken. That her full capacities have been permanently stripped from her provides reason to challenge the continuing force of a past decision; it may also lend greater weight to the exercise of whatever capacities remain.

One might speculate that what really motivates the suggestion that there is reason to honor the demented person's preferences is a rather different objection: that the demented person is a different person from the issuer of the advance directive. If the person has changed this considerably, perhaps it is questionable whether the demented person is indeed the same person as the person who wrote the advance directive. Not only have there been significant physical and psychological changes in the person, but these changes did not occur under the possibility of the conscious direction or control of the

person undergoing change.<sup>35</sup> If the demented person is not the same person who wrote the advance directive, then there is no reason--autonomy-centered or otherwise--to respect the advance directive. The power of autonomous decision does not extend this far. Respecting the directive would seem to endorse the enslavement or at least the wrongful appropriation of control over another person.

Dworkin acknowledges that his conclusions depend upon the assumption that personal identity survives dementia. He frequently reiterates that the demented person is not a new, distinct person from the person with heightened intellectual powers who once occupied her body. Rather, her dementia represents a stage of an entire life of a person who has become demented. Instead of examining Dworkin's defense of this position, I am more interested in disputing the diagnosis that the autonomy considerations I have forwarded disguise and depend upon psychological reductionist views about personal identity. To dispel this suspicion, let us take it as a given that, for Dworkin's reasons or on the basis of some other persuasive theory of personal identity, we are compelled to agree that personal identity is preserved where a person declines into dementia, even if there is a radical, abrupt change in character.

I want to resist the idea that if personal identity is maintained, then, respect to the autonomy entails that P1's decisions hold sway with respect to P2's future. There is something puzzling about Dworkin's conjunction of claims that P2 is a person, that P2's decisions do not manifest autonomy values, and that P1's decisions should legitimately control P2's life. Dworkin's justifications for ignoring P2's decisions derive from the fact that P2's capacities are diminished and her personality is shifting and unstable. If shifts in personality are sufficient to disqualify one from exercising respectable autonomy, then it is unclear why the major shift in personality and in capacities undergone by P (a shift not just in preferences but in aptitudes and abilities as well) would not pose a barrier to justifying the extension of P1's power over P2. If the value of P1's autonomy is explained in virtue of the expression of P1's

continuing character, then dementia cases should trouble us, for they are marked by a sharp, uncontrollable and unmeditated disruption and change in character. It is puzzling given this disruption why Dworkin would think it was obvious that P2's life was properly governed by P1's decisions since what happens to P2 and P2 does cannot seriously be taken as a *direct* expression of P1's character. That P1 could indirectly express her character by manipulating P2 does not justify such actions, any more than it would justify coercing a third party on the grounds that such coercion might express something about oneself; the directness of expression is a vital condition for underwriting protections for autonomy.

Strangely, it is often assumed that if non-reductionism about personal identity were true, we could with confidence explain such things as binding promises over our future selves no matter what their features and differences. In many cases it is not so simple.<sup>36</sup> If the justification for respecting autonomy emanates from considerations relating to the expression or development of personality or character, and does not directly derive from those facts that make one the same continuing person through time, then there is a further question beyond whether and how autonomy has value: namely, we must confront the issue as to what the proper temporal boundaries governing autonomous decisions are. Even if psychological reductionists like Parfit are mistaken about what personal identity consists in, they may still be right about the conditions necessary for assessing responsibility.<sup>37</sup>

Thus far, I have tried to suggest: first, that there are reasons to doubt that precedent autonomy has the range necessary to justify the application of advance directives; second, to argue that, contrary to Dworkin's claims, even if precedent autonomy has such a range, there is no warrant to conclude that the expression of the demented person's will has *no* autonomy value whatsoever. This last point, though, even if successful, would not settle the issue about advance directives. I have not attempted to show that the will of demented people should command as much respect as the will of the non-demented. As

with children, the will of demented people may have some autonomy value, but that may not tell the whole story. Given their diminished capacities, the autonomy of demented people may command some of our respect, but could, in appropriate circumstances, be trumped by our concern for their interests. If either of the critical tasks I have been pursuing is successful, then we must investigate what is in the interest of the demented person.<sup>38</sup> In the next section, I do not try to fully consider this question. I only seek to show that Dworkin's account of beneficence is inadequate to salvage his defense of advance directives and also that the account is in some tension with his assumed stance of religious neutrality.

### III

Apart from any respect we owe to the demented person's autonomy, whether previously or contemporaneously exerted, Dworkin recognizes that we must also explore what duties of beneficence we have toward the demented. Not surprisingly, Dworkin believes that considerations of autonomy and beneficence both support honoring the advance directive. At this stage, the advance directive's evidentiary properties resurface. Dworkin might argue that even if precedent autonomy as valued by the integrity account cannot extend its reign over P2, the directive may be the best available guide to P's interests. For, Dworkin argues, persuasively, that P1 may feel that P has strong 'critical' interests concerning what happens to P2. Some may feel that a life of unity and integrity may be spoiled if a prolonged stage of dementia is tagged on to the end of it; as Dworkin puts it, "as we judge a literary work,...[a] bad ending mars what went before."<sup>39</sup> Even if this is true, it remains to be shown that P1's interests are relevant to our beneficent concern for P2.

Dworkin's effort to meet this burden may be reconstructed in the following way. He acknowledges that demented people experience pleasure and pain and therefore have contemporary experiential interests. The demented person also has critical interests, although she is incapable of sound reflection about them. These critical interests, however, attach only to P2 *qua* P, that is, through her connection to

P1; she has none *qua* P2 alone. These critical interests of P2 arise in virtue of P1's more complex character, P1's vision of the unity, integrity and character of her life, and her previously entertained views about how her life expresses and respects the sanctity of life. Dworkin argues that P2 has no critical interests in any forward-looking way. That is, P2 *qua* P2 has no positive critical interest in the continuation of her life since P2 is incapable of forming and pursuing the acts and attachments which give life value. The value of a life, Dworkin insists, must be generated from the inside and this is no longer possible for P2 to do, given her diminished capacities.<sup>40</sup> Her continued existence can only serve her critical interests insofar as her existence would be a symbol of P1's persistence or tenacity, qualities that P1 more resolutely and deliberately manifested.

*Prima facie*, this position seems like a strange one for Dworkin to occupy. Given his professed aim to avoid partisanship about the sanctity of life, it seems odd for him to say that the life of the demented cannot be made valuable enough for it to be in her interest *qua* demented person for it to continue. I will return to this difficulty later on, but it may be helpful to sketch out a possible line of reply open to Dworkin in order to carry out the exposition of his view of beneficence. Perhaps Dworkin would attempt to evade this difficulty by arguing that the reason why continued life cannot lie within the critical interests of the demented person is not that her life itself is not valuable, but due to some fact about the *nature* of a critical interest. Dworkin's thought may be that a critical interest is just not the type of thing that could be tacked onto someone; for a person to have a critical interest, it must be possible at least for it to be grasped, recognized and adopted by that person. Since the demented person cannot have a perspective on what it is that makes his life go well, he cannot, therefore, *qua* demented person have critical interests.<sup>41</sup>

If the inability of demented people *qua* demented to have critical interests is established, then as Dworkin acknowledges, conflicts may arise between P2's contemporary experiential interests and P1's

critical interests (as well as with P1's precedent autonomy), but no conflict can arise between the *critical* interests of P1 and P2. This latter claim, that P2 cannot generate critical interests that diverge from P1's, permits Dworkin to advance a reconciliatory strategy that eliminates the possibility of conflict between autonomy values and beneficence. Dworkin argues that since precedent autonomy will likely be guided by P1's assessment of her interests and since such decisions will reflect P1's weighing (or otherwise taking account of) of her critical interests against P2's experiential interests, there is no conflict between respecting precedent autonomy and discharging our duties of beneficence. "Once we accept that we must judge [the demented person's] interests as she did when competent to do so--then the conflict between autonomy and beneficence seems to disappear."<sup>42</sup> Beneficence, in Dworkin's view, provides us with a separate positive ground for respecting advance directives, because their implementation will further the critical interests of P.

There are a number of difficult issues over which this argument too hastily glides. First, there is the question as to whether--if beneficence is our aim--we should place priority on the critical interests of P1 over the experiential interests of P2. Dworkin does not provide a strong justification for sharply discounting P2's experiential interests. He merely notes that these interests would have been taken into account by P1 when contemplating the advance directive. If P1 would have legitimate authority over P2, because of P1's autonomy, that might give us reason to act as though P1's decision was well-considered and took all relevant factors into account. Surely, though, it does not settle that the *beneficent* thing to do, therefore, is to satisfy the critical interest of P1. There are reasons to doubt the evidentiary strength of the advance directive. Although people may generally assess their own interests well, imagining what it would be like to be demented and to endure experiences not entirely accessible to mental and emotional processing is not an easy task; there are reasons to question how perceptive P1's judgment would be about the importance and nature of these experiential interests. Dworkin's claim cannot be

that P1's assessment just makes it the case that the denial or frustration of the assessed critical interests *is* perforce counter to P's best interests. Such a move would represent backsliding on his previous acknowledgement that one can get it wrong as to what is in one's critical interests,<sup>43</sup> and would be inconsistent with his critique of the purely evidentiary account of autonomy.

Dworkin needs to argue that critical interests just matter more than experiential interests do, full stop. This may often be true, but the case of demented people poses a challenge. Initially, for reasons I have already discussed, we should worry about whether the critical interests of P1 should exert such moral force, given P's abrupt change in personality. Even if P1 and P2 are identical for purposes of assessing philosophical issues of personal identity, given the dramatic personality change P has undergone, it is unclear whether we should think of P1's interest in P2 as exerting any strong moral pull on us. P1's interest may be understandable in light of the body P1 and P2 share and the circle of friends and family that may transfer their attachment to P1 to include concern for P2 as well, despite P's lack of a continuous character. That does not mean, though, that we should afford much weight to the interests of P1, any more than we would be compelled to give much weight to an understandable interest P1 might take in her doppelganger, given the inevitable connections others might make between them, if our aim were to act beneficently toward the doppelganger. Because P2 differs so radically from P1 and because P2 cannot contribute to the life project envisioned by P1, it is not obvious that the beneficent concern for P we evince during P2's life should naturally focus upon P1's interests.

The persuasiveness of the previous point about interests may well depend upon the plausibility of the earlier discussion about the temporally limited validity of P1's autonomy. Dworkin's account of beneficence is vulnerable in independent ways, though. Supposing we were to grant to Dworkin that P1's critical interests should exert some legitimate moral force over and above the weight that the interests of others in P2 would exert. Another issue would still stand in the way of affirming the

propriety of implementing advance directives, namely whether a beneficent approach would regard P1's critical interests as displacing or outweighing P2's experiential interests. We might be inclined, with Dworkin, to give critical interests greater weight because they reflect a more sweeping, deliberate and deep vision of a life; they concern what makes a life go well, not simply what makes it enjoyable. In the life of a person with a multifaceted personality and an ability to reflect upon it, whether one's whole life goes well seems obviously of greater moment than whether fleeting pleasures are enjoyed or pains endured. Further, a reflective person's ability to understand critical interests and their importance may allow her to cope with and rationalize the frustration of experiential interests. The demented person, however, if Dworkin is right, does not have a personality as fitted to coping with the frustration of experiential interests; she cannot appreciate the significance of her critical interests as P1 conceives them, nor can she grasp their connection to herself. It seems exceptionally cruel in such cases to force such a person to live through agony so that her critical interest of living a life marked by fortitude and perseverance, an interest she no longer recognizes, accepts or even understands, may be fulfilled. Likewise, it seems barbaric to ignore the experiential interests of a person whose life is filled with simple joys and delights and to cut this life off short, to kill her, so that the entire life of P is unsullied by a lingering period of intellectual deterioration and decline. In a case in which all that a person is capable of is an understanding of her experiential desires, there are good reasons to take such interests more seriously and for them to play a more prominent role in one's analysis of beneficence than they do against the backdrop of deeper critical interests.<sup>44</sup> Whether or not it is appallingly cruel to implement a directive which runs counter to the only remaining interests a person has, surely it stretches the notion of beneficence to a breaking point to disregard these experiential interests in the name of kindness.

Dworkin does consider the objection that experiential interests may take on greater significance in circumstances of dementia, but his replies sidestep the point. He acknowledges that demented people

lack a sense of their own critical interests, but he analogizes to the case of the permanently vegetative and argues that their obliviousness to their critical interests does not provide us with "a good reason for ignoring their fate."<sup>45</sup> Of course, the suggestion I am entertaining does not advocate disregard for the fate of the demented person. Quite the contrary, for what is at issue is what proper regard for her fate consists in and whether it requires placing very strong weight on her contemporary desires and interests. Analogizing to the case of the persistently vegetative is inapt here because the persistently vegetative person has no consciousness whatsoever and hence no experiential interests. Even if we are convinced that advance directives should govern our actions toward persistently vegetative patients, nothing may follow about demented patients, given that the complexity of their case involves their having ongoing, conscious lives.

In any case, I suspect that the situation of demented people is even more difficult and complex. Up to this point, I have tried to argue that Dworkin fails to give a persuasive interpretation of beneficence that would support implementing advanced directives. The experiential interests of demented people may conflict with the directive's dictates and these interests plausibly exert more moral force than Dworkin admits. There is yet a further problem with Dworkin's analysis of beneficence, though. Dworkin overly casually dismisses the possibility that P2 may have critical interests of her own which arise independent of her connection to P1 and P1's assessed critical interests.

Dworkin's denial of P2's having critical interests of her own is not entirely convincing or clear. Dworkin only seems to address the case in which the advance directive issues instructions to terminate the life of the demented person pursuant to P1's critical interests. Here, he takes pains to stress that the demented person cannot have a positive critical interest in continuing her life since the life itself cannot manifest any internally-generated value. To make this compatible with the injunction against relying upon any view about the sanctity of life, we might advert to the structural claims about the

nature of interests, that earlier I imagined were available to Dworkin.

But the plausibility of such a maneuver, I suspect, derives from the narrow range of examples Dworkin attends to at this point. While advancing this claim about critical interests, Dworkin addresses only the question of whether it could be in one's positive critical interest to continue living. This, however, leaves open a significant, gaping hole in Dworkin's account. Even if positive value cannot be poured into a life from outside it, because active agency, identification and reflection are necessary to grasp and realize the positive value of the life, surely it must still be possible for a life to go badly due to externally originating forces that have an effect on the person; that is, negative value can be brought into a life from the outside. Dworkin must concede the possibility of external forces affecting the value of a life if he is to make any sense of the practice of writing and respecting advance directives to protect one's critical interests. As Dworkin argues, how one dies and whether one's body persists past the point of one's mental lucidity can be a matter within one's critical interests, even if one's death or one's continued existence is not self-inflicted. As Dworkin contends, it is a matter of critical interest for persistent vegetative patients who are not aware of the state of their existence, much less able to contribute to it. If that is the case, then it seems surely plausible to say that if a demented person's life is full of pain and misery and empty of the compensation of pleasure, that sort of existence--taken in itself--is not simply a hedonic disaster but is not a worthwhile life at all, and one not in the critical interest of that person to continue.<sup>46</sup> If this is correct, then contrary to Dworkin's assertion, it is not only possible for demented people to have critical interests, but it is moreover possible for the critical interests of the demented person, along with his experiential interests, to conflict with the critical interests of P1.

We cannot easily conclude that the beneficent thing to do is to further the critical interests of the person as she conceived them prior to the onset of dementia, for they may have changed dramatically along with her capacity to conceive of them. Before we should concur with Dworkin that

implementation of the advance directive is permissible, much less required, we would have to consider whether there any reasons to hold the previously-conceived-of critical interests as exerting force, and then we would have to explain why they would trump her contemporary critical interests. I do not know how such an argument would go and I doubt it could be easily constructed.

Further, if Dworkin concedes the possibility that externally originating events can run counter to one's critical interests, then soon we will be led to ask why it could not be possible for externally originating events to further one's critical interests--to make one's life go better--although one made no positive, reflective contribution to their furtherance. As Dworkin explains it, whether something is in one's critical interest depends upon whether it makes one's life as a human being go well. So the question we should ask initially is not what demented people are capable of constructing out of their lives, but whether the life of a demented person *qua* demented person, can go well or badly at all. I have tried to suggest some ways in which demented people can have terrible lives, as when they are kept in constant pain out of which they can make no sense in order to serve purposes they cannot understand, much less identify with. Surely it is also true that the life of the demented person can go well in ways not orchestrated or even understood by that person. She may thrive to the best of the abilities she has and this could render her life a good one -- certainly a better one than one characterized by frustration and despair.<sup>47</sup> Moreover, her continued livelihood may provide solace and joy to her loved ones and she may receive care and concern from other human beings. Participating in these relationships can make one's life go well and may make persistence part of one's critical interests even if this life is not directed by any self-conscious vision or plan. It seems possible, then, that continuing or ending life could impact the critical interest of a demented person *qua* demented person. Contrary to Dworkin's suggestion, there is no easy assurance available to us that the path of beneficence is drawn by the person's conception of her critical interests when she was lucid. And if that path is not clearly drawn, then neither will the

argument that precedent autonomy and beneficence coincide. The critical as well as the experiential interests of the demented person can diverge from the interests of the person as he conceived them prior to dementia. These freshly generated interests must command some of our concern. If that concern is directed at the demented patient, our beneficent impulses may well conflict with precedent autonomy.

These intuitive appeals may be grounded in a more explicit account of the difficulty I suspect that Dworkin's claims about the demented's critical interests place him in. Dworkin's problem is that he has explicitly ruled out taking a position on the sanctity of life. He has also, persuasively, argued that part of what makes a life go well may depend upon whether it reflects and respects the sanctity of life. If Dworkin consistently refrains from taking a position on the conditions under which life has intrinsic value, how intrinsic value is properly respected, and specifically, whether it has value only when enjoyed or affirmed by reflective beings, then he will not be able to rule out the claim that the demented person has a critical interest in living in such a way that reflects and respects the sanctity of life. Thus, to remain consistent with his stance of neutrality, Dworkin cannot, for instance, eliminate the possibility that a demented person has a critical interest in continuing her life even if it lacks much intentional reflection, direction or internal combustion. This is not to say that Dworkin's implicit substantive (in his view, religious) position about critical interests is thereby proven to be wrong; there is much to be said for his underlying view that what makes a life positively valuable depends on internal generative activity. This view may indeed reflect the proper understanding of what is intrinsically valuable about human life. The problem, though, is that this view cannot underwrite his arguments for advance directives if these arguments are supposed to fit into a framework that maintains its religious agnosticism.

If Dworkin's conclusions about advance directives are to be defended, a different line of justification needs to be presented. Dworkin seeks to defend advance directives without taking a controversial stand

on the value or sanctity of life and thinks that he can accomplish this by embarking on a neutral analysis of autonomy and the nature of interests, critical and experiential. But if I am right that an analysis of the nature of critical interests will not assure us of the coincidence of considerations of beneficence and autonomy, then Dworkin will have to make arguments about the substantive content of these interests. He will have to argue more directly that the life led by a demented person cannot matter and cannot have value. He must argue that the life that is led will not contain experiences of a type that are worthy, but not because the natures of critical interests and valuable lives are such that it is impossible for external events to impact them. Dworkin will have to argue, rather, that the capacities of a demented person are simply too impoverished to benefit a human being, and that such a life is not worthwhile. This argument will surely engage him in the debate about the nature of the sanctity of life.

Perhaps one could defend this somewhat exalted standard of what it takes to make a life worthwhile. On that issue, I will not comment but I will make some remarks about the position Dworkin is placed in. Dworkin could depart from neutrality and take up the view that the critical interests a demented person may have in continuing life are insufficiently important to make the life worthwhile, in order to defend the implementation of advance directives calling for termination of the demented life. Such a move will expose the way in which the defense of advance directives does not sit comfortably with or flow from a position of religious neutrality (as Dworkin conceives of it), but rather flows from a substantive view about which kinds of lives have objective value. Further, such a defense of directives would be importantly partial. If Dworkin adopts the substantive defense, then he will be harder-pressed to defend, as a matter of beneficence, implementing any particular advance directives which require that the demented life be prolonged, despite the critical and experiential interests of the demented patient. If Dworkin abjures taking the substantive line on the sanctity of life, then the argument for implementing advance directives falls importantly short. For, if my arguments have merit, then it is possible for the

demented person to have interests which deeply conflict with the interests and decisions the person rendered when lucid. If so, then it is a much more difficult task than Dworkin allows to reach the conclusion that the beneficent way to treat the demented person is to disregard her contemporary interests and to further her prior interests and decisions. Fulfillment of past, relinquished, desires may play some role in one's contemporary interests, but we tend to believe that their importance diminishes significantly if they are replaced by disparate contemporary interests.

At their strongest, the arguments I have given show that the contemporary interests as well as the will of demented people may clash with that person's exercise of precedent autonomy as well as the critical interests the person had before she became demented and that the contemporary interests and decisions should drive our deliberations as to how to treat the demented.<sup>48</sup> This suggests that Dworkin is mistaken in holding that we treat demented people with most respect by implementing advance directives. Far from being morally required to do so, we may not even be morally permitted to do so. At its weakest, the line I have been pursuing will show that Dworkin's neutral defense of advance directives is importantly incomplete. For it to be convincing, we either need some account as to how we may resolve the clash between the contemporary interests and the past interests of the person such that the past interests carry the day, or we require a revamped account of autonomy which can more convincingly explain why prior decisions merit respect and why they should be implemented even when they are at odds with beneficence properly understood. This, as I have suggested, is a particularly difficult claim to sustain on the integrity account of autonomy as well as upon the alternative control account I have forwarded. In any case, Dworkin's reconciliatory approach leads him to avoid tackling these difficult balancing questions. If I am correct, we will have to face them.<sup>49</sup>

## Endnotes

1. Ronald Dworkin, *Life's Dominion*, Knopf (New York: 1993). References are to this book unless otherwise specified.
2. See e.g., "Autonomy and the Demented Self," *The Milbank Quarterly* 64 (1986), 4-16; "Philosophical Issues Concerning the Rights of Patients Suffering Serious Permanent Dementia," in *Philosophical, Legal and Social Aspects of Surrogate Decisionmaking for Elderly Individuals: Contractor Documents for the Office of Technology Assessment* (May 1986); "The Right to Death," *N.Y. Review of Books* (January 1991); "Unenumerated Rights: Whether and How *Roe* Should Be Overruled," *University of Chicago Law Review* 58 (Winter 1992) 381-432; "The Center Holds!" *N. Y. Review of Books* (August 1992).
3. For criticisms of his conception of the religious and of his interpretation of the First Amendment see "Inside Out, Within and Beyond, or Backwards?" *Harvard Law Review* 107 (February 1994) 943-947 and Erik Rakowski, "The Sanctity of Human Life," 103 *Yale Law Review* 2049 (May 1994), reprinted in this volume.
4. Pp. 68-101. Dworkin characterizes the dispute about the sanctity of life as one regarding the 'relative moral importance of natural and human contributions to the inviolability of human lives' (p. 91). Presumably, though, there is another dispute regarding the relative weight that should be given to the intrinsic, impersonal value of life when it conflicts with the subjective value of a life.
5. Pp. 150, 157, 168.
6. Pp. 169-170. Dworkin's position on late-term abortion reflects his dubious presupposition that women who elect them do not take the sanctity of life seriously. But, information relevant to one's decision may not be available until late into the pregnancy and relevant factors may change within a pregnancy. Elsewhere in the book, Dworkin acknowledges that acting on reasons relating to the future health of one's child or one's familial or financial situation can reflect a serious view about the sanctity of life; why should the emergence of these reasons late into pregnancy make acting upon them frivolous? Finally, consider a person who, from the onset of pregnancy, struggled hard with the relevant issues and to make a commitment to the fetus and future child. As the pregnancy progressed and she experienced its mounting burdens, she realized that she could not make the kind of full-fledged good-faith commitment to the life it merited, so she aborted out of respect for the importance of a life's going well. As Dworkin recognizes, philosophers who devote their lives to understanding the significance of life frequently change their minds and have not been able to reach a stable consensus within 4 to 5 months. If those who study the subject believe the problem to be extremely difficult and perhaps intractable, why is it reasonable to expect faster deliberation on the part of pregnant women in particular? Why is lengthy deliberation ending in late-term abortion a sign that the woman was "indifferent to the moral and social meaning of her act" (p. 170)?
7. Laurence Tribe originally made an argument along these lines in "Foreword: Toward A Model of Roles in the Due Process of Life and Law," 87 *Harvard Law Review* (November 1973) 1-53, although he retreated from the position in *American Constitutional Law*, Foundation Press, 2nd ed. (New York: 1988), p. 1350.
8. See e.g., T.M. Scanlon, "Ronald Dworkin and the 'Sanctity of Life'," 40 *N.Y. Review of Books* (July 1993), 45-51; Galen Strawson, "The termination of wrongs and rights," *The Independent* (June 1993);

"Inside Out, Within and Beyond, or Backwards?" 107 *Harvard Law Review* (February 1994) 943-948, Laurence Tribe, "On the Edges of Life and Death," *N.Y. Times Book Review* (May 16, 1993).

9. P. 201.

10.P. 227.

11.Pp. 201, 230.

12.P. 230.

13.P. 231.

14. Dworkin discusses financing care in "Philosophical Issues Concerning the Rights of Patients Suffering Serious Permanent Dementia," U.S. Office of Technology Assessment (1986).

15. This argument assumes that there is a higher-order critical interest (or a condition on critical interests) which people have in living their lives according to their own assessments of their critical interests, even when these assessments are mistaken. Dworkin does not argue directly for this premise in the book, although he hints at it at p. 106. A more extended argument for "the constitutive view of value," the view that nothing may contribute to the value of a person's life without her endorsement, appears in "Foundations of Liberal Equality," pp. 75-86.

16. There may be some question as to whether the seriously demented can 'express a will' or exhibit preferences about the continuation of their lives. Some in the advanced stages of dementia may not be capable of the resistance I imagine and only some of my conclusions will apply to their cases. Dworkin, however, does not limit his conclusions to those people and insists that out of respect for their autonomy, we may best respect a person by implementing these directives even when they do express "choices and demands" (225) and "wishes" (228) to the contrary in their demented state. Later, I discuss the characterization of the demented.

17. I will not take on the more challenging task of ascertaining how other decisions regarding the demented should be made, should they continue to live, and who should make them.

18. This rules out those people who are born mentally impaired. The focus is meant to be upon those who once functioned normally and who undergo mental decline.

19. See Jeffrey Cummings et al., *Dementia: A Clinical Approach*, 2d edition, Butterworth-Heinemann, (Boston, 1992), pp. 1-2.

20. See A.F. Jorm, *The Epidemiology of Alzheimer's Disease and Related Disorders*, Chapman and Hall, (London: 1990), pp. 26-27.

21. See Joseph Foley, "The Experience of Being Demented," in *Dementia and Aging* ed. Robert Binstock et al., Johns Hopkins Press, (Baltimore: 1992.)

22. See, e.g. Barry Reisberg et al., "The Final Stages of Alzheimer's Disease: Issues for the Patient, Family and Professional Community," pp. 12-16, in *Alzheimer's Disease and Related Disorders*, ed. Richard

Mayeux et al., Charles Thomas. (Springfield: 1988)

23. Pp. 218-9.

24. Pp. 225.

25. P. 221. Other patients Dworkin describes as subject to his conclusions could not run a tub but recognized family members and were enheartened to see them, and could engage in simple activities with pleasure.

26. It is not obvious that the demented person who occupies the body once occupied by a competent person is identical to the competent person. Indeed, such cases provide grist for psychological reductionist views of personal identity. Nonetheless, Dworkin insists that personal identity is preserved even in cases of abrupt decline into dementia. See his creative discussion in "Philosophical Issues...." Other commentators have challenged advanced directives on grounds that the demented person is not identical to the author of the directive and on the grounds that the demented being is not a person at all. See e.g. Dan Brock, *Life and Death*, Cambridge U.P. (Cambridge: 1993), pp. 356-387; Dan Brock and Allen Buchanan, *Deciding for Others* Cambridge University Press (Cambridge: 1990) and Erik Rakowski, in this volume. I am more interested in exploring what would follow about the legitimacy of advance directives if we were to grant this point, for it may be the abrupt, involuntary change in personality that matters morally, not the retention of identity.

27. Pp. 222-3.

28. Pp. 223-224.

29. Pp. 224. For a similar account, see Gerald Dworkin, *The Theory and Practice of Autonomy*, Cambridge University Press (Cambridge: 1988), pp. 17, 20, 26.

30. P. 229.

31. P. 228.

32. The evidentiary account treasures autonomy in the latter way, for its usefulness as a causal lever shunting an agent toward her greatest welfare. One might read the "integrity" account as indirectly instrumental too, in much the way that rule utilitarianism manifests an indirect valuing of utility's maximization. That is, one might interpret the integrity account as prizing autonomy because it allows expression of one's character, where such robust expression over a lifetime ultimately promotes a person's welfare. Such a reading is possible, but I think mistaken. If integrity's value were instrumental, one would expect to encounter arguments as to why bad decisions should be respected, even if their impact on the person's welfare were far greater than the self-expression they facilitated. The integrity account, as I understand it, does not aim to identify the goal which autonomy serves but instead identifies what it is about autonomy that makes it intrinsically valuable. That is, it is in virtue of autonomy's exercise being a way in which one's character is created and expressed, that it has value and should be respected.

33. Not all take a constructivist approach to delineating what is in a person's best interests. On more objective accounts of interest, the contrast between substitute judgment and beneficence is sharper.

34. Thus, I disagree with the claim that actual consent enjoys no intrinsically privileged moral status over hypothetical consent. See Erik Rakowski, "Taking and Saving Lives," 93 *Columbia Law Review* (June 1993), pp. 1114-1115.

35. The lack of control over tremendous personality change is relevant in distinguishing between the case of dementia and more commonplace forms of character transformation and evolution.

36. Robert Adams and Jennifer Whiting both allude to related doubts as to whether the truth of non-reductionism would provide us with any justificatory reason for harboring concern for our future selves and for others' future selves. Robert Adams, "Should Ethics Be More Impersonal?" 98 *Philosophical Review* (October 1989), 439-484 at 455. Jennifer Whiting, "Friends and Future Selves," 95 *Philosophical Review* (October 1986), 547-580 at 547.

37. Parfit and his critics frequently write as though his ethical theses about selves are true only if his theory of personal identity is true. See Chapters 14 and 15 of *Reasons and Persons*, Oxford (Oxford University Press: 1984). The way in which his personal identity argument is often pursued, however, proceeds by asking what is important about ourselves and on these issues, Parfit may well be right. Even if the metaphysical inferences do not follow, the normative insights might still hold.

38. This task would also present itself if there were no advance directive available. Dworkin suggests that a substituted judgment inquiry asking what the person would have chosen would both respect the person's autonomy and that the identical inquiry would ascertain the person's best interests (pp. 191-192). He does not take a stand on what should prevail if, contrary to his presuppositions, what is in the person's best interests differs from what she would have chosen. Elsewhere, Dworkin criticizes substitute judgment as not promoting autonomy values at all. See "Autonomy and the Demented Self," pp. 14-15. As I argue in the text, substitute judgment as it is typically conceived (SJ1) carries little autonomy value. SJ2 has some autonomy value, but its results should not necessarily wholly determine our actions. An incompetent person's will should be shown some respect, but may be overcome if there is a sufficiently serious conflict with her best interests.

39. P.27.

40. P. 230.

41. This interpretation finds support in his arguments in favor of constitutive over additive models of value in "Foundations of Liberal Equality," pp. 77-8.

42. P. 231.

43. See, e.g., p. 202.

44. There is another argument for placing greater weight on the experiential interests of demented people over their critical interests. When a life has the potential to go superbly, experiential frustrations seem of paltry importance in comparison with the caliber of critical interests at stake. But if the life can go better or worse, but due to constrained capacities or limited circumstances, it cannot be a very good life, then the significance of experiential interests might be thought to be more closely comparable to the critical interests. How excellent the life can be, it might be suggested, has bearing upon whether critical interests should be seen as automatically overwhelming experiential interests.

45. p. 232.

46. See also his claim in "Foundations of Liberal Equality": "Our lives may go badly...not just because we are unwilling or unable properly to respond to the circumstances we have, but because we have the wrong circumstances," p. 69.

47. Such a story seems consistent with, and even reminiscent of, some of Dworkin's approving remarks about the model of challenge, the idea that living well is a matter of successfully meeting the challenges that a life presents. See 'Foundations of Liberal Equality,' pp. 57, 60, 67. Dworkin's related arguments for the constitutive model of value, the view that nothing contributes to the value of a person's life unless it is endorsed by that person, do not actually rule out the possibility that various activities may lie within P2's critical interests. Dworkin insists that it could not further one's critical interests to lead a life that one despised and actively reviled as unworthy. 'Foundations,' p. 76. All of Dworkin's arguments appeal to our intuition that a life cannot go well if it is actively *rejected* by a person, but this is consistent with the belief that a demented person's life may go well and better if it contains certain features and activities, even if she lacks the capacity to recognize that her way of life furthers her critical interests.

48. I have not, however, said much about how one should go about balancing the autonomy values against any conflicting contemporary interests here. Such a task would have to be taken up to give a full account of the proper treatment of the demented.

49. I am grateful to Torin Alter, Justine Burley, Laura Cherry, Ruth Chang, Sean Foran, Marc Lange, Herbert Morris, Michael Otsuka, Erik Rakowski, Steven Shiffrin and the members of the UCLA Law and Philosophy Discussion Group for helpful conversations and written comments about this material. Enid Colson provided valuable research and bibliographic assistance.