

HUMAN RIGHTS: DIGNITY & BASIC NEEDS

HUMAN RIGHTS AND THE DIGNITY OF BASIC HUMAN NEEDS

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The concept of dignity is inextricable from the discourse on human rights. This thesis focuses specifically on the concept of dignity within the context of the core international human rights instruments put forward by the United Nations. In particular, it will demonstrate the importance of establishing a public conception of dignity within this context; one that justifies circumstances that are consistent with commonly held, intuitive judgments about rights. It will be argued that neither an autonomy or personhood-based conception of dignity, nor a capabilities-based conception achieves this state of affairs. Instead, this thesis will demonstrate that a needs-based conception of dignity ought to form the public conception.

The inextricability of the concept of dignity from the discourse on human rights suggests that the articulation of rights in terms of human dignity has both a cross-cultural resonance, and an intuitive appeal. Each of the nine core human rights instruments put forward by the United Nations recognizes the inherent dignity of the human family. In order to determine what kind of guarantees these documents make and the bodies that are responsible for their fulfillment, the concept of dignity requires clarification. This thesis appeals to the Rawlsian distinction between concept and conception, as well as the notion of reflective equilibrium in order to determine which set of principles ought to form the public conception. The end toward which this project is oriented is not necessarily one of legal interpretation; rather, it is a normative reconstruction that may or may not be a legal inquiry. Given the scope of the project, three conceptions of dignity are considered: James Griffin's personhood-based conception of dignity, Martha Nussbaum's capabilities-based conception, and David Miller's needs-based conception. Appealing to the Concluding Observations of state parties to the Covenant on Economic, Social and Cultural Rights, both personhood and capabilities-based conceptions of dignity are proven inherently exclusionary. Insofar as it is an intuitively held judgment that human rights ought to be universal, the conceptions which justify the exclusion of certain individuals or demographics from the objects of rights fails to achieve reflective equilibrium. I argue that a variant of David Miller's needs-based conception of human dignity that I propose here is the most successful in achieving reflective equilibrium, and for that reason, it ought to inform our conception of human dignity.

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List of all Abbreviations and Symbols

UDHR.....	Universal Declaration of Human Rights
ICESCR.....	International Covenant on Economic, Social and Cultural Rights

CHAPTER 1: HUMAN RIGHTS & THE CONCEPT OF DIGNITY

Introduction

The concept of dignity is inextricable from the discourse on human rights. Its presence suggests that there is both a cross-cultural resonance and intuitive appeal when it comes to articulating rights in terms of human dignity. The Preamble for the Universal Declaration of Human Rights (UDHR) demonstrates the integral role played by this concept. The document begins by recognizing the inherent dignity of the human family, asserting respect for the dignity and worth of the human person as a necessary condition for freedom, justice, and peace in at the world¹. Ultimately the Preamble proceeds to ground human rights in the inherent dignity of the human person. The concept also figures prominently in the nine core international human rights instruments which enumerate those guarantees. However, as I shall explain in this thesis, without further clarification of the relevant conception of dignity, it is difficult—if not impossible—to determine what kind of guarantees these documents make and who is responsible for their fulfillment. The end toward which this project is oriented is not necessarily one of legal interpretation; rather, it is a normative reconstruction that may or may not be a legal inquiry.

This chapter will serve as an introduction to the concept of dignity as it figures in the discourse on human rights. It will begin by considering the Rawlsian distinction

¹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

between concept and conception which proves a useful framework for navigating open-textured moral concepts such as ‘dignity.’ The desirability of each conception will be understood in terms of their success in achieving reflective equilibrium; that is, the extent to which each set of principles coheres with commonly held judgments. With the evaluative framework in place, the rights in question will be defined in terms of the international human rights instruments in which they are articulated. Once the importance of retaining the concept of dignity in the discourse on rights has been established, the competing conceptions will be introduced. In the chapters that follow, each of the conceptions will be considered in relation to a particular trend identified in the recent Concluding Observations of the Committee on Economic, Social and Cultural Rights. This thesis will argue that a conception of dignity that demands the satisfaction of a minimum standard for human existence, established on the basis of basic human need, ought to form the public conception of the concept in the discourse on rights. This particular conception will be referred to as the needs-based conception for the remainder of this inquiry.

Concept, Conception & Reflective Equilibrium

The specific qualities and characteristics which constitute dignity are the subject of much debate. As it is employed in the UDHR, ‘human dignity’ is an abstract moral concept left open to interpretation. While this is by no means an indictment of the Declaration, the ambiguous nature of the concept is liable to produce conflicting conceptions of the rights it guarantees, and the correlative duties to which it gives rise.

The success or desirability of this concept may be assessed—at least in part—by considering the implications that different conceptions of dignity justify or produce. John Rawls famously distinguishes between the notions of concept and conceptions in the opening pages of his seminal work *A Theory of Justice*. Although there he distinguishes between the concept of justice and conceptions of that concept, this distinction provides a useful framework for navigating other abstract moral terms such as dignity.

According to Rawls, a conception of justice is characterized by a set of principles which substantiates or articulates the concept of justice in a particular way.² The concept may be understood as the end toward which the principles of justice are oriented; it is the specific end that a set of principles intends to fulfill. In the case of justice, the end is the assignment of rights and duties in the basic institutions of society, as well as the appropriate distribution of the benefits and burdens of social cooperation.³ A conception of justice is an interpretation of how that end ought to be fulfilled, and the principles required to facilitate its fulfillment. In this case, a conception of justice is a set of principles which reflects a particular understanding of the appropriate methods of achieving the equitable distribution of the benefits and burdens of social cooperation. Given the open texture of the language used to define the concept, the terms of fulfillment vary amongst individual conceptions. While conceptions vary, each reflects a commitment to the role that they have in common.

² John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 3-10.

³ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 4.

While conceptions of justice may vary, some measure of agreement is necessary in a “viable human community.”⁴ Below a requisite level of agreement on what is just or unjust, the ability to meet legitimate expectations and to maintain mutually beneficial arrangements is compromised. Insofar as this is the case, a public conception of justice that is known and accepted by those with disparate principles of justice, as well as by the social institutions which satisfy the characteristic set of principles is required in a well-ordered society.⁵ While general agreement is conducive to the coordination, efficiency and stability of a society, Rawls explains that one conception of justice may be preferable to another when it comes to the desirability of the resultant broader consequences.⁶ This is an important consideration, particularly in cases where the framework of this distinction is employed to make sense of other abstract moral terms. While general agreement in terms of public conception is both desirable and necessary, there are certain principles which produce more desirable consequences than others. Those principles which constitute the most successful conceptions ought to characterize the public conception of a particular concept.

Determining the most successful conception of a particular concept requires establishing which set of principles better achieve reflective equilibrium. This is accomplished by taking a contractual, deliberative approach in which the principles of

⁴ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 5.

⁵ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 4-6.

⁶ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 6.

justice—for example—are considered alongside the relevant commonly shared judgments.⁷ Reflective equilibrium is the state of affairs that results when general principles sufficiently cohere with intuitive judgments about justice.⁸ The purpose of this mutual adjustment is to determine the contours of widely acceptable principles of justice.⁹ By excluding the information which “sets men at odds and allows them to be guided by their prejudices,”¹⁰ the principles which achieve reflective equilibrium are reasonable, and cannot be tailored to the advantage of some at the expense of others. In short, reflective equilibrium is achieved through a deliberative process in which all parties are treated as equal. The subject of deliberation is the set of principles which constitute a particular conception, and they are considered alongside other relevant, specific judgments. Working from both ends, reflective equilibrium is achieved when a multitude of relevant and reasonable considerations fit together and support one coherent set of principles. Therefore, the most successful conception of a particular concept is one constituted by a set of principles that achieves this balance and coherence with existing intuitive judgments about the concept. This inquiry is purposed with identifying the conception of dignity that achieves the best reflective equilibrium.

Understanding the Justificatory Role of the Concept of Dignity

⁷ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 18.

⁸ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 18.

⁹ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 17.

¹⁰ John Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p.17.

In the discourse surrounding human rights, the concept of dignity is ever-present. In most cases, the ‘role’ of the concept is justificatory: it is presented as the reason why humans are entitled to certain guarantees. In order to understand the justificatory role of the concept of dignity, one must first understand the nature of the guarantee being made. This includes understanding not only the nature of the guarantee, but the agents responsible for making the guarantee, and to whom they make it. For the purposes of this inquiry, these guarantees are understood to be primarily those articulated in the UDHR [and the nine additional human rights documents described below]. The state members of the United Nations fulfill the role of guarantor, and the citizens of those states the beneficiaries.

First, human rights are rights that every human being —regardless of arbitrary distinguishing features like race, gender, ability, sexual orientation, location, etc. —has no matter what. This is to say that there are certain things or conditions to which all human beings have legitimate grounds to claim. These rights may be seen as imposing negative duties on citizens, though the responsibility for their fulfilment and protection lies primarily with the state. Thomas Pogge explains that by asserting the right to some object, at least two claims are being made: “First, one is claiming that it is of great importance that human beings should have secure access to this object” and second, “one is claiming that the important interests of the right holder justify some significant duties on the part of other human agents to ensure that human beings actually have access to the

object of their rights.”¹¹ In this respect, rights are neither aspirational nor goal-like; rather, they articulate something the realization of which is morally required. Given the moral requirement to realize the objects of rights, failure to do so is worthy of criticism. Moreover, there is a moral requirement that the shortcoming or failure be rectified if not sufficiently achieved. The object of these rights constitute the requirements for a minimum standard of human existence, and the working understanding of this standard is subject to change depending on the conception of dignity that is employed. The subsequent chapters of this inquiry will assess the desirability of three particular conceptions in terms of how the minimum standard is defined, as well as how successfully the particular formulation of the minimum standard achieve reflective equilibrium.

Understanding rights in this way, the role of guarantor requires specification. As stated above, that role is fulfilled by state members of the United Nations. There are nine core international human rights instruments which specify the ways in which state parties are to fulfill their role of guarantor. Each instrument has a committee of experts purposed with monitoring the implementation of relevant treaty provisions, and some are supplemented by optional protocols dealing with specific concerns.¹² Together, the nine

¹¹ Pogge, Thomas. “Are We Violating the Human Rights of the World’s Poor?” *Yale Human Rights and Development Journal*, vol. 14, no. 2, 2011, p.4. <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1104&context=yhrdlj>.

¹² United Nations Human Rights Office of the High Commissioner. *The Core International Human Rights Instruments and their monitoring bodies*. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

core international human rights instruments constitute and enumerate the rights guaranteed by the UDHR. The concept of dignity figures prominently in many of the instruments and it is, at the very least, referenced in all.

A number of the instruments address the rights of vulnerable demographics, or those toward whom discrimination is persistent. Considering the dignity that inheres equally in all human beings, the International Convention on the Elimination of All Forms of Racial Discrimination “solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations.”¹³ The Convention lays out all of the ways in which State parties are expected to pursue this end through legislation, policy, and education. The Convention on the Elimination of All Forms of Discrimination Against Women acknowledges the persistent and extensive discrimination against women that occurs in violation of the inherent dignity of all persons. While the legal status of women is the primary focus of the Convention, there is also attention devoted to reproductive rights, as well as the culture and tradition of restricting women’s enjoyment of the fundamental rights.¹⁴ The Convention on the Rights of Persons with Disabilities seeks to promote, protect and ensure full and equal enjoyment of all human rights by persons who have long-term physical, mental,

¹³ Committee on the Elimination of Racial Discrimination. *International Convention on the Elimination of All Forms of Racial Discrimination*. 21 Dec. 1965. <http://www.o-hchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

¹⁴ Committee on the Elimination of Discrimination Against Women. *Convention on the Elimination of All Forms of Discrimination against Women*. 18 Dec. 1979. <http://www.o-hchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

intellectual or sensory impairments which hinder their ability to fully and effectively participate in society.¹⁵ These commitments are made in recognition of the “inherent dignity and worth and the equal and inalienable rights of all members of the human family.”¹⁶ The concept of dignity also plays a prominent justificatory role in the Convention on the Rights of the Child.

In addition to the instruments concerned with vulnerable or systemically disadvantaged demographics, there are others in place that enumerate the rights guarantees to those in particularly vulnerable circumstances. Among these instruments are: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. There are, however, instruments in place that address the protection, promotion, and enjoyment of rights of all human beings without identifying a particular group or circumstance. Constituting the legal framework in which all of the aforementioned instruments exist are the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. These instruments enumerate all of the rights guarantees made in the UDHR, and the concept of dignity figures centrally in both.

¹⁵ Committee on the Rights of Persons with Disabilities. *Convention on the Rights of Persons with Disabilities*. 13 Dec. 2006.

¹⁶ Committee on the Rights of Persons with Disabilities. *Convention on the Rights of Persons with Disabilities*. 13 Dec. 2006.

Given the scope of the present inquiry, the focus will remain on the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR is open for signature by any state member of the United Nations committed to the achievement and observance of a selection of human rights from the Universal Declaration. Upon signing, state parties to the Covenant are required to submit reports on the progress made in achieving the observance of the provisions of the Covenant. Each report is composed of a common core document containing general information such as the existing framework for the protection and promotion of human rights, as well as the developments affecting the full realization of the rights in the Covenant.¹⁷ In short, state parties to the Covenant demonstrate an active and ongoing commitment to their role as guarantor. While all human beings have equal and inalienable rights, the citizens of the state parties to the Covenant are beneficiaries of the effort of their state. Article 2.1 of the ICESCR asserts that state parties to the Covenant “undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind”¹⁸. While all human beings are entitled to these rights, those that fall within the territory or jurisdiction of the state parties to the Covenant are the intended beneficiaries. Since all human beings have human rights,

¹⁷ United Nations Committee on Economic, Social and Cultural Rights, “Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights.” 24 March 2009, pp. 1-4.

¹⁸UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993.

there is an argument to be made for the fulfillment of rights to those outside of these territories or jurisdictions. However, given that rights fulfillment in these cases requires commitment beyond that which a state shows its citizens, the argument for the duty to fulfill rights to those outside of the territories and jurisdictions of state parties is best left for a separate inquiry.

A more thorough understanding of the relation between rights, states and citizens may be achieved by considering a specific right protected by the ICESCR:

All persons are equal before the law and entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons an effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁹ In this case, the relevant guarantee has two components: the first of which being a guarantee to equal consideration before and under the law, and the second promise of protection from discrimination. Based on the justification of rights in terms of human dignity, this guarantee may be understood as an essential component or condition for achieving the minimum standard of human existence. In signing, State parties to the Covenant recognize the importance of this right [and many others], and accept the responsibility of fulfilling this guarantee to the citizens within their territory or jurisdiction. The citizens of these states then have reasonable

¹⁹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights. Article 26. 16 December 1966, United Nations, Treaty Series, vol. 993.

grounds to assume that they will be protected from this kind of discrimination by the governing powers which they are subject to.

The Concept of Dignity

The pervasive employment of the concept of dignity in the discourse on human rights is a testament to the broad cross-cultural resonance and intuitive appeal that makes it indispensable to the rights it purports to justify. The recurrence of the concept may be interpreted as the type of agreement Rawls describes as necessary to viable human community where, in this case, the community is made up of those who justify and articulate rights. This group would include all parties who contribute to the research, justification and articulation of rights through the UN human rights instruments, as well as the member states whose active commitment demonstrates an acceptance of the terms on which they are justified. As with the conceptions of justice, the conceptions of dignity purport to achieve the same end by different sets of principles. While the general consensus is that human beings have an inherent dignity that justifies certain universal rights, the conceptions of dignity and the corresponding rights vary immensely. The remainder of this project will explore a number of these conceptions, and the broader consequences associated with each. As Rawls suggests in *A Theory of Justice*, consideration of these broader consequences will make explicit the fact that certain conceptions achieve a better reflective equilibrium, and there is one conception that is the most successful.

Prior to determining the principles which constitute the most successful conception of human dignity, we ought to consider whether dignity is in fact the concept around which the discourse ought to revolve. Steven Pinker vehemently criticizes the use of dignity as a legal concept, arguing “that ‘dignity’ is a squishy, subjective notion, hardly up to the heavyweight moral demands assigned to it.”²⁰ Nonetheless, Pinker acknowledges two reasons why we ought to consider retaining the concept of dignity in the discourse.

First, as a phenomenon of human perception that triggers an ascription of worth, the concept of human dignity causes the perceiver to value and respect the rights and interests of others²¹. In the discourse on human rights, it is difficult to argue against the employment of a concept with such an effect. Without an ascription of value and respect for persons, the discourse would ultimately be for not; for what point would these rights have if we did not recognize some intrinsic value in ourselves and each other? Insofar as the concept of human dignity —at least in theory — causes one person to respect the rights and interests of another, it is not entirely useless.

The second reason Pinker provides in favour of retaining the concept of dignity has to do with the implications of its abandonment. Pinker expresses his concern that “reductions in dignity may harden the perceiver’s heart and loosen inhibitions against

²⁰ Pinker, Steven. “The Stupidity of Dignity.” *The New Republic*, 28 May 2008, p. 2. <https://newrepublic.com/article/64674/the-stupidity-dignity>.

²¹ Pinker, Steven. “The Stupidity of Dignity.” *The New Republic*, 28 May 2008, p. 9. <https://newrepublic.com/article/64674/the-stupidity-dignity>.

mistreating the person.”²² His concern is that the consistent undignified, humiliating or degrading treatment of human beings hardens onlookers. For example, Pinker references the degradation and humiliation of Jews in Nazi Germany that ultimately set off a “spiral of dehumanizations and mistreatment.”²³ The concern is that eliminating dignity from the discourse will lead to the dehumanization and mistreatment of those who are subject to certain types of treatment. This, considered in conjunction with the notion that certain human beings—in virtue of some arbitrary distinguishing feature—are more susceptible to mistreatment and abuse is a powerful advocacy for the dignity as a concept. For if a vulnerable individual is systematically devalued or disrespected and, as such, is not considered to possess the same inherent value as other members of society, their vulnerability will only increase with a lack of recognition and protection. If human history consistently demonstrates failure to explicitly acknowledge human dignity produces these results, then it is not difficult to speculate how its omission in the discourse could be problematic.

As Pinker concedes, dignity performs a useful function in the discourse on rights. In sum, this concept dictates the enforceable minimum standards of human existence which states must actively protect. The importance of cogently and accurately specifying these standards demands that we articulate and clarify as clearly as possible the public

²² Pinker, Steven. “The Stupidity of Dignity.” *The New Republic*, 28 May 2008, p. 10. <https://newrepublic.com/article/64674/the-stupidity-dignity>.

²³ Pinker, Steven. “The Stupidity of Dignity.” *The New Republic*, 28 May 2008, p. 10. <https://newrepublic.com/article/64674/the-stupidity-dignity>.

conception of their basis, i.e. human dignity. While the omnipresence of the concept of dignity in the discourse on rights suggests that it is both intuitively appealing and necessary, there is work to be done toward that end. In order to refine the concept of dignity, solidifying its value in both the discourse and documents pertaining to human rights, the principles which constitute the most compelling conceptions must be taken into consideration. This requires articulating rival conceptions and adjudicating between them.

As stated previously, a concept is the end toward which its constitutive principles are oriented. Returning to Rawls' paradigm case of the concept of justice, the 'end' is the assignment of rights and duties in the basic institutions of society, as well as the appropriate distribution of the benefits and burdens of social cooperation. Therefore, a conception of justice is a set of principles which specifies or constitutes this assignment and distribution. The concept of dignity may also be stated in terms of the end toward which the conceptions are oriented. For the purposes of this inquiry the concept of dignity will be understood as: a quality or characteristic inherent in all human persons which dictates a minimum standard for human existence, and necessitates the political and legal apparatus created by international human rights acts. Each conception of dignity offers a set of principles aimed at both identifying the relevant trait, as well as the correlating minimum standard of human existence.

Due to its limited scope, the focus of this inquiry will be restricted to the conceptions of human dignity offered by James Griffin, Martha Nussbaum, and David Miller. These conceptions reflect diverse philosophical traditions, and build on one another to support the merits of the proposal that will be advanced. In chapter two, I will elucidate the personhood or agency-based conception of dignity presented by James Griffin. This independently defined, monistic conception of dignity will be evaluated for its ability to achieve reflective equilibrium. The analysis will support the argument that a monistic conception of dignity grounded in terms of agency is inherently exclusionary, leading to Martha Nussbaum's pluralistic, capabilities-based conception. In the third chapter, I will consider Nussbaum's independently defined conception of dignity grounded in capabilities. The analysis of this conception will demonstrate that a pluralistic conception such as Nussbaum's is less obviously exclusive; however, since she does not adjudicate between what is a natural and unnatural realization of the capabilities, the possibility of exclusion persists. In the final chapter I propose that we should construe Miller's theory of rights as resting on a conception of dignity that is grounded in abstract human need. This placeholder-type conception of dignity avoids the vex that Nussbaum is faced with, insofar as the needs themselves are not independently defined. No doubt, this conception of dignity appears to be circular, but as I hope to show it is not viciously circular; rather, it is a promising basis for performing the concept's function.

CHAPTER 2: DIGNITY & PERSONHOOD

Introduction

This chapter will explore James Griffin's conception of human dignity and the theory of human rights to which it gives rise. In order to evaluate how successfully his conception of dignity achieves reflective equilibrium, several steps must be taken. First, the principles which constitute Griffin's conception of dignity must be understood in terms of the role they intend to fulfill. Recall that for the purposes of this inquiry, the role of the concept of dignity is understood as specifying a quality or characteristic inherent in all human persons which dictates a minimum standard for human existence, and necessitates the political and legal apparatus created by international human rights acts in order to satisfy that standard.

On Griffin's account, this innate human quality is agency or *personhood*. Conceptualizing human dignity in terms of personhood, Griffin provides a theory of human rights that defines an enforceable minimum standard of human existence for agents. It is in this section that this particular theory of rights and the correlating standard for human life will be elucidated. In order to assess the how successful a personhood-based conception of dignity is in achieving reflective equilibrium, Griffin's theory of human rights will be considered in conjunction with the Concluding Observations of the Committee for Economic, Social and Cultural Rights. More specifically, the state of affairs of persons with disabilities will be considered in relation to intuitively held judgments about the universality and inclusivity of human rights. Together, these factors

will demonstrate the failure of a personhood-based conception of dignity to achieve reflective equilibrium insofar as its principles justify outcomes that are inconsistent with the human rights project. This chapter will conclude with a thorough explanation as to why Griffin's personhood-based conception of human dignity fails to achieve reflective equilibrium and, therefore, ought not be the public conception adopted in the discourse on human rights.

Dignity: Personhood & Practicalities

James Griffin's conception of dignity is centred on the notion of agency. According to Griffin, it is the agential status of human beings which dictates the minimum standard for human existence.²⁴ He defines agency in terms of the human propensity to form "pictures of what a good life would be and to try and realize these pictures."²⁵ Griffin explains that human life differs from the life of other animals insofar as humans are capable of formulating conceptions of themselves, and of their past and future.²⁶ Within these conceptions are pictures of what a good life would be, and the

²⁴ Griffin, James. "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights." *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 3-4.

²⁵ Griffin, James. "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights." *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 4.

²⁶ Griffin, James. "First Steps in an Account of Human Rights." *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 310.

ways in which it may be realized.²⁷ Together these features constitute a characteristically human existence, or what Griffin refers to as *personhood*. Therefore, the quality or characteristic on which Griffin grounds his conception of dignity is that of being an agent that can both choose ends and pursue them freely. Insofar as this is the case, both autonomy and liberty are necessary conditions for agency; the absence of either meaning one's agency is deficient.²⁸ According to Griffin, human beings value their status as agents even more highly than their happiness.²⁹ In short, Griffin describes human beings as self-determiners who value their status as agents, and for whom a minimum standard of existence is one in which they are permitted to act as autonomous agents at liberty.

Griffin's personhood-based conception of dignity is reminiscent of Kant's conception, variations of which are taken to be the public conception employed in contemporary human rights legislation.³⁰ Given the continued relevance of the Kantian conception, it is worth explaining the set of principles which constitute it. Kant recognized that humans are beings with reason, making them persons with absolute

²⁷ Griffin, James. "First Steps in an Account of Human Rights." *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 310-311.

²⁸ Griffin, James. "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights." *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 4.

²⁹ Griffin, James. "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights." *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 4.

³⁰ Michael, Lucy. "Defining Dignity and Its Place in Human Rights." *The New Bioethics*, vol. 20, no. 1, 2014, p.14.

value, rather than things with relative worth.³¹ The basis of Kant's moral philosophy is such that human beings are rational in a way that other animals and things are not. This capacity to reason is a quality that demands a particular type of treatment, particularly amongst beings that share in it. Therefore, insofar as human beings are rational, they are expected to act in accordance with the principle that no rational being is to be treated exclusively as a means, but always as an end. In summary, the quality or characteristic which underpins Kant's conception of human dignity is the inherent ability to reason and to act on those reasons, giving rise to a minimum standard of human existence in which all persons are treated never merely as means, but ends in themselves. The implication of this entitlement, of course, being that human beings must always treat other rational persons as ends in themselves.

The imperatives that arise from Kant's identification of human beings as rational possessors of absolute worth are synthesized in his principle of humanity. The practical imperative is such that rational beings ought to act so that they use humanity —whether one's own person, or the person of any other — always as an end, and never as merely a means.³² This principle is taken as universal and objective, since it applies to all rational beings regardless of particular or subjective ends.³³ It follows from Kant's principle of

³¹ Kant, Immanuel. *Practical Philosophy*. Translated by Mary J. Gregor, Cambridge University Press, 1996. p. 79.

³² Kant, Immanuel. *Practical Philosophy*. Translated by Mary J. Gregor, Cambridge University Press, 1996. p. 80.

³³ Kant, Immanuel. *Practical Philosophy*. Translated by Mary J. Gregor, Cambridge University Press, 1996. p. 81.

humanity that human beings are not only *rational*, they are *autonomous*, and that essential to humanity is the ability to pursue one's subjective ends while treating other persons as ends in themselves. In fact, *the dignity of humanity* consists in the capacity to give universal laws, as well as subject oneself to those laws.³⁴ On this view, the concepts of autonomy and rationality are the foundation of morality; and it is from morality that Kant's secular conception of human dignity arises.

In summary, Kant's conception of dignity identifies rationality and autonomy as the qualities which dictate the minimum standard of human existence. In order to be dignified, a being must be capable of acting —on their own volition— such that they treat both themselves *and* others as ends, and never merely as means. In this sense, the concepts of rationality and autonomy go hand in hand. A being is dignified not only insofar as it *acts*, but it *acts in accordance with reason*, where reason is the cognitive process by which one's actions are assessed either for treating or failing to treat other persons as ends in themselves. There is a sense of accountability for one's actions, as well as a respect for persons that is latent in Kant's conception of dignity. Human beings are celebrated for their exclusive ability to act in accordance with reason, and the standards for morality are stringent because of it.

Where Kant's conception of dignity gives rise to a stringent moral standard, Griffin's conception of human dignity serves as the foundation of a stringent standard for

³⁴ Kant, Immanuel. *Practical Philosophy*. Translated by Mary J. Gregor, Cambridge University Press, 1996. p. 88-89.

human rights. Recall that for Griffin, human beings cherish their status as agents, and that this status is understood as the ability to choose ends which reflect their conception of a good life, and to pursue them freely. He distinguishes his position from Kant's by focusing on the autonomy of *homo sapiens* rather than that of an abstract agent.³⁵ Griffin explains that Kant's conception of autonomy requires that "one's actions came from a purely rational, intentional centre, undetermined by anything outside it"; however, rationality requires thought, which in turn requires language—a cultural artifact—and once all of those things are stripped away, "not enough is left."³⁶ Instead, Griffin concerns himself with the autonomy that reflects "the peculiarly human way of experiencing and conceptualizing the world" shaped "by characteristic human concerns and sense of importance."³⁷ It is the special importance of these particular human interests that justify human rights.

Human Rights & Dignity as Personhood

According to Griffin, personhood is the first of two grounds of human rights. However, personhood alone fails to fix a determinate enough line for rights in practice. Understanding human dignity as centering on the human status as persons or agents

³⁵ Griffin, James. "First Steps in an Account of Human Rights." *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 312.

³⁶ Griffin, James. "First Steps in an Account of Human Rights." *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 312.

³⁷ Griffin, James. "First Steps in an Account of Human Rights." *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 312.

simply allows for the identification of values that stem from that status.³⁸ For example, in order to fully realize the agential status on which human dignity is grounded, one must not be controlled by someone or something, as well as have an adequate understanding of what others think.³⁹ Therefore, the values of autonomy and education can be seen as implicit in, or necessary to the dignified status of human beings. However, declaring that human beings have a “right to autonomy” or a “right to an education” in virtue of their personhood or agency lacks the requisite determinacy for legitimate rights claims. Personhood alone cannot specify the extent to which a right exists, nor the form it takes.⁴⁰ In fact, according to Griffin this indeterminacy prevents us from saying that a right actually exists.⁴¹ Since the concept of dignity is used to justify rights which guarantee a minimum standard of human existence, and “the extensive power to determine everything that happens in and to our bodies goes far beyond that,”⁴² a second ground for human rights must be included.

³⁸ Tasioulas, John. “Human Rights, Universality and the Values of Personhood: Retracing Griffin’s Steps.” *European Journal of Philosophy*, vol. 10, no. 1, 2002, p.83.

³⁹ Tasioulas, John. “Human Rights, Universality and the Values of Personhood: Retracing Griffin’s Steps.” *European Journal of Philosophy*, vol. 10, no. 1, 2002, p.83.

⁴⁰ Griffin, James. “First Steps in an Account of Human Rights.” *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 315.

⁴¹ Griffin, James. “Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights.” *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 5.

⁴² Griffin, James. “First Steps in an Account of Human Rights.” *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 315.

In order to make rights determinate enough to do any real work, a number of *practicalities* must be taken into consideration.⁴³ These practicalities include considerations about human nature and how societies work, together “drawing the line” that gives rights the determinacy they require.⁴⁴ Given the “proneness to stretch a point” when it comes to rights,⁴⁵ failure to account for these practicalities in a theory of human rights can result in unrealistic and unenforceable claims. In order to provide a fuller substantive account of what the rights grounded in personhood are, a diverse group of considerations such as “(i) general facts about human nature, (ii) general facts about social life, (iii) social utilities, [and] (iv) traditions and socio-economic conditions of particular societies” must be factored into the equation.⁴⁶ Together these considerations mitigate the claims made on the basis of personhood, providing limitations which make them “effective, socially manageable, claims on others.”⁴⁷

⁴³ Griffin, James. “Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights.” *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 5.

⁴⁴ Griffin, James. “Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights.” *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 5.

⁴⁵ Griffin, James. “Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights.” *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 5.

⁴⁶ Tasioulas, John. “Human Rights, Universality and the Values of Personhood: Retracing Griffin’s Steps.” *European Journal of Philosophy*, vol. 10, no. 1, 2002, p. 84.

⁴⁷ Griffin, James. “First Steps in an Account of Human Rights.” *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 315.

In summary, Griffin maintains that the inherent dignity of a human being derives from their status as a self-determiner: an autonomous agent who is at liberty to pursue his or her conception of a worthwhile life. The values attributable to this status broadly identify the necessary conditions for human existence; however, with insufficient determinacy. In order to specify or constitute these values such that they may be seen as making legitimate rights claims, Griffin appeals to a second justificatory ground: practicalities. Together personhood and practicalities identify the values associated with human agency, and constitute them in a way that reflects the practical considerations about human nature and how society actually works. Rather than focus on agency in the abstract, Griffin is concerned with *human* agents and the history and societies in which they exercise their autonomy.

Concluding Observations: Disability & Personhood

Recall from the previous chapter that in order to determine how successfully a particular conception of dignity achieves reflective equilibrium, its general principles must be considered in conjunction with the relevant intuitively held judgments. In the case of universal human rights, one of those intuitive judgments is that the rights must in fact be universal. When it comes to Griffin's autonomy or personhood-based conception, there is reasonable concern that one of the implications is that it is inherently exclusionary. On this account, human beings value their status as agents, and full agency requires both autonomy and liberty. In order to be an agent in the way Griffin describes, a person must be capable of identifying the ends which correspond to their conception of

a good life, and they must be free to pursue those ends. However, the qualities which constitute agency or personhood are demonstrated to varying degrees amongst human beings. Not all members of the human family are capable of formulating a unique conception of a good life, and orienting their actions towards its procurement. Moreover, not all members of the human family are at liberty to pursue those ends, even when they are free of external constraints. Therefore, the ascription of human dignity on any single characteristic or trait necessarily excludes all persons who do not exhibit the trait, or fail to do so to the requisite extent.

In order to support the claim that Griffin's conception of dignity is inherently exclusionary, the protection and promotion of the rights of persons with disabilities will be considered. Statistics show that the characteristics which constitute agency on Griffin's account —autonomy, liberty, and [implicitly] rationality —do not inhere in all members of the human family. According to the World Health Organization, over 1 billion people —roughly 15% of the world's population— have some form of disability.⁴⁸ Disability is broadly understood as impairment, activity limitation and participation restriction; it is an umbrella term that describes the interaction between individuals with a particular health concern and personal and environmental factors. The ability to actively, and fully participate in human life requires the sort of autonomy and liberty that Griffin's conception of dignity prescribes. While it is not the case that every person with a disability is incapable of realizing their agential status, the impairments, restrictions and

⁴⁸ World Health Organization. *Disabilities*. <http://www.who.int/topics/disabilities/en/>.

activity limitations affect this possibility to various degrees. Even if only a small portion of the 15% are truly incapable of acting as agents, the statistic only represents those individuals who live their entire lives with disabilities, thus does not account for other groups whose agential status cannot be realized for some other reason.

In addition to disability, factors such as age affect a person's ability to fully realize their agential status. For example, a child of age three or four cannot reasonably be construed as an agent. While they may demonstrate preferences for, or inclinations towards certain things, to say that the child has formulated a unique conception of a good life and orients him or herself towards their desired ends is inaccurate. Rather, it is a child's parent or guardian that acts as an agent on their behalf, identifying and pursuing the ends which are consistent with the life they see as being in the best interest of that child. For example, a child is not independently aware of the importance of education, nor are they capable of registering in and attending school. Parents identify their child's need, and they make decisions regarding the type of education whether it is secular, religious, etc. In this respect —and many others —they act as agents on behalf of their children, until the children are able to do so themselves.

In a similar fashion, it is impossible to ascribe the agential status that Griffin describes to someone that is senile. With age and decreased cognitive function, even an individual who was once able to realize their agential status may fail to realize it to the requisite extent. Like persons with disabilities and children, individuals with dementia require persons to act as agents on their behalf.

Whereas children might someday realize agential status, most persons with dementia were once able to realize their agential status but likely will not be able to realize this status again. Consider the case of an elderly man with dementia—a man who once oriented his actions towards the ends which he deemed constitutive of the good life. Perhaps he maintained employment, travelled, and built and fostered relationships, among other things. Additionally, this man may have had children for whom he acted as an agent as described in the case above. All of this is to say that for most of this individual's life, this man would have realized his agential status, thus, on Griffin's account, entitling him to the objects of human rights. However, it is counter-intuitive to claim that he is no longer entitled as a matter of right to the objects of those rights (e.g., food and proper health care) now that he no longer realizes this status. Similarly, it is counterintuitive to claim that young children are not entitled as a matter of right to the objects of such human rights until they achieve agential status.

In sum, Griffin's characterization of human agency is implausibly exclusionary, for it does not guarantee human rights protections for groups of individuals that are the most vulnerable and require that their rights to be protected on their behalf.

To further substantiate the claim that an agency or personhood-based conception of rights fails to achieve reflective equilibrium, specific cases from the Concluding Observations of the Committee regarding persons with disabilities must be considered.

Right to Health

According to the World Health Organization, people with disabilities have the same health needs as non-disabled people. Additionally, many experience a narrower margin of health due to factors like poverty and social exclusion, or increased vulnerability to secondary, co-morbid, and age-related conditions.⁴⁹ Statistically, people with disabilities report seeking more health care as well as report greater unmet health care needs than people without disabilities.⁵⁰ This confirms that people with disabilities are indisputably more vulnerable than those without.

The Concluding Observations of the Committee suggest that persons with disabilities are consistently discriminated against in areas ranging from education and employment, to health care and housing. In a number of cases, an absence of comprehensive anti-discrimination legislation results in widespread discrimination against persons with disabilities. For example, Macau, China has yet to adopt anti-discrimination legislation leading the Committee to note “with concern that de facto discrimination against persons with disabilities persists.”⁵¹ Countries such as Jamaica, Vietnam, Uganda, and Ukraine have been subject to similar criticisms given the lack of comprehensive anti-discrimination legislation in place, or due to insufficient regulation and enforcement of affirmative action policies. In addition, similar criticisms are levelled

⁴⁹ World Health Organization, 2016, <http://www.who.int/en/>.

⁵⁰ World Health Organization, 2016, <http://www.who.int/en/>.

⁵¹ Committee on Economic, Social and Cultural Rights, “Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China.” *United Nations Economic and Social Council*. 13 June 2014.

against countries that *have* adopted comprehensive anti-discrimination legislation. For example, France was commended for the State implementation of the Framework Act on Measures to Combat Social Exclusion of July 1998; an Act “intended to combat social exclusion and guarantee equality of opportunities to persons belonging to vulnerable and disadvantaged groups.”⁵² However, in spite of these efforts, the rights of persons with disabilities are consistently fulfilled and protected at a much lesser rate than other citizens.

Right to Education

Article 26.1 of the UDHR states that everyone has the right to an education.⁵³ In signing the ICESCR, States agree that “education shall be directed to the full development of the human personality and the sense of its dignity” and that it “shall enable all persons to participate effectively in a free, society.”⁵⁴ This right is justified by the inherent dignity of all members of the human family which dictates a certain minimum level of existence, and state parties to the Covenant demonstrate their commitment to providing this minimum standard by signing. If dignity is conceived of in Griffin’s terms, the minimum level of human existence is one that enables all humans to act as autonomous agents. One of the necessary conditions of this is access to education.

⁵² Committee on Economic, Social and Cultural Rights, “Consideration of Reports Submitted By States Parties Under Articles 16 And 17 of the Covenant France.” United Nations Economic and Social Council, 9 June 2008, B3.

⁵³ United Nations Human Rights, “Universal Declaration of Human Rights”, Article 26.1.

⁵⁴ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Article 13.1.

In spite of the commitment of state parties to this right, the Committee's Concluding Observations suggest that persons with disabilities often experience the fulfillment and promotion of this right to a much lesser extent than other citizens.

There are several examples of state parties to the Covenant which have been criticized for failure to fulfill the educational component of the minimum standard of existence for persons with disabilities. In the 2013 Concluding Observations for Jamaica, the Committee expressed concern "the lack of access to formal education for children with disabilities."⁵⁵ The Committee expressed similar concerns in the 2014 Concluding Observations for China noting that "children with disabilities experience de facto discrimination and have limited access to inclusive education and to teachers trained specifically to educate children with disabilities."⁵⁶ Uganda was subject to similar concerns in the 2015 Concluding Observations where the Committee noted that there is a limited inclusion of children with disabilities in mainstream schools, and an absence of targeted training for teachers.⁵⁷ This, coupled with the high expenses associated with

⁵⁵ Committee on Economic, Social and Cultural Rights, "Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April-17 May 2013)." *United Nations Economic and Social Council*. 10 June 2013.

⁵⁶ Committee on Economic, Social and Cultural Rights, "Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China." *United Nations Economic and Social Council*. 13 June 2014.

⁵⁷ Committee on Economic, Social and Cultural Rights, "Concluding observations on the initial report of Uganda." *United Nations Economic and Social Council*. 8 July 2015.

enrolling children in schools intended specifically for children with special needs has lead to a higher dropout rate than amongst other students.⁵⁸

This is far from an exhaustive list of state members that have failed to meet the minimum education standard for a dignified human existence. However, the similarities within the sample suggest that there is an identifiable trend associated with this particular right's non-fulfillment in countries all around the world. This trend may be summarized as follows: in many countries, children with disabilities experience discrimination in regards to access to education. This is due in part to the limited number of teachers trained to educated students with disabilities, as well as unsuccessful integration of these students into mainstream schools. Given that over 15% of the world's population has a disability from birth, this trend affects a significant portion of the human family. While the Committee expresses its concern and makes recommendations to ameliorate the specific circumstances identified in the Concluding Observations, the pervasiveness of this trend suggests that there is a deeper rooted issue that needs to be resolved.

Right to Work

In addition to the trend in discrimination in regards to education, a similar commonality may be identified in regard to employment. Article 23.1 of the UDHR states that: "everyone has the right to work, to free choice of employment, to just and

⁵⁸ Committee on Economic, Social and Cultural Rights, "Concluding observations on the initial report of Uganda." *United Nations Economic and Social Council*. 8 July 2015.

favourable conditions of work and to protection against unemployment.”⁵⁹ The ICESCR enumerates this right, asserting that state parties to the Covenant are required to take steps to achieve the full realization of the right to work, including providing access to “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”⁶⁰ By signing the Covenant, state parties not only acknowledge the importance of fulfilling this right, but commit to doing so in order to ensure a minimum standard of human existence. However, as with the right to education, an inordinate number of state parties have been criticized by the Committee for their failure to satisfy this aspect of a dignified human existence. This is especially true in regards to the employment of persons with disabilities.

There are several examples of state parties whose practices and policies surrounding employment and disability have been criticized. In the 2008 Concluding Observations for France the Committee noted [with concern] “that the unemployment rate of persons with disabilities is still three times higher than the average unemployment rate” in spite of the legislation aimed at improving access to employment for persons with

⁵⁹ United Nations Human Rights, “Universal Declaration of Human Rights”, Article 23.1.

⁶⁰ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Part III, Article 6.2.

disabilities.⁶¹ However, France is not alone in receiving this type of criticism. While a number of other state members have legislation in place in an effort to see this right fulfilled for which they are commended, seldom do the policies achieve their intended purpose. For example, Ukraine was commended for the implementation of international human rights instruments such as the Convention on the Rights of Persons with Disabilities and the Optional Protocol (2010)⁶² but criticized for failing to implement measures to ensure compliance. While there is a “4 per cent quota for the employment of persons with disabilities in public and private companies and institutions” the Committee declared the policy to have minimal impact owing to the lack of compliance by employers.⁶³ Similarly, the 2015 Concluding Observations for Paraguay express concern that “despite the measures taken by the state party to promote the employment of persons with disabilities in the public and private sectors, such persons continue to suffer discrimination in access to employment.”⁶⁴

⁶¹ Committee on Economic, Social and Cultural Rights, “Consideration of Reports Submitted By States Parties Under Articles 16 And 17 of the Covenant France.” United Nations Economic and Social Council, 9 June 2008, 18.

⁶² Committee on Economic, Social and Cultural Rights, “Concluding observations on the sixth periodic report of Ukraine.” United Nations Economic and Social Council, 13 June 2014, B.3.A.

⁶³ Committee on Economic, Social and Cultural Rights, “Concluding observations on the sixth periodic report of Ukraine.” United Nations Economic and Social Council, 13 June 2014, C.12.

⁶⁴ Committee on Economic, Social and Cultural Rights, “Concluding observations on the fourth periodic report of Paraguay.” United Nations Economic and Social Council, 20 March 2015, C.17.

As with the previous example, the above does not constitute an exhaustive list of state members that have been subject to criticism for the fulfillment of the right to work. This sampling does, however, suggest a trend in the non-fulfillment of this right around the world. This trend may be summarized in the following way: in spite of the adoption of international human rights instruments aimed at the protection and fulfillment of the rights of disabled persons, there is insufficient policy and regulation on the part of state members to ensure that these rights are protected. As with the discrimination in access to education, the widespread non-fulfillment of the right to work suggests the public conception of human dignity does not assign adequate moral weight to the claims made by rights for *all* persons. In fact, a personhood-based conception of dignity like the one offered by Griffin can be seen as implicitly justifying this sort of non-fulfillment. The following section will explain why exactly this is the case, suggesting that his conception fails to achieve reflective equilibrium.

Personhood & Practicalities: Exclusivity & Reflective Equilibrium

Griffin acknowledges that ethics has an inevitable simplicity to it, which extends to the employment of terms such as ‘agency’.⁶⁵ While he concedes that persons with disabilities present a “borderline problem,” he explains that “the vast majority of adult mankind are capable of reaching this valuable [autonomous] state” and “anyone who crosses the borderline is equally inside the class of agents, because everyone in the class

⁶⁵ Griffin, James. “First Steps in an Account of Human Rights.” *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 319.

thereby possesses the status to which we attach value.”⁶⁶ In spite his attempt to resolve this simple or crude ethical implication, his conception of dignity can be used to justify the non-fulfillment or violation of rights of human beings who cannot pass that borderline and attain the dignified agential status that grounds rights.

On Griffin’s view, the inherent dignity of a human being derives from their status as a self-determiner: an autonomous agent who is at liberty to pursue his or her conception of a worthwhile life.⁶⁷ However, this status is demonstrated to varying degrees amongst human beings and, in some cases, is not demonstrated at all. In those cases where this status does not “cross the borderline,” or simply is not exhibited, state parties to the Covenant could appeal to Griffin’s conception of dignity to justify the sort of rights violations described above.

This justification would likely begin with an acknowledgement that human rights are shared —equally and inalienably— by all members of the human family in virtue of the inherent dignity of all human persons. Understood in terms of Griffin’s theory of human rights, human dignity is grounded in agency, where agency is the status of being an autonomous self-determiner. Certain disabilities prevent certain human beings from realizing this agential status. Griffin’s conception of dignity would not require states to

⁶⁶ Griffin, James. “First Steps in an Account of Human Rights.” *European Journal of Philosophy*, vol. 9, no. 3, 200, p. 319.

⁶⁷ Griffin, James. “Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights.” *Meeting of the Aristotelian Society*, 9 October 2000, Senate House, University of London. Presidential Address. p. 4.

protect and promote these persons' realization of the object of human rights. This possibility is inconsistent with the intuitively held judgment that human rights are universal, that *all* humans beings are equally entitled to have their rights protected and promoted. The implication of this is that Griffin's conception of human dignity fails to achieve reflective equilibrium. Taking his general principles into consideration alongside other relevant, specific judgments permits the justification of highly undesirable consequences. Rather than achieving balance and coherence, Griffin's conception of dignity provides an implicit justification for the denial of human rights to especially vulnerable demographics.

CHAPTER 3: DIGNITY & CAPABILITIES

Introduction

The previous chapter explored a monistic conception of dignity presented by James Griffin. On Griffin's account, the characteristic that distinguishes humans from other life forms and the quality on which the minimum standard of human existence is based is agency or *personhood*. Upon consider the principles which constitute a personhood-based conception of dignity in conjunction with the Concluding Observations of several countries, it was argued that Griffin's conception of dignity ought not to be adopted as the public conception. The reason for rejecting Griffin's conception is not utter lack of merit; rather, it is the inherent exclusivity that arises from grounding human rights on a single quality or characteristic that is realized to varying degrees across humanity.

In this chapter, I will focus on a conception of dignity that appeals to more than one inherent human quality or characteristic in grounding human rights.—namely, Martha Nussbaum's pluralistic conception of dignity which identifies "basic capabilities" as the basis for the minimum standard of human existence. This chapter will begin by elucidating her capabilities-based conception which will then be considered within the larger theory of human rights of which it is part. Understanding Nussbaum's conception of dignity as well as her larger human rights project, this chapter will proceed by

considering the Concluding Observations of several countries in order to assess how successfully a capabilities-based conception of dignity achieves reflective equilibrium. In particular, the focus will be directed at the human rights violations experienced by members of the LGBTQ community in several member states, specifically the anti-gay legislation enforced by the Ugandan government. Ultimately this chapter will demonstrate that, like the personhood-based conception of dignity, a capabilities-based conception fails to achieve reflective equilibrium and, as such, ought not be adopted as the public conception.

Dignity & Capabilities

Martha Nussbaum argues that human beings naturally host an open-ended disjunction of basic capabilities that are necessary to, or characteristic of major human life activities. These activities are characterized by growth, maturity, and decline; they are general and respectful of human diversity, and characteristics such as rationality and autonomy are not prioritized.⁶⁸ Nussbaum's conception of dignity is based on this open-ended disjunction of capabilities, as it is due to the various forms of activity and striving that human beings and their lives have an inalienable worth.⁶⁹ Among these central human functional capabilities are the ability "to live to the end of a human life of normal

⁶⁸ Nussbaum, Martha. "Human Dignity and Political Entitlements." *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics*. Washington D.C.: The President's Council on Bioethics, 2008.

⁶⁹ Nussbaum, Martha. "Human Dignity and Political Entitlements." *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics*. Washington D.C.: The President's Council on Bioethics, 2008.

length” as well as having good health, and adequate nourishment and shelter.⁷⁰ The list also includes bodily integrity, the ability to “use the senses, to imagine, think, and reasons—and to do these things in a ‘truly human’ way.”⁷¹ Other capabilities include the ability to have emotional attachments to people and things outside oneself, the ability to play, live alongside other species, and have control over one’s political and material environment.⁷² Where Griffin identifies the agential status of human beings as the inherent quality on which rights are justified, Nussbaum offers a pluralistic conception in which no single capability, or specific combination of capabilities is valued more highly than another. Instead, it is an open-ended disjunction of capabilities which serve as the justificatory basis for human rights. In this respect, Nussbaum's conception is less susceptible to the exclusivity critique waged against Griffin.

In addition to the aforementioned naturally inhering capabilities, Nussbaum identifies two as having special importance: practical reason and affiliation. These capabilities “organize and suffuse all the others, making their pursuit truly human.”⁷³ For Nussbaum, practical reason is the ability “to form a conception of the good and to engage

⁷⁰ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 78.

⁷¹ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 78.

⁷² Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 79-80.

⁷³ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 82.

in critical reflection about the planning of one's life."⁷⁴ Like Griffin, Nussbaum identifies the ability to formulate a conception of a "good" or worthwhile human existence, and to act so as to realize those desired ends as a defining feature of human existence. Alone, this capability has been proven inherently exclusionary. However, paired with the ability to affiliate—to live with others and have the social bases of self-respect and non-humiliation—they are presented as essential conditions of the minimum standard of human existence.⁷⁵

Figuring prominently in the current inquiry is the capability of affiliation which demands being able to be treated as a dignified being whose worth is equal to that of others.⁷⁶ Like practical reason, the capability to affiliate suffuses all other capabilities, as humans are social beings who live with and towards others. It entails—at a minimum—protection against discrimination on the basis of arbitrary distinguishing features such as race, sex, sexual orientation, religion, cast, ethnicity, or national origin.⁷⁷ This is not to say that these capabilities are ends to which all others are reduced; rather, that "a government that makes available only a reduced and animal-like mode of an important

⁷⁴ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 79.

⁷⁵ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 82.

⁷⁶ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 79.

⁷⁷ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 79.

item such as healthy living, or sensing, has not done enough.”⁷⁸ In short, respect for the inherent dignity of the human person requires respect for the capability to reason and affiliate, and the importance of both in all facets of human life, but does not exclude those incapable of doing exercising those capabilities.

As stated previously, Nussbaum does not base the ascription of dignity on any single capability, as she strives for an inclusive, universal theory of human rights. The capabilities she identifies are taken to be “important for each and every citizen, in each and every nation”⁷⁹ and since—for example— ascribing dignity on the basis of rationality alone excludes a substantial percentage of the human population, it is insufficient. Instead, Nussbaum asserts that “full and equal human dignity is possessed by any child of human parents who has any of an open-ended disjunction of basic capabilities for major human life-activities.”⁸⁰ However, there is not a list of rights that directly correlates to this open-ended list of capabilities. In much the same way that Griffin appeals to practicalities to allow rights grounded in personhood to do any real work, Nussbaum recognizes that human beings require educational and material support in order to become fully capable of realizing these capabilities in a truly human way.

⁷⁸ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 82.

⁷⁹ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 6.

⁸⁰Nussbaum, Martha. “Human Dignity and Political Entitlements.” *Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics*. Washington D.C.: The President’s Council on Bioethics, 2008.

Realizing capabilities in this way in turn dictates the threshold or minimum standard of existence that corresponds with this conception of dignity, which in turn serves as the justificatory basis for human rights. In short, Nussbaum recognizes the multitude of ways in which human beings are capable yet needy creatures who, with support, possess the requisite capacities to flourish according to their unique conceptions of a good life. Her conception of dignity is flexible, pluralistic, inclusive, and respectful of human diversity.

Human Rights & Dignity as Capabilities

Nussbaum's conception of dignity serves as the basis for a theory of human rights in which rights are best understood as combined capabilities, or capacities to function.⁸¹ Combined capabilities are to be understood as those which require not only the promotion of the development of internal powers, but the environment in which it is possible to exercise other functions, including practical reason.⁸² In the context of rights, this requires demands of nations not only the protection and promotion of rights, but also the cultivation of an environment that makes it possible for citizens to exercise their capacity to reason practically and engage in various forms of social interaction. In short, rights that respect the inherent dignity of the human person are those that exist to promote and protect essential human life functions, "leaving individuals a wide space for

⁸¹ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. 98.

⁸² Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 85.

important types of choice and meaningful affiliation.”⁸³ In order for rights to respect the inherent dignity of human beings as it is articulated by Nussbaum, they must be guaranteed in a way that allows people to live in accordance with their conception of a good life.

Nussbaum’s theory of human rights is grounded on this capability-based conception of human dignity. The foundation of her view consists of two primary considerations: human beings have an inalienable worth in virtue of their capacities for various forms of activity and striving, and those capacities depend on the world for their development and conversion into actual functioning.⁸⁴ Her ascription of dignity is not exclusive to any one capacity, nor to particular combination of them. Rather, Nussbaum identifies human capacity in general, as well as human need and the various forms of striving to which it gives rise as the source of human dignity. In other words, Nussbaum recognizes the multitude of ways in which human beings are capable yet needy creatures who —with the right support — possess the requisite capacities to flourish according to their unique conceptions of a good life. Her dignity-based account is compelling in its plurality —grounding dignity in a variety of capacities as well as vulnerability and need.

On this view, the basic capabilities dictate a *threshold* below which a life would

⁸³ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 85.

⁸⁴ Nussbaum, Martha. “Human Dignity and Political Entitlements.” *Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics*. Washington D.C.: The President’s Council on Bioethics, 2008.

fail to be worthy of the dignity of a human being.⁸⁵ As such, social and political institutions—including those which promise human rights—ought to promote or guarantee at least a threshold level.⁸⁶ While it is the *functioning*, and not merely capabilities that distinguish human from other animal life forms, the appropriate political goal where adult citizens are concerned is capability.⁸⁷ This is true insofar as the position identifies practical reason as the good that suffuses all other capabilities making them truly human. This involves making decisions, exercising capabilities in accordance with one's choice rather than out of necessity, all while being provided with certain guarantees that make a life worthy of human dignity possible. An individual may not achieve a functional level of every capability Nussbaum lists, but what is important is that the environment is such that they may realize those which factor into their conception of the good life. Should the political goal be achieving a functional level of all capabilities, it would contradict the notion that essential to a worthwhile human existence is the ability to exercise capabilities in accordance with one's choice. It is from the basic intuition that certain human capabilities exert a moral claim and that they ought to be developed, that Nussbaum's capability-based conception blooms.

⁸⁵ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 6.

⁸⁶ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 75.

⁸⁷ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 87.

Nussbaum's conception of capabilities bears a close relation to both social and political rights, as rights are best understood as combined capabilities, or capacities to function.⁸⁸ More specifically, combined capabilities are those which require not only the promotion of the development of internal powers, but the environment in which it is possible to exercise other functions, including practical reason and affiliation.⁸⁹ In the context of rights, this demands of states to not only guarantee and promote rights, but prepare then environment so that it is possible for citizens to exercise their capacity to reason practically and affiliate (among a long list of other capabilities). In short, rights that respect the inherent dignity of the human person are those that exist to promote and protect essential human life functions while permitting the suffusion of practical reason. In order for rights, to respect the inherent dignity of human beings as it is articulated by Nussbaum, they must be guaranteed in a way that allows people to live in accordance with *their* conception of a good life.

Concluding Observations: Human Rights & Capabilities

To reiterate, Nussbaum's conception of dignity maintains that the capacity for practical reason and affiliation suffuse all other capabilities. The central human functional capability of practical reason is such that one is capable of "being able to form a conception of the good life and to engage in critical reflection about the planning of

⁸⁸ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 98.

⁸⁹Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 85.

one's life."⁹⁰ The capability to affiliate requires that one is "able to live with and toward others, to recognize and show concern for other human beings, [and] to engage in various forms of social interaction" while "being treated as a dignified human being whose worth is equal to that of others."⁹¹ Nussbaum explains that these capabilities allow for organization and planning of one's life in a characteristically human manner, where a person is not a mere "cog in a machine," but a thinking being capable of "being done with and toward others in a way that involves mutual recognition of humanity."⁹²

While Nussbaum's conception of dignity rests in part on the essential nature of engaging in various forms of social interaction, it does not entirely preclude the possibility of denying or violating the rights of certain individuals on the basis of affiliation. For example, there are cases in which the capability to affiliate is exercised or realized in a way that is deemed unnatural or undignified by the state. While Nussbaum's formulation of the capability demands protection against discrimination, the capability itself is not articulated such that it is unconditionally inclusive. While the capability may *entail* certain protections, it remains possible that certain formulations of affiliation be characterized as undignified or unnatural. Insofar as this is the case, the rights of those

⁹⁰ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 79.

⁹¹ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 79.

⁹² Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 82.

whose affiliations are characterized in this way are susceptible to violation. This remains a possibility insofar as human rights are justified in terms of the dignity which naturally inheres in human beings, thus an individual that realizes their capability to affiliate in a way that is inconsistent with what is deemed a natural or human realization may be denied those rights claims.

To illustrate the force of this worry about Nussbaum's conception, consider that a number of state parties to the Covenant on Economic, Social and Cultural rights have legislation in place which characterizes the way in which members of the LGBTQ community live with and towards others as unnatural. As I shall enumerate below, it is commonplace for states to justify what intuitively seem to be serious human rights violations on the grounds that specific ideas of the good life, or a specific way of affiliating with others are unnatural.

According to an International Lesbian, Gay, Bisexual, Trans and Intersex Association report on state-sponsored homophobia, there are 75 countries in the world with anti-homosexuality legislation.⁹³ Of the 75 countries, roughly 40% describe same-sex relations as "against nature" or "unnatural," and 39% are UN Member States. The state-sponsored homophobic representation of the LGBTQ community has resulted in a multitude of blatant human rights violations, as well as a toxic and pervasive hatred leaving the entire community with no grounds for recourse. According to an inquiry by

⁹³ International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A. & Itaborahy, L.P. *State Sponsored Homophobia 2015: A world survey of laws: criminalisation, protection and recognition of same-sex love*. Geneva: ILGA, 2015

NGO Human Rights Watch, the enactment of such legislation leads to an increase in arbitrary arrests, police abuse, extortion, loss of employment, eviction and homelessness, and health care cutbacks within the LGBTQ community. The representation of the community by the government has created a climate in LGBTQ individuals are feared and rejected by the general population, and in many cases find themselves subjected to defamation, abuse and exploitation. In many cases, LGBTQ people are being attacked with impunity by citizens and police officers, and many are being forced to flee for their safety.⁹⁴ This inquiry will proceed by considering specific examples of these violations in the Concluding Observations of several State Parties to the International Covenant on Economic, Social and Cultural Rights that have legislation that describes homosexuality as unnatural.

Uganda—a member of the UN since 1962—serves as a textbook example of the grievous injustices that arise from the systematic representation of human affiliations as unnatural. In 2009 The Anti-Homosexuality Act was proposed, and initially rejected by Ugandan President Yoweri Museveni as ‘fascist’. Following a ‘scientific’ inquiry lead by the Health Ministry of Uganda, the law was ultimately passed in December 2013. While the constitutionality of the law has been challenged, it was deemed null and void merely due to lack of parliamentary quorum during the vote. Since its repeal, the Ugandan government has begun to draft new legislation entitled The Prohibition of Promotion of

⁹⁴ Human Rights Watch. “Uganda: Anti-Homosexuality Act’s Heavy Toll.” 14 May 2014 <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>.

Unnatural Sexual Practices Bill, which will criminalize the advocacy of LGBTQ rights and community support, among other things.⁹⁵ This in addition to the existing anti-sodomy laws (sections 145 and 146 of the Penal Code Act of 1950), has created an extremely dangerous environment for Uganda's LGBTQ community.

In a 2014 report by Human Rights Watch, several specific examples of the implications of this legislation were offered by 38 individuals directly impacted by the laws. One of the implications of the passing of the Anti-Homosexuality law was a significant uprooting of LGBTQ people. In some instances individuals have been evicted from their homes, while in others they have been forced to flee to neighbouring countries. One woman —a lesbian in Kampala —shared an eviction letter received from her landlord stating that in spite of her pleasant disposition and timely payments, she was no longer permitted to rent his house.⁹⁶ The reason for her eviction was simply that her former landlord suspected her of "being indecent" and that he "cannot fight the government."⁹⁷ The introduction of the Law also saw the reduction of access to health services and HIV prevention materials. A transgender man participating in the interview described an instance in which he was not only refused treatment for a fever on the basis of his sexual orientation and gender, but was also forced to pay the doctor 50,000

⁹⁵ Human Rights Watch. "Uganda: Anti-Homosexuality Act's Heavy Toll." 14 May 2014 <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>.

⁹⁶ Human Rights Watch. "Uganda: Anti-Homosexuality Act's Heavy Toll", 14 May 2014, <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>

⁹⁷ Human Rights Watch. "Uganda: Anti-Homosexuality Act's Heavy Toll", 14 May 2014, <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>

Ugandan shillings to prevent him from notifying the police.⁹⁸ This type of extortion is not uncommon; Human Rights Watch and Amnesty International have documented interviewees reporting that "police demand of between 30,000 (about US\$12) and 1.5 million Ugandan shillings (about \$634)."⁹⁹ Others have reported instances in which police have sexually assaulted members of the LGBTQ community while in custody, forcing anal exams in at least one case of a man being arrested on homosexuality charges.¹⁰⁰ While this list is by no means exhaustive, it provides some insight into the kind of rights violations that occur when a particular demographic is characterized in legislation as affiliating in a unnatural or undignified way.

Returning to the context of the ICESCR, the Committee expressed their concern on this very issue in the 2015 Concluding Observations for Uganda. In these Concluding Observations urged the State party "to withdraw the draft law on the 'prohibition of promotion of unnatural sexual practices' that discriminates against persons on the grounds of their sexual orientation and gender identity" due to the growing concern surrounding the increase in arbitrary detention and police abuse of members of the

⁹⁸ Human Rights Watch. "Uganda: Anti-Homosexuality Act's Heavy Toll", 14 May 2014, <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>

⁹⁹ Human Rights Watch. Uganda: "Anti-Homosexuality Act's Heavy Toll", 14 May 2014, <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>.

¹⁰⁰ Human Rights Watch. "Uganda: Anti-Homosexuality Act's Heavy Toll", 14 May 2014, <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>.

LGBTQ community.¹⁰¹ As stated previously, Uganda is not alone in receiving criticism for these kinds of implications. There are a number of other State Members with legislation in place that actively discriminates against members of the LGBTQ community on the basis of ‘unnatural’ behaviour or affiliation. In many cases, failure to protect and promote the right to non-discrimination results in the violation of other rights state parties agree upon in signing the ICESCR.

To name a second example of a state that purports to justify human rights abuses by appealing to the distinction between natural and unnatural ways of life, the 2013 Concluding Observations for Iran expressed concern that “consensual same-sex sexual activity is criminalized and that convicted persons may even receive the death penalty.”¹⁰² The Committee expressed further concern that members of the LGBTQ community also “face discrimination with respect to access to employment, housing, education and health care, as well as social stigma and marginalization.”¹⁰³ There are a number of documented instances which validate the concerns of the Committee. For example, in September 2010, three men from Ahvaz were reportedly executed after being

¹⁰¹ Committee on Economic, Social and Cultural Rights, “Concluding observations on the initial report of Uganda.” *United Nations Economic and Social Council*. 8 July 2015.

¹⁰² Committee on Economic, Social and Cultural Rights, “Concluding observations on the fourth periodic report of Iraq.” *United Nations Economic and Social Council*. 27 October 2015.

¹⁰³ Committee on Economic, Social and Cultural Rights, “Concluding observations on the fourth periodic report of Iraq.” *United Nations Economic and Social Council*. 27 October 2015.

found guilty of charges relating to homosexuality.¹⁰⁴ Another instance saw four men from Kohgiluyeh and Boyer-Ahmad province being sentenced to death for sodomy.¹⁰⁵ This due to recent amendments of the Iranian penal code which state that punishment for lesbianism and sodomy is to be flogged 100 times and --depending on marital status and consent -- individuals may be put to death.¹⁰⁶

The result of this treatment has left LGBTQ persons feeling excluded from Iranian society, one man claiming "I don't see myself as a part of this society at all. That's because of my homosexuality and the Iranian people's mentality about homosexuality... I usually refer to Iran as 'your country' instead of 'my country' or 'our country.'"¹⁰⁷ By characterizing the affiliations of the LGBTQ community as unnatural, and in turn criminalizing homosexuality, a culture of exclusion has been inculcated. Members of the LGBTQ community do not feel as though they belong to Iranian society compromising their ability to make rights claims, and society as a whole views them as

¹⁰⁴Dehghan, Saeed Kamali. "Iran's persecution of gay community revealed." *The Guardian*, 17 May 2012, <https://www.theguardian.com/world/2012/may/17/iran-persecution-gay-community-revealed>.

¹⁰⁵ Dehghan, Saeed Kamali. "Iran's persecution of gay community revealed." *The Guardian*, 17 May 2012, <https://www.theguardian.com/world/2012/may/17/iran-persecution-gay-community-revealed>.

¹⁰⁶ Saeed Kamali Dehghan. "Iran's persecution of gay community revealed." *The Guardian*, 17 May 2012, <https://www.theguardian.com/world/2012/may/17/iran-persecution-gay-community-revealed>.

¹⁰⁷ Saeed Kamali Dehghan. "Iran's persecution of gay community revealed." *The Guardian*, 17 May 2012, <https://www.theguardian.com/world/2012/may/17/iran-persecution-gay-community-revealed>.

falling outside of realm of rights protection, to such an extent that their rights are systemically violated by the state.

The implications of legislation that depicts certain forms of self-determination or affiliation as unnatural are far-reaching. As the examples suggest, excluding a particular demographic from the right to non-discrimination compromises their ability to enjoy nearly all other human rights. This includes—but is not limited to—the right to life, education, work, and to the attainment of physical or mental health.

The key worry about Martha Nussbaum natural capacities based conception of dignity is that she provides no resources for distinguishing between human capacities that merit human rights protection and those capacities that do not, or, as states like Iran and Uganda might put it, are unnatural. This allows for such state parties to the Covenant to concede that human rights are owed in virtue of the inherent dignity of the human person, where dignity is capabilities-based, but argue that certain human capacities are unnatural, and for that reason need not be protected.

Recall that reflective equilibrium is understood as a state of affairs in which intuitively held judgments coincide with the general principles of a particular conception in turn achieving balance and coherence. For the purposes of this inquiry it is assumed that appealing to the characterization of certain affiliations as 'unnatural' to justify denying and violating rights to certain individuals is intuitively unappealing. Moreover, it is inconsistent with the general principle that universal human rights are owed to all members of the human family, equally and inalienably. It may be argued that this moral

principle is not necessarily a test that each conception of dignity must pass. However, since the scope of this inquiry is delineated by the international rights instruments which declare the equal and inalienable nature of rights, it will be taken as an important criteria for all accounts. While Nussbaum's pluralistic conception of dignity is not a blatantly exclusionary as Griffin's monistic conception, it fails to achieve reflective equilibrium insofar as the defining principles may be utilized to justify a state of affairs which conflicts with fundamental judgments held about human rights. As such, a capabilities-based conception of human dignity ought not form the public conception that figures so prominently in the discourse on human rights.

It is possible that Nussbaum could dismiss the exclusivity criticism as a misinterpretation or misapplication of her conception of dignity. However, Nussbaum does not provide resources for distinguishing between natural and unnatural human capabilities. Insofar as this is the case, her account is not able to rebut the claim that certain seemingly paradigmatic objects of human rights, i.e. the freedom to pursue one's sexual orientation and understanding of one's gender, are not realizations of natural capacities and hence do not demand the state's protection.

CHAPTER 4: DIGNITY & HUMAN NEED

Introduction

The final conception of dignity that will be considered comes from the theory of human rights presented by David Miller. While Miller does not articulate his theory of human rights in terms of a particular conception of dignity, he appeals to *human need* in the same way that the previous authors do to agency or capabilities. As I shall explain, one important distinction, however, is that Miller does not independently define the needs which ground rights, offering instead more of a placeholder-type account.

This chapter will begin by briefly considering the larger theory of rights of which a need-based conception of dignity is a part. It will proceed by elucidating the idea of human need, specifically in how it constitutes the set of principles of a conception of human dignity. Once Miller's theory of human rights and his needs-based conception of human dignity has been fully explicated, this chapter will proceed by explaining why this conception is inclusive, universal and thus the best candidate for the public conception of dignity. In particular, it will demonstrate that due to the culturally independent and choice-insensitive nature of human needs, a needs-based conception of human dignity serves as a placeholder account which successfully achieves reflective equilibrium in the discourse on human rights.

Miller's Theory of Human Rights

There are two principle motivating factors behind Miller's theory of human rights, the first of which is that a theory of human rights has to take cultural diversity seriously.

According to Miller, the grounds for human rights must transcend particular cultures meaning they must be “available to people regardless of their cultural affiliation.”¹⁰⁸ His approach attempts to justify human rights by appealing to universal human interests that any person may recognize, appreciate and identify with regardless of the culture to which they belong. The reason for this is simple: human rights ought set out the terms under which persons of diverse cultures can live together on terms of equality.¹⁰⁹ In order for rights to be truly universal, the grounds on which they are justified must be universally compelling. They cannot be justified in terms of concepts or ideals that are more relevant or applicable to one culture than another, and the terms must be reflected in all persons, regardless of the arbitrary features which distinguish human beings.

The second factor is that a doctrine of human rights must specify a global minimum that people everywhere are owed as a matter of justice.¹¹⁰ In much the same way that Nussbaum's theory of human rights suggests a threshold below which humans are unable to live a dignified, human life, Miller's theory is concerned with specifying a global minimum standard of human existence. He appeals to human needs which are those needs that states must protect, and that it would amount to a violation of a dignity not to protect to do so. The reason for this is twofold: the rights cannot be merely

¹⁰⁸ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 410.

¹⁰⁹ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 409.

¹¹⁰ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 409.

aspirational, and the claims must be powerful enough to impose potentially demanding obligations on agents who bear varying degrees of connectedness to the claimants. Insofar as this is the case, the justificatory grounds must reflect a human interest that is so weighty that it can impose legitimate obligations on others, as well as dictate a minimum standard of human existence. However, Miller does not independently define these ‘needs’ as his theory of human rights is not intended to “extend to the complete list of rights that we would wish to include in our description of a fully just political regime.”¹¹¹ Rather, his conception offers a placeholder that permits the identification “of a list of rights that can specify a global minimum that people everywhere are entitled to as a matter of justice, and therefore may impose obligations.”¹¹² Appealing to human need as a placeholder for those qualities or characteristics on which rights are grounded allows for the concept of dignity to be populated without being subject to the exclusivity concern; it leads to neither an over- nor under-inclusive list of rights. In summary, Miller presents a variation of a monistic theory of rights which dictates a minimum acceptable standard for human existence determined by something that has cross-cultural resonance and intuitive appeal.

As stated previously, Miller takes human need to be the universal quality or characteristic in accordance with which human rights must be justified. According to

¹¹¹ Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2013. p.167.

¹¹² Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2013. p.166.

Miller, needs provide suitable justificatory grounds for human rights because "when we identify something as a human need, we identify it as an essential element in human life, and this gives it the right kind of moral urgency."¹¹³ On Miller's view, these 'essential elements' are not independently defined in the way that Nussbaum and Griffin define capabilities and agency respectively. By grounding human rights in this way, Miller distinguishes rights claims from those which stem from other more trivial interests, while avoiding the concerns of exclusivity that arises with too much or too little disambiguation.

For example, there is a fundamental human need for nourishment as it is an essential element in human life. All human beings require a certain level of nourishment in order to be able to act and engage with the world according to their preferences [or conception of the good life]. However, there is no basic human need for food that meets certain religious criteria, nor for delicacies which satisfy the most sophisticated palates. In these cases, the 'need' or desire for a particular kind of food is what Miller refers to as a societal need. This is not to say that these needs are less important, especially as they pertain to religious commitments; rather, the claim is that basic human needs universally underlie societal needs that may be both culturally and individually relative. Committing to human need as the justificatory ground for human rights draws the line and

¹¹³ Miller, David. "Grounding Human Rights." *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 412.

distinguishes those needs which have the greatest moral weight.¹¹⁴ However, it does not independently define the needs such that certain individuals may be viewed as having the need [or not], therefore it is not inherently exclusive.

The second reason for grounding rights in terms of human need is that needs are choice-insensitive meaning that an individual may choose to act such that their needs go unfulfilled, but he cannot help but have the need in the first place.¹¹⁵ This is because basic human needs are those items or conditions that are necessary for a person to have if they are to avoid being harmed.¹¹⁶ As agents, human beings may choose not to fulfill their basic needs, but it is beyond the agential capacity of all humans to decide not to have the needs at all.

Returning to the example of the basic human need for nourishment, a person may choose not to eat, but they cannot choose whether or not they require sustenance. A similarly unchosen aspect of human life is “the biological fact that we must take in water and breathe oxygen.”¹¹⁷ In both of these cases [and a number of others], the needs are not sensitive to personal choices; they relate to biological or sociological facts about human

¹¹⁴ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 412.

¹¹⁵ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 412.

¹¹⁶ Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2013. p.179.

¹¹⁷ Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2013. p.180.

beings, and they dictate the conditions for minimal decency regardless of a given set of social circumstances.¹¹⁸ Appealing to biological facts about the human family provides a justificatory basis for human rights that cannot be disputed on the grounds of cultural relativity, which is important since the rights the international instruments purport to justify are intended to be universal.

Miller acknowledges that while certain human needs are choice-insensitive, essential elements of human life, there are other needs which humans have in virtue of being social animals. While societal needs are universal insofar as all human beings have them regardless of the culture or environment within which they are immersed, they do not maintain a universal form. In other words, while it is true that all human beings have societal needs, these needs do not manifest in the same way for all persons. Miller explains that the societal needs of an individual in Sub-Saharan Africa are not the same as a person from the developed West.¹¹⁹ Even though all human beings have what he refers to as societal needs, Miller argues that there is a generic human form of life over and above the many specific forms of life that human beings have created for themselves.¹²⁰ Since a theory of human rights must transcend culture, a distinction must be made between the two types of need. They are interconnected, but necessarily separate when it

¹¹⁸ Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2013. p.181.

¹¹⁹ Miller, David. "Grounding Human Rights." *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 412.

¹²⁰ Miller, David. "Grounding Human Rights." *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p. 413.

comes to justifying rights. Basic needs are identified by considering the human activities that are reiterated across contexts and communities.¹²¹ This list includes [but is not limited to] food and water, work and leisure, freedoms of movement, conscience and expression.¹²² These are the needs that Miller invokes to justify human rights, for without their fulfillment it is impossible to lead a minimally decent life. However, these needs are not presented as an exhaustive list of the needs that populate our conception of human dignity. Rather, they are examples of needs that may be specified on grounds other than things that merit human rights protection, such as necessities for basic survival as a social being.

Prior to considering the kind of rights that Miller justifies using human need, it will be helpful to frame the justification in terms that are consistent with the rest of this project. In other words, the need-based justification of human rights must be articulated in terms of the concept of dignity. Similar to the way in which Griffin appeals to personhood or agency, and Nussbaum to the capabilities of affiliation and practical reason, Miller identifies human need as the quality to which dignity is attributed. This is to say that the conception of dignity that may be imputed into Miller's theory of human rights is one that attributes the inherent dignity of the human person to basic human needs. On this view, human beings have an inherent dignity insofar as they have

¹²¹ Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2013. p.184.

¹²² Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2013. p.184.

fundamental biological and sociological needs, the fulfillment of which underpins their unique existence. This conception of dignity serves the same justificatory role as the previous conceptions, and will be similarly evaluated for its success in achieving reflective equilibrium. Prior to assessing whether a needs-based conception of human dignity ought to be adopted as the public conception, the notion of human need and the rights to which it gives rise will be explained in further detail.

Human Need & Human Rights

There are three main ways that human rights may be justified in terms of human need. The first set of rights follow directly from the conditions that are necessary to a minimally decent human life. This includes [but is not limited to] rights against slavery, torture and arbitrary arrest, as human beings need to be protected against these forms of oppression in order to securely plan and organize their lives.¹²³ Recognizing that a minimally decent life must also include having the opportunity to communicate and interact with others, rights to freedom of conscience, expression and association may also be justified. In short, by appealing to the rudimentary needs of a social animal, rights that protect such elementary freedoms can be justified in terms of a needs-based conception of dignity.¹²⁴ Included in the basic human needs which ground human rights is the need for recognition. According to Miller, it is clear that “humans cannot lead minimally

¹²³ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.420.

¹²⁴ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, pp.420-421.

decent lives unless they achieve a certain standing, at least in the eyes of those who matter to them.”¹²⁵ This need may be used to justify rights to be given a certain legal status, as well as the right to be protected against certain forms of arbitrary treatment. It justifies these rights insofar as the systematic demeaning, ignoring, or treatment of a human being as a non-person undermines their capacity to lead a decent life, in spite of the material conditions that may be fulfilled.¹²⁶ Third, a needs-based conception of human dignity can also be used to justify some civil and political rights; however, these rights are justified instrumentally on the grounds that they are necessary to protect other rights that stem directly from human need. Miller concedes that it is difficult—if not impossible—to argue that these rights correspond directly to human needs, “but it has long been recognized that person who lacks such rights is vulnerable to having other, more basic, rights violated or taken away entirely.”¹²⁷ As such, these needs are placeholders for the conditions that are of such great value to human beings that, if not satisfied, the possibility of a minimally decent life is greatly diminished.

Miller acknowledges several objections that may be raised against a needs-based conception of dignity and the rights that it justifies. First, he concedes that some may

¹²⁵ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.421.

¹²⁶ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.421.

¹²⁷ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.422.

critique his position for relying on a foundation that is not sufficiently solid.¹²⁸ Since a needs-based conception of dignity appeals to a wide range of needs, some of which extend beyond the physical necessities for human life one might claim that his appeal to needs is a mere verbal maneuver¹²⁹ As such, it would not serve as a sufficiently solid foundation for the rights he purports to justify using this conception of dignity. Miller explains that he is—at least in part—appealing to an intuition, and it is incumbent on him to show that these needs really are needs. Failure to do so would result in a statement of human priorities rather than a universal grounding of human rights.¹³⁰ In order to demonstrate the fundamental necessity of the needs that he appeals to, Miller distinguishes them from societal needs which “depend on contingent social norms that define standards of decency.”¹³¹ By making this distinction, Miller is able to substantiate his intuition that there are basic needs which underpin the secondary needs which stem from human existence in a particular time and place.

The second obstacle that Miller addresses has to do with what he refers to as the problem of overshoot. His concern is that human needs may appear to be too expansive a

¹²⁸ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.411.

¹²⁹ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.422.

¹³⁰ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, pp.422-423.

¹³¹ Miller, David. “Grounding Human Rights.” *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.413.

basis for human rights; that people will need certain things that they cannot reasonably claim as human rights, because to do so would place too much of a demand on others.¹³² He resolves this problem by insisting that the justificatory relationship between needs and rights is not necessarily one-to-one, but that a need may lend support to several rights or a right may be justified by several needs.¹³³ For example, the human need for social contact may justify rights such as those to freedom of movement and association. Conversely, the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment can be justified in terms of the need for recognition, as well as a need for physical security and respect for bodily integrity. However, it remains possible that a particular human need may justify a right on its own. For example, all human beings have a need for food and water, and though the manifestation of this need may take different forms depending on the society in which it is considered, no human being can help but have that basic need in the first place. In turn, these needs give rise to a right to adequate nourishment and clean drinking water.

Failure to acknowledge that needs and rights may not bear a one-to-one relationship could potentially give rise to a third problem of undershoot, where it may appear that needs can only justify some important human rights and not others.¹³⁴ In this

¹³² Miller, David. "Grounding Human Rights." *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.417.

¹³³ Miller, David. "Grounding Human Rights." *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.417.

¹³⁴ Miller, David. "Grounding Human Rights." *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, p.411.

case it would be easy to justify why there are rights to food, shelter and medical aid, though much near impossible in the case of civil and political rights like the right to vote.¹³⁵ Miller addresses both the problem of undershoot as well as the problem of overshoot by reiterating that it is not the case that every human need directly entails a rights claim. Rather, it is a wholistic picture that considers needs while accounting for the practical considerations of responding to others.

Human Need & Inclusivity

Recall that in both the agency-based conception of dignity proffered by Griffin and the capabilities-based conception articulated by Nussbaum, there is an issue of exclusivity. Griffin maintains that the uniquely human status of self-determiner—an autonomous agent who is at liberty to pursue his or her conception of a worthwhile life—supports the inherent dignity which justifies human rights. As explicated in chapter two, this conception of dignity is susceptible to criticism insofar as it is inherently exclusionary. According to the World Health Organization, approximately 15% of the world's population—over 1 billion people—have some form of disability.¹³⁶ Disability is an umbrella term broadly understood as impairment, activity limitation and participation restriction that affects the interaction between individuals with a particular health concern and personal and environmental factors. While it is not the case that

¹³⁵ Miller, David. "Grounding Human Rights." *Critical Review of International Social and Political Philosophy*, vol. 15, no.4, 2012, pp. 411-412.

¹³⁶ World Health Organization. *Disabilities*. <http://www.who.int/topics/disabilities/en/>.

disability inevitably compromises agency, there are numerous cases in which it manifests at the expense of a person's ability to act as a self-determining agent. If human rights are justified in terms of a conception of dignity that appeals to the agential status of human beings, and certain human beings fail to realize this status, it is possible that a State Member may feel justified in denying, or refusing to protect and promote their rights. This was taken into consideration in conjunction with the Concluding Observations of several State Parties to the ICESCR, where it was demonstrated that an agency-based conception can potentially justify grievous rights violations against persons with disabilities and, as such, fails to achieve reflective equilibrium.

The capabilities-based conception of dignity on which Martha Nussbaum grounds her theory of human rights is also susceptible to the exclusivity criticism. Recall that on Nussbaum's account, respect for the inherent dignity of the human person requires the capability to reason and affiliate suffuse all activities. This demands an acknowledgement of the importance of both capabilities in all facets of human life, however it does not necessarily exclude those incapable of doing exercising those capabilities. On this view, the capability to reason practically is understood in terms of the formulation of a conception of a "good" or worthwhile human existence, and the propensity to act so as to realize those desired ends.¹³⁷ This notion is latent in Griffin's conception of dignity as well, thus the exclusionary nature of that capability has been

¹³⁷ Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2001. p. 92.

previously established. For this reason, the claim that affiliation —the capability of living with others and have the social bases of self-respect and non-humiliation— has potentially exclusionary implications was made.

The capability of affiliation is presented as suffusing all of the other human capabilities; it naturally and inevitably present in all facets of human life. However, as stated in the previous chapter there are number of State Parties to the ICESCR that describe certain kinds of affiliation as unnatural. More specifically, there are a significant numbers of countries that have been criticized for maintaining legislation which characterizes the nature of affiliation between members of the LGBTQ community as “unnatural.” From the recent Concluding Observations of said countries, it appears to by describing people in this way, the state acts as though it is justified in denying them certain basic human rights. The logic behind this simply being that if all human beings are entitled to certain rights claims given their natural capability to affiliate, and certain demographics exercise this capability in a way that is unnatural (and, as such, undignified), then those individuals are not entitled to the objects of those rights. Since Nussbaum does not adjudicate between what is natural and what is natural and unnatural when it comes to capabilities, it remains possible for a state to accept a capabilities-based conception of dignity while simultaneously justifying rights violations to those demographics.

It is possible to argue that a parallel worry vexes Miller's needs-based conception of dignity. More specifically, one might argue that the needs associated with a minimally

decent life require adjudication in much the same way that the natural/unnatural distinction does on Nussbaum's account. For example, an individual that contends that the affiliations of the LGBTQ community are unnatural may also claim that being able to engage in non-hetero relationships is not a minimal condition of human life. In this case, Miller's theory of human rights does not provide sufficient grounds to rebut the claim. However, while Miller's conception of dignity does not explicitly adjudicate and define every need that constitutes a minimum standard of human existence, the placeholder account provides a more workable framework when addressing rights violations. Consider, for example, the men who were executed in Iran for engaging in homosexual relations. While this action may be justified on the grounds of "unnatural affiliation", the reason could not be that the men had different or lesser basic human needs than heterosexual citizens. Though this may not settle the argument that there is no 'need' for homosexual relations, the act of killing these men violates other basic needs relating to physical security and safety that are directly attributable to survival for social beings. Insofar as this is the case, the Iranian government could not appeal to the basic human needs of these men in the way they could the nature of their affiliations to justify these violations.

Unlike both the agency and capabilities-based conceptions of dignity, a needs-based conception is not exclusive. Miller articulates the set of principles which defines the needs-based conception in a way that is completely *inclusive*, where 'needs' stand as placeholders for the things that demand rights protection [and whose failure to protect

would constitute a violation]. This is true for two reasons, the first of which pertains to the choice-insensitivity of basic human needs. Unlike agency and the capability to affiliate, there is a vulnerability or dependency associated with human need. Rather than it being a matter of realizing potential or acting in a particular way, there is a minimum level of vulnerability that increases depending on a number of circumstances.

Consider the case of persons with disabilities. In virtue of these disabilities, some of these individuals are unable realize their agential status in the way that Griffin describes as the basis for human dignity. Insofar as this is the case, they may be seen as failing to realize this quality to the requisite extent to justify rights claims, or perhaps failing to realize it at all. As such, certain rights violations may be implicitly justified. However, by appealing to a needs-based conception of dignity, the opposite is true. Since in the majority of cases persons with disabilities experience increased needs over the course of their lifetime, they cannot be construed as failing to demonstrate the inherent human quality on which human rights are justified. This in turn suggests that they are not only entitled to have those rights protected and promoted, but that they may require more stringent or active protection due to their increased vulnerability. Therefore, a needs-based conception of human rights would never justify an infringement or violation of those rights; though it may be used to justify increased protection.

The second reason why Miller's needs-based conception of human rights is inclusive has to do with the true universality of human need. As explicated above Miller adamantly distinguishes between societal needs and basic human needs; needs which

stem from socially contingent norms and those which are fundamental necessities of human life. Basic human needs persist regardless of cultural affiliation, as they are choice-insensitive features of human life. Regardless of the ability of a particular individual or demographic to realize their agential status, exercise practical reason, or realizing their capability to affiliate in a particular way, the satisfaction of these basic needs is the necessary foundation for all human life. These needs, however, are not independently defined; rather they are open-ended and serve as placeholders for those needs that demand human rights protection. The exact form of these needs—and hence the basis of human dignity—is left open-ended. The needs are then argued for as a matter of first order argument.

When it comes to justifying human rights, the fundamental and universal nature of these needs is of the utmost importance. Since the Universal Declaration of Human Rights and each of the other international human rights instruments purport to justify and articulate rights which apply—without qualification—to every member of the human family, their justificatory basis must not only be reflected in, but resonate with all persons no matter what. In the case of the agency-based conception of dignity, the justificatory basis of the rights is demonstrated in varying degrees, if at all. In terms of the capabilities-based conception, the possibility of characterizing certain kinds of affiliations as unnatural or deviant lead to the possible exclusion of certain demographics such as members of the LGBTQ community. However, all people regardless of ability, sexual orientation, race, ethnicity, and every other arbitrary distinguishing feature used to

classify human beings, have needs that must be met in order to realize both their agential capacity, as well as all other capabilities. As such, a needs-based conception of dignity is the most successful in achieving reflective equilibrium, and ought to be adopted as the public conception in the discourse on human rights.

Challenges

In much the same way that Miller's conception of dignity was used in the previous sections to critique the positions of both Griffin and Nussbaum, there are several possible challenges may be waged against his position. For the purposes of this inquiry, the challenges that will be considered will be limited to the ideas that have been considered within this text, namely those of James Griffin and Martha Nussbaum.

Included in these challenges will be the idea that one of the implications of a needs-based conception of dignity is that may justify a list of rights that excludes a number of things that are considered to be very important to human beings. The second and final challenge that will be considered has to do with the over simplicity of a needs-based conception.

More specifically, that a needs-based conception of dignity fails to acknowledge something about human beings that is both relevant and essential to the discourse on human rights.

In his own work, James Griffin advocates limiting the discourse on human rights, arguing that it is counterproductive to speak of everything that matters to human beings

as though there was an associated rights claim.¹³⁸ Griffin's concern is that the discourse on human rights has expanded to include all matters of justice and fairness, and that the terminology is extended to convey the importance of things that are not actually grounds for human rights. In this respect, Griffin is likely to appreciate the fact that the needs-based conception of dignity proffered by Miller does not strive to encompass everything that is important, just or fair. However, it is reasonable to anticipate that Griffin would be concerned that adopting a needs-based conception ignores the unique agential status of human beings. The problem with this being that human beings value their status as agents more than anything else, and it is also something that they value in others. Miller is positioned to respond to this challenge by returning to the argument that an agency-based conception of dignity is inherently exclusionary. Moreover, it is even less clear that human beings value the agency or personhood of one another to an extent that it may be used to justify stringent rights claims. This is not to say that agency is not important, nor that it cannot figure prominently in the discourse. Rather, the assertion would be that neither agency nor personhood demonstrates the universal quality that is required to form the justificatory basis of universal human rights.

A second [and related] challenge may be that the list of rights justified by a needs-based conception of dignity would be too short. The concern being that one of the implications of a shorter list of universal rights is the failure to acknowledge the essential,

¹³⁸ Griffin, James. "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights." Meeting of the Aristotelian Society, 9 October 2000, Senate House, University of London. Presidential Address. p.10.

yet less quantifiable aspects of humanity that ought to figure into the rights instruments. Otherwise put, since —for example-- human beings have the capabilities that Nussbaum describes there is more to human existence than fulfilling basic needs, and importantly so. Defending the needs-based conception of dignity one may claim that it is difficult to justify a more robust picture of basic human rights when such a substantial percentage of the world's population lives with many of their basic needs unmet. This is not to say that on an individual or collaborative basis, states should not strive for a greater or more extensive list of rights based on what they can provide. However, as long as there are human beings that are living below the minimum standard of human existence, it is difficult to justify a long list of aspirational rights claims.

Conclusion

This inquiry began by recognizing the inextricability of the concept of dignity from the discourse on human rights. Using the Rawlsian concept/conception distinction, three conceptions of dignity were assessed in terms of their ability to achieve reflective equilibrium. Neither the personhood-based conception articulated by James Griffin nor the capabilities-based conception presented by Martha Nussbaum achieved reflective equilibrium. In both cases, in spite of their respective merits the conceptions were taken to be exclusionary, whether implicitly or explicitly. This was attributable --at least in part-- to the fact that both conceptions are populated by qualities or characteristics that can be reasonably construed as being exclusive in nature. I offered an interpretation of David Miller's needs-based theory of rights that I argued overcomes the worries about

exclusivity associated with the previous accounts. Unlike the independently defined accounts provided by Nussbaum and Griffin, the use of 'need' in Miller's conception of dignity functions as a placeholder. In this respect, Miller's needs-based conception was argued to provide the best possible framework for navigating the universal scope of human rights. In conclusion, in order for human rights to be justified on sufficiently universal grounds, and to achieve the ends intended by the international human rights instruments the public conception of dignity ought to be one that is grounded in human need.

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