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UNIVERSITY OF WITWATERSRAND
DEPARTMENT OF PHILOSOPHY

HUMAN DIGNITY AND THE RIGHT TO CULTURE

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Cover Page

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Declaration

I declare that this is my own, unaided work. It is being submitted for the degree of Master of Arts in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other University.

Natalie Watermeyer

16th January 2006

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I. Introduction

Human Dignity and the Right to Culture

In the Sunday Times of 25th September, Bongani Mthethwa reported that many "cultural groups and traditionalists" are outraged by the fact that the proposed Children's Rights Bill seeks to ban the virginity testing of young girls. They see this as evidence of "ignorance and insensitivity to Zulu cultural values" and as an act of hypocrisy: while the Bill seeks to ban virginity testing, it permits the largely Xhosa tradition of ritual male circumcision, despite the fact that a number of youths are killed or permanently maimed by this practice each year[1]. Supporters of the ban on virginity testing claim that it contradicts the right to bodily integrity, "prejudices young women who aren't virgins" and perpetuates the idea that women should "remain pure" while it is acceptable for men to be promiscuous.

While the Constitution does guarantee the right to bodily integrity, it also establishes the right to culture. Whether this is an instance of conflicting rights, and if so, how this clash is to be resolved depends at least in part on how the right to culture is interpreted, and how it is justified. The latter question forms the basis of this research.

Unless otherwise specified, "culture" will refer to a way of life that is shared by a group, and transmitted from generation to generation. It includes the language, religion and traditional practices of a group and affects most (if not all) aspects of group members' lives – "it defines people's activities…determines occupations…and defines important relationships (such as marriage). It affects everything people do: cooking,

[1] Mthethwa (2005).

architectural style, common language, literary and artistic traditions, music, customs, dress, festivals, [and] ceremonies."[2]

The South African Bill of Rights includes a right to language and culture, as well as a right to cultural, linguistic and religious community:

> 30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights[3].
> 31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right; with other members of that community
>
> a. to enjoy their culture, practise their religion and use their language; and
>
> b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
>
> (2) The rights in subsection (1) may not be exercised in any manner inconsistent with any provision with the Bill of Rights.[4]

The right to culture may be interpreted in several ways; it is not clear which the Constitution is endorsing. Avishai Margalit identifies three possible levels to the right to culture[5]. The first grants a cultural group the right to non-interference, subject to the harm principle[6]. Presumably this right would protect the right of cultural groups to ways of life or practices that others find strange or offensive, but that do not break any laws protecting others - e.g. the sounding of the muezzin in a neighbourhood inhabited by Moslems. The second adds to this the right to recognition, for example through representation in the media (e.g. TV programming in all SA languages). The third obliges the state to positively support the maintenance or survival of a culture, for example by providing funds to build separate schools for Afrikaans-speaking students, or by exempting the San

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[2] Margalit (2004).
[3] The Constitution of Southern Africa (1996) Ch. 2 p. 15.
[4] Ibid p. 15.
[5] Margalit (2004).
[6] The "harm principle" (taken from J.S. Mill's *On Liberty*) states that the only acceptable justification for limiting a person's (or group's) freedom is to protect others from harm.

from laws against hunting in certain areas. Unlike the second level, it calls for measures that cannot be defended under the banner of equal treatment (equal access to representation); in fact it calls for the opposite: differential treatment on the basis of culture.

As the Constitution enshrines "human dignity" both as a value and as a right, and as this value is often seen as foundational to the rights established by the constitution[7], my aim is to examine whether the value of human dignity justifies a third level right to culture, with a focus on the South African context. In other words, should certain groups in South Africa be granted exceptions to particular laws in virtue of their culture, or given state support in maintaining specialised schools (e.g. only for Afrikaans-speakers), places of worship, etc., on the grounds of human dignity?

How should "human dignity" be understood?

The notion of human dignity is somewhat vague. The South African Constitution emphasises the value of human dignity as a rejection of the policies of Apartheid, under which the majority of the population was treated as being of less than equal worth. In contrast, the Constitution seeks to emphasise the inherent worth of all persons in virtue of their shared humanity[8]. This "humanity" is the source of dignity; the vagueness

[7] "In the capital punishment case [S. v. Makwanyane] …the main judgement, with which none of the members of the court disagreed, referred to the rights to life and dignity as the most important of all human rights and the source of all the personal rights in chapter 3." Chaskalson (2002) p. 139.

[8] "Respect for human dignity is particularly important in South Africa. For apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new constitution." O'Regan, cited in Chaskalson (2002) p. 139.

surrounding the concept therefore largely derives from debate as to what this shared humanity consists in.

I begin by looking at two possible approaches to dignity. In chapter two, I consider the "Kantian" view, which locates a person's humanity in her capacity for rational autonomy, and therefore equates respect for human dignity with respecting a person's ability to make, and live by, her own decisions[9]. In chapter three I examine the broader, more inclusive outlook for which Martha Nussbaum argues[10]. She holds that the state must work to create the social basis for the development of certain capabilities that are (she claims) fundamental to any fully human life, regardless of the conception of "the good" held by the individual. Her list of basic capabilities includes, for example, "senses, imagination and thought", emotions, affiliation, political and material control over one's environment, and so on. Respect for the person's "humanity" in this case amounts to protecting and nurturing her ability to life a genuinely human life; Nussbaum's view is influenced by both Aristotle and Marx. Following Nussbaum, I argue that respect for dignity should be predicated on this second, broader interpretation of "humanity".

Having argued for Nussbaum's broader understanding of "human dignity", in chapter four I describe three South African cases where the right to culture might be invoked: ritual circumcision, virginity testing and hunting rights for the Khomani San. Drawing on these, I then outline some of the reasons for opposing a third level right to culture, before going on to consider some of the arguments put forward by proponents of

[9] Hill (1992).
[10] Nussbaum (2001).

cultural rights that appeal to certain of the capabilities Nussbaum claims to be crucial to dignity.

Arguments put forward to defend cultural rights on the grounds that cultural membership is important to human dignity usually do so by appealing to the importance of securing or shaping one's identity (Taylor), or to the value of autonomy (Kymlicka).

The argument from identity

Charles Taylor claims that respect for human dignity requires that one respect the "universal human potential" possessed by every person, and that this should not simply be interpreted as the potential for rational autonomy, but as the potential for "defining one's own identity, as an individual and as a culture"[11]. I think that the capabilities that Nussbaum seeks to endorse are arguably those needed for developing one's "unique identity" and hence that Taylor's approach fits with Nussbaum's notion of dignity. Taylor claims that the importance of defining one's own identity follows from the rise of "authenticity", i.e. the idea that each individual has an original "mode of being", which one must seek to articulate if one is to attain full humanity. He argues that one's cultural membership plays an important part in this process. He therefore holds that cultural communities should sometimes be allowed to restrict individual freedom (to a certain extent) in order to ensure their survival.

[11] Taylor (1994) p. 42.

Arguments from autonomy

Taylor also argues that individuals develop their identities through a continuing dialogue with others, both in response to and in rebellion against the way that others perceive them. As a result, if a particular cultural group, race or gender is deemed inferior or somehow contemptible, its members may internalise this belief, making it a part of their identity and thereby damaging their self-respect. Consequently, their autonomy may be impaired. I discuss this in chapter six, most of which is devoted to consideration of the arguments suggested by Will Kymlicka. Kymlicka's approach is situated within a Kantian understanding of dignity, but as autonomy also plays a central role in Nussbaum's conception of dignity, his arguments remain relevant.

He argues that cultural membership is a necessary pre-condition of choice, and is therefore a necessary pre-requisite for freedom (which in turn is essential to human dignity)[12]. Culture invests our actions with meaning, and provides the "options" from which we choose, as well as the criteria with which we choose. Without culture, then, our capacity for choice, and hence our freedom, is severely limited. Thus the value of cultural membership is established by the same considerations that make liberty a primary good[13], namely that it allows us to evaluate and change our goals, values and beliefs if we no longer find them worthwhile.

[12] Kymlicka (1989).

[13] A primary good is a "good" that is of value to anyone, regardless of their conception of "the good" or life plan; e.g. self-respect.

Culture, emotions and the capacity for affiliation

In chapter seven I suggest further avenues of defence that Nussbaum's conception of dignity allows the advocate of cultural rights. These include appeals to both emotional health and the capacity for affiliation. Finally, in chapter eight I conclude following a brief review of the arguments covered.

II. Kantian Dignity

> Most infamously - as recorded as a shameful chapter of colonialist brutality – San inconveniently occupying land allocated to farmers were officially deemed to be less than human, declared to be 'vermin', and legally exterminated by pioneer farmers in hunting parties in order to 'tame' and clear the sought-after farming land.
>
> Roger Chennels, "The Land Claim of the !Khomani San of South Africa"

1. Dignity as Ground to Human Rights

Human dignity is referred to as the ground for human rights not only in the South African and several other national constitutions, but also in the United Nations Declaration of Human Rights[14]. Presumably, the reason for this is roughly as follows: if we accept that human beings have dignity (inherent worth), it follows that they should be treated as valuable – not abused or neglected. Human rights, then, attempt to prevent treatment that is not – and possibly to promote treatment that is – in accord with the value we attribute to human beings. Thus the actual specification of rights will depend on the source or nature of their value.

To illustrate - if we decide that a cave full of rock art has special worth, it makes sense to resolve to treat it in a particular way. What this "particular way" entails will depend on what we find valuable about it – in this case, its cultural significance. Consequently, we will preserve all those aspects related to its cultural value, attempting to ensure that it is not liable to environmental damage or defacement by vandals. We will not, on the other hand, try to protect and promote the level of fertility of the soil in the cave, as we are not interested in the cave's possible use as a vegetable patch. Similarly, it follows that the actual rights listed by a declaration of human rights will depend on what

[14] See United Nations Universal Declaration of Human Rights.

we believe to be the source of human worth. However, the use of human dignity as a founding value has not gone unchallenged.

2. Objections to dignity as a founding value for the Constitution

Sandra Liebenberg lists three common objections to the use of dignity as a value in adjudicating human rights issues[15]. First, dignity is seen as being too "vague and multifaceted" to use as a founding value. If the concept is not sufficiently well-defined or is too pliable, it is liable to be interpreted in whatever way best suits the person referring to it, and is consequently open to inconsistent rulings and abuse.

Second, the notion of human dignity is closely associated with "the protection of freedom and autonomy. As such, it serves to discourage the positive redistributive measures needed to remedy conditions such as material inequality and disadvantage"[16]. This appears to express concern at a possible libertarian approach, where redistributive measures (primarily taxation) are seen as violating the freedom of the individual to decide what he or she will do with his/her earnings. Thus legislation intended to redress the massive inequality between rich and poor, and to improve the lot of those trapped in a state of poverty, would seem to conflict with dignity (so understood).

Thirdly, it "promotes a narrow focus on individual personality issues as opposed to 'a group based understanding of material advantage and disadvantage'…Thus the need to redress systemic patterns of inequality and disadvantage are obscured by focusing on individual personality issues related to subjective feelings of self-respect and self-

[15] Liebenberg (2005) p. 5.
[16] Ibid.

worth"[17]. Liebenberg gives as an example a Canadian lawsuit, *Gosselin vs. Quebec.* In this case a class action protested the fact that welfare benefits for people under 30 years old was a third of that for those over thirty, despite the fact that the latter amount was deemed to be the minimum amount necessary for survival. Those in the former group could increase their benefits by joining "educational and employability programmes", but these offered a limited number of places and had "restrictive eligibility requirements". The court found that this system was compatible with respect for the dignity of those below the age of thirty as it was intended to increase their chances of finding employment, and hence "the majority held that a reasonable person in the claimant's circumstances would have perceived the government's positive motives in creating an incentive-based welfare scheme for young people" [18]. This example suggests that the concern regarding "subjective feelings and individual personality issues" is that the use of dignity as founding value focuses attention on the motives of the government or legislating body rather than the actual position of those affected by the legislation. As long as the state's motives are consistent with a respect for human dignity, then the resulting legislation is deemed acceptable, regardless of how this actually affects the person subject to this ruling.

However, using human dignity as a founding value could be also be seen as problematic if it lead to a focus on the "subjective feelings of self-respect" of the person *affected* by legislation. If it did, we would be left with no reason to change the state of a variant of "happy slaves" i.e. those who are socialised to derive their self-respect from a particular station or role, despite its patent inequality, so that they are reluctant to

[17] Ibid p.6.
[18] Ibid p.17.

confront any possible change despite its being to their advantage. Alternatively, focusing on these subjective feelings may weigh against measures that aim to improve an individual's or group's situation because it is feared that the recipient's self-respect may be undermined through her being dependent, or seen as more important than her material wellbeing.

In the following chapter I consider the account of human worth argued for by Kant. Having outlined his approach, I attempt to give a rough overview of how it supports some of the fundamental human rights, before asking whether it can be defended against the criticisms suggested in Liebenberg's paper. I believe that it can; however, I think that there are other reasons to prefer an alternative understanding of human dignity.

3. Kantian Dignity

> "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means but always at the same time as an end".
>
> Immanuel Kant

The idea of humanity plays a central role in Kant's second formulation of the moral law. Both Allen Wood[19] and Thomas Hill[20] argue that although Kant has sometimes been interpreted as broadly referring to human beings in general, his use of "humanity" refers specifically to the capacity for rationality, to which he attributes absolute worth or dignity.

[19] Wood (1999).
[20] Hill (1992).

4. The objective value of rational beings

Kant's claim is that people have inherent, objective worth – i.e. a worth that exists independently of anyone's recognizing it – because they are rational beings.

He argues that the objective worth of rational beings is necessarily presupposed whenever one makes a value judgement. In saying that something has value – "x is good" – I am attributing worth to that thing. However, the value that I attribute to it depends on the assumption that I myself have "unconditional objective" value in my capacity to attribute value (i.e. due to the fact that I am a rational being). In other words, if I am to hold that my statement that x is good is *justified* then I must in turn attribute an ultimate worth to myself. If I as rational being have this worth, then it follows that all other rational beings have the same inherent worth[21].

For example, say I hold that apples are good. They are tasty, have nutritional value, and are pleasing to look at. All of these attributes ultimately relate back to me; in this case my desire for health and pleasure. Hence my belief that the apple is good is only justified if I in turn hold myself to have a certain worth. Thus any value statement presupposes the value of the being that makes them. This being must be a rational being, as non-rational beings are not capable of such judgments. If I have worth in virtue of being a rational being, then it follows that all other rational beings have worth for the same reason.

This worth is objective in that it does not depend on my own feelings or beliefs, nor those of others; rather it is presupposed by any value judgement that I make.

[21] Wood (1999) pp. 126 – 127.

It is not objective in the sense of somehow existing in the world independently of rational beings; values do not exist independently of rational beings, but are brought into the world (imposed upon it) by these beings. Thus while the value of all other things is contingent (in the sense of being dependent upon the rational being who ascribes value to them), the value of the rational being is absolute.

5. Implications of Kant's View (The Kantian Approach)

First, it follows that the worth that Kant ascribes to rational beings is possessed equally by all who are rational beyond a certain degree (such beings need not be biologically human). Beyond this threshold, dignity does not vary according to talent, intelligence, moral goodness, etc. – the dignity of the stupid, the criminal and the vicious is equal to that of the intelligent and the good. Rational beings are valuable due to their ability to make choices and through this to confer value upon the world, which ability is independent of these latter qualities. Human dignity is therefore inextricably connected to equality. (Thus, as Kant says, the serpent was not lying when he told Eve that to eat of the tree of knowledge would make her the equal of gods.)

Second, as the value of rational beings is objective, they possess dignity whether or not anyone actually recognises it. In addition, it is independent of any value system, in the sense that it is presupposed by such a system and is therefore not dependent on any tenets or beliefs that the system might include. In other words, it is not culturally relative (which follows, of course, from being objective).

Finally, the value of a rational being is absolute, i.e. is beyond the worth of anything of "mere price" i.e. "any value dependent on contingent needs and tastes"[22] (e.g. material possessions, pleasure, freedom from suffering), and hence neither the being, nor the rationality itself can rationally be traded for the latter.

6. Hill's analysis of the practical implications of Kant's view

Thomas Hill lists several moral imperatives that follow from Kant's approach[23]:

1. As respect for human dignity essentially amounts to respect for the individual's rational nature, anything that undermines her rational capacity is prima facie impermissible. Hill gives as example things that cause permanent damage, such as frontal lobotomies; he suggests that actions causing temporary impairment are also questionable (i.e. using mind-altering drugs, drunkenness, etc.)

2. As killing a person would entail the destruction of her rational capacities, killing humans must typically be forbidden (except, for Kant, under particular circumstances – for example, as a punishment for particularly heinous crimes. He claims that the death penalty is compatible with respect for human dignity as it recognises the rational autonomy of the criminal by holding her responsible for her actions.)

3. Kant attributes to the individual's rational essence an "incomparable value", which Hill claims leads to the requirement that one attempt

[22] Hill, (1992) p.48.
[23] Ibid p.50.

to develop one's rational abilities, for example by attending school and making the effort to become educated.

4. Similarly Hill argues that it follows that one has a duty to use these capacities as far as possible, rather than say, spending all one's time watching MTV or lounging beside the pool.

5. Further, he claims that one should always use reason in attempting to persuade or influence someone, rather than resorting to coercion or manipulation.

6. If one values the rational capacities of others, it follows that one is bound to leave them their freedom to "set and pursue their own ends in a rational (moral and prudential) way, subject only to, whatever further constraints reason imposes."[24] This may be misleading, as it might be taken to support paternalism, i.e. imposing constraints on those who make apparently irrational choices that may cause harm to themselves. However, Kant is manifestly opposed to political paternalism; hence the "constraints imposed by reason" probably refer only to those that prevent an individual from harming others.

7. Hill states that Kant holds that mockery or contempt for others is impermissible as it shows a lack of respect for their status as rational beings. He would therefore find the use of derogatory language, hate speech and any action that seeks to humiliate someone unacceptable.

[24] Hill (1992) p. 50.

7. Kantian dignity as founding value

Using Hill's analysis, it is possible to form a rough idea of how many laws, as well as many of the rights listed in the South African Constitution, might follow from a Kantian approach to dignity. Hill's first listed duty - (1) - prohibits the use of anything that damages the rational capacity of the individual. This is likely to find expression in legislation regarding medical and scientific procedures involving human subjects. Further, if we accept that damage to one's self-respect can affect the ability of persons to make and live by their decisions, then (1) may also imply that legislation or actions that tend to significantly damage the self-respect of affected individuals – for example, many of the laws passed by the Apartheid state that sought to consign black people a second-class status, including the pass laws and Bantu Education act – should be prohibited, for much the same reason as drug abuse.

Duty (2) clearly supports the right to life. Duties such as (3) and (4) are primarily duties to self, but I think they entail a corresponding duty for the state, that is, to ensure that it is possible for individuals to fulfil these duties. In the case of (3) – the duty to develop one's rational abilities – this would presumably support the right to an education; thus it is the state's duty to provide adequate educational facilities.

The extent to which an individual will want or be able to develop her rational abilities will be enormously affected by her childhood development. The advancement of her rational capacities is unlikely to be successful if she is hungry, sick, abused or neglected. Thus (3) may ultimately support many of the rights detailed by the SA Constitution under "children"[25], for example, the right to "basic nutrition, shelter,

[25] The South African Constitution, chapter 2.

basic health care services", the right "to be protected from maltreatment and neglect, abuse or degradation", and the right "not to be required or permitted to perform work or services…that place at risk the child's well-being, education, physical or mental health" in order to make it possible for her to secure a basic foundation for rational development. In addition, it will be important that children not only have access to an education, but are genuinely able to attend school – which will not be true of those who must work to support their families, care for sick parents or raise siblings following the death of their parents. Ultimately this would seem to support redistributive measures or programs that aim to uplift the poor, thus ideally making it possible for all children to genuinely develop their rational abilities.

The duty to use one's rational capacities as far as possible – (4) – would seem to entail (6), i.e. the prohibition against restricting the individual's freedom insofar as her actions do not impinge upon the freedom of others. The more the state takes the decision regarding various matters out of the hands of the individual herself, the less able she is to make and live according to her own decisions. In other words, she is less able to exercise her own rationality. Thus (4) and (6) would seem to support those rights concerned with protecting the individual's freedom, entailing rights that limit the extent to which the state (or other people) may interfere with or seek to control individuals, as well as furthering the extent to which the individual is in control of her own life choices. These would presumably include the rights to "freedom of religion, belief and opinion", "freedom of expression", "freedom of association", "freedom of trade, occupation and profession", "political rights"[26] and so on. Once again, the duty to further the ability of individuals to

[26] Ibid.

make and live by their own choices may, as John Rawls argues[27], support redistributive measures. I will return briefly to this argument in response to Sandra Liebenberg's listed objections to dignity as a founding value for the constitution (below).

8. Does Kantian dignity fall foul of the objections to human dignity as founding value?

The first criticism listed by Liebenberg states that 'dignity' is too "vague and multifaceted" a concept to serve effectively as a founding value. Wood points out that although Kant's formula provides general principles that one should follow, taken alone these are not sufficient from which to deduce a moral conclusion. An additional empirical premise is required[28]. In effect what this means is that Kant is not providing a closed, self-sufficient system of moral rules; it seems highly unlikely that that could be done. Concrete situational information is usually, if not always, required. This additional premise may be highly debatable; its implications may be differently interpreted as a result of new scientific discoveries, or perhaps in the light of different belief systems (in other words, it is at this level that culture may begin to play a part). Consequently there will probably always be room for dissenting arguments as to which way appeal to dignity actually pulls in any given situation. However, this will hold for any interpretation of dignity, and moreover, is likely to be true of any other founding value – including, for example, equality, or even well-being, both of which are sometimes suggested as clearer or more concrete values. What we should ask then is whether or not Kant's system

[27] See Rawls (1971).
[28] Wood (1992) pg. 151.

provides an effective system of basic principles to apply. If we accept Kant's contention that humans have dignity because they have rational autonomy, then valuing humans for this reason appears to produce fairly concrete moral guidelines, as explicated by Hill (see above).

The second objection claims that placing too much value on principled decision-making may undermine measures that seek to redress material inequality. It may be argued that redistributive measures conflict with the dignity of those who are forced (through taxation) to contribute part of their earnings to support measures towards aiding the disadvantaged. Respect for their autonomy would appear to entail that they should be free to choose whether or not to help the poor.

As such, making the decision to contribute to the aid of the needy optional does not necessarily eliminate the possibility of redistributive measures, unless it is held that people simply will not do so voluntarily. This is not obviously true. Business and industry, for example, have good reason to invest in programmes that aim to educate future possible employees, prevent the spread of AIDS and reduce the crime rate – which it is arguable is partly realised by combating poverty. Individuals have similar reasons to consider contributing; moreover, it is not entirely unlikely that people might be motivated to help by altruism or duty.

That said, voluntary contributions may be too unreliable to rely upon. First, the amount that citizens choose to give may vary considerably each year, making planning and effective use of such funds difficult. Second, it cannot be guaranteed that enough people *will* contribute - it is not difficult to imagine that so soon after apartheid there may

be many people whose racism or possible feelings of increasing marginalisation will prevent their aiding a predominantly black group. Alternatively, many people may feel anxious about their own financial security, may be embittered by crime and so not want to help, and so on. Hence it seems preferable that redistribution (which is clearly necessary in South Africa) should be carried out through taxation.

Valuing dignity (rational autonomy) above all price (which would include the misery and suffering of being poor) as Kant does would seem to support arguments against such measures. However, John Rawls has argued that in many cases the disadvantages associated with being poor are likely to severely undermine the rational autonomy of the destitute; hence redistributive measures may be seen not as trading dignity for price, but for respect for the dignity of all. Those who are poverty-stricken very often are not in a position to exercise their rational autonomy, having little or no choice available to them. The ability to reflect upon and choose certain ends is denied them in their fight to survive: it is difficult to think rationally when you are starving; long term planning requires some level of security and stability; and without education one is unlikely to successfully develop what rational capacities one has. Consequently redistribution can be seen not as a means of alleviating misery, but of protecting rational autonomy.

While forced redistribution through taxation does limit the autonomy of the person who is taxed it can perhaps be defended on similar grounds to laws against murder, rape, robbery etc. In these cases limits are imposed on one's autonomy out of respect for the rational autonomy of others. Similarly, taxation is a limitation of one's freedom created by respect for the rational autonomy of others.

In addition, as the massive inequality in the distribution of resources in South Africa is predominantly a result of past social and political injustice in that access to education, job opportunities and other means necessary to the acquisition of wealth were denied to non-whites, contributing to measures that seek to rectify this might be seen as analogous to payment of a debt. The latter, like taxation, is enforceable by law and yet is presumably held to be compatible with respect for Kantian dignity. (Of course, this argument only applies to taxpayers belonging to groups not previously discriminated against; i.e. those who benefited from Apartheid.) At any rate, it seems that the Kantian focus on autonomy may well support redistributive measures, rather than undermining them.

The third and final criticism is that interpretations of "dignity" sometimes put too much weight on subjective personality issues. Liebenberg's example – the case of *Gosselin vs. Quebec* – suggests that the main issue at stake concerns not the subjective feelings of the individual, but those of the state. The approach taken by the Canadian legislature that Liebenberg describes seems to misinterpret Kant's outlook. His view is deontological, i.e. it locates moral worth in the act and the principle or maxim that it embodies, and not in the consequences it may or may not have. However, this should not be taken to mean that the moral worth of an act lies in the feelings or intentions with which it is undertaken; rather, Kant's approach asks us to examine the act and ask whether it itself is expressive of respect for humanity. This will include consideration of the likely effects of an action. How can any choice of action be rational without consideration of the effects likely to follow from it or the end that it aims to bring about? Thus, in the aforementioned case the point should not have been to evaluate whether or

not the government acted in good faith (so to speak) but to evaluate whether this particular legislation expressed respect for the claimant's humanity, given its probable outcome. This places the emphasis squarely on her actual situation. It follows obviously enough from the fact that there are not enough places in the employment training programmes, and that the eligibility requirements make getting a place difficult, that this legislation therefore prevents the claimant (and many others) from receiving "the bare minimum for the sustainment of life"[29]. This seems incompatible with respect for human dignity.

As regards concern for the self-respect of those who benefit from redistributive measures or programs that aim to bring about a greater level of social equality, this may be the result of a conceptual confusion between two interpretations of "dignity". "Dignity" is used sometimes to refer to an intrinsic and invariable worth possessed by all humans, regardless of their behaviour or the circumstances they find themselves in (call this D-dignity – Kantian dignity is of this kind). At other times it refers to "honour", or the opposite of humiliation, so that a being's dignity (call this d-dignity) is reduced if she acts or is treated in a particular way, lives in dissolute circumstances, etc.

This distinction is, I think, made in the constitution in that d-dignity constitutes a discrete right, whereas D-dignity is affirmed as a founding value. There is no point in protecting a right to D-dignity, because it refers to an inherent worth that cannot be removed or lessened without also removing one's humanity (i.e. by killing the person, performing a frontal lobotomy or similar). The Constitution affirms it then not through fear of its being lost or destroyed, but to establish that all rights must be compatible with

[29] As cited in Liebenberg (2005) p. 18.

respect for it. Hence the right to dignity must refer to d-dignity; it is in other words, a right not to be humiliated.

In claiming "human dignity" as a founding value, the Constitution is affirming the inherent worth of each and every human being, regardless of whether the individual herself or others recognise it. If this is the case, then interpretations of "dignity" (as founding value) that focus on the individual's "subjective feelings" such as those of self-respect etc. *as an end* seem to be to be conceptually confused. Instead of looking to the inherent worth of the person (which is constant and inviolable), they look to her subjective state of mind, in other words her d-dignity.

On the other hand, subjective feelings do play a role in D-dignity, in that low self-respect may compromise the individual's ability to make autonomous choices. If this is so, then any system of organisation that tends to undermine self-respect offends against the principle of respect for dignity in much the same way as feeding someone mind-altering drugs does. Similarly, the right to d-dignity follows from respect for D-dignity: Kant holds that the latter entails avoiding actions or behaviour that humiliate or mock persons. Thus in some cases appeal to subjective feelings or d-dignity may be relevant.

However, where concern for "subjective personality issues" is opposed to "a group based understanding of material advantage and disadvantage" or "the need to redress systemic patterns of inequality and disadvantage", it is not at all clear which way concern for self-respect should lead us. For surely material disadvantage and systematic inequality tend to undermine the individual's self-respect fairly considerably (as well as her d-dignity). Respect for a person's inherent worth must require then that we consider

her situation with regard to material and social disadvantage, as well as considering as the effect legislation or actions may have on her self-respect.

A Kantian approach to dignity therefore cannot quickly be dismissed as the founding value of the Constitution for the reasons listed above. However, there are other reasons to reject a Kantian approach to dignity.

9. Objections to Kant

1. Rejection of "animality"

Kant's "Formula of Humanity" requires that we act so as to respect the humanity in others and in ourselves. In other words, humanity is always to be treated as an end in itself; as possessing inherent dignity. Thus if "respect for human dignity" is interpreted in a Kantian fashion, it entails respecting humans as rational beings.

"Animality" on the other hand, does not, according to Kant, possess dignity or inherent worth. This is apparent in his view that the alleviation of pain and pleasure has "mere price", that the sex act is in essence always a violation of human dignity, and in his claim that non-rational beings (i.e. most species of animal) have value "only as means"[30]. Thus it would seem that human dignity does not include those capacities that we share with most other (non-rational) animals.

A Kantian respect for human dignity may yet require that all humans are able to satisfy these needs and desires insofar as our rational capacities depend on them.

[30] Wood (1999) p 24.

Alleviation of intense pain, hunger, sadness or loneliness is necessary because these states can interfere with or lessen the capacity for rational autonomy. Further, Kant might well support Marx's contention that humans should be able to exercise these capacities in a human (rather than brute) fashion[31], where this is understood as being a way infused with rationality, as he holds that respect for humanity requires exercising one's rational capacities as far as possible.

Respect for human dignity may even require a respect for the physical and psychological nature of the rational being, so that a certain level of respect for our "animality" may be derivable from our status as rational beings. Despite this, it remains the case that for Kant these capacities have only instrumental value; he holds that they do not form a part of what we most value about humans.

I think we can go some way to rejecting the idea that we value humans solely as rational beings by returning to Kant's claim that non-rational animals have value only as means. This seems (to me at least) intuitively false. If it were true, what sense could we make of many people's aversion to, and laws forbidding, cruelty to animals? Any injunction against cruelty to animals must be explained either in terms of the effect such cruelty to animals has on rational beings (perhaps it warps their rational or moral sensibilities, as Kant argues in his Lectures on Ethics) or in virtue of the fact that some rational beings confer value on animals by making them and their wellbeing their "ends". But this seems false – cruelty to animals is wrong because it causes them to suffer, regardless of any effect it has on rational beings. In the same way, it is hard to explain why the extinction of species – the shark, for example, should be of much concern,

[31] See Marx (1844).

provided that we could survive without it (i.e. its loss didn't threaten to bring down the ecosystem on which we depend).

Rather, it seems likely that we value animals as ends in themselves. Although we may perceive them as being of less value then humans (perhaps because they lack rationality) surely they possess more value than say, rocks – probably in virtue of their sentience. In fact, I would argue that we attribute a certain level of intrinsic value to even the meanest life form, simply in virtue of the fact that it lives. After all, there is something somewhat miraculous about life of any kind. It is true that this valuation of life does not make much of an appearance in our efforts to eradicate smallpox or the AIDS virus, but if these were discovered on an apparently barren planet, we would likely enough be excited and amazed. If this is the case, then it seems plausible that we value these same things – "animality" and the various needs and drives that go with being a living creature – in human beings.

2. The Kantian approach to the duty to relieve suffering is counter-intuitive.

Although I have argued in response to Liebenberg that the Kantian can defend measures that seek to alleviate misery and suffering on the grounds that they interfere with and limit rational decision-making, this approach seems somewhat counter-intuitive. We feel compelled to relieve suffering even when it does not affect the rational capacities of a being. This is apparent when we seek to alleviate low-grade suffering that does not obviously affect a person's rational decision-making (sometimes even when the individual herself is ignoring this pain), and also when we try to end suffering in a non-rational being (e.g. non-rational animals, severely retarded or brain damaged people, very

small children, and so on). What this shows is that in some cases we attribute value to certain things (e.g. the cessation of suffering) quite apart from any effect that they may have on our rationality.

3. Rationality alone cannot make sense of distinctions in value

One of Kant's arguments for the objective worth of rational beings claims that such beings have worth as the source of value in the world. In making autonomous choices, we project value onto the world. It may be argued, however, that the capacity for rationality alone cannot make sense of distinctions in value that we make. Why is it better to eat a variety of delicious and nutritious meals than to always have the same kind of bland, stale pizza? Why is a life that includes close and loving relationships preferable to one lived in isolation and loneliness? Why is it better to be in optimum health than to live with a chronic illness? Why choose to spend one's time perfecting one's painting skills rather than perfecting the ultimate ear-waggle?

Rationality alone cannot answer these questions. It must be combined with an understanding of our needs, the capacity for pleasure and pain, social and emotional capacities, and so on if it is to make sense of the value that we attribute to aspects of the world. Without consulting certain other capacities or vulnerabilities it is paradoxically difficult to make "rational" choices or to understand the rationality of the choices of others.

4. A Kantian approach does not protect certain aspects that we value about being human, and consequently may allow for an "inhuman" state.

As we have seen, the fact that Kant does not attribute any inherent dignity to the "animality" of human beings need not entail that the vulnerabilities of humans be ignored. Those who are in pain, starving or deeply depressed are not in a position to think or act in accordance with their rationality; hence there is good reason for Kantians to support redistributive or other measures that seek to relieve suffering.

However, there is a distinction between requiring that suffering be alleviated insofar as it interferes with or undermines the exercise of one's rational capacities, and recognising that certain other capacities (e.g. emotions, sociability) are central to a genuinely human life and are therefore valuable. It is possible to imagine a state in which the value of these latter capacities is not recognised and hence are not protected or furthered, with the result that human beings end up living a less-than-human life. If respect for human dignity does not encourage respect for those capacities that actually make life worth the living, there is nothing to prevent us from evolving systems of life in which people wake up and wonder why they should bother getting out of bed.

In this chapter I have argued that the Kantian conception of dignity can answer the criticisms typically made of human dignity as a founding value for the Constitution. It provides a clear system of principles to be applied in judicial decision-making; the emphasis it places on respect for autonomy need not weigh against redistributive measures, but may actually support them; and finally, the Kantian approach should not be understood as looking to the subjective states of mind of individuals as opposed to a concrete understanding of the situation of persons.

However, I am not convinced that the capacity for rationality constitutes the whole of what we value about human beings. In other words, human dignity should perhaps include not only rationality and the capacity to set ends, but also certain other capabilities, such as the capacity for affiliation, emotions, and so on. On the whole, Kant treats these other elements of human nature with suspicion, seeing them as opposed to the rule of reason and the moral law; consequently, Kantian philosophers typically focus only on the capacity for rationality, and do not specifically safeguard or promote other human capacities.

III. Nussbaum's Aristotelian Approach to Human Dignity

> Hath not a Jew hands, organs, dimensions, senses, affections, passions? Fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die? And if you wrong us, shall we not revenge? If we are like you in the rest, we will resemble you in that.
>
> William Shakespeare *The Merchant of Venice*

> Begin with the human being: with the capacities and needs that join all humans, across barriers of gender and class and race and nation.
>
> Martha Nussbaum *Women and Human Development*

"Human dignity" refers to the worth we attribute to people in virtue of their being human – but what makes a being human? In labelling the capacity for rationality and the ability to set ends "humanity", Kant is suggesting that any being that possesses these counts as human in a morally significant sense, and therefore has dignity. However, human beings as we know them are not simply rational beings, and possessing the capacity for rationality is arguably not enough to render a being valuable insofar as it is human. Simply put, rationality may be a necessary condition of humanness[32], without being a sufficient one. This may lead us to question whether the capacity for rationality is the only aspect of being human that we value.

Martha Nussbaum's Aristotelian approach, which she states is "frankly universalist and 'essentialist'"[33], seeks to determine which qualities a being must have for us to recognize it as human (again in a morally significant sense) – of which the capacity for rationality is only one element (albeit an important one, as it distinguishes humans from most other animals). Kantians, of course, would agree that humans are not simply rational beings – Kant himself regards humanity as only one constituent of humanness,

[32] I will use "humanness" to refer to the collection of qualities (yet to be determined) that make a being one that we, as humans, would recognize as another human. As such, "humanness" differs in meaning from "humanity" which I will continue to use in the Kantian sense – i.e. to refer to the capacity to set ends.

along with "animality" and "personality". Where Nussbaum's approach differs from the Kantian is in attributing the value of human beings – i.e. human dignity – not only to our rationality, but to those capacities that we find essential to being human – i.e. "humanness" – which, we will find, includes not only rationality, but also the capability for emotion and affiliation (amongst others). Thus she claims that respect for human dignity entails protecting and furthering the set of vulnerabilities and capabilities that are fundamental to any human life.

It is possible, of course, that we might respect or value humans solely as rational beings, and yet, recognising that humans are rational beings of a particular biological and psychological makeup, find that protecting and furthering other (non-rational) human capabilities is the best way of respecting this dignity. In other words, Nussbaum's capabilities approach could arguably instantiate a Kantian view of human dignity.

This, however, is not Nussbaum's view, for she recommends that we "begin…with a sense of the worth and dignity of basic human powers"[34], powers that include the capacity for emotion and affiliation; further, she states that "the central capabilities are not just instrumental to further pursuits: *they are held to have value in themselves*, in making a life that includes them fully human."[35]

Nussbaum advocates an Aristotelian method for determining which aspects of human nature and existence are crucial to humanness. Her argument is that these powers are the foundation of human dignity, that they exert a moral claim to be developed, and that therefore, a set of constitutional guarantees should be designed to ensure that all people are able to exercise these capabilities should they so choose.

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[33] Nussbaum (1995b) p. 63.
[34] Nussbaum (2001) p. 84.

In this chapter I begin by describing the Aristotelian method that Nussbaum uses to determine the essential aspects of humanness, and how these relate to human worth. I then outline the tentative list of capabilities Nussbaum derives using this method, sketch the distinction she makes between the "two thresholds" of functioning for these capabilities, and give some indication of how the second threshold may support certain rights. Finally, I examine whether Nussbaum's account can answer the general criticisms of dignity as founding value listed by Liebenberg, before considering an objection specific to Nussbaum's account.

1. The Aristotelian Method

> When I imagine a picture of the good or valuable life…I ought…to ask closely whether this imagined life is a life that could be lived by a being such as I am – by a being, that is, who shares with me all those characteristics that I consider to be truly constitutive of my… identity. For it might emerge that the life was so remote from mine that I could not imagine in it a person whom I could accept as identical to myself. Certain changes in a person and a way of life are compatible with continued personal identity; others are not.[36]

In this passage, Nussbaum outlines an Aristotelian method of determining the fundamental elements of humanness that is both "internal and evaluative". It is "internal" in that we proceed by examining our "deeply held beliefs" about who (or what) we are. In other words, humanness is something we experience "from the inside" (so to speak) – only a human being could decide what the essential elements of it are.

This is because the Aristotelian method is also *evaluative*. That is, it does not simply ask which aspects we as humans recognise ourselves as having in common with

[35] Nussbaum (2001), p. 74 (emphasis is my own).

all other humans. (Any rational being could do this; she need not be human). Rather it asks what we value about being human, i.e. it seeks to determine "what we deeply believe to be most important and indispensable"[37] for humanness. It is also the evaluative aspect of this approach that connects humanness with dignity; for humanness is ultimately made up of what we find to be most *valuable* about being human.

As Nussbaum points out, this evaluative approach comes naturally to us when we attempt to resolve questions around certain medical issues – for example, when debating how to treat people who suffer severe brain damage or are left in a "permanent vegetative condition", children who are born severely retarded, and so on. We naturally tend to consider their situation by asking whether we could contemplate a life of that form and find it worth living. We also, perhaps, use this kind of evaluation when we say that a person is "inhuman" or has acted "inhumanly"; to say this, I think, implies that someone has somehow debased or degraded herself by betraying a valued aspect of being human. Interestingly enough, more often than not we apply this judgement to individuals who have acted without compassion (or emotion generally) or who have not respected important bonds of affiliation. We do not usually claim that someone has behaved inhumanly when they have acted without autonomy (for example, under the influence of hypnosis).

How, then, does the Aristotelian approach proceed? It takes as its starting point the deeply held desire to maintain one's personal identity. Using this as a limit, it asks us to evaluate what changes to our nature or mode of existence we would be prepared to accept – i.e. that we would find consistent with our continuing as beings of the same

[36] Nussbaum (1995a) p. 91
[37] Ibid p.106

kind. The focus here is not on our personal identities as individuals, but as a species – i.e. we do not ask what changes would render us different persons; rather we ask what changes would render us different beings.

To illustrate: Nussbaum contends that Plato is guilty of the kind of incoherence to which Aristotle refers. In the *Phaedo*, Socrates urges his friends not to regret his death, for although his body will be burned or buried, he will "depart to the happy life of the blessed". The implication is that he will continue after death as "intellectual substance", and will therefore not be truly lost. Yet, if we consider Aristotle's claims, we might wonder whether Socrates's friends could genuinely take much comfort in the idea of his being transformed into intellectual substance, given that without his body Socrates would be unable to "talk philosophy and set the discussion in order", and would therefore be very different from the Socrates they know and love; so different, perhaps, as to not be Socrates at all[38].

Similarly, imagine a friend transformed into a rational ghost – or a memory chip in a computer – able to communicate, but without needs, desires or emotions. She would likely be altered beyond recognition in character, and we might feel that to all intents and purposes we might as well have lost her completely. Moreover, it is difficult to imagine what kind of relationship one could maintain with such a being, given that the possibility of mutual understanding, empathy and emotional or physical interaction would be greatly diminished.

This emphasis on the limits posed by personal identity may be misleading if we understand it as simply asking which changes are incompatible with our continuing as beings of a certain kind. Two problems arise: First, how do we decide whether a

particular alteration is incompatible with our remaining human? For example, all humans have bellybuttons: surely this is a relatively insignificant human characteristic? If some people were born without bellybuttons, we would presumably still judge them to be human, but on what grounds? How do we determine what is or is not significant? On the other hand, if we believe the capacity for cruelty to be common to all humans, then to lose this capacity *would* seem to be a significant alteration. But if the capacity for cruelty is part of humanness, then how can we claim (as Nussbaum seems to) that human value is composed of all the capacities that make up humanness? Presumably we do not want to argue that humans are valuable in part because they are cruel.

The solution to these difficulties lies in the evaluative nature of the Aristotelian approach. We are not simply asking what makes us what we are, but rather, what we value about what we are. Thus the aim is to consider various aspects of ourselves and ask whether we would be prepared to live without them. If we feel that we could give up the capacity for cruelty without regret (i.e. we decide that cruelty is not valuable in itself, although we may feel that it has its uses), then we have effectively decided that it is not crucial to our identity, and therefore that this alteration would be compatible with our remaining human.

To return to our previous example, in deciding that immortality would not be compatible with our remaining human, we are not simply saying that it would make us unrecognisably different. Rather, we are stating that becoming immortal would entail losing aspects of our selves and existence that we prize.

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[38] Nussbaum (1995a) p. 93.

In sum: the Aristotelian approach asks us to evaluate from an internal perspective what the necessary and sufficient conditions (so to speak) of our being human are. What aspects of ourselves could we alter without feeling that we had lost something important to ourselves, and consequently become a different kind of being? These same aspects then form our conception of what constitutes humanness, and determine which qualities must be present in other beings for us to recognise them as fully human.

2. The Role of Storytelling

The Aristotelian approach that Nussbaum uses develops out of a tradition in which humans are viewed as being something between gods and beasts. Greek myths and tragedies often tell of animals that have the capacity for rational thought, yet lack sociability, or of humans who lose certain aspects of themselves and become beasts or gods. Nussbaum holds that these served as a kind of thought experiment through which people were taught to recognise themselves. For example, she writes:

> On the side of the god we have the countless stories of the Homeric gods, anthropomorphic beings rather similar to humans in their desires and characteristic activities, but differing only in their power and, above all, invulnerability to death. These stories…ask us to imagine for ourselves how much of what is important to us is inseparable from our mortality and finitude. They ask to what extent love, friendship, and the virtues could have a place in a non-finite life that would, accordingly, lack certain opportunities for risk, effort and sacrifice.[39]

This process continues today, I think, particularly in works of science fiction and fantasy, in which computers become human and humans become machines,

[39] Nussbaum (1995a) p. 95.

monsters or superheroes. In films and books such as *A.I.*, *Bladerunner, I, Robot* and so on, we recognise some robots as virtually human following their development of certain capacities (such as emotions, independent thought, etc). Reflection on such stories can serve to help us identify those qualities that we feel constitute humanness. For example, in the recent film made of Isaac Asimov's *I, Robot*, two robot characters learn to think independently. One of them also develops the capacity for emotions (he fears termination, feels loyalty, experiences friendship and develops a sense of humour). While we come to relate to the second robot, and so feel apprehensive at the possibility of it being terminated, the eventual destruction of the former robot is not particularly regrettable (it is threatening, and we cannot empathise with it). This would suggest that the fact that a being possesses the capacity for independent thought is not enough to make us recognise it as human and hence valuable, and that therefore we tend to attribute a lesser value to the being that lacks these capacities and vulnerabilities.

3. Universality

Nussbaum holds that it is possible to reach agreement amongst people of all cultures as to what the necessary elements of humanity are, although these may be realised and utilised in very different ways. Drawing on Rawls, she talks of reaching an "overlapping consensus", which could serve as a metaphysically neutral guideline for criticism within societies and cross-culturally. She suggests that recognition of this common humanness is evidenced by the existence of cross-cultural relationships – friendships, marriages, etc. – and by the fact that we can relate to the literature and folklore of people separated from us by space and time – that is, we can recognise and

empathise with the characters in these stories, and understand the impact or meaning of the situations in which they find themselves:

> We can think of it as the idea that lies at the heart of tragic plots across cultural boundaries: certain deprivations are understood to be terrible, despite differences in metaphysical understandings of the world. Think of a tragic character, assailed by fortune. We react to the spectacle of humanity so assailed in a way very different from the way we react to a storm blowing grains of sand in the wind. For we see a human being as having worth as an end, a kind of awe-inspiring something that makes it horrible to see this person beaten down by the currents of chance – and wonderful, at the same time, to witness the way in which chance has not completely eclipsed the humanity of the person…Such responses provide us with strong incentives for protecting that in persons which fills us with awe.[40]

Forming an account of humanness, then, requires input from and discussion with people of all cultures, paying particular attention to literary, mythological and folkloric traditions.

4. Humanness and Dignity

Nussbaum's account of humanness is similar to Kant's account of humanity in a number of ways. To begin with, on both accounts a being born to human parents but lacking certain qualities would not classify as "human" in the relevant sense. This does not necessarily mean that we would have no moral obligations towards such a being, only that these would differ in certain ways from those that we owe a fully human being – and this result seems intuitively correct (at least in the light of Nussbaum's account). For example, it makes no sense to protect the right of a being born with a severely limited capacity for rationality and practical reason to live autonomously; firstly, because she

lacks the ability to do so, and secondly, because she is likely to come to serious harm if left completely to her own devices. On Nussbaum's account, such a being would still have worth insofar as she possessed other basic human capabilities (such as the capacity for emotion), as we attribute value to each and all of these. This is in contrast with Kant's view; for him, a being born without the capacity for rationality would not have any intrinsic worth, or dignity.

Next, both "humanness" and "humanity" are value terms. That is, in attributing them to a being, recognising it to be human in one of these senses, we are conveying the idea that it has a particular value or dignity, rather than identifying a particular biological species.

Nussbaum's account (like Kant's) attributes an inherent worth to each and every being that possesses the basic capabilities that constitute humanness. Beyond this, she makes no distinction according to talent, intelligence, social class etc. Rather, she holds that all human beings possess certain capabilities and needs, and that these carry a moral claim that they be developed. Thus her account, like the Kantian, attributes an equal basic worth to all persons, the difference being that she holds all the basic human capabilities to be the source of this worth. It follows from the views of both Kant and Nussbaum that in declaring human dignity to be the foundation of human rights, we place the emphasis squarely on respect for the individual rather than the good of society. Nussbaum holds that groups are important entities, but only insofar as they are good for individuals, i.e. promote individual capabilities:

> …the capabilities sought are sought for each and every person, not, in the first instance, for groups or families or states or other corporate bodies. Such bodies may be

[40] Nussbaum (2001) p. 74.

> extremely important in promoting human capabilities, and in this way they may deservedly gain our support: but it is because of what they do for people that they are so worthy…[41]

However, Nussbaum differs from the Kantian approach in that her account of human dignity (i.e. one which attributes value to rationality, emotions, affiliation, and so on) can be recognised only by other beings possessing humanness, i.e. emotions, sociability, rationality and so on, as it is largely derived from our evaluation of what makes our kind of life worth living. (Thus in *Dorothy and the Wizard of Oz*, the Tin Man must always have had a heart, for if he had not had one he could not have perceived its value.) Her account of humanness is therefore subjective, for if people decided that any of these capacities were not valuable, it would not form part of our account of humanness. Kant, in contrast, attempts to show that humanity has "objective" value and as such can presumably be recognised externally by any rational being. As with the Tin Man, so with the Straw Man, for only a rational being could grasp the value of rationality; however, Kant's account also attempts to show that humanity has value regardless of whether this worth is recognised or not.

If we value human capabilities – emotions, the capacity for affiliation, and so on – in ourselves, we must also value them in others, for it would be terrible to be a vulnerable, social, emotional being surrounded by invulnerable, non-social, non emotional beings, even if we shared rationality with them. We would have little chance to exercise the capacities that we so value to their full extent; it is unlikely that we could experience much in the way of friendship, love, or many of the other things that we hold

[41] Nussbaum (2001) p. 74.

make life worth living. It must be recognised then that we value human beings as being creatures like ourselves, with whom we can empathise, and with whom we share a network of meaning and value that is formed from these elements that we share in common.

5. Nussbaum's List of Capabilities

Using Aristotle's internal, evaluative approach, Nussbaum reflects upon those functions that she believes are fundamental to, and valuable to being – and recognising others as being – human. From this she derives a tentative list of human capabilities and vulnerabilities that are essential to being human. This is a working list, intended to generate debate, and open to revision as a result of further input from inter-cultural discussion[42]. In "Human Capabilities", her list is as follows:

Mortality

As we have seen, Nussbaum holds (following Aristotle) that our finitude significantly affects the shape and nature of our lives. However, despite the fact that mortality plays a key role in giving our lives the particular form that we value, she claims that all humans across cultures fear or avoid death, and that a being that did not do so in any degree would be so strange as to be inhuman.

The human body

All humans have in common a particular kind of body, subject to certain vulnerabilities, allowing various actions, and (usually) subject to pleasure and pain. The human body's distinct shape and nature is the first thing that alerts us to the presence of

another human. All human bodies share a similar set of needs and vulnerabilities, including:

2.1 Hunger and thirst – "all human beings need food and drink in order to live…and in general, do not wish to be hungry or thirsty". There is obviously a great deal of disparity across societies as to what and when we eat, and the significance we attach to various foods; further, the amount required by persons will vary according to individual needs. Ultimately, however, every human being requires a certain amount of nourishment in order to survive.

2.2 Need for shelter – the human body is affected by heat, cold and the elements, as well as being at risk from various predators. Humans therefore require shelter, although the degree of need may vary with the environment.

2.3 Sexual desire – sexual need or desire plays a role in most human lives beyond a certain age. Nussbaum claims that "it is, and has all along been, a most important basis for the recognition of others different from ourselves as human beings"[43].

2.4 Mobility – Human beings enjoy movement; prolonged immobility is frustrating and unpleasant. "An anthropomorphic being who, without disability, chose never to move from birth to death would be hard to view as human"[44].

Capacity for pleasure and pain

All humans experience pleasure and pain in some form or another. Further, pain is perceived as something bad and to be avoided in all cultures.

Cognitive capability: Perceiving, Imagining, Thinking

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[42] The list she puts forward in *Women and Human Development* (2000) is in fact significantly altered from that she provides in *Women and Development* (1995b) as a result of her work with the development community in India.

[43] Nussbaum (1995b) p. 77.

"All human beings have sense-perception, the ability to imagine, and the ability to think, making distinctions and 'reaching out for understanding'. And these abilities are regarded as of central importance"[45]. Clearly, some human beings are born with one or more of their senses impaired or non-existent, or left this way following illness or injury, and this does not make them less than human. However, if someone had no sensory faculties whatsoever, we would judge her life to be "so diminished as to be not worth living". In addition, it seems unlikely that a child born without any senses would be able to develop any cognitive skills, nor be able to experience pleasure or pain.

Early infant development

All humans go through a period of infancy and growth, during which they are dependent upon the care of others and experience "alternating closeness to, and distance from that, and those upon whom they depend"[46]. This crucially shapes and affects our emotional, rational and physical development, and "gives rise to a great deal of overlapping experience that is central in the formation of desires, and of complex emotions such as grief, love and anger". Nussbaum holds that a being that had never had these experiences would likely be so different as not to be human. That these experiences are crucial to the development of many of the capabilities essential to humanness is clearly illustrated by cases of children who have suffered abuse or neglect. Feral children who are discovered too late are left permanently brain damaged and unable to learn language and social skills; children that are abused or neglected sometimes grow up unable to empathise with others.

[44] Nussbaum (1995b) p. 77.
[45] Ibid.

Practical Reason

Human beings want to plan and conduct their lives according to their own decisions and beliefs as to what counts as a good life, although in many societies this capability is discouraged or forbidden to certain group members. Nussbaum holds that a being that simply never felt or expressed any interest in running her own life would not be fully human.

Affiliation with other human beings

"All human beings recognise and feel some sense of affiliation and concern for other beings. Moreover, we value the form of life that is constituted by these recognitions and affiliations…We define ourselves in terms of at least two types of affiliation: intimate family and/or personal relations, and social or civic relations."[47] This idea is expressed by the spirit of "Ubuntu" – "All people become people through other people".

Relatedness to other species and to nature.

Nussbaum contends that a recognition of and some degree of respect for our relationship to other animals, plants and nature as a connected whole is a part of humanness; further, she holds that a being that "treated animals exactly like stones" or "did not respond in any way to the natural world" would be sufficiently different as to be inhuman.

Humour and play

Nussbaum claims that all human beings enjoy some form of recreation, although this is expressed in vastly different ways across cultures. In addition, she states that human beings recognise each other "across cultural barriers, as the animal that laughs.

[46] Nussbaum (1995b) p. 78.
[47] Ibid.

Laughter and play are frequently among the deepest and also the first modes of our mutual recognition. Inability to play or laugh is taken, correctly, as a sign of deep disturbance in a child; if it proves permanent we will doubt whether the child is capable of leading a fully human life."[48]

Separateness

All human beings experience pleasure, pain, hunger and so on as separate beings - one person's pain cannot be alleviated or removed by increasing the pleasure of another any more than one person's hunger can be satiated by another person's eating. The individual has only her own life to live.

Strong separateness

It follows from the fact that human beings experience life as separate units that each person has a distinct and unique history and set of attachments –her "own peculiar context and surroundings – objects, places, a history, particular friendships, locations, sexual ties…in terms of which the person to some extent identifies herself". Further, Nussbaum claims that

> Though societies vary a great deal in the degree and type of strong separateness that they permit and foster, there is no life yet known that really does (as Plato wished) fail to use the words 'mine' and 'not mine' in some personal and non-shared way…on the whole, human beings recognise one another as beings who wish to have at least some separateness of context, a little space to move around in, some special items to use or love. [49]

[48] Nussbaum (1995b) p. 79.
[49] Ibid.

6. Dignity and Human Rights

Nussbaum distinguishes two thresholds to human capabilities:

> …We want to describe two distinct thresholds: a threshold of capability to function beneath which a life will be so impoverished that it will not be human at all; and a somewhat higher level, beneath which those characteristic functions are available in such a reduced way that, though we may judge the form of life a human one, we will not think it a *good* human life.

The first threshold, then, is the set of "basic capabilities" with which a human is born (or at least, is born with the capacity to develop), and which constitute humanness (i.e. those set out in the above list). These capabilities exert a moral claim that they be developed, as they are the source of human dignity. This gives rise to the second threshold, the level of functioning that we feel allows for a genuinely human life. Respect for human dignity requires that the state provide a social basis that allows individuals to attain this second level of functioning; thus it is this threshold that a system of human rights should seek to guarantee. Nussbaum includes the following under the second threshold:

Life

Clearly, all human capabilities are dependent upon the person's being alive. Nussbaum states that individuals should be able to live a life "of normal length", "not dying before her life is so diminished as to be worthless"[50]. Of course, with this right as with many others, both luck and nature play a significant role; the state cannot absolutely ensure that every person lives to a ripe old age. However, Nussbaum holds that it is the state's responsibility to do what it can to provide the social basis for this right, for

[50] Nussbaum (2001) p. 78.

example by putting in place adequate medical infrastructure, promoting a healthy environment (one free of pollution and avoidable carcinogens, for example) and so on.

Bodily Health

This includes "being able to have good health, including reproductive health, to be adequately nourished; to have adequate shelter." Again, luck and nature clearly play a role here; what is required is that the social basis be provided. As sleep is also crucial to bodily health, I think it may be worth including – intentionally caused sleep deprivation (a form of torture) and working hours that allow inadequate time for sleeping would be impermissible.

Bodily Integrity

"Being able to move freely from place to place; having one's bodily boundaries treated as sovereign, i.e. being able to secure against assault, including sexual assault, child sexual abuse, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction."

What is interesting here is that one should have "opportunities for sexual satisfaction". This suggests, perhaps, that prostitution should be legalized as recourse for those who have no alternative opportunities; alternatively, it may be that the state should somehow provide ways in which those who are "romantically challenged" can improve their personal attractiveness (i.e. through plastic surgery, personality coaching, or similar). This apparently punctures an objection made by Robert Nozick[51] to Rawls's arguments for redistribution in the form of forced taxation. Nozick argues that individuals

do not have equal opportunity or ability to form romantic relationships (the most important of Rawls's primary goods), yet we do not claim that the state should use taxes to support programs that improve the individual's chances of finding a mate. Nor, therefore, should the state tax the rich in order to support the education etc. of the poor to ensure that they have equal opportunity to compete in the job market. But if, as Nussbaum suggests, respect for human dignity requires that one have opportunities for sexual satisfaction, it isn't at all clear that we shouldn't support personal attractiveness programs.

Senses, Imagination and Thought

Included in this category would be all those rights connected with the development and use of these capabilities: the right to education and freedom of expression both artistic – i.e. through literature, music, art and so on - and political. Nussbaum also includes under this "freedom of religious exercise", "being able to search for the ultimate meaning of life in one's own way", and "being able to have pleasurable experiences, and to avoid non-necessary pain".

Emotions

Individuals should be free and able to form attachments, both to things and other people, and "to love, to grieve, to experience longing and justified anger". This is likely to find expression predominantly through rights that protect against experiences that damage one's ability to feel and to trust – i.e. various kinds of abuse and neglect, especially of children. I argued that a Kantian approach to dignity would protect children's wellbeing in virtue of the role it plays in their rational development; using

[51] See Nozick (1974).

Nussbaum's approach, such rights would also be defended by appeal to their emotional development.

In addition, Nussbaum adds: "Supporting this capability means supporting forms of human association that can be shown to be crucial in their [the emotions'] development."[52] These would presumably include the family, as well as religious and cultural communities. Thus appeal to emotional wellbeing suggests one avenue of defence for cultural rights, for there is a great deal of evidence that suggests that destruction and denigration of cultures leads to depression, anomie, and the breakdown of relationships and families. I will argue that this is the case in chapter seven.

Practical Reason

People must be free and able to make their own decisions concerning what the good life entails, and to live by these decisions. Appeal to practical reason would support rights that defend freedom of conscience, religion, and probably also culture, as it is very likely a major source of values and beliefs about what constitutes the good life. (I will examine Kymlicka's arguments to this end in chapter four).

Affiliation

"Being able to live with and toward others, to recognise and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and for friendship."[53] Nussbaum states that supporting this capability will entail protecting the institutions that nurture these forms of affiliation; again, these must include family, community, and probably cultural institutions. Culture,

[52] Nussbaum (2001) p. 79.
[53] Ibid.

I think, strongly influences the forms our private and political affiliations take, in many ways. Thus affiliation may also offer a possible avenue for the defence of cultural rights. Nussbaum claims that protecting this capability will require protecting freedom of assembly, as well as freedom of political speech.

Nussbaum further states that this capability requires the "social basis of self-respect and non-humiliation". Although affiliation may take many different forms, Nussbaum holds that it should always reflect the basic equal worth of persons. For this reason, discrimination of the basis of sex, race, religion, and so on should be prohibited. Appeal to affiliation may therefore also prohibit the sometimes discriminatory measures required to protect cultures, if these are felt to be in conflict with respect for the equal worth of individuals. Further, it may provide reason to require that cultures undertake certain significant changes (for example, the abolition of the caste system in India, or improvements in the status of women in patriarchal cultures).

Other Species

The individual should be "able to live with concern for and in relation to animals, plants, and the world of nature."[54]

Play

The individual should be "able to laugh, play, to enjoy recreational activities." This requires that her work week not be unreasonably long (unless she so chooses).

Control over One's Environment

This capability seems to be an essential prerequisite for any meaningful expression of one's practical reason. Nussbaum divides it into two categories:

[54] Nussbaum (2001) p. 80.

a. Political - In order to have a degree of control over her political environment, the individual must again have freedom of political speech and association, and the ability to participate meaningfully in political processes – e.g. the right to vote.

b. Material - Nussbaum maintains that individuals should be able to own property.

7. The Central Importance of Autonomy and Affiliation

"…Practical reason and affiliation are central to the entire project: they suffuse all the other capabilities, making them fully human."[55] Nussbaum follows Aristotle in claiming that practical reason and the capacity for affiliation are what distinguish us from other animals; in order to live a truly *human* life we must be able to live in such a way that all aspects of our lives are infused with or exercised in accordance with these capacities[56]. Thus these capabilities play a central role in her account; in her emphasis on practical reason she agrees with the Kantian that respect for human dignity requires that individuals should be able to exercise freedom of choice, insofar as this is compatible with respect for the dignity of others, and with Rawls, who holds that "satisfactions that are not the outgrowths of one's own choices have no moral worth." [57]

For this reason, Nussbaum emphasizes that the state's duty is to provide the social basis for functioning – i.e. to make it possible for individuals to exercise all aspects of their humanness – not to ensure that citizens actually do exercise these capabilities; whether or not they do so should be left as a matter of personal choice. If some

[55] Nussbaum (2001) p. 92.
[56] Marx would agree, as no doubt would Kant.

individuals choose to fast instead of eat, or to work more instead of play, that is their prerogative. If they are forced to do so because they have no food, or because they cannot afford to live on what they earn otherwise, then the state is failing to provide the necessary social basis for them to attain the second threshold of functioning. Thus Nussbaum's account differs from the perfectionist approaches of some forms of Aristostelianism.

8. Plurality

Nussbaum holds that while this conception of the good for human beings is sufficiently determinate to allow us to criticise unjust practices across cultures – i.e. it does not entail cultural relativism – it allows for cultural difference. There are many possible patterns of life that can allow for human flourishing as here described; many ways in which the various aspects of humanness may be developed and exercised. Nussbaum argues that her account allows for "plural specification" – the multiple ways in which different individuals may choose to realise their conception of the good life – as well as "local specification", the way in which a particular community might realise the conditions of human flourishing with regard to its own particular context. She writes:

> The Aristotelian needs to consider a different sort of plural specification of the good. For sometimes what is a good way of promoting education in one part of the world will be completely ineffectual in another. In such cases, the Aristotelian must aim at some concrete specification of the general list that suits, and develops out of, local conditions. This will always most reasonably be done in a participatory dialogue with those who are most deeply immersed in those conditions[58].

[57] Nussbaum (1995b) p. 95.

In other words, it seems likely that a political system will be effective in promoting human flourishing only if it takes into account the local context. A local illustration of the need for different, culturally sensitive approaches to education concerns the San Bushmen:

> One of the challenges experienced by teachers and management of the schools is to keep the Khomani San children within the boundaries of the classrooms, school premises and hostel. The Khomani San children experience difficulty in functioning in a confined or enclosed environment when they are used to being free to move about the land.[59]

Thus culture needs to be taken into account when considering the situation of various groups and how to implement state policy most effectively.

Nussbaum's account almost certainly allows for a first and second level right to culture. What remains to be seen is whether it provides sufficient resources to support a third level right.

9. Responses to criticisms of dignity as founding value

At this point I would like to return very briefly to the objections to human dignity as a founding value listed by Liebenberg, and evaluate whether Nussbaum's approach is capable of meeting them. The first suggests that the concept of human dignity is too "vague and multifaceted" to serve adequately as a founding value.

In focusing on capabilities, Nussbaum's approach arguably provides a clear set of criteria to be used in designing, implementing and evaluating a system of rights. Any state decision regarding its citizens' needs is to take into account how that decision is

[58] Ibid. pg. 94.

likely to affect each and all citizens' basic capabilities; if it is liable to undermine or significantly restrict the possibility of human functioning in some or all citizens, then it should prima facie be deemed unacceptable. That said, work needs to be done in establishing which human capabilities we hold to be essential, i.e. how far we agree with Nussbaum's suggested list of capabilities, and whether any amendments should be made. In addition, it seems likely that some ordering of the importance of capabilities will be necessary. For, while Nussbaum states that each item must be seen as having fundamental importance, so that any conflict between items resulting in a trade-off between them must be recognised as tragic, sooner or later such a situation will inevitably arise, and some prioritisation will be unavoidable.

The second criticism claims that human dignity emphasizes freedom and autonomy at the expense of redistributive measures needed to redress material inequality. In concentrating on capabilities, i.e. asking what individuals are able "to be and to do", Nussbaum's account explicitly draws attention to the need for material resources, for without these the possibility of human functioning is severely diminished. Just as Rawls argues that freedom and autonomy require material resources, so Nussbaum claims that not only autonomy, but many (if not all) of the other capabilities we judge central to humanness depend on the existence of material preconditions.

The third objection holds that human dignity leads to a "narrow focus on individual personality issues as opposed to 'a group based understanding of material

[59] Human Rights Commission (2004) pg. 24.

advantage and disadvantage'"[60]. Once again, Nussbaum's focus on what people are able to be and to do makes it clear that the actual circumstances of individuals affected by state actions must be taken into account, and not only the subjective feelings of either state or citizen.

10. Objection to Nussbaum's Account

1. We value the capabilities Nussbaum refers to primarily as "forms of rational control"[61]

The Kantian might object that we value the capacities that constitute humanness only as instantiations of the capacity for reason. To illustrate – rivers move, as do trees blown by the wind, but we do not attribute value to these forms of mobility. Presumably this is because they are random movements not subject to rational control.

If this objection holds, then Nussbaum's account would not significantly differ from the Kantian view of human dignity – it would merely list ways in which we express the capacity for rationality. Nussbaum's Aristotelian method asked us to evaluate from an internal perspective which aspects of humanness we found essential to continuing as human beings. No doubt we do value movement (as well as emotions, forms of affiliation etc.) partly as expressions of rationality: following Aristotle and Marx, Nussbaum argues that these capacities are used in a "truly human way" only when they are used in a manner infused with "practical reason and sociability". However, I would argue that we also value these capacities in themselves, i.e. for the texture and particular quality associated with experiencing them "from the inside". Just as we value the experience of say, colour for the richness it gives our visual experience, so we value emotions,

[60] Liebenberg (2005) p. 5.

movement and so on for the particular kind of experience that they bring to our lives. I think we can observe a delight in movement in non-rational beings, for example in dogs running simply for the sake of doing so, and that we, too value this kind of experience. Thus the capacities Nussbaum refers to cannot be reduced to "mere forms of reasoning", for we also value them for their unique qualia.

In addition, even if we decided that we in fact did value these capabilities only insofar as they are expressions of rational control, important work is done in affirming that each of these capacities plays an important part in a worthwhile human life. The capacity for affiliation, say, cannot be traded for an increase in practical reason without the individual losing an important element of human life. Nussbaum argues that we must be aware that any situation in which one capability must be traded off or sacrificed for another is tragic. Thus simply stating – as the Kantian usually does – that we value humans for their rational capacity is not enough, for it does nothing to prevent us treating all forms of rational control as commensurable – which they are not.

In this chapter I have argued for Nussbaum's broader conception of human dignity, i.e. one that attributes value to all the capacities that we find to be crucial to humanness. We value these both in ourselves and others for the particular qualities that they bring to our lives; each of them in some way gives our life a shape and form that is human and all of them play some part in making life worth living.

[61] This objection was suggested by T. Metz.

IV. Case Studies

The following are case studies taken from a South African context, which I hope will effectively illustrate the issues at stake with regard to a third level right to culture – i.e. cases in which this right conflicts with other important rights or requires differential treatment on the grounds of culture. These are ritual male circumcision, virginity testing, and hunting rights for the San bushmen.

1. Ritual Male Circumcision

Ritual male circumcision is practiced by many South African groups, including the Tswana, Sotho, Shangaan-Tsonga and a number of Xhosa tribes, in order to mark the rite of passage from boyhood to manhood. It is described as "one of the most resilient of all traditional African practices within [the] urban industrialized environment"[62].

During initiation, youths between the ages of 15 and 25 are circumcised by the ingcibi (traditional surgeon) while living in seclusion in the bush. They may spend weeks recovering, throughout which the wound must be continually re-dressed in order to form scabs and commence healing. They are also educated in the ways of the Xhosa: "the young men receive instruction in courtship and marriage practices [and] cultural expectations regarding social responsibilities and their conduct as men in the community are transmitted"[63] They are also taught a particular language for use at the initiation school, and may be beaten if they fail to learn it[64]. Knowledge of this language is sometimes used to distinguish genuine "graduates" from those who have not undergone

[62] Stinson. The information given here is based on the Xhosa initiation ritual.
[63] Ibid. p.2.

the initiation rite. Once a youth has completed his initiation he is recognized as a man and is "afforded numerous privileges associated with [his] status".[65]

The circumcision ritual carries various health risks and results in a number of deaths every year[66]. To begin with, the ingcibi may be incompetent or inadequately trained and some have been discovered operating under the influence of alcohol[67]. In addition, initiation nowadays is commonly carried out during the summer months when heat and humidity – aggravated by initiation huts constructed from modern materials, such as plastic – interfere with the healing process and encourage infection. (In the past the ritual was usually performed during the autumn months, with initiates staying in traditional huts made of grass and leaves.) Moreover, initiates are forbidden to drink water for several days,[68] which results in dehydration. Further, circumcision may be carried out using blunt or non-sterile blades, thereby risking the transmission of STDs – including HIV – and other blood-borne infections between those circumcised.

Youths are sometimes severely beaten if they fail to master the language of initiation. Occasionally, bandages applied too tightly restrict blood flow and result in septicemia and gangrene, thereby causing loss of penile tissue and leaving some initiates mutilated and psychologically scarred for life (if they survive).

Despite the risk of death or mutilation, the stigma attached to failing to complete the traditional ceremony is such that initiates are reluctant to leave the initiation camp to go to hospital. These risks are recognized by communities, but seen as 'par for the

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[64] Author anonymous (2002)
[65] Stinson p. 2.
[66] Mthethwa (2005) reports that "more than 250 deaths… and at least 221 cases of genital amputation have been recorded in the last ten years".
[67] Stinson p. 2.
[68] Author anonymous (2002).

course… "deaths and injuries [are] seen as a way of separating out those boys who were not fit to play the role of men in society."'[69] Various organizations such as the Eastern Cape Health Department and the South African Human Rights commission have attempted to ensure that risks are minimized, but tribal leaders view their efforts as interference and react with hostility[70]. Despite these risks, young Xhosa males feel great pressure to undergo the circumcision ritual due to the importance accorded it by community members. "The option of staying uncircumcised is impractical if you live among Xhosas because they won't take you seriously…in his book Long Walk to Freedom Nelson Mandela comments on how a Xhosa man who has not been circumcised is a paradox, because he is still viewed as a boy."[71]

Some persons suspected of feigning having completed the ritual have been involuntarily stripped and examined for scars incurred by stitches – evidence of a circumcision carried out in a hospital. If these are present, the victim is publicly humiliated by being forced to walk home wearing his clothes inside out.

Thus ritual circumcision offends against several rights protecting the individual's human dignity, first and foremost being the rights to life and bodily integrity, as the initiates risk death, contracting a serious illness (such as HIV/AIDS) and permanent disfigurement. The form that this disfigurement takes is very likely to interfere with the initiate's ability to experience sexual pleasure and to father children, as well as leaving psychological scars, thereby affecting his emotional capabilities and capacity for meaningful, close relationships. Clearly this cultural rite also encroaches upon the dignity of those who refuse to undergo the ceremony, forcing them to assume a lesser status

[69] Stinson p. 3.
[70] Ibid.

within the community that is likely to negatively affect their self-respect, capacity for healthy relationships with other community members, and so on. Moreover, given the stigma attached to one who does not go through the ritual, it is highly questionable to what extent this procedure can ever be said to be freely undertaken.

It is worth noting that – at least as far as would-be initiates are concerned – many of the risks attending initiation could be significantly minimized; for example, by insisting (ironically) that the initiation be carried out (as it originally was) in the cooler autumn months, with initiates staying in traditional huts of leaves and grass; by maintaining strict standards regarding the training and practice of the ingcibi; by ensuring that all blades be sharp and sterilized; by having would-be initiates trained in wound care, or having medical help on-hand; and so on.

That said, many traditional leaders oppose any interference with regard to the practice; moreover, even with these changes certain aspects of ritual circumcision would remain questionable: the experience is no doubt extremely painful, youths may live in fear of the event (as reported by one anonymous initiate in the Mail and Guardian "today is the day I have feared all my boyhood years"), and, of course, the second-class status and treatment of non-initiates would continue to conflict with respect for their human dignity.

A third level right to culture would allow the cultural groups that traditionally practice circumcision to legally continue doing so; in addition, it would provide grounds for those groups to request state funding to maintain the practice or to make it safer, for example by providing on-hand medical help or training in wound care for would-be initiates. Allowing certain groups the right to practice ritual circumcision would be

[71] *Online Mail and Guardian* July 19th (2002).

discriminatory in that the right to conduct similar procedures would not be open to those whose cultures do not traditionally practice ritual circumcision.

2. Virginity testing of Zulu girls

Virginity testing was reinstated in 1984 by King Goodwill Zwelithini – after having being allowed to lapse by several previous kings – allegedly in response to the AIDS pandemic and as part of the black consciousness movement. The test is usually conducted on a yearly basis by women who verify that the hymen is intact; those who "pass" receive certificates. The test is fallible as the hymen may be accidentally torn during non-sexual physical activity, or simply not present at birth.

Virginity testing has been encouraged by various parties including traditional leaders, on the grounds that it encourages girls to remain virgins, thereby protecting them from unwanted pregnancies and possible infection with diseases such as HIV/AIDS. However, the efficacy of the test in protecting girls from contracting AIDS appears to be questionable. The Eastern Province Herald of December 3rd, 2003 claims that "girls were discovered to be having anal sex in order to pass the tests", while Gender Links executive director Colleen Lowe Murphy is reported as saying: "studies show that in many instances, women are coerced into their first sexual experience" and that "the assumption that women [have] control over their virginity [is] misplaced"[72].

Like ritual circumcision, virginity testing is considered a rite of passage; unlike circumcision, however, it carries no obvious risk of death or disfigurement. However, it has been criticized on the grounds that it conflicts with the right to bodily integrity and is

[72] *Eastern Province Herald* 3 December (2004).

"degrading and demeaning"[73]; feminists have condemned the practice as being discriminatory and objectifying women.

In addition, the practice is said to damage the standing of young women who are not virgins or who fail the test: they are perceived as "loose", "promiscuous" and "in some ways socially unacceptable"[74]. In contrast, those who pass the test take pride in their status, and traditionally attract a higher dowry[75]. Thus as with ritual circumcision, this cultural ritual appears to saddle some members of the community with a second-class status that is in conflict with their human dignity.

Given the outlook of the communities that partake in this tradition, and the status awarded to those declared "pure" it is difficult to assess whether the practice is undergone voluntarily. Women who refuse to take the test are frequently assumed to be non-virgins. Further, some fear that the tests may put young women at risk of being perceived as "sexual prizes" and as targets for rape.

Once again, a third level right to culture would mean that virginity testing could be conducted legally by cultures that have traditionally practiced it, despite its being in conflict with the right to bodily integrity, etc. As with ritual circumcision, this right would discriminate on the basis of culture, for groups for whom the practice is *not* traditional would not be allowed to begin conducting purity checks on their daughters. Also, a third level right to culture might entail that the state support the practice, perhaps by providing funding to ensure that the women who conduct the tests have some training in counselling (it has suggested that this is necessary for dealing with women who have been raped).

[73] Clayton (2005).
[74] Kubi Rama (2005).

3. Hunting rights for the Khomani san

The San are the aboriginal inhabitants of Southern Africa, predominantly hunter gatherers who for a long time managed to maintain their culture and nomadic way of life through being able to survive in extremely hostile conditions and thereby avoiding contact with black and white settlers. Partly due to the founding of the Kalahari Gemsbok National Park (now known as the Kgalagadi Transfrontier Park) in 1931, the San tribes inhabiting the Southern Kalahari (known as the !Khomani San) were dispossessed of their traditional lands and scattered throughout South Africa, for the most part living in poverty and as "a de facto underclass": "Receiving negligible wages or the right to live in exchange for hard labour on Kalahari livestock farms, San developed few other skills to support life in a rapidly modernizing world."[76] Some became farm workers in the area; a few were able to continue living and working in the Park as trackers and labourers until they were forced to leave in the 1970s. "Many were largely assimilated into, or dominated by, local communities. The ancient San cultural practices, mainly nomadic in nature, were sporadically maintained in isolated groups."[77]

As a result of their dispersal, their group coherence eroded and they became "thoroughly fragmented as a people".[78] Their old languages fell into disuse, and the !Khomani language was declared extinct until individuals still speaking the language were discovered following a cultural resources audit.[79] "Fewer and fewer San practiced

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[75] Clayton (2005).
[76] Chennels (2004) p. 213.
[77] Human Rights Commission (2004) p.12.
[78] Chennels (2004) p. 213.
[79] Ibid.

their culture, and they fell into social disarray as their past lifestyles became a thing of memory, and they lost touch with their Kalahari origins."[80]

In 1994, various San groups united in an attempt to reclaim their land in the Southern Kalahari. This was lead by the "core surviving Hanaseb group" who had "by this time…completely associated themselves with a 'reinvented' Khomani ethnic identity."(12) In order to strengthen their application and aid as many San as possible, the Hanaseb group included other San groups (not originally from the area) in the claim. Many of these people had been partly assimilated into a more modern lifestyle: "They had come to measure development in terms of freedom from poverty and the acquisition of the trappings of 'modern life' e.g. possessions, modern housing, vehicles etc."[81] In 1999, the Khomani San won their land claim and were awarded six farms in the Witdraai area, as well as rights to 25 000 hectares on the southern boundary of the Kgalagadi Transfrontier Park, which they are free to use for cultural purposes, hunting, food gathering, and eco-tourism initiatives[82].

The foregoing indicates that San culture has largely been lost or destroyed over the last century, with only a few groups maintaining any semblance of their traditional way of life. This "reconstructed" San culture will differ significantly from their original culture: First, it is made up of several groups who were not originally part of the same community. Second, some of these groups had been largely assimilated into mainstream culture; their values have undergone significant change. Third, as part of the land claim, the San were required to adopt a hierarchical system of democratically elected leadership,

[80] Ibid.
[81] Chennels (2004) p. 9.
[82] Human Rights Commission (2004) p. 13.

as opposed to maintaining their traditional non-hierarchical system in which all members participate in decisions affecting the community: "It was required to formulate a virtually new community, with a more modern and 'democratic' leadership structure."[83] Finally, most San individuals were no longer using any of the San languages.

Thus, although the land awarded to the San can be defended as rightful compensation for the injustices suffered by the San over the last century, the decision to allow the San rights to hunt, collect food and conduct cultural activities in part of the Kgalagadi Transfrontier Park might be deemed questionable. Clearly, these rights cannot be awarded to all and sundry, as this would undermine the very purpose of a National Park. The San have therefore been awarded unequal rights on the basis of culture and this, at least at face value, conflicts with the equal treatment demanded by human dignity.

4. Reasons to Oppose Cultural Rights

Appeal to dignity suggests several reasons for opposing cultural rights.

First, respect for human dignity entails that the state should treat all human beings as equals, whereas a third level right to culture argues for differential treatment on the basis of culture. While some state policies (e.g. affirmative action) do promote differential treatment on the basis of race, gender, etc., these can be defended as temporary measures that seek to redress inequalities created by past injustices (and therefore as required by human dignity); it is not clear that the right to culture can. It may not temporary, nor does it obviously attempt to bring about greater equality.

[83] Chennels (2004) p. 7.

Second, cultural rights sometimes appear to be *in conflict* with respect for human dignity. As we have seen, the practice of ritual circumcision risks the lives as well as physical and mental health of many youths each year, while virginity testing undermines the bodily integrity of girls and women. Further, such practices are often themselves only one aspect of a system of values that perpetuates inequality, often with regard to the status of women. For example, the emphasis that virginity testing places on the "purity" of young women, and the varying amount paid in dowry depending on this purity suggest that women are primarily valued as sexual objects. Particular ceremonies may thus only represent the tip of the iceberg, and allowing such practices to continue might suggest an acceptance of the values they reflect, as well as subjecting those involved to the adverse effects of the custom itself.

However, not all cultures – nor the practices they seek to maintain – are in conflict with human dignity. The San Bushmen, for example, espouse a particularly egalitarian system, wherein each individual is held worthy of respect and care. Thus in some cases this objection to cultural rights does not hold.

Third, part of a culture's heritage may include contempt for other cultures, contempt that is come cases expressed in traditional ceremonies and customs. It is difficult to see how institutionalised contempt could be compatible with respect for human dignity.

Fourth, awarding cultural rights can be a source of conflict if groups feel that concessions are unfairly awarded. For example, many defendants of virginity testing

expressed outrage at the proposed Children's Bill, as it originally sought to ban the largely Zulu practice but not the primarily Xhosa custom of ritual circumcision, despite the risks posed to initiates by the latter[84]. Similarly, an increase in conflict has been reported following the awarding of land rights to the Khomani San. Peace and security are arguably necessary conditions of honouring dignity.

In examining to what extent cultural rights are compatible with human dignity, it is necessary to keep in mind and address such instances where the justifying value potentially pulls in opposing directions.

[84] Mthethwa (2005).

V. Identity and Culture

Following Nussbaum's approach to dignity, a practice conflicts with human dignity - and is therefore pro tanto wrong – if it damages, suppresses or destroys any of the capabilities that we find to be essential to humanness. A practice is acceptable if it supports or furthers the basic human capabilities necessary to humanness. In order to determine whether an aspect of a particular culture is compatible with human dignity, we must weigh any positive role that it plays in supporting or maintaining human capabilities against the damage it may do to the same.

In the previous chapter I described three cases where the right of a cultural group to maintain some of its practices appears to conflict in some way with respect for human dignity: Ritual circumcision risks the lives and physical integrity of initiates, and may damage their sexual and emotional capacities; virginity testing conflicts with the right to bodily integrity, and arguably assigns a lesser worth to women; the San have been granted rights to hunt in a protected area, a right not granted to members of other cultures. As such they are given unequal treatment, which seems to conflict with the principle that all individuals possess equal worth and should be treated accordingly. Given that this is the case, if these rights are to be defended as in fact being compatible with human dignity, it must be shown that they are in some way necessary for the human capabilities of the individual.

In this chapter I will focus on Charles Taylor's arguments to the effect that cultural membership plays an important role in the individual's personal identity, and should therefore be protected. Taylor's approach suggests several avenues of defence for

cultural rights. First, he argues that one's culture is an important part of one's "authentic" self. Second, he claims that individual members of groups that are treated as being somehow contemptible or inferior by others may internalize these beliefs, thereby "distorting" their identity and harming their self-esteem and autonomy.

In this chapter I discuss the first of Taylor's arguments, i.e. his appeal to authenticity; the second I will cover in the following chapter, where I discuss arguments from autonomy.

1. Authenticity

The notion of authenticity plays a key role in Taylor's arguments. He traces its origin to the 18th century idea that we possess an intuitive moral knowledge that we access through our feelings and by consulting 'the voice within'. Over time, access to this inner voice comes to be seen as significant in its own right – not merely as a source of moral knowledge, but as a condition of attaining full humanity[85]: "…being in touch with our feelings takes on independent and crucial moral significance. It comes to be something we have to attain if we are to be true and full human beings."[86]

Taylor attributes the initial articulation of this view to Rousseau who "even gives a name to the intimate contact with oneself, more fundamental than any moral view, that is a source of such joy and contentment: "le sentiment de l'existence"". Later, Herder adds to this idea by suggesting that every human has her own way of being human; "his or her own "measure"". Ultimately we end up with this notion of authenticity deeply embedded in our consciousness:

[85] "Humanity" here is used in the usual sense, rather than the Kantian.
[86] Taylor (1994) p. 28.

> There is a certain way of being human that is my way. I am called upon to live my life in this way, and not in imitation of anyone else's life…this notion gives a new importance to being true to myself. If I am not, I miss the point of my life; I miss what being human is for me…This…powerful moral ideal…accords moral importance to a kind of contact with myself, with my own inner nature, which it sees as in danger of being lost, partly through the pressures toward outward conformity, but also because in taking an instrumental stance toward myself, I may have lost the capacity to listen to this inner voice. [87]

There is little doubt that Taylor is correct in claiming the pervasiveness of this idea in much of the world today: it saturates Hollywood, Bollywood and a good deal of the music and publishing industry. People everywhere seem to be looking to "find themselves" or pursuing "self-realization". If we accept that discovering one's authentic identity is fundamental to becoming "fully human" and experiencing "the joy of existence" then respect for dignity requires that we should allow people to articulate (and live according to) their authentic identity. Nussbaum argues that individuals should be free to choose whether or not (and how) to exercise all the basic human capabilities, because, following Rawls she claims that "satisfactions that are not the outgrowths of one's own choices have no moral worth."[88] It seems plausible that this position is – at least in part – informed by the notion of authenticity[89]. If this is so, then it is likely that authenticity is an important part of Nussbaum's conception of human dignity. As such, the conditions required to "live authentically" should prima facie be supported.

Authenticity, then refers to the individual way that each of us interprets or exercises all these aspects of our humanity. For example, some individuals identify

[87] Taylor (1994) p. 30.
[88] Nussbaum (1995b) p. 95.
[89] I suspect that beginning with Mill, much of liberalism is informed by the notion of authenticity.

themselves more strongly with certain aspects of their humanness, seeing themselves as being particularly emotional beings – people who "follow their hearts", or predominantly rational – "people who follow their heads". Further, individuals may understand their various capacities in a range of ways, for example, they may exercise their sexual capacities according to certain preferences, identifying themselves as "straight", "gay" and so on.

What Nussbaum refers to as "strong separateness" also plays a large part in one's authentic self. People partly define themselves as distinctive individuals through their unique history and set of attachments to people and things. Taylor's defence of culture in virtue of the role it plays in identity might be understood as an appeal to this aspect of authenticity.

Individual authenticity appears to combine aspects of ourselves that are inherent (i.e., that we are born with), and those that are developed in response to our experience of the world. There is a great deal of debate regarding the question of where the former end and the latter begin. For example, women are often identified (and identify themselves) as the more emotional of the two sexes. At this point, it is often difficult to determine with any certainty whether there is something about being female that inherently predisposes women to being particularly emotional (hormones, perhaps) or whether this is something cultivated in women, or "imposed" on them by culture. From the outset, then, we come across a tension between an essentialist view of identity (i.e. one that holds that certain aspects of ourselves are there from birth, or automatically accompany

membership in a particular social collective – e.g. gender, ethnicity, sexual orientation) and a "constructed" one – one developed or created in response to exposure to the world. Is identity a question of nature, nurture, or both? Is discovering one's "authentic self" a question of finding "the real self buried in there, the self one has to dig out and express"[90], or is the authentic self "something one creates, makes up, so that every life should be an art work whose creator is, in some sense, his or her own creation"[91]?

Likely enough, one's authentic self is formed of a combination of inherent traits and external influences.

Taylor holds that process of articulating – and thereby defining – one's identity is conducted partly through a dialogical interaction with others (family, friends, the community and society at large) that continues throughout the individual's life. It is for this reason that the need for recognition – i.e. the need to be acknowledged and respected for what and who one is – comes to play such an important part in modern politics. For with the development of authenticity, i.e. the idea that one has a unique identity that is "inwardly generated" rather than determined by society, this need becomes increasingly problematic. Taylor claims that for the first time, individuals were faced with "…conditions in which the attempt to be recognised [could] fail"[92].

Because identity is something that the individual negotiates through her interactions with others, Taylor claims that a failure to recognise individuals (in the relevant sense) "shows not just a lack of due respect. It can inflict a grievous wound,

[90] Appiah (1994) p. 155.
[91] Ibid.
[92] Taylor (1994) p. 35.

saddling its victim[s] with a crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need."[93]

As some aspects of authenticity are likely to be inherent – e.g. one is arguably born gay or straight, etc.; being female may predispose one to expressing more emotion, and so forth, appeal to authenticity in this context underlies the belief that because one is straight/gay/female/male/black/white etc., one should be recognised (i.e. acknowledged and respected) as such.

Taylor concludes that "everyone should be recognized for his or her unique identity" and that this requires that we recognize the "unique identity of [the] individual or group, their distinctness from everyone else"[94]. Thus, because one's culture is an important component of one's "strong separateness" (i.e. unique identity) and therefore plays a part in human dignity, individuals have a right to maintain their culture.

However, appeal to authenticity as ground for cultural rights seems problematic. This is because the struggle to create and articulate one's authentic self is often conducted in opposition to the norms and values of one's culture, and therefore often comes into conflict with appeal to strong separateness; thus, in some cases, appeal to authenticity gives as much reason to emphasize the protection of individual rights over cultural rights as to support the right to culture. For example, if one is homosexual in a culture that deplores or mistreats homosexuals, then the need to live as one's authentic self – to be what one is (in this case, possibly inherently) and to be acknowledged and respected as

[93] Taylor (1994).
[94] Taylor (1994) p. 38.

such conflicts with the need to hold on to one's (unchanged) culture as a part of one's strong separateness.

This, I think, is clearly illustrated by reference to Taylor's arguments concerning measures taken by the Quebecois government in its bid to ensure the ongoing existence of a francophone community. The Quebecois government has legislated that French-speaking Quebecois must send their children to French-speaking schools; that any business with more than fifty employees must be conducted in French; and finally, that all commercial signage be written in French. The aim of these measures is to further the collective goal of ensuring the continuing survival of a French-speaking population in Quebec; in doing so, it restricts the rights of French-speakers to choose which language their children are to be schooled in, and business owners to decide the language their business is to be conducted in, and discriminates against those who do not share the collective goal. Consequently, there is a great deal of debate as to whether this legislation is acceptable.

Taylor appears to hold that these measures can be defended by appeal to authenticity. Hence, in reference to the measures being taken by the Quebecois government, he writes:

> …[these] measures [are] urged on the grounds of difference, the goal of which is not to bring us back to an eventual "difference-blind" social space but, on the contrary, to maintain and cherish distinctness, not just now but forever. After all, if we're concerned with identity, then what is more legitimate than one's aspiration that it never be lost?[95]

[95] Taylor (1994) p. 40.

The concluding sentence indicates that he believes these measures to be legitimated by appeal to identity – and thereby authenticity. However, in prohibiting French-speaking or immigrant families from sending their children to English-speaking schools, is the state not preventing some families from following their own path, their authentic selves? Taylor himself writes:

> Political society is not neutral between those who value remaining true to the culture of our ancestors and those who might want to cut loose in the name of some individual goal of self-development[96].

Surely both "remaining true to our ancestors" and "cutting loose in the name of self-development" are possible avenues of following or creating one's authentic self? In fact, the popularity of the idea of pursuing one's self-development is probably a direct consequence of the development of the ideal of authenticity.

Consequently, it seems that appeal to authenticity is likely to oppose cultural rights as much as support them, at least where these rights call for measures that restrict the autonomy of group members themselves.

To sum up: Taylor argues that cultural rights may be defended by appeal to authenticity: more specifically the role that culture plays in strong separateness, and the part that this in turn plays in individual identity. However, the ability to live authentically also requires that we be able to exercise (or not) our human capabilities in the way that we see fit. Culture also plays a role here – but in many cases, the role is negative, i.e. it militates against us expressing aspects of who we are. Appeal to authenticity is thus ambiguous. My feeling is that the right to live authentically by exercising our capabilities

outweighs the need to maintain a culture as an aspect of our strong separateness. Thus appeal to authenticity arguably gives us more reason to oppose cultural rights than to support them (in many cases; although perhaps not all). I therefore believe that Taylor's appeal to authenticity is ultimately unsuccessful.

[96] Taylor (1994) p. 58.

VI. Autonomy and Cultural Membership

> We make up selves from a tool kit of options made available by our culture and society. We do make choices, but we do not determine the options among which we choose.
>
> K.A. Appiah, from "Identity, Authenticity, Survival"

Will Kymlicka situates his defence of cultural rights within the Kantian tradition as exemplified by John Rawls and Ronald Dworkin. I have argued that Nussbaum's more inclusive approach to human dignity is preferable to a Kantian one that focuses only on the capacity for rationality, but as Nussbaum agrees with Kant in that freedom is a central aspect of respect for human dignity, Kymlicka's arguments remain relevant.

Kymlicka claims that individual autonomy is dependent upon cultural membership, so that a Kantian approach such as Rawls's – which emphasizes the importance of the conditions needed for living autonomously (i.e. primary goods) – must allow for measures that aim to protect the flourishing of cultures.

In what follows I will give his arguments in support of this claim before considering several objections made by his critics and possible responses.

1. Culture and Autonomy

Kymlicka's aim is to show that cultural rights are not only compatible with, but required by Rawls's political liberalism. On Kymlicka's reading of Rawls "the freedom to form and revise our beliefs about value is a crucial precondition for pursuing our essential interest in leading a good life"[97]. This is because it allows us to reflect upon and if necessary to change our goals, beliefs and values if we no longer find them of worth, thereby facilitating the self-respect that is dependent upon the belief that one's life-plan is

worthwhile. Rawls apparently holds that this self-respect is a precondition of any "rational plan of life"[98].

Therefore, once a certain level of material security for all is gained (enough to make autonomy possible) liberty should not be traded for more wealth. Rawls therefore stipulates that individual liberty should be curbed only in order to secure a greater basic liberty for all; in addition, he argues that the sole justification for an unequal distribution is that it results in increased freedom for the "less free person"[99].

Kymlicka points out that Rawls's system does not seem to allow much room for cultural rights, as these quite often work to restrict individual liberty in order to secure not an increase in liberty for the less-free, but the survival and/or flourishing of a group's culture. For example, San members who value the traditional ways might (hypothetically) wish to keep the education of San children within the group, so that children are raised with traditional values and skills, rather than being exposed to the modern world and its values (as they are at outside schools). Exposure to, and schooling within, the modern ways of the outside world may eventually lure future San members away from the community and from a traditional way of life; thus the way of life will gradually disappear. Similarly, the more traditional members within the group may wish to restrict efforts made by the more "modern" San to start businesses, build modern houses, buy cars, and so on, as all of these things will ultimately undermine the traditional San way of life.

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[97] Kymlicka (1989) p. 163.
[98] Ibid p. 164.
[99] Ibid p. 163.

Kymlicka's strategy is to show that the freedom to live according to one's choices is "intimately linked with and dependent on culture"[100] – and that therefore, access to one's culture is a primary good – in the following three ways:

First, culture provides the set of options from which we choose:

> The decision about how to lead our lives must ultimately be ours alone, but this decision is always a matter of selecting what we believe to be most valuable from the various options available, selecting from a context of choice which provides us with different ways of life. This is important because the range of options is determined by our cultural heritage.[101]

How might culture be responsible for "the range of options available?"

To begin with, culture provides options in a broad sense, by suggesting possible "life scripts". These are accessed through a body of stories, including folklore, fairytales, literature, histories, biographies etc., and conveyed through an oral or literary tradition. These constitute a form of moral education; they communicate many of the values endorsed by a culture to its members, and at the same time suggest possible ways of life as worthwhile (or warn against others). I suspect that these "life scripts" are often tied in with the way of life in which they are created; thus if one has identifies one's self with a particular life script, and the way of life assumed by it disappears, one is likely to be left aimless, frustrated and confused – unless one is of a sufficiently resilient and flexible nature – or young enough – to take on a new life script.

Next, culture structures both public and private forms of affiliation. Part of this entails allocating particular roles in families, communities, businesses and so on, on the

[100] Kymlicka (1995) p. 75.
[101] Kymlicka (1989) p. 165.

basis of features including age, gender, character and so on. This allocation of roles can be rigid or relaxed.

Further, a culture amasses a particular body of knowledge required to survive or flourish in the environment in which it arises. Thus (prior to being dispersed) the San had the detailed and extensive knowledge of their surrounds needed to maintain life in the Kalahari desert. Similarly, the typical inner city or suburban dweller has – or should have – a basic knowledge of the use of technology (e.g. how to access the internet, how to get from one place to another) and how to survive in a modern economy (learn certain skills, get a job, save money). This body of knowledge largely determines what career options are open to individuals of particular cultures. It will be very difficult for an adult San individual from the Kalahari to learn the necessary skills to do an IT job and survive in Sandton, just as it would be very difficult for the IT specialist from Sandton to subsist in the Kalahari. Thus culture both makes available and limits the "options" that are available to one.

Second, culture invests our actions with meaning and value. This being the case, access to culture becomes necessary for the possibility of rational choice:

> Different ways of life are not simply different patterns of physical movements. The physical movements only have meaning to us because they are identified as having significance by our *culture*... [102]
>
> People make choices about the social practices around them, based on their beliefs about the value of these practices…to have a belief about the value of a practice is, in the first instance, a matter of understanding the meanings attached to it by our culture[103].

[102] Kymlicka (1989) p. 165.
[103] Kymlicka (1995) p. 83.

Most aspects of day to day living are accorded meaning and value by culture, including how we perceive and interact with the natural world, how various aspects of individuals – their sex, race, age and so on – are perceived, and what kind of activity we find rewarding or worthwhile. Thus, for example, some cultures live in close harmony with the natural world, while others endeavour to control and distance themselves from it; in some cultures the elderly are seen as wise and venerable, while in others, they are "senile old bats"; and various roles, careers, life choices and so on are seen as prestigious or mundane.

To illustrate, the San lived a nomadic life in an extremely challenging environment, developing an extensive knowledge of and rapport with nature, owning no property and taking decisions as a group. This is in stark contrast with the settled, modern lifestyle of (for example) Johannesburg's northern suburbs, in which (for many individuals) value is attached to owning property and competing to 'get ahead'. To impose either lifestyle on the other would result in confusion and misery. This is partly because the value that each individual accords to say, living in the desert or spending an afternoon in a shopping mall is in part determined by their cultural heritage. Thus switching them around may negatively affect their ability to make rational decisions, as they are unable to effectively evaluate or perhaps even determine the options open to them, and further, unable to make – and live according to – choices that they find worthwhile. In addition, people frequently form a strong attachment to the values they are raised with (although some may later choose to reject these). One can imagine that an individual raised according to traditional San culture might experience continual regret at the loss of the free movement and close relationship with nature occasioned by a changed

lifestyle, even if she ultimately developed a sufficient understanding of the new culture to make reasonable decisions.

Third, cultural membership provides members with a sense of security, belonging and pride, and is therefore a valuable source of self-respect, thus playing an important role in the personal agency of individuals.

> …cultural heritage, the sense of belonging to a cultural structure and history, is often cited as a source of emotional security and personal strength. It may affect our very sense of agency[104].

This echoes an argument put forward by Margalit Avishai and Joseph Raz, who claim that the feeling of belonging provided by cultural membership is an important source of self-respect in that it is not dependent upon achievement[105].

This connection, of course, cuts both ways, as Taylor's argument for the need for recognition shows. Taylor argues that individuals can be brought to view their membership in a particular group as indicating their inferiority. Given that one's membership in various "collective identities" (ethnicity, gender, religion, etc) form part of the individual's identity, and given that the process of forming one's identity is dialogical, popular views or attitudes regarding that aspect of one's self may be incorporated by the individual into her self-image, with detrimental effects.

Arguments to this effect have been made by feminists who claim that women have been brought to see themselves as inferior, resulting in their being unable to pursue opportunities even when these are eventually made available. Similarly, it is alleged that

[104] Kymlicka (1989) p. 175.
[105] Raz and Margalit (1990).

many black people have been made to see themselves as lesser beings, a view conveyed to them by white people. Thus, "their own self-depreciation becomes one of the most potent instruments of their own oppression"[106].

Those who view a particular group with contempt often respond negatively to someone who exhibits outwardly identifiable "markers" of cultural membership – dress, name, skin colour, physical features and so on. Members of a particular group may be subjected to continual expressions of contempt and degrading treatment – subtle and overt, conscious and unconscious – from the surrounding majority. In these and other ways, individuals may come to see their membership in a particular culture to be a source of shame or disgrace, burdening them with "a crippling self-hatred"[107]. This seems to have been the case with regard to the San:

> Some lived on the outskirts of towns, similarly demoralized and accepting their status as the lowest of the low. Removed from the security of their lands, their modern lives were dominated by poverty, tension and fear. They longed for a way to return to their lands, and to connect with the old ways and values.[108]

This damage to their self-esteem negatively affects the autonomy of such individuals.

One response to this phenomenon has been to instate, and to varying degrees enforce, a system of equal rights that attempts to ensure that individuals are treated with respect for their equal dignity, regardless of ethnicity, gender, sexuality and so on. Ideally this would limit the extent to which a member of one group could express contempt towards, or treat in a degrading way any individual.

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[106] Taylor (1994) p. 26.
[107] Ibid.

However, there are limits to how much this approach can achieve. First, people who have internalized the belief that they are inferior often have difficulty standing up for themselves and asserting their rights. Consider one of the challenges facing the San following their successful land claim:

> After years of oppression and marginalization, the San were unaccustomed to asserting themselves against those in power. Submission to the authority of those with financial, political and coercive power over them came more naturally. They had to learn to accept the conflictual nature of negotiating with one's government, based on their own rights[109].

Further, quite often the bodies intended to protect and uphold individual rights are themselves staffed with individuals who hold negative views regarding a cultural community. For example, a great deal of tension exists between the police and the San in the Witdraai area; police attitudes towards the San are aggravated by the fact that some San have become habitual alcohol and marijuana abusers. Allegedly, crimes against San members sometimes go unreported, or, if reported, are not always investigated. In some cases, there have been claims of assaults on San individuals by members of the police force. Recently the Human Rights Commission had to intervene before an investigation was launched into the fatal shooting of a San man – Mr. Optel Rooi – by police officers.

Moreover, it is too much to hope that asserting the value of human dignity will go very far in bringing individuals to treat each other with respect and care. Intolerance is unfortunately here to stay, at least for the time being. The protection offered by rights cannot completely protect individuals from expressions of contempt, particularly when these are subtle or ambiguously expressed. Individuals therefore need, and are likely to

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[108] Chennels (2004) p. 2.
[109] Ibid p. 8.

go on needing, to be able to take refuge in their culture – to have a space in which they can live according to their ways with other like-minded individuals. In other words, they need a secure and flourishing community – and part of this will entail being able to maintain the culture with which they identify themselves.

Finally, as the saying goes, "the damage has already been done"; assertions of equality are not sufficient at this stage to redress the harm caused by the abuse and degradation of certain cultural groups. Claims of human dignity will not help if individuals feel that they possess dignity "in spite of" their cultural membership. This point is expressed with great clarity and force by Appiah:

> …if one is to be Black in a society that is racist then one has to deal constantly with assaults on one's dignity. In this context, insisting on the right to live a dignified life will not be enough. It will not even be enough to be treated with equal dignity despite being black, for that will require a concession that being black counts naturally or to some degree against one's dignity. And so one will end up asking to be respected *as a Black*[110].

A parallel story can be told with regard to the San. Thus the move to reclaim and recreate San culture, rather than completing the assimilation of San individuals into modern society, might be defended as follows:

Through rediscovering and saving the !Khomani language and the San's extensive traditional knowledge of the Kalahari, its plant and animal life, and in creating a new San community from scattered groups, the San will ideally reclaim an identity that connects with their past heritage, thereby giving them a sense of belonging and self-respect sorely

[110] Appiah (1994) p.161.

needed to counteract their almost complete demoralization and acceptance of second-class status.

It seems unlikely that this renewal of self respect could be achieved as effectively (if at all) by investing in the skills development etc. of San individuals without any reclamation of their identity, particularly when the San still acutely regret the loss of their ways, and when being identified as San carries negative implications (take for example, the "secret San" living within other communities, who do not want to be recognised as San people for fear of recrimination). In addition, we should bear in mind that affirmative action itself can be demoralizing, in that it is sometimes taken to imply that certain groups cannot compete without assistance, not because historical events have undermined their autonomy, but because they are somehow inherently less capable. Thus individuals may come to see their participation in an affirmative action program as itself a sign of their inferiority. This is not to say that affirmative action programs should be abandoned; rather, my point is that for them to succeed, groups like the San may need to have access to independent sources of self-respect; the feeling of belonging to a community, and possessing a unique culture would be invaluable here.

Given, then, that culture shapes our perception of value and makes available certain roles, it apparently plays an important part in our ability to evaluate possible "life plans" effectively, as well as giving us a "range of options" from which to choose. In addition, it is a source of self-respect, which directly impacts upon personal agency. Thus respect for human dignity, which requires respect for the individual's freedom to pursue

her notion of the good (i.e. autonomy), would appear to entail recognition of the role of culture in shaping and living according to her values.

As Murray argues, if the assimilation of a group is involuntary, it may undermine the self-respect of its members due to the fact that it is imposed upon them. This is suggested by Kymlicka's reference to the difference in the loss of culture of the Quebecois and the Aboriginal groups (see below). Being unable to protect and maintain a way of life that one values against the imposition of the majority is likely to be profoundly demoralising. The individual will likely feel that she is not in control of her own life, thereby affecting her sense of personal agency. Moreover, her feeling is entirely justified, for she *isn't* in control of her life – she is unable to live according to her own values, sometimes despite the fact that she is not harming anyone.

2. Application to Case Studies

How might Kymlicka's argument support a right to maintain practices which apparently conflict with human dignity, i.e. ritual circumcision and virginity testing?

This would seem to depend on how "central" the practice is to the culture, i.e. to what extent the survival and flourishing of that culture would be undermined – thereby negatively affecting the autonomy and self respect of the members that depend on it – by the banning of a particular practice.

It seems improbable that virginity testing could be defended on these grounds. First, the practice does not appear to be as important to Zulu culture as say, hunting and gathering are to the San, whose whole way of life, accumulated knowledge and developed skills are constructed around these practices. The practice of virginity testing was re-instated nine years ago; its lapsing did not appear to be as generally detrimental to

Zulu culture and the self respect of its members as the loss of hunting and access to their land was to the San. Virginity testing was allegedly reinstated as part of a black consciousness movement, presumably in response to Apartheid, which has since collapsed. It was also brought back as a response to HIV/AIDS – but here it is not clear that it is effective, as it is claimed that young women are frequently coerced into sex, or engage in anal sex, which allows them to pass the test.

As regards ritual circumcision, the situation appears somewhat different. Part of the process involves teaching the initiates the ways of their culture, appropriate behaviour, cultural expectations and so on. In addition, youths who have been raised to believe that with this ritual they pass into manhood may feel that in avoiding it they are never truly adult. Thus banning ritual initiation might affect the health of the culture and to some extent directly undermine the autonomy of would-be initiates.

The degree to which a practice is seen as "central" to a culture is likely to vary between communities, just as the extent to which the practice of say, ritual circumcision is perceived as a necessary step to manhood is likely to vary between individuals. The loss of an aspect of one's culture may be differently experienced from person to person and group to group; thus respect for human dignity may ultimately entail protecting individual liberty to decide whether or not to undergo such practices partly by allowing them to remain open to those who feel strongly about them.

3. Objections to Kymlicka's argument from autonomy

1. Kymlicka's approach allows for involuntary assimilation

Kymlicka defends cultural rights on the grounds that access to one's culture plays an important role in individual autonomy. However, several proponents of cultural rights – including Charles Taylor and John Danley – reject his approach on the grounds that insofar as culture is necessary to "provide options", all that is required is access to a culture, not necessarily one's own. Thus, rather than allowing cultural rights, the state may take measures to facilitate the integration of the minority into the majority culture, so that they have access to the "options" provided by the latter's culture. For example, in order to foster the autonomy of San individuals the government could devise a form of affirmative action directed at further integrating San members into modern society, partly by ensuring that they possess the education and skills required to make a decent living, are fully aware of their rights, and have access to the machinery that defends them (i.e. the full protection of the law), rather than acting to reconstruct a form of San culture.

Kymlicka in fact pre-empts arguments such as these by stating that culture is crucial to autonomy in virtue of its role in the personal identity of individuals:

> People are bound, in an important way, to their own cultural community…someone's upbringing isn't something that can just be erased; it is, and will remain a constitutive part of who that person is. Cultural membership affects our very sense of personal identity and capacity.[111]

If we consider Kymlicka's claim regarding the role of culture in providing our actions with meaning, then the culture within which an individual is raised will at least partly determine how she understands and makes sense of her actions, and also what she

holds to be valuable, morally correct, and so on. Thus a member of a given culture may simply not be able to assimilate into the majority without harm to her autonomy (past a given age), for her ability to make reasoned decisions – that is, decisions which make sense to her – is dependent upon the meaning and value provided by her culture.

Further, I have argued that the culture in which an individual is raised will significantly affect the kind of knowledge and experience she possesses. This will make it extremely difficult for her to learn the skills needed for successful assimilation.

Finally, I have argued (following Taylor and Kymlicka), that it may not be possible to successfully integrate members of a group while their members are viewed (or view themselves) in a negative light.

That said, Kymlicka's approach probably does not offer a basis with which to defend measures that ensure the ongoing survival of a culture (which is Taylor's aim[112]). Appeal to autonomy may offer reason to protect an individual's access to the culture in which she was raised, but a gradual loss of culture that takes place over generations and results from the choices of members need not negatively impact on their autonomy. Thus if increasing numbers of San children choose to leave the community, complete tertiary education and move to the suburbs, traditional San culture will eventually disappear completely – and this cannot be prevented by appeal to autonomy, which protects first and foremost the individual's right to choose.

However, I have argued that Taylor's reason for supporting measures that seek to ensure that a particular cultural community will always exist – i.e. the appeal to authenticity – cannot do the work he wants it to. Therefore, this consequence of

[111] Kymlicka (1989) p. 175.
[112] Taylor (1994).

Kymlicka's argument from autonomy is not reason to reject it. If changes occur – even to the point that their culture is no longer recognisable – as a result of the choices made by members of that culture, then so be it. Culture is not static, and like people, it changes over time.

2. Cultural membership is not crucial for autonomy

James Nickel is quoted by Robert Murray as claiming that there is evidence that both adults – for example, immigrants – and children successfully adjust to foreign cultures without harm to their capacity for rational choice[113]. Thus he argues that it seems unlikely that access to one's own culture is a necessary condition of rational choice. Consequently, cultural membership cannot be defended as a "primary good" necessary for autonomy.

Kymlicka has suggested at least three ways in which autonomy may be dependent upon cultural membership, and Nickel, I think, goes some way to undermining the second – i.e. the claim that culture infuses our actions with meaning and value and that consequently, when we leave our culture our ability to exercise our rational autonomy is significantly diminished. The fact that people do successfully move between cultures, temporarily or permanently gives us reason to question this – it suggests that our ability to make reasoned decisions can survive cultural transplantation.

However, ultimately Nickel's argument is unsuccessful.

First, as regards the successful transplantation of immigrants, diplomats and so on, the fact that they voluntarily undergo these experiences makes a crucial difference to their success in doing so, precisely because it is an expression of their freedom of choice.

Further, immigrants often do not so much lose their culture as move away from it, so that they have the support and comfort of knowing – or at least imagining – that if worst came to worst, they could return. This is not true for those whose culture is in the process of being destroyed (which group includes refugees). Kymlicka's third argument is applicable here, for insofar as we draw on our cultural heritage for a feeling of belonging and emotional security, this is likely to be undermined when our culture is destroyed; less so when we merely move away from it.

Finally, some cultures are more alike than others; movement between similar cultures will probably not result in the same loss of autonomy as movement between vastly different cultures. For example, it will be much easier for the average suburban household from Johannesburg to adjust to living in the United States than it will be for a traditional San family from the Kalahari. This is particularly obvious when we consider the discrepancy in the kind of skills, knowledge and experience held by the two groups.

Moreover, even for those who move between "similar" cultures, the change is often not easy – many return home. Consider all the South Africans who leave the country so as to "escape the crime", but soon decide that they are prepared to risk being hijacked rather than go on living in Australia/Canada/Britain/the United States or wherever. As I argued earlier, the ability to move between cultures may depend largely on how flexible and resilient a character one has.

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[113] Murray (1994).

4. Kymlicka's definition of "culture"

1. Culture as "structure" vs. culture as character

So far, Kymlicka's claim that cultural membership plays an important role in autonomy seems plausible.

However, although Kymlicka wants to show that cultural membership is crucial to individual autonomy, he does not want to enshrine the role of culture to the point where this renders illegitimate any possibility of change. For cultures *do* change; moreover, if culture is essential to the individual's ability to make intelligent decisions, then efforts to change an aspect of a culture – for example, to improve the standing of women, or dismantle Apartheid – become problematic, in that doing so may negatively influence the freedom of members of that culture and those affected by it. To return to the example above, virginity testing appears to reflect and espouse a system of values with regard to women that may affect most or all aspects of Zulu culture. If this is true, then banning it might be part of a process that ultimately changes Zulu culture significantly by making it less patriarchal. If this change amounts to loss of culture, such that this negatively affects the autonomy of members of that culture, then we have a direct conflict between the need to protect individual autonomy through maintaining access to the culture on which it allegedly depends, and altering culture such that the human dignity (including autonomy) of all individuals is respected. For surely, awarding a second-class status to women (if in fact Zulu culture does so), or seeing them primarily as sexual objects whose value resides partly in their "purity" is not in keeping with their equal dignity.

To this end, in *Liberalism, Community and Culture* Kymlicka distinguishes between the cultural "structure" and character of a culture:

> It is of sovereign importance to this argument that the cultural structure is being recognized as *a context of choice*…In one common usage, culture refers to the *character* of a historical community. On this view, changes in the norms, values and their attendant institutions in one's community (e.g. membership in churches, political parties, etc.) would amount to loss of one's culture. However, I use culture in a very different sense, to refer to cultural community, or culture structure, itself. On this view, the cultural community continues to exist even when its members are free to modify the character of the culture, should they find its traditional ways of life no longer worthwhile.[114]

Further, presumably referring to cultural structure, he writes:

> …culture is defined, as I think it should be defined for these purposes, in terms of the existence of a viable community of individuals with a shared heritage (language, history, etc.)[115].

Kymlicka gives the following illustration of the distinction between character and "culture structure". During the 1960's, the character of French-Canadian culture in Quebec changed considerably[116] - French-Canadian commitment to some of the "traditionally French-Canadian" institutions, including "the Roman Catholic church, parochial schools, the Union Nationale political party" could no longer be taken for granted. These changes, claims Kymlicka, did not amount to the loss of French-Canadian culture – "the cultural community itself was never in question, never threatened with unwanted extinction or assimilation". Thus, although the character of French-Canadian

[114] Kymlicka (1989) pp. 166-167.
[115] Ibid p. 168.
[116] Ibid p. 167.

culture changed, the "culture structure" continued, a result that Kymlicka contrasts with the aboriginal loss of culture:

> The demise of a culture, in the first sense [change in character] occurs because of the choices the francophones made from within their (stable) context of choice. The demise of culture, in the second sense [loss of culture structure] arises in spite of the choices of the aboriginal people, and undermines their context of choice[117].

Kymlicka's example does little to illustrate this or any other clear difference between "character" and "structure". Rather, this last quote suggests that as that the Quebecois remain secure and flourishing despite cultural change, while the Aboriginal groups do not, what matters is whether change is undertaken as a result of the decisions of the group members themselves.

Setting aside his example, then, from what Kymlicka writes in the first two quotes, "structure" appears to refer to the continued existence of a group of individuals making up a community and sharing the same language and history. As long as this continues intact, the culture survives, regardless of changes in values and practices within the group. Thus in bringing San groups together to form a community, rediscovering their language and as much of their traditional knowledge and folk lore as possible, San culture has been "restored" despite being significantly altered.

2. Objections to the distinction between "structure" and "character"

If cultural rights are intended to protect only cultural structure, and this is made up of community, language and history, then cultural rights cannot be invoked to protect

particular practices or a way of life. So, for example, although the San might have their community, language and history restored to them, there would appear to be no reason to allow them hunting and gathering rights in a protected area; the same goes for practices such as ritual circumcision or virginity testing. Ultimately, all groups could be expected to lead more or less the same way of life; all that cultural rights would allow protect is the community's ability to survive (i.e. not forced to scatter as the San were), use its own language and access its history.

Perhaps "accessing one's history" would mean being able to continue those practices that connect a community with its heritage. But then we move from the alleged "structure" of a culture to its character. In fact, it seems unlikely that we can divorce the role that culture plays in forming people's ideas of the good – their values, and the meaning they attach to various actions and objects – from the character of a culture, so that even if we could distinguish between structure and character, we would fail to solve Kymlicka's original problem – i.e. finding a way to allow for cultural change while protecting the elements of culture that are crucial to autonomy. The character of a culture probably has as much to do with the development of the individual's ideas of the good (and therefore may be a necessary condition of her autonomy) as does its structure.

Lawrence Piper[118] argues that by "cultural structure" Kymlicka appears to mean some kind of essence that underlies the character of a community – not only language, community and history, but a "set of background evaluative criteria", which provides the necessary framework of meanings and values necessary to autonomy, yet which

[117] Kymlicka (1989) p. 167.
[118] Piper (2002).

continues to exist even when the character of a community changes. Thus, argues Piper, Kymlicka wants to "fix particular culture attributes to particular identities".

That members of a culture should possess some inherent set of values or characteristics – e.g. Germans are disciplined, Zulus are warrior-like, the English are liberal (and so on) – that are not contingent upon circumstance or the character of the culture in which they are raised, is a dubious and dangerous contention – certainly not one that Kymlicka should be prepared to accept. For it might mean that some groups simply are inherently unable to accept a liberal system of government. Something to this effect has been suggested by Singaporean leader Lee Kuan Yew.

On the whole, the idea that we could make any meaningful distinction between cultural structure and character seems doubtful. David Bricker argues that Kymlicka is making a "distinction without a difference":

> "Structure" allegedly consists of an "ordering" of roles and their associated "meanings". "Character" consists of a culture's "norms, values and attendant institutions." In truth, Kymlicka is employing two ways of talking about the same thing. If "attendant institutions" change then "meanings" change because an institution is nothing more than an ordering of roles. If "norms and values" change, then "meanings" change because norms and values are forms of meaning.

Kymlicka himself ultimately rejects the "character"/"structure" distinction on the grounds that it "suggests an overly formal and rigid picture of what… is a very diffuse and open-ended phenomenon. Cultures do not have fixed centres or precise

boundaries."[119] Thus in *Multicultural Citizenship*, he defends the role of 'societal culture' in individual identity and autonomy.

3. The role of "societal cultures" in individual identity

Kymlicka's argument relies on the existence of a close connection between identity and culture: it is because he believes that culture plays an important role in the individual's identity and thereby her autonomy that Kymlicka holds cultural membership to be a primary good. Yet he does not want to espouse an essentialist notion of the role of culture in identity, for the veracity of such an approach is doubtful, and further, ultimately undermines the liberal position that Kymlicka wishes to maintain.

For this reason, he argues for the dependence of freedom on "societal culture", i.e.:

> …a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated and based on a shared language. I have called these 'societal cultures' to emphasize that they involve not just shared memories or values, but also common institutions and practices.[120]

Societal cultures, claims Kymlicka, are usually nations, and nations are usually societal cultures; this is because a culture's survival depends on its being a societal culture.

> …Given the enormous significance of social institutions in our lives, and in determining our options, any culture which is not a societal culture will be reduced to

[119] Kymlicka, (1995) p. 83.
[120] Ibid p. 76.

> ever decreasing marginalization. The capacity and motivation to form and maintain such a distinct culture is characteristic of 'nations' or 'peoples' (i.e. culturally distinct, geographically concentrated, and institutionally complete societies). Societal cultures, then, tend to be national cultures. This connection is confirmed from another direction, by studies of nationalism. Most analysts of nationalism have concluded that the defining feature of nations is that they are 'pervasive cultures', 'encompassing cultures', or 'organizational cultures'.[121]

Here Kymlicka is trying to establish a correspondence between societal culture and ethnic culture, so that reliance on one's societal culture ultimately defends a right to one's ethnic culture.

Kymlicka's move to the importance of societal culture ensures that the link between culture and identity is contingent, for societal cultures developed in response to the demands of modernization[122], rather than as an expression of some cultural "essence".

In addition, Kymlicka argues that a culture must be embedded in social institutions in order to survive. Consequently, his new approach offers a more explicit avenue of support for particular cultural practices and traditions, i.e. expressions of culture that go beyond maintenance of language, access to history, and the continuation of a community. Marriage, family life, education, political expression and so on, all merit protection for the part they play in the continued survival of a culture.

Although he now claims that the link between culture and identity is contingent, Kymlicka maintains that it is a crucial connection, as societal culture affects all aspects of human life and infuses patterns of life with meaning. In other words, Kymlicka claims it does the work he previously wanted "cultural structure" to do – provide the necessary tools for developing a life plan, making meaningful decisions, and so on.

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[121] Kymlicka (1989) p. 80.

5. Objections to "societal culture"

1. Kymlicka overstates the link between societal culture and identity

According to Lawrence Piper, Kymlicka over-generalizes the link between culture and identity, and societal culture and nationhood.

To begin with, Piper questions Kymlicka's assertion that societal cultures correspond with nations (where "nation" effectively means "ethnic nation") and vice versa. He argues that post-colonialist nationalism has tended to be multi-ethnic – for example, the local anti-apartheid movement put "enormous work …into constructing trans-ethnic 'African', 'black' and even 'South African' political identities despite attempts by apartheid governments to manipulate ethnic differences for their racist ends"[123]. Further, many African states have institutionalised the language of the colonists as a way of avoiding favouring one of the multiple indigenous languages. Thus in South Africa, "despite official policy that delimits no fewer than eleven official languages, English is the unofficial official language…Further, regardless of their mother tongue the vast majority of parents desire that their children learn English at school"[124].

In addition, due to the development of mass communication (e.g. the Internet) and the export of predominantly American culture alongside the spread of information technology, the entertainment industry, vast corporations, capitalism and so on, the disjunction of societal culture and ethnicity is increasing – "there is an emerging global 'societal culture' disconnected from any one ethnic nation"[125].

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[122] Kymlicka (1989) p. 77.
[123] Piper (2002) p. 181.
[124] Ibid p. 187.
[125] Ibid p. 186.

This increasing lack of correspondence between societal culture and ethnic nation – at least as far as South Africa is concerned – likely undermines the degree of importance that societal culture has for individual identity:

> ...Kymlicka…overstates the case [the link between societal culture and identity]. Societal culture, in his own definition, includes a standardised language and history, embodied in common economic, political and educational institutions (1995:76-7). Yet are the language, history and implicit values taught in schools and used in the state and market all that constitute the culture that individuals embrace? What about the influence of friends, family, civil society, and (ironically) ethnic groups in multinational states? These too clearly influence the culture of an individual, including their language (it may be a different one, it may be a dialect) and their sense of history (which may be framed in opposition to the societal culture).[126]

Although 'societal culture' does 'provide options', and access to it is necessary for individual autonomy, it does not do this via its role in individual identity (at least, probably not in South Africa, where it does not correspond with ethnic identity). If, however, the link between identity and societal culture is broken, there is no reason to protect societal culture. But then again, it is not this wider societal culture that cultural rights seek to protect; it is ethnic culture.

I think that Kymlicka's arguments regarding the role of culture in autonomy provide good reasons to protect ethnic culture, and that the excursion into "societal culture" can be treated more or less as a red herring. I think it is fairly clear that the role culture plays in autonomy need not assume an essentialist claim about the relationship between culture and identity. Further, the collapse in Kymlicka's attempted distinction between the structure of a culture and its character indicates a very real difficulty

[126] Piper (2002) p. 185.

regarding the relationship of cultural rights to human dignity, which cannot be avoided by appeal to societal culture. If culture does play a role in autonomy (and I think that Kymlicka – and Taylor – provide good reason to think that it does), then beneficial change in a culture (i.e. changes that further respect for the human dignity of all its members) often comes with a corresponding backlash – i.e. a loss of autonomy for some, or all of its members. This has shown to be the case in different contexts worldwide. Consider, for example, the effect that feminism has had in the West. Although the change in the status of women was (I think) undeniably necessary, it has not come about without a price. It is very probable that it is largely responsible for the rapid increase in the rate of divorce – with all the stress and heartache that divorce entails for all parties concerned – and has caused a great deal of pain and confusion for men and women as they are forced to reconsider their roles and expectations. Children are often also adversely affected.

Similarly, the effects of the imposition of foreign culture accompanying colonialism had devastating consequences on the health and functioning of native cultures, leading to breakdown in family structures and communities with appalling results. This was, no doubt, greatly exacerbated by the fact that the colonizers inevitably treated native inhabitants as inferior peoples, often denying their very humanity; however, it seems highly probable that the loss of culture itself was very detrimental to individual autonomy.

Perhaps the increase in crime and social breakdown observed in South Africa over the last decade – largely the outcome of decades of oppression – is itself a partial result of the upheaval following radical social and political changes. Change – even when it is for the better – is a difficult and painful thing.

To sum up: Kymlicka's arguments suggest that an individual's autonomy is dependent upon her having access to her culture, because of the crucial role that culture plays in determining many of the options open to an individual, as well as the values she holds – i.e. what patterns of life she finds meaningful and worthwhile. In addition, culture plays a role in autonomy in that it provides a sense of belonging and consequently is a source of self-respect – or of humiliation and degradation, when the culture in question is perceived negatively. Further, when individuals are unable to maintain a way of life or practices that they value, they may feel disempowered and disrespected, particularly when others do not have to undergo similar sacrifices. Thus they may feel that they are being treated as second-class citizens, despite having the same rights as everybody else. For all these reasons, a concern with individual autonomy lends support to the appeal for cultural rights.

However, this leaves us with a dilemma: appeal to dignity requires that cultures change insofar as is necessary to bring the treatment and status of all their members in line with respect for dignity. At the same time, Kymlicka has provided good reason to suspect that making these changes may undermine the autonomy of members of a culture, and respecting the autonomy of individuals is itself a crucial part of respecting their human dignity.

I will return to this problem in the following chapter: for now, it suffices to say that Kymlicka – and Taylor – have made an important contribution in demonstrating that there *is* a dilemma – and that this will not be best solved by simply ruling one way or the other for or against cultural rights. In showing that culture is so important, real progress

has been made in the case for the right to culture, even when this conflicts with other rights or entails some variation in the rights awarded to different groups.

VII. Culture, Emotions and the Capacity for Affiliation

So far, I have considered arguments for the right to culture grounded in a right to authenticity and in the right to autonomy.

In this chapter, I would like to argue that several of the other capacities that constitute human dignity also support the right to culture; most notably, our capacity for emotions and for affiliation.

Nussbaum argues that if we accept that part of what we value about human beings is their capacity for emotion, it follows that respect for human dignity will require that we ensure the existence of the social basis for emotional wellbeing.

Emotional wellbeing requires:

> Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. [127]

Further, she claims that "supporting this capability means supporting forms of human association that can be shown to be crucial in their development".

These "forms of human association" no doubt include family, friendships, and the individual's relationship with her community and society generally.

[127] Nussbaum (2001) p. 79.

The capacity for emotions is thus closely related to the capacity for affiliation. The latter is also a capability that Nussbaum deems crucial to human dignity. Respect for this capacity entails:

> Being able to live with and toward others, to recognise and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship…Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others.[128]

Once again, Nussbaum states that "protecting this capability means protecting institutions that constitute and nourish such forms of affiliation".

1. Emotion, Affiliation and loss of culture

Loss of culture is commonly acknowledged to result in increased levels of depression, as well as a breakdown in relationships. Many of the issues raised in previous chapters make this result unsurprising. We should expect loss of culture to impact negatively on the emotional health, and capacity for affiliation of the individual for the following reasons:

To begin with, if, as Kymlicka argues, culture plays an important role in the meaning (and hence value) that we assign to different aspects of life, a loss of culture may result in the individual being unable to make meaningful decisions. This will result in a decrease in individual autonomy (her ability to exercise practical reason); it will also cause her a great deal of frustration and misery, for she is unable to live a life that she finds meaningful and worthwhile. The likelihood of this leading to depression seems

high. I argued that the role of meaning in autonomy might be used as a reason to allow Xhosa youths who choose to undergo ritual circumcision (therefore necessitating that the practice be allowed to continue, and possibly be supported in certain ways): "[ritual circumcision] involves teaching the initiates the ways of their culture, appropriate behaviour, cultural expectations and so on… youths who have been raised to believe that with this ritual they pass into manhood may feel that in avoiding it they never truly reach adulthood. Thus banning ritual initiation might affect the health of the culture and to some extent directly undermine the autonomy of would-be initiates."

This reasoning, I think, is more effective when considered in the light of the effect loss of meaning is likely to have on emotional wellbeing and the capacity for affiliation. Undergoing ritual circumcision affects how initiates are perceived – and treated – by the rest of the community; also perhaps, the way in which they perceive themselves. Banning it outright is likely to drive a wedge between one generation and the next, or rather, those who have been circumcised, and those for whom it was never an option.

Kymlicka also suggests that "life scripts" are passed down through one's cultural heritage, in the body of stories and histories that are transferred or created from generation to generation. These "scripts" are a form of moral instruction; they also provide us with a means of understanding ourselves (as Nussbaum's discussion of the role of storytelling in ancient Greece illustrates) and our relationship with the world. Further, we may draw on them as a form of "archetype" in fashioning our own life plan. Although I agree with Nussbaum's argument that the stories and histories of one culture can be enjoyed and understood by members of other cultures, I also suspect that many of these tales may simultaneously be tied to a particular way of life and set of

[128] Nussbaum (2001) p. 79.

circumstances. For example, folklore passed down through San generations will probably engage with life lived in a particular context (the Kalahari, say). Thus if the individual has identified strongly with a particular way of life, and the values and archetypes of a given culture, and this way of living is undermined or removed completely, this is likely to cause frustration and depression.

Next, in my discussion of Kymlicka I argued that culture may determine the kind of knowledge that we possess, making it difficult for members of one culture to access many of the opportunities provided by the majority culture. Thus San raised within the old ways would possess a vast body of knowledge regarding life in the Kalahari – knowledge which is unlikely to equip them effectively to find jobs in modern society. If such San members are unable to maintain their own "options" – i.e. their own method of sustaining life and remaining independent, the best they can hope for is to live on welfare or handouts from concerned parties. This most likely entails feelings of frustration, powerlessness and loss of control and once again, results in low self-esteem and depression.

It is also probable that this will damage the relationship of such individuals with members of other cultures – if the relationship between two groups is consistently one of donor and recipient, the chances of the members of the two perceiving or relating to each others as equals is slim at best.

This brings me to Taylor's arguments for the need for recognition. He argued that members of particular groups may be brought to view themselves as somehow inferior or degraded, resulting in feelings of self-hatred and "the pain of low self-esteem". Mis- or non-recognition thus also damages the capacity for emotion.

In addition, it is likely to damage the individual's relationships, both private and public, for if her feelings regarding her cultural membership cause her to hate herself, she is unlikely to have entirely positive feelings towards others who share this characteristic. Thus her feelings towards family, friends and community become ambivalent: she may despise those closest to her for possessing what she views as the source of her degradation. Children may view their parents with contempt. Further, the individual's relationships with members of other groups are also poisoned: she may respond with anger, jealousy, servility or resentment to their perceived superiority. The loss is not hers alone, for members of other cultural groups are deprived of a healthy association with members of her group, and are likely to have distorted or false views regarding people of her culture, as well as missing out on whatever knowledge they have to impart.

More often than not, the end result is social breakdown, observed commonly enough in groups that have been colonized or subject to racial intolerance.

Further, culture plays an enormous role in determining what is perceived as normal or abnormal, acceptable or unacceptable behaviour. Consider the ways in which one greets an acquaintance: in Japan one bows, in England one shakes hands, in France one kisses the cheek. Knowing these apparently small, unimportant details (and being comfortable with them) goes a long way towards facilitating social relationships.

Culture affects how we interpret people's actions or physical proximity: thus an individual from one culture may stand too close for an individual from another group's liking. Similarly, when an individual moves into a foreign or unknown culture, she is often unable to pick up on – or make sense of – many of the social cues that facilitate

inter-personal relationships. This causes misunderstandings, unnecessary aggression, social rejection and distress, and therefore tends to undermine the individual's capacity for affiliation, as well as her emotional wellbeing.

When a group experiences a loss of or sudden change in culture, the cohesion that the culture provided is destabilised. Consider the confusion of the upper-class English male raised to "be a gentleman", when he opens a door for a woman and is rewarded with a torrent of abuse and recrimination. This, I think, illustrates on a small scale the kind of inter-personal confusion that is engendered by a dramatic or relatively sudden change in social mores following a loss of culture. This kind of difficulty is often experienced by many South African blacks on moving into largely white, western corporate culture for the first time.

All of the above go to show that culture plays an important role in both the capacity for emotion and for affiliation. Further, no doubt due to the sometimes very severe effects that it has on the emotional health, relationships and the autonomy of the individual, loss of culture is frequently accompanied by an increase in the number of suicides within a group. This, I think, should warn us against dismissing the part that culture plays in individual dignity.

VIII. Conclusion

In the preceding chapters I have looked at several ways of justifying a third level right to culture by appeal to various aspects of the account of human dignity argued for by Martha Nussbaum. The first of these was the argument from authenticity put forward by Charles Taylor. I suggested that appeal to this value may be implicit in the importance Nussbaum assigns to individual freedom to choose whether or not to exercise each human capability. In other words, I think that Nussbaum implicitly accepts the value of authenticity as an aspect of attaining full humanity - and therefore, as part of human dignity.

Culture plays a significant role in how we shape and use each of our capabilities, and thus in the identity we forge. However, Taylor's appeal to the right to develop and maintain one's authentic identity is probably best understood as an appeal to "strong separateness" – i.e. one's "own peculiar context and surroundings – objects, places, a history, particular friendships, locations, sexual ties…in terms of which the person to some extent identifies herself". It is partly through this that we define our unique selves.

The individual's culture and its practices likely constitute an important aspect of this strong separateness; therefore, if individuals have a right to maintain those attachments that make up strong separateness, then they must be allowed to maintain their culture and its practices. However, I think that in many cases appeal to authenticity likely suggests better reasons for opposing cultural rights than supporting them, as the need for strong separateness is arguably outweighed by the need to live autonomously - which some measures to ensure cultural survival restrict.

A more promising avenue of defence for a third level right to culture is appeal to the role cultural membership plays in autonomy, as argued for by Kymlicka (and Taylor, although this is not his main claim). Cultural membership plays a role in shaping the meaning and value that individuals attach to particular aspects of life and ways of living. It also largely determines the kind of knowledge and experience they are likely to have, which significantly affects their ability to access "options" and resources provided by the wider society. In addition, because individuals identify themselves, and are identified by others as members of a particular culture, when a culture is treated with contempt, or perceived as contemptible, its members may internalise this belief, thereby significantly damaging their autonomy.

I have also argued that a third level right to culture can be defended by appeal to the capacity for emotions and for affiliation. Loss of independence, an inability to live in a way that one finds meaningful and according to values that one holds, and the belief that one is somehow inferior or worth less than others all lead to depression, thereby negatively affecting one's capacity for emotions. They also poison a whole spectrum of human affiliation – i.e. the individual's relationships with family and friends, her community and society at large.

All of these factors show that cultural membership is very important to the individual, and therefore provide justification for considering a third level right to culture. However, they very often pull both ways, i.e. they also provide good reason *not* to allow a third level right to culture.

With respect to autonomy, cultures often seek to limit the freedom of some or all of their members, so that in some cases protecting a culture or some of its practices may

work against individual autonomy. In the long term, I suspect that cultural change is required by human dignity, as the ongoing suppression of some members cannot be condoned; however, the role of a stable culture in autonomy needs to be taken into account when deciding how best to bring about cultural change. As much as possible, change should be brought about internally, i.e. through the members of the culture itself. If we genuinely believe that autonomy is inherently desired by all persons, it follows that when given the chance most members of a culture will pursue changes that promote their individual freedom.

In some cases, however, such as that of the !Khomani San cultures that are battling to survive are not illiberal. Here the problem is that their survival calls for unequal rights – e.g. the right to hunt where others may not. However, treatment compatible with equal worth need not entail equal treatment; recognition of difference is sometimes key to treating people with respect for their equal dignity.

For example: feminists such as Susan Okin[129] argue that certain differences between men and women - both biological and socially constructed – must be recognized if we are to create a system that is truly just, i.e. respects the equal dignity of all. Attention must be paid to the fact that it is women who must take time off from careers etc. in order to give birth to their children, and that at present it is almost always the case that women do most of the work involved in raising children, and are therefore unable – or unwilling – to put as much time and effort into developing careers and ensuring their financial security. As a result, they become financially dependent upon husbands, making it difficult to leave if they are abused, and in the event of a divorce frequently rendering them in financial straits, as they may not have accumulated as much capital or as many

bankable skills as their more career-focused spouses. Therefore, Okin argues, in order to be just, social systems must be sensitive to ingrained gender roles, so as to ensure that women are treated as equals.

Nussbaum employs a similar line of argument in criticizing Rawls' focus on the distribution of material goods. She argues that equal respect for persons requires that we take into account their differing needs. If, instead, we focus on an equal distribution of resources, we will fail those individuals who need more in order to reach the same level of capability, due to either their social or personal situation. For example, a person who does not have the use of their legs will need a greater amount of resources in order to be mobile: she will need, at the very least, a wheelchair; whereas, a person who is not disabled will be able to move freely with fewer resources.

Put simply, what these arguments seek to show is that respect for human dignity requires treatment as persons of equal worth, rather than "equal treatment". Treatment as equals would entail assuming that people are equal not only in worth, but also in ability and social situation – which is clearly false. Some people are talented, able, have been favoured by society, and so on, whereas others have less talent, are disabled, or have been persistently discriminated against. All of these factors play a role in the individual's ability to attain a way of life compatible with respect for human dignity – i.e., one in which they are free and able to exercise those capabilities that go to make a life fully human and worth living.

As regards the emotional wellbeing and capacity for affiliation, this too often pulls in opposing directions. The capabilities of particular members of a culture –

[129] see Okin (1989).

women, lower castes, etc – are often damaged or limited by the culture itself. Once again, if we appeal to these capacities we need to consider both sides of the equation.

What becomes apparent is that there can be no easy, hard-and-fast solution to the conflict between culture and many important human rights. However, I think that there are sufficiently good reasons to consider a third level right to culture. In doing so, many factors need to be taken into account, for example how "central" the practice is to a given cultural community – i.e. the degree to which it pervades the knowledge systems and values of a community, the role that it plays in their ability to survive, the extent to which members incorporate this into their identity, and so on. Respect for human dignity requires that each case be considered on its own merits.

REFERENCES

APPIAH, K. (1994) "Identity, Authenticity, Survival: Multicultural Societies and Social Reproduction", in Gutman, A. ed. *Multiculturalism: Examining the Politics of Difference (*Princeton, NJ: Princeton University Press).

Author anonymous (2002) "The Making of a Man", *Online Mail and Guardian* 19 July.

Author not given (2004) "Virginity Testing Leaves Medical Experts Uneasy", *Eastern Province Herald* 3 December.

BRICKER, D.C. (1998) "Autonomy and Culture: Will Kymlicka on Cultural Minority Rights", S*outhern Journal of Philosophy* vol. XXXVI.

CHASKALSON, A. (2002) "Human dignity as Constitutional Value", in Kretzmer, D. and Eckart, K., eds. *The Concept of Human Dignity in Human Rights Discourse* (The Netherlands: Kluwer Law International).

CHENNELS, R. (2004) "The Land Claim of the !Khomani San of South Africa", in Roy C.K., Tauli-Corpuz V., Romero-Medina A. eds. *Beyond the Silencing of the Guns,* (Philippines: Tebtebba Foundation).

CLAYTON, J. (2005) "South Africa Ready to Ban 'Degrading' Virginity Tests", *The Times* 28 November.

COHEN, J., NUSSBAUM, M., HOWARD M. eds. (1999) *Is Multiculturalism Bad for Women?* (Princeton, NJ: Princeton University Press).

HILL, T. E. (1992) *Dignity and Practical Reason in Kant's Moral Theory* (New York: Cornell University Press).

HITCHCOCK, R.K., "Hunting is our Heritage: The Struggle for Hunting and Gathering Rights Among the San of Southern Africa"
[http//www.kalaharipeoples.org/documents/Hunt-iwg.htm]

HUMAN RIGHTS COMMISSION "Report on the Inquiry into Human Rights Violations in the Khomani San Community"
[http://www.sahrc.org.za/KHOMANI_SAN_ENGLISH_FINAL.pdf]

KRETZMER, D. and ECKART, K. (2002) *The Concept of Human Dignity in Human Rights Discourse* (The Netherlands: Kluwer Law International).

KYMLICKA, W. (1989) *Liberalism, Community and Culture* (New York: Oxford University Press).

KYMLICKA, W. (1995) *Multicultural Citizenship* (Oxford: Clarendon Press).

LIEBENBERG, S. (2005) “The Value of Human Dignity in Interpreting Socio Economic Rights”, *The South African Journal of Human Rights* vol. 21.

MARGALIT, A. (2005) “Liberalism and the Right to Culture”, *Social Research* Fall.

MARX, K. (1844) *Economic and Philosophical Manuscripts* (first published London: Lawrence and Wishart).

MTHETHWA, B. (2005) “Tradition and Modernity Collide in Virgin Debate”, *Sunday Times* 25 September.

MURRAY, R. (1994) “Liberalism, Culture, Aboriginal Rights: In Defence of Kymlicka”, *Canadian Journal of Philosophy* vol. 29.

NOZICK, R. (1974) *Anarchy, State and Utopia* (New York: Basic Books).

NUSSBAUM, M. (1993) “Non-relative Virtues: An Aristotelian Approach”, in Nussbaum, M. and Sen, A., eds. *The Quality of Life* (Oxford: Clarendon).

NUSSBAUM, M. (1995a) “Aristotle on Human Nature and the Foundations of Ethics”, in Althan J.E.J. and Harrison R. eds., *World, Mind and Ethics: Essays on the Ethical Philosophy of Bernard Williams* (Cambridge: Cambridge University Press).

NUSSBAUM, M. (1995b) “Human Capabilities, Female Human Beings”, in Nussbaum M. and Glover, J. eds. *Women, Culture and Development: A Study of Human Capabilities* (New York: Oxford University Press).

NUSSBAUM, M. (1998) “Political Animals: Luck, Love and Dignity”, *Metaphilosophy* vol. 29.

NUSSBAUM, M. (2001) *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press).

OKIN, S. (1989) *Justice, Gender and the Family* (New York: Basic Books).

PIPER, L. (2002) “Do I need ethnic culture to be free? A critique of Will Kymlicka’s liberal nationalism”, *South African Journal of Philosophy* vol. 21.

RAWLS, J. (1971) *A Theory of Justice* (Cambridge: Harvard University Press).

RAZ, J and MARGALIT, A. (1990) “National Self Determination”, *Journal of Philosophy* vol. 9.

STINSON, K. “Male Circumcision in South Africa: How Does It Relate to Public Health” [http://www.africanvoices.co.za/culture/circumcision.htm]

TAYLOR, C. (1994) “The Politics of Recognition”, in Gutman, A. ed., *Multiculturalism: Examining the Politics of Difference* (Princeton, NJ: Princeton University Press).

United Nations Declaration of Human Rights at http://www.hrweb.org/legal/udhr.html.

WOOD, A. (1999) *Kant’s Ethical Thought* (New York: Cambridge University Press).