Nussbaum, Kant, and the Capabilities Approach to Dignity[1]

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Introduction

The concept of dignity plays a foundational role in the more recent versions of Martha Nussbaum's capabilities theory.[2] Nussbaum (2006, p. 161) claims that capabilities and dignity are intertwined concepts in the sense that capabilities, or at least the ten central capabilities on her list, 'are ways of realizing a life with human dignity'. She also says that her account of political entitlements, which guarantees each individual an ample threshold of each of the goods on her list, is a way of 'fleshing out' the ideas of dignity and respect (Nussbaum, 2006, p. 174). However, despite its centrality to her theory, Nussbaum's conception of dignity remains under-theorised (Claassen & Düwell 2012). Furthermore, explicating her account of dignity and explaining its role in her version of capabilities theory exposes internal tensions within her view and raises a series of questions about its philosophical commitments and implications.

In this paper we focus on two interconnected sets of questions. First, Nussbaum attempts to integrate distinct and seemingly opposed Aristotelian and Kantian elements into her conception of human dignity. The Aristotelian elements involve linking dignity to species specific norms of flourishing and to the neediness and vulnerability of our embodied animal lives. The Kantian element involves the idea of each person as an end in themselves. Although Nussbaum draws on the Kantian conception of dignity, she also characterizes her conception of dignity in contrast to what she refers to as the Kantian conception of the person. But does Nussbaum successfully integrate these two seemingly opposed conceptions of dignity into one coherent account and is her representation of the Kantian view of dignity accurate?

Second, Nussbaum characterizes her conception of human dignity as political. By this she means that it is not based on controversial metaphysical assumptions about persons or on any comprehensive moral conception, and that it could be the subject of an overlapping consensus over time (Nussbaum 2011b). Yet, she is explicit that her conception of dignity is evaluative from the outset, that the entitlements that flow from

[1] We would like to thank this journal's three anonymous referees for helpful comments and suggestions.

[2] In the earlier versions of her capability theory Nussbaum focused on what a "truly human" life requires, whereas in her more recent versions the focus is on what a "dignified life" requires. Despite this shift, her list of central capabilities remains the same (Claassen & Düwell 2012). The concept of dignity does not play an important role in Amartya Sen's version of capability theory.

this conception of dignity are 'prepolitical, not merely artifacts of laws and institutions' (Nussbaum 2006, p. 285), and that the right and the good are thoroughly intertwined (Nussbaum 2006, p. 162). But is Nussbaum's conception of human dignity really only a partial, political conception and is her brand of liberalism more perfectionist than she wishes to admit?

In section one, we distinguish two kinds of dignity – status dignity and achievement dignity – and outline five questions that a theory of dignity needs to answer. In section two, we provide an interpretation of Nussbaum's conception of dignity, structured as possible answers to these questions. In section three, we use these same questions to outline Kant's conception of dignity. Our aim in this section is not, however, to offer a detailed defense of our interpretation of Kant. Instead, via a comparative analysis, we draw on our preferred interpretation of Kant in order to tease out further aspects and implications of Nussbaum's conception of dignity. In section four, on the basis of this comparative analysis, we highlight tensions in Nussbaum's version of capabilities theory between her Aristotelian conception of dignity and her commitment to political liberalism. The aim of our discussion is not to reject Nussbaum's theory as a whole, with which we are generally sympathetic, but to better clarify its conceptual basis and offer suggestions for its future refinement.

1. The Concept of Dignity

Nussbaum (2009, p. 351) notes that the "the idea of dignity ... is not fully clear, and there are quite a few different conceptions of it". To clarify it we can helpfully draw on John Rawls' distinction between a concept and a conception. A concept is a general term whose details are filled in by a particular conception. For example, the concept of justice includes the notion of a proper balance, but it is left open to each conception of justice to interpret what a proper balance is (Rawls 1999, p. 5). This distinction allows us to clearly contrast different conceptions of the same concept of dignity. This is important because it allows us to see that Nussbaum's claim that all the items on her list of central human capabilities "are implicit in the idea of a life worthy of human dignity" is less than helpful. This is because the "idea", that is, the *concept* of human dignity, needs to be filled out by a particular *conception* of human dignity and, as Nussbaum herself notes, there are many alternative conceptions. What one needs to do is to argue for the superiority of one's particular conception of dignity.[3] Further, her repeated appeals to an "intuitive idea of human dignity",[4] which she claims has broad cross-cultural support, is potentially ambiguous between the weaker claim that the concept of dignity has broad appeal and

[3] Admittedly, this is what Nussbaum does at times, such as in Nussbaum 2009.
[4] See, for example, Nussbaum 2006, p. 70.

the stronger claim that her conception of dignity has broad appeal. Nussbaum clearly needs the stronger claim to defend her account, but she often only defends the weaker claim.[5]

Before considering Nussbaum's conception of dignity, we first need to understand the concept of dignity. We can understand dignity (including human dignity) as follows: x has dignity if and only if x has a respect-worthy status. Dignity is a *status*, that is, a standing *in* some group. A status is respect-worthy if it is a weighty and important status to which we should respond with (something like) awe or reverence. As a status-term, dignity is relational. Those who have dignity are *elevated* over those who lack dignity (all else being equal) (Kant 1996b, p. 6:315; Sensen 2011).

With respect to human dignity, it is important to distinguish between two sub-concepts which we shall call *status dignity* and *achievement dignity*.[6] Status dignity refers to the respect-worthy status of a person him or herself. Status dignity is not a matter of degree (one either has status dignity or one does not have it) and it is often a permanent (or at least a stable long-term) property of a person. When we say that 'everyone has dignity', we mean that everyone has status dignity. To have status dignity is to have, as a person, a dignified or respect-worthy status. In contrast, achievement dignity refers to the respect-worthy status of a person's beings and doings. Achievement-dignity is a matter of degree (one can have more or less of it) and it is not in general a permanent or stable property since it can come and go. When we say 'she lost her dignity', 'her dignity was undermined', or 'she was undignified', we mean her achievement dignity. To have achievement dignity is to have acted in a dignified way or to be in a dignified state. For example, I might have a high degree of achievement dignity when I do something dignified, such as respond with fortitude to a heavy loss, but lose (or lose a degree of) my achievement dignity when I do something undignified, such as make a fool of myself in public by losing my cool and unjustifiably abusing someone. In contrast, I don't lose my status dignity when I make a fool of myself in public (even if doing so is undignified),

[5] For example, in defence of her claim that human dignity has "broad cross-cultural resonance and intuitive power", Nussbaum argues that dignity is an "idea that lies at the heart of tragic artworks, in whatever culture" (Nussbaum 2000, pp. 72-3). But this clearly refers to the concept, rather than to her conception, of dignity.

[6] A distinction along these lines is often made in the literature on dignity. For example, Sensen (2011, pp. 162-3) makes a similar distinction, which he claims is prevalent in historical conceptions of dignity, between "initial" (our status) and "realized" (our achievement) dignity; Neuhäuser and Stoecker (2013) between what they call "human dignity" (our status dignity) and "dignity proper" (our achievement dignity); and Schroeder (2010) between "inviolable" (our status) dignity and "aspirational" (our achievement) dignity. However, since we spell out this distinction in our own way, we prefer to introduce our own terms. This distinction also roughly corresponds with Darwall's (1977) distinction between recognition-respect and status-respect.

and my status dignity attaches itself primarily to me rather than to my beings and doings, such as my responding with fortitude to a heavy loss. However, this does not mean that status dignity cannot itself be an achievement of sorts (although, once achieved, it attaches itself to the person herself, rather than to her beings and doings). For example, on some traditional conceptions of dignity, only members of the nobility have status dignity. While according to this conception most people who have status dignity have it simply because they are born with it, some may acquire it through various deeds or achievements (such as through marriage or valuable service to the sovereign).

A useful way of contrasting and comparing different conceptions of dignity is to see how they answer the following five questions. 1. *Scope*: Who or what has dignity? 2. *Types*: Are there different types of dignity, such that two beings with dignity might possibly have different levels or types of dignity? 3. *Ground*: What is the basis or ground of dignity and why do some beings have it and others do not? 4. *Internal implications*: How should beings with dignity be treated by themselves and others? 5. *External implications*: What does the concept of dignity imply about how we should treat beings or things which lack dignity? These five questions need to be answered by someone offering an account of either status or achievement dignity (or both). Most comprehensive conceptions of dignity, including both Nussbaum's and Kant's, include accounts of both types of dignity. However, one could have a conception of only one type of dignity and not the other.[7]

In order to very briefly illustrate these five questions, we shall consider one possible condensed interpretation of a Catholic conception of dignity (Rosen 2012). According to such a conception we can answer the above questions as follows. 1. All and only humans have status dignity, including every human from the moment of conception at least until bodily death. Only those humans who live up to the demands imposed by the status dignity of all humans have achievement dignity. 2. Status dignity has an intrinsic and absolute worth which is equivalent in all cases. Achievement dignity has a moral worth that does not change one's status dignity in any way. 3. The ground of status dignity is

[7] For example, in debates about euthanasia in which disputants on both sides of the debate appeal to human dignity to defend their position, the defenders of euthanasia seem to be both appealing to a particular conception of achievement dignity (relating to bodily comportment and control) and rejecting the particular conception of status dignity that is assumed by the critics of euthanasia (Schroeder 2008). Such defenders of euthanasia might, then, be understood as endorsing only a particular conception of achievement dignity and rejecting all (or at least some) conceptions of status dignity. This shows that it is possible to have a conception of one type of dignity but not the other.

(roughly) the fact that each human is created in God's image. The ground of achievement dignity is (roughly) one's good actions. 4. All humans, because of their status dignity, have certain rights, such as a right to life, and must be treated in respectful ways. Those humans with achievement dignity are not due any extra rights, but they may be due extra praise or reverential treatment 5. Humans, as the sole bearers of status dignity, have the role of being guardians over nature and animals. Since having achievement dignity doesn't grant any extra rights, lacking it has no further implications. Of course, there may be other possible (and more detailed and accurate) interpretations of the Catholic conception of dignity. We propose this interpretation simply as a means of illustrating the five questions. We should also clarify that we do not endorse this particular conception of dignity.

2. Nussbaum's Conception of Dignity

1. *Who has dignity?* Although Nussbaum does not distinguish between status and achievement dignity, her account of human dignity seems to equivocate between these two kinds of dignity. Interpreting Nussbaum's work in the light of this distinction will therefore prove helpful in disambiguating her different uses of the concept in order to explain her answer to the question 'who has dignity?'

With respect to status dignity, Nussbaum claims that all human beings enjoy status dignity by virtue of their humanity; that is, by virtue of their membership of, first, the human species and, second, the human community. What is the relevance to human dignity of these two memberships? The relevance of *membership of the human species* to human dignity is related to Nussbaum's Aristotelian essentialism with its focus on species specific forms of flourishing. The basic intuition involves several ideas: first, that each distinctive form of species life involves a characteristic form of functioning, which essentially defines what it is to be a being of that species; second, that this functioning ought to evoke attitudes of wonder and respect; third, that these attitudes give rise to the idea that it is good for a being 'to persist and flourish as the kind of thing that it is', and wrong when a creature's flourishing 'is blocked by the harmful agency of another' (Nussbaum 2006, p. 349). What is the characteristic form of functioning of human beings? Nussbaum's (2000, p. 28; cf. 2006, pp. 181-2, 347) response to this question invokes a conception of human nature that is 'ethical and evaluative from the start'. Although there are many different forms of functioning that are characteristic of human beings, not all are respect-worthy. The respect-worthy forms of functioning are those that enable the individual human being to live a flourishing human life. The relevance of *membership of the human community* to human dignity is that a human being can only lead a fully human life as a member of the human community. The two components of humanity – species specific norms of functioning and participation in the human

community – thus go hand in hand: 'The relevance of the species norm is that it defines the context, the political and social community, in which people either flourish or do not' (Nussbaum 2006, p. 365).

Three further aspects of Nussbaum's conception of status dignity are important to highlight at this point. First, Nussbaum contrasts her conception of dignity, and its underlying conception of the human being, with a Kantian conception of dignity and personhood. She characterizes the Kantian conception of human dignity as founded on the Stoic idea that what specifically characterizes human personhood are the capacities for moral reason and freedom, which are radically distinguished from our animality and from the realm of natural necessity.[8] In contrast, Nussbaum situates her conception of dignity within an Aristotelian/Marxist tradition. According to this tradition, as Nussbaum characterizes it, human rationality and morality are interwoven with human animality, vulnerability, and bodily need. '[O]ur dignity just is the dignity of a certain sort of animal… and that very sort of dignity could not be possessed by a being who was not mortal and vulnerable' (Nussbaum 2006, p. 132). Furthermore, according to this tradition, sociability is a fundamental and pervasive characteristic of human life (Nussbaum 1992). To be a human being is to be a being whose existence and flourishing are dependent upon social relations with others, including relations of care and dependency, and whose rational capacities develop and change over the course of a human life.

Second, status dignity requires some kind of minimal capacities for agency, since for Nussbaum (2011a, p. 31) the 'notion of dignity is closely related to the idea of active striving'. This means that the lives of some members of the human species, notably those in a persistent vegetative state, anencephalic infants, and others in similar states that involve the (presumably permanent) absence of active striving or minimal agency, do not count as human lives and hence do not have status dignity (Nussbaum 2011a, p. 31; 2006, pp. 181-87). However, Nussbaum is not always consistent about whether active striving is a necessary condition for status dignity, although her theory does seem to require it. For example, she drops this requirement in saying that: 'We should bear in mind that any child born into a species has the dignity relevant to that species, whether or not it seems to have the 'basic capabilities' relevant to that species' (Nussbaum 2006, p. 347).

[8] In addition, according to Nussbaum (2009, p. 355), the Stoic conception of dignity differs from the Kantian and Aristotelian conceptions in being committed to the worthlessness of "external goods", such as health, friendship, and the lives of one's children.

Third, this implies that it is not a requirement of status dignity that one has the potential, even under ideally just conditions, to individually function to a threshold level in a distinctively human way. This cannot be a requirement for Nussbaum since it would make the scope of her conception of status dignity far too restrictive. Indeed it would make her conception even *more* restrictive than the Kantian conception she criticises, since in order to have status dignity it would not only require (as Kant also does) the potential to function to a threshold level in practical reason (the sixth item on her list), but also in the nine other items on her list of central capabilities.

Nussbaum implicitly appeals to a different sub-concept of dignity, achievement dignity, in developing her account of political entitlements. This account is motivated by the idea that, due to deprivation or various forms of social oppression, many human beings do not lead lives that are worthy of human dignity. Here dignity is equated with leading a good or flourishing human life. So when Nussbaum claims that the capabilities on the list are 'ways of realizing a life with human dignity' she seems to mean that having these capabilities up to an ample threshold is necessary to lead a dignified human life in the achievement sense of dignity. This means firstly, that the criteria for achievement dignity are distinct from the criteria for status dignity. Having status dignity involves being a human being with some capacities for agency. Having achievement dignity requires the opportunity to exercise each of the distinct, plural capabilities on the list up to an ample threshold. Secondly, it means that not every human being who has status dignity enjoys achievement dignity. In some cases the gap between having status and achievement dignity is due to deprivation or social oppression; in other cases it may be due to disability, whether physical or cognitive. Thirdly, in both kinds of case, failure to enjoy achievement dignity constitutes a thwarting of human possibilities, and this thwarting generates claims of justice.

This distinction between status and achievement dignity is also relevant to Nussbaum's account of animal dignity. With respect to status dignity, Nussbaum once again applies an evaluative species norm, arguing that all sentient and complex creatures possess the status dignity of their species specific form of animal life. Thus, it is good for individual animals of a species to develop the innate capabilities that are characteristic of the species and to enjoy opportunities to lead a flourishing life; and it is wrong when an individual's opportunities for flourishing are 'blocked by the harmful agency of another' (Nussbaum 2006, p. 349). When an individual animal achieves the central capabilities for its species to a threshold level, it has achievement dignity. Nussbaum thus regards species membership as essential to her conception of dignity.

2. *Types of dignity.* With respect to status dignity, Nussbaum is explicit that all human beings who are minimal agents have equal status dignity and are due equal respect in virtue of their humanity. Thus she says 'human dignity, from the start, is equal in all who are agents in the first place … all, that is, deserve equal respect from laws and institutions' (Nussbaum 2011a, p. 31). With respect to achievement dignity, the picture is more complicated. We have already seen that in many cases there is a gap between status dignity and achievement dignity. In the case of inequalities in achievement dignity arising from poverty, deprivation or social and political conditions, the gap between achievement dignity and status dignity constitutes an injustice. Remedying such injustices, and respecting dignity in the achievement sense, requires access to each of the central capabilities up to an ample threshold. In the case of inequalities in achievement dignity due to innate deficits in internal capabilities, such as those arising from cognitive disability, more effort and resources are required to enable a person, where they are able to do so, to reach the threshold.

However, in some cases of innate deficits in internal capabilities, a person may never reach the threshold of certain capabilities, such as practical reason, in her own right no matter how many resources are deployed. In such cases, Nussbaum (2006, pp. 192-99) argues that justice requires that a guardian act as her proxy for her to gain access to the relevant capability. But Nussbaum vehemently rejects the idea that in cases of cognitive disability the threshold, or the list of capabilities, should be different, on the grounds that upholding a single list and the same threshold for all citizens is normatively crucial for respecting the status dignity of people with cognitive disability. The role of guardianship should not be thought of as 'a matter of dealing with the "incompetence" of a person, but a way of facilitating that person's access to all the central capabilities' (Nussbaum 2006, p. 199). Nussbaum's example of guardianship is of someone voting on behalf of a person incapable of voting for themselves. While this example is problematic (can they really know who the other would vote for?), it does illustrate how guardianship might work in order to facilitate access to some central capabilities. However, in other cases it is less clear how guardianship could facilitate access to missing central capabilities. For example, it is unclear how anything that a guardian could do would facilitate a person's access to the capability to play or to use language in cases where those capabilities are constitutively beyond that person due to impairment or disability. The fact that someone else can play on my behalf doesn't change the fact that I myself will never be able to play. A similar point holds with regard to, for example, the capabilities for practical reason, emotions and sense, imagination and thought. In all these cases it is unclear how anything a guardian could do would facilitate *my* access to

the capability in cases where I lack the basic equipment needed to have these capabilities no matter how many resources are directed my way.

3. *Ground of dignity*. Nussbaum repeatedly asserts that her conception of dignity is political. By this she claims to mean that the idea of human dignity grounds 'a political doctrine about basic entitlements' (Nussbaum 2006, p. 155), rather than a comprehensive moral doctrine. She also claims that her version of capabilities theory is a form of political liberalism. These claims may seem puzzling, since Nussbaum (2006, p. 163) explicitly contrasts her Aristotelian/Marxist conception of human beings, with its associated conception of a life worthy of human dignity and its "richer and moralized account of the good", with Rawls's Kantian conception of the person and his thin theory of the good. Nussbaum insists, however, that her Aristotelian/Marxist conception of human beings is a political rather than morally comprehensive account of the person, although one that grounds a more complex political psychology than Rawls' account. She also insists that her theory of the good, embodied in the capabilities list, is a political conception of the good, not a comprehensive moral conception, although it does not pretend to be a value neutral list of all-purpose means, like Rawls' conception of primary goods. Rather, it is normative from the outset in the sense that it is based on an account of the capabilities that are necessary for a minimally flourishing or dignified human life. What makes her theory a form of political liberalism, in her view, is that it is grounded firstly, and primarily, in an 'intuitive' political conception of human dignity; and secondly, in the idea that the capabilities on the list could be the object of an overlapping consensus over time (Nussbaum 2006, pp. 153-54).

Given that Nussbaum's 'intuitive' conception of dignity is derived from an Aristotelian view of what makes for a distinctively human form of life, on what grounds can she claim that it is political? Nussbaum gives a number of different answers to this question: that this conception assumes an Aristotelian conception of persons as social and political animals (Nussbaum 2006, pp. 85-6, p. 158); that it is non-metaphysical in the sense that it is not based on any controversial metaphysical assumptions about persons or human nature, or on any particular comprehensive religious or ethical view (Nussbaum 1992; 2006, p. 79; 2011a, p. 109); that it both grounds and is expressed in an account of political entitlements and of political principles for either a liberal pluralistic society (Nussbaum 2006, p. 70) or even for all societies (Nussbaum 2011a, p. 111); that the political principles (i.e. the capabilities list) derived from this intuitive conception are 'part of a free-standing "partial moral conception"…explicitly introduced for political purposes only' (Nussbaum 2011a, p. 109); that the principles are deliberately vague and abstract, leaving it open for different nations and legislatures to specify them in different

ways (Nussbaum 2011a, p. 108); that these principles are akin to, and ways of spelling out, the notion of human rights (Nussbaum 2011a, p. 109); and that the intuitive conception of dignity and the principles derived from it respect diversity because they can be interpreted in the light of different comprehensive religious and moral conceptions (Nussbaum 2011a, p. 109). Nussbaum claims that it is because her conception of dignity is political in all of the above ways that it can be endorsed from within (all?) reasonable comprehensive views and thus, in time, could be the object of an international overlapping consensus. But it is important to note that she thinks the political justification in terms of overlapping consensus is 'posterior to an account of what makes lives in accordance with human dignity possible' (Nussbaum 2006, p. 154). What is primary, since it grounds the overlapping consensus, is the intuitive conception of dignity as realized in the goods or capabilities that make a life worthy of dignity. We shall return to the plausibility of some of these claims in Section 4.

4. *Internal implications*. The fact that Nussbaum conceives of her conception of dignity as political explains why she pays little attention to obligations to treat oneself in accord with one's human dignity. Thus although her conception of dignity draws on the Kantian idea of persons as ends in themselves, unlike Kant, Nussbaum does not derive any duties to oneself from the conception of persons as ends in themselves. Nussbaum does emphasize the importance of developing our distinctively human capabilities – hence the centrality of education in her version of capabilities theory. However, she does not connect her Aristotelian conception of dignity to virtues of character and presumably, on political liberal grounds, would not agree with Aristotle's emphasis on the importance of self-perfection since this would make her view a comprehensive moral one. This is why the thresholds apply to capabilities rather than to functionings, in order to leave it up to individuals to decide whether or not they will develop or exercise specific capabilities. But even with respect to the importance of capability development, Nussbaum's primary focus is not so much on the importance of treating oneself in ways that accord with one's human dignity by cultivating one's capabilities, but rather on the social justice obligations that are entailed by respect for human dignity. Thus while Nussbaum talks of the rights of individual to access, say, healthcare and education, there is little discussion of the responsibilities of individuals to look after their health or to make the most of their educational opportunities.

5. *External implications*. For Nussbaum, the only members of the human species who lack dignity are those who are not capable of agency or active striving. She mentions specifically anencephalic infants and persons in persistent vegetative states, although we wonder what she might say about persons with advanced dementia. For Nussbaum these

members of the species are not human beings in the relevant sense and do not have status dignity. However, she has little to say about how they should be treated. This is because she interprets her conception of dignity as political, and thus her focus is on the obligations of justice, rather than the moral obligations that are entailed by human dignity.[9] Although it would follow from her view that we do not have any obligations of justice to such beings, presumably she would think that, by virtue of their relations with other human beings, they ought to be treated with compassion, although what, if any, legal weight these moral requirements could have for Nussbaum is unclear.

3. Kant's Conception of Dignity

Given the number of competing interpretations of Kant's conception of dignity, it will neither be possible nor necessary to defend our interpretation of Kant against rival interpretations. Instead we shall simply work with our preferred interpretation. Even if the reader does not agree with this interpretation, the discussion in this section will still fulfill its primary function, which is to more fully draw out the details and implications of Nussbaum's conception of dignity by way of contrasting it with one plausible interpretation of Kant's conception. Further, given that Nussbaum explicitly sets up her own conception of dignity by contrasting it with her interpretation of Kant's, it is important to ask, as we shall do below, whether Nussbaum's criticisms of Kant are fully justified.

1. *Who has dignity?* Kant understands dignity to be an "inner worth" or "unconditional, incomparable worth" that is "raised above all price" and "admits of no equivalent". Further, he adds that "*respect* alone provides a becoming expression for the estimate of it that a rational being must give" (Kant 1996a, pp. 4:434-36). Dignity is thus a respect-worthy status the bearer of which has an absolute worth (Kant 1996a, pp. 4:434-36; cf. Sensen 2011). But who or what has dignity? Kant writes of the "*dignity* of a rational being", of "morality, and humanity insofar as it is capable of morality" as that "alone [which] has dignity", and of "*autonomy*" as the "ground of the dignity of human nature and of every rational nature" (Kant 1996a, pp. 4:434-36). Although there are a number of different interpretations of these passages, our preferred way of understanding them is that it is Kant's view that all rational (or human) beings have dignity just insofar as they have a rational nature (or humanity), and beings have a rational nature in the relevant sense if they have autonomy, that is, a *capacity for morality*.[10]

[9] But these *moral* obligations cannot form part of Nussbaum's *political* conception of dignity and thus would need to be independently defended.

[10] For alternative interpretations and more detailed discussions see Dean 2006, Korsgaard 1996, Rosen 2012, Wood 1999.

As well as writing of the dignity of *every* rational nature or every rational being, Kant (1996a, p. 4:440) also writes of the "sublimity and *dignity* in the person who fulfils all his duties". Unfortunately very few, if any, rational beings actually fulfil all their duties. Thus, on the one hand, Kant seems to claim that all rational beings have dignity since they have a rational nature, and on the other hand, that no rational beings have dignity since none fulfil all their duties. The best way to resolve this tension is to see the two sub-concepts of status and achievement dignity at work here (for a similar suggestion see Sensen 2011). All rational beings who have the *capacity* for morality have status dignity. All rational beings who actually fulfil all their duties and thereby act in a fully dignified manner also have achievement dignity. Obviously, one can sometimes but not always act in a dignified manner, and so have partial achievement dignity. In contrast, status dignity does not come in degrees. If you have status dignity, then you have an absolute worth (whatever level of achievement dignity you have) and must always be treated as an end in itself and never as a mere means (Kant 1996a, p. 4:429). If you do not have status dignity, then you have at best a comparative or non-absolute worth.

In order to determine who has status dignity, we need to know who has a capacity for morality. To have a capacity for morality is to be able to "give universal law, though with the condition of also being ... subject to this very lawgiving". Kant (1996a, p. 4:440) says that the "dignity of humanity consists just in this capacity". The capacity for morality requires cognitive capacities for thinking in terms of principles, thinking oneself into the position of others, imagining different outcomes and choices, applying general principles to particular cases with judgment, and so on. To have a capacity for morality one must also be capable of acting for the sake of the moral law itself, and this requires emotional as well as cognitive capacities, including what Kant calls necessary predispositions to duty. These include predispositions to moral feeling, conscience, love of human beings, and self-respect (Kant 1996b, pp. 6:399-403). One also needs to be able to acquire attitudes of respect, esteem, and love towards both oneself and others (Formosa 2013, pp. 201-204). Kant (1996b, pp. 6:399-403) is clear that these necessary predispositions to duty come in degrees, and while there can be no duty to *have* a predisposition to duty, since these must simply be presupposed in moral agents, there is a duty to *develop* and *cultivate* these predispositions.

This point gestures towards an ambiguity in the term 'capacity' which we shall need to disambiguate here in order to determine who has a capacity for morality. We can see this ambiguity in the following example. Mary cannot speak a word of Finnish. In the context of comparing Mary to a native Finnish speaker, it would be true to say that he

has the capacity to speak Finnish but that Mary does not. In contrast, in the context of comparing Mary to a dog, it would be true to say that Mary has the capacity to speak Finnish but the dog does not. In the context of comparing Mary to a Finnish speaker, a 'capacity' roughly means: something that one could do now, barring certain circumstances. A capacity in this sense is equivalent to what Nussbaum (2011a, pp. 20-1) calls an *internal capability*, that is, a capability in a mature condition of readiness which, when combined with the appropriate political, social and economic conditions, constitutes a *combined capability*. In the context of comparing Mary to a dog, a 'capacity' roughly means: something that one could do if one spent (even a lot of) time training and developing one's powers with the relevant help and assistance. Mary, unlike a dog, could speak Finnish if she put the effort into learning the language and got the right help and support. A capacity in this sense is equivalent to what Nussbaum (2011a, p. 23) calls variously "innate equipment", "innate powers that are either nurtured or not nurtured", and "*basic capabilities*".

Given Kant's claims about the need for the predispositions to duty to be cultivated and developed, it seems most plausible to interpret the requirement of a capacity for morality in the sense of a basic capability rather than an internal capability. A person has the capacity for morality, and thus status dignity, only if they could act for the sake of morality alone as the result of cultivating and developing that capacity with the right help and support. However, Nussbaum reads Kant as if he is claiming that in order to have status dignity we need to have a capacity for morality in the sense of an internal capability rather than a basic capability. That is, persons have the capacity for morality, and status dignity, only when they can, here and now under the appropriate conditions, act for the sake of morality alone.

To see what difference this makes to who has status dignity in practice we shall consider two cases, one that Kant does consider, the case of children, and one that Nussbaum focuses on, the case of the cognitively disabled. If Kant had thought that having status dignity requires having a capacity for morality in the internal capability sense, then young children would not have status dignity. As such, they could be treated as mere means. But Kant says no such thing (Kant 1996b, pp. 6:280; Kain 2009). Instead, Kant clearly thinks that we should not use children as mere means, and he focuses in great depth on how we should treat children as ends in themselves by cultivating their various rational, social and emotional capabilities (Formosa 2011a). If we interpret Kant as understanding the capacity for morality in the internal capability sense, then it becomes very difficult to understand how he can hold these (very reasonable) views. However, if we instead interpret Kant as understanding the capacity for morality in the basic

capability sense, then it becomes easy to understand how he can hold these views. This is because children, even very young children, have the *capacity* for morality in the basic capability sense, and therefore have status dignity, even though this capacity may take many years to develop and mature (if it ever does) into an internal capability.

Next, consider the case of the cognitively disabled. Nussbaum thinks it is clear that on Kant's supposedly overly rationalistic conception of the person, the cognitively disabled lack status dignity. Like other philosophers of his era, Kant does not explicitly address issues of disability, so we shall have to reconstruct what his views on disability should be. We can respond to Nussbaum's challenge by redeploying a response used by some who defend Rawls against similar criticisms (Wong 2007). We can do that by arguing that even very severely cognitively disabled humans may still have the *capacity* for morality in the basic capability sense for all we *know,* if they received far more resources and specialised care and attention from the earliest age in order to reach their full potential. With the right care and support disabled people have shown time and again that they are capable of far more than we had previously imagined. So we should give *everyone* (or almost everyone) the benefit of the doubt and assume that they have capacity for morality in the basic capability sense. The Kantian should therefore assume that the cognitively disabled *already* have status dignity. This provides an argument, not for neglecting the disabled, but for increasing the funding and support given to them. On this interpretative reconstruction, Kant's position is very similar to Nussbaum's own view, with the difference that for Kant this is a moral duty and for Nussbaum it is a requirement of justice. Whether Kant's moral argument can be extended to the realm of justice is a further question.

Of course, there may be some cases so severe that we can be *certain* beyond any reasonable doubt that the individual lacks a capacity for morality on even the broadest understanding of a basic capability no matter how many resources we deploy. But Nussbaum agrees with the claim that some humans, namely those who lack active striving, are so lacking in normal human basic capabilities that they lack human status dignity. Kant's conception of dignity, as understood here, would agree with Nussbaum's claim that the person in the permanent vegetative state and the anencephalic infant lack status dignity, although Kant would disagree with Nussbaum's claim that they are not fully human. The difference between Kant's and Nussbaum's conceptions of status dignity thus can't be that Kant but not Nussbaum draws a line below which some humans lack status dignity since they *both* draw such a line. Perhaps Nussbaum's worry is that Kant draws the line at a *much* higher point than she does. The importance of this difference will depend, however, on where exactly Kantians should draw this line. We

have argued above that there is no reason to think that Kantians should draw it at a point that is all that different from where Nussbaum draws it. But this does not mean that they both draw the line at exactly the same point either. While both accounts agree about, for example, cases of PVS, anencephalic infants and other similar cases, they do disagree about cases where there is minimal active striving but where we are also certain beyond any reasonable doubt that there is no potential to develop any rational capacities. In these cases Nussbaum's conception of status dignity is more inclusive than Kant's. As such, while there are differences in scope between Nussbaum's and Kant's conceptions of status dignity, these differences, though important, are not as great as Nussbaum claims they are.

2. *Types of dignity.* There are no levels or degrees of status dignity for Kant. If you have status dignity, then you have an absolute worth. For Kant, then, it doesn't make sense to speak of, say, the different dignity of an ape or a human. If an ape has dignity, then it has an absolute worth on par with any other rational being, humans included. This is different to Nussbaum's Aristotelian view, according to which there are different species specific types of status dignity. For Kant, all rational beings have the same type of status dignity, whatever species they belong to. But unlike status dignity, achievement dignity can and does come in degrees, since one can fulfil more or less of one's moral duties. Achievement dignity can also vary over time, since one can fulfil one's moral duties at one point in time but not at another.

The way that achievement dignity varies in degrees and over time, raises issues about the way rational agency itself develops and changes over time. At this point it is worth challenging Nussbaum's claims that Kant has an overly rationalistic conception of the person in which there is no room for moral development and thus for vulnerability and sociability. For example, Nussbaum (2006, p. 132) writes: "moral agency (in the Kantian view) looks like something that does not grow, mature and decline, but rather like something that is utterly removed, in its dignity, from these natural events". But in fact Kant stresses the sociability and vulnerability of humans and the importance of social interaction for the development of our moral capacities (Formosa 2014; O'Neill 1996; Herman 1993). This account of moral development, along with Kant's detailed discussions of the need to cultivate our predispositions to duty and of the imperfect duty to perfect ourselves, would make little sense if we read Kant as implausibly assuming that our rational capacities did not mature and develop, as well as potentially decline, over time. But through all those changes in our achievement dignity, our status dignity can remain intact. Further, Kant also does not ignore the essential role of sociability. For example, he argues that we have a "duty" to engage in social intercourse since the

"manners one is obligated to show in social intercourse", such as "*affability*, *sociability*, *courtesy*, *hospitality*, and *gentleness*", "promote the feeling for virtue itself" (Kant 1996b, 6:473, 6:402; Frierson 2005). More generally, Kant emphasises that our core rational moral attitudes, such as self-respect, moral feeling, self-love and love for others (Kant 1996b, 6:399-403), are not only developed out of, but can also be potentially reinforced or undermined, by patterns of socialisation (Formosa 2013, pp. 201-204). For example, Kant specifically says that our benevolent love for others can be undermined at its very root by acts of ingratitude by others (Kant 1996b, p. 6:455) and that the intentional spreading of harmful rumours "diminishes respect for humanity as such" and can "dull one's moral feeling" (Kant 1996, p. 6:466). While Kant does focus on rational capacities, he does not, as Nussbaum alleges, completely ignore the social contexts within which those vulnerable rational capacities are developed, maintained and exercised. Nussbaum's criticisms of Kant, in this regard, are therefore overstated as they are not based on the most plausible interpretation of Kant.

3. *Ground of dignity*. This is a complex and important issue, but one that we need not resolve here. It shall suffice to note that there are two general views (Formosa 2011b; Sensen 2011). On both views, Kant is committed to the claim that it is rational to treat people in accordance with their status dignity. But why is this? The first view adopts a constructivist metaethical approach, according to which we start with the commands or imperatives of practical reason itself (perhaps in the form of a rational procedure) and then derive the obligation to treat all persons with dignity from that basis. The second view adopts a realist metaethical approach, according to which we start with the dignity and absolute worth of persons and derive the obligation to treat persons with dignity from that basis. Interestingly, both views find counterparts in Nussbaum's work. The realist view has close similarities with Nussbaum's appeals to an intuitive idea of human dignity as grounding a set of obligations, although clearly the Kantian realist develops a different conception of that idea. The constructivist view has close similarities with Nussbaum's appeals to a procedure, namely that of overlapping consensus, as a way of grounding a set of obligations, although clearly this is a different procedure to the one that Kantians appeal to. However, although Kantians are clear about the strong tension between these two approaches, Nussbaum appeals to both without noting any such tension.

4. *Internal implications.* For Kant, a being with status dignity should always treat him or herself and all others always as ends in themselves and never as mere means. Nussbaum agrees that each being with status dignity is an end in itself. But for her this means that it is a matter of basic justice that each and every sentient animal should be

able to develop the central capabilities for its species to a threshold level, and thereby have achievement dignity. For Kant it means that all rational beings have a moral duty to fulfil various perfect and imperfect ethical and juridical duties, and by fulfilling all these duties thereby have achievement dignity. Both emphasise the importance of cultivating a similar range of capacities or capabilities, such as capacities for practical reason and sociability. But despite these similarities, Kant uses dignity as a moral concept, whereas Nussbaum uses dignity as a political concept. This explains why Nussbaum ignores duties to oneself whereas Kant stresses the importance of them.

5. *External implications*. For Kant, the key contrast is between persons with status dignity who have an absolute worth (regardless of their achievement dignity), and entities with a price, which have a relative worth. With respect to entities which lack status dignity we are limited in how we may use them by our *indirect* moral duties, or *duties in regard to* animals and inanimate nature. These indirect duties command, for example, that we should care for household pets even when they are no longer wanted, not destroy what is beautiful in nature, not cause animals unnecessary pain and suffering, and not use animals in painful experiments for "mere speculation" (Kant 1996b, pp. 6:442-44). As such, even if it turns out on Kant's account that some humans lack status dignity, such as those in a persistent vegetative state or anencephalic babies, it does not follow that we have no *moral* duties *in regard to* those humans. There are at least two ways that a Kantian might ground such indirect duties. First, by arguing that we have a duty *to* those who care deeply about such humans (such as their parents). Second, by arguing that we have a duty *to* ourselves, since it is difficult to maintain a disposition of love and respect for all rational beings if we fail to care for all humans, whether or not they have status dignity.

4. Critical Appraisal of Nussbaum's Conception of Dignity

In this section we shall draw on the insights revealed by this comparison between Nussbaum and Kant to engage in a critical appraisal of Nussbaum's conception of dignity. In doing so we make two main claims. First, that her conception of dignity really is comprehensive and not political. Second, that because of this there is an unresolved tension in Nussbaum's theory between her comprehensive account of dignity and her political liberalism. While similar claims have been made before (see, for example, Barclay 2003; Deneulin 2002; Nussbaum 2003), our argument for these claims is novel as we approach this issue via the central role that Nussbaum's conception of dignity plays in her theory. We shall begin by first briefly summarizing the differences between Kant's and Nussbaum's conceptions of dignity.

For Kant, status dignity is something that all rational beings have insofar as they have a capacity for morality. For Nussbaum, status dignity is something that all members of a particular species have insofar as they actively strive to meet their needs. However, despite these differences, both conceptions more or less overlap with respect to their views about the status dignity of (almost all) human beings, although they clearly differ regarding the status dignity of animals. There are also important differences with respect to their respective understandings of achievement dignity. For Kant, achievement dignity is achieved by actually fulfilling one's duties towards oneself and others. Achievement dignity is thus a matter of *proper functioning* as a dignified being. This focus on proper functioning is not a problem for Kant since he is working within the context of a comprehensive moral theory. Nussbaum, however, faces difficulties in understanding achievement dignity in terms of proper functioning, since she is working within the context of political liberalism. Political liberalism requires that the state remain neutral with regard to reasonable comprehensive moral doctrines in order that the principles of justice could be the subject of an overlapping consensus. Requiring proper functioning on matters that go beyond what could be the subject of an overlapping consensus indicates a comprehensive moral doctrine. It is to avoid this outcome that Nussbaum understands achievement dignity as a matter of having the central *capabilities* to a threshold level irrespective of one's actual *functioning*.

However, Nussbaum's distinction between capabilities and functionings is not stable in regard to all capabilities. The distinction is plausible in regard to capabilities that require access to resources, such as nourishment. In that case, one can have the capability but choose not to access the resource and therefore not achieve the relevant functioning. For example, it makes sense to say that you can have the capability to be well nourished (since you have the means to access food) but that you lack that functioning (since you are fasting for religious reasons). In such cases the distinction between threshold level capabilities and functioning is clear. In contrast, the distinction is implausible in regard to capabilities that require, for example, a threshold level of cognitive or emotional achievement. Having a threshold level of the capabilities for practical reason, senses, imagination and thought, and the emotions is not like having access to a resource which one can choose not to use. Rather, having these capabilities up to at least a certain threshold requires that you actually exercise a certain level of functioning. It requires actually doing and being various things, not just being capable of being or doing them. For example, it makes little sense to say that you can have the capability to have self-respect even though you lack self-respect, or that you can have the capability to have a healthy emotional life even though you don't have it as you are blighted by fear. Since you can't have the capability to a threshold level without some degree of relevant

functioning, the distinction between threshold level capabilities and functioning collapses in these cases. In such cases it is *humanly impossible* (even if it is *conceptually possible*) to have the capability but not the functioning and that is why this distinction collapses in these cases.[11]

The instability of this distinction in these cases points to an internal tension within Nussbaum's theory between her conception of dignity and her political liberalism. On the one hand, the Aristotelian elements in her theory, which are grounded in her conception of dignity and based in an appeal to intuitions about flourishing and proper species functioning, push her towards the view that individual flourishing through proper functioning should be the goal of justice. For example, it is noteworthy that Nussbaum (2006, pp. 347, 370) uses the terms "flourishing" life and living a "dignified life" or a "life with human dignity" as interchangeable. On the other hand, the political liberal elements in her theory, which are grounded in a separate and distinct process of overlapping consensus, rule out the goal of requiring proper functioning beyond what could be the subject of an overlapping consensus among reasonable comprehensive doctrines.

Nussbaum's focus on capabilities, as the *ability* to flourish, is supposed to be the effective compromise that resolves the tension between these two elements. We shall use four examples to illustrate why this compromise does not completely resolve this tension. Our first two examples are of the *only* two cases in which Nussbaum states that functionings and not capabilities should be the goal of public policy. The first case is that of childhood education. Nussbaum argues that it is justified to require children, through compulsory education, to achieve various forms of functioning on the basis that this is necessary for them to develop the central capabilities that they will need as adults. In other words, in this case achievement dignity (and thus justice) requires some degree of proper functioning. Although compulsory childhood education seems uncontroversial in most cases, there are some hard cases, such as the compulsory education of Amish children to age sixteen (see Nussbaum's discussion of *Wisconsin v. Yoder* in Nussbaum 2000, pp. 232-33), in which it does not look as though an overlapping consensus could be achieved. However, even so Nussbaum (2000, p. 233) still insists that compulsory

[11] This claim is different from (but not in tension with) the claim that it is difficult from a policy perspective to *assess* whether a capability is present without the presence of the corresponding functioning (see e.g. Deneulin 2002, p. 502). It is also different from the claim that at a *societal* level functionings and capabilities are interconnected; for example, members of a society can only have the *capability* of living in a clean environment if enough people *function* in a certain way (e.g. by disposing of their waste in appropriate ways). Our distinct claim is that in some cases, such as practical reason, an *individual* cannot *have* the capability without some degree of functioning, and therefore the very *distinction* between capabilities and functionings collapses in these cases (but not in all cases).

education is justified in such cases on the basis of the state's "compelling interest" in the "equality of its citizens". In this example, by supporting proper functioning as a political goal absent the possibility of an overlapping consensus, the tension is resolved by Nussbaum's Aristotelianism trumping her political liberalism.

The second case in which Nussbaum (2006, p. 172) says that the goal of public policy should be functioning is in the "area of self-respect and dignity". In this context 'dignity' refers narrowly to a *subset* of achievement dignity since it refers to achieving a threshold level in only a sub-part (part B) of one central capability (7. Affiliation). To have this narrow subset of achievement dignity is to have the "social bases of self-respect and non-humiliation" which constitutes being "treated as a dignified being" (Nussbaum 2000, p. 79). However, despite saying that functioning should be the goal of public policy in this case, Nussbaum does not actually require that citizens achieve the relevant functionings. She does not, for example, think that the state should enforce functioning by preventing citizens from abasing themselves or being in relationships that involve humiliation or hierarchical domination in the private sphere (Nussbaum 2000, p. 91). What she does object to is the *state* offering citizens the option to be "treated with dignity" or be "treated with humiliation" *by the state* (Nussbaum 2000, p. 92). It is only functioning by the *state*, not by *citizens* (unlike with compulsory schooling for children) that is required. The capability to enter into humiliating personal relationships that undermine self-respect is a capability that the state should *protect* (although it should not promote it), presumably on the grounds that state enforcement of self-respect and non-humiliation in the private sphere could not be the subject of an overlapping consensus. While the Aristotelian element in Nussbaum's theory pushes her to say that functioning should be the goal in the case of this narrow sense of dignity, when this requirement turns out to be in tension with her political liberalism and its requirement to stay within the bounds of an overlapping consensus, it is her political liberalism that trumps her Aristotelianism.

Examples of humiliation and hierarchical domination in the private sphere are central to many feminist critiques of the liberal public/private distinction. In this regard Nussbaum's (2011b, pp. 40-1) response to Susan Okin's feminist critique of Rawls' political liberalism is highly relevant. Okin (1994, 1998) argues that Rawls asks too little of religions and traditional cultures, which she sees as sexist, by only requiring that they accept the equality of women *as citizens*, but not more broadly. Okin's argument, however, is that inequality and relations of hierarchical domination and humiliation in the private sphere, by undermining women's self-respect and dignity, also undermine women's equality as citizens. The social bases of self-respect and dignity require being

treated with respect in both the private and the public spheres. Thus the two spheres cannot be kept distinct. If this argument is correct, then Nussbaum's conception of dignity and its associated acceptance of the equality of women *as citizens*, commits her to the equality of women in both the public and the private sphere. However, she resists this implication because to accept it would be incompatible with her political liberalism, on the grounds that the members of certain religious and traditional communities would not endorse it and thus it could not the subject of an overlapping consensus. In this example it is her political liberalism that trumps her Aristotelianism (and her feminism).

The fourth example is that of paternalistic laws that enforce proper functioning, such as compulsory seat belt laws and laws preventing boxing without gloves. These cases highlight a tension between respect for dignity in the political liberal and Aristotelian senses. The former requires the state to respect dignity by remaining neutral with regard to reasonable thick conceptions of the good by leaving people free to make their own justice-abiding choices, no matter how stupid or short sighted. The latter requires the state to respect dignity by promoting the goal of flourishing through proper functioning and therefore not to remain neutral about stupid or short sighted choices which can undermine central capabilities. The resolution of the tension exposed by such paternalistic laws is, Nussbaum (2000, p. 95) suggests, not to be decided at the constitutional level of basic principles, but rather to be left to the democratic processes of each state. This will involve the state prioritizing on a case by case basis either functionings over capabilities (compulsory seat belt laws) or capabilities over functionings (permitting boxing without gloves). However, whenever a decision is made to prefer functioning over capability at the democratic level, presumably some citizens will have good grounds for arguing that the state is unjustly prioritizing some thick conceptions of the good over others. For example, if I particularly value leading an exciting and reckless life, and therefore choose not to wear a seat belt when driving, but my state enforces seat belt wearing, then I can plausibly argue that the state is prioritizing less risk taking conceptions of the good over my own. Although an overlapping consensus is therefore not possible in this case, Nussbaum nonetheless thinks that such laws can be justified as they are the result of democratic processes. Nussbaum's view thus seems to be that the state must be neutral only at the level of constitutional essentials and not at the level of democratic self-governance. Nussbaum tries, then, to use a procedural solution to avoid having to take a stand on which element, her political liberalism or her Aristotelian conception of dignity, should trump the other in such cases.

The recurring presence of this tension raises questions about the plausibility of Nussbaum's claims that her intuitive conception of dignity and its intertwined conception of the good are partial political conceptions only, since they are not based on any controversial metaphysical or ethical assumptions and they could be the object of an overlapping cross-cultural consensus over time. The idea that there might be cross-cultural consensus about the importance of the *concept* of human dignity as the basis of human rights principles is not implausible. For example, the near universal agreement about the basis of human rights in human dignity in UN documents, such as The Universal Declaration of Human Rights, is an important example. However, as we made clear at the outset, what Nussbaum has to show is that her particular *conception* of dignity could be the object of an overlapping consensus.

With respect to status dignity, it is not implausible to think there could be consensus about the claim that all human beings who are agents enjoy equal status dignity. What is much more likely to be controversial is the Aristotelian essentialism that informs Nussbaum's particular conception of status dignity. Three aspects of this conception are likely to be particularly controversial. The first is the understanding of status dignity as bound up with species specific norms of functioning and flourishing, with its implications that human dignity just is the dignity of a certain sort of animal, and that animals who are sentient and capable of complex forms of striving also possess status dignity. From the perspective of many religious conceptions of human dignity, these implications, and the species specific norms from which they are derived, are likely to be regarded as unpalatable and as based on controversial humanist metaphysical and ethical premises.[12] A second claim that is likely to be controversial is that there is dignity "in human need itself" and the striving to meet those needs (Nussbaum 2009, p. 363). This claim leads almost inevitably to the claim that animals also have dignity, since animals also have needs which they strive to meet. But seeing dignity, not in autonomy and rationality, but in need itself, is obviously a controversial ethical claim, as is the associated claim that all animals who are sentient and capable of complex forms of striving also possess status dignity.[13] These are claims, for example, with which Stoics, some Kantians, and the proponents of a number of religions would strongly disagree. A third controversial aspect is bound up with the claim that respect for dignity requires

[12] Nussbaum (2006, pp. 383-84) acknowledges that her "idea of cross species dignity" is a controversial metaphysical idea that isn't (at present) supported by an overlapping consensus. However, what she fails to acknowledge is that her conception of *human* dignity as based in species specific norms of flourishing and the active striving to meet needs is also a controversial metaphysical idea since it is this conception that commits her to the status dignity of animals.

[13] As opposed to the far less controversial claim that the unnecessary suffering of animals matters morally.

more than "a reverential attitude", since it also requires "creating the conditions in which capabilities can develop and unfold themselves" (Nussbaum 2009, p. 357). Respect for dignity requires more than merely allowing others the space to make their own choices, it also requires providing resources to promote the development of their capabilities. This is, as Nussbaum notes, a claim that Stoics would reject, but Kantians would not. More generally, it is a claim that many libertarian and conservative theorists would find highly controversial. For example, Robert Nozick (1974, p. 334) thinks that the way for the state to respect the dignity of its citizens is to *not* use them as resources for meeting the needs of others. Indeed, from a less theoretical perspective, reflecting on the controversial nature of (in our view, very modest) proposals for extending health care coverage in Nussbaum's own country, reminds us just how controversial the extensive redistributive implications of her view are.

Nussbaum has therefore not avoided making controversial ethical assumptions. Instead she seems to be committed to a satisficing form of perfectionist liberalism, based on a substantive conception of human dignity and flourishing. Nussbaum (2003) explicitly rejects perfectionist forms of liberalism, such as those of Joseph Raz, which are premised on a commitment to realizing substantive ideals of the good life – in Raz's case, the ideal of autonomy. But there are other ways of understanding perfectionism. Satisficing forms of perfectionism hold that the state, as a matter of justice, has obligations to ensure that citizens are able to reach an ample threshold of the goods (or capabilities) necessary for leading a dignified life. Nussbaum's conception of achievement dignity seems to commit her to perfectionism in this sense, and thus to a form of liberalism, derived from her Aristotelianism, which is comprehensive rather than political. We think there is good reason for Nussbaum to embrace a satisficing form of comprehensive liberalism which would insist on the importance of adequate functioning with respect to some of the important capabilities, such as self-respect in both the public and private spheres, and levels of educational achievement that enable the proper exercise of practical reason. This form of liberalism, we suggest, is actually more consistent with Nussbaum's conception of dignity than the political liberalism she espouses and might enable her to coherently resolve some of the tensions we have identified above.

5. Conclusion

This analysis of the role of dignity in Nussbaum's capabilities theory has led to a number of important conclusions. First, that some of Nussbaum's criticisms of Kant's conception of dignity seem wrong or overstated. Second, the differences between the two conceptions are less significant than Nussbaum implies, such as in the case of the dignity of the cognitively disabled. Third, that a focus on dignity reveals a tension between the

Aristotelian and political liberal elements in Nussbaum's theory. Fourth, that Nussbaum's claim that her conception of dignity is only a partial political conception is implausible. Fifth, that Nussbaum's conception of achievement dignity therefore seems to commit her to a satisficing form of perfectionism.

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