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Thaddeus Metz

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Thaddeus Metz

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Introduction

Many human rights theorists, moral philosophers and jurisprudential scholars believe that the reason why human beings are morally so important is that they have a dignity. To have a dignity, in the sense meant here, is roughly to have a superlative non-instrumental value that deserves respectful treatment; there is some facet of characteristic human nature that is good for its own sake to a greater degree than anything else in the physical world and that grounds human rights. The question I seek to make headway in answering is: in virtue of what do human beings have a dignity? What is it that makes us (typically) worth more than members of the mineral, vegetable and animal kingdoms?

This question supposes that dignity is a clear, distinct and useful concept, an assumption that I do not seek to defend systematically against those who doubt it.¹ In addition, the question implies that the concept in fact applies to us, i.e. that (nearly) all members of our species do have a dignity, or at least a kind of dignity that rocks, plants and animals characteristically lack. I set aside the issue of whether, of earthly beings, only human beings have a dignity, acknowledging the important debate about whether apes and other intuitively higher animals also have it.

In this article, I critically examine two conceptions of human dignity that are grounded in African moral thinking, perspectives that are grossly underexplored in international debates about human rights. One view is that our 'life force' or vitality,

¹For influential sceptics, see Macklin (2003), Pinker (2008) and Schüklenk and Pacholczyk (2010). I do provide an analysis of the concept of dignity in the second section of this article, which implicitly grounds responses to them.

T. Metz (✉)
Philosophy Department, University of Johannesburg, B-603, POB 524, Auckland Park,
Johannesburg 2006, South Africa
e-mail: tmetz@uj.ac.za
e-mail: thadmetz@eastcoast.co.za

to be explained below, constitutes our dignity, while a second view is that our communal nature of a certain kind does so. In the next section of this article, I say more about what I mean by the term 'dignity', and then, in the following section, I spell out what these two conceptions of dignity are and why it is appropriate to call them 'African' rather than 'Western'. Next, in the rest of the article, I consider whether one of these conceptions is to be preferred to the other in the sense of being able on its own to account for a wide array of human rights that we intuitively have. Specifically, I argue that the communitarian conception of dignity is more attractive than the life-based one because it more naturally entails and plausibly explains many uncontroversial judgements about what we have human rights. Appealing to human rights related to free movement, interracial marriage, political participation, informed consent and criminal justice, I demonstrate that the vitality conception of dignity has difficulty capturing them, while the community conception can do so with relative ease.

Establishing that, of promising African views about dignity, the communitarian conception is more attractive than the vitality conception is of course not yet to show that friends of human rights should believe the favoured Afro-communitarian view. My aim here is the limited one of articulating and defending a theory of dignity with a sub-Saharan pedigree that is a genuine rival to the broad conception of dignity that dominates Euro-American and Australasian thinking about human rights, namely, the view that human rights are a function of a dignity inhering in our capacity for autonomy. I conclude the article by indicating future work that should be done to choose between the Afro-communitarian conception of human dignity and its strongest, Western competitor.

The Concept of Dignity

A *conception* of dignity is a philosophical theory of it, i.e. a comprehensive and basic principle that purports to entail that, and explain in virtue of what, things either have dignity or lack it. A conception of dignity aims to account for the 'underlying structure' of the myriad things with dignity by invoking as few properties as possible. The claims that beings have a dignity solely in virtue of, say, having a soul or being autonomous are different conceptions of dignity. In contrast, the *concept* of dignity is what these rival theories are about. The concept of dignity is that which makes a given theory one of dignity as opposed to something else such as virtue or welfare. In this section, I spell out the concept of dignity, saving analysis of the African conceptions of it for the next section.

I have already indicated that part of the idea of dignity, in the sense meant in this article, is the notion of having a superlative non-instrumental value. To have a *non-instrumental* value is for something to be good for its own sake, not merely good as a means to something else, and to have a *superlative* final value means being the most important good. To be the most important value is not best construed in terms having the largest quantifiable amount of value, but rather the most highly ranked kind of value, perhaps one that is incomparable (on which see Hill 1980: 48–50).

In addition, the concept of dignity as understood here is one that is typical of individual members of the human species. It is characteristic of living human beings

to have dignity, which means that all or nearly all of them have it. Although it is probably too narrow to suggest (as per Nordenfelt 2004: 78, 80) that dignity cannot be taken away from a human being so long as she is alive,² it is fair to say that a living human cannot alienate her dignity in the normal case.

Furthermore, most adherents to the idea of dignity believe that a human being's dignity is objective in the sense of obtaining independently of people's variable mental states. If someone has a dignity, she does so not merely because her society believes that she does (nor merely because she herself believes this, say, in having a sense of pride or self-esteem). Instead, one has a dignity independently of any contingent social construction, meaning that it is rather a natural property of an individual that societies ought to recognise, if they do not already (on which, see Rawls 1971: 505–506n30).

Still more, the notion of dignity that I am working with is something that does not vary incrementally in accordance with a person's gradient behaviours or traits, such as meritorious deeds, excellent achievements or virtuous dispositions. The latter are sometimes described as sources of 'dignity', e.g. when speaking of a 'dignified composure'.³ In contrast, for the purposes of this article, 'dignity' by definition inheres in an entity or capacity that is exemplified to a certain threshold (Rawls 1971: 506–510), so that no one with dignity has more than any other.

Finally, the concept of dignity is the idea of a value that warrants specific kinds of reactions. In particular, to have a dignity is to be entitled to respectful treatment. Instead of seeking to promote the kinds of beings that have dignity by, say, procreating as much as possible, they are standardly understood to warrant honouring (Dillon 2007; Christiano 2008). More specifically, beings with dignity are owed respect of the sort associated with according human rights (e.g. Donnelly 2009). To recognise another's human rights is, roughly, to uphold a weighty natural duty to treat an individual in a certain positive way regardless of the desirable consequences of not doing so. So, for example, dignity is widely taken to be the value that grounds the judgements that there is very strong moral reason not to torture, ethnically cleanse, enslave or discriminate against on a racial basis, even if these actions would benefit a large part of society. As most readers will know, many international human rights declarations and agreements posit the dignity of individual human beings as their foundation (e.g. UN 1948; OAU 1981; UNESCO 2005).

Summing up, the concept of dignity is the idea of *what it is about the nature of typical human beings that makes them objectively good for their own sake to an equally incomparable degree entitling them to respectful treatment in the form of recognising human rights*. Conceptions of dignity, then, are different theoretical accounts of what it is about characteristic human beings that makes them valuable in this way.

Two 'African' Conceptions of Dignity

One familiar conception of dignity, which I label 'Western', is the idea that our value is a function of our capacity for autonomy, where, from one angle, this is understood

² For counterexamples, see Kolnai (1976: 61–62).

³ For discussion of these and related types of dignity, see Kolnai (1976) and Nordenfelt (2004).

to be free will, and, from another, rational deliberation. The basic idea is that we have a worth that surpasses anything else in the natural world by virtue of our ability to govern ourselves or to act in light of deliberation, rather than merely be determined by crude mechanism such as instinct or conditioning. The work of German Enlightenment philosopher Immanuel Kant (1785) is the *locus classicus* of this approach to which beings have dignity and why, and his basic idea continues to be influential among ethical philosophers and legal theorists. From this perspective, to accord individuals human rights is to respect their special ability to make voluntary decisions for themselves, and human rights violations, such as murder, slavery and torture, are ways of severely degrading that ability.

I call this view 'Western' because it is *salient* in the normative thought of those in the West, i.e. in Euro-America. To use a geographical term to connote a certain idea should be taken to suggest *neither* that everyone in that locale accepts the idea, *nor* that no one outside of that locale does. Instead, it means simply that the idea is present in that locale to a noticeable extent, relative to other places on the globe. Baseball is aptly called 'American' even though Cubans play it, as is apple pie, despite the fact that Austrians make a wicked *Apfelstrudel*. Similarly, the combination of markets, science and Constitutions is appropriately called 'Western', even though one finds it in places such as South Africa and Australia. By analogy, the notion that human beings characteristically have a dignity in virtue of their capacity for autonomy is fair to label 'Western', even granting that some non-Westerners accept this view and that some Westerners reject it. It is fair, so long as the idea is prominent particularly in Euro-American ethics, politics, jurisprudence and the like, which, I submit, it is.

I use the term 'African' to perform a similar function, viz., to designate ideas that are *salient* in the normative thought of those on the continent. More specifically, by 'African', or 'sub-Saharan', I mean views recurrently espoused by pre-colonial black peoples below the Sahara desert and those substantially influenced by them in contemporary discourses. As with 'Western', calling a perspective 'African' implies neither that all traditional black individuals or even societies below the Sahara (and those indebted to them) have held it, nor that no one beyond it has done so. The label is rather meant to indicate that a perspective is common among those people and in that space–time in a way it has tended not to be among others elsewhere.

Black traditional peoples below the Sahara are well known for tending to share certain ways of life.⁴ They characteristically: are small scale in number so that everyone knows everyone else, with nothing approximating the size and anonymity of a metropolis; are oral cultures, lacking a corpus of written works; maintain that ritual, initiation and tradition have some moral importance of a sort unrecognised in modern societies; hold land in common, parcelling it out to households based on need or clan membership, in contrast to permitting profit-maximising private ownership; lack sophisticated science and technology, with the economy based largely on agriculture, cattle or hunting/gathering; maintain that there are weighty duties to aid that far transcend the nuclear family, centred on what Westerners would

⁴ Here, I tightly summarise anthropological and sociological findings from a variety sources, including: Fortes and Evans-Pritchard (1940), Forde (1954), Abraham (1962), Carlston (1968), Mbiti (1990), Gyekye (1996) and Wiredu (2008).

call 'extended family' such as uncles, cousins and many other members of a lineage; believe in a duty to wed and to procreate, viewing solitariness as problematic; have faith in the continued existence of and interaction with ancestors, people who were not merely forebears of a given people, but ones who both lived to a ripe old age and exhibited moral wisdom; resolve conflicts affecting society by consensus, at least some among popularly appointed elders, rather than rest content with either majority rule or the non-consultative will of a monarch; respond to infraction not with retributive punishment after the fact, but with an eye toward reconciliation between the offender, his family, the immediate victim and the broader community.

More could be added, but this should be enough to highlight what is routinely called the 'communal' nature of traditional African society. Such a way of life has been both the product and the producer of recurrently held value systems that prize two distinct goods: vitality and community.⁵ Some African thinkers take no view on whether one or the other is fundamental, simply placing them side-by-side as salient elements of sub-Saharan moral thought (e.g. Kasenene 2000). However, most of those who are philosophically inclined take one value to be fundamental and the other to be derivative from it. On the one hand, one readily sees how a communal way of life would not only be grounded in, but also encourage, a communitarian ethic taking (roughly) ideas of harmony or cohesion to be of primary importance. From this viewpoint, the basic value is community modelled on familial relationships, respect for or promotion of which entails valuing other people's lives or liveliness (for a clear instance, see Ejizu 2011). On the other hand, there are African philosophers and theorists who maintain that vitality has ultimate worth, such that protecting communal relationships is instrumental for fostering life or is a way to discover how to promote it; if discord were to arise and community were to break down, then people's lives or liveliness would be threatened (for a representative example, see Onah 2011).

There are other candidates for basic goods in the African tradition,⁶ but vitality and community are the most recurrent, are interesting and plausible candidates by which to ground a theory of human dignity, and are readily seen to be distinct from the Kantian–Western prizing of autonomy. In the rest of this section, therefore, I sketch out the nature of these two goods in more detail and draw on them to develop two theories of dignity that promise to account for human rights. Note that these theories are not intended to *represent* the views of a particular sub-Saharan people, let alone sub-Saharans generally. They are *philosophical constructions* that are grounded on and pull together in principled form a variety of ideas about morality salient in the region.

Vitality

One African theory of dignity is the view that our special worth is constituted by human life in some way. This perspective, very broadly construed, is common in both Western and African worldviews, though, as I now show, there are important differences in emphasis between these traditions.

⁵ The rest of this paragraph borrows ideas and some phrasing from Metz (2011).

⁶ E.g., Gyekye (2010) appears to take wellbeing to be basic.

In Western thinking, it has been common to hold that dignity co-varies with the presence of human DNA in a living organism. Such a view is noticeably held by many of those theorising in the Judeo-Christian religious tradition, who maintain that only human beings are children of God or made in God's image (Noonan 1970; Koop 1982; Paul 1995; Kass 2002; United States Catholic Church 2003; Novak 2007). What makes humans special, from this standpoint, is that they have a soul, a spiritual substance that originated in God and that will outlive the death of their bodies. Where goes a living human being, there goes a soul, and hence a being with dignity.

Although one can encounter this more 'Western' perspective in writings by Africans, particularly given the influence of Christianity below the Sahara, the notion of human life that is *particularly* salient there differs from it, and is less familiar to international readers. Instead of a living human organism or spiritual substance—a *thing*—being sufficient for dignity, it is common among sub-Saharanans to believe that it is a function of our degree of life *force*. Placide Tempels (1959) is well-known among scholars of Africa for having written the first 'ethno-philosophical' attempt to understand and relate African worldviews to a Western audience, and for having deemed the concept of life force to be at their heart. Although his work has been vigorously criticised for over-generalising, one still finds contemporary philosophers from a variety of sub-Saharan regions, ranging from Ghana and Nigeria down to South Africa, placing the notion of life force at the heart of their ethics (e.g. Dzobo 1992; Kasenene 1994; Magesa 1997; Shutte 2001: 16–33; Iroegbu 2005d; Mkhize 2008; Bikopo and van Bogaert 2010). Life force is traditionally interpreted as a valuable, spiritual or invisible energy that inheres in physical or visible things. Everything in the universe, even an inanimate object such as a rock, is thought to be good by virtue of having some degree of life force, with animate beings have a greater share of it than inanimate ones, human beings having more than plants and animals, ancestors, whose physical bodies have died but who live on in a spiritual realm, having even more than human beings, and God, the source of all life force, having the most. Tempels claims of the large swathe of sub-Saharanans who speak a Bantu language that:

their purpose is to acquire life, strength or vital force...Each being has been endowed by God with a certain force, capable of strengthening the vital energy of the strongest being of all creation: man. Supreme happiness, the only kind of blessing, is, to the Bantu, to possess the greatest vital force...Every illness, wound or disappointment, all suffering, depression, or fatigue, every injustice and every failure: all these are held to be, and are spoken of by the Bantu as, a diminution of vital force (1959: 30, 32).

Within this metaphysical picture, which is common (though not ubiquitous) below the Sahara, human dignity, our superlative value, can be understood to be constituted by the fact that, of physical beings, we have the most life force.

Like the Western prizing of human life, African respect for human life force obviously grows out of religious thinking. However, such a moral perspective need not be tied to a supernatural base in order to be plausible. Quite often, African thinkers make evaluative and normative judgements without appeal to spiritual ideas or at least not explicitly. For example, they say that a human being is special in virtue

of being able to exhibit a superlative degree of health, strength, growth, reproduction, creativity, vibrancy, activity, self-motion, courage and confidence, with a lack of life force being constituted by the presence of disease, weakness, decay, barrenness, destruction, lethargy, passivity, submission, insecurity and depression (see especially Dzobo 1992; Kasenene 1994; Magesa 1997; Iroegbu 2005a, b, d; Mkhize 2008). I will often refer to this physicalist, energy-oriented conception of vitality as 'liveliness' and sometimes as 'creative power' (as per Dzobo 1992).

To construct a theory of dignity and human rights, I appeal to this naturalist idea of liveliness and downplay the traditional, supernaturalist notion of life force. I do this for three reasons that I mention here, but lack the space to defend. First, the naturalist or physical construals of the vitality conception are no less compelling than the supernaturalist or spiritual ones; indeed, the former might be more compelling than the latter in that they account better for, e.g. the human right to life and correlative degradingness of murder.⁷ Second, most of us are much more confident that we have a dignity than that we have any spiritual nature, meaning that we cannot coherently ground a conception of dignity on spiritual notions. Third, even if we do have a spiritual nature, or are confident that we do, it would be inappropriate to ground political decision making on such a contested conception of the good, and I seek a theory of dignity that should ground legislative choice and judicial interpretation. Based on these rationales, in what follows I make no reference to God, souls, ancestors or anything else that is beyond what could be apprehended by the scientific method.

According to my favoured philosophical interpretation of African ideas about vitality, then, what makes us more special than plants and animals, for instance, is roughly that we have a much greater liveliness or creative power than they. Such a capacity includes the properties of autonomy or rationality, which the Kantian deems alone to ground our worth, but is not exhausted by them. Certainly not all exercises of autonomy or rationality are productive, on the one hand, and probably not all productivity involves an exercise of autonomy or rationality, on the other. Deeming our dignity to inhere in the capacity for creative power means that according human rights is to treat this capacity of others with respect, and, correspondingly, that violating human rights is to severely degrade this capacity. It is plausible, on the face of it, to think that the innocent have rights not to be killed, enslaved or tortured because such actions grossly impair others' capacity for liveliness. In the following section, I apply this vitalist conception of human dignity to a wider range of human rights, ultimately concluding that it does not account for them as well as the other African-based conception.

Community

The second conception of dignity with a sub-Saharan pedigree that I submit is worth addressing is the view that our communal nature makes us the most important beings

⁷ If a human person were essentially immortal and spiritual, then why should killing her body be considered so disrespectful, as doing so could not harm or otherwise affect herself?

in the world. As noted above, sub-Saharan views about morality are well known for characteristically prizing community in some way. Although Western philosophy is of course not devoid of communitarian elements,⁸ they are not the dominant theme there, unlike in African philosophy.

As with the vitality conception, there are two versions of the community conception worth distinguishing. One, traditional instance is the view that our dignity is constituted by our existing relationships with others, including spiritual persons such as ancestors. For example, the South African theologian and academic leader H. Russel Botman remarks, 'The dignity of human beings emanates from the network of relationships, from being in community; in an African view, it cannot be reduced to a unique, competitive and free personal ego' (Botman 2000; see also Bujo 2001: 88). The problem with this perspective is that it means that a person such as a hermit or a prisoner placed in solitary confinement, who is not in the relevant relationships, lacks a dignity, which is counterintuitive. Of course, these counterexamples would merely be apparent if everything in the universe were necessarily interconnected by spiritual forces, e.g. if every person were always already related to God (cf. Bujo 2001; Murove 2004; Mkhize 2008). Since I am, for the reasons above, abjuring supernaturalist conceptions of human dignity, this argumentative strategy will not help. I therefore develop a different, modal and physical conception of our communal nature, according to which it is not a person's actual relationships with a spiritual realm that constitute his dignity, but rather his essential ability to form them with other human beings that does so.

Elsewhere, I have argued that the capacity to enter into community with human beings grounded in African thought is well construed in terms of the combination of two logically distinct kinds of relationship, 'identity' and 'solidarity' (Metz 2007). To identify with each other is largely for people to think of themselves as members of the same group—that is, to conceive of themselves as a 'we', as well as for them to engage in joint projects, coordinating their behaviour to realise common ends. Identity is a matter of people sharing a way of life, with the opposite of it being instantiated by people defining themselves in opposition to one another and seeking to undermine one another's ends. To exhibit solidarity with one another is for people to care about each other's quality of life, in two senses. First, it means that they engage in mutual aid, acting in ways that are expected to benefit each other (ideally, repeatedly over time). Second, caring is a matter of people's attitudes such as emotions and motives being positively oriented toward others, say, by sympathising with them and helping them for their sake. For people to fail to exhibit solidarity could be for them to be indifferent to each other's flourishing or to exhibit ill will in the form of hostility and cruelty.

Identity and solidarity are different sorts of relationship. One could identify with others but not exhibit solidarity with them—probably workers in relation to management in a capitalist firm. One could also exhibit solidarity with others but not identify with them, e.g. by making anonymous donations to a charity. My proposal, following the intimations of several African thinkers, is that a promising conception of community includes *both* kinds of relationship. Consider the following senses of 'community' one finds suggested by sub-Saharan theorists:

⁸ For the closest kin, see especially Aristotle on friendship and the young Marx on species being.

'Every member is expected to consider him/herself an integral part of the whole and to play an appropriate role towards achieving the good of all' (Gbadegesin 1991: 65); 'Harmony is achieved through close and sympathetic social relations within the group' (Mokgoro 1998: 3); 'The fundamental meaning of community is the sharing of an overall way of life, inspired by the notion of the common good' (Gyekye 2004: 16); '(T)he purpose of our life is community-service and community-belongingness' (Iroegbu 2005c: 442).

The combination of identity, or sharing a way of life, and solidarity, or caring for others' quality of life, is equivalent to what English speakers mean by a broad sense of 'love' or 'friendship'. A loving or friendly relationship more or less is one in which the parties think of themselves as a 'we', engage in common activities, act to benefit one another, and do so consequent to sympathy and for the other's sake. Hence, one way of putting the Afro-communitarian conception of dignity I am articulating is to say that we have a dignity in virtue of our capacity for loving relationships.⁹ We are characteristically more capable of community in the sense of 'love' or 'friendship' than are rocks, plants and animals, and it is that feature that arguably makes us special in a way they are not. In order to commune with others in the relevant sense, one must be autonomous or rational as per Kantianism, but, on the African view, one has a dignity only insofar as one is capable of using one's intelligence in a particular, other regarding way. Deeming our dignity to inhere in our capacity for communal or friendly relationships means that according human rights is to treat this capacity of others with respect, and, correspondingly, that violating human rights is to severely degrade this capacity. *Prima facie*, the innocent have rights not to be killed, enslaved or tortured because such actions grossly disrespect others' capacity for community (as well as the agent's own).

So far, I have spelled out two major sub-Saharan conceptions of what it is about us that gives us a dignity and that accounts for human rights, but I have not provided any reason to favour one over the other. Of course, one might hold the view that more than one property confers dignity on us. However, one should first critically explore the simplest theories, since it is only by seeing whether one of them is adequate that one could firmly determine whether a more complex view is required. In the next section, then, I begin the task of ascertaining whether the vitalist or the community theory of human dignity better coheres with intuitions about human rights, arguing in favour of the latter and putting it forth as the most defensible theory grounded in African thinking.

The Inability of Vitality to Ground Human Rights

I start with the theory that our capacity for liveliness is what has a dignity and so warrants respectful treatment in the form of according human rights. One clue going in that this theory is inadequate to account for the full range of human rights is the narrowness of the topics that its African friends (and their Western, Christian cousins) are most known for addressing. They characteristically espouse views on

⁹ I first articulates this conception of dignity in detail and applied it to moral debate about the death penalty in Metz (2010)

the morality of abortion, cloning, euthanasia, assisted suicide, drugs/alcohol, poverty and the death penalty. These are mainly 'life and death' matters, for which one would naturally expect a vitality theory to have some clear implications. In the following, I argue that a vitality theory fares less well with regard to several human rights other than that to life.

Free Movement

First off, consider rights to freedom of movement. Fans of human rights typically think that the state has a duty to let all its (innocent) legal residents decide where within its territory they would like to live or visit. Furthermore, they usually believe that the state has a duty to let those (innocents) currently residing in its territory emigrate to a new state, supposing the latter is willing to accept them. Forcibly containing anyone (who has not been fairly convicted of a crime) within a state or within a part of its territory is to violate human rights, according to both the Universal Declaration of Human Rights (UN 1948, Article 13) and the African Charter on Human and Peoples' Rights (OAU 1981, Article 12).

Now, when thinking of prohibitions on movement, one initially pictures people being hemmed in and hence limited in their ability to express themselves and to develop in ways to which they are disposed. It would therefore appear that the capacity for liveliness would be impaired were rights to movement unrecognised.

The problem with this vitality based rationale for rights to movement, however, is that restrictions on movement need not be narrow. Imagine a state that forbade one from visiting a small part of an overall large territory or a state that prohibited citizens from emigrating to certain countries but not others. The liveliness of typical American citizens would not be hampered if they could travel neither to Alaska nor to Scandinavian countries.

The friend of the vitality conception of dignity can suggest a second, different respect in which infringing rights to movement might constitute a degradation of vitality. Instead of the effects of coercion on self-expression being such a degradation, perhaps it would be the reason for which the coercion would be imposed. Any coercion such as punishment is plausibly deemed to be a reduction of vitality, conceived as a matter of growth, activity or self-motion. It is reasonable to suggest, then, that punishment, a reduction of vitality, is respectful only if it is imposed in reaction to a person reducing or threatening to reduce someone's vitality. To punish and thereby reduce a person's liveliness for something other than impairing liveliness would degradingly treat the former's liveliness as worth less than whatever she is being punished for. Since crossing a border does not involve reducing anyone's liveliness, it would follow from this principle that it would be degrading of liveliness for a state coercively to restrict people's movement.

I have two replies to this strong rationale. First, it is not necessarily true that punishment constitutes a reduction in vitality. For example, suppose the law imposed a fine on people for trying to emigrate; such a penalty would not impair the vitality of the rich. Or suppose the law incarcerated those who try to emigrate; such a penalty need not impair the vitality of the poor, and might rather improve it by providing food, shelter and healthcare they otherwise would not have reliably had.

Second, it is not necessarily true that crossing a border would not reduce anyone's vitality. It might be, for example, that the state reasonably foresees that breaking

relationships and changing cultures would reduce the liveliness of the potential emigrant or the children she wants to bring along. It is well known that it is difficult to relocate to a new home, that it can cause a loss of self-esteem and sense of disorientation, which presumably count as reductions in the African conception of vitality *qua* creative power. And it would be reasonable for a state to expect that a strong culture, one not undermined by the immigration of foreigners and the emigration of locals, would foster liveliness among those who are a part of it. In these cases, therefore, it would not appear disrespectful of people's capacity for *vitality* for the state to restrict their movement, and yet doing so would remain a human rights violation.

Interracial Marriage

No self-described believer in human rights denies that people should be entitled to decide whom to wed. All think that, if the state is going to determine the conditions for marriage, it must do so in a way that permits people to marry persons of another race. Again, influential human rights documents concur (UN 1948, Article 16; OAU 1981, Articles 2, 11, 19, 20).

A tempting strategy for the friend of the vitality based conception of dignity would be to suggest a rationale for this right paralleling one from the previous subsection, namely, that to punish for marrying a person of another race would be a matter of reducing vitality for something other than the protection of vitality, and hence would be disrespectful of it. To avoid repetition and to take the issues farther, imagine in the present case that the racist state did not punish those who intermarry. Suppose it rather defined a valid marriage as one incapable of obtaining between members of different races. Those who have vowed to live together in romantic, long-term relationships simply could not count as 'legally married'. Despite the absence of punitive or 'restrictive' law in H L A Hart's (1961) influential terms, the state's segregationist 'facilitative' law would remain a human rights violation.

There are two plausible ways the friend of the vitality based conception of dignity could maintain that marital segregation without punishment would impair people's liveliness, but I maintain that neither is compelling. First, one might reasonably suggest that people would become depressed and be unable to express their natural selves, if not given the opportunity to wed those of another race whom they love. In reply, though, imagine a state that encouraged people of different races not to socialise with one another, so that they rarely became lovers in the first place. If people grew up thinking that it were inappropriate to become intimate with others deemed to be of 'another kind', then a segregationist marriage law would not frustrate strong desires, let alone threaten to impair health, childrearing or other forms of creative power. The point is that such state policies would be human rights violations, despite people's liveliness not being hampered or otherwise degraded.

Second, then, the friend of the vitality conception might plausibly suggest that 'separate but equal is unequal', meaning that such segregationist policies would likely result in lower self-esteem on the part of the race deemed inferior. The point is fair. However, imagine a 'racist but neutral' state.¹⁰ Such a state believes that its job

¹⁰ Of the sort former President de Klerk of South Africa has maintained was the intention, albeit not the practice, of apartheid architects.

is to foster cultures and that they flourish best when races are kept pure and distinct. It does not maintain that, say, black culture is inferior to white culture, but rather that blacks and whites must not intermarry in large part for the sake of blacks. In this hypothetical scenario, the state's discriminatory practice would not be expressing the judgement that any group is inferior to any other group, and so a loss of self-esteem would not be expected. But the human right to wed the partner of one's choice would still be violated.

Political Participation

More human rights that the vitality theory of human dignity has difficulty entailing and explaining are those regarding the freedom to participate in political governance. Most proponents of human rights believe that everyone should have an equal opportunity to vote on decisions affecting them and to hold public office (UN 1948, Article 21; OAU 1981, Article 13). It would violate human rights to let some people's votes count more than others, often called 'plural voting', or to deny some innocent, competent citizens the ability to vote at all or to become a member of the government.

To account for these rights, the friend of the idea that our dignity inheres in our capacity for vitality might draw on some ideas of John Stuart Mill (1861), who is well-known for arguing that citizens are likely to become more passive and dependent, the less they participate in governance. When people are shouldered with the responsibility of collectively determining their own fate, they tend to become more active and self-reliant than when they are not. If so, then the failure to accord people rights to political participation could be reasonably deemed to fail to treat their capacity for liveliness as the most important value.

In response, I grant the general point, but note that it has a limited range of validity and cannot fully capture firm judgements about duties of the state to be democratic, in two key respects. For one, imagine a state that gave somewhat more votes to the intelligent and educated, in the expectation that their greater influence on political decisions would likely result in better outcomes for citizens' liveliness. It does not appear that such a policy would be likely to make people passive and dependent, supposing everyone had at least one vote. In addition, and more deeply, it is an empirical matter whether that is true, and I submit that whether people have an equal right to vote does not depend on the resolution of such subtle social scientific controversies.

For another, imagine a largely democratic state that, from time to time, removes certain considerations from majoritarian legislation. I have in mind not a Constitutional bill of rights, but other, more mundane sorts of issues. For example, suppose that the executive forced people to wear seatbelts and would not allow a legislature to decide otherwise. If the executive branch did not usurp power routinely, but only on occasion when doing so would likely protect vitality, it does not appear that people's tendencies to be active and self-reliant would be compromised or that their capacity for creative power would otherwise be treated as less than the most important value. Yet their human right to political participation would be violated all the same.

Informed Consent

The default position in the field of bioethics is that informed consent must precede any medical treatment of, or research on, an individual. It would be a violation of patients' human rights for them to be actively misled about what medical problems they have or how medical professionals are responding to them (UNESCO 2005, Article 6). It would also objectionably infringe the human rights of participants in clinical trials if, say, they were not informed that they were part of a study, and if their intimate behaviour were monitored without their awareness (UNESCO 2005, Articles 6, 9; WMA 2008, Articles 22–26).

These rights do not appear to be a function of vitality, understood as liveliness or creative power. If a medical professional believed that a given treatment would be most effective for curing a patient, then her consent would be irrelevant from the standpoint of a demand to respect vitality. This would be especially true if the medical professional believed that the treatment would be somewhat less effective if the patient knew why and how she were being treated. Similar remarks apply to unwitting participants in clinical trials. If keeping them in the dark about the study were the most effective way of discovering new knowledge that would be useful in preventing or curing disease, then it seems that vitality would not be degraded.

The natural reply, here, is to say that the individual's liveliness would be gravely impaired if she found out that she had not been informed of the medical intervention conducted on her. If patients discovered that their physicians had not told them of their treatments, they would be less likely to adhere to the required regimen and hence would tend not to become as healthy. Furthermore, both patients and participants would feel violated upon discovering the lack of truth telling on the part of healthcare workers, and such a violation of trust could be expected to reduce a person's exuberance, self-esteem and willingness to engage with her fellows.

I believe the reply misfires, however, in that its logic suggests that what constitutes the violation of the human right would be the *failure to keep secret* the lack of informed consent. Vitality would be impaired only upon the patient's or participant's awareness that medical professionals had not fully informed them of the nature of the intervention; it would not be the lack of informed consent *per se* that would be the culprit. This rationale therefore entails that a medical practice of deception or withholding of the truth that were successful, or even overwhelmingly likely to be successful, would not be a human rights violation. However, it would still be a human rights violation for a team of clinical researchers secretly to observe, say, a person's manner of bathing or sexual habits without her having any way of knowing she were being monitored in these respects.

Criminal Justice

Almost no fans of human rights are pacifists. Most instead believe that force can sometimes be justified, particularly when the state employs it against criminals and does so in order to prevent serious crime. For example, it is standard to think that citizens have a right that their state protects them from suffering serious violence (UN 1948, Article 12; OAU 1981, Article 6). If two members of one ethnic group were trying to kill an elderly woman merely because she has a different ethnicity and

if an armed police officer were standing by, he would have a duty to shoot the aggressors, if that were necessary and sufficient to protect the innocent woman's life.

Note that aggressing, or having aggressed, appears to be a necessary condition for being subject to justified enforcement. That is, citizens have a human right not to be punished if they are innocent, or at least if a fair procedure has not judged them guilty (UN 1948, Article 11; OAU 1981, Article 7). So, even if framing and executing an innocent person would alone perform the function of preventing more innocent deaths (say, by preventing a bloodthirsty mob from rioting), it would constitute a human rights violation if a magistrate were to do so.

I submit that it is difficult for a vitality based conception of dignity to account for these human rights. One might initially suggest on behalf of the vitality view that punishing the innocent would be wrong since punishment inherently reduces a person's vitality. However, I provided grounds to doubt this claim above, and, more worrisome, such a rationale would counter-intuitively forbid the use of *all* punishment and force, even when directed against aggressors as needed to save innocents. A similar point applies to the suggestion that it would be degrading of vitality to reduce one person's vitality for the sake of protecting that of others; for those suffering from ethnic cleansing have a right that the state impairs the liveliness of the aggressors, if doing so is essential to save theirs.

Obviously, the guilt and innocence of the parties involved plays a key role in determining when the use of force is justified. However, the vitality conception, in its natural form, does not distinguish fundamentally between aggressors and non-aggressors. And notice that it will not do to suggest that *innocent life* alone has a dignity (which some in the Western vitality tradition have proffered, e.g. Paul 1995: sec. 57). For one, this is an *ad hoc* manoeuvre that is unattractive for merely aggregating unrelated moral elements. For another, the current suggestion entails that both executing the guilty and harvesting their organs, for which China is notorious, would be permissible, but few friends of human rights believe that. Below I argue that an Afro-communitarian theory of dignity accounts for intuitive judgements about human rights associated with criminal justice with more unity and elegance.

The Ability of Community to Ground Human Rights

Recall the communitarian conception of dignity that I have articulated in light of recurrent themes in African moral thought. According to this theory, a human being has dignity in virtue of his capacity for community or friendship, conceived as the combination of identity and solidarity, where to identify with others is to share a way of life with them and to exhibit solidarity with others is to care about their quality of life. Here, I contend that human rights are more plausibly viewed as unified by the idea that violations of them are particularly degrading treatments of this special capacity of ours.

One's capacity for communal relationships or friendliness is often particularly degraded by being the recipient of a *significant degree of unfriendly behaviour that is not a proportionate, counteractive response to one's own unfriendliness*. What genocide, slavery, human trafficking, apartheid and totalitarianism have in common is, roughly, that those who engage in these practices treat people, who are special in

virtue of their capacity for friendly relationship, in an extraordinarily unfriendly way when unnecessary to rebut unfriendliness on their part. Concretely, such practices involve thinking of others as separate and inferior, seriously undermining others' ability to pursue their own goals, grossly impairing their quality of life, and exhibiting emotions such as *Schadenfreude* as well as motives such as self-interest. Engaging with others in these unfriendly ways is to impair their ability to engage in friendly relationships and to treat them as though they are incapable, or unworthy, of them. Treating others' capacity for friendship as special would, in contrast, typically mean helping them to actualise it; it would mean drawing them into a communal relationship at least with oneself and ideally with others as well.

In the following, I return to the five human rights I have argued that the vitality conception of dignity cannot plausibly capture. I contend that violations of them are all well understood as one person treating others who have not been very unfriendly in a very unfriendly manner and hence degrading their capacity for friendliness.

Free Movement

It was difficult to see how restrictions on emigration from a state and on relocation within a state would invariably degrade the individual's capacity for liveliness. What the community conception can say, however, is that such restrictions are degradations of the individual's capacity to *share* a way of life with others. Sharing a way of life is not merely having a way of life similar to that of others; in its genuine sense it also includes selecting it for oneself in the awareness that others are doing the same. Part of what makes friendship valuable is that people have decided to come together, and to stay together, of their own accord. For the state to respect its residents' capacity for friendship, it must let them choose with whom to commune.

Interracial Marriage

A state's failure to allow two people of different races ever to count as being legally married did not appear to be an essential degradation of the individual's liveliness. Even if there would in many cases be inhibition and depression, and hence reduction in vitality, upon not being able to obtain a valid marriage with another, remember that would not obtain if the state succeeded in keeping races sufficiently far apart and did so without expressing the attitude that one were inferior to the other. A more promising explanation of why the failure to recognise interracial marriages would be a human rights violation is that it would be a serious degradation of the individual's capacity for the most intense kind of communal relationship possible, romantic love. Placing restrictions on people's ability to marry, for the sake of some notion of purity of culture, would be to disrespectfully treat the latter as more important than people's capacity for loving relationships.

Political Participation

I could not readily ascertain a reason for thinking that unequal suffrage or the inability to vote on certain non-Constitutional issues would necessarily treat people's capacity for liveliness in a disrespectful way. But if what is special about us is, in

part, our ability to share a way of life with others, that is going to include sharing political power. And supposing we are equally special in virtue of having the requisite capacity to share a way of life, that means according people the equal ability to influence collective decision making, which, in turn, means having an equal vote and the opportunity to determine all issues that do not involve an otherwise gross impairment of people's capacity for community.

Informed Consent

It appeared that the best the vitality conception could do to ground the human right to informed consent on the part of patients and participants was to suggest that they have such a right since their vitality would risk being impaired upon becoming aware that they had not been fully informed of the medical interventions conducted on them. A stronger explanation of this right, however, would appeal not to the consequences of failing to provide informed consent, but rather the nature of this behaviour 'in itself'. There is something degrading, e.g. about studying a person's bodily functions without her being aware of it, a judgement the community conception of dignity can underwrite. According to this perspective, the patient's or participant's capacity for friendly relationship *qua* identity and solidarity would be degraded by such unfriendly behaviour. Think about what is involved in genuinely identifying with others; one cannot *share* a life with others in a meaningful way when they are unclear about the basic terms of one's interaction with them (or, worse, when one uses force or exploitation to pressure them into doing one's bidding). Friendly relationships, of the morally attractive sort that include joint projects, require not only transparency between actors about their goals, but also willingness on the part of each to achieve them. Hence, free and informed consent is normally to be expected prior to remedying or experimenting as a way to respect people's dignity as beings capable of communal relation.

Criminal Justice

Lastly, recall that the vitality conception had difficulty accounting for the role that guilt plays in when human rights require or forbid the use of deadly force and other forms of coercion. Citizens have a right against their state to use deadly force against assailants when necessary to protect a single innocent, and a right that the state not punish a single innocent, even if doing so would protect more innocents from harm in the long run. There is nothing about human life *qua* capacity for liveliness or creative power as such that can entail and explain these judgements. To deal with them, the vitality tradition (in the West) sometimes speaks of the dignity of 'innocent life', but that is poorly motivated and still permits the execution of, and the harvesting of organs from, convicts, at least when these practices would save innocent lives.

In contrast, the community conception of dignity can say that respect for this capacity means treating a person in accordance with the way she has exercised it. Roughly, those who have been friendly do not warrant unfriendly treatment, whereas those who have been unfriendly do warrant unfriendly treatment, if necessary to protect those threatened by their own unfriendliness. By cashing out guilt and

innocence in terms of whether people have behaved in a very unfriendly manner or not, and by making respect for people's capacity for friendship a function of how they have actualised it, the community conception of dignity can account for the relevant human rights. Those engaging in ethnic cleansing are acting in a very unfriendly manner (toward those who have not been unfriendly), and so treating them in an unfriendly manner is not disrespectful, if necessary to protect those threatened by their unfriendliness. In contrast, it would be disrespectful to be unfriendly toward those innocent of any wrongdoing, viz., those who have not been unfriendly. And capital punishment and organ harvesting are degrading, by this view, since, even though these actions might save innocent lives, they would not save innocent lives *threatened by the ones executed or harvested*. The latter would be treated merely as a means to prevent harm that is not a product of their own unfriendly behaviour.

Conclusion: Community vs. Autonomy as the Ground of Dignity

In this article, I have sought to articulate the most promising way to ground human rights on characteristically African beliefs about human dignity. I have articulated two major conceptions of dignity that are grounded in ideas salient in sub-Saharan moral thought, the vitality and community theories, and I have argued that the community theory does a better job of entailing and explaining several human rights that intuitively exist. In particular, it appears that no conception of vitality, understood as it is in the African tradition as liveliness or creative power, can easily underwrite the judgements that people have human rights to freedom of travel and emigration, interracial marriage, democratic political procedures, medical interventions consequent to informed consent, and guilt-based criminal justice. In contrast, these rights and others appear naturally accounted for by the idea that what is special about us requiring respect is our capacity for communal or friendly relationships, understood as the combination of sharing a way with others and of caring about their quality of life.

I cannot yet conclude that the Afro-communitarian conception of dignity defended in this article is the most defensible conception as such and something that friends of human rights ought in fact to believe. To do so would require showing that it is to be preferred over the dominant, Kantian conception of dignity in the West, according to which people's dignity is constituted by their capacity for rational agency or free will. On the face of it, the Kantian view easily accommodates human rights to freedom of movement, interracial marriage, democratic politics, informed consent and fault-based criminal liability. That is, upholding these rights appears to be naturally understood in terms of respecting individuals' ability to govern themselves. Is that more Western account stronger than the more African one proposed here, namely, that human rights are at bottom ways of respecting people's capacity for friendly relationships, with human rights violations being roughly a matter of very unfriendly behaviour? Are there intuitive human rights that the Afro-communitarian conception can capture and that the Western one cannot, or vice versa? I submit that those who believe in human rights as grounded in human dignity have some interesting cross-cultural exploration to undertake.

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