

Human Rights and Normative Agency
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Not for Citation

Introduction

The idea of human rights is both popular and potentially promising as a means to understanding and implementing the conditions for a morally defensible global politics. But the widespread appeal of human rights does not, of course, entail that such rights improve the life prospects of individuals. It does not ensure that such rights are justified, nor even that they exist. So we must step back and ask, in a general way, what human rights are, what are their contents, and on what grounds are we justified (if we are) in affirming them. In this chapter I propose to consider one influential answer to these questions: the claim that human rights serve to protect the normative agency of individuals. By outlining and evaluating this claim, its rationale, and how it might be defended against some key objections, I hope to show that, while normative agency is indeed a plausible candidate for grounding human rights and, therefore, for reaching firm conclusions about what human rights we have, what they are rights to, and why we have them, there are reasons to expand the grounds of human rights beyond normative agency.

My argument, in short, is that normative agency is (1) a promising idea around which to formulate a justification of human rights and that (2) such a justification can withstand a critique suggesting that individual autonomy is overrated as a fundamental moral premiss, but that (3) there are several good reasons to expand the justifying grounds of human rights beyond normative agency, reasons focused on a more pluralist set of basic grounds. In particular, I focus on the tendency for an exclusively ‘normative agency’ justification to make it difficult to defend the basic rights of some of the most vulnerable human beings (children, the disabled) and, in its emphasis on human distinctiveness, to unduly privilege human beings over non-human animals with whom we share many of the features (vulnerability, sociability) that can ground basic rights and that are so much in need of protection. This so-called ‘human supremacism’ objection is powerfully argued by Will Kymlicka; in my view it qualifies but does not refute the claim that normative agency is a foundation of human rights. The objection should lead us toward a pluralist account of the grounds of human rights.

Normative Agency as the Foundation of Human Rights

The view I would like to consider is part of the so-called orthodox tradition of thinking about human rights in that it says these are moral rights we possess in virtue of being human. The specific version of this view with which I am concerned, set out most memorably by James Griffin, focuses on a particular feature (or features) of human beings that serves as a candidate ground of human rights. In short, it says that human rights “are possessed by human agents simply in virtue of their normative agency”.¹ The idea is that the point of human rights is to

¹ James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 48.

protect our human status, understood as “our status as normative agents.”² A normative agent is a person, thus Griffin calls his view the *personhood* account, where personhood constitutes the standing or status that entitles us to the protections provided by human rights. To be a normative agent is to reflect on, evaluate, and act upon a conception of the good life for oneself. In turn, normative agency is classifiable into three elements: autonomy, liberty, and welfare or minimum provision.³

Autonomy is “self-decision” or deciding for oneself amongst the values to guide one’s life. An autonomous person chooses their own “path through life” rather than being led by others.⁴ *Liberty* is to not be forcibly stopped by others from the pursuit of the life one has autonomously chosen for oneself; and *welfare* or *minimum provision*, including basic material resources and minimum education, refers to the conditions needed for a person’s choices to be real and effective in practice.⁵ The distinction between autonomy, liberty, and minimum provision as grounds for human rights is related to the difference between protecting our *capacity* for normative agency and protecting our *exercise* of it.⁶ Autonomy refers to a capacity: it is the ability to decide for oneself concerning the path to take in leading a worthwhile life. Liberty refers to the exercise of normative agency: it is being able to act in pursuit of the goals one has chosen without interference by others. Minimum provision refers to the conditions, beyond liberty, needed to ensure normative agency, namely, the food, shelter, education, medical care, and leisure necessary to both decide and act on one’s conception of the good life.

It is because normative agency – reflecting, deliberating, choosing, and acting on what we see as a good life for ourselves – has such value that it needs protection. Persons can live the life of normative agents only if they are not dominated by others, prevented by others from pursuing their chosen way in life, or prevented by lack of education or subsistence from being able to pursue it. Consequently, the list of “highest-level human rights” to autonomy, liberty, and welfare provides the basis for making sense of human rights practice as embodied, for instance, in the *Universal Declaration of Human Rights*. Personhood or normative agency is possible only if the following are protected: life, security of the person, political voice, free expression and assembly, basic education, and standard of living.⁷

Normative agency can seem quite expansive as a basis for human rights, so it is important to point out its *minimalist* character. As conceived by Griffin, human rights protect our status as

² *Ibid.*, 81. While Griffin calls his view the personhood account, it is nonetheless the protection of agency that constitutes the purpose of human rights. As he puts it at 258, “the defence of agency is what individual human rights are meant for”. Consequently, I will refer to the view under consideration as the normative agency account.

³ Griffin adds another ground of human rights, beyond personhood, that he labels “practicalities”. His point is to ensure a clear line limiting the practical requirements of human rights protections by appealing to “empirical information” about “human nature and human societies, prominently about the limits of human understanding and motivation.” James Griffin, *On Human Rights*, 38.

⁴ *Ibid.*, 150, 33.

⁵ *Ibid.*, 33.

⁶ *Ibid.*, 47, 183, 226, 243.

⁷ *Ibid.*, 33.

agents but do not provide everything that might be necessary for each of us to flourish. “They are protections of that somewhat austere state, a characteristically human life, not of a good or happy or perfected or flourishing human life. ... Protecting normative agency requires protecting certain human capacities: namely, those without which one’s options in life shrink so drastically that life as a normative agent is undermined.”⁸ This minimalism serves to answer concerns about both the demandingness of human rights and their universality: protecting the austere life of an agent is meant to be something that can be achieved in practice without excessive cost and that can be accepted by everyone regardless of their wide-ranging substantive conceptions of the good.

It is instructive to consider a possible parallel between Griffin’s personhood argument and John Rawls’s appeal to “the capacity for moral personality” as a sufficient condition for being entitled to equal justice and as a way to interpret the idea of natural rights. While Griffin appeals to normative agency, Rawls appeals to the distinguishing features of “moral persons” who possess two basic features: the capacity for a sense of justice and the capacity to form, revise, and pursue a conception of their own good.⁹ In his theory of justice as fairness, Rawls assigns lexical priority to the protection of basic rights and liberties on the grounds that they secure our “highest-order interests” understood in terms of these two basic capacities.¹⁰ Rawls’s defence of the basic rights and liberties covered by his first principle of justice asks us “to consider which liberties are essential social conditions for the adequate development and full exercise of the two powers of moral personality over a complete life.”¹¹ In pointing to this parallel between Griffin’s argument from normative agency and Rawls’s argument from our two fundamental capacities, I merely want to exhibit the centrality of this type of reasoning in the work of the twentieth century’s most influential Anglo-American political philosopher.

One final preliminary point is worth making, namely, that Griffin links normative agency with one interpretation of the idea of human dignity.¹² The idea is that human rights protect our capacity to choose our conception of the good life for ourselves, to live according to judgments we make about the values to endorse in living our lives. Griffin resists any simple appeal to the dignity of persons as too vague to be helpful in identifying, understanding, and justifying human rights, but he endorses the appeal to “the dignity of normative agency” because it points to the justifying grounds of autonomy, liberty, and minimum provision and it emphasizes our use of reason to freely determine our decisions about value. As he puts it, “[n]ormative agency constitutes what we call ‘human dignity’”.¹³ The link between dignity and agency will reappear

⁸ *Ibid.*, 34, 101.

⁹ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1999), 441-442.

¹⁰ *Ibid.*, 152.

¹¹ John Rawls, *Political Liberalism*, expanded edition, New York: Columbia University Press, 2005, 293. I avoid here the complicating factor that Rawls’s later work emphasizes political autonomy rather than moral autonomy in defending his principles of justice. Also, for present purposes, I pass over Rawls’s own minimalist account of human rights in *The Law of Peoples*, Cambridge: Harvard University Press, 1999.

¹² Griffin, *On Human Rights*, 151-152.

¹³ *Ibid.*, 226, 144-145 and 31. Consider two further sentences from Griffin: “Human rights grew up to protect what we see as constituting human dignity: the life, autonomy, and liberty of the

below in the context of Kymlicka's 'human supremacism' objection to normative agency as the key ground of human rights. But I now turn to an objection to any view that prioritizes autonomy as a key moral and political value.

The Autonomy Objection

Sarah Conly has made the case "against autonomy" by arguing that we overvalue it: in many cases individuals are better off when "we interfere with their ability to direct their lives according to their own reasoning."¹⁴ We are systematically bad at reasoning about and making our own autonomous choices in many spheres of our own lives, including most obviously choices affecting our health and long-term financial interests. The gist of Conly's case rests on her convincing description of our "poor instrumental reasoning" linked to cognitive biases such as optimism bias (believing things will work out better for us than the odds suggest), time-discounting (undervaluing future gains and losses), and status quo bias (preferring an existing arrangement regardless of its merit).¹⁵ Consequently, instead of respecting individual autonomy we should "help one another avoid mistakes so that we may all end up where we want to be".¹⁶ For Conly, respecting persons does not demand respecting individual autonomy.

Although Conly's argument is aimed at defending coercive paternalism as against any sort of liberal harm principle, it should be clear that the argument itself threatens any account of human rights grounded in individual autonomy. The normative agency conception must take account of Conly's criticism because the defensibility of a core value, autonomy, is directly at issue. A key element of personhood is autonomy; in fact it is probably accurate to say that autonomy is the most important of the three core constituents (autonomy, liberty, and welfare) of human normative agency that purport to ground human rights themselves, since autonomy is the first of Griffin's three "stages" of normative agency.¹⁷ So if autonomy is questionable, the personhood conception of human rights is weakened severely.

How would a defender of the personhood conception reply to this objection? I propose to show that we can accept Conly's critique of autonomy while holding on to autonomy as a key basis for human rights. The reply to Conly should point out, as Griffin does, that "[n]ot all forms of autonomy are the autonomy to which we attach great value."¹⁸ As he argues, in calculating my own income taxes each year I am more autonomous (in one sense) than if I were to hire a tax accountant to do my taxes for me. But the autonomy to which we are, and should be, strongly committed is not the autonomy to calculate one's own taxes but the autonomy that, along with liberty and welfare, is part of being a normative agent. My normative agency is unaffected by

individual" (*Ibid.*, 349). "Autonomy and liberty constitute the central values of what we think of as human dignity" (*Ibid.*, 327).

¹⁴ Sarah Conly, *Against Autonomy*, Cambridge: Cambridge University Press, 2013, 1.

¹⁵ *Ibid.*, 8, 9, 20-23.

¹⁶ *Ibid.*, 2.

¹⁷ Griffin, *On Human Rights*, 149.

¹⁸ *Ibid.*, 133.

having someone else do my taxes.¹⁹ What matters morally is a person's autonomy to reason about, evaluate, and choose a conception of a good life for themselves.

The problem with this reply, however, is that it does not address Conly's worry that human beings are systematically poor at reasoning about what is good for themselves. Nonetheless, I think a reply is possible. The key move is to point out that we may distinguish different *objects* about which we might reason when we are thinking about how to live our lives. We can think about short-term goals and long term goals; we also reason about both means and ends. It could turn out that autonomy is more defensible with respect to some of these objects of reasoning than others. And even when we can reason well about what goals or ends to pursue, there may still be emotional or motivational obstacles to acting on the results of deliberation. But Conly would seem to agree with the point I am arguing here, that individual autonomy in choosing for oneself a conception of a life worth living is not something we should hand over to others.²⁰ On the contrary, one way of describing her case 'against autonomy' is as a rejection of an individual's choice-making, in every context, about what is good for her or him, on the grounds that she or he (in fact, everyone) is susceptible to systematic biases in reasoning that more or less guarantee bad results *from her or his own perspective, i.e., the perspective of her or his autonomously chosen conception of a worthwhile life*. In other words, Conly is rejecting autonomy in everyday decision-making, not everywhere but in specific cases in which harmful mistakes are overwhelmingly likely and where much more good is likely to be produced by intervening to prevent such autonomy. But she does not present a case for rejecting autonomy in the sense needed for grounding human rights, that is, autonomy in evaluating and deciding for oneself the value of particular options for leading a good life.²¹ Nor does it seem plausible to claim that Conly's objection to autonomy in the case of a person's health or long-term financial planning applies directly to the more general case of an individual's reasoning about what is worth pursuing in life.

In fact, in directly addressing the content of the right to autonomy that serves as part of the justification of human rights, Griffin explicitly mentions decisions about food and investment in order to explain what he does and does not mean by autonomy.²² Autonomy in this specific sense intended, i.e., as partly constitutive of normative agency, concerns a person's decisions about the kind of life they should lead; it does not concern every decision a person might make. Consider Griffin's example of an adult son who lets his mother order his restaurant meals even though he would rather do it himself. In the everyday sense of the term 'autonomy', this would reduce his autonomy since it reduces the number of decisions he makes for himself; but it would not affect his autonomy in the specific sense of deciding for himself what makes his life go better or worse. The same goes for investment decisions: if a person decides that her interests are best promoted by, to some extent, deferring those decisions to an expert, this can be both a reduction of autonomy in the everyday sense but irrelevant to her autonomy in the normative agency sense. Of course, even in the everyday sense of autonomy, it can be rational for her to give it up so that she can better promote her interests overall. This way of putting the matter seems to be precisely

¹⁹ *Ibid.*

²⁰ Cf. Griffin, *On Human Rights*, 45.

²¹ *Ibid.*, 149.

²² *Ibid.*, 152-153.

what Conly is recommending, but if so it should be clear that it leaves untouched the case for or against autonomy understood in the normative agency sense.

Yet it is possible that Conly's argument is not limited in the way I have been arguing. So we should consider a question raised by her critique of autonomy: Does her case extend to cover the terrain of autonomy in the normative agency sense? In other words, if we accept that overcoming systematic individual reasoning biases justifies coercive paternalism, in particular spheres of our lives, aimed at promoting our best interests, do such biases also potentially interfere significantly with our capacities to decide for ourselves – even if only in a “piecemeal and incomplete” way – what is worth doing in life?²³ If the answer to this question is ‘yes’, then Conly's case would threaten autonomy in the normative agency sense. How should we go about answering this question?

In reply to the objection that coercive paternalism fails to respect persons by overriding their decisions, Conly says that “[i]f anything, coercive paternalism manifests respect for the value of human lives by trying to help people live fruitful lives in which they are able to achieve their own ultimate goals”.²⁴ In other words, Conly conceives her attack on ‘autonomy’ as a means of enabling people to pursue and “achieve their own ultimate goals”. She is not arguing that those goals themselves are to be imposed from outside rather than chosen from the inside by each one of us. In fact, Conly is worried that human beings have a natural propensity to conform and that, paradoxically, paternalistic education can help us to lead lives that truly reflect our own values.²⁵

Conly also makes the interesting claim that “in some cases being denied choices can be liberating” and that paternalistic “government intervention allows us to focus our decision making on the decisions we actually care about.”²⁶ It can be psychologically beneficial for us to leave it to qualified others to determine what foods should be legal and what makes cars safe to operate. Again we see, I believe, that Conly's powerful case against autonomy should not be understood as denying the value and importance of deciding for ourselves. Rather, she is defending state intervention in some areas of our lives and with respect to some of our decisions with the aim of leaving us free – *autonomous* – with respect to the big decisions we care about, including choice of careers and personal relationships.²⁷ When it comes to our capacities to make moral judgments or to decide how to live our lives, Conly is concerned to protect our autonomy. She defends coercion when it can pass a cost-benefit analysis aimed at promoting individuals' welfare as seen from their own perspective, where “the whole point is to make people better off by their own lights.”²⁸

²³ *Ibid.*, 149.

²⁴ Conly, *Against Autonomy*, 9.

²⁵ *Ibid.*

²⁶ *Ibid.*, 11.

²⁷ *Ibid.*, 15.

²⁸ Sarah Conly, ‘When Freedom of Choice Doesn't Matter’, *The Tocqueville Review* 37 (1), 2016, 39-58, at 55, 43.

Human Rights, Interests, and Pluralism

Recall that autonomy is one aspect of normative agency and that the latter is the proposed ground of human rights with which I am concerned. But perhaps normative agency is too limited a basis for the range of human rights we should be prepared to defend. One way to put this concern into perspective is to place it within a venerable rights tradition that links rights to *interests*. Consider Griffin's claim that human rights are "*protections* of key human interests. They are protections in virtue of imposing obligations on others to do or to forbear."²⁹ He identifies autonomy, liberty, and welfare – the three elements of normative agency – as "especially important human interests" from which we derive the strong protections known as human rights. Or consider Griffin's claim that it is "because of the special importance ... of these particular human interests that ... we ring-fence them with the notion of human rights."³⁰

Let us consider for a moment the idea that some interests are especially important. Richard Vernon persuasively argues that rights matter because they protect interests of a particular type, namely, "interests that have a special importance to human life", such as the interest in physical security, whose protection has a profound and "pervasive effect over the kind of life I can have, not just over my ability to do this or that particular thing."³¹ Rights, moreover, protect only those interests (such as security and subsistence) with "*general* importance, that is, they cannot be based on some idiosyncratic interest of mine but must be based on the idea of an opportunity or a resource that all or most lives can be said to depend on." In other words, the interests whose importance generates rights "are things that people need whatever their personal or idiosyncratic goals in life."³² Vernon's two points, on the special and general importance of interests, are well taken. It is plausible to see Vernon's discussion as applying to the question of *human* rights in particular. If so, his claims generate questions for the defender of human rights to ask when considering candidates for the content of such rights. First, is the interest the right would protect fundamentally important in living a recognizably human life? Second, is the interest important for all persons regardless of specific differences between them?

As we have seen, Griffin understands his own view as a species of interest-based defence of human rights. One might think that this account is in line with the application of Joseph Raz's view of rights in general to human rights in particular, as follows. As Griffin puts it, on this Raz-inspired view, "a human right arises when there are universal human interests sufficient to justify imposing the correlative duties on others."³³ But Griffin is explicit that Raz's explanation of a right fails because, while it allows more interests to count (beyond autonomy, liberty, and welfare) as grounds for human rights, it threatens to expand the potential range of interests "to

²⁹ James Griffin, 'Replies', in Roger Crisp (ed.), *Griffin on Human Rights*, Oxford: Oxford University Press, 2014, 211, emphasis in original.

³⁰ Griffin, *On Human Rights*, 35, 36. See also *ibid.*, 51-56, 108.

³¹ Richard Vernon, *Historical Redress: Must We Pay for the Past?*, London: Continuum, 2012, 26. Cf. Richard Vernon, *Friends, Citizens, Strangers: Essays on Where We Belong*, Toronto: University of Toronto Press, 2005, 92, 94.

³² *Ibid.*, 26, emphasis in original.

³³ Griffin, *On Human Rights*, 54. For the classic interest-based account of rights, see Joseph Raz, *The Morality of Freedom*, Oxford: Oxford University Press, 1986, Chapter 7.

fill most of the domain of well-being.”³⁴ For example, if we have an important interest “in there being a rich array of options in life from which we may choose”, and if this justifies imposing duties on others to protect that interest, we will be committed to accepting human rights-based duties that extend well beyond what is required to protect normative agency itself. But, according to Griffin, this has two negative implications. First, we lose the ability to distinguish what human rights require from what may be demanded as a matter of distributive justice (e.g., higher levels of wealth and cultural resources); and second, we sever the link to the idea that human rights protect the moral minimum we can demand of each other as human beings.³⁵ As we have seen, Griffin’s appeal to normative agency or personhood as the ground of human rights serves to limit their reach to protecting “that somewhat austere state, a characteristically human life”, rather than “a good or happy or perfected or flourishing human life.” The content of human rights, on this view, is therefore limited in that “they are rights not to anything that promotes human *good* or *flourishing*, but merely to what is needed for human *status*.”³⁶

Accordingly, if one insists on categorizing Griffin’s view as an interest-based account of human rights, this is potentially misleading because only a very limited class of interests count as legitimate grounds of human rights: the basic human interests in securing the conditions of personhood or normative agency, understood in terms of autonomy, liberty, and minimum welfare provision. And one could argue that this is an improvement on the open-ended interest-based conception because normative agency identifies the limited range of interests on which to focus when justifying human rights, interests that pass Vernon’s tests of special and general importance.

It is nonetheless plausible that normative agency is not the only defensible ground of human rights, that there are other interests sufficiently important to put others under a duty.³⁷ John Tasioulas’s main objection to Griffin’s account is that it mistakenly claims that the only appropriate grounds for human rights are those values linked to personhood or normative agency. Tasioulas believes other human interests are sufficiently important to ground human rights, including “accomplishment, knowledge, friendship, and the avoidance of pain”.³⁸ For example, he suggests that the human right to education is based on our interest in knowledge, the human right to work on our interest in accomplishment, and the human right to leisure on our interest in play.³⁹ If this line of thinking is promising, we have the makings of a *pluralist* defence of human rights. For our purposes, pluralism simply refers to the idea that there is more than one basic characteristic or capacity of human beings that properly serves as a justifying ground of human rights.

³⁴ *Ibid.*, 55.

³⁵ *Ibid.*

³⁶ *Ibid.*, 34.

³⁷ John Tasioulas, ‘Human Rights, Universality, and the Values of Personhood: Retracing Griffin’s Steps’, *European Journal of Philosophy* 10, 2002, 79-100; John Tasioulas, ‘Taking Rights out of Human Rights’, in Roger Crisp (ed.), *Griffin on Human Rights*, 14.

³⁸ Tasioulas, ‘Taking Rights out of Human Rights’, 21, 26.

³⁹ *Ibid.*, 26.

Is Griffin's account actually more pluralistic than it might at first appear to be? One might think so, given the fact that the personhood view appeals to three basic values rather than one, thereby making it "trinist" rather than monist.⁴⁰ But at its core the personhood account focuses on one characteristic of human beings that makes them candidates for human rights, namely, normative agency. Autonomy, liberty, and welfare are distinguished as elements needing protection if agency is to be properly valued and protected, but of these three it seems clear that autonomy is central and that liberty and welfare are valued as means to securing individual autonomy.⁴¹ In short, then, Griffin's view is something close to a monist conception of the foundations of human rights. This raises the worry that any candidate human right would be justified only if there is an available agency-based moral explanation for it. And we do find this in Griffin's account of the human right not to be tortured, an account that emphasizes the role of torture in "undermining someone else's will, getting them to do what they do not want to do, or are even resolved not to do."⁴² While this explanation is insightful and revealing about the purposes of torture, it is at least questionable whether we should think that the causing of severe pain and terror could not, by itself, explain why torture violates a human right.

We have been considering the idea that normative agency leaves something important out of one's grounding for at least some human rights. One way to see the case for a more explicitly pluralist set of grounds is to consider the so-called human supremacism objection to the family of views about human rights exemplified by the normative agency defence.

The Human Supremacism Objection

I now turn to a different kind of worry about the personhood or normative agency justification of human rights. The problem is that identifying normative agency as both distinctively human and as a necessary condition for possessing human rights has the unwelcome implication that infants, the severely mentally disabled, and non-human animals are excluded from the privileged group of human rights bearers. For present purposes I will focus only on the distinction between human beings and non-human animals and the exclusion of the latter from the category of basic rights bearers. We can call this *the human supremacism objection*, following the lead of Will Kymlicka, who makes this point as part of his rejection of the 'new dignitarian' accounts of human rights whose proponents (including Jeremy Waldron and George Kateb) appeal to human dignity to both defend human rights and exclude animals from primary moral concern.⁴³ Human supremacism is the view that there is a moral species hierarchy in which human beings have pride of place while non-human animals are denied basic moral status and potentially left unprotected from human domination, oppression, and violence.

Kymlicka makes a plausible case for the claim that Jeremy Waldron, for example, combines his appeal to human dignity with a corresponding assertion of human uniqueness and

⁴⁰ Griffin, *On Human Rights*, 51.

⁴¹ Cf. Griffin, *On Human Rights*, 179-180.

⁴² *Ibid.*, 52.

⁴³ Will Kymlicka, 'Human Rights without Human Supremacism', *Canadian Journal of Philosophy*, January 2018.

human superiority to mere animals.⁴⁴ The worry here is that Waldron is appealing to an old, predominantly religious, conception according to which human beings are special, created in the image of God, and therefore to be accorded higher moral status than the rest of creation, including both the animal kingdom and the natural world more generally. Kymlicka adds to this point the claim that appeals to human dignity have in recent years tended to be strongly correlated with such supremacist thinking. In reply to this view, one might say simply that ever since Darwin we have known that human beings are not special, that we are simply one animal species amongst others, and that therefore we should jettison the belief that the moral status of humans is, by default, at the top of the moral pecking order.

This leads to the following question: Is Griffin guilty of the human supremacism of which Kymlicka correctly accuses Waldron? On the one hand, Griffin does speak of human dignity as being at the core of his account. The natural rights tradition to which he appeals asserted in the twelfth and thirteenth centuries that human beings are unique, in line with the older Jewish and Christian traditions that we are created in God's image.⁴⁵ Griffin also emphasizes the appeal to dignity in this tradition, from William of Ockham in the fourteenth century to Pico della Mirandola in the fifteenth. Pico is a particular hero in Griffin's narrative precisely because he is taken to have conceived dignity as basically autonomy, understood as the key element of normative agency.⁴⁶ In fact, Kymlicka places Griffin in the offending category of supremacist defenders of human rights, that is, those who – wittingly or otherwise – illegitimately single out (some) human beings for special moral status and consequently fail to recognize that needs, capabilities, subjectivity, sentience, the capacity to suffer and the vulnerability that follows from it, all of which we share with non-human animals, are also defensible grounds for fundamental rights.⁴⁷

Yet, on the other hand, Kymlicka's lumping Griffin together with Waldron and other human supremacist dignitarians seems slightly unfair. Unlike Waldron (and George Kateb), Griffin's appeal to dignity does not explain that idea in terms of human possession of it along with the consequent denial of moral considerability to animals altogether. Still, he does understand dignity in terms of normative agency, a capacity that, given its picture of freely choosing a conception of the good for oneself and acting on that conception, one would be hard pressed to find in animals in anything like the same form. Griffin's normative agency defence of human rights has no place for non-human animals, but this is objectionable only if (1) one expects to find a place for animals in an argument for *human* rights, and (2) there is no place for a defence of non-human animal rights alongside one's account of human rights. It is here that I

⁴⁴ *Ibid.*, 7. Kymlicka shows that Waldron distinguishes persons, who possess dignity and value, from "things and animals", and that such dignity implies that persons should not be treated like "dumb animals". See Jeremy Waldron, *Dignity, Rank, and Rights*, Oxford: Oxford University Press, 2012, 12. See also Jeremy Waldron, 'Inhuman and Degrading Treatment: The Words Themselves', *Canadian Journal of Law and Jurisprudence* 23 (2), 2012, 269-286, at 282.

⁴⁵ *Genesis*, 1: 27.

⁴⁶ Griffin, *On Human Rights*, 152.

⁴⁷ Kymlicka, 'Human Rights without Human Supremacism', 8, 16, 24 n. 32. Kymlicka endorses approaches to grounding human rights that appeal to a range of features that humans share with non-human animals, including vulnerable subjectivity and capabilities (*ibid.*, 5).

think the pluralist conception of human rights comes into its own, since it includes normative agency in a central role along with vulnerability and the capacity to suffer that characterize both human beings and non-human animals. In short, what we get is non-supremacist but species-appropriate justifications of rights: non-supremacist because there is no claim that human beings are superior to animals or entitled to use them for their purposes, but species-appropriate because the defence of *human* rights correctly appeals to both our vulnerability and our capacity to choose freely amongst a range of conceptions of a good life, a capacity accurately ascribed only to humans.

This move is almost correct. It avoids human supremacism and emphasizes cross-species continuities in identifying the grounds of human rights, so it is thus far both morally acceptable and empirically accurate. But it is incorrect in demanding that *human* rights must be partly founded on normative agency: the problem here is that many human beings – such as the profoundly mentally disabled -- lack the capacity to form, revise, and pursue a conception of the good for themselves yet they are still entitled to basic human rights in virtue of other features such as sentience. The key point here can be made by quoting the words of the great utilitarian, Jeremy Bentham, who, despite at one time rejecting appeals to natural (or what we would call human) rights, nonetheless looked forward to the day “when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny.” Bentham strongly rejected human supremacism by asserting that moral considerability stems from sentience rather than rationality or agency: “The question is not, Can they *reason*? Nor Can they *talk*? but can they *suffer*?”⁴⁸

One can reject human supremacism, thereby retaining the idea that animals have rights that we have strong duties to protect, without denying the existence of any morally relevant differences between human beings and animals. Griffin’s version of the dignity defence interprets dignity in terms of human normative agency, the capacity to form conceptions of the good life and to pursue these conceptions. We can accept the value of normative agency, noting its role in an account of what makes us human, all the while recognizing that, despite their lacking normative agency, animals matter morally for a range of reasons including their sentience, vulnerability, capabilities, sociality, and needs. But the moral mattering of animals should be explained in terms of *their* interests and characteristics, such as vulnerability and the capacity to suffer, and there is no reason to eschew an appeal to human normative agency simply because that would pinpoint a feature we do not share with non-human animals. The point, in any case, is that a dignitarian – or at least agency-based – account of human rights need not be a version of human supremacism.

Interestingly, Griffin’s own description of normative agency as the ground for human rights explicitly points to its role in distinguishing human beings from non-human animals. Griffin appeals to what he takes to be both distinctive about human beings -- i.e., what distinguishes us from other morally considerable beings -- and morally significant. His “substantive account” of human rights begins with the claim that

⁴⁸ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, J.H. Burns and H.L.A. Hart eds., Oxford: Clarendon Press, 1996, 283.

[h]uman life is different from the life of other animals. We human beings have a conception of ourselves and of our past and future. We reflect and assess. We form pictures of what a good life would be – often, it is true, only on a small scale, but occasionally also on a large scale. And we try to realize these pictures. This is what we mean by a distinctively *human* existence – distinctive so far as we know. Perhaps Great Apes share more of our nature than we used to think, though we have no evidence that any species but *Homo Sapiens* can form and pursue conceptions of a worthwhile life. ... [The key reason to] value our status as human beings especially highly ... centres on our being agents – deliberating, assessing, choosing, and acting to make what we see as a good life for ourselves.⁴⁹

My present point is simply to raise the question whether this plausible account of human distinctiveness necessarily commits its defender to human supremacism. If we accept that human beings enjoy a moral status tied directly to their unique possession of normative agency, does it follow that human rights must take precedence over the rights of animals? I would like to make two points in reply to this question, one point resistant to the thrust of Kymlicka's argument, the other point more sympathetic.

First, a commitment to protecting normative agency need not imply that animals may be treated as mere means to human goals. The apparent fact that Waldron's dignitarianism seems to lack any deep concern for animal suffering does not mean that all defenders of human moral equality must follow him down that road. But second, even though the normative agency or personhood account of human rights does not require a dismissal of animal rights, nonetheless it does make it easier to overlook the basic moral claims of animals. Why so? Here I think the problem lies in singling out normative agency as the ground of human rights. The best way to show this is to explain how a pluralist justification differs from a justification that appeals only to normative agency.

A pluralist foundation for human rights has at least three virtues. (1) It acknowledges that we human beings have non-autonomy interests whose existence alone can justify some human rights. (2) It therefore allows the justification to appeal directly to non-autonomy-based human interests -- such as the interest in basic physical security, freedom from suffering, and basic subsistence – rather than having to link them to one's autonomy-protecting rationale. And (3) a pluralist account of human rights will include some basic interests – again, like security, subsistence, and freedom from suffering – that human beings share with non-human animals. This sharing of interests makes it more difficult to do what some dignitarians seem apt to do, namely, to overlook entirely the partially parallel case for animal rights.

An enormously significant point hammered home by Kymlicka is the tight connection between a range of morally relevant grounds for human rights – such as the possession of basic interests, needs, and capabilities; the need for companionship and social interaction; vulnerability to mistreatment; being embodied subjects of a life – and empirically well-grounded continuities between humans and animals.⁵⁰ In other words, the evidence overwhelmingly suggests that human beings are not special in such a way that would justify a strong qualitative interspecies

⁴⁹ Griffin, *On Human Rights*, 32.

⁵⁰ Kymlicka, 'Human Rights without Human Supremacism', 5, 8, 13-14.

moral distinction between them and animals. On the contrary, many of the deepest facts about humans to which we can appeal in grounding human rights are actually facts about both humans and many other species of animals. Accordingly, the most plausible account of human rights provides reason to be very skeptical of human supremacism or species hierarchy.

In this context it is worth considering David Lynch's 1980 film *The Elephant Man*, in which the disfigured main character, John Merrick -- based on Joseph Merrick (1862-1890) -- proclaims his powerful objection to being publicly humiliated and used merely as a source of amusement for others. Perhaps the most famous line in the film is Merrick's plaintive cry, "I am not an animal. I am a human being." I recall, as a young person watching the film for the first time, being moved to tears by this scene; but it takes on a new meaning in the context of the need to reject human supremacism. Kymlicka mentions Michael Rosen's plausible account of dignity violation as humiliation, exemplified by being put on display in a circus.⁵¹ Merrick was treated like a circus animal. Here the point is that the key objection to his treatment should have been that humiliation of a sensitive creature is morally wrong. This would have the positive effect of applying not only to Merrick but also to circus animals. One can imagine revising the film script to replace "I am not animal. I am a human being" with a slightly longer plea from Merrick as follows: "I am a sensitive social creature. I feel pain and emotional distress. I suffer terribly when treated by all of you in this humiliating way." Nothing in this revised plea depends on placing humans above animals in a moral hierarchy; on the contrary, it could be used by a defender of animal rights to help explain what is wrong with circuses.

Kymlicka rightly wants to emphasize the "corporeal vulnerability" humans share with animals,⁵² but it does not follow that an account of human rights should fail to mention features, such as the capacity to form, revise, and pursue a conception of the good life, that do seem to distinguish many human animals from other species. While human supremacism should be rejected and the multiple continuities shared by human and non-human animals recognized, nonetheless characteristics like the capacity for autonomy (as it figures in Griffin's trinitist conception of normative agency: autonomy, liberty, and welfare) do help make the case for some human rights such as the right to freedom of expression, freedom of assembly and association, freedom of conscience, the right to political participation, and the right to basic education. To sum up, then, the best solution holds that some human rights are grounded in basic interests that human beings share with other sentient creatures, but other human rights are grounded in – and only make sense when they appeal to – *agency interests* that we do not share with non-human animals, interests that help to justify (human) civil rights like the right to free speech and (human) political rights like the right to vote and run for office. Again, this is not to deny the continuity between animals and humans in *many* of their morally significant characteristics, but it is to assert that *some* human characteristics are both morally significant and correctly understood as distinctive to human beings.

It is worth pointing out that Kymlicka, although a proponent of the human supremacist objection, has himself defended both individual rights and group-differentiated ethnocultural rights by appealing to individual autonomy. In his celebrated defence of liberal multiculturalism,

⁵¹ *Ibid.*, 25 n. 42. See Michael Rosen, *Dignity*, Cambridge: Harvard University Press, 2012.

⁵² *Ibid.*, 18.

Kymlicka argues for protecting societal cultures because they provide individuals with meaningful options from which to choose. The argument is premised on the underlying value of autonomous individual choice as a precondition for leading a good life.⁵³ This sort of reasoning fits quite well with Griffin's appeal to autonomy as one of the three basic, highest-level human rights. I take this to be further support for a pluralist view of the grounds of human rights within which autonomy figures centrally.

One aim of a satisfactory account of human rights – and a key aim of Griffin's own view – is to help make sense of both the theory and practice of human rights, where the practice includes the human rights revolutions during the period from 1945 to the present. So Griffin emphasizes the appeal to dignity as a key element of the *Universal Declaration of Human Rights*⁵⁴ in his account of normative agency as what he takes to be the best understanding of dignity. But Kymlicka objects to Griffin's personhood or normative agency account precisely on the grounds that it runs counter to modern human rights practice. Consider that Griffin's theory excludes human babies and the seriously mentally disabled from its purview because they lack the capacity to normatively evaluate competing plans of life.⁵⁵ For Griffin, we have strong moral duties to these vulnerable members of our species; it is simply that those duties are not correlated with human rights because, on his view, such rights protect an individual's capacities to reflect, evaluate, and act on a conception of their own good, but babies and the severely mentally disabled lack these capacities. However, Kymlicka correctly points to the real world phenomena of the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities* to show that human rights jurisprudence and activism includes within its conception of personhood those excluded by Griffin's account. It is no part of current human rights practice to demand a test of normative agency or cognitive competence to determine inclusion as a human rights bearer. As far as human rights practice is concerned, then, persons include “all embodied and vulnerable human subjects, in all of their enormous diversity of linguistic and cognitive capacities” (and if such “corporeal humanism grounds human rights, its logic extends naturally to animals”).⁵⁶

The human supremacism objection correctly puts us on guard against the illegitimate privileging of *Homo Sapiens* that would allow us to run roughshod over non-human animal interests. It also points to the wisdom of focusing on features that ground human rights that we share with animals. Taking these ideas into account should pave the way for defences of both human and animal rights while recognizing that some features of human beings, such as the capacity for autonomy, may support rights only for human beings; still, this is compatible with a strong, rights-focused concern with the interests of animals.

⁵³ Will Kymlicka, *Liberalism, Community, and Culture*, Oxford: Clarendon Press, 1989, 12-13; Will Kymlicka, *Multicultural Citizenship*, Oxford: Oxford University Press, 1995, 80-83; Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, Oxford: Oxford University Press, 2002, second edition, 339.

⁵⁴ *Universal Declaration of Human Rights*, Preamble.

⁵⁵ Griffin, *On Human Rights*, 92.

⁵⁶ Kymlicka, 'Human Rights without Human Supremacism', 24 n. 32.

Conclusion

Earlier I said that the normative agency conception is a variant of the orthodox picture of human rights in that it sees such rights as held by human beings simply in virtue of their being human. In light of the human supremacism objection, however, I should add that ‘simply in virtue of being human’ is potentially misleading if it suggests that species membership is itself duty-generating. On the view I defend, it is normative agency, along with other morally important interests such as vulnerability and the capacity to experience pleasure and pain, that justify the rights of individual human beings. It remains important to talk about human rights, but this should in no way preclude the defence of animal rights, nor should it limit the grounds of human rights to normative agency alone.