

## HUMAN DIGNITY, BIOETHICS, AND HUMAN RIGHTS

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### Introduction

Commitment to human dignity is a widely shared value. Concepts of human dignity reach back to the seminal writings of Immanuel Kant and arguably to the Stoic tradition in ancient Greece and Rome as well. Appeals to human dignity are common in bioethics, philosophy, and legal discourse. Human dignity also serves as the grounding for human rights. In recent years, protection of human dignity has also emerged as a central criterion for the evaluation of controversial technologies, like cloning and embryonic stem cells.

While human dignity is a powerfully evocative and widely affirmed concept, it is elusive as to its precise meaning and requirements. For some people dignity refers to the essential and inalienable core of human nature, but there is disagreement as to what the distinguishing feature of human nature is, and what exactly constitutes the source of dignity. For human rights theorists, human dignity refers to the intrinsic worth of all human beings and the requirement that all human beings should be treated with appropriate respect, but work on human rights has not yet defined the contents and requirements of that human dignity. Others use the concept of human dignity to ground the ethical obligations owed to the human person, and again there are varying interpretations as to the scope of these duties as well as the identification of the duty-bearer(s). Given this situation, there is the distinct possibility that not only the term human dignity may convey a multiplicity of understandings, it may even be referring to different things.

A recent collection of essays commissioned by the United States President's Council on Bioethics begins with an important question: is human dignity a useful concept in bioethics that sheds important light on a wide range of bioethical issues or, on the contrary, is it a useless concept or at best a vague substitute for other more precise notions?<sup>1</sup> That question can also be asked more broadly, for example for human rights, as well. Disappointingly, neither the introductory essay to the volume which raises the issues nor the volume as a whole provides answers. The 19 essays and commentaries which follow them put forward the authors' perspectives on human dignity, and in the process attest to the wide range of views on human dignity, but they do not resolve the question put forward in the introduction. The closest the volume comes is the comment that the march of scientific progress that promises to give us manipulative power over human nature will eventually compel us to take a stand on the meaning of human dignity.<sup>2</sup>

Drawing from the literature on bioethics and human rights, this article addresses the question as to whether human dignity is or could be a useful

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<sup>1</sup> A. Schulman, 'Bioethics and the Question of Human Dignity', in *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics*, Washington, D.C.: Government Printer 2008, p.3.

<sup>2</sup> *Idem.*, p. 17.

concept for bioethics and human rights. It begins with a discussion of the under-conceptualisation of human dignity. The next two sections identify the diversity in conceptual approaches to human dignity in bioethics and human rights. The following section considers some of the problems with using human dignity as an evaluative standard. The article then proposes initial developmental steps to enable the concept to be applied in a more precise and meaningful way, based on Martha Nussbaum's capabilities approach.

### **I. Under-Conceptualisation of Human Dignity**

Writings using a dignitarian standard rarely provide an explicit definition of the term or criteria to apply. Dignity's intrinsic meaning in such documents is often left to an intuitive understanding or an assumed shared understanding. However, in a pluralistic society groups and communities hold a diversity of worldviews, social and religious values, and cultural understandings that inform and shape their interpretation of human dignity. Referencing human dignity without further explication implies a level of social or ethical consensus that simply does not exist.<sup>3</sup>

A lack of clarity about the meaning of human dignity can relegate the concept to be used as little more than rhetorical dressing. A recent analysis I conducted of discussions of human dignity in the literature on reproductive technologies is a case in point. The majority of authors surveyed using human dignity in their ethical evaluations of reproductive technologies neglected to conceptualise dignity. References to human dignity in those publications frequently were offered in passing, perhaps intended as reinforcement of the viewpoints put forward based on other defining ethical considerations.<sup>4</sup> For example, a 2002 report by the United States President's Council on Bioethics on the subject of human dignity and human cloning<sup>5</sup> fails to conceptualise human dignity or address the specific ways in which human cloning may impinge on human dignity. The reference to human dignity appears to be used to convey a sense of general social unease, but with little explanation of how, exactly, cloning threatens human dignity.

The same problem of under-conceptualisation characterises the human rights instruments that so frequently reference human dignity. According to the Universal Declaration on Human Rights: "all human beings are born free and equal in dignity and rights".<sup>6</sup> Because human rights are predicated on the intrinsic value and worth of all human beings, they are considered to be universal, vested in all persons regardless of their country of origin, gender, race, nationality, age, economic status, or social position. This insistence on the universality of human dignity is one of the significant contributions of the human rights paradigm. However, from the text of the Universal Declaration of Human Rights onwards the drafters of human rights instruments have chosen not to identify the source(s) of human dignity or to explicitly define it.

Apparently the drafters of the Universal Declaration on Human Rights realised they could achieve a consensus around the statement that all

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<sup>3</sup> T. Caulfield & A. Chapman, 'Human Dignity as a Criterion for Science Policy', *PLOS Medicine* 2005-2, pp. 0736-0737.

<sup>4</sup> A. Chapman, 'Human Dignity and New Reproductive Technologies', in: N.J. Palpant & S.C. Dille (eds.) *Human Dignity in Bioethics*, forthcoming.

<sup>5</sup> President's Council on Bioethics, *Human Cloning and Human Dignity: an Ethical Inquiry*, Washington, D.C.: Government Printer 2002.

<sup>6</sup> Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A(III), on 10 December 1948, Article 1.

human beings are born equal in dignity and rights, but not about its grounding and implications. The goal at that point in history was to reach a political agreement that atrocities inflicted on large populations, as had occurred during World War II, would not be tolerated by the international community.<sup>7</sup> Or to put it another way, the goal in enshrining 'the inviolability of human dignity' was to prevent a second Holocaust and not to offer a comprehensive philosophical justification.<sup>8</sup> Subsequently, the lack of fixed content associated with human dignity facilitated formulating specific rights and duties that ought to be legislated in the name of human dignity, because doing so did not require compromising varying basic beliefs. The rights and duties enumerated in each human rights instrument reflect the needs identified and the political agreement achieved at that time unrelated to an underlying conception of human dignity.<sup>9</sup>

This may work up to a point when human dignity serves as the symbolic grounding for specific rights, but it can be problematic when human dignity is put forward as a standard to evaluate conduct or policies. This issue will be discussed later in the paper.

## II. Philosophical and Theological Conceptions of Human Dignity

In his overview of the uses of human dignity in bioethics, Adam Schulman attributes at least some of the confusion and disagreement as to its meaning to the disparate sources of the idea of human dignity. He identifies four strands or sources: (1) the classical notion of dignity as something rare and exceptional and therefore worthy of honour and esteem; (2) the biblical account of persons as 'made in the image of God' and therefore possessing an inherent and inalienable dignity; (3) Kantian moral philosophy's identification of human dignity with rational autonomy, with its emphasis on equal respect for all persons and never treating another person as a means to an end; and (4) 20<sup>th</sup> century constitutions and international human rights declarations that cite human dignity as the supreme value on which all human rights and duties are said to depend.<sup>10</sup> Each of these approaches has strengths and limitations as well as approximate modern analogues and applications.

The word 'dignity' comes from the Latin *dingus* and *dignitas* meaning something like 'worthiness of honour and esteem.' The classical or Stoical notion of dignity as something rare and exceptional has aristocratic implications in a democratic and egalitarian age. As Schulman observes, this notion of human dignity lends itself to invidious distinctions between one human being and another. It also raises questions as to what it is about particular people that warrants special admiration.<sup>11</sup>

An aristocratic conception of human dignity has contemporary analogues in the interpretation of human dignity held by the transhumanists and more broadly others who advocate human enhancement. Nick Bostrom, a leading transhumanist theorist, puts forward the idea of dignity "as a quality, a kind of excellence admitting of degrees and applicable to entities both within and

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<sup>7</sup> D. Shultziner, 'Human Dignity – Function and Meanings' 2003 Global Jurist Topics 3: 1-21.

<sup>8</sup> Schulman 2008, *supra*, note 1, p. 13.

<sup>9</sup> Shultziner 2003, *supra*, note 7, p. 5.

<sup>10</sup> Schulman 2008, *supra*, note 1.

<sup>11</sup> *Idem*, p. 7.

without the human realm".<sup>12</sup> For Bolstrom, dignity as a quality in human beings (or for that matter intelligent machines) functions as a virtue or an ideal which can be cultivated, fostered, respected, admired, or promoted.<sup>13</sup> The transhumanist project advocates the enhancement of human beings, including introducing or attaching non-biological entities. Their agenda advocates that individuals should have the right to transform their own bodies as they wish and that parents should have the right to decide which technologies to use when deciding to have children. In contrast, those holding a human rights or other universalist perspectives on human dignity, like myself, anticipate that the use of human enhancement technologies could undermine our humanity or our dignity as humans. Another consideration is that access to any of these technologies is likely to be limited depending on financial means and their availability, with the result that benefits would not be widely shared. This would likely introduce even greater inequalities within and between societies. Enhancement interventions might also introduce invidious distinctions between persons who are 'improved' and those in a natural or 'unimproved' state, thus violating the fundamental human rights principles of equality of status, non-discrimination, and non-stigmatisation.<sup>14</sup>

Biblical religion, Schulman's second strand, contributes the Judeo-Christian scriptural reference to man 'as made in the image of God.' The implication is that human beings thereby possess an inherent and inalienable dignity. One dimension of that dignity, as portrayed in the Book of Genesis, is the special position of human beings in the order of creation: humans are given stewardship or dominion over all things. Schulman's interpretation of this central passage points in another and humbler direction: its reminder that while humans are made in God's image, we are not ourselves divine; we are creatures, not creators.<sup>15</sup> Gilbert Meilaender tries to capture something of this dichotomy when he characterises the human being as 'neither beast nor God' and links human dignity with the acceptance of this in between state.<sup>16</sup>

Several recent books argue that the human rights movement is impoverished by its lack of attention to the religious foundations for human rights and seek to compensate for this deficit.<sup>17</sup> This literature explores perspectives in a very diverse sampling of religions, including some, like Islam, that are often erroneously assumed to be doctrinally hostile to human rights. The dilemma is the lack of common ground. Predictably these books show that there are a wide variety of interpretations and perspectives on human rights even within the same tradition and certainly across traditions.

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<sup>12</sup> N. Bolstrom, 'Dignity and Enhancement', in *Human Dignity and Bioethics*, Washington, D.C.: Government Printer 2008, p. 173.

<sup>13</sup> *Idem*, p. 175.

<sup>14</sup> Some of these concerns are developed in: A.R. Chapman & M.S. Frankel (eds.) *Designing Our Descendants: The Promises and Perils of Genetic Modifications*, Baltimore: Johns Hopkins University Press, 2003.

<sup>15</sup> Schulman 2008, *supra*, note 1, p. 8.

<sup>16</sup> G. Meilaender, *Neither Beast Nor God: The Dignity of the Human Person*. New York and London: New Atlantis Books 2009, p. 5.

<sup>17</sup> E.M. Bucar & B. Barnett (eds.), *Does Human Rights Need God?* Michigan: Eerdmans, 2005; E.D. Reed, *The Ethics of Human Rights: Contested Doctrinal and Moral Issues* Waco, Texas: Baylor University Press, 2007; I. Oh, *The Rights of God: Islam, Human Rights, and Comparative Ethics*, Washington, D.C.: Georgetown University Press, 2007. N. Arnison has a perceptive review of these books in: 'Review of *Does Human Rights Need God? The Rights of God: Islam, Human Rights, and Comparative Ethics*, and *The Ethics of Human Rights: Contested Doctrinal and Moral Issues*,' *Journal of the Society of Christian Ethics* 2010-30: pp. 209-213.

Schulman proposes that the biblical conception of dignity could provide ethical guidance in answering the question of what we owe to others at the very beginning and end of life, to those with severe disability or dementia, and even to tiny embryos: "Seeing human beings as created in the image of God means, in some sense, valuing other human beings in the way a loving God would value them".<sup>18</sup> However, there are several problems with doing so. First, as Schulman himself recognises, we live in a secular society in which many people, among them secular bioethicists, are uncomfortable with citing religious texts and fear the imposition of religious dogma.<sup>19</sup> Second, given the brevity of the references and the differences in the nature of the biblical societies with our own, the implications of the biblical account of human dignity are ambiguous, as for example in the controversies over cloning and stem cell research. Does it mean that every stage of human life is sacred and therefore cannot be destroyed, or is it a mandate to do whatever is necessary to heal the brokenness of creation, including engaging in a fundamental re-engineering of life?

Kantian moral philosophy constitutes Schulman's third strand. Kant's singular contribution is conceptualising dignity as the intrinsic worth that belongs to all human beings and therefore requires equal respect for all persons. His various formulations of the 'categorical imperative' require treating all persons as an end and never merely as a means to one's own ends. Kant, however, located human dignity entirely in rational autonomy, i.e. the capacity to make moral decisions, thereby denying any significance to other aspects of our humanity. His exclusive emphasis on rational autonomy also raises questions as to the status of human beings who do not yet have the powers of rational autonomy (infants and children), who can never obtain them (those with cognitive mental impairment) or who have lost them (those with dementia).<sup>20</sup> Another problem that Schulman points out is that the doctrine of rational autonomy can be difficult to apply, especially in a biomedical context.<sup>21</sup> Schulman also faults Kant's moral philosophy with bequeathing a 'deplorable legacy' in the form of rigid distinctions between a morality of absolute imperatives (deontology) as Kant advocated and one that considers the results of our actions (consequentialism).<sup>22</sup> As noted below, there are many prominent Kantians in contemporary philosophical and legal circles writing on human dignity.

Schulman's fourth strand is the frequent use of human dignity in national constitutions and international declarations. He comments that because of its 'formal and indeterminate' character, the notion of human dignity put forward in these documents "does not offer clear and unambiguous guidance in bioethical controversies".<sup>23</sup> Two relatively recent human rights documents underscore this ambiguity as to the meaning of human dignity and the problem it imposes for using human dignity for guidance in bioethical controversies.

The Universal Declaration on the Human Genome and Human Rights, prepared by UNESCO and then adopted by the U.N. General Assembly in 1999, emphasises that genetic research and applications should fully respect human dignity, freedom, and rights and prohibits all forms of discrimination based on genetic characteristics. Article 2 states that "Everyone has a right

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<sup>18</sup> Schulman 2008, *supra*, note 1, p. 9.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Idem*, p.11.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Idem*, p.13.

to respect for their dignity and for their rights regardless of genetic characteristics".<sup>24</sup> The Declaration affirms freedom of research related to the genome, which is necessary for the progress of knowledge and freedom of thought,<sup>25</sup> but with the caveat that researchers respect principles of caution, intellectual honesty and integrity in the conduct of research and the presentation and utilisation of their findings.<sup>26</sup> The document assigns responsibility to states to take appropriate measures to foster the intellectual and material conditions to foster freedom in the conduct of research on the human genome and to safeguard respect for human rights in the process.<sup>27</sup> The Declaration further stipulates that practices that are contrary to human dignity, such as reproductive cloning of humans, should not be permitted, but it does not illuminate how such practices can be identified.<sup>28</sup>

The 1997 Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine constitutes another effort to address technological developments relevant to health from a human dignity perspective. Parties to this Convention make a commitment to protect the dignity and identity of all human beings and to guarantee respect for their fundamental freedoms with regard to the application of biology and medicine.<sup>29</sup> A central principle of the Convention is that the interests and welfare of persons shall prevail over the interest of society or science.<sup>30</sup> Recognising the need for medical research on humans, the Convention specifies a series of conditions to protect research subjects.<sup>31</sup> It also stipulates limitations to protect human dignity, particularly the types of permissible interventions altering the human genome.<sup>32</sup> But again it does not explain the criteria to identify limitations to protect human dignity.

Adding further complexity, the concept of human dignity in human rights documents is used for a variety of purposes that may be inconsistent with one another. For example, in human rights law, human dignity serves as the source or grounding for all rights. At the same time it is assumed that the specific rights enumerated in the various human rights covenants together comprise the requirements of human dignity. This fundamental tautology has grounded human rights over the past sixty plus years. In addition, the preservation of human dignity is sometimes treated as a right in itself. The constitutions of several countries, including South Africa, Israel, and Germany, articulate substantive rights to dignity.<sup>33</sup>

### III. Legal and Human Rights Conceptions of Human Dignity

Steven Malby identifies three strands of human dignity with particular relevance to philosophical and legal literature interpreting human rights law. The first or Kantian strand associates human dignity with an individual's

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<sup>24</sup> Art. 2 of the 'Universal declaration on the Human Genome and Human Rights', at: <http://www.unesco.org/ibc/uk/genome/project/index.htr>.

<sup>25</sup> *Idem*, Art. 12b.

<sup>26</sup> *Idem*, Art. 13.

<sup>27</sup> *Idem*, Art. 14-16.

<sup>28</sup> *Idem*, Art. 11.

<sup>29</sup> Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, *supra*, note 13, pp. 259 -266.

<sup>30</sup> *Idem*, Art. 2.

<sup>31</sup> *Idem*, Art. 16 and 17.

<sup>32</sup> *Idem*, Art. 13.

<sup>33</sup> S. Malby, 'Human Dignity and Human Reproductive Cloning', *Health and Human Rights* 2002-6, p. 107.

autonomous capacity to make moral judgments. This notion of agency is featured in the writings of Alan Gewirth.<sup>34</sup> Deryck Beyleveld and Roger Brownsword build on the capacity for autonomous moral choice and link it with the ability to perceive the possibility of being harmed to constitute the basis of human dignity.<sup>35</sup> A major problem with the Kantian interpretation, however, as Malby and other analysts, including Schulman, have noted, is that it strips human dignity from the most vulnerable members of the human community, those human beings who are incapable of autonomous moral choice, such as young children or individuals with mental impairment.<sup>36</sup>

A second strand Malby identifies considers dignity as inherent to all human beings, as for example, in the grounding of the various human rights instruments. Moreover, where strand one is primarily concerned with experiential losses of dignity, strand two recognises that dignity can have both subjective and objective requirements.<sup>37</sup> Strand two also contributes the important notion that under some restricted circumstances it may be legitimate to put constraints on the autonomous choices of individuals in order to protect the dignity of other individuals and communities.<sup>38</sup>

In the third strand, dignity becomes public, collective, and prescribed by social norms. Borrowing from Rhoda Howard's work,<sup>39</sup> Malby notes that under this conception of dignity, human dignity is not a claim that an individual asserts against society. Rather it becomes collective and prescribed by social norms. This approach can therefore lead to a claim that a group of persons may possess a form of dignity closely identified with its collective way of life, as for example in relationship to the dignity and rights of indigenous peoples.<sup>40</sup> He also points out that while this approach to human dignity may seem alien to the individualist orientation of international human rights law, Article 29 (1) of the Universal Declaration of Human Rights states that: "everyone has duties to the community in which alone the free and full development of his personality is possible".<sup>41</sup>

#### **IV. Problems with Applying Human Dignity as an Evaluative Standard**

The concept of human dignity is being increasingly used in debates about controversial biotechnologies. In a 2006 article published in *Nature*, Timothy Caulfield and Roger Brownsword document how the concept of human dignity has emerged as a key point of reference for the regulation of science and technology.<sup>42</sup> Given the ambiguity as to the meaning of human dignity and absence of content or criteria that is discussed, it is difficult to evaluate how human worth might be degraded or supported by a given technology or

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<sup>34</sup> A. Gewirth, *Reason and Morality*, Chicago: University of Chicago Press 1978, particularly pp. 63-103.

<sup>35</sup> D. Beyleveld & R. Brownsword, *Human Dignity in Bioethics and Biolaw*, Oxford and New York: Oxford University Press 2001, pp. 49-67.

<sup>36</sup> Malby 2002 *supra*, note 39, p. 108.

<sup>37</sup> *Idem*, p. 109.

<sup>38</sup> *Idem.*, p. 11.

<sup>39</sup> R.E. Howard, 'Dignity, Community, and Human Rights', in: A.A. An-Naim (ed), *Human Rights in Cross-Cultural Perspectives*, Philadelphia: University of Pennsylvania Press 1986, pp. 81-102.

<sup>40</sup> Malby 2002, *supra*, note 39, p. 112.

<sup>41</sup> *Ibid.*

<sup>42</sup> T. Caulfield & R. Brownsword, 'Human dignity: a guide to policy making in the biotechnology era?' *Nature* 2006-7, pp. 72-76.

scientific activity. This has not discouraged both proponents and opponents of specific developments and technologies from trying to use the mantle of human dignity.

An international seminar on this topic which I co-organised found that discussions about the impact of scientific discoveries and new technologies on human dignity frequently take one of these two approaches.<sup>43</sup> In the first, human dignity is used in a conventional legal and ethical manner to emphasise the right of individuals to make autonomous choices. This conception treats human dignity as a means of empowerment. Some scholars have gone so far as to suggest that this is the only appropriate normative use of the idea of dignity.<sup>44</sup>

Alternatively, dignity may reflect a broad social or moral position that a particular type of activity is contrary to public morality or the collective good. Statements that a particular technology infringes human dignity convey a sense of general social unease. It may also register concerns about activities that seem to threaten "those parts of the human condition that are familiar and reassuringly human", without detailed explanation of why and how the activities are troubling.<sup>45</sup> The UNESCO statement about human cloning cited above stands as a good example of such a use. Likewise, in the area of stem cell research, dignity is used as a rationale for limiting research on human embryos. When used in this manner, dignity is meant to reflect a broad social or moral position and as a justification for a policy response – usually a policy that is intended to curtail a given activity. Caulfield and Brownsword see such a trend increasingly dominating the rhetoric of human dignity in debates about biotechnology policies.<sup>46</sup>

An earlier article I co-authored with Timothy Caulfield argued that when used in this vague manner, dignity can silence open debate and may serve to blur an understanding of the real policy concerns behind a given technological innovation or scientific development.<sup>47</sup> Moreover, without a clearer conception of human dignity and its requirements, it is not possible to evaluate technological innovation or scientific developments in the service of protecting human dignity. In more extreme circumstances, it could involve 'intolerant voices (whether of the majority or of an influential minority) expressing negative attitudes about certain practices, which attitudes are then translated into restrictions ostensibly in the interest of respect for human dignity'.<sup>48</sup>

## V. Toward a More Meaningful Concept

There is an obvious need to develop a meaningful concept of human dignity, and preferably with specific criteria that could be used for evaluative purposes. Of the current interpretations of human dignity, Martha Nussbaum's capabilities approach holds promise on both those counts.<sup>49</sup> Her

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<sup>43</sup> The next few paragraphs are based on: Caulfield & Chapman 2005, *supra*, note 3.

<sup>44</sup> R. Macklin, 'Dignity is a Useless Concept', *BMJ* 2003-327, pp. 1419-1420.

<sup>45</sup> R. Brownsword, 'Bioethics Today, Bioethics Tomorrow: Stem Cell Research and the "Dignitarian Alliance"', *Notre Dame Journal of Law, Ethics and Public Policy* 2003-17, p. 15.

<sup>46</sup> Caulfield & Brownsword 2006, *supra*, note 48.

<sup>47</sup> Caulfield & Chapman 2005, *supra*, note 3.

<sup>48</sup> D. Beylveled & R. Brownsword, *Human Dignity in Bioethics and Biolaw*, Oxford: Oxford University Press 2001, p.288.

<sup>49</sup> M.C. Nussbaum, *Women and Human Development: The Capabilities Approach*, Cambridge and New York: Cambridge University Press 2000; M.C. Nussbaum,

theory combines human need and dignity across cultural differences into a concept she refers to as 'capabilities'. She conceptualises human capabilities as 'what people are actually able to do and to be' and as a measure of the extent they can live a life that is worthy of the dignity of the human being. Nussbaum is a 'universalist' in two ways. She seeks to cross philosophical, gender, religious, and cultural barriers in her evidence and formulations, and she holds that all persons possess full and equal human dignity by virtue of their common humanity, including a wide range of children and adults with severe mental disabilities. She distinguishes between this inherent human dignity and respect for that dignity.

Although human beings have a worth that is inalienable because of their capacities for various forms of activity and striving, these capabilities must be nurtured for their full development and their conversion into actual functioning. She argues that the absence of opportunities for the development and exercise of major human capacities can result in a life unworthy of human dignity.<sup>50</sup> The equal worth of all persons confers political entitlements for the development of their capabilities. She identifies capabilities with the basic social minimum governments should provide for their citizens.<sup>51</sup> According to Nussbaum, the social goal should be understood in terms of the government getting citizens above the capability threshold needed for a meaningful life.<sup>52</sup> In the case of individuals who cannot attain the capabilities on her list because of a disability, she insists that they still have these capabilities, for example the right to vote, but may have to exercise them in a relationship with a guardian.<sup>53</sup>

Nussbaum identifies a list of ten central human capabilities. The advantage of her list is that it does not ascribe human dignity to any single characteristic or basic capability, as for example rationality, which would have the disadvantage of excluding from human dignity many human beings with severe mental disabilities.<sup>54</sup> Her list of capabilities captures wide dimensions of human needs and behaviour, more so than the rights enumerated in the various human rights instruments. It also goes beyond human rights to reference such things as senses, imagination, and thought; emotions; affiliation; and relationships with other species.

Her delineation of central human functional capabilities are:

- (1) *Life*: being able to live to the end of a human life of normal length, i.e., not dying prematurely or having a life so reduced as to be not worth living;
- (2) *Bodily health*: being able to have good health, including reproductive health, to be adequately nourished, and to have adequate shelter;
- (3) *Bodily integrity*: being able to move freely from place to place; to be secure against assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for reproductive choice;
- (4) *Senses, imagination, and thought*: being able to use the senses, to imagine, think, and reason informed and cultivated by adequate education, including in experiencing and producing self-expressive works; being able to

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*Frontiers of Justice: Disability, Nationality, Species Membership*, Cambridge, MA. and London: Harvard University Press 2006; M.C. Nussbaum, 'Human Dignity and Political Entitlements', in *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics*, Washington, D.C.: Government Printer 2008, pp. 351-380.

<sup>50</sup> Nussbaum 2008, *supra*, note 55, p.359.

<sup>51</sup> Nussbaum 2006, *supra*, note 55, p. 5.

<sup>52</sup> *Idem*, pp. 67-71.

<sup>53</sup> Nussbaum 2008, *supra*, note 55, p.364.

<sup>54</sup> *Idem*, p. 362.

use one mind protected by guarantees of freedom of expression with respect to political and artistic speech and religious exercise; being able to search for the ultimate meaning of life;

(5) *Emotions*: being able to have attachments to things and people outside ourselves; to love those who love and care for us; in general, to love, grieve, experience longing, gratitude; and justifiable anger;

(6) *Practical reason*: being able to form a conception of the good and to engage in critical reflection about the planning of one's life;

(7) *Affiliations*: being able to live with and toward others, to recognise and show concern for other human beings, to engage in a variety of forms of social interaction; to have the social bases of self-respect and be able to be treated as a dignified being whose worth is equal to that of others.

(8) *Other species*: being able to live in relationship with and with concern for animals, plants, and the world of nature;

(9) *Play*: being able to laugh, play, and enjoy recreational activities;

(10) *Control over one's environment*: on a political level being able to participate effectively in political choices that govern ones' life, including protection of free speech and association; on a material level, being able to hold property, seek employment, and freedom from unwarranted search and seizure all on an equal basis with others.<sup>55</sup>

## Conclusion

Is human dignity a useful concept? My sense is that human dignity has great symbolic power and is a *potentially* useful concept. Moreover, human dignity is too important a concept with too rich a heritage to be allowed to be languish on the trash heap of useless concepts. In addition, I agree with Adam Schulman's comment<sup>56</sup> that issues being raised about the impact of scientific discoveries and new technologies on human dignity make it imperative to gain greater understanding about the meaning and requirements of this significant but elusive concept. Otherwise, references to human dignity in debates about controversial biotechnologies and policy issues will likely be ineffectual and potentially even exacerbate divisions. Moreover, the one goal that all interpreters and groups may agree upon, the protection of human dignity, will never be achieved.

So the issue at hand is: how do we make human dignity a more meaningful and precise a concept? A helpful starting point would be for all users to be specific about the conception of human dignity being applied and to delineate its implications. This will doubtlessly encourage further intellectual development or perhaps reduce inappropriate applications. Optimally, it would be beneficial to work towards a better conceptualised notion of human dignity that might achieve broad consensus and that can also offer specific criteria to use for evaluative purposes. This article has put forward Martha Nussbaum's conception of capabilities as a potential starting point. Until there is greater clarity about the meaning and implications of human dignity, there is a need to be circumspect about using human dignity as an evaluative standard.

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<sup>55</sup> Nussbaum 2000 *supra*, note 55, pp. 78-80.

<sup>56</sup> Schulman 2008, *supra* note 1, p. 17.