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School of Social and Political Sciences

**Dignity and Free Will: The Moral Foundations of the
Human Rights Regime**

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for the Degree of
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Dignity and Free Will: The Moral Foundations of the Human Rights Regime

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Abstract

The concept of human dignity is often placed at the centre of human rights discourse, providing the moral foundation on which human rights are based. Probing deeper into the meaning of dignity, it becomes clear that dignity relates to the supposed innate capacity humans have for free will. When this capacity is restricted, it is taken that a person's dignity is violated. Human rights then become premised on the ideal of individualism, protecting only the right of individuals to retain their capacity for free choice. This is witnessed in the dominance of civil and political rights in the practice of human rights. More expansive notions of social and economic rights prove more difficult to reconcile with a human rights regime premised on dignity.

Recent research in neuroscience challenges the extent to which humans hold the capacity for free will. Taking this research into account, through the methodological approach of reflective equilibrium, this dissertation will examine whether the philosophical underpinnings of human rights discourse remain consonant with recent empirical findings in neuroscience. Where areas of tension are found between human rights discourse and the empirical evidence, alternative moral foundations will be suggested that are congruent with the empirical evidence, which could also offer a more extensive approach to the implementation of human rights.

1. Introduction

When looking for a moral foundation for the global human rights regime, many rely on the concept of human dignity (Habermas, 2010). As some see it, human dignity itself is grounded in free will; human dignity relates to the protection of this domain, allowing for individuals to construct their own plan of life, living according to this plan without interference. Positing human dignity in this way leads to an inherently individualistic perspective on human rights, as the human rights regime must protect the private sphere of each individual in order to safeguard their human dignity. This conception of human dignity assumes that there are no significant internal restraints on free will; thus, in order to protect human dignity, only external restraints need to be guarded against. However, recent research in neuroscience suggests that there are internal restraints to free will, located in the relationship between the brain and conscious awareness.

This dissertation will take as its research question: does human dignity provide a stable moral foundation for the global human rights regime? Taking into account research in neuroscience that challenges how we think about free will, this dissertation will ask whether a conception of human dignity congruent with research in neuroscience would provide a more secure foundation. As research in neuroscience suggests there are internal constraints on an individual's free will, this dissertation will examine areas of tension that exist between human rights discourse and empirical evidence within neuroscience. In order to resolve these tensions, alternative moral foundations will be suggested.

Drawing out the ways in which free will is foundational for dignity, the theories of free will used to support dignity will then be assessed against empirical evidence from neuroscientific research, in a process of reflective equilibrium. In reflective equilibrium, judgements and principles are assessed alongside one another; where there is discord between them, the judgements are adjusted in order for them to become congruent with the principles (Rawls, 1971, pp.48-51). Over the following two chapters, judgements regarding human dignity will be drawn from the literature, particularly in relation to free will. The third chapter will examine work in neuroscience on free will, and the implications this has had for philosophy, deriving

principles that are broadly applicable in relation to both the empirical evidence, and the theories that have been made in light of the work. Judgements identified in the first two chapters will then be assessed against these principles in the fourth chapter, in order to evaluate dignity's stability as a moral foundation for the global human rights regime. Following this analysis, where areas of incongruence are found between the principles and judgements, alternatives will be suggested in the fifth chapter.

Dignity will be explored in the first chapter, in order to better understand its meaning. Though there are several ways in which dignity can be understood, it will be argued that the concept of free will is central to the meaning of dignity. The second part of this chapter will explore the relationship between human dignity and free will. When dignity is grounded in free will, dignity becomes premised on a belief in the capacity of humans for free choice. The various metaphysical positions on free will are also examined, drawing out those positions that are most relevant for theories of human dignity. The ways in which human rights are affected by their moral underpinnings will be explored in the second chapter. It will be argued that when dignity is used as a moral foundation for a human rights regime, human rights become an individualistic ideal, whereby the ultimate aim is the protection of the individual's free will; human rights that are less concerned with free will, such as social and economic rights aimed towards securing collective material goods, are harder to support with dignity as their moral foundation.

In the third chapter, I will examine research in neuroscience that challenges how we think about free will. Beginning with Libet's work in the 1980s, I will assess the way in which subsequent work in neuroscience challenges the limits of free will. I will then turn to the responses to Libet's work, including criticisms by philosophers such as Mele and Dennett, in order to clarify the extent to which Libet's work has challenged free will. More recent work in neuroscience will then be taken into account, in particular research within the field of social neuroscience.

The fourth chapter will then assess whether there are implications for human dignity as a moral foundation for the human rights regime. It will begin by assessing theories of dignity drawn from human rights theory against principles drawn from

work in neuroscience and philosophy, following Libet's experiment. Subsequently, it will analyse these principles in more depth and draw out areas of incompatibility. A reformulation of human dignity will be suggested that takes empirical evidence into account. The fifth chapter will assess the implications this reformulation has for the implementation of human rights, and the vulnerability hypothesis will be examined as an alternative moral foundation for human rights.

1. Human Dignity

Human dignity has been of importance in Western societies since Roman times, when its etymological root, *dignitas*, denoted an individual's status within society (McCrudden, 2008, pp.656-657). Developed further by various philosophers during the intervening time, the concept of dignity entered into modern human rights discourse in the 1940s, with its usage in the International Labour Organisation's Philadelphia Declaration, the Charter of the United Nations, and the Universal Declaration of Human Rights (UDHR) (McCrudden, 2008, pp.675-676). The Charter of the United Nations states in its preamble a desire 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person' (United Nations, 1946). In the preamble of the UDHR, it is stated that the 'inherent dignity' of every individual human being and their 'inalienable rights' are the foundations of 'freedom, justice and peace in the world' (United Nations, 1948). The International Covenant on Civil and Political Rights (ICCPR) states in its preamble that rights 'derive from the inherent dignity of the human person' (Waldron, 2012, p.201). Though human dignity is ubiquitous throughout human rights discourse, having been referred to in further documents related to the protection of human rights since the UDHR (McCrudden, 2008, p.669), there are numerous ways of defining dignity, and its meaning is not always clear (Shachter, 1983, pp.848-849).

Within modern human rights discourse, dignity has come to hold a meaning that is at odds with ancient understandings of dignity. Whereas in Roman thought, dignity referred to a person's worth, and thus existed in relation to that person's status in society (McCrudden, 2008, pp.656-657), in human rights discourse, dignity is inherent in the human individual, regardless of that person's societal position. The modern sense of its meaning could already be detected in Cicero's writings, and this

conceptualisation of dignity was further developed through the Enlightenment. Stripped away from its signification of social status, several alternative moral sources were posited in order to define dignity (McCrudden, 2008, pp.656-659). Cicero used the concept of dignity to distinguish humans from animals; the superiority of the human mind over the animal mind lent humans an inherent source of dignity. Following Cicero, thinkers throughout the Middle Ages and the Enlightenment viewed dignity as being inherent in the human condition, though their understandings of dignity differed. Some – such as Pico Della Mirandola – thought dignity was granted by God, others – such as Kant – viewed it in relation to reason. Though several moral sources have been suggested on which dignity can be founded, as Shachter notes (Shachter, 1983, pp.848-849), the specific ways in which dignity can be understood practically – how dignity affects behaviour and human relations – are less clear. Shachter posits that Kantian morality is useful in developing a practical understanding of dignity.

Within Enlightenment thought, Kant was pivotal in founding dignity upon reason (McCrudden, 2008, p.659). Kant conceived of dignity as being attained through respect of the imperative – to always treat others as ends in themselves rather than means (Kant, 2005, p.113). Achieving this requires individuals not to subject others to the force of their own will, and to respect their capacity for free choice. Through doing so, individuals come to inhabit the ‘kingdom of ends’, and it is their status as members of this kingdom that grants them dignity. It is here that free will – the question of whether an individual could have acted other than they did (Van Inwagen, 1975, p.188) – comes into relation with human dignity. In respecting the individual’s capacity for free choice, it is assumed that individuals possess free will: that in any given situation, they have the capacity to choose a different course of action than that which they decide on, and that this capacity is free of both internal and external constraints. As Habermas notes, rights being premised on a respect for free will leads to an individualistic conception of human rights (Habermas, 2010, pp.473-474), in which free will is sacrosanct, and each individual must not transgress against the free will of another. Therefore, when human rights are premised upon a conception of human dignity – which, in turn, is grounded in free will – human rights become necessarily individualistic, as they must protect the domain of each individual’s free will.

Since coming into significance in Roman thought through its etymological root, *dignitas*, the concept of human dignity has undergone much development. Its usage in contemporary human rights discourse, though not without contestation, tends to draw on liberal understandings of dignity (Howard and Donnelly, 1986, p.802), wherein the individual is viewed as being capable of exercising their own free choice. Human rights are delimited by their moral foundation; thus, when premised on a conception of human dignity for which free will is key, human rights can only develop insofar as this understanding of dignity will allow – rights that contravene the idea of free will become difficult to support. However, before examining how human rights are affected by their moral foundation, it will first be necessary to further examine the subject of free will.

1.1 Free Will

Before proceeding, it will be helpful to establish an understanding of the three dominant approaches to the question of free will: *hard determinism*, *compatibilism*, and *libertarianism*. *Hard determinism* is the view that all matter in the universe is subject to physical causation; because of this, under a set of identical conditions, the same physical events would unfold in any scenario; no matter how many times it was repeated, if the same conditions were applied, the same outcome would be achieved (Dennett, 2003, pp.56-57). Due to this, there is no room for human agency, and all human actions are the products of the physical environment in which they exist. *Compatibilism* concedes that all matter is subject to the laws of physical causation; however, compatibilists argue that there is space for free will within a deterministic universe. *Libertarianism* is the claim that we live in an indeterministic universe (Dennett, 2003, pp.97-101). From the subatomic level up towards all higher levels, physical matter is not entirely subject to a chain of causation that determines its future state. Due to this, there is space for agency; humans are able to act of their own will, breaking a chain of physical causation.

Kantian metaphysics, which can be found at the root of theories of dignity founded on free will (Habermas, 2010, pp.473-475), often prove difficult to define, as there are debates over whether Kant was a hard determinist, compatibilist, or libertarian

(Vilhauer, 2004, p.719), and Kant himself made changes to his definition of freedom throughout different works (Ameriks, 2000, p.71). For Kant, the type of freedom that morality depends upon is related to the ‘fact of reason’; the ability of humans to practise reason grants them moral freedom. Kant conceived of free will as the capacity of individuals to make laws for themselves, and live according to them, ensuring that these laws are compatible with the laws of others, and that they follow the principle of treating individuals as ends in themselves, never as means (Habermas, 2010, pp.473-475). However, these moral laws are both universal and individualistic. Through their capacity for reason, individuals are able to comprehend and act according to the moral laws, which are universally applicable (Kant, 2005, p.87). Central to the idea of Kantian moral laws is the concept of the categorical imperative (Kant, 2005, pp.96-97). The categorical imperative is the principle that when an individual acts, they ought to act as if in accordance with a universal law; that the action they performed would always be performed by any individual in identical circumstances. It is through acting according to this imperative that individuals come to treat one another as ends in themselves rather than means. Habermas posits a theory of human dignity upon these ideas, and Kant also related dignity to this ‘kingdom of ends’ (Kant, 2005, p.113). Upon this conception of human dignity, Habermas notes that human rights are inherently universalistic (Habermas, 2010, pp.473-475); as moral laws that all individuals should behave according to, rather than the laws of any state – a stance reflected in the universalism of the Universal Declaration of Human Rights, that guarantees all individuals equal rights regardless of the nation-state of which they are a citizen (Freeman, 2011, pp.41-43). Living according to these moral laws, it becomes imperative that each individual respects the domain of free will possessed by every other individual as inviolable.

Yet the question remains as to how it is possible for individuals to exercise their free will and live according to moral laws. Kant took a novel approach to this question. Fundamental here is the distinction Kant draws between the noumenal and the phenomenal (Vilhauer, 2004, p.719), the noumenal being the thing as it is in itself, and the phenomenal being the thing as it appears in time. While the phenomenal self is subject to laws of determinism, the noumenal self exists freely from these laws (Vilhauer, 2004, pp.728-729), as for Kant, empirical events are only appearances to

the phenomenal self. The noumenal self, which exists outside of the laws of physical causation, is able to establish physical causations that result in empirical events as they appear to the phenomenal self. Thus, though not denying the laws of physical determinism, Kant retains a belief in free will.

This capacity for free will and rational choice is what distinguishes humans from other animals, according to Lee and George (Lee and George, 2008, pp.174-175). It is an innate attribute of humans that is indivisible. For Lee and George, while in certain situations dignity may appear to be diminished, such as when an individual is humiliated socially, suffers pain, or has a reduced capacity for free choice due to physical restrictions, the inherent human ability to make rational choices ensures that human dignity cannot be entirely removed from an individual. Yet Lee and George's understanding of free will differs from Kant's, as the metaphysical underpinnings are drawn from Kane's libertarianism (Lee and George, 2008, p.186; Kane, 1998). Thus, as individuals are not constrained in their actions by deterministic laws of physical causation, Lee and George posit that individuals are able to consciously choose a course of action, their choice being determined in the act of choice itself, rather than the events prior to the act of choice (Lee and George, 2008, pp.185-190). Accordingly, this capacity must be respected; governments must respect the right of its citizens to make free choices. Similarly, Waldron defines dignity as the individual's 'ability to control and regulate' actions in relation to their 'apprehension of norms and reasons' that exist in regard to that individual (Waldron, 2012, pp.200-204).

This places a high level of demand on the criteria necessary for free will. Actions must not only be entirely controlled by the individual in the act itself, in the act of choice, they must be consciously decided (Lee and George, 2008, pp.185-190). In this libertarian conception of free will, through their consciousness, humans have the ability to think across space and time, reflecting on past experiences as they decide on their current course of action. Through this, they are able to be objective in their decision-making, learning from previous successes and failures. A high level of demand is placed on free will, as for actions to be considered free, a large amount of objective decision-making must be involved in the process of conscious thought preceding the action, and the action itself must be consciously controlled. Yet for

those who view human dignity as being hinged on a libertarian understanding of free will, it is this capacity for conscious decision-making that distinguishes humans from animals, and thus gifts humans with something unique that is worthy of protection. For this reason, human dignity enshrines the need for human rights.

While in Roman times, *dignitas* referred to a person's status within society, in modern times dignity is viewed as something inherent in the human individual, independent of their social status. How dignity came to inhabit the human condition is less clear, as is dignity's practical significance. It was thought by some that dignity was granted by God, while philosophers of the Enlightenment such as Kant saw dignity as being dependent on human reason. When dignity is referred to within human rights discourse, its meaning tends to be closer to understandings of dignity drawn from the Enlightenment. God is not referred to in any of the documents mentioned at the beginning of this chapter, and in these documents, dignity is viewed as being equal in all humans, rather than existing in relation to their 'worth' to society. Thus, in human rights discourse, dignity often relates to some form of human reason, and the capacity of humans to think and act freely, though the precise formulation according to which this capacity exists is not consistently agreed on. Contemporary philosophers such as Habermas draw on a Kantian conception of free will, while Lee and George base their understanding on a libertarian ideal. Though the ontological and epistemological ideas that inform the concept of human dignity can differ, dignity nevertheless is central to human rights discourse, and some form of free will serves as its basis. Contained in these various forms of free will is the position that humans are capable of making free choices.

2. Dignity and Human Rights

The moral idea of dignity influences the way human rights are conceived of by NGOs and intergovernmental organisations, along with the way in which they are implemented in international and national law. When dignity is conceptualised as being dependent on free will, the need for civil and political rights becomes clear, as there is a need to protect each individual's free will from the potential violations of other agents. Human rights then become premised on *negative freedom*; freedom *from* intrusions into the private sphere that have the potential to contravene an

individual's free will. Shachter argues that the rights supported upon this position are those such as the right of the individual against the incursions of the majority, the right to freedom of thought and conscience, and a separation between the public and private spheres that leaves space for individual and familial life (Shachter, 1983, p.850). *Positive freedom* – the freedom *to* do something, whether that is to obtain material goods or realise a form of self-determination – is harder to reconcile with a conceptualisation of dignity for which free will is foundational. Under this conceptualisation, it is taken for granted that if there are no external obstacles, an individual is free to act, and therefore positive freedoms are unnecessary. Therefore, social and economic rights – such as the right to material goods, education, and a decent standard of living –, which are premised on positive freedom, become difficult to defend within the scope of human rights discourse, when the primary motive of human rights is to protect dignity.

Scholars have identified innate problems with the main objective of a political system being the protection of individual free choice. Marx thought that liberal freedoms would lead to individuals being atomised and isolated from one another (Waldron, 1987, pp.125-132). Safeguarding every individual's right to free choice would lead to individuals viewing one another as potential limits on their own freedom, limiting the capacity for individuals to cooperate and sacrifice their own self-interest for the collective good. Inherent problems with the protection of free choice are also noted by Goodin; in a reformulation of a phrase from Marx, Nozick wrote, 'from each as they choose, to each as they are chosen' (Nozick, 1974, p.160). Goodin argues that respecting free choice naturally leads towards a commitment to Nozick's principle (Goodin, 1981, pp.97-98). As Goodin states, according to this principle, individuals who are not 'chosen' may be left without a decent standard of living, yet so long as their free choices are not restricted by the state or other individuals, their dignity is left intact. Nozick's principle therefore leaves individuals vulnerable to many kinds of privations and sufferings, with their alleviation being dependent on the free choices of either themselves or others. Where a person's material circumstances prohibit them from accessing a decent standard of living, and others are unwilling to assist them, they would be left to suffer. Hence, if only the protection of free choice serves as the foundation of human dignity, human rights leave individuals open to many other forms of harm.

Yet Shachter does note that economic concerns are implicated within the idea of dignity (Shachter, 1983, p.851). For all its association with individualism and the protection of individual free choice, the concept of dignity was nevertheless foundational in the ILO's Philadelphia Declaration (McCrudden, 2008, pp.675-676), an organisation that serves to protect economic rights. This is perhaps not surprising, as according to most modern theories of dignity, it applies to all universally; some form of basic equality must exist in relation to dignity, and as economic inequality can inhibit a person's capacity for free choice – through barring their access to the basic necessities of life – some argue that human rights discourse should incorporate arguments for economic equality. Liebenberg has put forth the argument that dignity is central to the protection of socio-economic rights (Liebenberg, 2005, pp.4-5). The right to life, a right recognised in the South African constitution, is not only the right to exist, according to Liebenberg (Liebenberg, 2005, pp.10-12). It is a relational concept, based on the value of human dignity, a value that does not reside in atomised individuals, but in the bonds between humans. Following Shachter's reasoning (Shachter, 1983, p.849), Liebenberg argues that dignity is not an ideal recognised through self-evaluation; it is one that is realised by a community, which values the lives of all of its members. Recognising the right to life means not only acknowledging the right to live, but also the right to live a life as a valued member of a community, and to live with a decent standard of living. However, Liebenberg recognises that individual free choice remains central to the idea of dignity (Liebenberg, 2005, p.9), and that the use of dignity as a moral foundation for the implementation of socio-economic rights is unconventional, as dignity can, and often does, exist in tension with socio-economic rights (Liebenberg, 2005, pp.5-6).

As Shachter notes however (Shachter, 1983, p.851), there are others who argue that attempts to secure economic equality are an infringement on individual personal freedom, and thus violate dignity. Following a Kantian conception of dignity, positive freedoms cannot be supported, as the demand for some kind of material good would infringe the dignity of the person forced to supply the good (White, 2003, p.6). For Kant, economic inequality did not necessarily exist in tension with equality of dignity. Only if an individual's low economic status reduced them to

being the slave of another with higher economic status would Kant view their dignity as being diminished. Furthermore, Guttman states that rights extending beyond the protection of basic human dignity dilute the meaning of human rights, as the amount of rights needed becomes excessive and unenforceable (Guttman, 2001, pp.IX-X). However, both Kant and contemporary human rights scholars such as Guttman recognise the need for a form of basic economic assistance; as Guttman notes, starving people are denied their agency. Yet with dignity as the central moral concern of the global human rights regime, the protection of individual rights and negative freedoms is its main objective.

Heretofore, the development of the global human rights regime has reflected this concern. Scholars of human rights such as Karel Vasak identify three generations within the movement (Wellman, 2000, pp.639-640). The first generation consisted of civil and political rights, growing out of the political movements of the 18th century, and documents produced by these movements, such as the French Declaration of the Rights of Man and the Citizen, and the American Bill of Rights (Bill of Rights, 2016; The Avalon Project, 2008). Contained in these documents was the desire to limit the power of the state over the individual, and to secure the basic freedoms of individuals: the right to own property, to free speech, to a fair trial, to a private life, and to belief. Economic, social, and cultural rights constitute the second generation of rights, and came into formation at the beginning of the twentieth century (Wellman, 2000, pp.639-640), while the third generation of rights – cultural, environmental, developmental, and the right to peace – did not come until the late twentieth century. There are scholars who contend that human rights discourse reflects its own chronological development, with preference still given to the first generation of rights over the subsequent generations, with the second and third generations often facing resistance (Marks, 1980, p.440).

Though Marks notes it would be an oversimplification to state that the first generation of rights granted negative freedoms exclusively (Marks, 1980, p.438), as democratic rights and the right to a fair trial can be seen as positive freedoms that require state action, positive freedoms are nevertheless far more prevalent within the subsequent generations. Thus, negative freedoms carry greater weight than do positive freedoms within human rights discourse, partly due to their greater

prominence in the first generation. However, it is not only the way in which the human rights discourse has developed that has led to the dominance of civil and political rights, but also the moral premise on which they are founded. For Freeman, the single human individual is the fundamental moral unit of human rights discourse (Freeman, 1995, p.25). Positive freedoms such as collective cultural rights can exist in friction with individual rights, and Freeman finds this problematic (Freeman, 1995, p.39).

With human dignity at the centre of human rights discourse, the free choice of individuals remains sacrosanct, and while concessions can be made to social, economic, and cultural rights, when they come into conflict with individual rights, human rights scholars such as Freeman object to them. As Mount Jr. argues, when the notion of dignity is tied to the idea of the self (Mount JR, 1983, p.27), it naturally follows that independence is of central importance; to protect a person's dignity is to protect their free will, leaving the individual independent in their capacity for free choice. Anything that violates their independence thus violates their dignity. Conceptualised in this way, dignity provides a firm basis for the protection of the individual, and the individual's private sphere in which they are able to exercise their free will. However, rights that do not sanctify the independence of the individual can be viewed as transgressing their dignity. A person who is granted welfare payments can be viewed as being dependent on these payments for their survival; therefore, in return for access to welfare, they sacrifice some of their independence, and thus also their dignity.

Therefore, as it currently stands, the global human rights regime is premised on the protection of negative freedoms. The central text of contemporary human rights, the UDHR, upholds rights such as: the right to life, the right against slavery, the right against torture, the right against arbitrary arrest, freedom of religion, and freedom of expression (United Nations, 1948), all of which are negative freedoms, requiring inaction on the part of the state, unless private actors attempt to transgress these rights. All of these rights are stated in the first twenty-one articles, which are primarily focused on civil and political rights, and with the exception of rights to democratic participation, and the right to a fair trial, which require some action from the state, these articles serve to protect negative freedoms. It is only with the twenty-

second article that social, economic, and cultural rights are granted. Articles twenty-two through to article twenty-nine establish rights such as: the right to social security, the right to employment, the right to leisure time, the right to health, food, clothing and housing, the right to education, and the right to participate in the cultural life of the community. The securing of these positive freedoms establishes a basic level of economic and social security, without placing what may be deemed an excessive level of demand on the provider of these rights. This framework of rights closely follows the Kantian conception of dignity, in which a minimal level of economic security must ground human dignity, though beyond this, a disproportionate demand would be placed on another agent (White, 2003, p.6). In this way, free choice is protected through the prevention of external interference, and a basic level of economic security ensures choice is not restricted through the absence of material goods necessary for survival.

However, the central tenet of this underlying moral system, the protection of free choice, exists in tension with certain strands of scientific knowledge. The following chapter will explore contributions from neuroscience on the capacity humans have for making free choices, along with the subsequent philosophical debate these contributions have precipitated, before assessing whether human dignity – when grounded in free will – remains a stable moral foundation for the human rights regime, in chapter four.

Yet it should be noted that there are some political theorists who argue that conceptions of free will in political theory should not be hinged on metaphysical considerations. Dubljević posits that autonomy in political theory finds its legitimacy in democratic authority; rather than relying on notions of freedom drawn from metaphysics, freedom conceptualised in this manner becomes a matter of social agreement (Dubljević, 2016, pp.W1-W2). This argument is based upon previous assertions made by Rawls. Rawls wrote that autonomy should be a political rather than metaphysical or moral value (Rawls, 2005), and found three necessary requirements for autonomy: people must think of themselves, and of others, as being capable of forming a conception of the good, they consider themselves able to pursue their conceptions of the good through their institutions, and they must regard themselves as being able to take responsibility for their ends (Rawls, 2005, pp.30-

33). However, in the assumption that people are able to form their own conceptions of the good, and have the capacity to take responsibility for them, there are deeper questions of the mechanics that allow for these actions to be taken. The capacity for free choice has been challenged by research in neuroscience. While freedom in political theory can be thought of as an issue of social agreement, there are nevertheless assumptions made about our capacity for free choice. The following chapter will further explore this capacity.

3. Neuroscience and Free Will: The Metaphysical and Moral Implications

For many human rights theorists, the natural capacity of humans to make free choices is an essential and defining feature of the human condition; it is this element of humanity that provides the moral foundation for human rights. Yet the extent to which humans are free to choose has been challenged by research in neuroscience. Research by Kornhuber and Deecke in 1965 first revealed the electrical change in the brain that occurs before an individual acts, which they termed ‘readiness potential’ (RP) (Libet, 1999, p.49). Libet expanded on these experiments in an attempt to understand the timeframe in which these electrical changes occur, and thus to understand whether conscious will preceded the RP. According to conventional theories of free will, Libet thought the conscious will to act should occur either before the RP, or simultaneously.

In Libet’s experiments, 40 participants observed a clock face with one hand moving 25 times as fast as a normal second hand, in order to account for milliseconds (Libet, 1999, pp.49-51). The subjects were then asked to flick their wrist whenever they desired to do so, and note the position of the hand on the clock at the precise moment they felt this desire. While this happened, electromyogram (EMG) scans measured the electrical movement of muscles, and activity in the brain was also assessed, using electroencephalography (EEG). The results showed that before the flick of the wrist, the RP appeared 550 milliseconds beforehand, while the conscious will to act occurred 200 milliseconds prior to the act. Adjusting for errors of measurement noticed during previous tests, Libet added an additional 50 milliseconds to the time of the conscious will to act, meaning 150 milliseconds passed between the conscious

will towards action and the act itself. This meant there was an average gap in time of 400 milliseconds between the RP and the conscious will to act. Libet also noted that RP was also likely to occur before the 550 milliseconds recorded, as the RP is thought to originate in an unknown area of the brain.

Thus, the experiments appeared to show that the brain worked ahead of an individual's conscious awareness of the desire to act, leading Libet to question whether there were ramifications for how we think about free will. The 150 milliseconds between the conscious intention to act and the act itself led Libet to believe there was some space left for human agency (Libet, 1999, pp.52-53). However, rather than being able to initiate the action consciously, under these conditions, the individual has only the capacity to veto an action. Yet Libet's evidence around this was unclear, and even the veto function appeared to be subject to restrictions. Some suggested that the veto function was developed unconsciously, further undermining the case for conscious control of actions. Libet finds an alternative, though limited, role for free choice in the concept of awareness. Awareness, according to Libet, exists apart from the precise moments that occur during the process from RP to action, and is not subject to the restrictions of their content. Developing after the onset of RP, the concept of awareness is applicable to the whole subsequent process, and Libet posits that some kind of free will exists within it. At a minimum, actions can be considered to have been voluntarily made if subjects can report having being aware of their intention to act (Cacioppo and Berntson, 2012, p.36). Free will is here viewed within extremely narrow confines, but some form of it nevertheless remains.

Libet did not anchor theories based on this work to a broader metaphysical position, considering the findings compatible with both determinism and indeterminism (Libet, 1999, pp.54-56). Finding value in the phenomenal feeling of free will, Libet also did not desire to stop people from feeling they acted of their own free volition. However, Libet did argue that from a moral position, the findings of the research were more compatible with negative orders than positive orders. Using the biblical example of the Ten Commandments, Libet finds the demand 'thou shalt not' to be congruent with the neuroscientific evidence. As the impulses towards action are begun in the brain outside of conscious awareness, individuals may struggle to live

according to a moral system that made positive demands of them. But the veto function that arrives 150 milliseconds before the action leaves them with the capacity to cancel their act. Therefore, a moral system that demands people not to act is compatible with Libet's empirical evidence. However, a moral doctrine that made positive demands of people would prove more difficult to reconcile with Libet's work.

The neuroscientific evidence obtained by Libet has been interpreted in a number of ways in neuroscience and philosophy, and in terms of both its metaphysical and moral implications. In works that both refute and support Libet's findings, time is viewed as a crucial factor in the process. According to Wegner, the roots of desires are difficult to untangle, and what leads an individual to desire to act could potentially begin long before the process has begun (Wegner, 2003, p.55). To locate the origin of a desire would involve studying a much lengthier process than the one that occurs between RP and the action. However, Wegner's work further supports Libet's position, and Wegner attempts to further weaken the case for consciously controlled actions. Wegner writes that consciousness is always 'late' to the event; in the case of short events, the evidence for this is even stronger (Wegner, 2003, pp.59-61). In the act of picking up a ringing telephone, the conscious awareness of the action can be far behind the action itself. For Wegner, consciousness itself is ultimately an illusion.

Others have been more critical of Libet's work, and argue that it does not disprove compatibilism or libertarianism. Dennett again focuses on the timing of the process. Dennett begins by noting that Libet does not take into account the time it takes to visually process information (Dennett, 2003, pp.231-234). The gap between the RP and awareness of the intention to act could be explained by the delay in processing visual information. Libet's view of where conscious awareness is located in the brain is problematic for Dennett. Within the process of looking at the clock face, deciding when to act, and noting the timing of the decision to act, several parts of the mind are involved. There is the vision centre, the part responsible for making practical judgements, and the part Dennett terms the 'Cartesian Theatre', what is commonly understood as the central location of consciousness, where final decisions are felt to be made. However, determining the location of where the actual decision is made

proves difficult. Furthermore, the decision-making process can actually involve a much shorter time frame than the one identified by Libet. As Dennett notes, a tennis player is capable of serving a tennis ball from one side of the court to the other in 450 milliseconds, 100 milliseconds less than the 550 milliseconds involved in Libet's process (Dennett, 2003, p.238), and the other player is required to attempt to return this service within this timeframe, speeding up the process between intention and action. Yet though decision-making is performed extremely quickly, it provides a similar example to Wegner's answering of a ringing telephone. Though a decision is made, conscious awareness of the decision-making process can be delayed in such quick actions.

In addition to the difficulty of locating the moment a decision is made, Mele draws a distinction between choices that are made seemingly at random, and choices that are informed by reason. In Libet's experiments, the subjects were asked to flick their wrist at any point during the experiment; at no point was there ever a motivation for them to do so. For Mele, this is akin to choosing a jar of peanuts in a supermarket from a stack of identical jars (Mele, 2014, pp.13-14). There is no motivation for choosing one of the jars over any of the others, and so the choice will be made more or less at random. However, in a situation where a range of options is presented, in which there would be specific motivations for choosing one option instead of the others, Mele contends that the decision-making process involved would be distinct from one in which there was no motivation.

The precise time of the moment a decision is made is also central to Mele's criticism of Libet's work. Mele states that there is no way for Libet to prove that the RP is actually the moment a decision is made (Mele, 2014, p.12). Instead, Mele argues that the RP is something that precedes an intention to act, rather than the intention itself (Mele, 2014, p.19). Thus, as in Dennett and Wegner's work, Mele finds difficulty in determining when an intention becomes an ultimate decision to act. Overhanging this process is Mele's concept of motivation. Along with distinguishing random choices from motivated choices, Mele also identifies a difference between pre-determined choices and choices made in the moment before action (Mele, 1997, pp.320-321). Actions decided on in the moment, such as in Libet's experiment, can be thought of as one continual process, from the intention to

the action, and must be regarded separately from pre-determined actions, where the intention is separate from the action. Therefore, the returning of the tennis ball, or the answering of the telephone, must be distinguished from the attending of a meeting arranged a week earlier. In the latter example, various competing motivations can be weighed against one another, until the desire to attend the meeting takes precedence over other desires, while in the former examples there is only one motivation involved. For Mele, Libet's work does not pay sufficient attention to this distinction.

Further developing the critique of Libet's work, Dennett expands the timeframe in which motivations, intentions, and actions exist, viewing free will as an evolving process (Dennett, 2003, pp.247-251). Free will, for Dennett, is a continually developing process in which humans respond to their environment, learning through effective methods of problem solving through trial and error. Communication is also of vital importance to Dennett's conception of free will. Through their ability to communicate, humans are then able to both ask others requests and to make requests of themselves. They are able to reflect on the reasons for making these requests, and to decide upon their actions after deliberation. In a similar way to Mele, who views free choice as a much longer process than Libet's experiment, involving the weighing up of competing motivations, Dennett also views the human capacity for free will within a much larger scope than for which Libet allowed. For those such as Dennett and Mele, Libet's work only informs us about small, relatively trivial actions, within a short time scale. Libet's work is less valuable when applied to larger actions that hold more importance.

Nevertheless, Libet's critics do make concessions to some of Libet's conclusions. In contrast to Descartes' conception of consciousness, Dennett states that consciousness of the causes of an action is the exception rather than the rule (Dennett, 2003, p.246). Whereas Descartes believed that through introspection, the mind could understand its own workings, Dennett admits that recent work in neuroscience and psychology has revealed that the mind is rarely aware of causation. Thus, Dennett concedes that consciousness has a limited role in decision-making, though he does not think this has much bearing on the question of free will. Similarly, Mele, following Cashmore, states that the Cartesian view of free will as an almost magical component – a

component that exists apart from mind and body, and allows for decision-making to take place outside of the laws of physics – is a view of free will difficult to reconcile with modern science. Instead, Mele argues that philosophers must define free will in much narrower terms (Mele, 2014, pp.84-85). The view that free will is dependent on the ability to make conscious decisions, which are also not dictated by brain activity, is an unrealistic conception of free will, according to Mele (Mele, 2014, pp.89-91). Rather, free will should be defined according to its utility. For Mele, this means defining acts for which people can be held morally responsible as acts of free will.

While Libet's work challenged traditionally held notions of free will, critiques of this work posited that some form of free will remained compatible with Libet's empirical evidence. This required defining free will within stricter confines, and holding less ambitious ideas regarding free will. As will be seen, subsequent work has further developed these ideas.

3.1 Contemporary Work and Social Neuroscience

Since the responses made to Libet's work, research in neuroscience has further explored the various regions of the brain, investigating their role in the process of forming intentions and executing actions. In the human brain, several circuits lead to the primary motor cortex, which is responsible during every action for transmitting signals to the spinal cord and muscles (Haggard, 2008, p.936). Some of these circuits begin at either the basal ganglia or the pre-frontal cortex, before being transmitted to the pre-supplementary motor area. From the pre-supplementary motor area, they are sent to the primary motor cortex, which holds the final responsibility for the execution of an action. It is understood that the pre-supplementary motor area is the location of the brain where the RP begins. However, rather than the RP being responsible for the initial stage of the impulse towards action, Haggard argues that the circuits that precede the pre-supplementary motor area distinguish between voluntary actions and stimulus driven actions. Neuroscientists refer to certain actions as voluntary if their performer could report in retrospect as having chosen to act (Cacioppo and Berntson, 2012, p.36). The circuit between the basal ganglia and the pre-supplementary motor area is thought to be particularly important in the

execution of voluntary actions. In patients with Parkinson's disease, the output between these two areas is reduced, meaning involuntary and stimulus driven actions have different neural origins to voluntary actions. Dopaminergic inputs are also involved in the circuit between the basal ganglia and the pre-supplementary motor area; when deliberating on a course of action, dopaminergic inputs trigger signs of potential rewards based on past successful behaviours. This sits in accord with Dennett's criticism of Libet's work, when Dennett argued that free will is a continually evolving process based on past successes and failures (Dennett, 2003, pp.247-251), along with Mele's assertion that motivations towards action override the momentary physical mechanisms of the brain (Mele, 1997, pp.320-321).

However, when immediate responses are required, other circuits in the brain are involved in the process. Sensory information is processed through a circuit involving the parietal lobe, which forms a representation of the data, followed by the premotor cortex, and finally the primary motor cortex (Haggard, 2008, p.936). When a decision is required in haste, this process can be short-circuited towards other routes. As yet, it is unclear whether actions made involving these other circuits can be considered voluntary. Thus, Haggard argues that different actions involve different neural processes, much as Mele argues not all actions stem from the same cause (Mele, 2014, pp.49-51). Haggard makes a fundamental distinction between long-term intentions and short-term intentions (Haggard, 2008, pp.941-942). Long-term intentions involve planning, the weighing up of options, and deliberation over a period of time, whereas short-term intentions are described by Haggard as 'urges'. Understanding long-term intentions requires the study of prospective memory, whereas short-term intentions can be studied through Haggard and Libet's examination of the process between intention and action. Ultimately, Haggard rejects the view that actions are precipitated by conscious thoughts; rather, they are brought about through a complex network of brain processes (Haggard, 2004, p.944). Though this may not disprove the existence of free will, Haggard nevertheless views this finding as having important ethical implications, and argues it will change how we think about human actions and responsibility.

While short-term intentions can be studied through the kinds of experiments utilised by Libet, long-term intentions require others forms of study. Social neuroscience can

be helpful in exploring the origins of long-term intentions. In social neuroscience, it is thought that study of the brain is limited when it is approached as a singular unit; instead, social neuroscience examines the brain as it exists within a network of other brains (Cacioppo and Berntson, 2012, pp.44-48). Unlike Wegner, who views consciousness as an illusion (Wegner, 2003), social neuroscience posits that consciousness is an epiphenomenal concept, and one that is socially constructed. Our awareness of our will and ability to choose grows out of our relations with others. As Dennett viewed free will as a continual process of evolution, social neuroscience views consciousness as a product of people working together to provide safety and security for each other. From working and communicating alongside one another, we learn how to provide for ourselves, but these processes also alter brain states (Cacioppo and Berntson, 2012, pp.44-48). According to social neuroscience, a current brain state can be the result of past brain states, or it can be the result of the interventions of others. Thus, long-term intentions do not exist in a vacuum; they are partly a product of our social relations, but can also be altered by unexpected interventions. While this is not an entirely deterministic view of human agency, it nevertheless provides further challenges to the idea that the choices humans make are determined in the act of choosing itself, rather than events prior to the act of choice.

Both Haggard and Mele admit that the inner workings of the brain are not yet fully understood (Haggard, 2008, p.936; Mele, 2014, pp.82-83). The question of whether neuroscience can prove or disprove free will remains unanswered, though both neuroscientists and philosophers concede that individual consciousness may play a lesser role in decision-making than traditionally thought. This leaves open the question of whether the view that human choices are actualised in the act of choice itself is compatible with modern neuroscientific evidence, along with its moral and metaphysical implications. According to human rights theorists, whether hinged on Kantian or libertarian metaphysics, or sidestepping metaphysical considerations altogether, human dignity is dependent on the capacity to freely choose amongst options, and to make a decision that is not determined by preceding events. The following chapter will assess whether in defining human dignity in this way, using free choice as its moral basis, a conception of human dignity is maintained that would be unrealistically demanding of free will.

4. Assessing Human Dignity: Moral and Empirical Challenges

In order to answer the research question – does human dignity provide a stable moral foundation for the human rights regime – this chapter will assess theories of human dignity against principles drawn from the debates over neuroscientific evidence on free will. Different positions on human dignity will be assessed – such as Lee and George’s position with its libertarian underpinnings, and Habermas’ Kantian understanding of human dignity – against principles made in light of empirical evidence on free will. The aim here will be to find a conception of human dignity that is compatible with these principles.

First of all, the findings thus far will be summarised. In human rights theory, human dignity is often the foundational moral principle; for some theorists, dignity relates to our innate capacity for free choice. It is through this capacity that we come to hold dignity. There are various approaches taken to the further question of how this capacity is innate. For those such as Habermas, following Kantian metaphysics, though the phenomenal world – the world as it appears – is deterministic, our noumenal selves are not subject to the laws of determinism, and therefore we have the ability to choose. Lee and George, following Kane’s libertarian metaphysics (Lee and George, 2008, p.186), deny that the universe is deterministic; humans are able to act according to their own free will as they hold an inherent capacity for conceptual thought, a capacity not bound by laws of physical causation. Others, such as Dubljević, would deny metaphysical considerations held any weight when assessing moral and political freedoms; for Dubljević, we are as free to choose as the political system we live in allows us to be (Dubljević, 2016, pp.W1-W2). In neuroscience, Libet challenged the capacity for free will. However, as was seen, Libet’s findings can only be accurately ascribed to short-term intentions. Competing motivations override the constraints on free will found by Libet, meaning that the origins of long-term intentions are harder to locate. In social neuroscience, it is thought that conscious thought itself, the faculty traditionally associated with our capacity to choose, is actually a social construct (Cacioppo and Berntson, 2012, pp.44-48). According to this model, our long-term intentions are rooted deeply in

social experiences, and the capacity for free choice is neurally constrained by the social environment in which it exists. Here, the line between internal and external restraints begins to blur. Actions made externally by other agents may not explicitly restrict a person's free will, though the cumulative effect they have on the person's brain may mould their behaviour in a certain way.

Evidence obtained from neuroscience does not prove outright that humans have no free will, it only reveals some of the internal constraints to which an individual's free will is subject. The various positions within human rights theory on human dignity will now be assessed against the findings in neuroscience, and the subsequent philosophical implications.

Assessing Habermas' Kantian conception of dignity in light of the neuroscientific findings proves difficult, as for Kant, the noumenal sphere exists beyond empirical laws (Vilhauer, 2004, pp.728-729). Though laws of physical causation appear to work consistently in the phenomenal sphere, this is only an appearance; the thing as it exists in itself, the noumena, is not subject to these laws. Thus, following Kantian thought, it would be denied that findings in neuroscience held any significance for the human capacity for free will; neuroscience only reveals the thing as it appears, not the thing in itself. However, as will be discussed later, some of the content explored in the previous chapter is pertinent in relation to Kantian dignity. For now, the main focus will be Lee and George's libertarian understanding of dignity.

In responding to the neuroscientific evidence on free will, Mele would not state that Lee and George's conceptions of human dignity was unfeasible from the outset, as Mele does not think it impossible that individuals consciously control their actions. However, the requirement that states that all actions must be consciously deliberated before their execution in order to be considered free is, for Mele, an overly ambitious understanding of free will. As Mele states, this is not to state that conscious intentions never achieve their intended aims (Mele, 2014, pp.49-51); it is quite clear that they often do. A person who has a doctor's appointment can intend to leave their house at an appropriate time beforehand; their punctual arrival at the appointment could be considered proof of their conscious will towards action being satisfied. However, their actions once they have arrived in the waiting room for their

appointment should be considered separately, as the strength of motivations are now reduced. Given a choice between reading a magazine and looking out of the window, it is unlikely that either option will offer great rewards, and so there may be little conscious thought involved in the decision. Smaller actions whilst sitting in the waiting room may involve even less conscious thought: the placement of the hands, whether to slouch or sit upright, whether or not to cross their legs. There is very little motivation for the person to decide on any of these courses of action, and it is likely that the decision made will not involve much deliberation.

For Mele, this is because not all human actions are caused in the same way. Some actions are propelled by strong motivations to achieve a result, others are not. Similarly, neuroscientists such as Haggard (Haggard, 2008, pp.941-942) found that long-term intentions originated in different parts of the brain to short-term intentions. In their understanding of human dignity, Lee and George do not take this distinction into account. As mentioned in the previous chapter, Mele argued that Libet's work had significance in relation to short-term actions, and conceded that our conscious will to control short-term urges can be limited (Mele, 1997, pp.320-321). Larger, more significant actions were subject to greater motivations and therefore could be considered to involve a larger amount of conscious decision-making. Though Lee and George do not delineate between different types of action, the question remains whether smaller actions involving less conscious deliberation can be politically or morally significant. Questions also remain unresolved regarding the limits of conscious control over larger actions, but these will be addressed later.

The examples used earlier would obviously not bear much importance in relation to human dignity. How one spends one's time waiting in a doctor's waiting room has little political or moral significance, though other types of short-term action could prove different. Sending a text message whilst driving is unlikely to involve a large amount of conscious thought, yet the consequences of doing so can be great (Qiao and Bell, 2016, pp.5-8); the act is a significant cause of road accidents, and can lead to further dangerous driving habits. This action would not generally be subject to the conditions Mele applied to actions involving high levels of motivation, as it is unlikely there will be great rewards for sending the text. It is also unlikely the action would be subject to much prior planning or deliberation. Therefore, according to

Mele's conception of freely willed actions, this kind of action – involving little conscious thought – would be judged differently to actions involving higher levels of motivation. Likewise, the answering of a phone whilst driving would involve even less conscious thought. As noted in the previous chapter, Wegner finds that in the case of answering a phone, consciousness of the action comes after the action itself. In the case of answering a phone whilst driving, though it may not involve much conscious thought, the action may have severe moral repercussions.

When laws are enforced against acts such as sending texts whilst driving, the prevalence of such acts is reduced (Qiao and Bell, 2016, pp.5-8). Though people may be aware of the danger of the act, they are not dissuaded from its performance until they are legally prohibited from performing the act. Libet argued that moral systems that made negative demands – requiring people not to act, rather than demanding they do act – were consistent with his empirical findings. In examples of actions involving little conscious decision-making, Libet's theory remains cogent. When left to choose for themselves, in the case of short-term decisions, people may choose a dangerous course of action. However, when the law demands that they do not perform the act, they will be less likely to perform a dangerous action.

Mele argued that actions involving higher levels of motivation are subject to greater levels of conscious decision-making. In general, it would appear that actions taken that involve much conscious deliberation also have greater scope for being morally significant. An action taken that had been planned over an extended period of time, had involved the weighing up of many alternative options, and had the potential to offer great rewards or entailed significant consequences, would attach greater moral responsibility to the performer of the act. In Arthur Miller's *Death of a Salesman* (Miller, 2000), the protagonist, Willy Loman, decides to commit suicide in order for his son, Biff, to receive the insurance payments after his death. Leading up to Willy's decision was a chain of events, though the key event was Willy being fired by his boss, Howard. For Mele, the type of action taken by Howard would not be subject to the restraints on an individual's will exposed by Libet's experiments. The strength of the motivation involved in making the decision, and the time taken during deliberation, would override concerns over the RP's antecedence to conscious awareness. As such, Howard would bear some responsibility for Willy's subsequent

unemployment, though within a human rights regime premised on negative liberty and the protection of individual agency, this is of little consequence, as Howard would be deemed free to choose as he wished.

Furthermore, as is the case in *Death of a Salesman*, an action such as this would entail consequences beyond the initial reactions. While Lee and George argue that choices must not be decided by prior events for them to be considered free (Lee and George, 2008, pp.185-190), in the given example, Willy's future choices are now limited by the circumstances stemming from Howard firing him. This is not to say that Willy's future actions are entirely determined by Howard's action, but that Willy's choices will be restricted. Within the range of future choices available as a result of the original action, there are both short-term and long-term intentions; both are constrained by Howard's action. As social neuroscientists would argue, the brain states of people involved in such a situation are best understood in relation to one another (Cacioppo and Berntson, 2012). Several events precipitated Howard's action. Previous emotional states have affected his performance at work, though it is Willy's argument with Howard that persuades Howard to fire Willy. The action taken could not be understood when approached as a singular choice made in a vacuum. Rather, it should be understood alongside the decisions made, actions taken, and other circumstances that affect the situation in which it was taken.

Following from Howard's action are a series of choices for Willy to make, each limited by Howard's initial action. Willy, who takes great pride in the ideal of the American Dream – hard work, success, and economic independence –, must now decide how to financially support his family. To begin with, Howard suggests Willy rely on his sons for financial support. However, Willy's shame at his loss of economic independence prevents him from choosing this option. Willy's neighbour Charley offers Willy a job. Yet Willy's pride also stops him from accepting Charley's offer. Weighing up the options, Willy decides that he must take his own life, in order for Biff to collect the life insurance payments. According to social neuroscience, this decision would have been made consciously, in accord with understandings of human dignity drawn from human rights theory. However, it was not made through the person's singular consciousness, but through an epiphenomenal consciousness; the conscious state in which the decision was made

was determined, in part, by the conscious states of others. Social shame plays a large role in determining Willy's decision, a phenomenon located deep within social consciousness. A failure to live up to social ideals leads suicide to be the preferable option for Willy. Though human rights theorists such as Lee and George view the capacity for free choice as the ultimate reason for the protection of human rights, when choices are limited, an individual may be forced into a situation whereby their fundamental right to life is threatened through their own free choice.

Thus, empirical and metaphysical challenges undermine a libertarian understanding of human dignity. However, there are also non-metaphysical challenges to examine. In examples of both short-term and long-term intentions, the choices made are, as Dubljević noted, rooted in social agreement. Whether or not someone chooses to send a text message whilst driving, or chooses to fire an employee, the outcome will be determined to some extent by what is acceptable legally, but also socially and culturally. Dubljević asserts that political autonomy is not dependent on any metaphysical notion of free will (Dubljević, 2013, pp.46-47); thus, according to Dubljević, neuroscientific evidence should not alter conceptions of political freedom. In democracies, individuals vote for their political representatives, who in turn enact laws; these laws can therefore be viewed as originating in the will of the people. Individuals then act according to what has been agreed upon as acceptable behaviour under the laws within that democracy. However, this non-metaphysical approach to moral responsibility does not strengthen Lee and George's position, in which the ability of individuals to make free choices is an essential component of their human dignity. Though Dubljević does argue individuals are able to make free choices, the freedom of the choice is not rooted in the act of choosing itself, as Lee and George would state. Rather, the freedom of the choice is determined by the social conditions in which it was made.

4.1 Rethinking Human Dignity

While Dubljević argues metaphysical theories of free will are irrelevant to ideas of political freedom, there is nevertheless an area where Dubljević's judgements are congruent with those of social neuroscientists. The root of political freedom, for Dubljević, is in social agreement (Dubljević, 2016). Likewise, in social

neuroscience, consciousness is viewed as a product of social relations (Cacioppo and Berntson, 2012). Thus, the choices we make are a product of the social environment in which we exist. While Lee and George's original judgement was that human beings have a natural capacity to make choices 'that are not determined by the events that preceded them, but are determined by the person making the choice in the very act of choosing', a judgement that existed in accord with the principles and judgements previously described would have to be revised. A revised judgement could read as follows: human beings have a natural capacity to make choices; however, these choices are rooted in social agreement, and the process involved in making the choice is subject to the conditions of the social environment.

It may be the case that while parts of Lee and George's libertarian position on human dignity are incompatible with empirical evidence, along with moral and political judgements made in light of this evidence, other defences of human dignity and free will remain cogent. As aforementioned, Kant conceived of free will as the ability to make laws for oneself, and live according to them (Cherkasova, 2004, p.368). Free will for Kant is synonymous with reason (Cherkasova, 2004, p.368). It is through listening to our own innate sense of reason that we come to act according to our own will; in doing so, we also come to live in accord with moral laws. Though Kant does view individuals as being able to make free choices, they do not attain human dignity through this capacity. Dignity instead exists in relation to morality (Kant, 2005, pp.113-115). The human capacity to play a role in the design of universal laws, and then act in accordance with them, allows humans to view individuals as ends in themselves. Being part of the 'kingdom of ends' – where they treat others as ends in themselves rather than means and receive the same treatment in return – is what allows for their human dignity.

In light of the empirical and moral challenges addressed thus far, it should be asked whether it is possible for individuals to come to comprehend, and act in accordance with, Kant's conception of universal moral laws. According to Kant, only rational beings are able to understand the universal moral laws (Kant, 2005, p.87). Thus, none rational beings would be denied human dignity. However, when this argument is inverted, the fact that people frequently disobey moral laws would seem to invalidate their rationality, along with their human dignity. This issue with Kant's

theory was noted by Cherkasova (Cherkasova, 2004, p.368). As reason and free will are synonymous, and it is through their use that we are able to act morally, when an individual disobeys moral laws, they lose their status as a being imbued with reason and free will. In addition, Cherkasova argues that individuals cannot be held responsible for their actions in Kantian theory, as when they disobey moral laws, they are acting against their reason, and it is through acting in accordance with reason that allows us to hold people morally responsible.

Though moral laws are frequently transgressed, in regards to long-term intentions, they do play a role. As both Mele and Dennett would argue, when acting on long-term intentions, reasons are weighted against one another in a process of deliberation. Individuals are ultimately triggered towards actions by the strength of motivations. However, there are areas of Kantian theory that would be challenged by the principles and judgements examined thus far. For a person to have acted in accordance with the moral laws, Kant thought the person must be deemed to have acted in accordance with duty, rather than their actions being motivated by self-interest or the strength of their emotions (Kant, 2005, pp.79-80). Modern psychology recognises the importance of the role emotions play in decision-making (Lerner et al, 2015). When weighing up competing motivations, self-interest and emotional needs will all be assessed, and may play a large role in the ultimate decision.

Despite these tensions within a Kantian understanding of dignity, in reformulating a conception of human dignity, Kantian ideas are helpful. Rather than looking to the capacity for free choice, we should instead look towards the ability of individuals to make moral decisions. Through reason, though individuals may choose to disobey moral laws, they are at the very least, able to comprehend them. However, much like the theory of consciousness, social neuroscientists may argue that rather than reason belonging to the domain of the individual, it is instead a product of social agreement. Thus, while individuals may sometimes defy moral laws, when a social environment positively enables individuals to make moral choices, they are able to understand these choices, and so to take responsibility for them.

Instead of thinking of dignity as existing in relation to the independent individual, who is able to make their own choices, dignity should instead be thought of as a continually evolving process of social construction. There are many obstacles to the act of choice, some of them located in the brain itself. However, when a social environment allows for the making of moral choices, individuals are able to comply.

Taking this into account, the research question can now be answered: does human dignity provide a stable moral foundation for the global human rights regime? When dignity is premised on the ideal of free choice, it comes into tension with evidence in neuroscience and social neuroscience. The ideal of free choice can be unrealistically demanding of the concept of free will, given the range of obstacles to free will previously noted. With the concept of dignity at the heart of human rights, human rights become premised on individualistic ideals. These ideals have consequences; civil and political rights take precedence over social and economic rights. In practice, a lack of social and economic rights can impact upon a person's quality of life, and in situations where individuals are left in extreme poverty, their very survival can be threatened. An individual's free choice is unlikely to remedy these kinds of situations.

Following this, understandings of dignity in human rights theory ought to be revised. Firstly, they should be revised to reflect the distinction between long-term and short-term intentions. In human rights theory, free will is perceived to be a static concept that remains the same across any given situation. For Lee and George, choices are made in the act of choice itself (Lee and George, 2008, pp.185-190); in a situation where an individual is not incapacitated – not imprisoned, injured, or inebriated for instance – they are free to choose any course of action they desire. Yet as has been seen, choices are limited by the environment in which they are made, and are distinguished by the surrounding circumstances. A choice made as to picking up a ringing telephone must be considered separately from a choice to fire an employee. Short-term intentions are involved in the former and long-term intentions in the latter. The motivations surrounding the former are likely to be low in quantity and quality, and little deliberation will be involved. While it is unlikely such a choice will have great moral or political ramifications, in the case of answering a telephone whilst driving, the consequences could be of significance. As aforementioned, the

desire to perform socially undesirable actions such as these can be curbed through the implementation of laws. In the case of long-term intentions, much greater levels of motivation will be involved, and the likelihood of moral or political significance is also higher. Legalistic measures also may not suffice in influencing the choice to produce a desirable outcome; culture, personal ambition, and social relations all have the potential of influencing the choice. The roots of these two kinds of intention are also different, both neurally and socially. Human rights discourse should reflect this distinction, recognising that not all choices involve the same processes, and that different techniques must be used to influence choices. In regards to a choice such as Willy's decision to commit suicide, a far more interventionist human rights regime would be required to ensure this was not the preferable option for Willy.

Secondly, understandings of dignity should be altered to consider the role of consciousness in the decision-making process. As it is traditionally understood, consciousness is a property attributed to singular individuals, and it is from the seat of consciousness that individuals determine their choices, Dennett's 'Cartesian theatre'. However, even Libet's critics view this as implausible. Consciousness, in its singular form, often has a limited role in the decision-making process. Instead, a view of consciousness that was compatible with Mele and Dennett's work, along with research in social neuroscience, would view consciousness within a longer range of time, and in relation to its social environment. Rather than it being a faculty that allows for free choice in any given situation, it is instead a continually evolving process that reacts and responds to the environment in which it exists. Thus, rather than choices being free in the act of choice itself, they are instead heavily influenced by prior occurrences. Therefore, human rights discourse should recognise that in order to protect human rights, it is sometimes not the free choice of individuals as an isolated phenomenon that must be protected; instead, the environment in which choices are deliberated must be shaped in order for desirable choices to be made. In order for dignity to be reified, a social environment must exist that recognises the limits of the individual capacity for free choice.

5. An Alternative Foundation

It now remains to be asked: what does this mean for human rights regimes? A human rights regime that was founded on the idea that choice was rooted in social agreement, rather than an isolated capacity of the individual agent, would look fundamentally different. Rather than being premised on the protection of individual agency, a human rights regime would instead be premised on the idea that the social environment must be conducive to the making of moral choices. The ideal of protecting free choice would also be recognised as unrealistically ambitious. As there are both internal and external constraints on free choice, and the line between these types of constraint can become blurred, it provides an unstable moral basis for the human rights regime. Fineman posited an alternative, in the concept of vulnerability (Fineman, 2013, p.13). For Fineman, vulnerability is not the property of certain groups based on identity; it is instead an inherent part of the human condition (Fineman, 2013, p.16). Innate in the body itself, vulnerability is manifest in the ageing process, our ability to experience physical harm, and the chance of catching diseases (Fineman, 2013, pp.20-21). Individuals are also vulnerable to the environment they exist in; floods, droughts, famines, fires, and chemical spills all have the capacity to harm individuals, and there is little the individual can do to avoid this harm. Fineman thus argues for a more interventionist human rights regime, which recognises that vulnerability exists at the core of the human condition. This regime would recognise that there is not much the individual subject can do to avoid experiencing certain types of harm, and would intervene in order to better protect individuals (Fineman, 2013, pp.24-26).

Our limited capacity for free choice further exacerbates our vulnerability. Due to the social environment dictating to us the options we have to choose from, in cases where we are presented with options with equally poor outcomes, we are left in a state of vulnerability. For those such as Lee and George, our capacity for free choice is sacrosanct and should be protected. Yet often, free choice is limited in protecting us from harm, or enabling us to live fulfilling lives.

A human rights regime that took this into account would firstly distinguish between different kinds of choices. Choices that are a result of short-term intentions would be recognised as often morally significant, though in certain cases, their potential for causing harm would be acknowledged. As such, the protection of these kinds of

choices would be viewed from the point of preventing harm, and their prohibition would not be a violation of a person's dignity. Choices emanating from long-term intentions are more complex, as they hold the potential for greater moral and political significance.

To return to the example of *Death of a Salesman*, under a non-interventionist human rights regime premised on the protection of free choice, Howard would be free to choose to fire Willy. The choices made as a consequence of the initial action, though subject to less freedom than Howard's original choice, would still be considered free choices. However, under a conception of human rights that recognised the importance of the social environment in allowing for choice, the limits placed on further actions by Howard's original action would be recognised. This would create the grounds for a more interventionist human rights regime. While this type of human rights regime may not necessarily have to prohibit Howard's action, it would ensure that provisions were in place to prevent Willy from being in a situation where suicide was a viable option. Employment rights could be strengthened to make it more difficult for Howard to fire Willy, without taking this option away from Howard entirely in situations where it was justified. Measures could also be taken to ensure alternative employment opportunities were available for people in Willy's position, and welfare could be in place to provide financial support. In order to reduce the social stigmatization people experience when they fail to live up to a society's ideals, psychological support could also be offered.

All of these options are compatible with human rights regime based on the value of free choice. However, with the concept of vulnerability at the heart of a human rights regime, the need for these modes of support would be recognised as a necessity, rather than optional. In addition, more extensive approaches could be utilised, that would be compatible with a vulnerability-based approach, but could cause tension with a free choice-based approach. Universal Basic Income (UBI) is a more radical approach to welfare; under UBI, all the inhabitants of a political community receive an income that is not means tested, and is in no way related to their employment status (Van Parijs, 2004, p.8). Though in many ways UBI facilitates free choice rather than restricting it – no longer being faced with financial insecurity, people would be free to choose and take more risks regarding their

employment – some proponents of a free-choice based approach to human rights would nevertheless find it problematic. UBI mandates that everyone in the political community pay towards the scheme, and in return receive their payment. All individuals are thus forced into the sphere of UBI, regardless of their choice. Furthermore, some may argue that UBI reduces a commitment to individual responsibility; with the certainty of financial security, incentives to find employment would be reduced, and there are arguments that this would increase irresponsible behaviour (Van Parijs, 1992, p.8). While UBI may not prohibit free choice, in this scenario, it increases the likelihood of unjust choices.

However, given the vulnerability of the human condition, modes of support such as UBI would better protect individuals from their own vulnerability, and the vulnerability inherent in the environment in which they live. While recognising the risks involved in free choice, UBI would not entirely prohibit individuals from making their own choices. Yet further rights are implicated within a human rights regime that acknowledged the limits to free choice, along with the vulnerability of the human condition. As aforementioned, the social environment a person inhabits affects the range of choices they are offered. A human rights regime that recognised this would therefore have to intervene within the social environment to ensure that individuals were able to choose from a range of satisfactory choices. As Liebenberg argues (Liebenberg, 2005, pp.10-12), the right to life – as recognised in the South African constitution – does not only mean the right to exist, but the right to live a fulfilling life. When based on vulnerability rather than free choice, a human rights regime would be better placed to ensure that individuals were able to live fulfilling lives, through offering the right to choose from a set of just choices. This would require a human rights regime to not only employ civil and political rights, but to recognise the importance of social and cultural values, along with the impact they can have on the individual's ability to choose. Social and economic rights would be necessary to nullify the negative effects of these values.

Placing vulnerability at the heart of human rights would ensure that all individuals were protected from their own vulnerability. Rather than restricting free choice entirely, it would be recognised that when free choice is placed at the centre of human rights discourse, the inherent vulnerability of individuals can be exposed.

This alternative approach to human rights would instead ensure that individuals were offered protection against their own vulnerability, through ensuring that they were not left in situations in which the choices they were offered were equally unjust.

Conclusion

Returning to the research question – does human dignity provide a stable moral foundation for the global human rights regime – the empirical evidence, along with the judgments and principles drawn from them, suggest that when human dignity is grounded in free will, dignity does not provide a stable moral foundation. Whether free will is founded in Kantian or libertarian metaphysics, making the protection of the individual subject's free will leads to inevitable problems. When left to their own devices, the social environment in which they exist can lead individuals to being in situations where they are left with no agreeable options. This, in combination with the brain's limited power for free choice, undermines dignity's strength as a moral foundation.

When premised on a conception of human dignity grounded in free will, human rights are inevitably individualistic. Individuals are left to make their own free choices, their capacity for doing so being seen as the fundamental property of human beings, and one that must be protected. Being left to make their own way in life, their successes and failures are viewed as being fundamentally due to their own agency. Though human rights regimes may make concessions to social and economic rights, in an attempt to protect individuals from the extreme ends of a philosophy of individualism, rights that are viewed as a threat to individual agency are approached with caution. Each individual's own domain of free will is protected against the potential incursions of another.

There are latent problems with the protection of free will being placed at the forefront of human rights. As was noted, there are both internal and external restrictions on the capacity for free choice. Libet noted the internal restrictions on free choice located within the brain itself. However, as Mele argued, these restrictions are only relevant to short-term intentions. Though short-term intentions

can on occasion hold moral implications, they can be managed through the application of laws. Long-term intentions are more relevant to human rights theory. As social neuroscientists posit, long-term intentions are rooted in the social environment, a product of interacting minds. Therefore, the social environment restricts the choices an individual is able to make. Where this environment is not conducive to the making of moral choices, leaving individuals to their own capacity for free choice becomes problematic.

Positing vulnerability as an alternative moral foundation for human rights would lead to a distinctly different human rights regime. Rather than aiming to protect the free will of each individual, which has been shown to be an implausible and potentially damaging task, the human rights regime would instead recognise the innate vulnerability of all individuals. Due to this vulnerability, the human rights regime would be required to intervene to actively protect individuals from the inherent flaws in the human condition, and the dangers of the environment in which they live. Furthermore, as the capacity for free choice is less a product of individual consciousness than it is of the social environment, the human rights regime would intervene in the social environment to ensure its amenability to moral decision-making.

If dignity is to be salvaged as a moral foundation for the global human rights regime, understandings of dignity should be reformulated to take into account the limits to individual agency, and the vulnerability inherent in the human condition. This would allow for a more interventionist human rights regime, and one that would be better placed to protect individuals from threats that cannot be avoided through their individual free choice.

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