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African recognition of dignity as a basis for universal human rights

I present a typically African account of human dignity, which I derive from Ifeanyi Menkiti's influential strongly normative view of traditional African practices of recognition respect (2004). I explain how this implies a suitable basis for a common good criterion for human rights. I develop this account against (a) the claims of Tshepo Madlingozi (2017) and Vincent Lloyd that the struggle against anti-Black racist domination does not depend on recognition; (b) the claim by David Boucher (2011) that human dignity is a convenient fiction for human rights recognition; and (c) the claims of Kwame Gyekye (2002) and Motsamai Molefe (2020) that Menkiti's view on human dignity does not provide adequate warrant for the universality of human rights. I draw on Menkiti's account of recognition respect for human dignity and on arguments for the authority of actual rights recognition by Gerald Gaus (2006) and Rex Martin (2013). In doing so, I present a comprehensive theory of human rights recognition that does not depend on any intrinsic, transcendental human capacity but locates the universality of human rights in the mutually recognised common good, which is implicit in extant African communal normative social practices that are oriented toward the recognition of dignity.

Keywords: dignity, human rights, African philosophy, rights recognition, common good

Introduction

The legitimacy of human rights has taken a knock over the past two decades, discredited by rising geopolitical tensions and emerging blocs of hostile mutual antagonism. The status of human rights has also been discredited by a persistent tendency, particularly by the USA and its allies, to appeal to human rights to justify aggressive intervention in the sovereign affairs of foreign states while perpetuating egregious human rights abuses at home and abroad. The USA engages in mass incarceration of Black men. The state has tortured unlawfully detained political prisoners, for instance, in Guantanamo Bay, while criticising Chinese imprisonment of Muslim Uighur insurgents. South Africa is criticised by the USA, which refuses to recognise the jurisdiction of the International Criminal Court (ICC), for failing to arrest al-Bashir and for considering hosting Vladimir Putin at a BRICS summit, who are both wanted for extradition by the ICC, for human rights violations. Such hypocrisy makes it easier for states such as Russia and China to deflect criticism of their own violations. Human rights are thus seen as naïve ideals and associated with failure to appreciate *realpolitik*, that is, real world power politics. Moreover, they have become associated with liberal hypocrisy, reflecting the imposition of Western political and cultural practices and values on the rest of the world. The notion of human dignity underpinning human rights has been dismissed as redundant fiction by critics including Ruth Macklin (2003), Steven Pinker (2008) and Catherine MacKinnon (2011), for example, in favour of autonomy and substantive equality.

I will argue in favour of a recognition-based account of human rights, although the politics of recognition, redistributive social justice and inclusion have been tainted by association with superficial celebrations of multiculturalism and diversity. The intention of such politics, to assimilate different cultures and ethnic groups into hegemonic political economic practices and social orders, is regarded with suspicion. Decolonial critics, such as Tshepo Madlingozi (2017), associate 'transformation' and 'recognition' with the integration of historically conquered people into settler polities, to legitimise and to mask colonisation. Madlingozi dismisses South Africa's "constitutional commitment to recognising and incorporating the historically oppressed and marginalised through a programme of social justice" (2017:129). He argues that the extension of human rights to historically dehumanised peoples amounts to a practice of assimilationist "neo-apartheid constitutionalism" (2017: 129). He claims the function of this is to seduce its victims into 'teleological whiteness' which is "the idea that being white and the attainment of whiteness are the highest ideals of emancipation" (2017: 129). Following a similar line of reasoning, Vincent Lloyd, in *Black Dignity* (2022), argues that the language of multiculturalism and inclusion reflects a dominating system of white hegemony that is determined by a history of anti-Black domination.

Suspicion of manipulative appeals to human rights and of the recognition of human dignity as a basis for human rights may be warranted, given the manipulation of such discourse to shore up hegemonic orders of domination. However, such criticism neglects the need for actual recognition of human dignity to generate obligation on states to secure conditions that meet the basic requirements of human rights.

Madlingozi, Lloyd and other like-minded critics of the politics of recognition are right that victims of settler colonial domination struggle to be free of domination, first and foremost. Recognition, Lloyd argues, "is a secondary concern". Moreover, he asserts, "to desire recognition in the world is to accept that the world has the final say when the world is infected by domination". Achieving the position of master, Lloyd continues, "is no success at all"; the aim of the struggle against domination "is not inclusion in a world of domination" (2022: 10).

However, this critique of the politics of recognition neglects a prior relationship, involving recognition between family members and friends. In response, I identify a common good criterion, which may be said to ground the universality of human rights, evident in communal relationships of African dignity, that the focus of Black dignity, specifically on anti-Black racism, neglects. Prior to struggles against racism, communities live in ethical fellowship. Mutual recognition of the common good in these relationships – implicit in the recognition of dignity described by Ifeanyi Menkiti – may be understood to underpin universal human rights.

To derive a positive account of African dignity, I turn, in section 2, to the work of the African philosopher Menkiti, who provides us with a somewhat idealised account of the recognition of personhood in the traditional village. This account, nonetheless, yields insight into a mutually recognised common good criterion – for the recognition of dignity – which is evident in typically African communities. Menkiti (1984) claims that it is the community that defines the person, in honour of her communal contributions. The duties one performs, which contribute to the common good of the community, determine how one may be recognised by the traditional African community one inhabits. Dignity, or respect for one's personhood, on this account, is a status attained in one's performance of communal duties (1984: 176). The virtue of such virtuous conduct is that one's achievements contribute to the common good. It is from this communal standard of assessment (and not specifically from the individual's achievement of outstanding moral merit) that we may derive a common good criterion for human rights. Menkiti's communitarian account of the communal recognition of dignity in personhood offers a marked alternative to the account presumed by Madlingozi and Lloyd, of recognition and inclusion of oppressed Black subjects by dominant white society.

Recognition of dignity in virtuous conduct, of moral personhood, to which Menkiti refers, requires one's meeting obligations to the community and to the wider state. However, as Motsamai Molefe (2021) notes, on this account, not all human beings achieve the status of dignified personhood. If human dignity is a basis for human rights, this condition threatens their universality. They are supposed to belong to all human beings, not just outstanding persons. The same problem arises in Lloyd's account of Black dignity. Lloyd argues, "not every human being shares in dignity […] some people are aligned with masters […] and thus have no dignity at all. Only those aligned with the enslaved […] against domination have dignity" (2022: 16). Kwame Gyekye (2010) and Molefe (2021) reject Menkiti's strongly normative account as a basis for the recognition of human rights, for excluding those who do not meet it. By contrast, I argue that the implicit appeal to mutual respect for the common good – evident in social practices of recognition of human dignity (as per Menkiti's account) – is compatible with the universality of human rights. I offer an African theory of human rights recognition, grounded on mutual respect for the common good – evident in the normative assessment of respect for dignified, virtuous conduct – as a basis for the universality of human rights.

In the next section I discuss Boucher's critique of human dignity as a basis for human rights, along with an explanation of his argument that human rights follow from recognition. I then review accounts of Black activists of the positive role of a qualified conception of dignity. I also consider Vincent Lloyd's critiques of dignity and of the politics of recognition. In the second section, I review Menkiti's account of African social practices of respect for dignity, to explain why his interpretation of such practices limits the universality of dignity as a basis for universal human rights. The final section offers a moderate interpretation of his account, which implies mutual respect for the common good. I relate this respect for the common good to the common good criterion of rights recognition theory, drawing on accounts of rights recognition by Rex Martin and Gerald Gaus. For a global community to respect human rights, mutual respect for the common good is necessary. Although Menkiti's account of African social practices of dignity does not accord dignity to all, his account does presume mutual respect for the common good. Such mutual respect supports universal human rights, I argue.

Social recognition of human rights and social recognition of dignity

"If there are any moral rights, where do they come from and how do we acquire them?" asks political theorist and philosopher of international relations David Boucher. Contention over the content, range and status of human rights has led many to claim that the origin and justification of human rights are derived

from a higher power or status beyond political disagreement. The universality of human rights, runs the argument, belongs to features of human nature we all share. Boucher advances a persuasive alternative argument that, "international law and human rights are fundamentally based upon and are codifications of customary international law" (Boucher 2011: 753). He claims "the establishment of which rules are genuinely universally binding is a discursive activity evidentially based on the actual practices of states, legal precedent and the opinions of learned jurisprudents" (Boucher 2011: 753). The claim, that recognition makes and acknowledges rights, seems to reject the view of natural rights theorists, that rights are inherent in the ontology of human personhood, in basic needs or human dignity. Such views, while prevalent, "are a convenient fiction", Boucher argues (Boucher 2011: 753). Rights do not inhere in dignity; they are immanent in social practices (Boucher 2011: 758). "It is widely acknowledged,' he adds, "that international law and human rights are fundamentally based upon and are codifications of customary international law" (Boucher 2011: 753).

Following the British Idealist philosopher TH Green, Boucher argues, first, "recognition makes rights", and second, "recognition is a way of knowing and acknowledging these rights" – which is to say, "customary behaviour creates rights, and the discursive activity of common law lawyers and international jurists constitutes recognition in the sense of knowing them or formalising them" (Boucher 2011: 755). Rights arise from normative customary practices that respect them. "Customs in their observance […] give rise to moral constraints", which justify the obligations to which customs give rise (Boucher 2011: 755). Rights are powers possessed by persons that others recognise for a common good (Boucher 2011: 756). Social practice creates the right. In addition, the right is acknowledged when it is violated and has to be addressed (Boucher 2011: 759). On the recognition theory of rights, then, rights are recognised on two levels – first, they emerge in customary practices, such that they are recognised in our social relations, and second, they are recognised formally when needed, for instance, in cases of dispute.

Boucher goes on to argue on this basis that "international law is declaratory of what is already immanent in the international community", explaining that the authority of human rights is "derived from their customary character, and not from the dictates of right reason, or logical deduction from universal natural attributes" (Boucher 2011: 761). The normative practices of states in the international community yield customary norms from which international law is derived over time. These norms in turn are formally expressed in the reasoning of the judgments of courts. The idea put forward here is that human rights emerge from a process of "convergence and agreement upon values that canvass wider and wider support in the process of being accepted as 'universal'" with an emphasis on conventional and customary law – as opposed to 'right

reason', 'human nature', or dignity. International developments in the protection of human rights "have largely been based upon the principle of customary law, state practice and statements of classic jurists" who articulated the principles by which states and individuals must conduct themselves in the international sphere (Boucher 2011: 768). The most fundamental rights "have the social recognition of the international community, and they are justified on the grounds that they contribute to the common good of global society" (Boucher 2011: 768). Boucher concludes that "the process has not been the rationalist method of right reason deriving principles of natural law, or of establishing indubitable data about human nature", but, rather, "has developed from the careful and considered understanding of how practices have arisen, how they have been understood by classical writers on international law and how they have contributed to what may be deemed the customary law of human rights" (Boucher 2011: 768).

While I agree with Boucher and other rights recognition theorists, such as Gerald Gaus and Rex Martin, on the general formulation, that rights emerge from customary practices, it is worth noting two problems that follow from this common sense view of our common law. One has to do with the implicit domination inherent in international hegemony, that is, in the history of domination belonging to the establishment of international legal practice. The second problem belongs to the denial of dignity, not by rights recognition theorists, as a basis for human rights, but by dominant political regimes and peoples of marginalised, excluded and oppressed social groups.

First, most states have ratified the Universal Declaration of Human Rights (UNDHR), arguably, since the list of rights accords or aligns with the fundamental rights that most members of the global international community already recognise, such that the UNDHR expresses an overlapping consensus of comprehensive moral doctrines. However, the establishment of a global community and of international consensus in the interpretation and formulation of human rights has been influenced predominantly by the interest of dominant players in this community. As Boucher explains, "international law in modern Europe is the offspring of the customary law of an ancient international non-social community which resembles the law as it is described in Icelandic sagas..." (Boucher 2011: 760). "International law is declaratory of what is already immanent in the international community," he continues, and "human rights, on this view, are developmental and evolutionary" (Boucher 2011: 760). Human rights are grounded in customary international law, which "arises in essence as a result of the actual practices of states in their relations, developing the notion of civilised conduct appropriate to a moral community of states and individuals" (Boucher 2011: 763). It is uncontroversial to add that the main influence on such practices is from dominant states.

Second, in this history of domination, our collective recognition of human rights, and of their meaning and value, stems from historical experiences of what it means to be treated with indignity, that is, to be treated as less than human creatures, unworthy of equal respect. To a great extent, our conception of human rights is informed by struggles for respect for dignity. As Vincent Lloyd stresses in *Black Dignity*, the struggle for dignity is marked out as a fundamental aim of African Americans in the United States civil rights movement. Martin Luther King understood this movement to be an attempt "to find a new sense of dignity". Stokely Carmichael identified the unifying aim of the Black Power coalition as the commitment "to rebuild their dignity". Barack Obama argued that "we can admit the intractability of deprivation and still strive for dignity". "When we say Black Lives Matter," explains Alicia Garza, "we are talking about the ways in which Black people are deprived of our basic human rights and dignity" (Lloyd 2022: 1). "From Marcus Garvey to Malcolm X, from Ida B. Wells to Angela Davis,' Lloyd argues, "dignity is always found around Black struggle" (2022: 1). Jurgen Habermas argues that, "Different aspects of the meaning of human dignity emerge [...] from the plethora of experiences of what it means to be humiliated and deeply hurt" (2010: 468). Likewise, in response to MacKinnon's 'bemusement' that the jurisprudence of the South African Constitutional Court centres on the right to dignity, Justice Edwin Cameron responds, "there is a sound reason why dignity, for all its indeterminacy, has taken so central a place in the formative jurisprudence of the court. It is to be found in South Africa's past of racial indignity – where racial subordination was both premised on and itself enacted shamefulness and disgrace [...] derived from the view that black South Africans were subordinate and inferior humans" (2013: 468). Black Consciousness activist Stephen Bantu Biko proclaimed that "the black man must reject all value systems that seek to make him a foreigner in the country of his birth and reduce his basic human dignity" (in Cameron 2013: 471). It is clear then that our conception of human dignity is informed by longstanding practices of resistance developed by political groups' struggles against domination.

Cameron implicitly alludes to the two problems mentioned above, that "the process of degradation of civic status started with the European settlement of South African in the seventeenth century" (2013: 470). We may therefore conclude that the arrival of customary 'international' (i.e. European) customary law, which provides the fundamental basis for human rights recognition, coincides also with the denial of human dignity. South African constitutional law sees fit to rectify this in our Bill of Rights. The struggle for human dignity is part and parcel of the interpretive legal framework for our understanding of human rights in South Africa. Lloyd, like Boucher, explicitly rejects the understanding of dignity as a status inherent in our basic humanity, which justifies our human rights. Rather, he

sees dignity as "something you *do*, a practice, a performance, a way of engaging with the world [...] In a world that denies Black humanity and embraces racial domination, dignity names an affirmation of that humanity, which necessarily means struggle against domination" (2022: 2). Lloyd finds human dignity not to inhere in the ontology of human being but rather in collective struggle against domination (2022: 155). It is not a status, with fixed, positive, dogmatic content, but a struggle (2022: 35, 144). Dignity is not an idle concept in relation to understanding human rights but a central reminder of the social practices of resistance to mistreatment, which legitimate and inform the human rights we endorse. Dignity is part and parcel of customary norms from which international law is derived over time. It is not an inherent attribute belonging to the ontology of the person. Dignity emerges from social struggles.

Vincent Lloyd is therefore right to emphasise the considerable significance, role, and influence of historical struggles for human dignity on the development of the international human rights regime (2022: 2). A democratised sense of universal dignity, as that which we ought to respect in all persons, he maintains, "was embraced after the Second World in the United Nations Charter, the Declaration of Human Rights, and the constitution of 142 countries" (2022: 16). However, Lloyd is mistaken to insist that the struggle against domination for human dignity is not a struggle for recognition. Lloyd denies, for instance, that "the slave's object in struggle," is "to be seen as a human being [...] as equal in standing to all other humans", and "to achieve proper recognition" (2022: 10-11). Lloyd argues that the slave wants to be free from domination, recognised or not; recognition is a secondary matter. However, the struggle against unjust mistreatment, inequality and domination for human dignity is integral to our understandings of human rights, throughout the history of the evolution and development of human rights recognition. It is clear that the recognition of human dignity belongs directly to the obligation to secure freedom from domination. While Lloyd may be right that the slave need not seek recognition from a master, there is a different kind of recognition that the struggle for recognition of human dignity involves, which is the mutual recognition of one human being by another, in human fellowship. It is this prior mode of recognition underpinning human communities that imposes the obligation not to enslave a fellow human being. Moreover, this obligation imposes a burden on the state, the primary addressee of human rights law, to prevent and legislate against exploitative systems of domination to secure human dignity. The slave may not seek recognition from her master, but for the rest of us, especially the state, to impose the obligation on citizens not to engage in slavery, the common good of mutual recognition, of human dignity, plays a key part in informing the content of our human right not to be enslaved. This relationship of respect between human beings is certainly not derived from relations of mastery

and slavery, but it may be found in relationships of fellowship in customary African social practices.

In the following section, I appeal to an alternative conception of the recognition of human dignity to the problematic account of recognition to which Lloyd objects, i.e. of the slave by the master. Recognition of dignity in human personhood is a common feature of African communities on which African philosophers have frequently remarked. For instance, in Akan culture, Josiah Cobbah argues, "the pursuit of human dignity is not concerned with vindicating the right of any individual against the world", but with "a vindication of the communal well-being" (1987: 322). Cobbah argues that "Africans do not espouse a philosophy of human dignity that is derived from a natural rights and individualist framework", but, "a communal structure of cultural humanity" (1987: 331). He claims that African "cultural values provide human beings with dignity" (1987: 331). This is not dignity as the inherent or intrinsic capacity of the individual, to which Boucher objects, nor is it the recognition of a slave by a master, which Lloyd disavows. It is not dependent on the conception of human dignity in human rights that follows from the dominant Western approach, which has come to inform a hegemonic conception of international human rights. Rather, recognition of a common good in dignity, by fellow members of traditional African communities, I will argue, is the type of recognition that is needed to secure human rights.

Mutual recognition of the common good in African social practices of dignity

Menkiti has outlined an African account of human dignity, which he locates in traditional normative customary relationships of dignity respect. Menkiti rejects, for being too individualistic, the Kantian account of the dignity of human nature, in rational autonomy, conceived as intrinsic and inherent in one's capacity to give moral laws to oneself, to follow from one's own will. In contrast, he finds that dignity is defined by the community, in typically African communities, appraising persons for virtuous conduct in their achievements and in their contributions to the community. Dignity is earned in the honouring of moral obligations, by a person, which serves the community's common interests, or common good.

"Most Western views of man abstract this or that feature of the lone individual and then proceed to make it the defining or essential characteristic", he worries, arguing that the African view "denies that persons can be defined by focusing on this or that […] characteristic of the lone individual" (1984: 171). On the African communitarian view, Menkiti claims, the community defines the person in virtue of virtuous conduct. Dignity is not conceived to inhere in some permanent, intrinsic attribute of human beings, with which we are born, such as reason. "To

go beyond the raw appetitive level to the special level marked by the dignity of the person, something more would seem to be needed", Menkiti argues, which involves "movement of the individual human child into personhood" (2004: 325). "Personhood", he explains, "is the sort of thing which has to be achieved", and this involves "a truly serious project", which involves more than an abstract attribute belonging to persons at birth (2004: 326). Menkiti observes that African societies see personhood as an achievement, "attained through the discharge of the various obligations defined by one's stations" (1984: 176).

Menkiti explicitly states that "the African conception of the human person is metaphysically communally situated" (2017: 461), adding that our understanding of dignity refers to "observed social facts, by reference to the avowals and disavowals issuing from countable individuals already engaged in an established social game [...] we have chosen to call the 'moral' game" (2017: 468). "In the absence of others", he claims, "no grounds exist for a claim regarding the individual's own standing as a person" (2004: 324). While "for European philosophy", he argues, "it seems that the idea of the dignity of human person continues to be an abstract affair [...] having to do with the individuated spaces which discreet individuals occupy [...] for African philosophy [...] it tends to be a lived dignity, an affair of experience, connected to the ongoing activities of a social whole" (2017: 468). "The quality of mutual accommodation, of mutual respect [...] has to be a key issue", he insists, adding, "Mutuality is key" (2017: 471). Whereas "the managers of corporate capitalism in America, propelled by a spirit of possessive individualism, forgot along the way the real spirit of the human person", he argues, "it is only in community that we, as persons, have our being"(2017: 472). Menkiti emphasises this point, that "community is not an adornment, but a central defining feature of our existence *as persons* in the world" (2017: 473). In sum, dignity is not an attribute of each single human person, given by nature, but is found in mutual accommodation and mutual respect.

To be clear, Menkiti insists here that dignity is attributed by the community to virtuous persons, on the basis of appraisal of their virtuous conduct. He specifically insists that dignity is not an inherent attribute of the human being per se. Furthermore, it is not a quality of the lone individual. Rather, dignity is an attribute accorded to virtuous persons on the basis of communal standards of appraisal. Key to this communal appraisal of the virtuous person is the standard of mutual and general benefit. The conduct of the virtuous person is virtuous because it serves the common good. From social practices of dignity, that is, from the communal attribution of dignity to virtuous persons, then, we may derive a necessary standard of assessment, which is, the common good. The rights and benefits associated with dignity, in African social practices of recognition of dignity, stem from their benefit for the common good. That is to say, rights

depend on duties toward the common good. We will see why this is so important for human rights as we proceed to discuss rights recognition theory. Many African philosophers have misinterpreted Menkiti, to presume that his account of dignity neglects the wellbeing of every individual. However, it is the wellbeing of every individual in the community, i.e., the common good, that underwrites recognition of dignity.

Kwasi Wiredu, likewise, emphasises Menkiti's point that, at least in Akan culture, "human fellowship is the most important of human needs", and what is good in the ethical sense is what is conducive to the harmonisation of human interests (2002: 194). Wiredu adds that the "greatest value", in Akan society, "is attached to communal belonging" (2002: 199), such that "every cultivated Akan (*Okaniba*) sees life as a scenario of continual striving after personhood", that is, communal appraisal of one's dignified status (2002: 199). The "normative conception of a person", in this view, is "of a morally sound adult who has demonstrated in practice a sense of responsibility to household, lineage and society at large" (2009: 16). Conversely, as Wiredu points out, this also means that "habitual default in duties and responsibilities could lead to a diminution in one's status as a person in the eyes of the community" (Wiredu 2002: 200).

Wiredu agrees with Menkiti that "a person must be an individual who satisfies certain norms", such that the dignity of normative personhood is, thus, "defined by the community" (2008: 336). Wiredu insists, "there is a strong sense of the irreducibility of human dignity in Akan thought" (2002: 199). He explains, with reference to Menkiti, that one gains (or loses) degrees of dignity according to the extent of communal appraisal of one's contribution to the *common good*. Wiredu identifies the common good of 'sympathetic impartiality' as "the first principle of all morals", which is "the logical basis of the golden rule […] that is frequently heard in Akan ethical talk, in the phrase, 'do not do unto others what you would not that they do unto you'" (2002: 198). This notion of 'sympathetic impartiality' is sympathetic, since it is directed to the other, out of mutual consideration for the common good of the self in relation to the other. It is also impartial, in the sense that it applies to everyone, and not just the specific other, or the self. Dignity is attributed to a person for the sake of community. "In the upshot", he concludes, "one sees oneself as necessarily part of an ordered whole whose principle of order is the ethic of community" (2009: 17). According to Menkiti and Wiredu, dignity is derived from customary practices of mutual respect for one another, in our collective responsibility to meet reciprocal moral obligations. As I shall explain further in the following section, these conceptions of dignity, grounded in African normative customary social practices of mutual recognition respect, offer us an alternative to the essentialist conception of inherent dignity to which Boucher objects, aligning well with his account of rights recognition.

African dignity as a basis for universal common good in human rights

Universality from the common good, in social appraisal of dignity

The African account of dignity I have outlined exposes a sticky problem at the heart of the concept of human dignity. Dignity functions as a regulative ideal or criterion that informs universal human rights and correlative duties. However, Menkiti's account of the contingent social recognition of dignity, in African social practices, has been found to expose a gap between the universality of the common good criterion, which human rights and their correlative duties must satisfy, on the one hand, and the contingency involved in social recognition of dignified persons, on the other. A recurring criticism has been levelled against Menkiti's view of the relative dignity attributed to communal appraisal of personhood. This is that it does not satisfy a crucial condition of universal application, which is needed for *human dignity* and, in turn, human rights. Molefe takes this up with Ikuenobe, who follows Menkiti's account. Molefe explains that Ikuenobe's rejection of an "ontological approach to dignity in favour of a performance-based one […] sacrifices the attractive feature of egalitarianism" (2020: 52). He argues, the view "is intrinsically inegalitarian because it bases respect on moral performance" (2020: 52). For Menkiti and Ikuenobe (and for Wiredu), the dignity of a person is defined by the community. However, if my dignity depends on actual social recognition, then how can dignity be said to inhere in every individual? If dignity is bestowed by the community to a person in honour of her honouring of communal obligations, then how can dignity serve as a foundation of human rights for all, including those who fail to meet such conditions for respect? Boucher, who dismisses the concept of dignity as a convenient fiction, insists that rights are inherent in recognised social practices. Thus, he faces a similar problem, that the universality of human rights thereby depends on contingent states of affairs.

The classic notion of an exceptional, transcendental kernel of dignity belonging to humans, may be said to warrant universal equal treatment. However, if dignity is attributed to a person (a) on the basis of *appraisal of virtuous conduct*, then it is not clear to Molefe how dignity might satisfy the criterion of universal equal treatment for all people. Molefe's view on dignity aligns to *some extent* with Menkiti's conception of dignity as *recognition respect* since it is attributed to moral persons. However, for Molefe, the recognition respect of human dignity may be attributed to (b) recognition of our *transcendent capacity for virtue*. By contrast, (a) *appraisal respect* considers only our immanent virtuous conduct (2020: 35).

In *Human Rights and Human Dignity* (2020), Pablo Gilabert also addresses this problem with a helpful distinction between (a) *status-dignity* – "the normative standing in accordance to which human individuals are entitled to the obligatory treatment that human rights state" – and (b) *condition dignity,* which concerns contingent "states of affairs in which human beings enjoy the treatment owing to them" (2020: 284). Status-dignity is thus transcendent. Slaves, for example, retain status dignity even if they do not enjoy condition dignity.

Vincent Lloyd identifies a similar distinction, between ontic and ontological struggle. Ontic struggle aims at a particular object (2022: 10). However, he finds that the world is corrupted by unequal power relations, belonging to regimes of domination, mastery and slavery, especially weighted against Black people. As such, he concludes, "ontic struggle will not get us free; only *ontological* struggle, struggle aimed at domination, struggle against the master, promises us that" and "every struggle against domination involves dignity" (2022: 10). Ontic struggle against instances of domination must be oriented toward ontological struggle, against domination per se, he explains. Lloyd understands dignity not as a status but as a struggle against domination. Moreover, Black dignity, he argues, "is the paradigm of dignity", since the relationship of anti-Black racism between the Black slave and white master "represents domination at its purest" (2022: 14). For Lloyd, ontological struggle is transcendent, since it "aims at an impossible object, a world free of systems of domination" (2022: 11). Since he makes this distinction, Lloyd can claim that "Black dignity is fundamentally committed to equality and to the equal distribution of dignity", at an ontological level, but, at the same time, "only those aligned with the enslaved struggling against domination have dignity" (i.e. at the ontic level) (2022: 16). For Lloyd, like Menkiti, dignity is measured in degrees. Molefe reserves human dignity for respect for human beings' moral capacity for virtue.

Unlike Menkiti, Molefe, Gilabert and Lloyd rely on transcendence, beyond recognition. For this reason, they avoid the problem of the contingent status of social practices of recognition for the universality of human rights. Does Menkiti's account frustrate such universality? I argue that universality stems from the common good, which such social practices presume, in their attribution of dignity to persons of virtuous conduct. The common good is the yardstick.

Like Boucher, I do not think we need to leap toward transcendence to reach human rights. However, unlike Boucher, I argue that the concept of human dignity need not be conceived of as a 'convenient fiction' belonging to an inherent attribute of the ontology of the person but as a basis for human rights from social recognition. Drawing on Menkiti, we find a suitably well-aligned view of dignity belonging to socially recognised customary norms. However, Menkiti does not

support a universal conception of dignity, since he denies that some human persons have dignity at all. How may we derive – from his account of recognised practices of respect – a concept of human dignity belonging not to transcendence but to communal recognition of the common good? Whereas Molefe claims "repudiation of the ontological approach to dignity in favour of a performance-based one [...] sacrifices the attractive feature of egalitarianism which underpins the universality of human rights" (2020: 52), I claim that we find respect for the common good of human dignity in social practices of mutual recognition.

We find respect for the common good in customary practices of recognition respect between members of African communities. We can agree with Menkiti that human dignity belongs to recognition respect for virtuous persons, in light of the common good which is evident in the attribution of dignity, without worrying about his view that dignity belongs to appraisal of virtue. Implicit in appraisal of virtuous conduct, there lies an appeal to the common good, to which such conduct ought to correspond. This common good criterion is implicit in practices of recognition, and it is incumbent on human rights. Drawing on Menkiti's account of the African recognition of dignity, we avoid the conclusion of Lloyd that recognition means assimilation with white domination. A slave may not seek recognition from a master, but, as I explain, human rights depend on normative practices of recognition, which accord with a common good. Such social recognition is evident in African communitarian customary practices of mutual respect for the common good, which underwrite the assessment of conduct. The common good does not belong to any one specific, isolated individual, recognised by others (due to an inherent, transcendent capacity). It belongs to one another.

As Ikuenobe puts it, "dignity is not a capacity we are born with by nature", rather, "dignity arises from interactions with others in a social context". (2016: 454). Masolo agrees, our cognition and moral capacities are not inherent attributes of an individual, but rather they "start with the reality of others with whom we enter into association" (2004: 496). To presume that the concept of dignity involves the natural capacity of individuals for virtue, belonging to the ontology of every human person, is to lose the African cultural sense of dignified relations. Menkiti agrees with the claim that dignity is not a natural or inherent attribute of isolated, abstract individuals. Our conceptions of dignity are socially and culturally determined, wholly artificial, since what we know of dignity depends on our socially mediated recognition of dignity, often against indignity.

African communitarianism rightly affirms the social relationships and the web of communal duties that the concept of dignity must entail. We owe it to one another to respect universal human rights. Packing human dignity into the natural human capacity of individual human persons for virtuous conduct detracts from

the normative human relationship between people, which assessment of dignity entails, and which typically African ethics embraces in appraisal of dignity. To avoid the individualisation of human dignity, by contrast, a plausible way to account for the universality of human rights is to maintain that they must satisfy the criterion for human dignity, which involves customary normative recognition respect between people.

As a criterion for human rights, the moral status of human dignity depends on respect for the common good. Molefe's account of dignity as a capacity for virtue abstracts from communal relationships as the basis of dignity, to attribute dignity to the ontology of human personhood. However, human rights cannot be secured without social recognition. The approach to dignity from a transcendent, inherent capacity of the human individual loses both the cultural specificity of African dignity and the social recognition on which human rights depend.

Rights recognition theory

To see the alignment of these considerations with human rights recognition, it is worth turning briefly to the British Idealist tradition from which international political theorists derive the rights recognition thesis. Responding to the natural rights tradition, TH Green denied that there can be rights independent of society, insisting, like Menkiti, that no rights can be attached to individuals in isolation from society. Human rights, Rex Martin reminds us, are not natural. They are the rights of persons in *organised societies*, representing interests "vulnerable to specific threats which are characteristic of life in society, in particular, modern societies" (2013: 3). In contrast with the view that "human rights as 'moral' rights do not presuppose social recognition or enforcement", Martin argues, with Jeremy Bentham and Green, that, "*all* moral rights, as accredited moral rights, can themselves be construed as presupposing practices of (social) recognition" (2013: 4). This is because "an ideal morality which totally lacked any social recognition of any sort, anywhere, would also lack the very thing it was supposed to provide, moral authority" (2013: 4). Moral principles must underwrite and assign moral directives on second-party conduct. This condition presupposes that these justifying elements are recognised. "A claim or duty that is not acknowledged," he explains, "will not be regarded as one which normatively governs conduct", and there are no rights without specific duties (2013: 5).

Gerald Gaus argues against the 'independence thesis' (rights are observer-independent facts). This thesis denies "that morality is part of practical reason", that is, "that an ideally rational agent, who was aware of all the reasons for action that there are, would necessarily have the motivating reasons to act on his moral obligations" (2006: 215). Morality is practical, he insists, with reference to Green,

"in so far as terms such as 'ought' and 'right' get their meanings only when they enter into practical guidance in people's dealings with each other" (2006: 218). Gaus argues, first, since the rational will "always seeks its good […] morality must articulate a common good". Therefore, "a necessary condition for rights to be rationally recognised is that they are understood as promoting a common good" (2006: 223). Second, Gaus agrees with Green and Martin that "a political authority that has no practical effect has no political authority at all, as it cannot perform its main task of sorting out disagreements and harmonizing rights", and so, "there must be some general recognition of it" (2006: 229). "The very precondition of authority, that those subject to it have some obligation to obey," he explains, "presupposes rational recognition of the authority…" (2006: 230). This is because "the job of an authority is to regulate and co-ordinate social interaction […] An authority that is not socially recognized simply is unable to perform the office of an authority" (2006: 230). Rights, as powers, are therefore "defined by social recognition. Without general social recognition, no authority exists" (2006: 230).

In sum, first, moral rights must at least co-ordinate our activities, and second, "unrecognized co-ordinators do not co-ordinate". Thus, moral rights must be socially recognised (2006: 234). Some rights should be recognised, but are not recognised, Gaus acknowledges; and some socially recognised rights, which serve no common good, such as slaveholding, before the 19th century, are immoral. However, "since a crucial function of rights is to dispense moral authority", we see that "rights cannot perform their function unless they achieve a degree of social recognition" (2006: 235).

On the basis of these considerations, Rex Martin sets out three main criteria for active human rights: First, it has "a justifying element"; second, there is "effective and enactable social recognition" (so rights and duties can be put into practice with due understanding), in which case (with 1 and 2) we can reasonably expect the third criteria, "maintenance by promotion and conforming conduct, on a wide variety of occasions" (2013: 7). Martin admits that some socially recognised rights may not be "institutionally embodied" but he insists that these are "*merely* moral rights" and not "claims against the basic institutions of society", such as human rights (2013: 7). Human rights, he explains, are "mainly intended to impose restraints on governments or on organised societies" (2013: 8). The state, he adds, is needed to enforce compliance (2013: 9). Since government is the organiser of human rights, backstopping the duties of persons with regulation and legal support, Martin argues, active human rights require both social recognition and institutional embodiment of those rights to direct our conduct (2013: 9-10). Again, like Gaus, Martin notes, of the 'justifying element' (1), that human rights must be justified, at least, according to "the standard of mutual and general benefit", i.e.

the benefit of each and all (2013: 11), or the common good, as Gaus puts it. It must be that they, "could be seen by almost all people, as being of benefit […] to themselves and to a *vast number* of human beings alive" (Martin: 2013: 11). For the universality of human rights to be morally justified, the "mutually *perceived* benefit" of most people must be satisfied. In addition to this basic criterion, Martin adds, an overlapping consensus should be achieved, providing justification from the respective endorsements of "a variety of comprehensive ethical doctrines", converging on a justified focal point (2013: 12).

Gaus and Martin provide a compelling response to the arguments of Lloyd and Madlingozi, discussed earlier, that the struggle for human dignity and human rights, against anti-Black racism, slavery, and the domination of white hegemony, does not recognise equal standing. Freedom from domination may first and foremost be the aim of resistance and struggle against anti-Black racism, slavery, and exploitation, but an appeal to human rights, as a means to secure correlative obligations against others, as we see, all depends on social recognition, and at least in the case of *active* human rights, official, formal institutional embodiment. The ontological struggle against domination, as Lloyd recognises, requires practical engagement. This includes appeals to socially recognised human rights.

However, contrary to the claims of Gaus and Martin that rights must be recognised, it is worth noting that the common good criterion on which they insist is not in turn explicitly derived – in their accounts – from recognised social practices. Gaus, Martin, and Boucher are right to insist that rights must be recognised. However, they insist on the standard of mutual and general benefit, or common good. Although they stipulate this requirement, they do not specify from where it is derived. For the sake of consistency, the common good criterion ought to be derived from actual social practices, like rights. Gaus derives this criterion by rational deduction from logical presuppositions of a rational will, which determine that a moral good must not constrain one's will to seek one's interest. Martin stipulates this criterion, insisting that the universality of human rights requires this. Neither theorist shows us in what instance such a criterion is socially recognised. For the common good criterion to cohere with the general rights recognition thesis, it is worth demonstrating, from African ethics, how social practices of recognition may determine a criterion of human dignity as a basis for the common good criterion for human rights, in which case, human dignity is not an inherent attribute or a convenient fiction but a recognised regulative ideal, derived from mutual recognition respect in recognised social practices.

Rights recognition in communal appraisal

With reference to Martin's criteria for active human rights, then, we see how the maximal and strongly normative conception of dignity, which Menkiti identifies in traditional African communal social practices, may be said to offer a basis for the universal recognition of human rights, without requiring (a) presupposition of the transcendental kernel of inherent and exceptionally human capacity or some or other attribute belonging to the ontology of the abstract, lone individual, or (b) assimilative reconciliation between masters and slaves, with slaves acquiring recognition and inclusion in some or other systemic, hegemonic, and/or white structure of domination. Menkiti's performance-based account of the customary appraisal of dignity for moral performance does not sacrifice the egalitarianism underpinning the universality of human rights, as Molefe (2020) alleges, since the practice, to which Menkiti refers, carries an underlying common good criterion. Wiredu refers to this as the 'Golden Rule': do not do to others what you would not that they do to you (2002: 199). The standard of assessment – the common good of the community – must be presupposed in the attribution of praise to virtuous members of the community, for fulfilling their obligations to the common good of the community. Critics have given an individualistic interpretation of Menkiti's account of the appraisal of the dignity of persons by abstracting the individual from the network of social obligations Menkiti prefigures in his account, but an appeal to the communal common good is implicit in his view of recognition respect for dignity since it is the basis for communal praise of the dignity of moral persons by members of the community.

Without a common good criterion, communal praise for the dignity of human persons is irrational since it asks the moral will of community members not to seek to satisfy their personal interests. To recall, Menkiti argues that dignity is a lived affair of practical experience, "connected to the ongoing activities of a social whole" (2017: 468). "The quality of mutual accommodation, of mutual respect [...] has to be a key issue," he insists, explaining that "mutuality is key" (2017: 471), since "it is only in community that we, as persons, have our being" (2017: 472). He emphasises that "community is not an adornment, but a central defining feature of our existence *as persons* in the world" (2017: 473).

As Cobbah explains, "respect is the cardinal guiding principle for behaviour within the family and the society" (1987: 321). Africans, he argues, espouse a philosophy of human dignity derived from a communal structure of cultural humanity, wherein "cultural values provide human beings with dignity" (1987: 331). Cobbah claims that the "Africentric conception of human dignity" enriches universal understandings of human rights and dignity since it is organised on principles of respect, restraint, responsibility, and reciprocity wherein the family "seeks a vindication of communal well-being" (1987: 321). Dignity is

not an abstract, transcendental capacity but a practical concern for recognised customary practices. On this African view, then, dignity is not a capacity we are born with by nature. nor does it just belong to virtuous persons. African social practices of recognition of dignity rely on a social dynamic of mutual recognition.

Dignity, on Menkiti's account, is attributed to virtuous persons by the community in mutual recognition of the common good. This is evident in their appraisal, since the contribution of the virtuous person to the common good warrants praise. Dignity is not just the one-way appraisal of a person but also a signal of mutual respect for the common good. Dignity is not a right or entitlement I am owed but a signal of respect we owe one another, for meeting moral duties in interactions with one another. Dignity does not belong to a single person but to mutual recognition respect between people. For Masolo, dignity "stands more as a watchdog for the common good than as a robust social theory" (2004: 88). In this claim he alludes to the fact that dignity is not a theory, which warrants specific rights, but rather a basic criterion, which the attribution of rights to others must satisfy. African dignity functions as a suitable criterion for human rights, introducing a common good standard of mutual and general benefit that must belong to any socially recognised comprehensive moral doctrine insofar as it provides recognition of human rights. From Menkiti's account of the attribution of dignity to virtuous persons' conduct, evident in their contributions to the common good, we derive a criterion for human rights, which does not list them, but which they must meet. The common good, evident in dignity, yields the criterion of universality for human rights.

Conclusion

I have argued that an active human right, first, must be justified by (a) accredited, critical, moral standards of overlapping consensus, involving a convergence of comprehensive moral doctrines underlying normative customary social practices, (b) corresponding to the Golden Rule, which is a common good criterion of mutual recognition respect, such that it could be seen by most people to benefit most people, thereby reaching a moral standard of mutual and general benefit. Second, a human right must have some sort of significant social recognition. Third, this involves official recognition in law and in courts, or is situated in legal, supported and regulated social and economic institutions. Fourth, this recognition must be maintained primarily by conforming conduct. Finally, this recognition must be officially protected by oversight and enforcement of government.

In doing so, I have argued against the claims of Lloyd and Madlingozi that those struggling against anti-Black racist domination need not seek recognition, since, I explained, a right could not provide moral authority and serve as a

normative guide if it did not enjoy social and formal recognition and correspond with mutual recognition respect. Such recognition may be found in traditional African ethics, as per Menkiti. Furthermore, against Gaus, Martin, and Boucher, I have argued that the common good constraint belongs to human dignity, which is not a convenient fiction or just a logical entailment but may be derived, for example, from recognised African normative customary practices of dignity. Finally, against Molefe and Gyekye, I have argued that Menkiti's account of the appraisal of dignity in traditional African communities provides warrant for the universal common good of human rights. This is because the appraisal of dignity is contingent on mutual recognition respect among humans.

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