

## **Ethical naturalism and human rights**

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The question of the foundations of human rights is one that has become an increasingly pressing issue over the last few decades. One of the most compelling recent attempts to provide an answer to it is James Griffin's *On human rights*. What is novel about Griffin's account is his conviction that we need a *substantive* account of human rights in order to render more determinate just what we actually mean by "human right". To this end, Griffin develops and draws on a conception of ethical naturalism which I lay out in the first section of this paper. I then contrast it with an alternative, "second-nature" conception of ethical naturalism that I present in the second section, drawing on the work of John McDowell and David Wiggins. My objective in doing so is to show in the third and final section that while Griffin's account may succeed at the theoretical level in providing substantive criteria for deciding what qualifies as a human right, it fails as a candidate for widespread justification of human rights. The alternative conception of ethical naturalism makes the reasons for this clear and shows why an overlapping consensus on human rights is the right model of justification.

### **I. Griffin's ethical naturalism**

James Griffin's approach to grounding human rights centres on working towards a more determinate conception of what we mean or should mean by the term 'human right'. But human rights are not to be understood as rights we have simply in virtue of being human, because this is true of moral claims in general (Griffin 2008, 17). Rather, there must be something special about the kinds of claims human rights represent, which warrant their enunciation in this particular form. This specialness is captured in the characterization of human rights as "protections of normative agency" (Griffin 2008, 2). Already with this claim, the nature of Griffin's approach is evident: he firmly believes that only a *substantive* account of human rights will suffice (Griffin 2008, 22). One of the virtues of such an account, which will provide criteria for deciding what qualifies as a human right and why, is that it will help stop the runaway growth of the extension of the term in recent times and preserve its integrity and credibility (Griffin 2008, 17). As we

will see, Griffin will ground his substantive account in an ethical naturalism. A key part of his approach to grounding human rights, however, are the historical connections he draws between it and what he calls the Enlightenment project of human rights. I thus turn to his consideration of history first.

In *On human rights*, Griffin begins with a brief historical account of the history and origins of human rights discourse. The whirlwind tour we get of the likes of Aquinas, Suarez, Grotius, Pufendorf, and Locke is unified by the clear tendency in their accounts of natural law and natural rights *qua* precursor to our modern conception of human rights: human beings are able to work out and understand for themselves the natural laws, precepts, or moral principles needed in order to live together in stable societies (Griffin 2008, 9ff.). In fact, in the case of Aquinas, we already see a model for Griffin's own ethical naturalism:

In the universe, as conceived by Aquinas, everything has its divinely assigned end. One could therefore see human ends as part of, and readable off, nature. This view, developed in a certain way, can support a strong form of natural law. It can support, for instance, a form of moral realism—that is, the view that human goods and perhaps even moral principles are not human constructs, but part of a reality that is independent of human thought and attitude. And this sort of moral realism can, in turn, support the epistemic view that judgements about human good and moral principles are capable of truth and falsity in the strong sense that more familiar kinds of report about nature are (Griffin 2008, 11-12).

Despite its obvious religious/theological foundations, Aquinas' theory succeeds in pointing to nature as a source for grounding human rights, a source which is independent, to use our terms, of cultural variation. In the course of the seventeenth and eighteenth centuries, however, there is a steady falling away of the religious and theological underpinnings of natural law and a move towards secularization to the point that the idea of natural law comes to mean nothing more than “the claim that there are moral principles independent of positive law and social convention” (Griffin 2008, 12). The final outcome of this process is the Enlightenment notion of human rights that emerges at the end of the century, as contained in documents such as the French *Declaration of the Rights of Man and of the Citizen* (1789) and the United States Bill of Rights (1791). This is the notion of human rights, Griffin claims, that we still have today, there having been “no theoretical development of the idea itself since then” (Griffin 2008, 13). It is this

notion, however, which remains woefully indeterminate, for saying a human right is one we have simply in virtue of being human, without any further specification of what 'human' means, is insufficient for determination of what properly can count as a human right. Nevertheless, the historical discourse on natural law and natural rights and the Enlightenment notion do provide us with a clue: "[n]atural law began as a part of a teleological metaphysics capable of supporting strong interpretations of how morality is rooted in nature" (Griffin 2008, 14). But, Griffin asks, once that foundational metaphysics is abandoned, what do we have left to go by, and is it enough? (Griffin 2008, 14). This is where the account Griffin is going to provide comes in. His proposal for how to ground human rights in ethical naturalism is clearly intended to be understood as emerging out of and as completing the Enlightenment project of human rights. His substantive account fills the gap that has been left since the end of the eighteenth century.

Griffin provides an overview of his substantive account in the second chapter of *On human rights*. Human rights, at their most basic, are protections of our human standing or personhood. If personhood is broken down by analyzing the notion of agency, three values emerge from three features of agency which are constitutive of it. These are 1) autonomy ("one must (first) choose one's path through life"), 2) minimum provision (in order for "one's choice [to] be real [...] one must have at least a certain minimum education and information [and] one must have at least the minimum provision of resources and capabilities it takes" to be able to act, and 3) liberty ("others must also not forcibly stop one from pursuing what one sees as a worthwhile life") (Griffin 2008, 33). These are the three values which Griffin will use to derive the "highest-level human rights" and subsequently to develop that account in Part II of his book, before turning to various applications in the Part III. Before that, however, Griffin owes us a fuller explanation, justification, and grounding of his substantive account and it is here that he turns to ethical naturalism.

Human rights are grounded directly in the central substantive values of personhood: autonomy, liberty, and minimum provision. These values and their associated rights, however, are not derived from any abstract moral theory, via a formal principle such as Kant's Universal Principle of Right or Mill's Principle of Utility (Griffin 2008, pp. 2ff). Rather, they are grounded in merely what is needed for a human

being to be a human being, for human *status*. Among other things, personhood on its own generates the right to life and security of person (since personhood would be impossible without it), political voice, free expression, assembly, and press (all generated from autonomy), and rights to education and minimum provision (Griffin 2008, 33). While it is must be acknowledged that certain of the generated rights depend on the nature of the society in question, e.g., there must be a press for there to be a right to freedom of press—Griffin later associates these with the “practicalities” that need to be considered in determining specific rights (Griffin 2008, 37ff)—the underlying values are basic to being a human being. But what are the grounds for this claim? As Griffin himself puts it, “[s]tatements about human nature could most easily lay claim to cross-cultural standards of correctness if they could be seen, as some classical natural laws theorists saw them, as observations of the constitution and workings of part of the natural world” (Griffin 2008, 35). But he is quick to anticipate the response to this: “this looks like trying to derive values (human rights) from facts (human nature), which generations of philosophers have been taught cannot be done” (Griffin 2008, 35).

Griffin, however, thinks we have a new way of grounding such claims which can replace the religious or metaphysical underpinnings deemed necessary by the likes of Aquinas but no longer accessible to us today. The criticism that we are deriving a value from a fact in this case only stands if we buy into “a certain conception of nature: namely, the conception that sees nature as what the natural sciences, especially the physical sciences, describe” (Griffin 2008, 35). Griffin, in contrast, proposes that we adopt a different understanding of what is ‘natural’ which accommodates his understanding of what is ‘human’. His argument is essentially that it is simply inadequate to define the ‘human’ in natural scientific terms alone, for any resulting definition will be missing crucial aspects of what it is to be human which cannot be captured in such terms. Most important, according to Griffin, are basic human “*interests*” which ground notions like autonomy and liberty, which are, in turn, central to functioning human agents. These basic interests are fundamental to our understanding of human nature and clearly transcend the narrow terms of natural science. Griffin unabashedly claims that his “notions of ‘human nature’ and ‘human agent’ are [thus] already well within the normative circle, and [that] there is no obvious fallacy involved in deriving rights from

notions as evaluatively rich as they are” (Griffin 2008, 35). The reason for this is clear: “it is [...] much to quick to think that what is evaluative cannot also be objective [...] that it cannot also be natural” (Griffin 2008, 35). We must instead see basic human interests as features of the natural world, as basic to human nature. As Griffin puts it, he is calling for an “expansive naturalism” which “gives hope of restoring a form of that central feature of the human rights tradition: namely, that these rights are grounded in natural facts about human beings” (Griffin 2008, 36). The link with Aquinas is only too clear.

Griffin’s ethical naturalism does not end with his defence of universal human interests as the proper ground of human rights. For it could plausibly be argued that the ‘naturalness’ of these interests seems to be grounded in nothing more than his mere claim that they have this status. In chapter six of *On human rights*, entitled “The metaphysics of human rights”, Griffin goes a step further and provides an account of the interests themselves and their origins. In contrast to what he calls ‘the taste model’, which he associates with Hume and according to which values are seen as entirely reducible to subjective preference, Griffin maintains that some basic human interests must be seen as having an objective status (Griffin 2008, 111-12). His argument here draws on Wittgenstein’s notion of a ‘form of life’ (and Donald Davidson’s ideas on what is necessary for us to be able to interpret the language of others) (Griffin 2008, 113ff.). Griffin focusses on Wittgenstein’s insight that a language is only possible because the rules of use of words are not akin to a mental template but rather can only be understood as part of the shared practices of a community, which, in turn, “are possible only because of the human beliefs, interests, dispositions, sense of importance, and so on that go to make up what [Wittgenstein] called a ‘form of life’” (Griffin 2008, 113). What this points to is the fact that there are all sorts of ways in which we see and understand each other that are fundamental to the possibility of us being able to share a language. “[A] form of life seems to consist in part in a shared set of beliefs and values” (Griffin 2008, 113). It is this shared form of life that is the repository of certain basic human interests and values which, in turn, are part of the necessary conditions for language in the first place. Griffin believes that these “will be confined to a few of the most basic human interests [...] that we want to avoid pain and anxiety, that we have goals and attach importance to their being fulfilled (and perhaps also a few moral norms closely connected with these

interests, such as that cruelty is wrong)” (Griffin 2008, 114). What is also true about sharing a form of life is that one’s standards for evaluating one’s life can no longer be seen as entirely subjectively generated. Griffin gives the example of “accomplishment” and notes that standards by which I can claim to have achieved something of significance in my life are not chosen by me, such that (using Rawls’ example) I could not claim counting all the blades of grass on various lawns as a genuine example of “accomplishment” (Griffin 2008, 114). All this Griffin associates with what he calls “the perception model” and according to which “[f]or me to see anything as enhancing my life, I must see it as enhancing life in a generally intelligible way, in a way that pertains to *human* life and not just to my particular life” (Griffin 2008, 114).

On this basis, Griffin makes his central claims about the naturalness of certain human interests. There are certain biologically-based human interests such as nourishment and nurturing necessary to avoid ailment, pain, and malfunction (including psychological) which he terms “disvalues” and which are, he claims, “part of the framework necessary for the intelligibility of language” (Griffin 2008, 116). But as reflective, rational creatures, there are also certain “non-biological interests” such as accomplishment which are, Griffin claims, “as deeply embedded in human nature as biological ones”. The list Griffin provides of these is “accomplishment, enjoyment, deep personal relations, certain kinds of understanding, and [...] the components of personhood” (Griffin 2008, 116). In a word, “biological interests are embedded in our animal nature, and non-biological ones in our rational nature” (Griffin 2008, 117). All of these basic human interests are available or accessible to us in virtue of our participation in a form of life and our knowledge of its associated language. Griffin invokes the idea of a certain kind of *sensitivity* that, under the right conditions, a human being will have to these interests, which Griffin associates with “prudential values”, such that she will both recognize them and have the appropriate reaction to them (Griffin 2008, 117ff.). The analogy here is to visual perception. Just as there are conditions we can point to which are necessary for successful seeing—good light, good eyes, good position—we can also work out “the conditions for the successful workings of our sensitivity to prudential values” (Griffin 2008, 119). Griffin acknowledges that the conditions for the operation of a sensitivity to prudential values is far more complex than those necessary for successful

visual perception. “One needs, first of all, a lot of knowledge of the familiar, undisputed factual sort about the world. One has also to have sufficient human capacities to know how enjoyment, say, figures in human life” (Griffin 2008, 118-19). Correspondingly, a failure in sensitivity would have various causes: lacking the concept, information, certain human capacities (Griffin 2008, 119). The point here seems to be that since these biological and non-biological basic interests, now characterized as prudential values, are deeply embedded in human nature, as long as we are functioning as normal human agents (as complex as the conditions for that are), we will all naturally be sensitive to these interests/values. As Griffin puts it, “[a] full account of deliberating about human interests suggests that in the right conditions we are sensitive to certain things’ making life go better” (Griffin 2008, 119).

Crucial to Griffin’s argument is that these interests be seen as part of *human* nature, and not as relative to a particular society or culture. In order to make this clear, he draws an analogy between an ointment’s being “soothing” and an accomplishment’s being “life-fulfilling”. Because both these concepts are deeply embedded in the human perspective, our recognition of their occurrence brings with it a reaction, an *appropriate* reaction, when our sensitivity is functioning properly (Griffin 2008, 122). It is no argument against the objective validity of these concepts to say that, because they are embedded in a human point of view, they are not truly objective. The question is whether they are inescapable components of our best account of what happens in the natural world, of which human beings are a part (Griffin 2008, 122). And Griffin believes that their fundamental relation to basic human interests gives them this status. Our natural sensitivity to these interests is proof of this. In the case of pain, one cannot separate recognition and reaction—our reaction to pain is in part constitutive of our recognition of it as pain.

[I]t is not that, as a matter of fact, we just find ourselves desiring to avoid pain or to have it alleviated. What is going on is more complex: we have these desires *because* we find pain undesirable. We have an attitude towards it; we find it bad, and for obvious reasons. Some basic values are part of the framework necessary for language, and the disvalue of pain must be one of them. The distinction between fact and value [...] becomes difficult to sustain at this point.

And the same logic holds for basic human interests in general, interests embedded in our nature as human beings.

Cases of interests' being met and unmet, I think, earn their way into the world of facts. We can place them in our everyday natural world, and do not need to resort to anything remotely like a detached 'value realm'. That conclusion brings out what seems to me immensely plausible about ethical naturalism. In talking about human interests we are not talking about entities in such an other-worldly realm [...] but, rather, about certain things that happen in the only realm that values need: mainly, what goes on in human lives, that *this* or *that* meets an interest, and so makes a life go better. (Griffin 2008, 123).

Griffin sees this "ethical naturalism" as part of that wider "expansive naturalism" we encountered above according to which what we mean by 'natural' or 'factual' now comes to include human interests (Griffin 2008, 124). At base, it is from these human interests and their associated prudential values that human rights are derived and properly grounded. The values of autonomy, liberty, and minimum provision underlie and are the criterion for the human rights derived from them which serve to protect normative agency.

## **II. Second-nature ethical naturalism**

Griffin's ethical naturalism starts from a first-person perspective on the world in which, if all the goes well and I become a normal, functioning human agent, I am sensitive to various interests and related values which "make my life go well or better". I recognize and react appropriately to things as different as pain, on the one hand, and accomplishment, enjoyment, deep relations with others, on the other. These interests and values correspond to basic features of a recognizably human life. We are not just biological organisms, we are also rational, reflective organisms and the interests and values associated with being such are just as natural to us. For example, because I am capable of *leading* a life, *choosing* it for myself, the value of autonomy is natural to my being, to any human being. Because I am capable of feeling fulfillment, the value of accomplishment is natural to my being. Griffin's ethical naturalism thus begins from *natural* features and capacities of human agency—which the over-arching adjective "normative" is meant to capture—and shows how the interests and values associated with them are ones to which we are normally sensitive because they are embedded in our

language and its connected form of life. The move from the prudential to the moral comes when I see others as capable of the same things, as having the same interests and values—at the most basic, I recognize and react to your pain as I would to my own (Griffin 2008, 124ff.; Griffin 1996, 71ff.)<sup>1</sup>. “For me to see you as human is to see you as having certain physical and psychological states that you want to avoid or to have alleviated, as having goals that can be achieved or frustrated, [etc.]” (Griffin 1996, 69). In a word, I start from my own perspective and understand you by projecting that perspective onto you and respecting those same values at stake in your life (Griffin 1996, 69). Another source of my moral relationship to others is the fact that my realization of my own interests deeply involves them also. As Griffin puts it, the explanation of prudential values must involve according a large place to “the value represented by other persons” (Griffin 1996, 69). For example, I cannot achieve accomplishment without others, deep personal relations by definition involve other human beings, etc. (Griffin 1996, 69-71). What is striking about the underlying structure of Griffin’s argument here and his ethical naturalism in general is the distinct resemblance it bears to early modern and Enlightenment theories of human nature and society, often termed Epicurean, which were premised on self-preservation as the most basic motive of human nature. Naturally, Griffin’s account is much more nuanced, but the starting point is nonetheless human *interests* and *prudential* values. The moral level can be understood as having to do with the issue of the social coordination of self-interested agents, and moral norms as involving a large element of “policy” that emerges over time in societies (Griffin 1996, 93ff; Griffin 2008, 127ff.).

Now there is a different way of understanding ‘ethical naturalism’ whereby ‘naturalism’ consists not in giving a substantive account of the interests and prudential values that are “deeply embedded in human nature”, but rather in providing an account of how human beings *become* ethical agents in the first place. The idea of a ‘form of life’ as basic is present here too, but a key difference is that the values belong to their own kind of language and are not *only* part of one’s spoken language or part of something more basic which renders language possible in the first place. One is instead initiated into an

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<sup>1</sup> Griffin discusses the move from prudence to morality in Section 6.4 of *On human rights*. He provides a more extensive discussion in his earlier book, *Value judgements: improving our ethical beliefs*.

ethical language shared by the members of a society and the values of this ethical language are both intrinsically self- *and* other-regarding. That is, one does not start from purely prudential values alone, but rather from values that relate to others too, such as honesty, generosity, etc. Likewise, the ethical sensitivity to these values is different from Griffin's conception of sensitivity, for it is something one originally *acquires from others* and *develops*. But this ethical sensitivity and the very capacity to acquire it and to act according to a web of values is seen as a *natural* feature of the human form of life. So, despite the already apparent differences, this understanding of ethical naturalism is in complete agreement with Griffin that our understanding of 'naturalism' must be broadened to include features of human agency that are not capturable within the terms of natural science. Let me now try to flesh out this alternative conception of ethical naturalism whose focus, in contrast to Griffin, is on *how* human beings become ethical agents.<sup>2</sup> I turn first to the insights of John McDowell and David Wiggins on this subject.

A good place to start is with the notion of values. Both McDowell and Wiggins defend an approach to values that construes our perception of them as analogous to our perception of colours (McDowell 1998, 132ff; Wiggins 1987, 189ff). But, as we will see, their 'perception theory' of values is rather different from that of Griffin's. To start with visual perception, if we were to say that our experience of seeing the colour 'red' should really be explained in terms of the primary qualities of the object we are looking at, its microscopic structure, say, then we are, quite simply, no longer explaining the experience itself, as it is *subjectively* experienced. Secondary qualities such as colours, therefore, *do* have objective reality. While they depend on beings like us to be seen, as long as *we* exist, they exist for us and independently of us. We, as it were, each subjectively experience them objectively, under favourable circumstances (the right lighting, etc.). McDowell and Wiggins construe values as having an analogous reality. Values are not arbitrarily subjective, in the manner of the 'taste theory' Griffin rejects. When I feel a sense of nausea, whatever object it is that causes my nausea is, for me, nauseous. That I find vanilla ice cream more 'delicious' than chocolate is likewise a simple subjective preference. But when it comes to values, my ascription of a value-property to an action or

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<sup>2</sup> The following draws on DeSouza, "Pre-reflective ethical know-how" and DeSouza, "Charles Taylor and ethical naturalism".

person, while depending on my subjective experience and judgement, can also be criticized and the question as to whether the action or person merits the value-property-ascription can be asked. While values are subjectively experienced, they also have an objectivity to them in so far as we can ask whether someone really is honest or whether that action really was generous. More basically, their objectivity derives from the fact that human beings in a society can perceive the properties of actions or characters in a manner analogous to how they perceive colours. While our sharing the same basic visual perceptual apparatus is the condition of our shared colour perception, an analogous case can be made for the genesis of our shared capacity for value-perception. McDowell and Wiggins provide accounts of this genesis which are similar in important respects. Both of them, for example, argue for a naturalistic understanding of this account of the phenomenology of value experience that resists the reductivist terms of a natural science.

Wiggins develops his account of our shared capacity for value-perception in “A Sensible Subjectivism” and “Moral Cognitivism, Moral Relativism, and Motivating Moral Beliefs”. He shows how a historical social process can lead to the establishment of shared moral responses to intersubjectively discernible features that engage our sentiments or feelings. This process “creates a form of life that invests certain features of people, acts and situations with the status of values” (Wiggins 1990, 79). In growing up within such a form of life, Wiggins says, our original participation in a general way of feeling and of being motivated leads to us *finding* or *discovering* that X deserves such and such a response, or has such and such a value. Wiggins also defends this moral phenomenology by arguing for its naturalist credentials along Humean but avowedly cognitivist lines—he claims Hume has never deserved the hostility of moral cognitivists. Wiggins argues, like Griffin, that if value properties are not replaceable by physicalistic/scientific explanations, then they *are* making a difference. But the values Wiggins (and McDowell) are talking about are, of course, rather different from the prudential values embedded in human nature that Griffin speaks of. They are not all prudential, and they are not embedded in human nature. Wiggins goes on to claim that value properties reveal how human beings respond not only to natural features of the world, but “to features that mind itself, as it has taken on a life of its own, has marked out there. Value properties are properties that mind critically delimits and demarcates in the

world” (Wiggins 1990, 84). If these properties are indispensable and irreducible, Wiggins concludes, “this is surely what it is for consciousness not merely to arrive in the natural world, but for it to make itself at home there. By critically determining the presence there of valuational properties, we colonize that natural world” (Wiggins 1990, 84). This grounding of moral phenomenology in human nature and historical social processes is Wiggins’ own version of ethical naturalism that rejects any reductivist scientific view of nature—something Wiggins explicitly does on several occasions—in favour of a Humean naturalistic view which “treats human morality as a certain sort of natural phenomenon, a phenomenon of feeling” (Wiggins 1990, 68). Wiggins thus not only gives an account of how we encounter values in our world; he goes further and tries to provide a genetic, naturalist account of it on the basis of a broader understanding of ‘naturalism’.

While Wiggins provides us with a way to understand how an ethical language or web of values in a form of life might have come about, John McDowell provides us with a more detailed account of how human beings become ethical agents. His conception of “second nature” is central to this account. Drawing on Aristotle’s *Nicomachean ethics*, McDowell paints a picture of how human beings acquire an ethical character through their upbringing. The process involves the moulding of motivational and evaluative propensities which results in the formation of the practical intellect and the concomitant acquisition of practical wisdom or *logos* (*phronēsis*). The virtuous character that is acquired does not consist merely of habitual inclinations, but of a sensitivity to certain kinds of reasons for acting. Both motivational *and* evaluative propensities are shaped.

In acquiring one’s second nature—that is, in acquiring *logos*—one learned to take a distinctive pleasure in acting in certain ways, and one acquired conceptual equipment suited to characterize a distinctive worthwhileness one learned to see in such actions, that is, a distinctive range of reasons one learned to see for acting in those ways (McDowell 1998, 188).

Beyond the affective and cognitive shaping that comes with an ethical upbringing, McDowell is here pointing to another fundamental feature of an ethical outlook: its autonomous nature. The reasons to which we become sensitive are interrelated and mutually supporting—they constitute their own form of *logos*. McDowell’s analysis is of a second nature of virtue, which he recognizes as one possibility among many (McDowell 1998, 188-89, 194). Now on the Aristotelian conception, virtue is unified.

One is not sensitive to virtues one by one; rather, only someone who possesses them all can possess any one of them fully. As McDowell emphasizes in “Virtue and reason”, this particular ethical outlook involves the instilling of “a single complex sensitivity” (McDowell 1998, 53). This sensitivity ultimately amounts to a conception of the kind of life a human being should lead, of how a human being should live. The upshot is that this ethical outlook is not codifiable (McDowell 1998, 57-8). One cannot derive universal principles of action from it which could be rationally justified from an external point of view, e.g., as producing the greatest good or as being the most conducive to human flourishing. The rationality of virtue is *internal* to its associated ethical outlook (McDowell 1998, 71). The example of courage can serve to illustrate this. A courageous action in the face of danger, for example, can also be motivated by benevolence and justice. In addition, as McDowell also emphasizes, “courageousness is primarily a matter of being a certain kind of person” and this entails not being the kind of person who is “ready to rethink the rational credentials of the motivations characteristic of being that kind of person, on occasions when acting on those motivations is in some way unattractive” (McDowell 1998, 192). There is of course a connection between courage and human interests. As McDowell formulates it: “human beings need courage if they are to stick to their worthwhile projects, in the face of the motivational obstacle posed by danger” (McDowell, 1998, 191). But this is part of the “reflective background” of one’s second nature and is not directly in play when one acts courageously. One precisely does not engage in a rational weighing of considerations; rather, “what directly influences the will is the valuations of actions that have come to be second nature” (McDowell 1998, 191).

Practices, dispositions, virtues all belong to the second nature that we as human beings acquire in our upbringing, and this second nature opens us up to a space of reasons which has its own inner rationality or *logos*.<sup>3</sup> McDowell seeks to secure the autonomy of

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<sup>3</sup> This of course does not mean that second nature is not fundamentally related to first nature, for it of course is. As McDowell makes clear: “the innate endowment of human beings must put limits on the shapings of second nature that are possible for them”, in part because second nature works on the motivational tendencies of first nature, but also because, if second nature is subjected to reflective scrutiny, first nature is one of the sources that limits what can intelligibly be a part of it. See McDowell (1998a), 190-91. An important line of inquiry would also seek to understand just how a constructed second nature meshes with an innate first nature, e.g., how much what we come to value owes to how impulses are shaped and how much to the nature of those impulses themselves.

the “space of reasons”<sup>4</sup> from the space of nature *qua* natural scientific intelligibility (McDowell 1994; McDowell 1996, 236). At the same time, however, McDowell insists on seeing the ethical as intrinsically bound up with the natural—it does not inhabit some realm of pure practical rationality utterly disconnected from human beings as natural organisms. As McDowell puts it, his proposal is for a *naturalized* platonism, not a “rampant” one (McDowell 1994, 83-4, 91-5). What is key, however, is to carve out a conception of naturalism which is not defined in exclusively natural scientific terms and which preserves the intelligibility and integrity of the space of reasons particular to the ethical. Hence his call for an expansion of our conception of what is natural, just like Griffin, to include more than what is intelligible in exclusively natural scientific terms. The concept of “second nature” is his candidate for showing how the space of reasons and the space of nature can be joined. Human beings’ capacity to be responsive to reasons is not something supernatural, it is part of their mode of living and this mode of living corresponds to the specifically human way of actualizing themselves as animals (McDowell 1994, 78). It is through human beings’ acquisition of a second nature, which cannot “float free of potentialities that belong to a normal human organism”, that they acquire a capacity to be responsive to reasons (McDowell 1994, 84).

McDowell’s discussion of the concept of second nature is avowedly focussed on a second nature of virtue, but he clarifies that “[a]ny actual second nature is a cultural product” and that “some outlooks are informed—as Aristotle’s is not—by a lively sense of alternative possibilities for human life, lived out in cultures other than one’s own” (McDowell 1998, 194). What remains common, however, to these cultural products is the basic structure of a second nature. While one could plausibly speak of cultures as inculcating a “cultural second nature” in its members (allowing naturally for degrees of heterogeneity and pluralism), one can speak of a more specific “ethical second nature”. Every human being acquires an ethical second nature during childhood and adolescence that comprises the interrelated, and possibly conflicting, values, virtues, goods, rights, behaviours, attitudes, etc. which make up the ethical fabric of that culture. In this respect, one could not have an ethical second nature of virtue alone, for the ethical fabric of a

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<sup>4</sup> McDowell draws on the ideas of Wilfrid Sellars here in distinguishing the space of reasons from the space of nature (Sellars 1963).

culture cannot possibly consist only of virtues—it must be broader and deeper than this. Similarly, and more obviously, one’s upbringing does not impart a stand-alone sense of what is morally “right and wrong” or a narrow conception of “the moral”. Just as an ethical fabric never in fact consists of a sense of right and wrong alone, so too is an individual’s ethical second nature never reducible to this. Rather, the sense of right and wrong only makes sense in the context of the ethical fabric, and one’s corresponding ethical second nature, as a whole. A related crucial feature of an ethical second nature is the fact that in opening us up to an ethical space of reasons, it is in fact *constitutive* of one’s sense of the ethical, including the narrowly moral sense of right and wrong or “right action”. The very moulding of our motivational and evaluative propensities is what opens up the ethical for us. Normativity is rooted in the ethical fabric we are enveloped in as youngsters and the ethical second natures we develop as a result. Our sense of what is courageous or generous or noble, for example, is not based on any kind of external and reflective reason by which we make an evaluation. Rather, our sense will be inner and unreflective. Naturally, depending on the kind of ethical upbringing and the individual’s own nature, this ethical sensitivity will vary; but the underlying point is unaffected by this, for no average human being is without an ethical second nature.

Bernard Williams’ discussion of generosity highlights the fact that a genuinely generous action cannot stem from an external consideration such as feeling one ought to be generous (Williams 1981, 48). I would like to claim that, in fact, this point applies to the way we primordially evaluate *all* ethical actions. Our primordial ability to recognize and perform actions that are generous, honest, courageous is from an inner sense of these virtues. The ethical space of reasons can *only* be opened up by this kind of inner sense of the ethical. We perform and have a sense of ethical actions *first* in a pre-reflective manner, only later developing a way of understanding and justifying them in a reflective and possibly rule-oriented manner. And it is that seamless integration of the motivational and evaluative which endows us with this inner sense of the ethical. Our sense of the normative could thus never be derived from a theory we learn as an adolescent or adult. As McDowell puts it, reason is not what orders human beings to join duty’s army; rather, “they were not in a position to hear its orders until they were already enrolled.” Nevertheless, it is true that “their continuing service [...] is obedience to reason’s

categorical demands” (McDowell 1998, 197). It is also the case that reason and reflection, once acquired, allow us to work on the ethical fabric of our culture, but this important process of criticism and reform is always like Neurath’s boat which, while at sea, can only be replaced plank by plank at best (McDowell 1998, 189).

### **III. Ethical naturalism and the justification of human rights**

It is the ramifications that these two different conceptions of ethical naturalism have for how we think about the grounds and the grounding of human rights that I would like to turn to in this final section. I make this perhaps dubious distinction between ‘grounds’ and ‘grounding’ for a reason. For one possibility to consider is that Griffin’s conception of ethical naturalism provides ‘grounds’ at a theoretical level for working out which human rights really should count as human rights, while the alternative, second-nature conception is better for understanding what is practically needed for a ‘grounding’ of human rights that is meaningful for peoples and cultures around the world.

In *On human rights*, Griffin discusses the two candidates he believes are the only viable ones for bringing about a greater convergence on the justification of human rights. The whole point of his book is to argue that we need a substantive account of human rights, so for this reason he casts aside early on the various other non-substantive accounts of human rights such as John Rawls’ “contractualist account”, Charles Beitz’s “legal-functional account”, and the “structural accounts” of Joel Feinberg, Ronald Dworkin, and Robert Nozick (Griffin 2008, 20-8). He characterizes his two favoured accounts as the “more ethnocentric approach” and the “less ethnocentric approach”. The first consists in “the continued spread of the largely Western-inspired discourse of human rights” of which Griffin’s account is meant to be seen as the latest and fullest articulation. The second is the now well-known model articulated by John Rawls and Charles Taylor of an “overlapping consensus” on human rights. What qualifies these two candidates for consideration is their acknowledgement of the need for substantive foundations for human rights: “they involve an agreement directly on values—not on a comprehensive moral view, it is true, but on a particularly deep conception of agency that figures, or can without daunting difficulty come to figure, in all of them. Human rights can, therefore, be directly grounded in values without becoming culturally limited” (Griffin 2008, 27).

Griffin believes that his “more ethnocentric approach” is in fact the better choice for a justification of human rights. But while Griffin clearly acknowledges that it is “largely Western-inspired”—hence his admission of its greater ethnocentricity than an overlapping consensus model—he believes that it is much less culturally specific than a top-down moral theoretical justification that would rely on a principle like Kant’s Universal Principle of Right or Mill’s Principle of Utility. This is one of the consequences of grounding human rights in a certain conception of ethical naturalism. The interests and values Griffin has outlined which are embedded in human nature—autonomy, liberty, minimum provision—provide a naturalistic foundation for human rights that can truly claim objectivity. They are the conditions of possibility not of human *flourishing*, for that is beyond the proper moral scope of human rights, but only of “human *status*” (Griffin 2008, 34). As foundational criteria, they allow us to determine what should really be on the list of human rights and they provide guidance in working out practical applications, such as when human rights conflict with other rights and goods, topics Griffin addresses in detail in his book. Nevertheless, Griffin sees his account as Western-inspired and, despite this, as the best option for securing widespread justification. He adduces many practical considerations in support of his position and against the idea that human rights discourse’s being Western-inspired should pose a serious obstacle to its international acceptance: Westerners have overcome the alien in order to adopt Eastern religions, so why can’t Easterners “in the case of much more accessible Western human rights?”; the oft-repeated belief of Rawls that “a radical inter-society pluralism of conceptions of justice and the good” is “a pervasive and ineradicable feature of international life” is exaggerated; human rights are not absolute, for there is much “flexibility and qualification” where other conditions can “outweigh or qualify human rights” (Griffin 2008, 137-38). Griffin also raises a key objection to the less ethnocentric approach of the overlapping consensus model. He characterizes this model in the following way.

The less ethnocentric approach [...] would come down to finding local values similar to the Enlightenment values of autonomy, liberty, justice, fairness, and so on. It would look for local counterparts of whatever Western values back human rights. It would then have to rely on the indigenous population’s seeing how valuable these values or close

counterparts of them are, and how they can serve as the ground of human rights. (Griffin, 2008, 139).

Griffin maintains that while this might lead to agreement on basically the same list of rights, the underlying values might in fact diverge, and this is precisely what his account has sought to render determinate. For “a useful human rights discourse is not made possible just by agreeing on the *names* of the various rights. [...] We need also to be able to determine a fair amount of their content to know how to settle some of the conflicts between them” (Griffin 2008, 140). This is why the more ethnocentric approach is to be preferred. In specifying the foundational values of autonomy, liberty, and minimum provision, it provides the required content.

Now on the alternative conception of ethical naturalism that was developed in the second section of this paper, the clear preference would be for the overlapping consensus model. While Griffin’s model might be seen to provide a convincing account of the basic human interests that are at stake in human rights and of the associated values of autonomy, liberty, and minimum provision, locating these as “deeply embedded in human nature”, as part of a complete, naturalistic account of what is required for human status is not enough to render it truly amenable to widespread justification. The main reason for this is that Griffin is still asking people to assume an objectively rational stance and develop an understanding of a theoretical account of human nature or rather “normative agency” and therein find the justification for their belief in and commitment to human rights. But as the second-nature conception of ethical naturalism shows, the values that Griffin believes people have a natural sensitivity to are in fact accessed via a process of ethical formation in upbringing whereby they are initiated into the ethical fabric of their community. The closest that Griffin comes to showing an awareness of the primordially intersubjectively shared and constituted nature of these values that I am pointing to here is in his discussion of the “convergence of belief”. But this convergence is based on the erroneous prior idea that sensitivity to values is an individual matter: “[c]ertainly, if the explanation I suggested in the one-person case is plausible, it will be a likely candidate in the many-person case” (Griffin 1996, 64). Rather, by being initiated into the shared and pre-existing ethical fabric of their community, individuals develop a pre-reflective understanding of the values of autonomy and liberty and this understanding

depends on their pre-reflectively grasping a whole host of other values that provide the context without which they would not make sense. These values, in turn, are broader than the prudential values Griffin speaks of, extending to ethical values that are other-regarding. Whereas Griffin must account for the move from the self-interested to the other-regarding, from the prudential to the moral, the second-nature conception sees both kinds of values as interconnected from the very beginning in the web of values constituting the ethical fabric of a community. The underlying point is that it is the shaping of evaluative and motivational propensities that opens one up to the very space of the ethical in the first place. For most people around the planet, the kind of justification favoured by Griffin is simply unfeasible. Although it certainly seems more objective in trying to ground human rights in a naturalistic understanding of basic human interests and values, Griffin is wrong to conclude that it is on the basis of a sensitivity to these prudential values that human beings' ethical nature and agency is founded. Rather, all human beings' sense of normativity or ethical sensitivity is based on the ethical second nature they acquire in childhood and the web of values they develop a pre-reflective sense of. *This* is the true basis of any ability they will have to make sense of human rights. The more narrowly moral sense of "right and wrong" which human rights reflect is one they will have acquired from within their own ethical context and it will also make sense to them as it relates to the wide range of other broadly ethical values they have an understanding of. This is also why Griffin's objection that an overlapping consensus will merely amount to a search for "counterpart individual values" to the values of autonomy, liberty, and minimum provision gets the whole picture wrong. For it is rather a question of seeing how human rights and their moral content can be made to fit into or be contextualized within a pre-existing ethical framework and outlook.

An overlapping consensus model of the justification of human rights thus holds out better prospects of securing meaningful and widespread justification of human rights. On a practical level, it is the only model that truly reflects and does justice to the way most people acquire, and possess through most of their lives, their ethical sensitivity. While Griffin's account may prove effective at the theoretical level in providing foundational criteria for what does and does not count as a human right, thus rendering the concept more determinate, what the overlapping consensus model recognizes is that

true justification of human rights for most people must relate these rights to the thick ethical languages of their communities. This is the insight that underlies the overlapping consensus model. And it is the second-nature conception of ethical naturalism which shows why it is right.

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