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A Negotiation of Human Equality and Equal Personhood

In her essay “Crimes of War, Crimes of Peace,” Catharine MacKinnon criticizes both the conception and the realization of ‘human equality’ in contemporary human rights discourse. Not only is the conception of human equality flawed because it attempts to eliminate human differences, rather than eliminate the oppression of human beings based on their differences,¹ but even this flawed conception of equality has not been properly extended to “over half the human race” (85) – namely, to women, who are regarded as inhuman and, therefore, outside of this framework.² James Griffin, in his essay “First Steps in an Account of Human Rights,” rejects equality as a ground for human rights, arguing that, instead, personhood “can generate most of the conventional list of human rights” (311). Griffin’s model does not contradict MacKinnon’s assertion that human rights are grounded in equality, however. In this paper, I will argue that Griffin’s conception of personhood includes an assumption of human equality, and that

¹ “Human rights locate equality in eliminating irrational differentiation. . . . The current political force of the mainstream human rights view takes its deep text, on my analysis, from a reading of the Nazi experience: Survival lies in blending in, in being indistinguishable from one’s surroundings, in nondifferentiation. . . . [I]nstead of criticizing the view that killed you for being different, you fight for the right to be recognized as the same and to become the same . . .” (MacKinnon 104).

² The claim that MacKinnon criticizes the inequality of women with men may seem troubling in light of MacKinnon’s criticism of ‘equality’ itself (as detailed in the footnote above). MacKinnon, however, unambiguously objects to “women’s enforced inequality” (95), noting that “women’s problem has been that society and law do not agree that nature made them human . . .” (98).

MacKinnon's conception of an 'ideal' human equality that (a) acknowledges the dissimilar needs and statuses of human beings, and that (b) encompasses, fully and equally, all human beings, can be reconciled with Griffin's conception of personhood under his personhood-grounded approach to human rights theory.

I will first analyze the divergence in Griffin and MacKinnon's individual interpretations of equality's role in the evolution of human rights theory. Both Griffin and MacKinnon agree that a late-medieval shift in the way human beings were perceived – namely, that human beings could be born *intrinsically equal* to one another – was the catalyst for the contemporary human rights movement. Where Griffin and MacKinnon diverge is in how they allow this pre-existing tradition to frame their arguments; while Griffin expands upon the canonists' notion that “we are rational and moral agents” (309), MacKinnon criticizes the exclusion of women during this formative period, arguing that this exclusion laid the foundation for women's inequality that would endure for centuries to come.

The development of the notion of human equality – “that all human beings are, in a very particular sense, equal” (Griffin 309) – can be tied directly to Griffin's conception of personhood. According to Griffin, the prevailing view of the canonists (and the only view that Griffin is interested in) stated that *all* human beings are equal, *all* human beings are made in God's image, and *all* human beings must therefore share

similar faculties, and, in particular, the faculty of agency.³ Griffin writes, “Many canonists argued emphatically that the American natives were undeniably agents and, therefore, should not be deprived of their autonomy and liberty” (310), indicating that human agency has historically been used as a grounds for human rights, so much so that an ‘enlightened’ European philosopher was able to identify a common agency (and, thus, a common humanity) with an American native at a time when few others were able or willing to do so. Griffin builds upon this historical conception of agency to construct his argument that personhood, which “centres on our being agents” (311), should be the foundation for human rights.⁴ Since this historical conception of agency includes an assumption of human equality (namely, that humans are *equally endowed with agency*), Griffin’s conception of personhood must therefore be founded upon the same assumption of human equality.

MacKinnon, on the other hand, consults history in order to identify where and how the injustices of our current human rights tradition originated. Like Griffin, MacKinnon acknowledges the conception of human equality in the evolution of human rights discourse: “The contractarian liberals . . . posited the radical notion that each person . . . had by nature, irrevocable and equal entitlements. . .” (94). The content of these entitlements are irrelevant to this discussion; MacKinnon’s recognition of the

³ “The prevailing view of the canonists is that this new sort of *ius* . . . derives from the natural law that all human beings are, in a very particular sense, equal; namely, that we are all made in God’s image, that we are free to act for reasons, especially reasons of good and evil. We are rational and moral agents” (309).

⁴ Griffin writes, “[T]he best substantive account is, to my mind, in the spirit of the [human rights] tradition. . .” (310), indicating his keenness to build upon historical ideas to construct his arguments.

claim that all human beings have, by nature, equal entitlements, however, is significant. MacKinnon does not criticize the concept of 'equal entitlements' *per se*;⁵ instead, she first and foremost objects to the unequal treatment of women *despite* the claim of equal entitlements. "Largely beneath notice in this tradition has been the status of women" (95), MacKinnon writes. MacKinnon ultimately argues that the oppression of women occurs *outside* of this conception of human equality, rather than *through* it. She notes: "Building on this tradition [of excluding women], the original liberals formulated their social compacts in and for societies in which women could not even vote" (96). A society in which women cannot vote would certainly be incompatible with the contractarian liberals' "radical notion" of equal entitlements. MacKinnon is therefore arguing not against the human rights tradition's conception of human equality itself, but its *execution* of this conception whereby women are groundlessly excluded.

The conception of equality that MacKinnon addresses is not dissimilar from the conception of equality that Griffin bases his personhood model upon. The idea that all human beings are *equal in their personhoods* would be compatible with both conceptions of equality. MacKinnon, therefore, has identified a failure in the *realization* of Griffin's conception of 'equal personhood'. Personhood, as Griffin defines it, is ingrained in the human being's status as an *agent*. This raises an important question: are women agents

⁵ MacKinnon will later criticize contemporary conceptions of "'human rights' equality" for instituting sameness where sameness does not exist. Here, she is simply arguing that the ideal of 'human equality' is worthless because it has been predicated upon the belief that women are not human. "That women were apparently so different to Aristotle as not to be treated unequally under his principle when excluded from citizenship has not been considered a drawback or an indication that something is amiss" (95).

under Griffin's definition of 'agency'? MacKinnon would almost certainly argue that women are not (and have not been for centuries) considered agents.⁶ While Griffin concedes that not all human beings are agents, his standard for agency is explicitly clear: "What we attach value to . . . is our capacity to reflect on, to choose, and to pursue what we ourselves decide is a good life. . . . [T]he vast majority of adult mankind are capable of . . . reaching this valuable state. . ." (319). Taking the most prevalent contemporary notion of "mankind" to denote all human beings, the vast majority of human beings, then, possess agency and must therefore be *equal in their personhoods*, according to Griffin. MacKinnon's objection to the injustice of our contemporary human rights tradition's failure to extend women their personhood status would be Griffin's objection as well.

It is now important to distinguish Griffin's conception of 'personhood' from MacKinnon's conception of 'sameness'. MacKinnon's objections to sameness are twofold: first, the solution to a perverse system where women are granted second-class citizenship to men is *not* to maintain the status quo, under the guise of preserving equality where none existed in the first place. Furthermore, women should not be asked to conform to any standard of personhood set and defined by their very oppressors. To address these concerns, I would first argue that Griffin's model of *equal personhood* does

⁶ "Half of humanity is . . . effectively defined as nonhuman, subhuman, properly rightsless creatures, beings whose reality of violation, to the extent it is somehow female, floats beneath international legal space" (MacKinnon 86).

not entail any sort of equality of treatment.⁷ What is needed to protect a blind man's personhood surely must be distinct from what is needed to protect a seeing man's personhood; a blind man would require unique provisions, for example, to ensure that he is capable of "pursuing what [he] sees as a good life" (Griffin 311). Similarly, a woman would require unique provisions to ensure that all of the elements that allow her to choose "[her] own course through life" (311) are protected. Violations that are uniquely experienced by women, such as sexual or reproductive abuse, infringe upon a woman's personhood because her identity as a woman is so closely linked to her personhood.

MacKinnon argues that practices such as pornography, spousal abuse, and even rape "are widely permitted as the liberties of their perpetrators" (87). Griffin's conception of personhood, however, consists of a series of trade-offs,⁸ the content of which his essay does not attempt to tackle. Griffin, therefore, does not attempt to answer questions such as, where does a man's liberty to view pornography begin and where does a woman's liberty not to have her body objectified end? If Griffin had sought to delineate such boundaries in his conception of what it means to autonomously choose and pursue a good life, MacKinnon's concerns would be justified.

However, Griffin's conception of personhood is founded upon a very precise definition

⁷ "To say that we are all equally endowed with rights is not to say that we are all endowed with a right to equality, where that means other forms of equality" (Griffin 317).

⁸ Griffin conceptualizes personhood as "elements of a good life . . . features that characteristically enhance the quality of life" (314), and leaves this conception highly susceptible to conflicts between trade-offs. Griffin notes, "Issues about trade-offs should be at the heart of an account of human rights" (315).

of agency. Autonomy, liberty, and some sort of minimum provision are what a person happens to *need* in order to act upon his or her own agency.

Although Griffin does not include human equality as a ground for human rights, his criterion of personhood is enough to render the human rights tradition's exclusion of women a severe injustice under his model as well. In and of itself, human equality would be too vague to serve as a foundation for human rights. Human equality would engender the protection of fairness and justice as human rights (just as personhood engenders the protection of liberty and autonomy), Griffin argues, and while fairness and justice are certainly qualities of a society worth upholding, they are by no means human rights. The extension of 'human' status to women goes far beyond protecting fairness and justice, however; it is a protection of personhood itself and, therefore, completely consistent with Griffin's personhood-grounded model of human rights.