
Is human dignity the ground of human rights?

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Many venerable legal documents suggest that human dignity is the ground of human rights. The German Constitution (1945) opens in Article 1 with the captivating declaration: ‘human dignity is inviolable’, and goes on in Article 2 to state: ‘The German people *therefore* acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world’ (emphasis added).¹ The Helsinki Accords (1975) even more explicitly claim that human rights ‘derive from the inherent dignity of the human person’. On this view human beings have rights *because* they have dignity. On an even stronger view, which is also quite common in constitutional law, it is the very function of those rights to protect the dignity of human beings. In that case, all human rights are specifications of one fundamental right: the right to have one’s dignity (or the dignity of the human species?) respected.

At the other end of the spectrum of possible views we find the sceptical idea that all appeals to human dignity are entirely vacuous: they can be made for any specific claim about human rights whatsoever, they are routinely being made for opposing views, for example about euthanasia, and have no argumentative, but only rhetorical, force. ‘Dignity is a useless concept . . . and can be eliminated without any loss of content’ (Macklin 2003).²

I shall argue that both views are mistaken. Appeals to human dignity have a proper role in human rights discourse, but it is not a foundational and also in some other respects a limited role.

The meaning of dignity

One common argument for the view that the appeal to human dignity is empty is that the very term ‘dignity’ is hopelessly vague and equivocal. For example, as a human being you have dignity; supposedly you cannot lose it as long as you exist. But you also have the right not to be subjected to humiliating treatment and the harm this right protects you from seems precisely to be the loss of your dignity.

¹ Repeated in the Charter of Human Rights of the European Union (2000), but without the ‘therefore’. For the standard interpretation of the relation between dignity and rights in the German constitution, see for example Maunz and Dürig 2013.

² This editorial has evoked much discussion, for example in Schulman 2008.

I believe that the concept of dignity has a tolerably clear meaning: it is an elevated status in a status-ranking, the status of some being which makes a deferential attitude to that being appropriate. A being can have one such status and lack another, hence have dignity in one respect and lack it in another. That doesn't make the concept polysemic. A mayor can have dignity because of his function and lack it because of his behaviour. Obviously, the relevant statuses can be ordered in many ways, and it makes no sense to have a controversy about 'the' proper ordering.³ Two important categories are the following.

- (1) According to Cicero, '*dignitas est alicuius honesta et cultu et honore verecundia digna auctoritas*.'⁴ In hierarchical societies, dignity is the prerogative of the higher estates, for example the nobility and the church, because the members of those estates have legal power over others. And it is still a position of institutionalized authority, especially in the public domain, which is deemed to make its occupants worthy of deferential treatment. If you have dignity because of your role, you have it to the same degree as all other occupants of that role.
- (2) Dignity can also be a personal characteristic which people have in general to different degrees and can individually display to different degrees on particular occasions. A normally dignified person can occasionally behave in an undignified way. Dignity in this sense is normally seen as a function of a person's condition and his comportment.

These two categories should be distinguished from a third one:

- (3) The dignity you have as a person or as a human being. This notion first occurs in some Stoic texts, in particular in Cicero's *De officiis* (Book I: §§ 105–7), it gets a theological interpretation (*imago Dei*) in the work of influential fathers of the church like Augustine, and a classical exposition in Pico della Mirandola's *Oratio de hominis dignitate* (1486). A passage in Kant's *Grundlegung zur Metaphysick der Sitten* (1785) is commonly considered to contain the canonical expression of its fundamental ethical importance.

By distinguishing these grounds of dignity, we can easily dispel some confusions without supposing that the term is equivocal. Recently, a young Muslim lawyer in the Netherlands refused to stand up in court on the entering of the judges, because on his view Islam teaches us that all human beings have equal dignity. Surely they have equal dignity as human beings, but in addition some may have special dignity as judges, and to deny that comes dangerously close to denying their authority. And, if human dignity is the foundation of human rights, it is because of your inalienable dignity as a human being that your personal dignity should not be alienated.

³ Cf. Nordenfelt 2004 and comments on that paper.

⁴ The honourable authority of someone worthy of worship, honour and reverence. *De inventione* 2.166, quoted by Van der Graaf and Van Delden 2008.

Human dignity and human rights

If this is what dignity means, and if human beings have dignity as such, it is easy to see why human dignity is so often considered to be the ground of human rights. Because human beings have dignity, they are worthy of respect, and of respectful treatment. What could be a better way of showing respect than by recognizing them to have rights and deferring to those rights? The relevant class of rights, human rights, are to be classified as such precisely because they are possessed by every human being as such, and not dependent on an institutional role of authority, or on a person's condition and behaviour.

It is controversial which goods exactly are to be protected by human rights. But all such goods, whatever they are, should be seen as good to the person who bears the rights. Rights are assets; that is why, if in any particular case you turn out to be the worse for having them, you can normally waive them. Why are you entitled to this benefit? Why should the fact that some things are good for you be a reason for other people to take them into account, to respect or even to promote them? A plausible answer to this question seems to be: because you have a special value yourself. It is this special, incomparable value or preciousness which is supposed to be designated by the term 'dignity' or 'worth'. 'Your interests matter because you matter' (Velleman 1999; 2006: 40–4; 2008a).⁵ This argument has often been ascribed to Kant and something like it has been expressed by many Kantian authors. But it can also be found in the theological tradition from Augustine on: when God created the Earth, he gave Man a special status, and that is why Man's interests count.

In order to evaluate this argument, let me start from a different but analogical issue. Suppose you see someone helping an old lady cross a busy street. You ask him why he does it, and he answers, somewhat pompously: that is my duty. There is something wrong with that answer. We might have hoped that he did what he did in order to help someone who needed help. If he did it instead because it was his duty, that seems a clear case of the moral mistake of 'having one thought too many' (cf. Williams 1981). More plausibly, he did not give you any answer at all. By saying that it was his duty, he did not really specify his reason, but only restated that he had one, adding, perhaps, a characterization of the nature of his reason, for instance as a compelling moral one. In that case, his reference to a duty was, as Thomas Scanlon calls it, a 'buck-passing' one (Scanlon 1998: 95–8).⁶

⁵ Inspired by Anderson (1993: 26–30). Cf. Korsgaard 1996, Chapter 4; 2004: 93; Wood 1999: 115, 132–9; McMahan 2002: 242. Sensen 2009 shows that it is a mistake to ascribe this view to Kant. That he denies moral status to animals is not because they do not have dignity but because on his view they have no freedom, and hence no capacity for moral action.

⁶ Cf. the placeholder view discussed by Kagan 1991: 60. On my view duty is a buck-passing concept in some cases but not in others (professional or legal duties for example). It depends on the relevance to the validity of the duty of the existence of a pattern of legitimate mutual expectations; cf. Den Hartogh 2002: Chapters 1–2.

There are many other moral concepts besides duty of which we can ask whether or when they are buck-passing, whether and when they specify a reason or only characterize it. It is a wonderful way to economize in ethics. Examples are the concepts of a right, of virtue, of equality, and of value. As for the concept of 'a right', for example, by asking that question we can perhaps distinguish between a proper and a merely inflationary use.⁷ As for 'value', as Scanlon suggested it is clearly a buck-passing concept. '(T)he badness of a toothache . . . does not add a further reason to the reasons for going to the dentist that are already given by the nature of the toothache, its painfulness' (Dancy 2005: 37).⁸

Is dignity also a buck-passing concept, or isn't it? Does it specify the ground of human rights, or does it only refer to that ground, whatever it is? Do your interests really matter *because* you matter, or do both statements express the same truth? If the first view is correct, two consequences follow both of which I will deny, the first in this section, the second in the next. The first consequence is that it is possible for another being to have similar interests which do *not* matter, because that being has no 'dignity'. This is the traditional view of the moral standing of animals which Kant shared.⁹ According to Kant it is morally objectionable to cause suffering to animals, because it tends to erode your sensitivity to the suffering of humans. In contrast to Descartes' view,¹⁰ Kant does not deny that animals are capable of suffering, but for him this fact has no independent moral significance, because animals are no 'ends in themselves'. This seems morally problematic, another case of having one thought too many. If different beings have the same interests, these interests should count equally, that does not depend on any further fact which makes these interests count. Rocks don't have rights, not because they are a morally inferior type of entity, but because they have no interests that we could possibly protect.

My argument is not only an appeal to moral intuition. Suppose we have ascertained that a being has the characteristics that qualify it for having certain rights, whether it is the possession of certain interests, or the capacity of self-government or whatever. Then, in order to decide whether that being really has those rights, we need not ask: but does it have dignity? For that question can only be answered, positively, by reference to the very same characteristics. Dignity doesn't sort out the proper rights-bearers from all beings that have the relevant characteristics. This shows that they have those rights because they have those

⁷ The proper use of 'a right' isolates a claim that normally excludes being weighed against competing claims.

⁸ Dancy, however, does not conclude that value is merely buck-passing but rather that value and reasons supervene on the same facts. On dignity I argue for a similar position for different reasons.

⁹ *Metaphysik der Sitten, Tugendlehre*, § 17; cf. Kant 1997: 212–13, 434–5, and an excellent discussion by Korsgaard 2004. In the context of his time, Kant's views should be seen as enlightened, because he at least condemned cruelty to animals and even specifically their use in experiments for purely speculative reasons.

¹⁰ Explicitly rejected in the *Kritik der Urteilskraft* § 90 1. Anm.

characteristics, not because, in addition, they also have dignity (Feinberg 1980: 151; Griffin 2008: 66).¹¹

These same characteristics, however, also make them worthy of respect, and this can be expressed by saying that, as human beings, they have dignity. That is a separate claim, and not a redundant one.

The practical relevance of the issue

When human dignity is seen as the ground of human rights, this mistake has a second unfortunate consequence. Because of both these consequences the issue is not of merely academic interest. It has great practical relevance.

If human rights are 'derived' from human dignity, our first duty is to respect human dignity, and refraining from intruding on human rights is only a way of doing so, possibly one way among others. Hence, if the duty to respect human dignity and the duty to recognize a particular human right conflict with each other, the former duty, being the foundational one, wins out. Protecting human dignity is therefore normally a good reason for constraining the exercise of human rights.¹²

This is a common view of constitutional law in many countries, and the constraining results are evident in many domains, but in particular in the area of bioethics (for example, Beyleveld and Brownsword 2001; Sulmasy 2008). Actions forbidden as violations of human dignity by the Council of Europe's Convention on Bioethics (1997), by UNESCO's Universal Declaration on Bioethics and Human Rights (2005) and by similar national legal instruments, include the selling of organs from dead and living persons, surrogate motherhood, cloning, producing hybrids or chimaeras, creating embryos for research, medical experiments on brain-dead people, and selecting an embryo by pre-implantation diagnostics on its fitness for donation of its marrow to a sibling with Fanconi anemia.

I do not deny that, to the extent that the ground of human rights, whatever it is, is also deserving of a deferential attitude, there is a moral reason for expressing that attitude. Neither do I deny that this reason can conflict with the duty to respect some particular human right. But it is a mistake to think that what fundamentally matters is expressing the attitude, and that respecting human

¹¹ Luban 2009 plausibly suggests that human rights instruments refer to 'dignity' as a placeholder for whatever the ground of the rights is, precisely because they don't want to commit themselves to any specific view of that ground. Cf. Glendon 2001 on the history of the Universal Declaration of Human Rights.

¹² Some Kantian authors argue that, because autonomy is the basic capacity of human beings which requires us to acknowledge their incomparable value, that acknowledgment can only result in empowering them to exercise that capacity, not in constraining its exercise. Beyleveld and Brownsword 2001. But should or should we not then protect choices, for example for palliative sedation, that imply the destruction or reduction of that capacity? Cf. Velleman 1992; 1999; 2007.

rights is only one way of doing that. The appeal to human rights protects us against harm and interference, the appeal to dignity against offense. We should clearly distinguish between these considerations before weighing them when they conflict. When we do, it appears that the appeal to dignity, whatever its rhetorical force, need not be decisive.

This is underlined by the following consideration. What is to be considered to express respect or disrespect is often a matter of convention. Hence if you think that what fundamentally matters is expressing the attitude of respect, you are in danger of overestimating symbolic values and, perhaps, even of being prepared to sacrifice to them the very real values they symbolize. Joel Feinberg calls this a form of sentimentality, but it could also be called a kind of idolatry. Feinberg's example is refusing post-mortem donation of one's organs because one thinks that this involves an instrumentalization or commodification of the human body (Feinberg 1985: 75). Similarly, it could be argued that, if we could provide a sufficient number of post-mortem organs for transplantation to patients of organ failure by allowing these organs to be bought and sold, and could not provide them in any other way, we should allow such a market, even if we share the common feeling that such a market fails to do justice to the symbolic value the human corpse derives from its association with the human person.

The Sabbath is there for men, not men for the Sabbath.

The relevance of the appeal to human dignity and its limits

I have not argued that the appeal to human dignity is vacuous, but only that it does not have the foundational importance often claimed for it. Correspondingly, I have not denied that considerations of human dignity are morally relevant, nor even that, exceptionally, the exercise of human rights can be constrained because of such considerations. That the status of a slave, even if voluntarily accepted, is incompatible with the respect properly due to human beings, may be one good reason to consider acts of voluntary self-enslavement null and void.¹³ I have only contended that we will tend to over-value considerations of human dignity when they conflict with considerations of human welfare or autonomy protected by human rights, if we conceive of appeals to human rights as, basically, appeals to human dignity themselves.

There is another reason for considering the force of such considerations to be limited. Even when human dignity is not held to be the proper specification of the ground of human rights, whatever it is, the appeal to it suggests that it is appropriate to characterize that ground as something which deserves to be responded to by an attitude of respect. I want to suggest that this view, while not false, is one-sided. For the ground of human rights does not only consist in honorific properties like our capacity for self-government, which give us an

¹³ Note that in that case the relevant value is not only a symbolic one: it is not a mere matter of convention that slaves lack dignity.

exalted place above most other animals, it also consists of properties like our basic needs and our vulnerability, which we share with many other animals. A proper response to these properties does not consist in a deferential attitude like honour and respect, but rather in compassion, albeit compassion without condescension.¹⁴

Take, for example, the right not to be tortured. It is clearly true that an essential part of the evil of torture is that it humiliates its victim. Putting the point in a paradoxical way which I have already explained: it violates the inalienable dignity of the victim by causing him to lose his personal dignity, by destroying the very basis of his self-respect. But another essential part of the evil of torture is simply that it *hurts*, that it causes excruciating pain and/or severe mental suffering from fear, shame or disgust. Cats can be tortured because they can suffer. It could be objected that even the suffering from physical pain still has a characteristic human aspect, because it involves much more than the pain itself, for example the sense of utter helplessness. Torture denies its victim any option of coping with the circumstances that cause the suffering, and thereby threatens the core of his self (cf. Cassell 1991; Velleman 2008b). And surely the human ability to cope, to manage not only one's actions but also one's emotions in the face of adverse circumstances, is a proper cause for respect. Hence even by causing physical pain the torturer fails to properly respect his victim. I do not deny that, but only maintain that he also fails to properly care for him. It is not one single attitude which is *the* proper response to the facts that invoke a human rights claim.

Human dignity is not the ground of human rights. And even as a mere characterization of the ground of human rights it is incomplete. The Germans should change their unchangeable constitution.

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¹⁴ I owe this expression to a lecture by Raimond Gaita.

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