

Human Dignity



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The Idea of Human Dignity



My aim is to defend the idea of human dignity. Does it need a defense? After all, the idea has become commonplace, especially since the end of World War II. In the name of human dignity, which now turns out to mean in its most common use the equal dignity of every person, charters of human rights are promulgated, and appeals to it are made when people all over the world struggle to achieve their claimed rights. Human dignity is thus perceived to be the basis for human rights. But not much is said about what human dignity is and why it matters for the claim to rights. It almost seems as if the idea of human dignity is axiomatic and therefore requires no theoretical defense. All it needs is to be translated into established rights, which are then preserved in the face of attempts to keep people down and deny them what they are owed.

When people have to struggle to establish or preserve or reestablish their rights, they contend with various interests that are threatened by the demand for rights and that have many kinds of power to repel such assertions, but these antagonistic interests have little theory of any weight to sustain their cause—they have only tenacious privilege backed up by alarms, and by lingering popular prejudice, superstition, and mental inertness, and the cry of security against the enemy always ready to hand. It can be thought that whatever was the case some centuries ago, the defense of rights at present requires little theoretical

articulation. Why make trouble by defending rights at length and make worse trouble by claiming that human dignity is the basis, or part of the basis, for human rights? Theoretical defense invites philosophical skepticism, which is sometimes useful to stimulate thought, but there is these days not very much theory, though there is some, that comes out and says that human rights are, in Jeremy Bentham's phrase, "non-sense upon stilts," and that the idea of human dignity adds yet more nonsense.

The reason to go on with the theoretical defense of human rights is that opposition to them exists among thinkers who are on the side of the great majority of people and who do not support the established privilege that a system of rights threatens. One principal source of opposition to rights comes from those who think human rights are essentially bourgeois rights and therefore make too much of one particular right, the right of property. From the nineteenth century on, this opposition on the radical left has been prominent and sometimes revolutionary. The Marxist and other radical critics of the right of private ownership have gone so far as to call into question the value of almost all other rights because in an oligarchic or capitalist society the rich and their allies are so dominant as to make such rights as free speech, press, and religion into weapons useful to fortify the oppression of the subordinate classes. This analysis overshoots the mark, but retains the power to cause unease among those who are committed to human rights. Human rights are in fact conceptually and actually unsettled by widespread poverty, despite the strength of the case that the abolition of private property is not the way to reduce poverty in the long run. There are also other worries about rights that we will eventually attend to, including the critiques made by utilitarian and virtue-ethics thinkers. Like the oppositional left, these critics also write on behalf of the people, not the elite, though unlike the left, they rarely have much power. Still, we have to try to see what these theorists, who oppose rights because they either support the people or want to better the character of the people, say to defend their views, and what role, if any, the idea of human dignity plays in their arguments.

In any case, there is already a substantial theoretical literature in defense of rights. It begins in the revolutions in Britain in the seventeenth

century, proceeds in revolutionary America and France in the latter part of the eighteenth century, continues in Kantian philosophy, and develops further in John Rawls's influential political philosophy and Ronald Dworkin's legal theory in the twentieth century. Add to all this work Western jurisprudence throughout. The truth is that the idea of human dignity figures in it only to a minor extent, if at all. The exception is Kant's political and moral philosophy, and he is of course a major theorist of dignity (*Würde*). For him, dignity is a foundational idea, and his work remains a continuous source of profound instruction. My debt to him will be obvious. But why, it could be asked, make so much of Kant? Kant aside, why go on thinking about human dignity, especially when we see that, especially in the twentieth century, actual progress in realizing human rights (whether called by that name or called natural rights) has often come about without much need or use of theoretical assistance? Feelings of injury and insult have mattered most, especially when they come together to impel a leap of consciousness, in which a quickened expectation of decent treatment is combined with a more definite feeling of what human dignity in some simple sense is owed; and once emergent, these attitudes and passions disseminate themselves by ordinary if belated insight, by imitation, and by the attractiveness of gradually established example.

Can we at least say that there is no harm in thinking more about the idea of human dignity and its place in the theory of human rights? I hope that there is some good. It turns out, however, that the idea of human dignity encompasses more than a role in the defense of rights; there is place in it for the dignity not only of individuals but also of the human species as one species among all the others.

Dignity of the Individual; Dignity of the Human Species

The core idea of human dignity is that on earth, humanity is the greatest type of beings—or what we call species because we have learned to see humanity as one species in the animal kingdom, which is made up of many other species along with our own—and that every member deserves to be treated in a manner consonant with the high worth of

the species. Since Pico della Mirandola's speech *On the Dignity of Man* (1486), in which the core idea is found early, there have been a number of revisions and elaborations. Yet doubt is sometimes expressed when human dignity is introduced into later discussions of rights, even when human rights are accepted as defensible and conducive to human interests. Several particular contentions stand out in supporting the thought that all theoretical discussion about human dignity is irrelevant to the cause of promoting the establishment of human rights, or may even be a distraction. The first contention is that, despite the efforts of Kant, the idea of human dignity adds nothing but a phrase to the theory of human rights; it surely does not provide, or help to provide, an indispensable foundation. The second is that the historical record shows such human savagery toward human beings that to speak of human dignity is to mock human suffering by refusing to make paramount the moral difference between victims and victimizers; we must grant dignity only to those persons who have acted morally. The only human beings who have human dignity are those who are morally blameless or at least much less guilty; violators of rights, the victimizers, have forfeited their chance to acquire dignity. The theory of rights must distinguish between those who have dignity and those who have (not yet) lost it. The third contention is that the affirmation of human dignity is dangerous because, when extended to the human species vis-à-vis other species, it leads to monstrous human pride, which drives people to exploit nature for human purposes and hence to ravage nature and ultimately make the earth uninhabitable for many species, including humanity. The fourth contention is that human species-pride is not only dangerous but false: there is no basis for thinking that the human species is anything special; or that it alone has dignity among all the species; or that if the human species does have dignity, that its dignity is greater than, or even incomparably greater than, the dignity of any other species.

Despite elements of truth or at least plausibility in these four contentions, my countercontention is that we should not repudiate the various attempts that have been made to defend the idea of human dignity, and that additional conceptual work is not necessarily wasted. There is more to be said. I cannot deny that any attempt should face the

kinds of antagonism I have just mentioned and other kinds as well. I must try to show that the idea of human dignity adds something necessary to the theory of human rights; that though human history is a slaughter-bench, the scene of uninterrupted crimes and atrocities, human dignity must be affirmed, even the dignity of those who assault the dignity of others through wrongdoing, and thereby injure their own dignity also, implausible as that notion may seem.

As my discussion proceeds, I also wish to show, as I have said, that the idea of human dignity not only serves to help defend the theory of individual rights but also gives a perspective on the dignity of the human species. Still it is possible that the dignity of the species may be in tension with the theory of individual rights; the idea of human dignity may be at odds with itself, the claims to dignity of the individual with the claims to dignity of the species. However, to speak of the dignity of the human species as distinct from individual dignity is to invite more skepticism and even hostility. I nevertheless want to defend species dignity while admitting that human beings are generically given to mad presumption in their enterprises and exploits, whether at the expense of nature or of one another. I think that such presumption has actually been integral to species dignity. But now humanity should direct its energies, as no other species can, to the stewardship of nature and therefore curtail its mad presumption against nature. I wish to go to the extent of saying that the human species is indeed something special, that it possesses valuable, commendable uniqueness or distinctiveness that is unlike the uniqueness of any other species. It has higher dignity than all other species, or a qualitatively different dignity from all of them. The higher dignity is theoretically founded on humanity's partial discontinuity with nature. Humanity is not only natural, whereas all other species are only natural. The reasons for this assertion, however, have nothing to do with theology or religion.

I therefore work with the assumption that we can distinguish between the dignity of every human individual and the dignity of the human species as a whole. With that assumption in place, I make another assumption, that the dignity of every individual is equal to that of every other; which is to say that every human being has a *status* equal to that of all others. The idea of individual dignity thus applies to per-

sons in relation to one another, and moves ideally in a progression from an individual's self-conception to a claim that other persons have no less than equal status. I, like anyone else, can insist on my dignity as a human being, in the face of others situated above me in power and prestige and who treat me in such a way as to fail to recognize my full humanity. I also see that what I insist on, which is universal in nature, I cannot claim just for myself or my group, but must claim for all human beings. Each person must claim for all, and all for each.

All individuals are equal; no other species is equal to humanity. These are the two basic propositions that make up the concept of human dignity. The idea that humanity is special comes into play when species are compared to one another from an external and deindividuated (though of course only human) point of view. When we refer to the dignity of the human species, we could speak of the *stature* of the human race as distinguished from the *status* of individuals. In comparison to other species, humanity has a stature beyond comparison. The reasons for speaking of individual dignity are the same as those for speaking of the dignity of the species: the same unique and nonnatural traits and attributes, characteristics, and capacities. I am therefore not saying that the species has a real existence apart from the individuals who make it up, or has a substance that is different from the substance of any individual or all of them, or has a collective agency different from the agency of individuals separately or in groups. Nevertheless, I talk about the species because the interdependence of individuals and groups is so extensive and deep, and so entangled, so hard, even impossible, to describe or trace, that for certain purposes we might just as well make the human species a unified entity or agent, even though we know it isn't. Most important, the human species also includes the nameless, countless, and unindividuated unborn. I do not see how the idea of human dignity can omit reflection on the human species, apart from named or nameable individuals or identifiable groups.

The historical record appears to indicate that thinking about humanity in relation to other categories of beings comes well before thinking about individuals as individuals. Affirmation of human stature, in one set of terms or another—the word *stature* rarely occurs—comes well before political and social concern for every person equally.

Conceptually, human stature precedes individual status; the greatness of humanity precedes the equality of individuals. Starting with Homer, Western literature dwells on individuals, but they are mostly of the upper rank and they tend to matter, except to Socrates, not as individuals but as members of a class, or as defined by role or function. What counts is that the few at the top demonstrate what humanity at its best is capable of.

Although Odysseus is remarkably delineated as a person, the standards are set even for him, and the gods have their own plans also for him. Priam and Achilles break out of their roles but into tears. Socrates, however, discovers the individual, the self-conscious and hence dissident and conscientious individual, who by thinking for himself acts to avoid being an instrument of injustice, not, like Sophocles' Antigone, to uphold mores or customary piety. To be sure, Socrates says that he pursues wisdom out of piety toward the god, and is put to death because he is accused of corrupting the youth by teaching gods other than those of the city. But he does not accept the accusation that he teaches other gods. Both he and Antigone can say in her bitter words about herself: "I stand convicted of impiety / the evidence my pious duty done" (*Antigone*, p. 190). What matters first is that Socrates would rather die than give up his pursuit of wisdom, which he began before the medium of the god Apollo at Delphi had answered no when asked whether anyone was wiser than Socrates, and second, that he would rather die than inflict injustice on another person. Condemned to death on the charges against him, he chooses to die for the safety of the laws of the city rather than escaping with the help of his friends. Death stalks him or he stalks it. Both his piety and his moral sense are therefore distinctively his and they dominate his bond to his fellows and his peculiar tie to his city. It is not necessary or even possible to say in which of the two qualities Socrates is more radical. In his *Confessions*, Augustine discovered the individual self, the largest continent, while looking for God within; what is amazing is that he not only believed that inside is where we should look for God, but with profound originality proceeded to map out the vastness of inwardness. Again, it is not necessary or even possible to say whether his theology grows out of the discoveries of his introspection or these discoveries grow out of his theology. Socrates in

Plato's *Apology* and Augustine in the *Confessions* are two principal landmarks on the way to finding that individuals can exist as individuals, and that as individuals they have equal status.

In these works, the individual as subject and the individual's subjectivity are presented in a way that still retains the power to inspire reflection. But until recent centuries, human stature was preponderantly thought equivalent to the dignity of the human species, and stature was owed to the exertions of a few. It would seem that, conceptually, human dignity was for a long time just a matter of stature, of humanity's superiority to all other beings on earth, although it was a superiority that only the few high and great ones proved or at least made vivid. The Socratic breakthrough, in a setting of Athenian democracy, which was itself a breakthrough, provides the earliest movement toward the notion of the equal status of every individual; but even so, in the background is the distinctiveness of the human race as the particular object of the gods' interest. Is it possible that for some of us, too, the idea of human dignity is equivalent to the notion of stature: the superior being of the few and the greatness of their achievements? Can human stature therefore do without individual status to fill out the idea of human dignity? In a turnabout, if we are committed to equal status, do we need the stature of the human species in order to defend it? As I will indicate, the element common to status and stature is uniqueness, but a uniqueness defined by its partial discontinuity with nature, unlike the uniqueness of all other species and of all their individual members. But perhaps, though I doubt it, the purported common element is only a loose analogy, relevant for some purposes but not conceptually essential for working out an idea of human dignity.

My rough determination is that equal individual status is shored up by the great achievements that testify to human stature because, in a remarkable, memorable, and graspable way, they rebut the contention that human beings are merely another species in nature, and thus prepare the way for us to regard every person in his or her potentiality. At the same time, the idea of human stature is helped by acknowledging the claims of equal status, if only because the theory of equal individual rights has set the old order on fire. But the better reason is that the no-

tion of equal status deepens the idea of human dignity. It carries through on the attempt to establish the value of humanity by insisting on the value of every human individual. The theory of rights, however, must be more than partly, pragmatically, or grudgingly accommodated. The notion of equal status prescribes the imperative that role and function should not define any person, essentially or exhaustively. The potentialities of any person can become actualized unexpectedly, and jump over boundaries or, at a minimum, push the boundaries back by converting role and function into a vocation that is creatively pursued.

One implication of the equal status of every individual as a unique being is that no single person can stand for the species, whether that individual is average or is exceptional in various aspects. No one can represent (in the sense of embody) the human species in some imaginary congress of intellectual species in the universe. Equal status means that the question of which individuals in the human species are “best of breed,” let alone “best in show,” is out of order. Of course people vary in their talents and innate abilities, and in the manner of their acculturation, but that undeniable fact is irrelevant to human status. Most important, no person of whatever excellence could adequately incarnate such an unfinished and indefinite species as humanity; the potentiality of the species will always be incompletely disclosed as long as it lasts, and without any substantial change in its biological endowment.

Status and stature belong together in one concept of human dignity. But an important difference will emerge in our analysis. We know when individual status is respected when we determine that a state is not using or misusing the people, wasting or infantilizing them—in short, when the state honors their rights. The evidence is mostly in what the state does not do, in avoidance and noninterference. In contrast, we impute stature to humanity on the basis of the record of its achievements. The evidence is manifest. Status is a largely negative concept, defined by what assaults or even effaces it; stature can be defined only positively, by what is humanly achieved.

The concept of equal individual status is only part of the idea of human dignity; the other part is the stature of the human species. What is more, as I will suggest, status is only part of the defense of the theory of

human rights; the other part is the public morality of justice. As we go along, these points will be developed.

Human Dignity Is an Existential, Not a Moral, Value

Human dignity is an existential value; value or worthiness is imputed to the identity of the person or the species. I stipulate that when the truth of identity is at stake, existence is at stake; the matter is existential. The idea of human dignity insists on recognizing the proper identity of individual or species; recognizing what a person is in relation to all other persons and what the species is in relation to all other species.

The truth of personal identity is at stake when any individual is treated as if he or she is not a human being like any other, and therefore treated as more or less than human. The truth of identity is also at stake when a person is treated as if he or she is just one more human being in a species, and not, instead, a unique individual who is irreplaceable and not exchangeable for another. These two notions seem to go in opposite directions—commonness and distinctiveness—but I think that they cooperate in constituting the idea of equal individual status.

In one sense, personal identity is not an achievement. I could not and did not choose to be born at all, or born a man instead of a woman; to be born on this date rather some earlier or later one, and born to these parents rather than some others. I could not have been some other person and still been myself, even though the society in which I grew up helped to shape me; the same me could of course have grown up in some other society, which would have shaped my beginnings differently. I am not a creature who has a destiny, but once I am in existence, certain features are what they are, and are more or less fixed. In another sense, identity is an achievement. Becoming or being oneself has meaning. One tries to realize certain potentialities rather than lazily leaving them dormant; one can try to resist imitating others or conforming thoughtlessly to the prevailing mores or fashions; one can work hard to avoid pretending to be what one isn't; one can change oneself for the better; one can take hold of oneself; one can aspire to be not the author but the editor of oneself and one's life; one can aspire to a measure or episode of authenticity.

For the time being, all that I want to say about the identity of the human species is that it is the only animal species that is not only animal, the only species that is partly not natural, and that is therefore unpredictable in its conduct despite its genetic sameness from one generation to the next. These are, I think, the most important considerations in regard to the identity of the human species.

Individual status is a major part of the idea of human dignity because it struggles against such notions as the natural or divinely ordained superiority or inferiority of some human beings in comparison to others or in relation to them; the idea of caste, or the natural slavery of some; the idea of hereditary rank; the idea of inherited curse; the idea of eternal damnation in itself, and also when it is posited for some but not others; and the belief that one may sacrifice the lives or conditions of life of the smaller number of persons for the larger number without seeing that acting from sincerely perceived necessity can nevertheless be doing evil. Actually, cynically asserted necessity is the norm. False metaphysics sponsors these and many other notions that war on equal individual status and thus fortifies the almost inveterate tendency that human beings have to divide the world up into pseudo-ontological categories. The pathetic fact is that the only enemies of human dignity are human beings.

When I speak of identity, I have in mind only individuals and species. I am skeptical of efforts that theorists make to give groups the same existential weight or dignity as individuals and the species. My skepticism extends to the concept of group rights, because under some versions of this concept, a group has rights that are not translatable into each member's individual right of free association and other rights, but rather are a sort of corporate rights that may abridge members' individual rights. The basis of my skepticism is the reason that if a person thinks of himself or herself first as a member of a group, that person has defined identity as affiliation, and not as first being oneself. To be affiliated with one's whole self is to welcome docility, to endorse the thought that one's possibilities are exhausted, perhaps from birth, and that one cannot change or be changed; all that one can do is play a part and at most make the part one's own by small differences of attitude or conduct. Indeed, cultural identity may be imagined as one's fated and

irrevocable personal identity. Affiliation that is self-defining and life-defining with this intensity gives a person a hand-me-down identity, an identity that has completion and enclosure, which no personal identity that is free of self-mystification can possibly have. One's life becomes a vicarious experience, lived through the fate of the group. Group rights consign individuals to dependence sustained by their conformity. I know that a life-defining group affiliation can feel like an enlargement of the self, but it is actually a diminishment; it can feel like an intensification of the sensation of being joyously alive, but it is actually existential surrender.

I want now to make a contrast between existential values and moral values. The category of existential values, values of identity, includes such cherished aspirations and attainments as developed or distinctive selfhood, autonomy, authenticity, freedom, equality, power for its own sake, virtues for their own sake, perfectionism of character or style of life, honor, glory, and fame. All these values may pertain to individual uniqueness and hence are allied to the idea of human dignity; but they figure in uniqueness as a project, not as a given. They signify a desire for an enhanced identity or enhanced individuality. As such, these values can matter to the discussion of human dignity; some, like freedom and equality, have a place at its center; all can be and often are discussed, however, apart from the idea of human dignity. But as I will suggest when I discuss the value-ethics critique of human rights, the project of enhanced individuality or cultivated individual uniqueness is not essential to the defense of equal individual status. Every human being is unique and individual without having to try to be.

All existential values have a conceptual independence from instrumental practicality and most important from morality, despite the fact that freedom and equality, the core of human rights, are often defended as practically or morally necessary or useful. When I say that human dignity is an existential value, however, I do not deny its close relation to morality, despite its conceptual independence. (Not to say that all existential values—say, honor, glory, and fame—must bear a close relation to morality.) I mean that for many people, and rightly, morality has to do solely or principally with human suffering; but human dignity in its concern with status and stature has to do with the proper

recognition of the identity of every human being and the identity of the human species. I also do not deny that the motives to inflict suffering and to assault dignity come from the same repertory of vices: the same appetites, emotions, and passions, whether they are inherent in everyday life or are inflamed by the eager adoption of the doctrine of necessity or by the appeal of ideology to the imagination. Still, being made to suffer, bodily and materially, is not conceptually the same wrong as being treated as if one is not a human being. Lastly, I believe that though a human being can never forfeit his or her dignity and thus become legitimately open to any kind of inhuman treatment, one assaults one's own dignity when one is a party to serious injustice, or systemic oppression, or to evil as a policy; one is acting as if one were more than human, or more human than those whose victimization one causes or calmly accepts as nothing untoward. The ties between moral values and existential values are often tight, but not always so; they are conceptually distinct, even in the idea of human dignity, and not only when tension between them appears.

Now, the deserved salience of Kant's moral philosophy in the theory of rights may lead us astray and make morality and dignity interchangeable terms. He holds that human dignity or worth lies in the uniquely human capacity on earth (to leave aside more-than-human entities) to act morally, which necessarily means to act from the correct moral disposition. First, only the good will shows respect for the moral law; emotions like love or pity do not belong to the correct moral disposition; and intrinsic to the good will is the resolve to be indifferent to the effects of one's moral action on human purposes. Second, Kant also thinks that we treat persons with the respect they deserve when we treat them as ends and not merely as means. They deserve respect as ends because as moral agents they are capable of respecting the moral law. To put the two thoughts together, we accord persons the respect they deserve as ends, when we treat them in a way that shows our respect for the moral law, not when we mimic morality out of one or another emotion or interest, much less when we immorally or disrespectfully use them as mere means. Kant ties respect for the moral law in one's actions and respect for persons as ends in our dealings with them into an unbreakable knot.

But suppose that we want to hold, instead, that there are additional bases for respecting human beings and hence their rights than their capacity to act morally. Free agency is a broader concept than moral agency. The moral and the existential are not interchangeable terms, and they cannot be tied into an unbreakable knot. We might also think that there are other praiseworthy sources of moral conduct, besides respect for the moral law, like pity or compassion. Then, too, we could believe, and as a matter of course, that anticipation of the consequences of our action is properly part of our disposition to act, just as the actual consequences are properly subject to moral judgment. All these objections to Kant are commonplace. We learn much from Kant, but not on moral motivation, and not on the place of morality in the larger scheme of human values, even when we take Kant's theory of the virtues into account.

The conceptual distinction between moral and existential values is interestingly made by Justice William Brennan in his concurrence to the per curiam decision that (temporarily) invalidated the practice of capital punishment (*Furman v. Georgia*, 1972). His discussion in this case is perforce framed by the specific kinds of pain and suffering (mental and physical) that punishment inflicts, rather than the many kinds of pain and suffering that a state that does not recognize and respect rights inflicts on the totality of a person's existence. But Brennan allows himself, when he is discharging his specific interpretative task, to reach a general principle. He says that more than pain is involved in "extremely severe punishment," and in capital punishment especially. "The true significance [of severe punishments] is that they treat members of the human race as nonhuman, as objects to be toyed with and discarded" and that they may "reflect the attitude that the person punished is not entitled to recognition as a fellow human being" (pp. 272–273). (The old Nazi phrase was "life unworthy of life.") He also says that severe pain like that of capital punishment can be degrading (p. 281), especially when it is inflicted arbitrarily on some but not all who have committed capital crimes; when the severity of the pain is unacceptable to contemporary society; and when a lesser punishment than death would be adequate for the deterrent or expressive function of punishment. The "paradigm violation" of human dignity is "torturous punishment," which capital punishment is, mentally more than physically.

His conclusion is that capital punishment is a cruel and unusual punishment and is therefore prohibited by the Eighth Amendment of the US Constitution.

It is excellent that somewhere on the highest level of US jurisprudence, the idea of human dignity appears to be doing irreplaceable work in the defense of human rights. In the *Furman* case, the target is torture or what is torture-like: living on death row for a long period and then enduring execution that is rarely free of serious pain. The trouble is that apart from the metaphor of the human being as an object that is toyed with and discarded, and the reference to the state's failure to recognize a prisoner as a fellow human being, the entire burden of Brennan's reasoning against capital punishment is carried by the view that the infliction of such severe pain is immoral, a great immorality committed by the state. He does not quite say that capital punishment makes the state no different from and certainly no better than a murderer, but he could have. Human dignity is frequently mentioned, but it is not clear what work the idea does. Elsewhere, he expands the notion of human dignity to require state provision for individual self-development. This idea is rather too custodial for the good of human dignity; the real force of his conceptualization lies in his principled aversion to capital punishment and other cruel or unusual punishments.

Brennan implies that deliberate infliction of severe needless pain is in itself degrading because it is the ultimate immorality; the infliction of such pain is the worst way that human beings treat other human beings. No one, no matter what they have done, ever deserves to receive the worst at the hands of the state. The treatment is inhuman. But Brennan does not hold on to his point that the infliction of severe pain can be an instrument of an intention that goes beyond pain for the sake of pain; namely, the reduction of a human being to the nonhuman status of a thing or animal. He keeps returning to the cruelty endured by the prisoner in capital punishment—that is, to the extraordinarily painful experience of a prisoner facing death and then undergoing execution. The severity of experienced pain is what holds Brennan's attention. He says that the United States believes that "the dignity of the individual is the supreme value"; but it is telling that he then calls this foundation "moral grounds" (p. 296).

I do not want to press Brennan too hard. I can see why it makes sense to hold that inflicted pain can be so severe that one wants to say that it is in itself an effacement, apart from intentions or effects, of the humanity and hence the dignity of the victim. What I would like, however, is a more definite indication that the violation of dignity has existential weight that is independent of the suffering in itself. Part of the intention of inflicting suffering is to re-identify groups of people as subhuman and do so through the kinds of suffering that degrade. In general, atrocities, crimes against humanity, are not merely immoral but evil. When evil in the form of the effacement of human identity is involved, the category of immorality seems inadequate. The moral concept of cruelty does not account sufficiently for the phenomenon of cruel and unusual punishments such as slavery.

I also think that what Brennan's opinion requires is a sharper distinction between pain (no matter how severe) and death. He hates the thought that a state would deliberately end the life of a human being and tries to make the awfulness of that act resemble as closely as possible the most extreme pain. By making so much of the cruelty, he is able to take refuge in the Eighth Amendment and thus see severe pain as in itself degrading and hence as violating human dignity. He believes that he cannot appeal to an absolute infeasible right of life because the due process clauses of the US Constitution do not prohibit capital punishment, but assume its continued existence and only demand due process protections for the capital accused person. Conceptually, he is left with the profound immorality of state-inflicted cruelty. Yet he sees that retributive moral arguments (secular and religious) are used to defend capital punishment: "a life for a life" has ancient standing. He consequently needs a kind of argument that is not only moral; so he continuously refers to human dignity, as if it were more truly moral than traditional morality, just because human dignity seems incompatible with, above all, the deliberate and punitive infliction of severe pain.

But why is death "an unusually severe punishment?" His answer is that it is "unusual in its pain, in its finality, and in its enormity" (p. 287). But he does not spell out the specialness of death as a punishment; he does not say why death is so bad that no one can ever be said to deserve it, even if it were inflicted quickly and painlessly. We need an existential

argument for an absolute, indefeasible right of life, not a moral one, and I hope to give a sketch of it in a little while. In Brennan's concurrence, striking and praiseworthy as it is, morality actually does just about all the conceptual work; dignity hardly does any. The defense of human rights requires a more defined existential or identity component.

When we look, as we will, at the connection between pain and degradation outside the framework of legal punishment (capital punishment in particular), and with state-inflicted crimes against humanity in mind, the nature of the degradation that severe pain can cause becomes clearer.

Uniqueness and Dignity

In the idea of human dignity to recognize oneself as sharing in a common humanity with every human being is the primordial component of individual identity. Its positive center, however, is belief in one's uniqueness together with the uniqueness of every human being. Analogously, the dignity of the human species lies in its uniqueness in a world of species. I am what no one else is, while not existentially superior to anyone else; we human beings belong to a species that is what no other species is; it is the highest species on earth—so far. In a further step, we want to be able to say that the uniqueness in each case is commendable, not because any uniqueness whatever is commendable but because human individual and species uniqueness derives from capacities, from traits and attributes that are unique and commendable. All other species are more alike than humanity is like any of them; a chimpanzee is more like an earthworm than a human being, despite the close biological relation of chimpanzees to human beings. The small genetic difference between humanity and its closest relatives is actually a difference in capacity and potentiality that is indefinitely large, which actually means that it can *never* be fully measured. Only the human species is, in the most important existential respects, a break with nature and significantly not natural. It is unique among species in not being only natural. Of course, if the species breaks with nature, so must every individual member of it.

Does dignity really depend on uniqueness, on unique identity? In one sense of dignity, the answer is no. I mean that any creature or person or thing can strike an observer as having the dignity of being itself, worthy of perception, and able to arouse wonder at its mere existence. The concept of uniqueness does not have to be in play for us to feel this wonder at the suddenly vivid appearance of a particular thing, creature, or human being that is seen or found by the way; we know that species exist, but the particular is suddenly magnificent in momentary isolation and sufficiency. The creature or thing or person may be so little known to us that we do not have enough knowledge of it or him or her to make any claim of uniqueness. Or the concept of uniqueness can be in play as the momentary feeling that what is before us is the only one of its kind, when of course it isn't; its presence before us impels the feeling that nothing else is like it. Appearances and impressions count for everything. We observe as from a distance; the frame of mind is aesthetic.

But when we speak of human dignity as the status of the individual or the stature of the human species, we are reaching for another sense of dignity, the dignity of what is uniquely human in its identity. Human identity rests on unique traits and attributes, which make human beings capable of commendable works and ways of being, but also of wrongdoing of every kind and in every degree. If there were only or mostly wrongdoing, it would be nonsense to speak of human dignity. The existential values would be worthless without realized moral capacities. But there is more than wrongdoing. All (or almost all) and only (truly only) human beings have these commendable traits and attributes. (I will later discuss these traits and attributes at some length.) If we want people to be treated with the proper recognition and respect by means of a system of human rights, we must work to encourage the perception that each person's common human traits and attributes, in their individualized presence, make that person uniquely precious; and if we want the human species to serve as steward of nature, we are asking for people to direct, more than they have ever done, their uniquely human traits and attributes to activities that make up the great project of stewardship, which no other species could possibly conceive or perform.

We begin thinking about the human dignity of individuals, their equal status, when we impute to every person this thought: I have a life

to live; it is my life and no one else's; it is my only life, let me live it. I exist and no one can take my place; I exist and though I do not owe my existence to fate or other superhuman necessity, I am not nothing. My birth may have been planned, but I was not intended as the specific person I eventually became. In some moods, I fantasize that everything that has so far happened in the world was needed to bring about my particular existence, and that my existence is therefore a necessary outcome of innumerable interlocking causal chains, although I know that the same could be said of all other persons and creatures. Anyway, I am not nothing, even if or even though I go to nothing at the end. I am not nothing, even if in my life I amount to nothing out of the ordinary.

There are people who are so disabled that they cannot function. Does the idea of dignity apply to them? Yes, they remain human beings in the most important respect. If they cannot actively exercise many or any of their rights they nevertheless retain a right to life, whatever their incapacities (short of the most extreme failures of functioning). They must be treated as human beings, not as subhuman or as animals or lumps of matter. Clearly, however, the idea I explore puts functioning human beings at the center. Nor do I wish to deny that the obvious differences between adults and children (potential adults) remain crucial.

Attacks on the Status of Individuals

Lodged in the idea of human dignity is the belief that the individual's status can sometimes be attacked—injured and insulted—painlessly, without suffering. People can be manipulated, controlled, or conditioned softly and subtly, or even invisibly, and not feel that they have been degraded or even wronged, that they have been existentially harmed. They may even find pleasure or numerous benefits in their situation, and feel grateful to those who rule them paternalistically or in such a narrowly regimented way as to withhold from them the contrasts and range of experience needed to create awareness of their dignity. It would take an outsider or an alienated subject to find their horizon arbitrarily closed in. To use a discredited term, people may live in false consciousness, and do so comfortably. One of the advantages

of the idea of human dignity for the theory of human rights is to raise the possibility of painless oppression, whether in ostensibly rights-respecting societies or in successfully disciplined societies where the very idea of human dignity and the rights that flow from it are lacking.

The problem of painless oppression and the attendant problem of false consciousness, however, do not provide the most significant issue where the idea of human dignity does indispensable work. The greater the suffering that a society may inflict on people within or outside its domestic jurisdiction, the more urgent the question of human dignity becomes. But the suffering that a system may inflict on people in denial of their rights is not the whole story. The damage done to morality is crucial, but not an exhaustive account of the oppression. Beyond oppression, there are systems of suffering that are so extreme as to efface the personhood of individuals and leave only biological entities that do anything to survive, at whatever cost to those around them and to their own dignity. Degraded human beings therefore lose their identity as human beings and as particular persons, at least for a significant stretch of time. They have been forced to lose almost all uniquely human and personal characteristics. Thus through no fault of their own, they no longer manifest the reasons for which incomparable dignity is ascribed to human beings. Except in rare cases, they can no longer exercise free agency or moral agency. The assault on dignity has achieved its aim when the very possibility of the idea of human dignity is forced out of the mind of the victim by extreme suffering. One has been made to forget that one is a human being because those who do evil as a policy have already denied that those to whom they do it are human. This extreme will to deny the humanity of targeted groups grows out of ideologies and elaborated fantasies that congeal in revulsion and bottomless contempt for the afflicted groups and results in their degradation. The original denial of their humanity seems vindicated in a grotesque parody of proof. The effects of the atrocious policies reinforce the extremism of will. Crimes against humanity are the most serious crimes against human dignity as well as the most serious crimes against the morality embedded in human rights.

Deliberately effacing the person takes place in extreme situations like war, many prisons and forms of captivity, torture, slavery, concentra-

tion camps, induced or neglected famine, and death camps. But we should not speak as if at any time degraded human beings are no longer human; to do so would justify the treatment inflicted on them. They are human beings in ruins. Even if some captives are freed, their recovery of status may be only nominal, but it is something like resurrection to recover it more than nominally. Great suffering imposed by human decision, not by natural calamity, can thus impose the aggravated harm of the attempted destruction of existential status.

Yes, natural calamity may be so dire as to make human beings forget themselves in their efforts to save themselves at whatever cost to others, and prior or subsequent human neglect may worsen the effects of natural calamity, but nature has nothing in mind when it starts a catastrophic process. In contrast, the evil treatment of people—say, a totalitarian system of extermination—deliberately imposes on them the worst existential loss. The evil of inhuman suffering is a conceptually separate consideration from the inevitable existential loss that is sustained by most people when they are dehumanized, even if for only a while, by their suffering. The human loss has more than one dimension.

I am not saying that the idea of human dignity represents indifference to suffering. Rather it serves as a reminder that the harm sustained by a human being subjected to inhuman treatment is more than the experience of pain. In most cases (but not all, as we shall see), the existential perspective is not in competition with moral judgment. My complaint is that the existential loss, the loss of human dignity through extreme suffering, is not always taken into account. It is heartless but necessary to say that since the existential loss often ceases to register on the victim after the ordeal has gone on for a while, it is up to the observer to insist on it, precisely to highlight the compound nature of the experience of evil treatment, the total abrogation of human rights.

Moral and Existential Components in the Theory of Rights Compared

I propose the tentative thought that from a moral point of view human rights are instrumental in their value, while their value from an exis-

tential point of view is not instrumental. The fundamental moral advantage of rights is that they are supposed to reduce suffering by guarding against state oppression and wrongdoing. In contrast, the existential advantage is that the state's respect for rights shows that the authoritative source of laws and policies in society is constrained by its recognition of every person's identity as a human being equal in status to all others and as a unique self. For all its good effects on the psychology of a person, such recognition is not instrumentally valuable, because one's identity precedes any purpose one has. To be sure, a person finds that guaranteed rights create an atmosphere of freedom in which opportunities for action multiply. But I think that it is somewhat misleading to regard an atmosphere of freedom as only or primarily instrumental; it makes a new world. In exercising a right, one shows that one is aware of being free and also demonstrates what being free means. One exemplifies one's status as free and equal. I won't insist, however, on a sharp contrast between the instrumental and noninstrumental value of human rights, as if to say that what is noninstrumental must always rank higher.

The hope, perhaps futile, is that the question should not arise as to the comparative importance of moral and existential components in the theory of individual human rights. At first sight, we can say that both are necessary, and neither is sufficient. A second look indicates, however, that since there can be painless degradation where no right but life is respected (discussed again later), the existential component is occasionally necessary and sufficient to condemn such an infantilizing system where rights are comfortably absent because they are thought unnecessary. The moral element has failed to cooperate with the existential element in upholding human rights.

There is one last stumbling block. Does morality actually require a prior existential element? I mean that a committed champion of animals could ask why the prevention or reduction of human suffering counts as an absolute moral purpose, while animal suffering is at best, and rarely that, a minor consideration. One way of dealing with this question is to say that individual members of the human species matter existentially more than members of all other species; human beings

have an incomparably higher dignity. They matter more because of what they are: members of the human species, with the unique and incomparable traits and attributes of the species. In being partly and commendably nonnatural, a human being has an incomparably higher status than any animal. If human beings matter more, their suffering matters more.

I know that what I have just said is not a strict entailment; it may even be a mistake. But I just do not see that animals are existentially equal to human beings when they are not existentially similar to human beings. The infliction of needless suffering on any person is wrong not only for the pain that it causes but also for the failure to recognize a shared humanity that it demonstrates. What makes the precept that no person should suffer needlessly into a *moral* precept of the highest order is thus a prior existential consideration: persons are to be treated in some ways and not in others. To cause them needless suffering is to treat them in a way that denies them their dignity. It would therefore seem that only the idea of human dignity can be the starting point for the claim that human suffering matters more than animal suffering, even though the needless suffering of any animal that is not immediately threatening is always deplorable. (It is also right but regrettable to have to kill a lion to save a human being.) The alternative way of defending the priority of human suffering is simply to plead species-solidarity: us against them. This is a neat solution but a bad one because it comes down to the adage that might makes right, which is not a moral principle. It is instead a debased existential idea: since human beings are usually able to overpower other species they are permitted to make them suffer for any purpose human beings have.

Let me ask again: should we judge the comparative importance of moral and existential elements in the theory of rights? Is this theory only a branch of moral philosophy and not of existential philosophy as well? Later, we will take up more fully the subject of existential values in the theory of rights; so I will delay addressing this question (to the extent that I am able to discuss it) until then. But I will say that, in my judgment, the highest value is morality and always deserves at least *prima facie* precedence in our practice in the present and future, what-

ever we may think about the more remote past, that assessment does not establish, by itself, that whenever there is a moral consideration involved morality is a sufficient guide for thinking about the issue.

Secular Affirmation of the Dignity of the Human Species

It has been said that the earth would be better off without human beings living on it. I think that after a set of steps, we can reject that contention and affirm the unique contribution that humanity can make to nature. The stewardship of nature is a contribution that only humanity can make, and would exemplify human stature most gloriously. From nature's point of view, even though nature has no point of view, the human species is irreplaceable because its stewardship depends on commendably unique traits and attributes that help to make human beings partly not natural. Before humanity perished we could not pass on to any other species, not even our closest relatives, our knowledge and appreciation of nature. Only the partly not natural can serve nature in certain ways that it deserves and cannot provide for itself.

This essay will thus concentrate on the place of the idea of human dignity, in the form of equal individual status, in the theory of human rights; and on the dignity of the human species, in the form of human stature, which is based on unique nonnatural capacities. But in the affirmation of the dignity of the species, the record of human atrocities will not be forgotten; nor will the affirmation be turned into a counsel of forgiveness. Furthermore, the standing of the human species vis-à-vis other species is not the only form of stature that counts; nor is the stewardship of nature the only active expression of stature. Stature is also tied to the repeated demonstration that humanity has made, at any given time, if not the most of itself (who can say what the most is?) then something astonishing and unexpected; that its achievements are great and have shown that at any given time there could be no foreseeable end to the realization of unsuspected human potentialities. Human stature is essentially an existential, not a moral, value.

My essay is a secular attempt to discuss human dignity. I do not rely on traditional answers that any religion gives to the question of hu-

manity's rank. A common Christian answer is that humanity finds its place in a scale of entities with divinity at the top, angels below the divinity, and humanity "a little lower than the angels" (Psalms 8:5), with all animals beneath humanity and intended to serve it. But we are not in the eye of any divinity. I do not assume that there is a religious answer to the question of the worth of humanity. It would be flattering to think, for example, that only human beings are in the image or likeness of the divinity and that therefore we have the dignity of kinship with some entity immeasurably greater than us but nevertheless not utterly removed from us in its nature, not "wholly other." If we could first believe in the more-than-human entity of monotheism, there would then be no problem about the nature of and reason for imputing dignity to every individual and to the species. Who could deny it? Then, too, Greek myths include stories in which the gods feel lust for human beings (whom the gods did not create out of nothing) and sometimes mate with them. There is literal if selective kinship. Christianity teaches that being human is a good enough (though temporary) condition for God. But we should try to do without such props; they can always give way to enlightenment. Furthermore, given the extent of suffering in human history, much of it owing to human wickedness, God the creator has endured a perpetual legitimation crisis all through the history of theological reflection. Secularism relieves us of his burden.

I am aware that a case can be made for perceiving much of Western religion as existing not to make truth-claims about more-than-human reality, but by artful means to promote human dignity in the only ways that could establish a foothold and that then perhaps could eventually be discarded as a theological husk. I mean that Greek and Roman polytheism, Jewish theism, and Christian theism invent deities to provide a standard that is supposedly not humanly devised and yet pretends show that humanity—in its god-like resemblances or creative achievements or even in its capacity for wickedness—has a dignity, an importance, that humanity does not have to claim for itself. Who could doubt the centrality of humanity in the eyes of the deities when one reads Homer and Sophocles, the Jewish scriptures, and the Christian Testament? We must learn to manage without the literalness of such assistance, if we can. But suppose human beings can respect one another

only as creatures of a god or as mortal (though rather feeble) copies of the gods and grow to hate one another as shriveled worthless beings against the assumed background of a godless world? Imagine having to lie to people to persuade them of the truth of their dignity.

It would also be comforting to posit the existence of the soul as an answer to the question of the identity of every individual. In one version, the soul of any individual has existed immaterially, without a body, from the beginning; it has a necessary existence because of God's purpose; it bears an identity known fully only to its maker. Incarnation is the soul's prison; the soul, one's identity, needs no body. In some accounts, any soul could conceivably have been given any human or animal corporeality (or more than one) and retained the same identity, the same essence; it is, if not eternal, then immortal. However, as long as we have no continuity of consciousness between incarnations, no recollection of earlier embodiments, the idea is a nonstarter. I may as well be only one self-aware person as be many persons and animals, linked who knows how—charming as that thought perhaps is, and fertile in suggesting human kinship with all nature because humanity, like everything else, came from matter, or suggesting the inclusion within every individual of traces of many animal species. (Chromosomal similarities are irrelevant to the doctrine of reincarnation, which is not a metaphorical anticipation of molecular biology.) Some who believe in the soul think that one could have been born at some other time or place and somehow still be the person one is now; one's existence is not merely the outcome of a chance coming together of progenitors at one time in one place. Perhaps the oddest notion is Christian: the resurrection of the dead body into immortality and the reawakening of the immortal (not eternal) soul on Judgment Day. The secular theory of dignity does without such unwarrantable claims about the soul and should content itself with the concept of mind, a uniquely human possession, which is not dissociable from the body, is not immortal, much less eternal, but, rather, infinite, despite its meager life-span.

Nor do I posit a nonhuman or more-than-human audience for speculation about the standing and worth of humanity. If we accept religious teaching, these problems receive solutions, diverse as they must be. One problem is surely solved: the posited divinity is the measure of

all things. But humanity must perforce be the measure: it introduces measure into the universe. Humanity must be the judge in its own case, with all the strains and perplexities such a condition engenders. It is also the only audience or interlocutor for the discussion. There is no arbiter or sponsor. Humanity talks to itself about itself, it judges itself, it invents the questions and answers, it alone worries about human dignity. There is no appeal beyond itself. But the discussion must go on because there are certain questions that must be answered, and can only be answered by reference to the idea of human dignity. Or we can say more modestly that the idea of human dignity supplies the least unbelievable answers.

We will return to these questions later. But let us now develop some thoughts about the place of the existential element in the theory of human rights and its relation to the moral element.

Human Dignity in the Capability Approach

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Introduction

The capability approach is a broad normative approach which has been developed from the 1980s onwards, most prominently by economist Amartya Sen and philosopher Martha Nussbaum. In the philosophical context, the main use of the approach is to assess the justice of social arrangements: societies are just to the extent that they guarantee each citizen an entitlement to his or her basic capabilities. In more recent years Nussbaum has emphasized the fact that the capability approach is a human rights approach, and has begun to ground her version of the approach in a specific concept of human dignity. In this contribution I will first briefly summarize the main concepts used in the capability approach (section 1), and then present Nussbaum's concept of dignity as a grounding of that approach (section 2). Finally, I will criticize this way of using the concept of dignity and raise some questions (section 3).

The Capability Approach

The capability approach is used by social scientists, lawyers and philosophers, in a variety of contexts, for descriptive, evaluative and prescriptive purposes. What all these uses share is only a rather minimal conceptual apparatus: namely a stress on 'capabilities to functionings' as the favoured focus for research.

Functionings are defined by Amartya Sen as 'parts of the state of a person – in particular the various things that he or she manages to do or be in leading a life.' (Sen 1993: 31). Functionings are 'doings' and 'beings' then, like eating, riding a bicycle, walking, working, sleeping etc. Later Sen also described functionings as 'the various things a person may value

doing or being' (Sen 1999: 75) or as the 'things he or she has reason to value.' (Sen 2009: 231). This value-laden definition of the notion of functionings builds the normative criterion for deciding which functionings are valuable into the concept itself: Sen's later definition makes individuals themselves the judges over which functionings are valuable. In Nussbaum's version of the capability approach, whether a functioning is valuable is not decided by the person herself, but by an ethical procedure of evaluation, in which dignity comes to play a role (see next section). Arguably, then, Sen's and Nussbaum's different definitions of functionings represent different interests in using the approach (as a welfare economic theory versus a political-ethical theory).

Capabilities are derived from functionings. In Sen's use, 'The capability of a person reflects the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection'. (Sen 1993: 31). In contrast to this usage of 'capability' in the singular, Nussbaum uses it in the plural. For every functioning, there is a capability to function in that way. A capability is an ability or opportunity to choose a specific functioning. If one has a 'capability to ride a bicycle', one can choose whether or not to go for a ride. The concept of choice is central: it is up to the person herself to decide whether or not to realize a certain capability in her life (Nussbaum 2000: 88). Capabilities, then, are freedoms to achieve something and functionings are these achievements.

Nussbaum uses this conceptual apparatus in philosophical theorizing about justice to say that a society is just to the extent that every citizen has constitutionally guaranteed entitlements to a list of basic capabilities. This does not mean that in every situation it is only important that people are given capabilities. Sometimes it may be necessary to be more paternalist and promote people's functionings directly, bypassing their own choices (Nussbaum 2000: 89–96; 2006: 171–2; Claassen 2013). However, these cases remain exceptions to the rule. The main focus on capabilities makes the capability approach a liberal approach, which respects the choices of persons to function as they want.

The main attraction of the capability approach is that it presents an alternative to approaches which identify a society as just when persons have rights to certain resources, or when utility is maximized. The capability approach posits itself between resourcism and utilitarianism. Resources (goods and services) are important only because people can do something with them, i.e.: function in a certain way. And since some persons may need more resources to get to the same functionings level as others, it is misleading to focus on bundles of resources (Sen 1990; Pogge 2002; Anderson 2010). On the other hand, one may think that what really matters for justice is not how people are able to function with a given bundle of

resources, but what pleasure or utility they derive from their functioning. However, if two persons with equal capability levels experience different levels of utility, they should remain themselves responsible for that difference. A just society is not responsible for people's happiness, only for the opportunities to make themselves happy.

The crucial question now is how to select a list of basic capabilities. Sen has always refused to select such a list, preferring to keep the approach open for several uses and referring to processes of public and democratic deliberation to make selections of basic capabilities (Sen 2009). However, Nussbaum has argued against Sen that a theory of justice needs to take a stance on this issue (Nussbaum 2003). There are good reasons to agree with Nussbaum, at least if one's ambition is to have a theory of justice which fulfills an action-guiding and critical function. It is more respectful of democratic deliberation to offer a concrete list as a proposal, which is up for deliberation and adoption in a political community, than to refuse giving any input to the democratic process (Claassen 2011).

If we agree with the need to reflect philosophically on a list of basic capabilities, then the next question is what the normative criterion for such a selection might be. In earlier work Nussbaum relied on an intuitive idea of what makes a life a fully human life. This is an appeal to human nature, where that notion is itself treated as an evaluative one: that which makes a human life a good one (Nussbaum 1990; Nussbaum 1995). Arguably, such a notion is too vague to do the work of selection: humans have many morally bad, cruel abilities (Claassen and Düwell 2013). The introduction of the notion of dignity in Nussbaum's later work may be seen as a way to strengthen her approach and make the criterion that is used to select basic capabilities more strongly normative.

Nussbaum's Concept of Dignity

Nussbaum makes three uses of the concept of dignity: as a general notion to ground her capability list, as a concept that grounds animal entitlements and as an argument for focusing on functionings in some cases.

First, the central idea of Nussbaum's capability theory now is that 'all human beings ought to acknowledge and respect the entitlement of others to live lives commensurate with human dignity' (Nussbaum 2006: 53). She acknowledges that this is an 'intuitive notion that is by no means utterly clear' and rejects the idea that one can use it 'as if it were an intuitively self-evident and solid foundation for a theory that would then be built upon it' (Nussbaum 2011: 29). Instead, she maintains that dignity gets its importance by being related to a set of other notions. Three stand out. Dignity is related to *respect* – beings with dignity demand

respect from others. Dignity is also related to *agency* – one focuses on what people are able to do, not on their passive satisfactions. Dignity is related, finally, to *equality*: it is that in respect of which we are all equal (Nussbaum 2011: 30–31). How does this help us to make a list of basic capabilities? Nussbaum argues that with these connected notions in mind,

[W]hat must happen is that the debate must take place, and each must make arguments attempting to show that a given liberty is implicated in the idea of dignity. This cannot be done by vague intuitive appeals to the idea of dignity all by itself: it must be done by discussing the relationship for the putative entitlement to the other existing entitlements, in a long and detailed process – showing, for example, the relationship of bodily integrity inside the home to women’s full equality as citizens and workers, to their emotional and bodily health, and so forth.

(Nussbaum 2011: 32).

Second, Nussbaum uses the notion of dignity to extend capability entitlements to those humans with (severe) disabilities and to non-human animals. Up to this point, ‘dignity’ has referred to human dignity. This concept raises Kantian associations that Nussbaum explicitly rejects. She maintains, invoking Aristotle, ‘that there is something wonderful and wonder-inspiring in all the complex forms of life’ (Nussbaum 2006: 347). Animals, then, have their own type of dignity. As for humans, it is related to the type of functionings that they are capable of and the flourishing that they can derive from these functionings. Dignity, functioning and flourishing exist in animals as much as in humans. But since dignity is not only related to functioning and flourishing, but also to respect and rights/entitlements, this means that animals now also deserve respect and get rights to a set of capabilities. Obviously, this leads to many controversial questions about animal ethics, that I cannot go into here (Cripps 2010; Ilea 2008; Hailwood 2012)¹

These two uses of the concept of dignity are the main ones. However, for the sake of completeness, we must also mention that Nussbaum uses the notion of dignity in a third way, in the more restricted context of her discussion of when to promote functionings instead of capabilities.² We should prohibit choices people make to humiliate or debase themselves (Nussbaum 2000: 91; Nussbaum 2006: 172). Unfortunately, Nussbaum does not give much elaboration of this use of the concept, neither does she mention examples where we should prohibit people’s choices out of a concern for her dignity (it also seems problematic: dignity is first used to lie in individuals’ capacity to choose their own functionings, and later dignity justifies prohibitions on choice; one could wonder whether this is a consistent use of the term). In the following, then, I leave this third use out of consideration and concentrate on

dignity as the ground for human and animal entitlements.

With this general overview in place, I will now focus on the only article in which Nussbaum has given a more elaborate account of her concept of dignity (Nussbaum 2008), relating to the first two uses discussed above: to ground a list of human basic capabilities and extend this to animals.

Nussbaum draws an opposition between a Stoic-Kantian notion on the one hand, and an Aristotelian-Marxian notion on the other hand. The Stoic notion rests on a respect for the rational powers of human beings. The fact of possessing reason makes all human beings equal (universalism), and this is the ground for our moral respect for all humans. Rationality and morality are thus closely connected: the fact of possessing reason justifies treatment as an end-in-itself, not as a mere instrument to the purposes of others (Nussbaum 2008). Nussbaum accepts the idea of dignity as deserving respect for creatures as ends. She has two main problems with the Stoic account. The first I already mentioned: that the focus on rational capacities as the ground for being ascribed dignity excludes animals, with their non-rational capacities.

The second problem deserves more elaboration. The Stoics believed that human dignity cannot be violated. Thus, 'it turns out that dignity, radically secure within, invulnerable to the world's accidents, doesn't really need anything that politics can give' (Ibid: 355). This leads to a quietistic attitude to the outside world. Other people cannot violate my dignity by withholding important goods from me, and even enslaving me is not a violation of my dignity. The radical consequence is that any theoretical statement of the sort 'respect for dignity requires x' (where x refers to a certain treatment) is now inconsistent. It is not open to the Stoic account to claim that inhumane or indecent treatment violate one's dignity, since on the same account one's dignity cannot be violated. The reason for this stance, Nussbaum believes, is that the Stoics believed that 'in order to give human dignity its due reverence they had to show it to be radically independent of the accidents of fortune' (Ibid).

Nussbaum's Aristotelian-Marxian alternative rejects this independence from the external world. Human dignity does not only rest on an inviolable independence from the world. We are also vulnerable and needy beings, and require help from others in many respects: 'human beings have a worth that is indeed inalienable, because of their capacities for various forms of activity and striving. These capacities are, however, dependent on the world for their full development and for their conversion into actual functioning.' (Ibid: 357). If we try to take the various components apart, dignity fulfills three roles. First, dignity is ascribed to humans and animals because of their *potentiality* to develop certain capabilities. This attribute cannot

be lost, the potential is always there. Second, the ascription of dignity gives us the reason why humans should be treated with *respect*. In reality, the potential can fail to be developed (people's vulnerability to the natural and social world). Dignity gives us the reason why such failures, when caused by others humans, are moral failures. Third, respect for dignity takes the form of protection of human *rights* to the development of these capabilities (at least, rights to the 'social basis' of such development). Capability-based human dignity requires law and politics to implement a series of rights.

Dignity as a Motivation for Respecting Capabilities?

If one believes that the capability approach is more attractive than its direct competitors (resourcism, utilitarianism) in giving an account of a just society, then one will expect that it is able to give a more convincing account of dignity as well. Ascriptions of dignity always need a grounding in one or more features of the dignity-bearing creature; there must be something about that creature that makes it dignified. It is plausible to think of these features as capabilities: as potentials to function in a specific way. All theories which ascribe dignity on the basis of rationality in this sense are also capability theories, since rationality is one of human beings' capabilities. This may sound surprising, but it is a logical consequence of the concept of 'capability'. Nussbaum's theory is different only because it happens to defend a broader set of capabilities, going beyond our rational capacities.

Despite these attractions, there are also problems with Nussbaum's use of the concept of dignity in context of her capability theory. First, one could wonder what theoretical work the concept is actually doing. Nussbaum's capability list was drawn up in a series of articles in the 1980s and 1990s which made no use of the concept of dignity. Later, she revised the capability list slightly, but these revisions had little to do with the introduction of dignity. So either Nussbaum thinks with the benefit of hindsight that dignity as an invisible hand had been implicitly guiding her selection process all along (this seems unlikely), or that the work the concept is doing lies not in the selection of basic capabilities, but rather in motivating why these capabilities deserve respect at all. This last option seems more plausible. Dignity is meant to give normative force to a list which itself remains selected on the basis of the Aristotelian question 'what is it to flourish for a human being?'. In terms of the three parts of dignity mentioned at the end of the previous section, the main function of dignity for Nussbaum is that it gives us a reason to respect the capabilities of humans and animals.

This does raise a follow-up question however. For how does dignity motivate an attitude of respect? As we saw, Nussbaum refers to the Aristotelian notion that there is something

‘wonderful and wonder-inspiring’ in complex forms of human and animal nature. Elsewhere she elaborates on this in the following passage:

The idea of dignity has broad cross-cultural resonance and intuitive power. We can think of it as the idea that lies at the heart of tragic artworks, in whatever culture. Think of a tragic character, assailed by fortune. We react to the spectacle so assailed in a way very different from the way we react to a storm blowing grains of sand in the wind. For we see a human being as having worth as an end, a kind of awe-inspiring something that makes it horrible to see this same person beaten down by the currents of chance – and wonderful, at the same time, to witness the way in which chance has not completely eclipsed the humanity of the person. As Aristotle puts it, ‘the noble shines through’. Such responses provide us with strong incentives for protecting that in persons that fills us with awe. (Nussbaum 2000: 72–3).

Despite the rhetorical power of this passage, I think we need to remain critical of the idea that ‘wonderful’ and ‘awe-inspiring’ things justify our attitude to respect those things. We should never forget that respect is meant in the specific sense in which it in turn leads to the protection of a series of rights. Now I can judge many things wonderful without thinking that these things deserve respect. I judge my iPad to be a wonderful, even awe-inspiring piece of technology. Nevertheless I do not think that my iPad has individual rights that deserve protection. Similarly, I may find a landscape awe-inspiring without thinking that it deserves this kind of rights-protecting respect. Awe and wonder seem to be different attitudes than respect, and there is no easy way to get from one to the other. But if this is so, and if dignity is related to awe and wonder, then it is a deficient basis to ground an attitude of respect.

It is important to mention that before Nussbaum took the turn to the wonder-inspiring concept of dignity, she grounded her capability list in a method she called ‘internalist essentialism’. The general idea there was to enquire for oneself which functionings are defining of one’s human nature by asking which functionings one is willing to give up. Functionings like affiliation and practical reason, Nussbaum argued there, cannot seriously be given up, because the cost of doing so is too high (Nussbaum 1995: 110; see also discussion in Claassen and Düwell 2013) She called this the use of ‘self-validating arguments’: the procedure of asking such questions validates the answers one gives to these questions. The respect-motivating force of the capabilities, according to this method, then, does not have its ground in what we think inspires awe and wonder, but in the consideration of what is essential to be able to lead our own lives. If Nussbaum would have upheld this method, then dignity would have been – more credibly, in my opinion – something ascribed to 1)

ourselves, because we have capabilities that are vulnerable to violation or underdevelopment, and 2) other human beings, because they also have the same capabilities (given that they belong to the same species as me). The capabilities essential to lead our own life are also those essential to lead a 'human life' in general. The deep wound that *we* would feel if our capabilities were violated is what motivates us to respect the capabilities of similarly placed others.

This brings us most naturally to the question of the extension of dignity to animals. On Nussbaum's theory any creature that is able to function in a certain way would deserve to have its own type of dignity recognized. The problem with this is that it would seem to set no limit at all to the extension of dignity. Plants also function in certain ways, and maybe ecosystems do so as well – plants can flourish or perish, ecosystems can be stable or degrade. To set a limit, Nussbaum first considers adopting the utilitarian criterion of sentience, but then turns to her own capability approach, and holds that any creature with one of her capabilities qualifies. This she calls a 'disjunctive approach';

[I]f a creature has *either* the capacity for pleasure and pain or the capacity for movement from place to place *or* the capacity for emotion and affiliation *or* the capacity for reasoning, and so forth (we might add play, tool use, and others), then the creature has moral standing. (Nussbaum 2006: 362; similarly Nussbaum 2008: 363)

As she notes just after this passage, possession of one of these capabilities normally coexists with sentience: 'Aristotle reminds us that this is no accident: for sentience is central to movement, affiliation, emotion, and thought' (Nussbaum 2006: 362). For practical purposes the capability approach and utilitarianism converge on this point.

I will grant that the disjunctive approach would give Nussbaum a workable criterion to distinguish creatures with moral standing from other natural phenomena. The problem is that this answer is unavailable on Nussbaum's own theory. For she restricts the disjunctive approach to the ten capabilities she has defined as central to *human* life. Given the animal basis of human life, unsurprisingly this also works well enough to include animals in the moral realm. Both animals and humans eat, walk around, use senses, etc. However, plants and ecosystems are also functionally organized natural phenomena, i.e. they have *other* types of functionings (which, incidentally, are not accompanied by sentience), and it seems arbitrary to exclude these from the disjunction. So far, then, Nussbaum has given no argument why these should be excluded. Her argument is circular: first she defines a list of capabilities shared by humans and animals, and then she concludes that human and animals (but not plants and ecosystems) fit the bill.

This problem is related to the previous one, and it can also be solved by my suggestion to use Nussbaum's earlier self-validating method as the basis of dignity-ascriptions. For it is not arbitrary to ascribe dignity to humans and animals if one starts with a method which reflects on which capabilities are essential to lead one's own (and by extension, a human) life. Such a method leads, unsurprisingly, to human dignity. It also leads to animal dignity because humans also have an animal nature. Humans must recognize the value of capabilities in themselves (like play, or nourishment) that animals also have. If we base respect for the capability for play in others on the judgement that we ourselves would not want to do without play in our lives, then there seems no good reason to restrict the extension of this respect to *human* others only; animal others then also come into the picture. This reasoning then grounds Nussbaum's extension to animals while not leading to dignity and respect for plants, ecosystems and material objects.

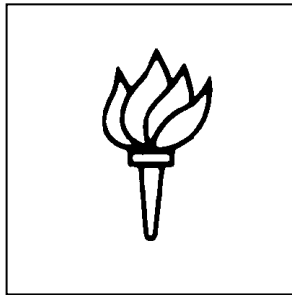
There is one potential objection to this line of reasoning. This is that the human capability for play (and all the other capabilities that we share with animals) only deserve respect because they are instantiated in a being which *also* has rational capacities. This Kantian objection, then, is that what ultimately grounds respect remains rationality; and the 'animal capabilities' in humans are merely worthy of protection because they help make possible the attainment of a rational life. I think this objection is mistaken. Nussbaum is right to claim that 'animal capabilities' in humans are valuable for their own sake, not merely as a necessary precondition for our rational capabilities. This comes out most clearly when thinking about humans who are incapable of rationality (like severely mentally disabled persons). However, given the fact that Kantians will in such cases ground respect in complicated extensions of rationality means that I cannot here give a full refutation of this objection. At least Nussbaum's position here is worth considering. It is mirrored, moreover, by similar extensions of dignity to animals in the Kantian tradition (Korsgaard 2004).

In conclusion, I have argued that Nussbaum's earlier self-validating method (or a similar method) is better able to ground respect for a set of rights to human capabilities, and their extension to animals, than an appeal to human dignity, at least when the latter is based upon intuitive judgments of whatever in nature inspires us with awe and wonder. This does not preclude the possibility that the concept of dignity could be used to describe the status of those beings that the self-validating method selects as worthy of respect. Whether the ascription of the status of dignity would then be doing any real normative work, is a question that I will have to leave for another day.

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Is Dignity the Foundation of Human Rights?

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9. Dignity as a status

Sometimes it is said—correctly in my view—that dignity is a status-concept, not a value-concept.⁵⁷ If we think carefully about status, it may seem that this opens up yet another possibility for a mistake about dignity's alleged foundational role.

In law, a status is a particular package of rights, powers, disabilities, duties, privileges, immunities, and liabilities accruing to a person by virtue of the condition or situation they are in. Bankruptcy, infancy, royalty, being an alien, being a prisoner, being a member of the armed forces, being married—these are all statuses, each of them comprising its particular package of rights, powers, etc. In Britain, the monarch has distinctive powers and duties; in most countries, a bankrupt has distinctive disabilities; so do convicts (often they cannot vote, for example); a serving member of the armed forces has distinctive duties and a few distinctive privileges; and infants have few, if any, of the legal rights and powers that adults have. In all these cases, the status-word operates rather like an abbreviation for the list of rights, powers, etc. that a person in one of these situations has. We could, if we liked, laboriously spell out each of these incidents. For infancy, we could say (a) that if X is under eighteen, then X has the right to support from X's parents; and (b) that if X is under eighteen, then X does not have the power to enter into certain contracts; and so on. Or, for bankruptcy, we could say (a) that if Y's liabilities have been adjudged to exceed his assets or he does not have the wherewithal to pay his debts as they fall due, then he is forbidden from incurring any further debts and (b) if Y's liabilities have been adjudged to exceed his assets or he does not have the wherewithal to pay his debts as they fall due, then he is entitled to protection from his creditors; and so on. But instead we summarize all this information by saying that in law X is an infant and Y is a bankrupt, and our understanding of the technical legal meanings of those terms—bankruptcy and infancy, respectively—carries with it knowledge of the details of the legal position that people with this status are in.

The point I want to make is that the status term does not seem to introduce any new information. As John Austin wrote in his *Lectures on Jurisprudence*, “[t]he sets of rights and duties, or of capacities and incapacities, inserted as status

⁵⁷ For argument to this effect, see Jeremy Waldron, *Dignity, Rank and Rights* (Oxford University Press, 2012), **pincite**.

in the Law of Persons, are placed there merely for the sake of commodious exposition.”⁵⁸ A status-term, he said, is “an ellipsis (or an abridged form of expression),” purely a matter of expository convenience.⁵⁹ It is nothing but an abbreviation, a “device of legal exegetics.”⁶⁰

If all this is true, and if dignity is a status, then it will be a mistake—a sort of category mistake—to talk of dignity as the foundation of rights. Instead, we may say that dignity is a status that *comprises* a given set of rights. The old notion of *dignitas* was like this: the *dignitas* of a noble was a different status from the *dignitas* of a priest and the difference consisted simply in the detail of the rights associated, respectively, with the status of nobility or holy orders. And so too, perhaps, with our notion of human dignity. To say of a being that it has the status of human dignity is certainly to imply that it has human rights.⁶¹ But that is because human dignity as a status term is just a short way of conveying that information. Like every other status term, it abbreviates a list of rights. We don’t have human rights because we have human dignity; our having human dignity *is* our having human rights.

However, maybe this is not the end of the matter. On Austin’s view, a status-term is just an abbreviation for a list of rights, powers, disabilities, duties, privileges, immunities, and liabilities. But perhaps it is also worth insisting that the list is not arbitrary; it is supposed to be a list that *makes sense* relative to some *underlying idea* that informs the status in question. And the meaning of the status-

⁵⁸ John Austin, *Lectures on Jurisprudence, or The Philosophy of Positive Law*, 5th edition, ed. Robert Campbell (John Murray, 1885), vol. II, Lecture XL, pp. 687-8.

⁵⁹ *Ibid.*, p. 700

⁶⁰ This is the rendering of Austin’s position in C.K. Allen, *Legal Duties and Other Essays in Jurisprudence* (Oxford: Clarendon Press, 1931), p. 34.

⁶¹ Some jurists maintain that, strictly speaking, the status of a human person is a sort of oxymoron. R.H. Graveson, *Status in the Common Law* (Athlone Press, 1953), at 2, defines “status” as “a *special* condition of a continuous and institutional nature, *differing from the legal position of the normal person*, which is conferred by law... whenever a person occupies a position of which the creation, continuance or relinquishment and the incidents thereof are a matter of sufficient social concern.” I disagree with this: it compares unfavorably with Roman law notions, which included, as one status among others, the status of the ordinary free man.

term embraces this idea as well.⁶² In the example of infancy, propositions (a) and (b) are not arbitrary legal propositions. Each of them makes sense in terms of the underlying idea that human children are much less capable of looking after themselves and much more vulnerable to depredation or exploitation by others than adults are. And they make sense together, as a package, in response to that idea—i.e., they make sense jointly as well as severally. The underlying idea—that being an infant (in the ordinary-language meaning of that term) requires special solicitude from society—is what makes sense of infancy in its technical legal meaning. We can say something similar about bankruptcy, alienage, royalty, being a prisoner, and all the other status-terms I mentioned. Each of them is not just an abbreviation of a list of legal “if-then” propositions; it packages a list of propositions deemed to make sense, jointly and severally, in virtue of a certain underlying idea about a particular circumstance or vicissitude of the human condition.

This is not just a matter of each item (in the list abbreviated by a given status) having some rationale.⁶³ It is a matter of their having a common rationale which explains how the various rights, duties, and so on hang together, i.e. the underlying coherence of the package. So, for example, the contractual incapacities of infants are understood in relation to the duties of their parents to make the provision for them that for most of us is made by our own ability to enter into contracts. Because an infant lacks contractual capacity, someone else must make provision for them. Abstracted from the whole package, a given incident of a

⁶² Austin was not unaware of this account. He associated it with the work of his own mentor Jeremy Bentham, and he offered rare criticism of the master in this regard, complaining that “Mr. Bentham ... appears to me to be inconsistent and obscure in all he says on the subject.”

It is remarkable that Bentham (who has cleared the moral sciences from loads of the like rubbish) adopts this occult quality under a different name. In the chapter in the *Traité de Législation*, which treats of États (or of status or conditions), he defines a status thus: *Un état domestique ou civil n'est qu'une base idéale, autour de laquelle se rangent des droits et des devoirs, et quelquefois des incapacités.*

Austin, *Lectures on Jurisprudence*, p. 699. Austin is quoting from a work we know now as Jeremy Bentham, *The Theory of Legislation*, ed. C.K. Ogden (Kegan Paul, Trench, Trubner & Co., 1931), **pincite**, but which in Austin's day was, for some reason, published only in French.

⁶³ I don't just mean someone's particular opinion as to why a given set of legal provisions is justified. I mean something more like a legally-established justification—like a legally recognized purpose or policy—something which is not just present in politics to persuade people that the law is good and right, but rather suffuses the law itself with a sense of purpose.

given status may not make much sense. But, in the package, it makes sense in relation to the underlying idea which it shares with all the other incidents.

Accordingly, if human dignity is a status, then we should say that it comprises not just a set of human rights, but an *underlying idea* which explains both the importance of each of these rights in relation to our being human and the importance of their being packaged together in this regard. If this is so, then the objection we considered early on in this section is a mistake. It is wrong to criticize a claim that dignity is the foundation of rights by saying that all that dignity does is abbreviate a set of rights. It doesn't just abbreviate them, it refers to the idea that underlies and unifies them.

10. The grounds of dignity

My aim in this paper has been to explore some of the difficulties that might seem to stand in the way of a claim that rights are derived from dignity or that human dignity is the foundation of human rights. One last objection needs to be entertained.

When we say that dignity is the foundation of human rights, we often give the impression that dignity is an irreducible value, that we have burrowed deep below the rights that are recognized in the familiar human rights charters and that once we burrow down to dignity, it is not necessary to go any further. But when dignity is discussed in other settings, it is often accepted that dignity is an idea with foundations of its own and that it is sensible to ask what dignity is based on and from what features of the human person or the human species human dignity is derived. For example, some say that our dignity consists in God's claim upon us, or our being created in His image.⁶⁴ Others say, with Kant, that our dignity is based on the metaphysical significance of our possession of moral capacity, the ability to act on principle even when every empirical impulse or inclination, every sentiment, and every element of self-interest pressures us to the contrary.⁶⁵ Others say that dignity is based on our ordinary non-metaphysical ability to take responsibility for

⁶⁴ For the former conception, see Jürgen Moltmann, *On Human Dignity: Political Theology and Ethics* (Fortress Press, 1984), **pincite**. For the latter, Jeremy Waldron, "The Image of God: Rights, Reason, and Order," in John Witte and Frank Alexander (eds.) *Christianity and Human Rights: An Introduction* (Cambridge University Press, 2010), 21.

⁶⁵ Kant, *Groundwork of the Metaphysics of Morals*, **pincite**.

our lives and our recognition of similar abilities in others.⁶⁶ Others still, say it is rooted partly in the specialness of the human species, of which every individual partakes *qua* human even if he or she does not actually share the qualities and achievements that distinguish the species.⁶⁷ As I said in section 5, a rights-theorist's foundational claim about dignity directs us, not to a clear conception, but to questions and controversies about that idea—questions and controversies that can't be answered without going much deeper than the alleged foundation itself.

Is this a problem—that our alleged foundational idea turns out to be in quest of foundations for itself? I don't think so. That X is a foundation for Y may be a relative rather than an absolute claim; the claim is that X illuminates Y in an interesting way or that claims like Y can be derived from X; it is not necessarily a claim that X is rock-bottom, as it were. It does not preclude the possibility of there being an even deeper value W that in turn illuminates X or from which conceptions like X can be derived.

Alternatively, we may use the framework discussed in the previous section to convey the thought that the invocation of dignity points not just to the rights that constitute a particular status but to the underlying idea that unifies them. That underlying idea may be thought of as what dignity ultimately amounts to or as what dignity is ultimately based on or as what the rights that dignity comprises are

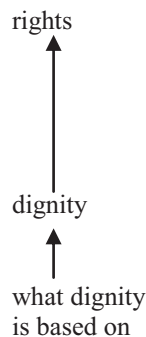


fig. 1

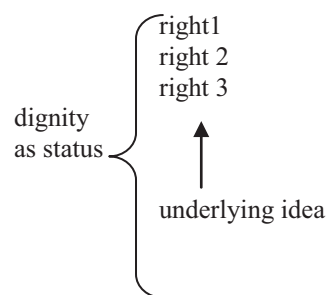


fig. 2

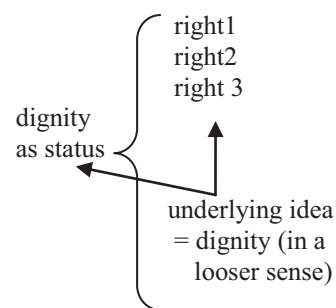


fig. 3

⁶⁶ Dworkin, *Justice for Hedgehogs*, pincite.

⁶⁷ George Kateb, *Human Dignity*.

ultimately based on. It might even convey the idea that dignity and rights are co-foundational, which will be unsurprising if the grammar of dignity is that of a status-concept, along the lines I set out in section 9. It is probably wise not to be too fussy about this. Section 9 dealt with status in a technical legal way. But moral philosophers and others use status—particular in relation to dignity—in a much looser sense. Once we understand that the technical analysis does not disclose any insuperable objection to talk of dignity (the status) as a foundation for the rights it comprises, then we can afford to be accommodating of the looser sense and relatively indiscriminate as between the models indicated in figures 1 through 3 (on p. 28).

I said at the beginning of this essay that my aim was to explore the claim that human rights are based on human dignity, not with a view to refuting the claim, but in order to see what obstacles the claim might face. The claim is often made loosely; sometimes it is barely more than a piece of decorative rhetoric. Other times, it seems to convey a quite precise (and controversial) proposition. I don't want to make a fetish of precision; part of the point of my analysis is to see where we can afford loose talk in this regard and where it is important to tighten up the claim about the relation between dignity and rights. Philosophers tend to think that precision is always important; but they have known since Aristotle that that may not always be wise.⁶⁸ Sometimes the quest for precision blinds us to certain insights that we can as yet only formulate haltingly; sometimes it blinds us to the importance of pursuing certain questions (and linking them to other questions) even when there is not yet an answer in sight.

It has not been my intention to defend any particular version of the claim that human dignity is the foundation of human rights. For what it is worth, I think some such claim is true and helpful. Mostly I have wanted to see whether there is room for any such claims. I think there is; there are all sorts of pitfalls and fallacies, but the propounding of a foundational relation between human rights and human dignity is not always a matter of confusion.

⁶⁸ Aristotle, *Nicomachean Ethics*, **passage about not demanding more precision than the subject allows.**