

# The Foundations of the Philosophy of Human Dignity and the Law

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The view that human dignity is the basis of human rights is widely endorsed, but also highly problematic. Critics have convincingly shown that both the notion of dignity itself and its relation to human rights are objectionably obscure. This paper defends the view that dignity can be seen as the foundation of human rights against such charges. It develops a novel, detailed analysis of dignity. It integrates inherent and contingent features of dignity in a coherent fashion, explicates the precise relation between dignity and human rights, and shows how human rights can be sensibly conceived as both derived from and protective of dignity.

Contemporary human rights literature typically interprets dignity as what has been called a ‘metaphysical value property’: an inherent, inviolable and inalienable preciousness that all human beings possess, no matter who they are, what they do, or what is done to them. Such an understanding of dignity at first seems attractive as a basis for human rights because it ensures both that all human beings always have dignity and hence human rights, and that human rights can trump all other concerns. This universality and absoluteness also lead to major conundrums, however, as they seemingly make dignity irrelevant for practical purposes. If nothing done to us affects our dignity, then what function do human rights serve in relation to dignity? Take, for example, the common view that human rights protect dignity: if nothing done to us can affect our dignity, then what is it that human rights protect dignity against?

Dignity literature commonly distinguishes inherent conceptions of dignity (like the one just introduced) from contingent ones. Contingently understood, dignity is something that some people have, but not others. It is something that must be bestowed or recognised, and hence also something that can be taken away or lost. Kings, presidents or judges, for instance, are said to have specific dignities, whereas slaves had no dignity at all. Citizenship, too, can thus be thought of as a dignity. If dignity is understood contingently, it is easy enough to explain why we should be concerned about our dignity and would want to see it protected. At the same time, however, contingent understandings of dignity cannot carry the weight human rights advocates want to put on dignity. If we would make human rights dependent on contingent dignity only those people who possess the relevant dignity will have human rights, and we would no longer be able to denounce many gross mistreatments as human rights violations when they are inflicted on people who lack the relevant dignity. To summarise the dilemma: to apply universally dignity must be inherent, but to be practically relevant dignity must be contingent. In this paper I develop a novel account of dignity that brings inherent and contingent features together in a coherent fashion, and show how human rights can be based on dignity thus understood. First, I argue that dignity can be usefully understood as a relational, hierarchical notion – a point taken from Sensen (2011).<sup>1</sup> Then, I argue that only a very specific form of hierarchy is relevant to dignity, namely the hierarchy that is inherent in lawgiving. The connection between lawgiving status and dignity is very prominent in

Kantian ethics, but it is by no means an exclusively Kantian idea and can be found throughout the history of political thought. I develop the notion of lawgiving in more detail and distinguish three essential features of dignity: that of moral-legislative, moral-adjudicative and moral-executive status. I then show that the first two of these features directly follow from faculties that are inherent to personhood, but that the possession of the last will always be a contingent matter. I demonstrate how this allows us to make sense of human rights as protecting dignity. Our inherent dignity is argued to necessarily bring with it a claim to (certain forms of) contingent dignity, as it is crucial to our moral agency that we not only qualify as moral agents, but also that we can express ourselves as such. Human rights are then shown to follow directly from inherent dignity – ensuring that we always have them – whilst what they protect is contingent dignity.

The paper concludes by discussing the implications of conceiving of dignity in this way, exploring the ‘image of man’ that it leads to. It is argued that the propounded account of dignity should be appealing to anyone who (1) believes that it is our moral agency that makes us of special moral concern, and (2) has a view of moral agency that allows for a distinction between inherent faculties that enable us to form moral beliefs on the one hand, and our contingent ability to act on these on the other.

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