

Human Dignity: A Normative Justification for Human Rights

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MARIANA OLAIZOLA, JUN 27 2012

Man is only a reed, the weakest in nature, but he is a thinking reed. There is no need for the whole universe to take up arms to crush him: a vapour, a drop of water is enough to kill him. But even if the universe were to crush him, man would still be nobler than his slayer, because he knows that he is dying and the advantage the universe has over him. The universe knows none of this.

— Blaise Pascal, *Pensées*

In the opening sentence to *Anarchy, State and Utopia*, Robert Nozick declares, “Individuals have rights and there are things no person or group may do to them.” This statement is the starting point of Nozick’s theory in favor of the minimal state, an entity that ensures the protection of people’s pre-political rights without at the same time infringing on these rights. Nozick takes as given the notion that human beings are born with certain entitlements.

Those who are skeptical of a naturalist conception of rights search for an explanation for why humans are said to possess rights in the first place. They inquire into the nature of human beings to unearth what it is about persons that render them subjects of specific rights and obligations. This paper follows in the footsteps of those who see a potential answer to this question in the idea of “human dignity.” It is a concept that crept up in the first sentence of the Universal Declaration of Human Rights, the founding document of the modern human rights revolution, and has since then conspicuously established itself in many of the new domestic constitutions and regional human rights covenants.[1]

To some, “dignity” seems too obscure a concept to be able to shed any light on the essence of human rights. In its *R. v. Kapp* 2008 decision, the Canadian Supreme Court dismissed dignity as “an abstract and subjective notion...confusing and difficult to apply.”[2] In that same year, the renowned psychologist and author Steven Pinker wrote an article titled “The Stupidity of Dignity,” in which he claims that dignity “is a squishy, subjective notion, hardly up to the heavyweight moral demands assigned to it.”[3] Are these sources right in arguing that dignity is a hollow concept, or is there, in fact, some substance to the idea of dignity?

This paper is of the second opinion. It argues that there is a more fundamental moral demand of respect that underlies the conception of human rights, and that this moral imperative derives from the inherent dignity of human beings. The following is an exploration of what it means to deny persons their inherent and equal dignity, and why this possibility provides the normative foundation for human rights. The paper begins with an examination of the role of dignity in jurisprudence, taking the contentious German Aviation Security Act court decision as a case study. This is followed by a systematic exposition of a conception of human dignity as the grounding principle for human rights.

A CONTROVERSIAL DECISION

In the wake of the September 11 terrorist attacks, the German Parliament passed bold legislation granting the Secretary of Defense the power to authorize the use of military weapons against aircrafts that posed a threat to civilian lives on the ground. The Aviation Security Act (*Luftverkehrssicherheitsgesetz*), as it was called, pertained only to

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those cases in which “the use of direct force was the only and ultimate means of preventing a severe incident.”[4] However, the German Constitutional Court struck down the law as unconstitutional before these powers could ever be exercised. This instance of judicial review is particularly noteworthy for the interpretation of human dignity that it advances.

A proper understanding of the Court’s arguments with respect to dignity requires a brief overview of the historical context behind the drafting of the German Basic Law (*Grundgesetz*). The German Constitution of 1948 was created in the shadow of the Nazi reign of terror. Indeed, the language and structure of the text reflect a deep preoccupation with a relapse into totalitarian inhumanity in the absence of strict constitutional safeguards. To remove any ambiguity regarding the intolerability of the Holocaust, the framers of the Constitution ensured that dignity featured prominently in the new text. Thus, the first clause (Article 1, section 1) of the Basic Law states: “The dignity of man is inviolable.” Constitutional justices and scholars have interpreted this clause as the supreme principle of the German Constitution and the theoretical foundation for the human rights enumerated in the subsequent articles.[5]

The German conception of dignity is very different, for example, from the Israeli conception in that it is not merely another right to be balanced against other claims. Instead, dignity is seen as an inalienable property of human beings, which neither the state nor any individual, including the possessor of dignity, may waive or disregard. Notably, the German Constitutional Court never rules cases solely on the basis of dignity.[6] Rather, the Court appeals to this abstract principle whenever it seeks to present a right in its intensified or “turbo-charged” form, namely by introducing the attribute of inviolability.[7] Inviolability means that when the violation of a right is severe enough to encroach on the dignity of the person whose right is being violated, the Court must proscribe the violation of the right.[8] In the Aviation Security Act case, dignity was summoned in conjunction with the right to life of the innocent passengers aboard the plane.

As it happens, the Court had sufficient reason to declare the Aviation law unconstitutional without any appeal to human dignity. Two thirds of the Court’s decision consists of an explanation of why the law violates the constitutional distribution of powers between the federal and the districts governments, specifically with respect to the use of the armed forces. This argument provided sufficient justification for an annulment. However, the Court chose to provide a further argument. The next section outlines the Court’s case against the Aviation Act with reference to human dignity.

THE COURT’S VERDICT

In the last section of its decision, the German Constitutional Court invoked the principle of human dignity to assert that it is categorically impermissible for the state to intentionally shoot down an aircraft occupied by innocent civilian passengers. The Court maintained that the fact that the passengers were doomed to die anyway did not entitle the state to kill them. Surely, every human being is bound to die someday, but the state does not value persons’ right to life in proportion to their life expectancy. A person who expects to live for ten more years does not have a stronger right to life than a person who expects to live for five. Likewise, the Court argued, passengers in a plane do not relinquish their right to life because they have five minutes left to live, as opposed to civilians on the ground, who might have a longer life expectancy. Indeed, these five minutes might be the most precious moments of these persons’ lives, which they might choose to use spiritually or otherwise.

Furthermore, the Court asserted that balancing the rights of the passengers on the plane with those of the civilian targets on the ground, and acting to maximize the number of rights protected, is strictly at odds with the principles of the German Constitution. Even if there is just one innocent passenger on the plane but one thousand projected casualties from an effective attack, the state is prohibited from targeting the one passenger. The Court was committed to upholding the Constitutional guarantee of respect for *each* person’s dignity, which, as the first clause of the Basic Law states, is absolute. Expounding on its interpretation of dignity, the Court stated that respecting the dignity of the passengers requires that they not be treated as “mere objects of its rescue operation for the protection of others.”[9] The Court continued, “Such a treatment ignores the status of the persons affected as subjects endowed with dignity.”

The Court’s conception of dignity is unmistakably Kantian. Each person is to be treated as an end in herself, and not

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merely as a means to another end.[10] As subjects possessing dignity, the passengers on the plane ought not to be sacrificed for the sake of saving the lives of others without their consent. The Court maintained that each passenger is infinitely valuable in and of herself, and therefore cannot be used as a means to fulfill the state's goal of minimizing casualties. No goal justifies the disrespect for a person's dignity. In its decision, the Court categorically ruled out the possibility of summoning such consequentialist rationalizations at the expense of treating individual human beings as subjects with dignity.

Moreover, the fact that the passengers are already being treated as objects by the hijackers does not relieve the state of *its* duty to respect the passengers' dignity. Otherwise, the state would be reinforcing, and indeed validating, the hijackers' offense. Each agent is solely responsible for her own actions, and no person or entity can be authorized to directly violate a person's dignity. By prohibiting the state from intentionally killing civilian passengers aboard a hijacked plane, the Court cemented the constitutional principle of respecting each person's dignity regardless of the consequences that may ensue. In the absence of this last section of the decision, the German parliament could have passed a revised statute that circumvented the problem of federalism. However, the argument based on dignity effectively rules out the possibility of passing any law that permits the intentional targeting of civilian passengers in a hijacked airplane, or any relevantly similar, situation.

PROBLEMS WITH THE COURT'S DECISION

The Court's argument based on human dignity has provoked incisive debates about the limits of state action and permissible responses to states of emergency.[11] The Court's willingness to firmly defend the constitutional principle of dignity in the face of mounting national security threats is indeed admirable. However, this section argues that the conception of dignity underlying the decision is flawed and leads to counterintuitive implications when applied to relevantly similar situations. Consider the Court's distinction between two cases:

- (1) Shooting down a hijacked aircraft *occupied by innocent passengers* that is to be used as a weapon against civilian targets on the ground is strictly *impermissible*.
- (2) Shooting down a *pilotless aircraft or one occupied exclusively by hijackers* that is to be used as a weapon against civilians on the ground is *permissible*.

The Court rationalizes its distinction between the two situations by asserting that the hijackers are responsible for their own actions. Indeed, they themselves "brought about the necessity of state intervention" and "can avert such intervention at any time by refraining from realizing their criminal plan." [12] Certainly, if the hijackers are killed from a counter-terrorist attack by the government, their dignity has not been violated because by committing a criminal act, the hijackers have *chosen* to expose their lives to such an attack. At no time do they lose their agency and ability to change their fate by diverting course, so a government action to incapacitate them is permissible. This is analogous to an ordinary case of self-defense, where the state acts on behalf of the targeted civilians. Clearly, the hijackers are not *objectified*, to use the Court's language, since it is their own action that places their lives in jeopardy.

The question is, in what respect does the physical presence of the innocent passengers change the situation so as to place an absolute prohibition on the use of force against the hijacked aircraft? According to the Court, it is impermissible to directly target innocent persons as a means to prevent the deaths of other innocent persons. The state ought not to treat persons as interchangeable—the lives of the innocent passengers simply cannot be traded off for the lives of the civilians on the ground. Each person deserves infinite respect, and therefore no person should be deprived of one of the things that she is likely to value most (i.e. her life) *as a means to another end*.

However, the presentation of a well-known analogy will show that the passengers were not, in this case, being treated as objects, despite the Court's emphatic professions to the contrary. The two situations outlined above are comparable to the cases of the Strategic Bomber and the Terrorist Bomber, respectively, presented by Warren Quinn.[13]

- (1) Case of the Strategic Bomber: a pilot blows up an enemy munitions factory, foreseeing that innocent civilians

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living in the vicinity will be killed in the explosion.

(2) Case of the Terrorist Bomber: a terrorist kills innocent civilians as a means to induce a government to submit to its demands.

Intuitively, the first case is permissible while the second is not. The nature of modern warfare is such that civilian deaths are virtually unavoidable. Unless one is prepared to embrace the doctrine of pacifism, one should be prepared to accept the unintended but foreseen deaths of innocent civilians during wartime, including those resulting from strategic bombing, within the limits of proportionality.[14] Terrorism, on the other hand, requires the harming of civilians in order to be effective. In this case, the purpose can *only* be achieved if civilians are harmed (or if government officials believe that civilians will be harmed). The case of the Strategic Bomber is markedly different:

The bomber “intends an explosion, but not in order that any civilians be affected by it. Of course he is well aware that his bombs will kill many of them, and perhaps he cannot honestly say that this effect will be ‘unintentional’ in any standard sense, or that he ‘does not mean to’ kill them. *But he can honestly deny that their involvement in the explosion is anything to his purpose* [emphasis added].”[15]

Here, the civilian casualties do not contribute productively to the bomber’s goal of destroying the munitions factory. To the extent that the civilians serve no useful role in realizing the bomber’s aim, they are not *used*. In fact, if the civilian casualties could by some miracle be avoided, the bomber’s purpose would be even more satisfactorily fulfilled. Unlike Terrorist Bomber, the Strategic Bomber does not treat persons “as if they were then and there *for* his purposes.”[16] In this sense, he does not treat them as means and thus does not assault their dignity.

One objection to this kind of argument is that regarding unintended but foreseen civilian deaths as “collateral damage” in some way reflects less than optimal regard for their dignity. Especially in cases where particular people are expected to die with near certainty, rather than a more or less random population with ambiguous probability, the fact of their presence should at least *reduce* the morality of the preemptive operation. Pretending that they are not there and thus acting with the same prerogative to use force is like ignoring their existence or assigning no positive weight to the fact that they *are* there.

Even if this is true, the presence of the civilians and the high probability that they will die does not warrant aborting missions to eliminate potentially very destructive arsenals. Although it would of course be much preferable for there not to be vulnerable civilians in the vicinity, the fact that they are there should not impede action to destroy the lethal weapons. Military missions that result in civilian casualties are acceptable because these casualties are not the main purpose of the mission. Indeed, the deaths are neither sufficient nor necessary for the attainment of the goal of destroying the munitions factory and saving future lives. In short, the persons are not being used as mere objects. The same logic applies to the Aviation Act, since the innocent passengers do not die *in order to* protect a greater number of civilian targets and are therefore not treated as means to another end.

INSIGHTS FROM THE CASE

The key lesson from the Aviation Security case is that it is possible to fail to protect basic human interests, such as the preservation of life, while not violating the principle of respect for persons’ dignity. In this case, shooting down a hijacked airplane with the undesirable expectation that innocent civilians will die is *justified*. [17] What the principle of respect for dignity requires is that persons’ interests not be compromised without having an adequate reason for doing so. The preservation of life should be seen as a *prima facie* right that could be justifiably forfeited. In this case, the necessity of disabling a potentially very lethal weapon provides sufficient reason to directly attack the aircraft, even with the anticipated but undesirable consequence that innocent civilians will die. Insofar as the state can offer adequate reasons for its action, it does not assault the dignity of the innocent persons.

The Court’s decision, albeit misguided, offers two important insights into the proper understanding of human dignity and its implication for the protection of rights. First, it establishes that *each* person deserves respect for possessing equal dignity as a human being. Second, it affirms that to treat persons with respect is to refrain from treating them as

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mere means. These assertions call for systematic philosophical elaboration. In particular, they demand an explanation of what it means to be treated as a mere means and why such treatment amounts to an assault on dignity. The last sections of this paper build on the Court's assertions and attempts to offer a more complete understanding of dignity.

DIGNITY AS STATUS

A comprehensive conception of dignity requires an account of what grounds the claim that humans are equal in dignity in the first place. At a fundamental level, this paper advances a "status" conception of dignity, but one which differs from that proposed by Jeremy Waldron.[18] Waldron defines status as "a legal condition characterized by distinctive rights, duties, liabilities, powers, and disabilities" and that "attaches to a person when their occupying a certain position is a matter of public concern." [19] Waldron argues that our contemporary notion of equal human dignity is the result of a long process of legal inclusion, driven by the popular revolutions of the past three centuries. He traces the genealogy of the term "dignity" from its ancient Roman origins to its use in modern society, showing the gradual equalization of status between persons. By and large, society no longer supports distinctions between people based on fortunes of birth, and therefore there are no grounds for according special status to certain social classes or persons as opposed to others.

Waldron's account of the universalization of high status leaves several questions unanswered. Conspicuously, Waldron fails to explain why the equalization of status occurred through a leveling-up rather than leveling-down process. Is there a normative justification for why every human being should be treated more like a king than a peasant? In other words, what gives human beings the prerogative to claim equal *high* status, relative to other kinds of beings? Presumably, there would be something wrong with a world where every person was treated, by the law and by each other, like cattle. What is missing from Waldron's account is a normative justification for preserving the legal status quo where everyone can claim a certain minimal quality of treatment. Dignity does not denote just any kind of status; it is a special status that calls for a high caliber of treatment.

Thus, even though Waldron's account is historically plausible, it lacks a normative basis. This does not mean that we should give up on the status conception of dignity. Dignity is first and foremost about recognition, treatment and respect by others. Thus, it is a concept that acquires meaning only within a social context. The treatment that humans owe to each other derives from a property that they share in common, that distinguishes them from other kinds of beings. This is the property of reason. The nature of humans as beings that respond to reasons, as "thinking reeds" to echo Pascal, is what endows them with a superior rank in relation to other creatures and things. Paying due regard to this distinctive status, by engaging in appropriate behavior toward the subject with dignity, is what is meant by *respect*. In this understanding, the reason why there has been a gradual equalization of high status in the eyes of the law, as Waldron's account suggests, is precisely because it has been incipiently recognized that all persons deserve a basic level of respect as rational beings. As Rainer Forst asserts, persons are reason-giving and reason-deserving beings, and this is what accords them unique status.[20]

The distinguishing feature that human beings share in common, namely the capacity to respond to reasons, can be the source of norms about how humans treat each other precisely because of the nature of this feature. Only humans can recognize and defer to the reasons of other humans. Non-human animals do not have this capacity. Therefore, the unique status that humans enjoy in relation to other beings by virtue of their capacity to reason bears on the norms governing humans' behavior toward each other. It is important to recognize that this is not the case with other features that might be shared in common. Blonde people share a characteristic that distinguishes them from brunettes, and yet there is nothing about this characteristic that has a bearing on how blondes should treat each other.[21] By contrast, the capacity to respond to reasons is a feature that carries with it normative weight. Forst is exactly right in suggesting that persons cannot demand reasons for the treatment that they receive without being willing to provide reasons to others for the treatment that they provide.[22]

That human dignity is grounded in persons' unique capacity for rationality does not mean that there are not additional attributes that differentiate persons from other beings. George Kateb, in his recent book *Human Dignity*, embarks on a holistic exploration of the traits and achievements that mark human beings as exceptional and partially supra-

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natural.[23] These attributes include the capacity for language and thinking, the ability to be creative and generate unpredictable artistic and intellectual breakthroughs, all of which relate to man's capacity for reason. According to Kateb, it is the combination of these traits that accounts for humanity's existential status above beings that are merely natural.[24] However, Kateb does not explain how this claim about the superiority of the human species in relation to other beings translates into norms about how humans ought to treat each other. His account seems to suggest that what makes humans dignified is the fact of being exceptional. However, other animals are exceptional in their own ways. What is missing from his account is the acknowledgment that it matters *how* humans are exceptional. Saying that a person has dignity is recognizing that she is exceptional in a particular way that bears on how others should treat and regard her.

DIGNIFIED TREATMENT

According to Michael Rosen, there are four separate strands in the conception of dignity: dignity as rank or status, dignity as intrinsic value, dignity as measured and self-possessed behavior, and dignity as respect.[25] The previous section attempted to show that the first two strands can be woven together in the same conception of dignity. Man's inherent nature as a rational being explains the superior status that he occupies in relation to other beings. This section incorporates the fourth strand into the foregoing conception of dignity.

When someone fails to treat another person with dignity, what exactly is it that they are denying to that person? It is important to recognize that violations of dignity are distinct from the infliction of suffering. In the novel *Brave New World*, Aldous Huxley depicts a society in which people are blissfully ignorant of the fact that they are being deprived of a dignified life. To be sure, a person may live an undignified life, i.e. a life not worthy of a human being, without feeling any pain. Needless suffering is degrading and also immoral, which is why it is wrong to subject other animals, and not just humans, to painful experiences. However, humans are owed more than just a pain-free existence. They are owed respect as beings with reason.

Kant's "Law of Humanity," which the German Constitutional Court has been keen to apply, states that persons should never be treated only as means, but always also as ends in themselves.[26] To treat persons merely as means is to fail to take into account their interests as individuals while denying them adequate justification for doing so. Expressed positively, to treat someone with respect for their dignity means to treat them in ways that anyone in that position would accept as reasonable and therefore would freely and rationally consent to. It is not sufficient simply to attach *some* importance to others' interests. Derek Parfit's anecdote about the pirates in China who robbed everything in his grandmother's possession except for her wedding ring highlights this point. Just because they were sensitive to her sentimental attachment to the ring and allowed her to keep it does not mean that they respected her dignity. As Rosen rightly points out, treating people as ends requires more than just giving some weight or consideration to their interests. It demands that they be treated according to reasons that free and equal rational beings would consent to as binding for all.[27]

It is precisely the imperative to treat persons as equal subjects with dignity that justifies the institution of a system of rights. Rules ought to be established to prevent both, states and individuals, from abrogating the vital interests of others without adequate justification for doing so. Crucial to the idea of establishing such a system is the notion that human beings are capable of pressing reasonable claims on others and of rationally judging whether they should respect the claims that others press on them.

Once the overall system has been established, within which persons are allowed to press claims based on reasons that everyone is able to understand and accept, it is possible to ascertain specific rights that protect individuals from harms that encroach on their dignity. Joel Feinberg elucidates an important distinction between claims and rights.[28] Rights are *valid* claims, i.e. claims that can be justified:

"Having a claim to X is not (yet) the same as having a right to X, but is rather having a case of at least minimal plausibility that one has a right to X, a case that does establish a right, not to X, but to a fair hearing and consideration. Claims, so conceived, differ in degree: some are stronger than others. Rights, on the other hand, do not differ in degree: no one right is more of a right than another." [29]

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As beings with reason, persons can press claims that translate into rights binding upon others, but only after appropriate justification has been offered.

In his *Letter from a Birmingham Jail*, Martin Luther King Jr. appeals to the concept of dignity in condemning racial discrimination: "Segregation...substitutes an 'I it' relationship for an 'I thou' relationship and ends up relegating persons to the status of things...Now is the time to lift our national policy from the quicksand of racial injustice to the solid rock of human dignity." King's words encapsulate the relationship between dignity and the specific human right against unjust discrimination. Underlying this practice is the indefensible suggestion that a certain race is somehow inferior to another. Yet according to the foregoing argument, all human beings are equal in dignity, and therefore no such treatment could ever be justified to the person being marginalized. The discriminator in this case would surely object to suffering the kind of treatment that he is prepared to inflict on the other. In order to avoid acknowledging this invidious double standard, people who engage in discrimination or racist practices typically fabricate explanations for regarding the other as sub-human. Having dehumanized the victims, the discriminators are then perfectly willing to deny them their dignity and, as King bluntly states, relegate them to the status of mere things.

The same argument applies to slavery, torture and severe forms of humiliation. These are types of treatment for which no adequate justification can be offered. There is another feature that these harms share in common, namely their capacity to break down the victims' own sense of self-control and rational agency. Rosen calls these types of treatment "dignitary harms," because they are inherently degrading and directly undermine subjects' dignity. This paper argues that all unjustified harms are dignitary harms. A person's dignity is objectively denied whenever she is disadvantaged or injured without an adequate justification.

Dignitary harms can vary in their degree of severity. For example, the Holocaust was a graver violation of dignity than discrimination in America under the Jim Crow laws, relatively speaking. However, assaults on persons' dignity occurred under both systems. Since violations of dignity are never justified, all persons have unconditional protection against such harms in the form of rights. Rights against slavery, torture, unjustified discrimination and other severe forms of humiliation are universally recognized to be inviolable. In any case, very few people are prepared to publicly defend such types of treatment.

The principle of dignity does not just establish negative rights, but it can also be the source of such positive rights such as the right to a basic education and the right to a decent standard of living. As long as persons live in abject poverty, their agency is curtailed, and so is their ability to engage in social and political life as full members of society. As Article Twenty-Six of the Universal Declaration of Human Rights stipulates, there is also a right to live under a democratic polity and to participate in the formulation of political rights and obligations as equal citizens under the law. Indeed, freedom from political and social domination is a condition for the exercise of human dignity.[30]

Dignity, then, is the source of the principle that no person should be harmed or disadvantaged without an adequate justification that all free and equal rational persons could accept. This understanding avoids the objection of inconsistency that arises when rights have to be balanced against each other. When a state restricts freedom of expression to prevent the incitement of racial hatred directed at a vulnerable minority, it balances two rights against each other, both of which involve dignity. The German Court has had to address conflicts of this sort, typically with regard to Holocaust denial situations, and has frequently ruled in favor of restricting free speech.[31] The view of the Court is that the dignity of the victims of racial hate speech trumps the interests of the speakers in promoting their views. In each case, the Court offers plausible justifications for why the rights of one group outweigh the rights of another group. Insofar as adequate justification is offered for such balancing, dignity remains inviolable on both sides.

CONCLUSION

This paper argued for an interpretation of human dignity as the grounding principle for human rights. The argument has four components. First, all human beings possess equal dignity that derives from their common nature as rational beings. Second, this shared attribute accounts for their elevated status above other beings. Third, to violate a persons' dignity is to fail to provide adequate reasons for the treatment that they receive and thus to deny them their

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equal status as human beings. Fourth, the imperative to refrain from treating persons as sub-human, or as mere means, justifies the establishment of a system of rights, within which specific protections against unjustified harms are instituted. There are two levels at which the principle of human dignity informs a conception of human rights. At the macro-level, dignity is the principle that justifies the establishment of a *system* of rights. At the micro-level, one can appeal to dignity to decide the content of *specific* rights. Dignity therefore provides the moral underpinning for the existence of a human rights system in general and for the establishment of particular rights within this system. If this is right, then the basic respect owed to persons with dignity is what endows the conception of human rights with normative spine.

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Law (Venice Commission). Montpellier, July 1998.

[1] Including the South African Constitution (Chapter 2, Section 7), the Hungarian Constitution (Article 2), the Spanish Constitution (Article 10), the Portuguese Constitution (Article 1), the Cuban Declaration of Human Rights, the Revised European Social Charter (Article 26), and the American Convention on Human Rights. See McCrudden, Christopher. "Human Dignity and Judicial Interpretation of Human Rights." *The European Journal of International Law*, Vol. 14, No. 4 (2008), for an extensive list.

[2] 2008 SCC 41

[3] Pinker, Steven. "The stupidity of dignity: Conservative bioethics' latest, most dangerous ploy. *The New Republic*," May 28, 2008. Available at: http://www.tnr.com/story_print.html?id=d8731cf4-e87b-4d88-b7e7-f5059cd0bfbd

[4] Müller, Felix and Tobias Richter. Report on the Bundesverfassungsgericht's. (Federal Constitutional Court) Jurisprudence in 2005/2006. *German Law Journal*, Part II/II Vol. 9 (2008), p. 186.

[5] Walter, Christian. "Human Dignity in German Constitutional Law." European Commission for Democracy through Law (Venice Commission). Montpellier, July 1998.

[6] Ibid.

[7] I am grateful to Professor Kim Scheppele for her insights on this point.

[8] I am indebted to Professor Ralph Poscher for clarifying the German Constitutional Court's understanding of inviolability.

[9] Bundesverfassungsgericht (BvR). Pressestelle - Press release no. 11/2006 of 15. February 2006. Zum Judgment of 15. February 2006 - 1 BvR 357/05. Section 122.

[10] This is Kant's "Persons-As-Ends," or Law of Humanity, formulation of the categorical imperative.

[11] Miller, Russel A. "Balancing Security and Liberty in Germany." *Journal of National Security Law and Policy*, Vol. 4, No. 369 (2010), p. 388.

[12] BvR, Section 148.

[13] Quinn, Warren. "Actions, Intentions, and Consequences: The Doctrine of Double Effect," *Philosophy and Public Affairs*, Vol.18, No. 4 (1989), p. 334-351.

[14] See Gardam, Judith G. "Proportionality and Force in International Law." *The American Journal of International Law*. Vol. 87, No. 3 (1993), p. 391-413.

[15] Quinn, 342.

[16] Ibid., 348.

[17] Proportionality forms part of this justification, as it would be unreasonable to launch an attack that is expected to kill more innocent persons than it will save.

[18] Waldron, Jeremy. *Dignity, rank, and rights: The 2009 Tanner Lectures at UC Berkeley*. New York, NY: New York University of Law.

[19] Waldon, 51.

Human Dignity: A Normative Justification for Human Rights

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[20] Forst, Rainer. "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach." *Ethics*, Vol. 120 No. 4 (2010), p. 722.

[21] I am very grateful to Professor Charles Beitz for bringing me to consider this distinction.

[22] Forst calls this the condition of reciprocity.

[23] Kateb, George. *Human Dignity*. Harvard University Press: Cambridge, 2011.

[24] *Ibid.*, 5.

[25] Rosen, Michael. *Dignity: Its History and Meaning*. Harvard University Press: Cambridge, 2012.

p. 61-2.

[26] Kant, Immanuel. *Grounding for the Metaphysics of Morals*. Translated by James W. Ellington. Hackett: Cambridge, 1981. p. 36.

[27] Rosen, 84-9.

[28] Feinberg, Joel. "The Nature and Value of Rights." *The Journal of Value Inquiry*, Vol. 4, No. 4 (1970). p. 252.

[29] *Ibid.*, 254.

[30] Forst, 717.

[31] Douglas-Scott, Sionaidh. "The Hatefulness of Protected Speech." *William & Mary Bill of Rights Journal*, Vol. 7, No. 2 (1999), p. 319.

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