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Freedom and equality as necessary constituents of a liberal democratic state

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Chapter 4. The import of ‘human dignity’

4.1 Having examined Rawls’s and Dworkin’s views, I will explicate the decisive presumptions that are prevalent in these views, so that the discussion can be broadened. This also affords the opportunity to evaluate such presumptions. Dworkin’s position could be supplemented by a notion such as ‘human dignity’, while Rawls’s perspective, which focuses on reason, may benefit from an examination from a Kantian stance. Such an extension of the discussion would be desirable in any event, since I would not limit the research to an exegesis of the works of these authors, which serve merely as starting points here, albeit important ones. The first explication is presented in the present chapter and consists in an examination of ‘human dignity’, while the next chapter provides the Kantian stance just adumbrated.

‘Human dignity’ has many defenders. Rather than to provide an overview here, I will concentrate on one author and expand the discussion from there. The author in question is George Kateb, since in his work *Human Dignity*, ‘human dignity’ is not just, as is the case with many of its protagonists,¹¹⁴ an assumption or presumption necessary to argue some philosophical outlook, but features itself as the object of inquiry. I will first scrutinize the arguments Kateb amasses.¹¹⁵ The result of this process bears on the position of other thinkers as well, so that the relevance of what is brought to the fore in this chapter is not limited to his presentation. In order to make the practical relevance of the discussion clear, I will subsequently refer to some representative legislation in which the phrase ‘human dignity’ appears.

4.2 One way to consolidate the rights of their bearers is to seek a justification in their being human as a special element. Incidentally, in this case – as in any similar argument – the justification will *succeed* rather than *precede* the actual *status quo*, since the discussion arises only *within* a society the presence of which is a condition for it to arise at all.¹¹⁶ (Whether it be governed democratically or not is not irrelevant for this issue, but not crucial.) I will initially focus here on Kateb’s *Human Dignity*, which aspires to an encompassing theory on mankind’s place in the world, and to designate the consequences this has for the evaluation of mankind.

¹¹⁴ E.g., M. Nussbaum, *Frontiers of Justice*, p. 79: “The basic intuitive idea of my version of the capabilities approach is that we begin with a conception of the dignity of the human being, and of a life that is worthy of that dignity [...]”

¹¹⁵ The first part of the following text corresponds with what is said in my review of George Kateb’s *Human Dignity*, which appeared in *Dialogue*, vol. 51, no. 2 (2012), pp. 329-333.

¹¹⁶ This brings to mind Hobbes’s remark that philosophy can only take place in a commonwealth (*Leviathan*, Ch. 46 (p. 459); cf. Ch. 13 (p. 89)).

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4.3 Kateb's work is brought to the fore here as an example of a theory that tries to accommodate for certain human qualities while at the same time providing a scheme that protects the interests of those that lack them. It is, as I will indicate, in my view, a typical example of a theory that wants too much, so to speak: it is unwilling to sacrifice what is special in humanity but fails to accept the consequences of this premise when it is pressed to do so, thus leaving an account that may be considered inconsistent or even void.

The outline of *Human Dignity* is presented thus: "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. [...] 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 deindividualized (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."¹¹⁷

4.4 Kateb's notion of 'human dignity' is an intricate one, incorporating status and stature¹¹⁸ (as mentioned above). One wonders, though, what could prompt such an amalgam. If there were merely a need to underline the special contributions individuals (are able to) accomplish, the stature aspect would obviously be a superfluous addition. The benefit – if that is what this is – of such a conception is, in any event, that it includes those who cannot claim any merit; for them the stature aspect is the crucial element. A clear downside of this element is its vagueness, which may be precisely what accounts for its success to accommodate those that lack a status in the *actual* sense (to contrast it with the author's conception of this word). (I must be a bit harsh here, since even this word's meaning is hollowed out by the author, who clearly does not want to acknowledge the relevance of any qualities that are not evenly divided among human beings.)

¹¹⁷ G. Kateb, *Human Dignity*, pp. 5, 6.

¹¹⁸ G. Kateb, *Human Dignity*, p. 9; cf. p. 18.

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The difficulties are brought to the fore by Kateb's insistence to consider uniqueness to be "[...] the element common to status and stature [...]"¹¹⁹ This becomes apparent when it is somewhat concretized: "[...] 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."¹²⁰ Still, if Kateb is, as would appear to be the case, not willing to make choices, and, in other words, to single out one or more actual criteria on the basis of which the human species's 'dignity' would subsequently be defended, it is simply the bare fact of belonging to this species that is decisive, namely (presumably) having certain *physical* characteristics, making the decisive element an arbitrary one. Once Kateb reaches the point where he starts to list the characteristics that are unique to human beings, it is clear that he dismisses such a way out (and rightly so, for the reason just mentioned), but he does not provide another solution: "All the traits and attributes are based in the body, but none is reducible to a merely biological phenomenon with an exclusively biological explanation. They all establish that humanity is partly nonnatural."¹²¹

It is not reason (in whatever sense) that is crucial, as this would exclude those that are seriously cognitively impaired, and would easily force a modification of this outlook, either conferring 'dignity' on those animals that exhibit more intelligence than these individuals, or denying these individuals 'dignity'. Neither of these options is open to Kateb, which makes the vagueness of his definitions all the more problematic.¹²² It also makes it suspicious, to phrase it thus: it is almost as if the theory were constructed with the agenda in mind to create a 'safe haven' for every human being, while being able to justify a different treatment for animals (whose suffering, not belonging to a species that is unique, is less important than that of mankind¹²³). This becomes apparent, e.g., when Kateb says, committing an obvious *argumentum ad consequentiam*: "[...] we should not speak as if at any

¹¹⁹ G. Kateb, *Human Dignity*, p. 8.

¹²⁰ G. Kateb, *Human Dignity*, p. 17.

¹²¹ G. Kateb, *Human Dignity*, p. 133.

¹²² Incidentally, it would be a *non sequitur* to conclude from the mere fact that the human species is unique that it should *eo ipso* be 'elevated' in some way compared to the other species. One need only point to some conspicuous actions in history that humans uniquely perform to know that caution in making such an inference is warranted. As far as I know, the systematic destruction of one's own species and others, apart from that of the planet as a whole, is not behavior consistently manifested by any animal. Of course, the very reason why humans are, in contradistinction to animals, capable of performing such acts in the first place may be said to testify to the presence of a special quality, but if the mere *capacity* to act in some way or other (i.e., in a positive or negative, or, less vaguely, desirable or non-desirable way) is sufficient to have 'human dignity', this may perhaps be said to detract from the notion's value (irrespective of the more fundamental issue of its possible semantic voidness).

¹²³ G. Kateb, *Human Dignity*, pp. 22, 23. Kateb does not ignore animals' suffering, though, and speaks of animal rights as "[...] made up of two components: the quasi-moral and the quasi-existential, in analogy with human rights." *Human Dignity*, p. 117.

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time degraded human beings are no longer human; to do so would justify the treatment inflicted on them.”¹²⁴

Taylor’s analysis is similarly problematic: “[...] men and women are the beings who exhibit certain capacities which are worthy of respect. The fact that we ascribe rights to idiots, people in a coma, bad men who have irretrievably turned their back on the proper development of these capacities, and so on, does not show that the capacities are irrelevant. It shows only that we have a powerful sense that the status of being a creature defined by its potential for these capacities cannot be lost.”¹²⁵ In such cases as those that are mentioned, however, the most credible position is that the potential is indeed lost, and that the very nature of the creature has changed in a decisive way, for otherwise one should be forced to acknowledge that some faith, i.e., an *unfounded* view (which may in this case be expressed by the phrase wishful thinking), is decisive. If one notices the irrevocable loss of the capacities that are deemed necessary to conclude that the being in question merits respect, the only defensible conclusion is that such respect, and *a fortiori* its particular status, along with the special rights that accompany it, can no longer credibly be acknowledged, at least not in the way indicated above.

4.5 On the basis of the foregoing, it appears difficult, if not downright impossible, to delineate, within this frame of thought, a domain to which human beings exclusively belong on account of a non-trivial trait. This may be called a lower limit when it comes to seeking a contrast with those species that (supposedly) lack (this sort of) ‘dignity’. The upper limit, by contrast, lies in the acknowledgement of the non-existence of a special standing for those human beings that are endowed with extraordinary qualities (at least at the level of analysis with which I am concerned. Kateb does not overlook the differences between individual human beings). Still, he seems to need precisely the achievements of such individuals to buttress the special position of mankind: “[...] equal individual status is shored up by the great achievements that testify to human stature because [...] 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.”¹²⁶

‘Great achievements’ would in fact plead *inequality* among human beings (since the greatness of such achievements is acknowledged by contrasting them with achievements of others that are *not* great). The uniqueness of the species can, accordingly, only be said to

¹²⁴ G. Kateb, *Human Dignity*, p. 21.

¹²⁵ Ch. Taylor, *Philosophy and the Human Sciences*, p. 196. Incidentally, in *Sources of the Self*, Taylor upholds a contingent sense of ‘dignity’, so to speak, and points out its problems involved with it: “[...] my sense of myself as a householder, father of a family, holding down a job, providing for my dependants; all this can be the basis of my sense of dignity. Just as its absence can be catastrophic, can shatter it by totally undermining my feeling of self-worth. Here the sense of dignity is woven into this modern notion of the importance of ordinary life, which reappears again on this axis.” *Sources of the Self*, pp. 15, 16.

¹²⁶ G. Kateb, *Human Dignity*, p. 8; cf. p. 115.

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follow from the achievements of great individuals (or at least not from the acts of each individual), forgoing here the matter what factors constitute the acts of such individuals; in the most extreme cases (people that are significantly cognitively impaired), individuals are not even *capable of* performing unique accomplishments. It must be granted that Kateb connects the great achievements to human *stature*¹²⁷ rather than to the status of individuals, so that individuals may be said to ‘share’ in the achievements: they are of the same species as the ‘great’ individuals and might be considered, from this perspective, to achieve great things if the circumstances had been different, whereas an animal would (presumably) never be able to, e.g., compose music or cure a disease.

If this reasoning is carried through consistently, those individuals who are unable to contribute in such a way should not be considered human beings. The alternative consists in including such beings, at the expense of the disappearance of the demarcation line (the lower limit just mentioned) between human beings and animals. This is not what Kateb would argue, focusing on the fact of being human: “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).”¹²⁸

It is not surprising that Kateb finds himself in a split, which can only be considered to be a dilemma, although he does not himself describe it as such:¹²⁹ “I am not saying that when we regard any particular individual we should see in him or her an embodiment or personification of the whole human record, and by that conceit inflate the person into the species, or even allow the full range of demonstrated human capacity to bestow its aura on any given human being or on all human beings equally. No, we deal here with the stature of the species, carrying with it a past that grew out of other species and will be extended indefinitely into the future. But the fact remains that every individual has all the uniquely human traits and attributes that the human record shows. The human record shows and will show, however, a cumulative display of these traits and attributes that surpasses any individual and any particular group or society.”¹³⁰

On the one hand, individuals are not the personification of the human record (so that the individuals whose mental capacities are exceeded by those of some animals are included – at the same time, a supposedly common ground (the very human record) between ‘great’ individuals and these individuals is lost), but on the other hand, every individual has all the decisive traits and attributes to include him (which is easily refuted on the basis of experience).

¹²⁷ E.g., G. Kateb, *Human Dignity*, p. 179.

¹²⁸ G. Kateb, *Human Dignity*, p. 19.

¹²⁹ The fact that he does not characterize the matter in such a way does not, of course, relieve him of the task to take the problem seriously.

¹³⁰ G. Kateb, *Human Dignity*, pp. 125, 126; cf. p. 179.

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4.6 What does all this mean for the issue of granting rights? Kateb says: “Two kinds of equality are involved when the state recognizes and respects human rights. First, there is moral equality, and second, there is the equal status of every individual.”¹³¹ The first sort of equality is difficult to maintain in light of the preceding analysis. The second sort of equality, the equal status of every individual, by contrast, can be defended, but in order to eliminate the difficulties pointed out above, another foundation (or, rather, *a* foundation) must be provided. This is what I will attempt to do in my own alternative. For now, I will broaden the inquiry with regard to the topic at hand, examining whether ‘human dignity’ may serve as a basis to grant rights.

The problem with ‘human dignity’, it seems, is that it is an honorific rather than a description, so that the reason *why* ‘dignity’ should be bestowed on human beings remains to be clarified.¹³² One may contrast this with an honorific bestowed on, e.g., athletes who have shown extraordinary accomplishments. They are praised for this, and in this consists the honorific: the honorific is based on some quality or performance considered exceptional by some.¹³³ Crucially, such an honorific can only have a meaning if the reason for it to be bestowed can be *contrasted* with situations in which it would be out of place. The honorific is bestowed on athletes who show, as I said, extraordinary accomplishments. They are ‘extra-ordinary’ (beyond the ordinary) in the sense that ordinary people (or the athletes with whom they compete) cannot (or, in any event, do not) perform such feats. If a medal were to be awarded to anyone who is able to walk, e.g., the number of people lauded would be so great that it would lose its meaning. The contrast with others not able to act thus is lacking in this latter case.¹³⁴

In the case of ‘human dignity’, the problem seems to be that everyone who is a human being (a person) is *eo ipso* qualified a proper candidate to have ‘dignity’ bestowed on him. There is no contrast (not even with those who lack reason, who are still treated with ‘dignity’ (if they cannot fend for themselves, they are not simply abandoned, which would probably mean their death, but are taken care of in special institutions)). (There is, to be sure, a more fundamental contrast, namely with non-humans (animals).) If there is no criterion to bestow an honorific (such as ‘dignity’), the honorific itself loses all meaning.¹³⁵ As Hegel says,

¹³¹ G. Kateb, *Human Dignity*, p. 30.

¹³² One may define ‘dignity’ as “[...] a matter of status – one’s status as a member of society in good standing.” (J. Waldron, “Dignity and Defamation: The Visibility of Hate”, pp. 1611, 1612 (cf. p. 1610)), but while this provides a notion that has practical merit, it would be difficult to underpin it in terms of the present discussion, especially if it is added that “Philosophically speaking, we may say that dignity is inherent in the human person – and so it is.” “Dignity and Defamation: The Visibility of Hate”, p. 1612.

¹³³ It is not necessary to dwell on the issue of whether praise is in each case warranted. The example is merely used to make a point.

¹³⁴ The contrast with those who are quite unable to walk (some handicapped people) is of course irrelevant here.

¹³⁵ Cf. C. Schmitt, *Verfassungslehre*, p. 227 and *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, p. 14. On p. 17 of the latter work, he says: “Eine absolute Menschengleichheit wäre [...] ein Gleichheit, die sich ohne Risiko

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to say that persons are equals is an empty, tautological statement (“ein leerer tautologischer Satz”) as long as ‘person’ has not been specified and thus remains an abstraction.¹³⁶

An alternative would be not to focus on the ‘human’ part of ‘human dignity’ but rather to deem a characteristic decisive that some may be said to exhibit and which others lack, such as rationality. If rationality in the sense of a (mere) theoretical faculty is the focal point, some may be inclined to speak of ‘worth’, but in this case, the *differences* between individuals would have to be stressed. This is what Pojman does when he says: “Contrary to the egalitarians, and in spite of the widespread acceptance of the “egalitarian plateau,” there is good reason to believe that humans are not of equal worth. Given the empirical observation, it is hard to see that humans are equal in any way at all.”¹³⁷

Likewise, Hobbes qualifies man’s (value or) worth as his price,¹³⁸ while defining ‘dignity’ as “The publique worth of a man, which is the Value set on him by the Commonwealth [...]”¹³⁹ In such a case, ‘human dignity’ in the sense discussed here is in fact hollowed out. Another conception of rationality (or reason) may be put forward to evade this outcome. This is Kant’s alternative. Crucially, his stance differs from Pojman’s in that ‘given the empirical observation’ is not relevant for him, which may be a way to salvage, so to speak, ‘dignity’, but given the ‘costs’ in philosophical terms, it must be demanded whether this constitutes a viable option. Kant’s proposal will be expounded in chapter 5.

If one should, however, want to stress the ‘human’ part, it may be argued that, rather than to find a quality that may serve as the basis to bestow such an honorific, ‘human dignity’ has been ‘invented’¹⁴⁰ to serve as a political means (if all human beings (rather than just a selected group, on the basis of some specific quality that these individuals share and those not included in this group lack) are to be considered bestowed with ‘dignity’, they are all shielded against acts that would conflict with respecting such a quality). It is not the case that one encounters ‘human dignity’ through experience and consequently uses this quality as the basis for one’s political outlook; the outlook itself demands that such a fiction be created. The alternative, that ‘human dignity’ can be derived from nature somehow, would have to account for the fact that *human* ‘dignity’ and not *non-human (animal)* ‘dignity’ is said to exist,

von selbst versteht, eine Gleichheit ohne das notwendige Korrelat der Ungleichheit und infolgedessen eine begrifflich und praktisch nichtssagende, gleichgültige Gleichheit.” (“An absolute equality of human beings would be an equality that is understood by itself without any risk, an equality without the necessary correlate of inequality and consequently an equality that is both conceptually and practically void and indifferent.”)

¹³⁶ G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, § 49 (pp. 102, 103).

¹³⁷ L. Pojman, “Are Human Rights Based on Equal Human Worth?”, p. 621.

¹³⁸ Th. Hobbes, *Leviathan*, Ch. 10 (p. 63): “The Value, or WORTH of a man, is as of all other things, his Price; that is to say, so much as would be given for the use of his Power: and therefore is not absolute; but a thing dependant on the need and judgement of another.”

¹³⁹ Th. Hobbes, *Leviathan*, Ch. 10 (p. 63).

¹⁴⁰ I place the word between inverted commas as it may not have been contrived but rather (gradually) have become a workable notion. If this is indeed the case, the inquiry must be just as critical as when the outcome is a deliberate result.

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which is impossible for the same reason outlined above, namely, that no criterion is provided on the basis of which ‘dignity’ can be bestowed.¹⁴¹

Only if such a criterion were provided could the contrast between humans and non-humans be explained on other grounds than political ones, but this would render humanity (being human) as the basic feature problematic. This is precisely the dilemma Benn faces¹⁴² and which he is clearly unable to resolve: “[...] we respect the interests of men and give them priority over dogs not *insofar* as they are rational, but because rationality is the human norm. We say it is *unfair* to exploit the deficiencies of the imbecile, who falls short of the norm, just as it would be unfair, and not just ordinarily dishonest, to steal from a blind man. [...] [A] man does not become a member of a different species, with its own standards of normality, by reason of not possessing [the characteristics that distinguish the normal man from the normal dog].”¹⁴³

The problem here is not the claim that rationality is the human norm but rather that it is hard to defend on ‘moral’ grounds why this norm should exclusively be applied in dealing with members of one’s own species. (Whether such a position may be defended on *other* than ‘moral’ grounds remains to be seen.) Such a stance easily leads to the (rightful) accusation of speciesism,¹⁴⁴ so that someone who “[...] would make ‘human worth’ dependent upon nothing more than being a member of a certain natural species is in similar trouble [as a racist, J.D.]”¹⁴⁵ (Incidentally, Kateb denies that the accusation of speciesism (referring to it as ‘species snobbery’) applies to his position,¹⁴⁶ but I have found no basis in his work that would support this.) It may be argued that unqualified speciesism, which means that species per se is ‘morally’ relevant, is question begging,¹⁴⁷ or even *a priori* unacceptable. It is understandable that mankind should want to award itself a special position, but that does not point to a ‘moral’ foundation¹⁴⁸ and may perhaps more convincingly be construed as an attempt (and a successful one at that) to find the most

¹⁴¹ Incidentally, any argumentation in which a criterion is used by humans to bestow ‘dignity’ on humans is suspicious for that reason alone, especially if other species (animals) are claimed to be deprived of it.

¹⁴² This brings to mind the dilemma with which Kateb finds (or should find) himself confronted (cf. section 4.5).

¹⁴³ S. Benn, “Egalitarianism and the Equal Consideration of Interests”, p. 71.

¹⁴⁴ This may be defined as follows: “To base judgements and/or treatment of an individual on their species where species is not relevant.” (J. Tanner, “The Argument from Marginal Cases: Is Species a Relevant Difference”, p. 228), or as “[...] a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species.” P. Singer, *Animal Liberation*, p. 6.

¹⁴⁵ D. A. Lloyd Thomas, “Equality Within the Limits of Reason Alone”, p. 541.

¹⁴⁶ G. Kateb, *Human Dignity*, p. 179.

¹⁴⁷ J. Tanner, “The Argument from Marginal Cases: Is Species a Relevant Difference”, p. 228.

¹⁴⁸ Cf. C. Schmitt, *Verfassungslehre*, p. 226: “Daraus, daß alle Menschen Menschen sind, läßt sich weder religiös, noch moralisch, noch politisch, noch wirtschaftlich etwas Spezifisches entnehmen.” (“Nothing distinctive can be derived from the given that all human beings are human beings, be it in religious, moral, political or economic terms.”)

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few be agreeable outcome, having to take into consideration the interests of the beings that, like mankind, can claim certain rights while being able to exclude those that are unable to do so.

4.7 It is worthwhile to examine some representative legislation in which the notion of ‘human dignity’ features, so that the discussion is shown not to be a merely academic one. The present legislation at the international level (forgoing here the issue of whether ‘international law’ is actually law) appears to consider ‘human dignity’ a (‘moral’) axiom.¹⁴⁹ To present some examples:

Consolidated Version of the Treaty on European Union

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The International Covenant on Civil and Political Rights (ICCPR) is rife with references to ‘human dignity’:

International Covenant on Civil and Political Rights

Preamble

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

¹⁴⁹ It features at the national level as well. Article 1 of the German constitution, e.g., starts as follows: “Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.” (“The dignity of man is inviolable. It is the duty of all state authority to respect and to protect it.”) Incidentally, ‘dignity’ seems not to have come to the fore in legislation until the 20th century (D. Schroeder, “Human Rights and Human Dignity”, p. 324).

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Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

The word ‘inherent’ is similar to ‘intrinsic’. It may have been used here to point to the fact that something important is at stake, but including it does not in fact reach that goal. It only adds an element (one might even say: a *metaphysical* element) to (presumably) solidify the meaning; it would be the same as saying that the human person has an essential ‘dignity’ (it belongs to the essence of a human being). If this means anything at all, it is not clear what, and if it does not mean anything in the first place, it is of no use to protect it from being violated, just as it would be in vain to erect a concrete wall around a box presumably containing the essence of an (invisible) round square. One could have started article 6 with “Every human being has the right to life.” This would acknowledge the fact that such a right exists, without resorting to a supposedly existing right prior to granting this. In other words, one would not speculate whether such a right in fact exists irrespective of its being granted by the legislator.

The objection that the importance of the right is not sufficiently acknowledged thus is easily refuted by putting forward the questions: (1) does such a supposedly natural basis actually add anything in explanatory power, and can its existence be proved?, and (2), more importantly, does its presence add anything in practical consequences? As for the second point: should someone be deprived of a right, it should be enough to appeal to the relevant article. He may in addition claim that this is based on a natural right, but his assailant will presumably not be impressed by this, nor should it make a difference to the judge who must reach a decision.

‘Human dignity’ is not the starting point in legislation as an axiom in each case. For example, in the American Declaration of Independence, it is stated:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

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In this case, there is mention of laws of nature; the basis is apparently sought in a divine act, which becomes especially clear from the fact that the ‘unalienable rights’ have their source in God. This is problematic since it appeals to the existence of a God, and His (presumed) actions, but at least it is indicated what the basis of these (purportedly unalienable) rights is. (A remaining problem is the apparent self-evidence of these supposed truths.) A claim that ‘inherent rights’ should exist *without* a concomitant appeal to a divine foundation is in need of just as much support as one that does include such a basis. So if one leaves out the appeal to God, this does not mean that an actual explanation is provided; it just means, on the contrary, that one’s account is all the more abstract, and I know of no poorer methodological approach than that which consists in confusing abstracting with explaining. By removing God from the equation, so to speak,¹⁵⁰ one has merely indicated which alternative one does not accept; if one leaves it at that, no explanation whatsoever is given. One still has to explain, accordingly, on what basis such rights should be ‘inherent’, presuming that such a basis can be provided at all, of course.

I have argued that this is not the case. That is not to say that the rights presented above for that reason become void, but rather that ‘human dignity’ fails to provide the legitimacy for their existence, so that it may be said to be superfluous.¹⁵¹

4.8 Summary and relation to chapter 5

Kateb argues that ‘human dignity’ is what makes human beings special; it may be used as a standard to grant rights to – human – beings. A main problem is that it remains unclear what the ‘stature’ aspect adds to the analysis, unless it would be the inclusion of those whose value is not covered by the ‘status’ aspect, in which case ‘human dignity’ is veritably hollowed out. In addition, there must be an actual basis to grant ‘human dignity’; if no such basis, being found in a characteristic (such as rationality, perhaps), is forthcoming (presuming that such a characteristic *would* suffice), the accusation of speciesism or the absence of an explanation looms. This is no mere academic observation, as the examples of international legislation show. Perhaps a return to the characteristic mentioned before, rationality, must, then, be considered, albeit, given the problems pointed out in chapter 2, from another perspective

¹⁵⁰ Such a locution will, I presume, not be taken to attest to an irreverent disposition.

¹⁵¹ Cf. M. Hossenfelder, “Menschenwürde und Menschenrecht”, p. 32: “Der Begriff der Würde findet in der Ableitung nirgendwo Verwendung. Er ist für die Begründung der Menschenrechte überflüssig und meine Empfehlung wäre, ihn in Zukunft tunlichst zu meiden. Zum einen wegen seiner Inhaltslehre.” (“The concept of dignity is not applied anywhere in the derivation. It is superfluous for the founding of human rights and I would recommend that it be avoided in the future, if possible. In the first place because of its lack of content.”) This means that this account must be traded in for an alternative ‘moral’ standard of the same standing, presuming one is (readily) available lest the right’s legitimacy be a postulate rather than a demonstrable given. Failing such an alternative – or at least the proof that one exists –, a relatively modest account, cleansed of all ‘moral’ elements, is the only viable option.

CHAPTER FOUR

than the one that was presented there. This will be undertaken in chapter 5, where Kant's conception of 'reason' is the focus of attention.

