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Freedom and equality as necessary constituents of a liberal democratic state

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Citation

Doomen, J. (2014, May 21). *Freedom and equality as necessary constituents of a liberal democratic state*. Retrieved from <https://hdl.handle.net/1887/25825>

Version: Corrected Publisher's Version

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Issue Date: 2014-05-21

Chapter 5. A critique of reason

5.1 The previous chapter was concentrated on ‘human dignity’. For the reasons put forward there, this notion fails to function as a foundation to grant rights to human beings. An alternative would be to force the propagators of rights to show their colors, and use an actual criterion. In this chapter I will present an obvious candidate to fulfill such a role: reason. It is such a candidate since reason is often considered a special quality, perhaps even belonging to a different category than physical qualities. Whether reason is in fact the decisive element in such a way remains to be seen, of course. In chapter 2, Rawls was shown to exhibit such a stance. I will examine the arguments of the philosopher who may be considered his precursor in this regard, Immanuel Kant, to consider reason – as he understands it – to be crucial in treating those who (are presumed to) act on the basis of reason in a special way.

5.2 The relevance of Kant’s work for the present study lies primarily in his emphasis on reason as the focal element for a ‘moral’ theory. It is precisely this aspect of his philosophy that may make it a suitable alternative to the alternative of starting with the – vague – notion of ‘human dignity’. (To anticipate matters somewhat, ‘dignity’ will turn out to be an important issue for Kant as well, but not, significantly, as a starting point (in the way it features in Kateb’s work, for instance).) By stressing the importance of reason, Kant seems at least to have found an actual criterion to distinguish between various beings. Whether his conception of this faculty will in the end provide a workable theory is what I will explore here.

5.3 First of all, it must be clear what Kant means by ‘reason’ in his ethical works. This is not to be taken in the sense of reasoning power, or in the sense which comes closest to this in his own main theoretical work, *Kritik der reinen Vernunft*, as the faculty of principles (“das Vermögen der Principien”),¹⁵² or the faculty to establish the unity of the rules of the understanding guided by principles (“das Vermögen der Einheit der Verstandesregeln unter Principien”).¹⁵³

It is not understanding¹⁵⁴ itself which constitutes the crucial difference between man and animal (since this merely leads to a relative difference¹⁵⁵), but rather man’s practical reason. That this is the decisive element is perhaps most clearly expressed by Kant when he states that it is on the basis of being autonomous that one is to be considered an end in

¹⁵² I. Kant, *Kritik der reinen Vernunft*, A 299/B 356.

¹⁵³ I. Kant, *Kritik der reinen Vernunft*, A 302/B 359.

¹⁵⁴ I do not explicate here the crucial distinction in Kant’s theoretical philosophy between understanding (“Verstand”) and reason (“Vernunft”), as this would digress needlessly from the topic at hand.

¹⁵⁵ I. Kant, *Die Metaphysik der Sitten*, pp. 435, 436; cf. notes 166 and 170, *infra*.

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itself,¹⁵⁶ which is (supposedly) possible in the domain that cannot be reached by the use of – theoretical – reason.¹⁵⁷ The (theoretical) reasoning powers do not, then, constitute the decisive ground for man to be considered an end in itself; something has ‘dignity’ on the basis of its capacity to act ‘morally’.¹⁵⁸ Autonomy is the basis of the ‘dignity’ of man’s nature, and of every reasonable creature (or ‘nature’, as Kant puts it).¹⁵⁹

5.4 Kant’s notion of ‘dignity’ differs in a significant way from Kateb’s. As was just demonstrated, Kant links this to autonomy; Kateb, by contrast, speaks of ‘human dignity’ as an existential rather than a ‘moral’ value (demonstrating his awareness of the difference from Kant’s view).¹⁶⁰ Crucially, ‘dignity’ is not a starting point for Kant, as it is for Kateb, who insists that “Human dignity is an existential value; value or worthiness is imputed to the identity of the person or the species.”¹⁶¹

For Kant, ‘dignity’ is rather a corollary of being endowed with, and acting in accordance with, (practical) reason. Indeed, from his vantage point, it should be considered a category mistake to *start* with ‘dignity’. This does not necessarily mean that Kant’s approach is correct, but merely that it is more intricate and consequently merits a serious inquiry. A false dilemma must be avoided: that Kant’s theory provides a criterion that is not *a priori* to be *rejected* does not mean that it should therefore be *accepted*, for there may be (*a posteriori*)¹⁶² considerations on the basis of which it is, in the end, to be abandoned. A¹⁶³ clear difficulty with Kant’s position is that freedom (in the sense of a ‘free will’), which is the basis of autonomy, cannot be demonstrated¹⁶⁴ and must accordingly be presupposed or postulated.¹⁶⁵

¹⁵⁶ I. Kant, *Kritik der praktischen Vernunft*, p. 87. Autonomy (of the will) is defined by Kant (*Grundlegung zur Metaphysik der Sitten*, p. 440) as “the quality of the will by which it is a law to itself (independently of any quality of the objects of volition).” (“[...] die Beschaffenheit des Willens, dadurch derselbe ihm selbst (unabhängig von aller Beschaffenheit der Gegenstände des Wollens) ein Gesetz ist.”)

¹⁵⁷ E.g., I. Kant, *Kritik der reinen Vernunft*, A 532 ff./B 560 ff., A 702/B 730, A 800 ff./B 828 ff.

¹⁵⁸ I. Kant, *Grundlegung zur Metaphysik der Sitten*, p. 435.

¹⁵⁹ “Autonomy is the basis of the dignity of human and every reasonable nature.” (“Autonomie ist [...] der Grund der Würde der menschlichen und jeder vernünftigen Natur.”) I. Kant, *Grundlegung zur Metaphysik der Sitten*, p. 436.

¹⁶⁰ G. Kateb, *Human Dignity*, pp. 10-17.

¹⁶¹ G. Kateb, *Human Dignity*, p. 10. On p. 24, Kateb says of human stature: “Human stature is essentially an existential, not a moral, value.”

¹⁶² Indeed, any objection must, I think, be such: the matter cannot be resolved *a priori*.

¹⁶³ This is *a*, not *the* (only), difficulty, for several other issues remain which make Kant’s position difficult to uphold; in some respects, the criticism of Kateb’s position can be directed at Kant’s as well.

¹⁶⁴ I. Kant, *Grundlegung zur Metaphysik der Sitten*, pp. 448, 461; on pp. 458, 459, Kant puts it as follows: “[...] alsdann würde die Vernunft alle ihre Grenze überschreiten, wenn es sich zu *erklären* unterfinge, wie reine Vernunft praktisch sein könne, welches völlig einerlei mit der Aufgabe sein würde, zu erklären, *nie Freiheit möglich sei*.” (“Reason would exceed all its limits if it were to undertake to *explain* how pure reason could be practical, which would be completely identical to the task to explain *how freedom would be possible*.”)

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This means that it is, strictly speaking, not up to a human being to judge whether someone (else) is ‘dignified’ or not (with the corollary, if one is consistent, that no (‘moral’) difference between man and animals can be made, at least not by human beings themselves). After all, human beings are not able to (empirically) observe the freedom of the beings they encounter, which would serve as the determining divide between beings that have a price and those that have a ‘dignity’.¹⁶⁶

On the other hand, Kant does at least provide a criterion to differentiate between beings that do not act autonomously and those that do, whereas Kateb, whose approach is not burdened by an elusive notion such as ‘autonomy’,¹⁶⁷ fails to provide *any* criterion. If a human being is not able to act ‘morally’, he is not to be considered an end in itself. After all, Kant states: “Morality is the condition under which alone a reasonable being can be an end in itself, since it is only through morality that it is possible for it to be a legislating member in the realm of ends. So only ethics and humanity, insofar as it is capable of it, is that which has dignity.”¹⁶⁸ The phrase ‘insofar as it is capable of it’ makes it clear that it is not the mere fact of being a human being that is decisive but rather the ability to act ‘morally’. This means that other reasonable beings than man, if they exist, may be ‘moral’ agents.¹⁶⁹ The accusation of speciesism cannot, then, be leveled against Kant.

This can also be inferred from what Kant says in *Die Metaphysik der Sitten*, in which simultaneously becomes apparent what was argued before, that reason as a theoretical faculty is not the decisive ability to grant human beings a special status, as there is only ‘an *extrinsic* value’ (‘einen *äußeren* Werth’) for man’s usefulness, which only leads to a relative difference, based on a price (‘Preis’), between human beings and animals, and that a human being has a dignity as a ‘*noumenal man*’ (‘*homo noumenon*’), in which case – *theoretical* reason not being decisive – he is regarded elevated above any price.¹⁷⁰

¹⁶⁵ I. Kant, *Grundlegung zur Metaphysik der Sitten*, pp. 449, 459. In *Kritik der reinen Vernunft* and *Kritik der praktischen Vernunft*, this topic is dealt with in greater detail. This is not the place to elaborate on this theme.

¹⁶⁶ I. Kant, *Grundlegung zur Metaphysik der Sitten*, pp. 434, 435.

¹⁶⁷ “[...] human dignity cannot depend on autonomy as its ultimate justification because most people, no matter how favorable the circumstances to individuality, will never break out of conformity to the extent that autonomy demands.” G. Kateb, *Human Dignity*, p. 108. Strictly speaking, by the way, this observation does not strike Kant’s viewpoint, as the place where he locates autonomy, if it exists at all, is not to be found through experience (pursuant to the characteristic distinction between the phenomenal and the noumenal realms (e.g., *Kritik der reinen Vernunft*, A 42, 43/B 59, 60, A 238, 239/B 298)), but that very fact may be said to be part of the problem in that it contributes to the elusiveness of the notion.

¹⁶⁸ “[...] Moralität [ist] die Bedingung, unter der allein ein vernünftiges Wesen Zweck an sich selbst sein kann, weil nur durch sie es möglich ist, ein gesetzgebend Glied im Reiche der Zwecke zu sein. Also ist Sittlichkeit und die Menschheit, so fern sie derselben fähig ist, dasjenige, was allein Würde hat.” I. Kant, *Grundlegung zur Metaphysik der Sitten*, p. 435.

¹⁶⁹ Cf. I. Kant, *Grundlegung zur Metaphysik der Sitten*, pp. 408, 426, 428, 430, 436, 447.

¹⁷⁰ I. Kant, *Die Metaphysik der Sitten*, pp. 435, 436.

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On the basis of such considerations, man is said to have ‘an inalienable dignity’ (‘eine unverlierbare Würde’ (‘dignitas interna’)),¹⁷¹ a phrase that brings to mind the similar dictum in the legislation mentioned in the previous chapter with regard to ‘inherent dignity’ and ‘inherent right’.¹⁷²

5.5 What remains problematic in Kant’s theory, *inter alia*, is that the crucial elements are unprovable and must be postulated (which appears most clearly in *Kritik der praktischen Vernunft*¹⁷³). This has important consequences for a concept such as ‘autonomy’, which is difficult to grasp.¹⁷⁴ The concept may be said to result from an effort to artificially salvage a special status for man: “Autonomous man serves to explain only the things we are not yet able to explain in other ways. His existence depends upon our ignorance, and he naturally loses status as we come to know more about behavior.”¹⁷⁵

5.6 Apart from this issue, the general difficulty is that ‘dignity’ cannot conclusively be said to follow from any characteristic. A distinction between desirable and non-desirable characteristics is easily made, by means of the basest observation. To conclude, however, that ‘dignity’ should in some cases be acknowledged attests to an unwarranted jump to an unobservable given. At first sight, the problem is not as grave as in the case of Kateb’s line of reasoning, since Kant constructs a link between (practical) reason and ‘dignity’ rather than between (Kateb’s vague conceptions of) ‘humanity’ and ‘dignity’. However, the difference is actually largely cosmetic, for in the end, anyone employing a notion such as ‘dignity’ will have to be clear what it means (if this is possible at all).

¹⁷¹ I. Kant, *Die Metaphysik der Sitten*, p. 436. A similar stance is exhibited by Fichte (*Über die Würde des Menschen*, pp. 87-89).

¹⁷² Schopenhauer observes, based on a similar line of thought as the one mentioned above (*vide* note 111, *supra*), that value, and, *a fortiori*, ‘human dignity’, is to be understood as a relative rather than an absolute notion (*Die beiden Grundprobleme der Ethik*, p. 166).

¹⁷³ I. Kant, *Kritik der praktischen Vernunft*, pp. 122-134.

¹⁷⁴ I leave it to the reader whether he is indeed, perhaps with some effort, able to do this. I myself am not: for me, the word has no meaning, and no concept corresponds with it. One may use ‘autonomy’ in a ‘diluted’ way, referring to the liberty citizens have (expressed, e.g., through the political and legal rights that are the topic of this inquiry), but that is not a concept that would correspond with the encompassing (and literal) one of ‘autonomy’ addressed here. This means that Rawls’s notion of ‘full autonomy’, which is presented as a political rather than an ethical value (*Political Liberalism*, Lecture II, pp. 77, 78), may be upheld while the problems with a notion such as ‘rational autonomy’, which is said to be “[...] shown in [persons] exercising their capacity to form, to revise, and to pursue a conception of the good, and to deliberate in accordance with it.” (Lecture II, p. 72), are apparent in light of the considerations presented above (although it must be granted that Rawls’s version of even this variety of autonomy seems less ambitious than Kant’s).

¹⁷⁵ B. Skinner, *Beyond Freedom and Dignity*, p. 14. Perhaps Skinner is also correct in saying: “Autonomous man is a device used to explain what we cannot explain in any other way. He has been constructed from our ignorance, and as our understanding increases, the very stuff of which he is composed vanishes.” *Beyond Freedom and Dignity*, p. 200.

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The problem I mentioned in section 4.6, that ‘dignity’ is hollowed out if it is equated with worth (in the sense of price), is a pressing one for Kant as well. If the aspect of worth in this sense is decisive, it is not difficult to treat different cases in different ways: those who work hard and/or display talents that are valued will be treated differently (receive higher rewards) than those who do not, an issue that is uncontested in any non-egalitarian distribution system.¹⁷⁶ In such an approach, rewards or even rights are not bestowed on the basis of some ‘moral’ insight. Various explanations may be provided why this happens, but a common explanation¹⁷⁷ is that granting someone rewards promotes his industry. Such an explanation is not hard to follow, and may easily be accepted (precisely because it does not introduce any elements that cannot be clarified).

By contrast, the link between ‘dignity’ (assuming here, *arguendo*, that it has a meaning, and that this may be demonstrated (otherwise the following argument is moot)) and some sort of entitlement *is* difficult to grasp, making the possibility of using it as a starting point problematic. That is not to say *a priori* that it cannot exist, but if that is the case, it must be demonstrated, leaving those who seek to found (certain) rights on ‘(human) dignity’ with the onus to demonstrate, first, that such a notion is not devoid of meaning, and, second, how such an entitlement may be said to follow from it. Given the limitations that I have set upon this inquiry, and the absence of the need to include such an analysis into it, such a burden does not lie on me, so I can end this discussion here, remarking merely that, although the presence of these limitations was not incited by a desire to evade this burden, I do not regret, noticing the predicament with which those who defend an alternative are faced, that this is the consequence of my starting point.

5.7 To what do the foregoing observations amount? The problems in Kant’s system of thought may be considered to be somewhat mitigated by the distinction he makes between ‘moral’ and juridical laws of freedom,¹⁷⁸ leading to different demands (respectively the internal and external conformity with the norm).¹⁷⁹ Still, even if one limits the analysis to the domain of law (in which the motive is, on the whole, not relevant and compliance (whether this result from an external motivation or from a conviction or not) is the main issue),¹⁸⁰ the

¹⁷⁶ Taking the term ‘egalitarian’ in the radical interpretation, manifested in communism.

¹⁷⁷ This has already been propagated by Mandeville (*The Fable of the Bees*, Part 2: Sixth Dialogue, pp. 414, 415, 429, 430). (Mandeville does not address fundamental rights here, but rather specific rewards (profits), but the analysis is essentially the same.)

¹⁷⁸ I. Kant, *Die Metaphysik der Sitten*, p. 214.

¹⁷⁹ I. Kant, *Die Metaphysik der Sitten*, pp. 214, 219.

¹⁸⁰ A situation such as the penalization of attempt (i.e., the failed attempt to commit a crime), in which case, strictly speaking, a motive is the critical aspect, must not be confused with this observation, since it is still irrelevant, except when the punishment is concerned, *which* motive may have been decisive (in the case of a justification, the outcome is significantly different, no punishment being administered, but the motive is in that case, too, not important to make an appeal to it).

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question of the demarcation of the domain of bearers of rights¹⁸¹ remains a pressing matter, precisely because practical reason as the criterion is not available here.

In any case, ‘humanity’ as such and ‘reason’ – in whatever sense – are insufficient to conclude to ‘(human) dignity’. As I said above (section 3.4), the notion of ‘intrinsic value’ is vague, and, apart from that, an assessor of the (supposed) value is required. Kant does not escape this, speaking of ‘Würde’ (‘dignity’) as something that has ‘einen innern Werth’ (‘an inner worth’).¹⁸² Another criterion than reason or humanity may be put up as a candidate, but it would, as far as I am able to assess the situation, be random and, apart from that, one would still be confronted with the burden of making it clear what ‘dignity’ means. Perhaps the most credible – and effective – position consists in giving up such a search altogether and trading in the ambition to constitute a philosophy that is enriched by a ‘moral’ superstructure (and recognize that it may in fact be said to be an impoverishment as soon as the addition should prove to be superfluous or even void of content) for a more cautious approach, or at least not accept such a superstructure until its existence or meaning will have been proved, if possible.

There is nothing *a priori* amiss with the wish for an ‘elevated’ theory, but one must always keep in mind that the extent to which a theory must be justified corresponds with that of its claims rather than with its appeal or the aspirations of its originator. Perhaps the strategy to start cautiously and add elements to one’s theory only if it is clear that these do not suffer from problems such as those encountered with some of the claims of the authors discussed above is the most promising one. This outcome might seem to be detrimental to the search for a foundation of the rights that must be granted on the basis of formal equality. If that were the case, denying such a result should only be allowed for political ends (for philosophically, one would be committing a clear *argumentum ad consequentiam*), if such a *modus operandi* were deemed acceptable and could work at all. Such a conclusion is, however, to be forestalled until my own view will have been presented, which will, I think, prove to be a viable alternative to resorting to such unconvincing actions, for its (intended) solution is

¹⁸¹ Why human beings are those whose freedom (not in the ‘moral’ sense) must be taken into consideration, and why they must therefore be the bearers of rights, is not explicated by Kant when he presents this as the fundamental tenet of a system of law (*Die Metaphysik der Sitten*, pp. 230, 231; cf. p. 246), but since this is the domain of *external* – rather than *internal* – conformity, no respect for the ‘dignity’ in man (which could, after all, only follow from his (alleged) ability to act ‘morally’) can be determinative here.

¹⁸² I. Kant, *Grundlegung zur Metaphysik der Sitten*, p. 435. A contemporary variant is found in the work of Christiano, who seems, when speaking of ‘the value of humanity’, bent on introducing as much metaphysics in his theory as possible: “The fact of humanity confers a special status on most human beings, a dignity which ought to be honored. The humanity of a person is that person’s capacity to recognize, appreciate, engage with, harmonize with, and produce intrinsic goods.” *The Constitution of Equality*, p. 14; “Human persons have *equal moral status*. Since the status of humanity derives from the fact that humanity is a kind of authority in the realm of values, equal status is based on the fact that human beings all have essentially the same basic capacities to be authorities in the realm of value.” *The Constitution of Equality*, p. 17.

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indeed a philosophical one, albeit minimalistic compared to some of those discussed in the foregoing.

5.8 Summary and relation to chapter 6

Kant's account of reason is such that practical reason is the decisive criterion for a being to have a 'dignity'. The criticism of speciesism does not apply here, but other issues are problematic. Apart from the fact that the ability to act practically reasonably is an elusive matter in Kant's philosophy, to see how 'dignity' should follow from acting thus is no less difficult than it is to grasp how it should follow in the alternatives presented before, from the foundations (or alleged foundations) that were defended there. A sufficient number of representative views that defend equality with an appeal to a 'moral' outlook have been discussed to conclude that such an approach proves problematic and calls for an alternative. If that alternative proves more compelling, it should be adopted to replace such views. Chapter 6 is essentially a defense of such an alternative, arguing what I conceive to be the most viable position to defend basic equality.

