

# ‘Dignity’ and the Incomplete Grounding of International Human Rights

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## 1. ‘Dignity’ in the International Human Rights Discourse

In the wake of massive suffering caused by World War II, States realised that a re-evaluation of the international legal status of the individual was required as a precondition of a path to global peace. Further to the preambular paragraphs of the 1945 United Nations Charter and the 1948 Universal Declaration of Human Rights (‘UDHR’) – marking the entry of the word ‘dignity’ into international human rights discourse – Article 1 of the UDHR resoundingly affirmed the centrality of human ‘dignity’: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

The two 1966 International Covenants on civil and political and economic, social and cultural rights recognized “that these rights derive from the inherent dignity of the human person”. This language cemented human ‘dignity’ as the foundation or source of human rights in international law.

Since then, the concept of human ‘dignity’ has been enshrined in various domestic and international laws. Mary Robinson, commenting on the UDHR, stated that its “universal vocation to protect the dignity of every human being has captured the imagination of humanity”.<sup>1</sup> Kevin J. Hasson opined that human dignity is the foundational concept of the global human rights regime, “the ‘ultimate value’ that gives coherence to human rights”.<sup>2</sup> Yehoshua Arieli went further and stated that the UDHR and the concept of the ‘dignity’ of man are “the corner-

stone and the foundation on which the United Nations sought to reconstruct the future international order of mankind and of public life in general”.<sup>3</sup> Habermas also champions the idea of human ‘dignity’ by saying that it is the source from which all human rights are spelled out.<sup>4</sup>

However, no international law document defines the word ‘dignity’. Given that the legitimacy of human rights is still being challenged – for example, in Chinese society although the State of China is party to many international human rights treaties – we cannot take human rights to be self-evident, however much we believe they are “the only political-moral idea that has received universal acceptance”.<sup>5</sup>

## 2. Evolution of ‘Dignity’ in Western Thought

Although, as Sensen argues, a “contemporary approach in which human dignity is thought to ground human rights is very different from the way human dignity has been understood traditionally”,<sup>6</sup> the lexicons which go hand in hand with ‘dignity’ in the UDHR – such as “inherent”, “born to be” and “endowed with reason and conscience” – reveal that these contemporary concepts relate to traditional Western thought. By sketching the extended evolution of the concept of ‘dignity’, we may gain a better understanding of how the word functions today.

<sup>3</sup> Yehoshua Arieli, “On the Necessary and Sufficient Conditions for the Emergence of the Doctrine of the Dignity of Man and His Rights”, in David Kretzmer and Eckart Klein (eds.), *The Concept of Human Dignity in Human Rights Discourse*, Kluwer Law International, The Hague, 2002, p. 1.

<sup>4</sup> Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights”, in Claudio Corradetti (ed.), *Philosophic Dimensions of Human Rights*, p. 66.

<sup>5</sup> Louis Henkin, *The Age of Rights*, New York, Columbia University Press, 1990, p. ix.

<sup>6</sup> Oliver Sensen, “Human dignity in historical perspective: The contemporary and traditional paradigms”, in *European Journal of Political Theory*, January 2011 10, p. 71.

<sup>1</sup> Mary Robinson, “The Universal Declaration of Human Rights, the international keystone of human dignity”, in Barend van der Heijden and Bahia Tahzib (eds.), *Reflections on the Universal Declaration of Human Rights: A Fiftieth Anniversary Anthology*, Martinus Nijhoff Publishers, 1998.

<sup>2</sup> Kevin J. Hasson, “Religious Liberty and Human Dignity: A Tale of Two Declarations”, in *Harvard Journal of Law and Public Policy*, 2003, Vol. 27, p. 83.

## 2.1. Roman and Ciceronian Concept of 'Dignity'

As Donnelly notes, 'dignity' in Roman times was primarily understood as an attribute of those worthy. 'Dignity' was also seen as a virtue or the consequence or reward of virtue. The realization of that virtue may be the proper natural end of man; in Aristotelian terms, man's *telos* or final cause. But what gives one worth, and demands respect, is the realization of that potential.<sup>7</sup> It is necessary to note that in ancient Rome 'dignity' was largely characteristic of great men, those meriting special honour or distinction. The 'worth' to which 'dignity' referred was a feature of the few, rather than of mankind in general.

Cicero, inheriting Greek Stoicism, gave 'dignity' a broader sense. In his *De Officiis* (*On Duties*), Cicero contrasts mankind with animals and reminds us of our superiority. He argues that 'dignity' is to be achieved and preserved by freeing oneself from disturbing emotions, especially desire, fear, pleasure, pain, and anger.<sup>8</sup> In a passage in *De Officiis*, Cicero attributes 'dignity' to man in general by using the term "dignam hominis", the first preserved that can be translated as "human dignity". The passage, which has exerted great influence, reads:

It is essential to every inquiry about duty that we keep before our eyes how far superior man is by nature to cattle and other beasts: they have no thought except for sensual pleasure and this they are impelled by every instinct to seek; but man's mind is nurtured by study and meditation [...] From this we see that sensual pleasure is quite unworthy of the dignity of man (dignam hominis) [...] And if we will only bear in mind the superiority and dignity of our nature. (I. 105-6)

Cicero professes the belief that all human beings are endowed with 'dignity', and that mankind is worthy of respect for the sole fact of its existence. Cicero found this attribute universal because human beings possessed superior minds, with the capacity to learn and reason. Cicero rendered human nature sacred and superior, and paved the way for later development of human 'dignity'.

## 2.2. Judeo-Christian Conceptions of Human 'Dignity'

Judeo-Christianity is another main contributor to the concept of 'dignity'. Christian doctrine enjoys, due to its dominant role in Western history, significant historical importance, even up to the present time. Although the Bible does not contain the word 'dignity', the idea of human 'dignity' is present in the Bible. *Genesis* provides a source to understand the Judeo-Christian conception of

'dignity' and human nature by providing that man was created "in the image of god" (*imago dei*) and in the likeness of God. As God's agent on earth, man was given rule over the earth and other creatures. God made man "a little lower than the angels, and [...] crowned him with glory and honour" (Book of Psalms, 8:5), which provides man with a certain 'dignity'. Grounded on revelation, human 'dignity' is understood as flowing from one's relationship with God and is inherent; and our transcendent worth and value comes from God rather than a human quality, legal mandate, or individual merit or accomplishment, though Christianity does require us to be reunited with God.

'Dignity' in the Christian understanding is not merely inherent and inalienable, but in some important sense universal. It is something "that none of us has by merit, that none of us can receive from others, and that no one can take from us".<sup>9</sup> Thomas Aquinas, drawing on the Genesis account, further refined the understanding of the human being as an "intelligent being endowed with free will and self-movement".<sup>10</sup>

The *Catechism of the Catholic Church* incorporates the idea of man as made in the image of God as central to its conception of human 'dignity':

Of all visible creatures only man is "able to know and love his creator" [...] and he alone is called to share, by knowledge and love, in God's own life. It was for this end that he was created, and this is the fundamental reason for his dignity.<sup>11</sup>

After establishing the fundamental status of human 'dignity', the *Catechism* moves on to argue that "[e]very human person [...] has the natural right to be recognized as a free and responsible being. All owe to each other this duty of respect. The right to the exercise of freedom, especially in moral and religious matters, is an inalienable requirement of the dignity of the human person"<sup>12</sup>. It is probably out of this consideration that the Church started to develop its social doctrine on improving labour rights in the 1981 *On Human Work* and other encyclicals.<sup>13</sup>

## 2.3. 'Dignity' from Mirandola to Kant

From the Renaissance onwards, human 'dignity' emerged as a topic of particular prominence among important thinkers such as Pico della Mirandola, Locke, Hume, Pascal and Descartes. Mirandola, author of *Discourse on*

<sup>9</sup> Wolfhart Pannenberg, *Systematic Theology*, Bloomsbury Publishing, Vol. 2, 1991, p. 177.

<sup>10</sup> Thomas Aquinas, *Summa Theologiae*, St. Augustine's Press, 2010, I-II, Prologue, p. 1.

<sup>11</sup> *Catechism of the Catholic Church*, Libreria Editrice Vaticana, para. 356 (<http://www.legal-tools.org/doc/ffb2b0/>).

<sup>12</sup> *Ibid.*, para. 1738 (<http://www.legal-tools.org/doc/e3806e/>).

<sup>13</sup> *On Human Work*, Libreria Editrice Vaticana (<http://www.legal-tools.org/doc/73f8a6/>).

<sup>7</sup> Jack Donnelly, *Human Dignity and Human Rights* (<http://www.legal-tools.org/doc/e80bda/>).

<sup>8</sup> Cicero, *On Duties*, E. M. Atkins and M. T. Griffin (eds.), Cambridge University Press, 1991, I. 67-69, 105.

*the Dignity*, often viewed as the manifesto of the Renaissance, was the first of great thinkers to give a full acknowledgement of human ‘dignity’. He concluded that the initial dignity of men consists in their capacity to choose their own place in the chain of being. Human beings are special because they were given freedom and reason. What lifts human beings up above the rest of nature is that they can choose their fate themselves: “Thou (man), art the moulder and maker of thyself”.<sup>14</sup>

Immanuel Kant is regarded as the father of modernity’s concept of ‘dignity’, on which he elaborated particularly in *Metaphysics of Morals*. His theory appears to have drawn both directly on Cicero and the broader Stoic tradition, and has had considerable impact on modern political thought and the international human rights movement. For Kant, ‘dignity’ is an absolute inner value, enjoyed by all humans. He writes about human nature:

Man regarded as a person, that is, as the subject of a morally practical reason [...] he is not to be valued merely as a means [...] he possesses a dignity (Würde, absolute inner worth) by which he exacts respect for himself from all other rational beings in the world.<sup>15</sup>

For Kant, the human being itself is the end, and entitled to invariable ethical respect. No person should be depersonalised or dehumanised by any other individual or the State. The ‘dignity’ of humanity in each of us – a ‘Würde’, an inner ‘dignity’ – demands respect. Thus Kant makes human ‘dignity’ independent of a Supreme Being or external source. Kant explicitly links the moral duty of the individual – with reference to the ‘dignity’ of humanity within us – to rights, and he praised the rights of others as sacred and inviolable.<sup>16</sup>

Donnelly comments that the Kantian concept is an important source for the idea that human rights rest on the inherent ‘dignity’ of the human person, and it was clearly one of the inspirations for the 1948 UDHR.<sup>17</sup> Of particular importance is Kant’s claim that “humanity itself is a dignity”<sup>18</sup>. Here Kant renders the Roman-medieval concept of ‘dignity’, which was a special status or rank, universally attributable. Humanity, which is present in even the lowliest of men, gives each individual a ‘dignity’ that calls for respect by all other individuals, society, and the State. The details of that respect, especially in its political elements, are realized through human rights. As Klug has observed, the modern concept

of ‘dignity’, largely influenced by Kant, has replaced the idea of God or Nature as the foundation of “inalienable rights”. Rights were to be accorded to all human beings without distinction because of the essential ‘dignity’ of all humanity.

### 3. Constraints in the Contemporary Human Rights Discourse

The evolution of the concept of ‘dignity’ in so-called Western countries is based on the premise that human beings have agency. It seems less concerned with our relationship to others and to society. Kantian thought starts with the assumption of humanity’s absolute independent autonomy, and reaches the relationship between the individual and others almost as an afterthought.

Human duties are largely absent from international human rights instruments. Arguably, this reflects an excessive emphasis on *individual* rights, if necessary, over and above *communal* interests. Joel Feinberg goes so far as to say that ‘dignity’ “may simply be the recognizable capacity to assert claims”.<sup>19</sup> There has been much talk about taking rights seriously, while the idea of responsibilities receives much less attention. Duties may be the other side of the coin of rights, but the coin is rarely flipped. In her book ‘Rights Talk’, Glendon suggests that Americans are particularly preoccupied with ‘rights talk’. She explains that the pervasive presence of rights talk causes difficulty in defining critical questions, finding common ground for discussion, and arriving at compromises in the face of intractable differences. “Simplistic rights talk”, says Glendon, “simultaneously reflects and distorts American culture. It [...] omits our traditions of hospitality and care for the community”.<sup>20</sup>

The U.S. Government has been incredibly active in exporting its understanding of human rights over the years, and the U.S. has – through military intervention and other aspects of her foreign policy – involved herself directly in the domestic affairs of many countries. Many are concerned that in this broader picture, U.S. Government references to ‘human rights’ may sometimes be instrumentalised to serve national political interests.

### 4. A Confucian Perspective on Human Rights

As HAN Sangjin argues, a Confucian perspective on human rights does not accept the rigid American dichotomy between individuals and their community.<sup>21</sup> Though a corresponding word does not exist in classical Confu-

<sup>14</sup> Pico della Mirandola, *On the Dignity of Man, on Being and the One*, Hackett Publishing, 1998, p. 5.

<sup>15</sup> Immanuel Kant, *The Metaphysics of Morals*, translated by M. Gregor, Cambridge, 1991, pp. 434–435.

<sup>16</sup> Immanuel Kant, *Lectures on Logic*, translated and edited by J.M. Young, Cambridge, 1992, p. 193.

<sup>17</sup> Donnelly, 2009, p. 22, see *supra* note 7.

<sup>18</sup> Immanuel Kant, 1991, p. 462, see *supra* note 15.

<sup>19</sup> Joel Feinberg, “Duties, Rights and Claims”, in *American Philosophical Quarterly*, 1966, Vol. 3, p. 143.

<sup>20</sup> Mary Ann Glendon, *Rights talk: The impoverishment of political discourse*, Simon and Schuster, 2008, pp. xii–xiii.

<sup>21</sup> HAN Sangjin, “Confucianism and Human Rights”, in *Confucianism in Context: Classic Philosophy and Contemporary Issues, East Asia and Beyond*, Wonsuk Chang and Leah Kalmanson (eds.), State University of New York Press, 2010, p. 129.



Confucian texts, the idea of 'dignity' can be gleaned. ZHANG Qianfan claims 'personal dignity' captures the essence of Confucian ethics.<sup>22</sup> According to Joseph Chan, the Confucian view of human persons as capable of realizing *ren*, the highest Confucian moral ideal, means certain ability or disposition to care for and sympathise with others. Human beings must live in society to become human and flourish. Chan further notes that Confucians do not think of themselves as subjects possessing rights upon which they make claims against each other, but of reciprocal commitments, of mutual love and care.<sup>23</sup> Confucianism views society as an organic whole, and values the function of one's family, community and country.

This does not mean that Confucianism diminishes individual interests. Chan distinguishes *self*-interest and *selfish* interest, and suggests that Confucianism embraces the former. He argues that human rights and Confucianism are compatible: human rights protect important interests in *ren*, which, simply put, means to love your fellow men. If mutual love fails, human rights protection serves as a fall-back.<sup>24</sup> From this perspective, Confucianism endorses individual rights and duties towards others, in co-existence. As Chan argues, the concept of human rights does not imply that humans are *asocial* beings, with interests independent of and prior to society. Rather, using freedom of expression and religion as examples, he shows that human rights protect those interests of an individual that are social in nature. Even if it is an individual's right that justifies a human right, the content of interest may well be social.<sup>25</sup> Hence, it would be amiss to look at human rights independently from others and society. The fulfilment of our human rights largely depends on respecting the rights of others.

## 5. Time to Grow Deeper Roots

Attempts to bring together Confucian texts and international human rights may help ground human rights in

some important countries. This would also seem necessary as regards classical Indian texts.

Grounding international human rights is necessarily a continuous process, where the main challenge evolves over time. At this stage, we must seek a better balance between individual human rights and the well-being of society as a whole. For those who are primarily interested in promoting individual human rights, it is now required that the value of human 'dignity' be elaborated with greater intellectual rigour and global perspective than what has been done to date. As illustrated by the references above to the profound importance of the Roman, Judeo-Christian and German traditions, the Anglo-sphere tendency to ground international human rights in their national constitutional law traditions has become inadequate and is not able to deliver what is now required.

The time may have come for a coalition of Chinese, Continental-European and genuine scholars of East-Asian religious-philosophical traditions to move research and inquiry systematically and energetically forward so that the universal legitimacy of human rights can grow deeper roots. The rich Chinese tradition of concern for the link between the individual and society, between our duties and rights, may hopefully contribute to the course of promoting international human rights.

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<sup>22</sup> 张千帆(ZHANG Qianfan), 为了人的尊严 (*For the Human Dignity*), Beijing: 中国民主法制出版社 (China Democracy and Law Press), 2012, p. 25 (author's translation).

<sup>23</sup> Joseph Chan, "A Confucian Perspective on Human Rights for Contemporary China", in *The East Asian Challenge for Human Rights*, Joanne R. Bauer and Daniel A. Bell (eds.), Cambridge, 1999, pp. 216–217.

<sup>24</sup> *Ibid.*, p. 233.

<sup>25</sup> *Ibid.*, p. 216.