

“Human Rights, Human Dignity, and Power”
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1. Introduction

This paper explores the connections between human rights, human dignity, and power. The idea of human dignity is omnipresent in human rights discourse, but its meaning and point is not always clear. It is standardly used in two ways, to refer to (a) a normative status of persons that makes their treatment in terms of human rights a proper response, and (b) a social condition of persons in which their human rights are fulfilled. This paper pursues three tasks. First, it provides an analysis of the content and an interpretation of the role of the idea of human dignity in current human rights discourse. The interpretation includes a pluralist view of human interests and dignity that avoids a narrow focus on rational agency. Second, this paper characterizes the two aspects of human dignity in terms of capabilities. Certain general human capabilities are among the facts that ground status-dignity, and the presence of certain more specific capabilities constitutes condition-dignity. Finally, this paper explores how the pursuit of human rights and human dignity links to distributions and uses of power. Since capabilities are a form of power, and human rights are in part aimed at respecting and promoting capabilities, human rights involve empowerment. Exploring the connections between human rights, capabilities, and empowerment provides resources to defend controversial human rights such as the right to democratic political participation, and to respond to worries about the feasibility of their fulfillment. This paper also argues that empowerment must be coupled with solidaristic concern in order to respond to unavoidable facts of social dependency and vulnerability. A concluding section identifies some commonalities and differences with the approach to the ontological underpinnings of human rights presented by Carol Gould in her contribution to this volume.

2. Analysis of uses of “human dignity” in the main human rights documents

2.1. A brief survey

I focus here on the idea of human dignity in the specific context of human rights practice.¹ A natural starting point for our exploration is the main human rights documents. Their inspection reveals at least eleven points about the use of the idea human dignity.

(i) Some utterances seem to refer to human dignity as an inherent property of human beings, a status they constantly have rather than one they can achieve. (a) The first sentence of the Preamble of the Universal Declaration of Human Rights (UDHR) refers to the “inherent dignity ... of all the members of the human family.” (b) The fifth sentence expresses “faith ... in the dignity and worth of the human person.” (c) Article 1 says that “[a]ll human beings are born free and equal in dignity and rights.” (d) The second and third sentences of the Preambles of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) also refer to human persons’ “inherent dignity.” The expression also occurs in the first clause of Article 10 of ICCPR and in the first sentence of Article 20 of the Vienna Declaration.

(ii) A statement appears to tell us something about the features in virtue of which human persons have human dignity in the sense referred to in (i): “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” (UDHR, Article 1).

(iii) We are told that human rights are “derived” from human dignity. (a) The third sentence of the Preamble of both ICCPR and ICESCR refer to the recognition “that these rights derive from the inherent dignity of the human person.” (b) The third sentence of the Preamble of the

¹ For broader historical explorations see George Kateb, *Human Dignity* (Cambridge, MA: Harvard University Press, 2011) and Michael Rosen, *Dignity* (Cambridge, MA: Harvard University Press, 2012).

Vienna Declaration claims that “all human rights derive from the dignity and worth inherent in the human person.”

(iv) Some statements appear to refer to dignity as a more contingent condition or state that human beings may come to enjoy (and this includes certain treatment of them by others). This sense is different from the one considered so far. Examples include reference (a) to “economic, social and cultural rights as indispensable for [persons’] dignity and the free development of [their] personality” (UDHR, Article 22); (b) to “just and favourable remuneration” from work “ensuring for [the worker and their] family an existence worthy of human dignity” (UDHR, Article 23, third clause); (c) to education as being “directed to the full development of the human personality and the sense of its dignity” (ICESCR, Article 13, first clause); and (d) to seeking a treatment of refugees that involves “durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation” (Vienna Declaration, Article 23, third paragraph).

(v) Some references to dignity seem ambiguous between the senses mentioned in (i) and (iv). An example is the claim that “one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their abilities” (Vienna Declaration, Article 55).

(vi) Some statements intimate a connection between dignity, rights, and social and political power:

(a) “[A]ll human rights derive from the dignity and worth inherent in the human person, and ... the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms” (Vienna Declaration, Preamble, third sentence).

(b) “[E]xtreme poverty and social exclusion constitute a violation of human dignity and ...

urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and the efforts to combat extreme poverty” (Vienna Declaration, Article 25).

(c) “Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression and injustice. Democratic participatory governance based on the will of the people best assures these rights” (UN Millennium Declaration, Article 6).

(vii) Dignity seems in most cases to be primarily a predicate that applies to individuals. (See, for example, (vi.a) above). However, it occasionally appears to apply to collectives. An example includes indigenous people in Article 20 of the Vienna Declaration.

(viii) Some statements emphasize the global scope of the duties to respond to human rights deprivations. Thus (a) the UN Millennium Declaration, in its Article 2, says that “in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality, and equity at the global level.” (b) The global scope of duties correlative to human rights (and thus to human dignity) is a clear corollary of Article 28 of UDHR, according to which “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

(ix) Not only are some duties correlative to human rights (and thus to human dignity) global in scope (as mentioned in (viii)). Some human rights documents emphasize that also the site of

action and responsibility is quite wide, including not only state institutions. (a) A striking example is the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), whose claims range over “the political, economic, cultural, civil or any other field” (Article 1). (b) Rene Cassin, one the drafters of the UDHR, insisted that the duties of individuals and institutions below and above the state are crucial.² (c) In its Preamble, the UDHR’s is presented as “a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society ... shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”

(x) “Children” are said to be within the scope of dignitarian principles. The text cited in (viii.a) continues: “[W]e have a duty ... to all of the world’s people, especially to the most vulnerable and, in particular, the children of the world.”

(xi) It is important, when we think about human dignity as a status in the sense mentioned in (i), that this status differs from other, specific social statuses. “Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (UDHR, Article 2).

2.2. Conceptual elements and substantive questions

The conceptual structure of the use of the idea of human dignity in human rights discourse surveyed in 2.1 is not immediately transparent. But an analysis of it reveals some elements and

² See Mary Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 93,113-4. This is why Cassin proposed, just before its adoption, that the title of the Declaration be changed to “Universal Declaration of Human Rights” from “International Declaration of Human Rights.” Glendon explains: “The title ‘Universal’ [Cassin...] later wrote, meant that the Declaration was morally binding on everyone, not only on the governments that voted for its adoption. The Universal Declaration ... was not an ‘international’ or ‘intergovernmental’ document; it was addressed to all humanity and founded on a unified conception of the human being” (161).

connections. The elements are the following:

- Human persons' more or less general, constant, or permanent features. (Examples include persons' conscience, reason, and capacity to act in a spirit of brotherhood—see (ii) and (xi) above.)³
- Human persons' human dignity as an inherent property. Let us call this *status-dignity* (see (i)).⁴
- Human persons' various human rights.
- Human persons' condition in which human rights are fulfilled. Let us call this *condition-dignity* (see (iv)).
- Human persons' duties towards others concerning the fulfillment of their human rights (and thus their dignity in the two senses). (See (viii) and (ix).)
- Human persons' power to control the political process and other aspects of their social life that affect the fulfillment of their human rights. (See (vi).)

How are these elements related? The basic links seem to me to be the following:

1. Human persons have status-dignity in virtue of some of their more or less general, constant, or permanent features.
2. Human persons have human rights because they have status-dignity. (See (iii).)

³ The capacity to act in a spirit of brotherhood must be assumed to exist by the text referred to in (ii), since it says that people “should” act in that spirit, and should, like ought, implies can.

⁴ The general idea of dignity as a normative status is that dignity grounds certain kinds of treatment toward those who have it. If X has dignity, then any other person Y ought to treat X in certain respectful and helpful ways. (On the last point see Derek Parfit, *On What Matters*, vol. 1 (Oxford: Oxford University Press, 2011), 241). Furthermore, in our context of discussion, if X has dignity, then X is *entitled* to certain forms of treatment by Y. The relevant forms of treatment owed to X by Y, and the recognition of rights to that treatment, would be a proper response to X's dignity. Now, if X has dignity, then X has some features F such that any other agent Y ought to respond to X-who-has-F by treating X in certain respectful and helpful ways. The appropriate forms of respect and help, and their correlative rights, depend in part on the content of F. Different kinds of dignity depend on the features F that X has and that ground certain proper normative responses (thus, human dignity is broader than the “dignity of office” of a magistrate, since the former depends on general facts about human beings and the latter depends on a specific institutional status—see (xi) in 2.1). In sum, if X has F, then X has status-dignity, which in turn helps ground some of X's rights and some of Y's duties towards X.

3. Human rights are those rights the fulfillment of which secures that human persons enjoy a dignified life (condition-dignity).
4. Human persons have duties to respect, protect, and promote the fulfillment of those rights. Such duties may have a wide scope and site.
5. To secure the fulfillment of human rights, human persons require access to various forms of power, and thus they have a right to that access. Some forms of power may be instrumentally significant (to achieve and retain condition-dignity). And some forms of power may be intrinsically significant (their recognition may involve a recognition of capacities that give rise to status-dignity).

I have proposed an analysis of the use of the idea of human dignity in some of the most important documents in human rights discourse. Now, this analysis prompts a set of substantive interpretive questions. What are the features of human beings that give rise to status-dignity? What does that status consist in? How does that status support the existence of various human rights? How are duties to properly respond to status-dignity (by contributing to furthering condition-dignity) to be articulated? What forms of power are instrumentally or intrinsically significant for an account of human dignity and human rights? In the remainder of this paper I address these questions about how to understand human dignity in human rights practice.

3. Developing a proposal about how to understand human dignity

3.1. The role of the idea of human dignity in human rights discourse and practice

How should we develop an account of human dignity? In this section I suggest a general interpretive strategy (3.1), and address the question of the extent to which we should expect the idea of human dignity to be a key for our understanding and justification of human rights (3.2).

In the next section I will propose a partial deployment of this strategy.

To make headway in determining what to think about human dignity in the practice of human rights we could ask: What is the role, or point, of invoking the idea of human dignity in the practice of human rights? The content of the idea depends on its function within the practice in which it operates. So, to understand human dignity, we must have a view of what the use of the concept is to accomplish within human rights practice. But before answering this question, we should notice that it could be construed in different ways. I will construe it in terms of what we may call a *deliberative interpretive proposal*, which I see as different both from an *elucidation* and a *stipulation*. An elucidation of a concept within a practice is a description of how agents who participate in the practice understand it. A stipulation of a concept is a recommendation that participants in the practice use it, regardless of whether they have done it already. A deliberative interpretive proposal falls somewhere in between. Like a stipulation and unlike an elucidation, its aim is not fundamentally descriptive. Its aim is deliberative in the sense that it seeks an answer to a question of the form “How am I *to* conceive of human dignity in human rights practice?” This question differs from the elucidatory question “How did, or have, I conceived of human dignity in human rights practice?” A deliberative proposal may recommend an understanding of human dignity that differs significantly from previous or current understandings, and it involves an ethical assessment of the practice. But although it is a proposal, it is not a mere stipulation. Its justification may require some continuity with the previous forms of the practice within whose continuation it is to play a role. It involves an interpretation of the practice, a view of what it has been and how it could be developed. To forestall misunderstandings, I do not say that the interpretation of the practice assumes that it is valuable. The result of the deliberative assessment may well be that the practice must be abandoned altogether. But if the practice is worthy of

continuation, then one's understanding of the key normative ideas in it should take into account the valuable materials it itself provides. This is the case with the human rights practice (as opposed to, say, the practice of slavery).⁵ When asking how this practice should be shaped from now on, a deliberative interpretive proposal is appropriate. A merely elucidatory answer would risk being unduly conservative, and a merely stipulative answer might turn out to be irrelevant to the practice, or involve a change of subject we would regret.

Now, what desiderata should we have in mind when developing a deliberative interpretive proposal regarding the normative idea of human dignity in human rights practice? In general, we should seek a deliberative reflective equilibrium in which our understanding of human dignity fits well within the set of claims we have reason to make about the content and justification of human rights.⁶ I think that at least four desiderata should play a role in this search. First, as we saw, we should seek some level of continuity with the practice if it is valuable. In this paper I try to honor this desideratum by starting with a survey of the uses of the idea of human dignity in human rights practice (see section 2, and the next paragraph). Second, we should make proposals whose content has intrinsic ethical appeal. As I will go on to argue in the remainder of this paper, human dignity should be used to pick out significant values in social life, and to help us articulate and defend morally appropriate responses to them. The practice of human rights is worth pursuing largely because, and to the extent that, it is framed in some such ethically desirable way. Third, and obviously, our proposal should offer a concept that is not intolerably

⁵ Notice, however, that the normativity of the values on which the ethical assessment of the practice relies does not depend on their having been operative, or accepted in the practice. My account of deliberative interpretive proposals is in some way similar to the "constructive interpretation" approach to practices and normative concepts that Ronald Dworkin proposes in *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), ch.2. However, I do not simply adopt that approach because it is not fully clear to me how description and evaluation of a practice operate within it. I think it is important to distinguish the questions "What is this practice like?" and "What should this practice be like?" even if they are related.

⁶ On deliberative reflective equilibrium see T. M. Scanlon, "Rawls and Justification," in *The Cambridge Companion to Rawls*, ed. S. Freeman (Cambridge: Cambridge University Press, 2003), 139-67.

indeterminate. Finally, our proposal should have justificatory power. Our account of human dignity should help us formulate and defend the human rights we have reason to accept.

Let us return to the role of human dignity in human rights practice. We can take our cue from how the idea has operated since the drafting of the UDHR. It has been referred to as perhaps the central substantive normative idea of the human rights project. More specifically, human dignity has been invoked as a shareable normative idea whose role is to help ground and give unity to the human rights project in the face of deep disagreement about fundamental metaphysical and moral principles amongst its supporters.⁷ The idea of human dignity is thus architectonic to the practice, and responds to important needs within it. We need an idea that carries compelling moral force, can help us explain what is distinctive and valuable about the human rights practice, and can help us argue about various human rights. We also need that idea to provide a common ground even if different people in turn defend it in different ways on the basis of more fundamental principles that are not shared. (This constitutes the best realistic hope in a world of deep cultural, religious, and moral diversity.) Our answer to our original question about the role of human dignity could preserve this role, and be mindful of the circumstances (regarding moral importance and disagreement) that surround it.

We could then develop an understanding of human dignity that captures the basis of human rights, their great importance, and the fact that disagreement on deeper levels of justification exists and is likely to remain. In formulating a more determinate idea, we would do well to signpost both areas of (existing or likely) agreement and disagreement about it. This means that, often, the idea of human dignity will mark a terrain of argument and bounded disagreement. The latter is not futile. Human rights are an *ongoing* project, and greater levels of agreement may be

⁷ Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19 (2008), 655-724, at 675-8; Glendon, *op. cit.*, 146.

achieved in the future.⁸ By identifying areas of disagreement we care about as focal points of debate, we express to each other that we are committed to pursuing the project.

This idea of a terrain of argument is important in defusing the common worry that there is too much disagreement about the idea of human dignity for it be of good use. First, notice that the same could be said about equality and liberty, which we rightly do not think should be dropped from our debates about social justice. These ideas do important justificatory work, which we need to do if our more specific claims are to be better than mere assertion. And dropping them will not solve our disagreements, which are likely to infect any other justificatory ideas we choose to use as substitutes. We do better by taking them as marking important areas of debate in which it makes sense to engage. Second, we can recognize that since there is disagreement about deeper moral foundations, whatever agreement about human dignity we reach may be incomplete. For example, a Kantian and a Catholic may agree that human dignity is very important, and that it helps justify human rights. But since they disagree on whether human dignity as a normative status concept applies to beings that are not rational agents (such as a severely cognitively impaired individual or a human fetus), they might disagree on whether (or how) human rights doctrine concerning condition-dignity applies to them. We should acknowledge that this kind of disagreement exists and should not seek to eliminate it by definitional fiat.

3.2. Human dignity and a broad view of human interests

The idea of human dignity is key to understanding human rights, their basis and content. An account of human dignity should point us to certain features of human beings that give rise to their status-dignity and are significant in justifying human rights (the fulfillment of which

⁸ Charles Beitz helpfully characterizes the human rights practice as “emergent.” Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), sect. 7.

constitutes condition-dignity). But is the idea of human dignity a partial or a systematic key? It would be a systematic key if it is necessary for the justification of all human rights, and it would be a partial key if it is a contributory resource for justifying some but not all human rights. If we think that the former is the correct answer, a question arises about the relation between two common ways of understanding human rights: (a) as flowing from the importance of human dignity; and (b) as flowing from the importance of certain human interests. (a) and (b) might converge on the list of human rights that are justified. If this is so, then the two approaches would be extensionally equivalent, and differences in intension might not, perhaps, be very important. But if (a) and (b) have different implications as to which rights are justified, then we must choose. But what should we prioritize in that choice? Should we preserve the rights that are not justified by one view and invoke the justification of them provided by the other? Or should we preserve the preferred basis of justification and see the alleged rights that do not flow from it as not being human rights?

A way in which we may seek convergence between (a) and (b) is by saying that the former works through the latter: if persons have human dignity, they have human rights whose content involves the protection of their urgent human interests. I favor this approach. But given two common understandings of (a) and (b), this strategy may not seem to work. The features that give rise to status-dignity may not comprise all that is needed to capture some intuitively important human interests. For example, if we think, as many do, that what gives rise to human dignity is human beings' capacity for rational agency,⁹ then we will not include some obvious sources of urgent human interests such as the capacity to feel pain. The mismatch seems to arise

⁹ See, for example, James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008). Griffin focuses on the "the capacity to choose and to pursue our conception of a worthwhile life" (calling it "normative agency") (p. 45). For a more pluralist view that captures dignity in terms of various basic claims, see James Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell, 2007), ch.4.

as follows: when we identify important human interests, we look for normatively relevant general features of human beings without regard as to whether some of these features are also held by other beings, for example non-human animals; in contrast, when we identify human dignity, we look for general features of human beings that differentiate them in normatively significant ways from other beings such as non-human animals.¹⁰ I worry that if we understand human dignity in the way stated in the previous sentence, and we decide to base the justification of human rights on it, we will be left with a less pluralistic evaluative view of human interests than that sentence refers to: the focus would be not on the urgent interests that *all* (or *most*) humans have, but on the subset of them that *only* humans have. We will then be unable to refer to obviously important interests such as avoiding pain when justifying human rights. This is too restrictive.

There are two ways to avoid the unduly restrictive conclusion. One is to construe human dignity as a partial rather than as a systematic key for the articulation of human rights. But this construal would clash with the common view within human rights practice that human rights must be justified by reference to human dignity (see (iii) in 2.1). So we should see whether a less revisionary option is available.¹¹ One such option would be to find a plausible account of human

¹⁰ Is this true? Presumably, Kantians could think that rationality is something that human beings and other beings, e.g., intelligent beings in other planets, could hold. They might just think that as a matter of fact, non-human animals on earth don't have rationality. But that strategy would not be premised on the goal of finding what is distinctive about human beings (which is what I am considering here). It starts with the value of rationality, and then claims that human beings (and any other beings that are rational) qualify as having dignity. In this paragraph I am not discussing that strategy. I find it problematic for the different reason that it has a narrow account of the sources of dignity. I turn to the need for a broader account in the rest of this subsection. I thank Matthew Liao for discussion on this point.

¹¹ What I proceed to suggest may not succeed at positioning human dignity as a systematic rather than as a partial key for the articulation of human rights. This failure may not affect the proposal regarding the relations between human rights, human dignity, and power that I outline in section 4, which is explicitly presented as partial.

A way to make the view of human dignity as a systematic key less vulnerable is to interpret the common claim that human rights are derived from human dignity as saying that every justification of a human right must draw on human dignity, even if they need not draw *only* on it. Human dignity would then be an idea that is pervasive without being exhaustive: it should figure in all justifications, but not as the only key component. Other values (perhaps different for different rights) might also be invoked.

dignity that is broader than the one mentioned in the previous paragraph. A proposal I favor is the view that a significant basis of humans' status-dignity is a set of very important human capabilities. These capabilities ground interests in the opportunities and abilities to maintain, develop, and exercise them. I will develop this capabilitarian picture in section 4. For now, it is important that the set of important capabilities is plural and broad: it does not only include capabilities for rational (prudential and moral) agency, but also other capabilities, such as to feel pain and pleasure. The latter are important, for example, in a straightforward articulation of some rights to bodily integrity and health care.

Now consider the worry (which may be part of what motivates narrow conceptions of human dignity¹²) that this account, by including the capabilities to feel pain and pleasure, will make us unable to identify specifically human rights. The account will yield rights that some non-human animals would also have. It would be better, in an account of *human* rights, to see the basis of *human* dignity as comprising *specifically human* capabilities and interests.

We can respond to this worry in at least three ways, which I present in order of decreasing concessiveness. First, we can give instrumental arguments about the importance of responding appropriately to humans' capability to feel pain and pleasure. An example would be to point out that when people experience extreme pain, they are unable to exercise their specifically human capabilities of rational agency. This response retains the narrow account of human dignity because the not specifically human capabilities or interests are causally but not constitutively relevant for it.

¹² Another, perhaps related worry motivating narrower conceptions of dignity is that broader conceptions are too indeterminate. See Griffin, *op. cit.*, 51-6, 88-90. I think that determinateness of sense is important, and mentioned it as the third desideratum of deliberative interpretative proposals in 3.1. But we should also attend to the other important desiderata. If a somewhat less determinate proposal fits better the other desiderata than an alternative, more determinate proposal, then we may have all things considered reason to prefer the former. The need for greater determinacy can then be fulfilled through interpretations of dignity in specific contexts.

A second response is to point out that people have a specifically human way to experience pain and pleasure. Usually, such experiences have an intentional content that involves some level of linguistic and inferential articulation. This response is less concessive than the previous one because it sees at least some instances of pain and pleasure as constitutive of specifically human life.

I accept the foregoing responses, but I think that we should go further. Consider pain. We also want to recognize the great importance of sheer, animal, pain in our lives, even when it is not articulated in the ways the second response envisages. We want to have arguments for human rights to avoid experiences of such pain that are not merely instrumental but are also based on the recognition of their great intrinsic significance. For example, we do not only want to be able to say: “I shouldn’t be beaten up or tortured when I try to express political dissent, because if I am I will be less likely enjoy my right to political participation.” We also want to be able to say, more directly: “I am entitled to live without arbitrary impositions of pain.” Human rights practice would be severely impoverished if utterances like the last are ruled out as basic (rather than merely derived) moves.

A third response seems then to be called for, in which we take some capabilities that humans have, even when other animals also have them, as among the constituents of what gives rise to the normative status of human dignity. This response is not concessive to the objector, because it denies that human dignity must only be based on features of human beings that are not shared by other beings.

How should one then respond to the likely protest that this account fails to capture *human* rights? By insisting that the not specifically human features included are extremely important to understand what human beings are and have interests in. Even if other animals *also* have them,

they are no less human for that. The objector may say: But will we not then have to grant dogs *human* rights to avoid pain? The answer is: Of course not, as dogs' pain is not humans' pain. But it is pain all the same, the objector continues. At this point one must simply say: Surely there are *animal* rights that partly overlap with *human* rights.¹³

An important source of the difficulty here is that the idea of human dignity is sometimes linked with a hierarchical perspective on value. Human dignity must capture the very high worth of human beings in contrast with other, lesser beings (by analogy with the earlier, historical use referring to the dignity of those in higher classes or castes when compared to those in lower ranks).¹⁴ I see the force of this point. But what gives “higher” worth to human beings is not all that gives worth to them: “lesser” sources of the worth of humans are still significant. Thus, the capacity for rational agency may make humans especially significant, but their abilities to feel pleasure and pain are further sources of value. I also see that pressing this line may lead to issues of conflict of interests between humans and non-human animals. But when not utterly tragic (as when we would die unless we kill animals for food), these conflicts may have to be responded to by surrendering, or severely qualifying, humans' alleged entitlement to harm other animals.¹⁵

4. Dignity, power, and capabilities

4.1. Rank, status, and power

¹³ My account relies on a conjunction: There is a human right to O if (inter alia) this is a right that humans have and O is connected with some of the features F that give rise to status-dignity. Other animals might have some F, and a right to O, but since the right would not be one that humans have, the absurd conclusion that they have a human right to O does not follow. The relevant contrast when shaping our ideas of human dignity and human rights is not between humans and other species, but between what belongs to all humans and what belongs to some by reference to special features such as race, class, and nationality. I thank Rowan Cruft and Massimo Renzo for discussion on these issues.

¹⁴ Jeremy Waldron, “Dignity and Rank,” *European Journal of Sociology* 48 (2007), 201-37; and “Tanner Lectures: Dignity, Rank, and Rights,” (Berkeley, April 2009), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1461220>

¹⁵ See Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), 157-63.

I present now a more determinate and substantive account of human dignity that addresses the questions mentioned in the last paragraph of 2.2. I should emphasize that this proposal is partial rather than complete. It focuses on foregrounding the significance of social and political power.

Some formulations in the survey in 2.1 state intriguing connections between human dignity and social and political power. (vi.a) says that people “should be the principal beneficiary and should participate actively in the realization” of the human rights that derive from their status-dignity. This statement suggests that people should have the power to shape the social processes that fulfill their human rights rather than be merely the passive recipients of it. Empowerment seems to have intrinsic significance. It may also be a constitutive part of the condition in which human rights are fulfilled. (vi.c) says that “democratic participatory governance ... best assures” the fulfillment of human rights. Here specifically political empowerment appears to have at least instrumental significance. It may be causally important in the process of human rights fulfillment. How can we make sense of these connections between human rights, dignity, and power?

One possibility is to explore further the notion of dignity as a status. If we look at statements (i) and (xi) we notice an important contrast. Human rights are based on a status-dignity that all human beings possess equally. Such a status differs from more circumscribed ones that might be attached to specific or contingent social positions. In his recent work on the subject, Waldron has accounted for this contrast by exploring the genealogy of the idea of dignity in relation to the idea of rank.¹⁶ Historically, dignity was first associated with the high rank or nobility of some individuals occupying high positions in hierarchical social structures. But later dignity became associated with all individuals in an egalitarian way. Waldron explores, in particular, the significance of this shift for the development of our view of the nature of juridical institutions. I think that the genealogical link is worth exploring further to reveal the importance of social and

¹⁶ Waldron, *op. cit.*

political power for dignity and human rights. The inegalitarian and non-universalist use of dignity in the past was directed to agents who had power over others. Thus, the egalitarian and universalist use could be seen as demanding equal empowerment. Such an empowerment, I suggest, would be part of what condition-dignity involves, and it would be a fitting response to people's status-dignity.

Now, we cannot make full sense of condition-dignity as involving equal empowerment if we just think about how to universalize and equalize the earlier entitlements of rank. First, as Waldron recognizes, some entitlements would simply disappear if they were to be universalized (this holds for essentially hierarchical power positions such as being a slave-holder or an aristocrat).¹⁷ Second, in this exercise we would be stuck with the raw materials provided by the hierarchical societies we take as starting points. These may not provide enough information to articulate all the forms of condition-dignity and empowerment that we have reason to recognize. In addition to the formal test (according to which we should recognize only those conditions that survive universalization), we need a more substantive strategy that helps us explain why some candidates make ethical sense, which amongst those that can be universally held are to be accepted, and why power is an important dimension for their articulation.

4.2. Capabilities, power, and the basis and content of human rights

Why does power matter for dignity? The answer I propose has two components. First, power matters for status-dignity because some forms of it are among the facts that make human beings need and deserve treatment in terms of human rights. Second, power matters for condition-dignity because some forms of it contribute both intrinsically and instrumentally to the fulfillment of human rights. I will argue that these points can be helpfully articulated in the language of capabilities, which is already being used to explore the link between what human

¹⁷ "Dignity and Rank," 224-5, 227-8; "Dignity, Rank, and Rights," 32.

beings can do or be and what they should be able to do or be in their social and political life. Because of this link, the capability perspective helps us account for human rights and dignity. Human beings have some capabilities that justify status-dignity, and they should have some capabilities that constitute and secure condition-dignity.

Before unpacking these claims, let me briefly say why the concept of *capability* can be used to articulate various considerations about *power*. The general idea is that we can use the vocabulary of capabilities to capture important issues commonly couched in terms of power. This is possible because of the coincidence between the two concepts (or, at any rate, between the aspects of them that I proceed to mention). Let me start by characterizing the notion of capability. As used by defenders of the so-called “capability approach,” a capability is a real or substantive (as opposed to merely formal) opportunity or freedom of persons to do or be certain things (i.e. to engage in certain “functionings”) if they so choose.¹⁸ This notion can be used to capture the concept of agential power in both its general sense and in its specific social and political sense. The general sense is the following: In certain circumstances C, an agent A has power with respect to whether some outcome or state of affairs O occurs to the extent that A can voluntarily determine whether O occurs. The idea is simply that an agent’s power is their ability to shape aspects of the world as they choose.¹⁹ As I see it, a capability is an agent’s power to do or be certain things. A more specific sense of power concerns social and political settings: here an agent has power to the extent that they can voluntarily shape their social interactions with others, including the decision-making processes through which the outcomes of those

¹⁸ Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999), 74-6. Nussbaum, op. cit., 20-5.

¹⁹ This ecumenical characterization does not preempt substantive debates: it may apply to individual or collective agents, allows for degrees of power, includes power over oneself and over others, includes “good” and “bad” ways of exercising power (e.g. through rationally convincing someone to do something or through force, coercion or manipulation), includes power over things besides persons (e.g. technological power to transform material environments), and includes various possible subjects of power: not just someone’s action, but also the formation of their beliefs, desires, and other features and circumstances. For a survey see Steven Lukes, *Power: A Radical View*, 2nd. ed. (New York: Palgrave, 2005).

interactions are determined. Specific capabilities in social and political life can be identified to capture instances of this dimension of power.

Let us now consider how the idea of capability, by articulating the aforementioned general and specific dimensions of power, can help us make sense of status-dignity and condition-dignity.

(a) *Status-dignity*. To illuminate the relation between capabilities and status-dignity we can ask: What are the general facts that make our practical attitudes and responses to human dignity desirable and feasible? This question tracks what we may call the *circumstances of human dignity* (by analogy with Rawls's "circumstances of justice").²⁰ It seems to me that at least part of the answer should refer to some capabilities (i.e. some powers) that people normally have.²¹ Some valuable basic capabilities are among the features of human beings that ground our view of them as deserving the kind of respect and concern that human rights articulate. These clearly include the capabilities concerning reason, conscience, and solidaristic action (see (ii) in 2.1). Human beings are able to recognize, assess, and act on the basis of reasons. These involve both prudential considerations about how to live a good life and moral considerations about how to show proper respect and concern toward other persons. Human beings can take the initiative and shape their lives (to pursue the good and the right) in multiple ways. They can imagine alternative forms of personal and social life, and achieve some of them through technological inventions, productive work, and social cooperation. Of course, human beings have other valuable basic capabilities, such as to experience pleasure and to relate cognitively and aesthetically to the world around them.

Referring to the aforementioned valuable capabilities is not enough to explain why the talk of

²⁰ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), sect. 22.

²¹ Of course, people vary in the extent to which they have these capabilities, but what is crucial for what I proceed to say is that they have them to a sufficient extent. These capabilities are what Rawls calls "range properties" (op. cit., sect. 77).

human dignity makes ethical sense. Such talk links to rights and duties, and for these to be practically relevant there must also be some facts that render the development and exercise of the valuable basic capabilities both difficult and feasible. Sources of difficulty include the existence of certain *disvaluable* capabilities—such as to be cruel or domineering—and certain deficiencies regarding the exercise of valuable capabilities—such as indifference or insufficient solidarity. They also include conflicts of interests given material scarcity (so that people find it hard to simultaneously realize their prima facie permissible life-projects when there are not sufficient resources for everyone). Still, if talk of human dignity and rights is to have real practical traction (as it clearly does), circumstances have to be such that important achievements regarding the development and exercise of basic valuable capabilities are accessible. Thus, it should be the case that the operation of the disvaluable capabilities is not always triumphant, valuable capabilities could be extensively deployed, and circumstances of scarcity and conflict can be ameliorated (for example through technical and institutional innovation). Dynamic duties to expand the feasibility of a decent life for all must be possible to fulfill.²²

(b) *Condition-dignity*. Human beings are agents with capabilities of prudential and moral reasoning, imagination, knowledge, productive labor, and social cooperation. Given material and social difficulties, they have reason to respond to the existence of these features with respect and concern, by recognizing the status-dignity of each person. Such respect and concern is to be expressed by articulating a set of human rights and duties. The basic valuable capabilities that give rise to status-dignity ground a plurality of human interests whose content concerns the abilities to maintain, develop, and exercise them in desirable and permissible ways. This brings us to the issue of condition-dignity. We can identify various kinds of social conditions in which

²² On *dynamic duties* see Pablo Gilabert, “The Feasibility of Basic Socioeconomic Human Rights. A Conceptual Exploration.” *Philosophical Quarterly* 59 (2009), 559-81.

human dignity is fostered. Human rights practice focuses on the most urgent of them. In general, seeing human rights as supporting capabilities means being concerned with whether people are really able to do and be what they have urgent reason to value.²³ If there is a human right to x, then every human person ought to have the capability to get x.

Now, the existence of specific capabilities involves the presence of social and political empowerment, which is significant both intrinsically and instrumentally. It is intrinsically significant for condition-dignity because it is desirable that the occurrence of states of affairs in which people develop and exercise their capabilities is up to them, i.e. that they select and shape them through their choice. Consider labor rights (see (iv.b) in 2.1). People should be able to work, but no one should be forced to work. And labor conditions should not be humiliating and degrading, as is often the case in contemporary sweatshops. Social and political empowerment is also instrumentally significant. It makes sense to recognize rights to form and join unions (UDHR, Art. 23.4) because they give workers the strength to bargain for labor conditions and remuneration that are not crushing.

If we think of the content of human rights as involving capabilities to engage in valuable functionings, then it is important that people can choose whether to engage in such functionings. This includes being able to articulate, through cooperative exercises of prudential and moral reasoning and inclusive decision-making with others, some appropriate solutions to circumstances of conflict of interests (and rights). Such political capabilities, and the empowerment they involve, are significant intrinsically, as their fostering involves a public recognition of people's capacity to judge and choose how to organize their social life. They also matter instrumentally: individuals can use them to prevent domination, oppression, or

²³ Nussbaum, "Capabilities, Entitlements, Rights: Supplementation and Critique," *Journal of Human Development and Capabilities* 12 (2011), 23-37, at 29-30.

indifference to their basic interests.²⁴ People need political power to keep mechanisms of collective decision-making responsive to their urgent interests. They also need power to process, in a fair and insightful way, the indeterminacy and the disagreements about rights that exist (and thus engage in the terrain of argument mentioned in 3.1). Political empowerment is a reasonable response to the common tendencies to exclude groups of people from political participation and other social advantages, be self-serving and biased when wielding decision-making power, disagree on moral matters, and have limited knowledge of the needs and views of others.

The points made in the last paragraph help defend democratic rights as human rights. The claim that such rights exist has recently been subject to philosophical challenge.²⁵ But it is becoming increasingly recognized in the actual international practice of human rights. We already considered points (vi.a) and (vi.c) from the survey in 2.1 (see 4.1 above). Article 21 of the UDHR and Article 25 of the ICCPR include very strong statements of political participation rights. And a plethora of grass-roots movements from Latin America and Eastern Europe in the 1980s to the Arab Spring and the Occupy movement in 2011 have framed domestic and global campaigns for democracy in terms of human rights. Rights of political equality make clear sense once we see human dignity as tied to capability and power. When some people are treated as political inferiors their capabilities for reason, conscience, and solidaristic action with their fellow human beings are not properly recognized. Their status-dignity is not respected. And when they lack political equality their condition-dignity is not appropriately guaranteed. Some are avoidably placed at the mercy of others who are more powerful. The realization of their

²⁴ This also applies at collective levels. (vii) in 2.1 intimates the importance of collective self-determination for dignity. Empowerment of political communities in their international relations (or of national minorities within multinational states) deserves attention. This is important when addressing the common worry that human rights are used as an ideological instrument in domestic or international domination. To the extent that political equality exists within and between states, the worry loses force.

²⁵ Joshua Cohen, *The Arc of the Moral Universe and Other Essays* (Cambridge, MA: Harvard University Press, 2010), 349-72. Pablo Gilabert, "Is There a Human Right to Democracy? A Response to Joshua Cohen," *Revista Latinoamericana de Filosofía Política / Latin American Journal of Political Philosophy* 1 (2012), 1-37.

fundamental civil and socioeconomic rights is thus less secure than it would be in a political system that gives them full political standing.

Let me add a cautionary remark about the limits of a treatment of human rights and dignity in terms of empowerment. In addition to identifying the many ways in which persons have or need power to fulfill their human rights, we must also recognize unavoidable restrictions. In politics, in economic affairs, and in personal life, human beings cannot be completely independent. A radical ideal of independence is infeasible. We all depend on the help of others to live a decent life. We may not always be able to reciprocate. Given that some significant differences of social and political power may remain even after profound reforms, we may not always be able to make it prudent (on instrumental grounds) for others who are more powerful to help us. Hence, we should emphasize the importance of solidarity, and cultivate our readiness to give it and receive it. This affects the proper understanding of the nature and content of human rights. Consider, for example, Articles 1 and 25 of the UDHR. The first refers to the idea of universal “brotherhood,” and the second recognizes a right to assistance for those who cannot fully support themselves. Securing human rights requires giving people power. But it also requires that they use it with a spirit of human solidarity. This will not be achieved unless we articulate our commitment to human dignity and human rights in a way that illuminates the passive besides the active dimensions of the human condition. We need moral space for dignified vulnerability and receptivity.²⁶

I conclude this section by briefly stating some debts, complementarities, and disagreements regarding the capability approach as developed by Martha Nussbaum. The debts are obvious: I build on Nussbaum’s account of human rights as requiring the presence of certain capabilities,

²⁶ See also (x) in 2.1. Further, we need this sensitivity to avoid sliding from the connection between dignity and power into a destructive attitude toward the nonhuman natural world. The pluralist view of human interests (introduced in section 3.2) can enhance this sensibility.

and define the latter as she does. I also take some basic capabilities as the ground of human dignity, recognize that there is a plurality of them (including forms of sentience and striving that lie beyond rational agency), and claim that the content of human rights (which identify what is needed for a life worthy of human dignity) includes securing various central capabilities. These central capabilities, as Nussbaum explains, involve a development of basic capabilities into “combined capabilities” that include both agents’ internal preparedness to do or be certain things and external material and social conditions that allow them to do so. Nussbaum proposes a valuable list of ten central human capabilities, which, in her account, ground the various human rights. They refer to conditions securing adequate levels of people’s capabilities with respect to life; bodily health; bodily integrity; the use of their senses, imagination and thought; the engagement of their emotions; the use of their practical reason; the development of social affiliation; the concerned relation with other species; activities involving play; and the control of their political and material environment.

This paper advances original points that complement Nussbaum’s approach. It provides a direct discussion of the uses of “dignity” in human rights documents, and proposes a deliberative interpretive proposal to articulate their structure and substance. It explores the fruitful connection between capabilities and various issues normally couched in terms of power. Finally, it introduces the idea of the circumstances of dignity, and within them it emphasizes the significance of disvaluable capabilities and the moral dimension of practical reason (i.e. the power to be reasonable besides rational).

An important difference with Nussbaum is that I present reference to valuable capabilities as providing only a partial key to articulating human rights. There may be human rights whose content is not best, or fully, captured as securing some capability. An example concerns rights to

due process, which are based on independent considerations of fairness. The wrongness of some violations of rights, such as the avoidable failure to make health care available, need not depend on lack of choice by the right-holder (even if that makes them worse). Furthermore, and relatedly, I think that to move from the identification of interests regarding valuable capabilities to the identification of rights we need to deploy a framework of reasoning that systematically factors in the perspective of duty-bearers beside that of right-holders to articulate reasons of feasibility, fairness, and responsibility that contribute to determining whether the interest in having a certain capability links to correlative duties to protect or promote its satisfaction. I think (and argue elsewhere) that moral contractualism would be useful for this task.²⁷

5. Some commonalities and differences with Gould's approach

In her contribution to this volume, Carol Gould argues that any conception of human rights must rely on some general view of human beings, that such a view affects the conception's account of the basis and content of human rights, and that we should develop a conception that captures both the active agency and the interdependence of persons in their social life (including the power relations they face or generate). I agree with these points, and in this paper I provided a fresh articulation and defense of them. I developed the common points by connecting them directly with central aspects of the contemporary human rights practice. The idea of human dignity, which is foundational for that practice, involves both descriptive and normative views of human beings in their social life that can (and as I argued should) be interpreted in a way that captures the importance of power, agency, and solidarity.

My focus on the contemporary human rights practice motivates two possible disagreements.

²⁷ I thank Matthew Liao for discussion on these points. See further Pablo Gilabert, "The Capability Approach and the Debate between Humanist and Political Perspectives on Human Rights: A Critical Survey," *Human Rights Review* 14 (2013), 299-325.

The first concerns the capability approach. Gould shares with that approach the preoccupation with persons' effective freedoms, but she challenges what she sees as an "essentialism" in that approach's identification of lists of capabilities to engage in certain functionings. Such lists, Gould claims, may be useful in specific contexts, but may not work as general pictures of human development. Her focus on more general conditions of free agency is more ecumenical: it minimizes ideological bias or one-sidedness, leaving specifics for "cross-cultural dialogue." I do not think that this challenge to the capability approach succeeds. The lists of capabilities that approach seeks to identify are explicitly presented as emerging from cross-cultural dialogue, and are open to contestation and revision within it. Furthermore, if we want to generate and justify the various civil, political, and socioeconomic human rights of contemporary practice, we cannot avoid making claims about what freedoms are especially significant, and this cannot be done without taking a stance on controversial lists of important goods those freedoms would involve access to (i.e. we should appraise certain functionings, and capabilities to achieve them).

I acknowledged the problem of deep disagreement in section 3.1. But the best response to it is to engage it directly where it arises, seeking broadly shareable yet substantive pictures of important human capabilities. The second possible difference with Gould's approach concerns how demanding the list of capabilities or freedoms underpinning human rights should be taken to be once we take this disagreement seriously. Gould says that the content of human rights tracks the necessary conditions of agency (construed broadly, including capacity for intentional activities in social contexts). She claims that we should acknowledge both basic human rights securing the bare existence of agency and non-basic human rights securing the flourishing of it. My worry here is that this picture may miss a distinctive feature of the human rights of contemporary practice, according to which human rights are especially urgent claims. Humanist

considerations of justice responding to human dignity, both domestic and global, can go beyond human rights.²⁸ Although they go beyond ultra-minimal claims to survival and security, human rights do not seem to exhaust what humans owe to each other as a matter of justice. Instead, they mark the most urgent forms of justice, targeting the conditions for a decent rather than a fully flourishing human life for all. Take socioeconomic rights. There is a difference between sufficientarian claims against severe poverty and claims to full equality of access to important advantages. We should pursue both. But given the difference in relative urgency, we should not make justification of the former hostage to the success of arguments pertaining to the latter.

²⁸ For exploration of both dimensions see Pablo Gilabert, “Humanist and Political Perspectives on Human Rights,” *Political Theory* 39 (2011), 430-67; and Pablo Gilabert, *From Global Poverty to Global Equality. A Philosophical Exploration* (Oxford: Oxford University Press, 2012). I don’t deny that future human rights practice may incorporate more demanding claims. Perhaps it should. Like Gould, I reject conventionalist views of practices. But we could think more lucidly about the changes if we are aware of how they would change our current situation. I thank Laura Valentini for discussion on this point.