

Atrocities and the Development of Human Rights

1st Lecture: Human Dignity & Human Rights

Morten Dige, Dept. of Philosophy &
History of Ideas, Aarhus University

1. Basic concepts: Dignity – Humanity – Human Rights
2. The legal role of human dignity
3. What is human dignity: Inner value or social rank?
4. Negative definitions of dignity

1

UN Declaration of Human Rights

“... recognition of the *inherent dignity* and of the equal and inalienable rights of all members of the human family is *the foundation* of freedom, justice and peace in the world” (Preamble)

“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.” (Article 1)

[emphases mine]

2

German *Grundgesetz*

- (1) Die Würde des Menschen ist *unantastbar*. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.
- (2) Das Deutsche Volk bekennt sich *darum* zu *unverletzlichen* und *unveräußerlichen* Menschenrechten als Grundlage jeder menschlichen Gemeinschaft, des Friedens und der Gerechtigkeit in der Welt.
- [emphases mine]

3

Descriptive or normative?

Human dignity is allegedly *indisputable, inviolable, and inalienable*.

This seems on the face of it blatantly false, especially considering the historical pretext of the *Declaration* and *Grundgesetz*!

What kind of claims are these?

- > Descriptive?
- > Normative?
- > Constitutive?

4

Human Dignity and Humanity

'Humanity' and 'Humanism' are not biological concepts!

They rather refer to human beings as:

- > Rational, autonomous, responsible, (potentially) moral; worthy of *respect* and *recognition*.
- > Relational, caring, vulnerable; worthy of *solidarity*, ('brotherhood') and *compassion*

5

Pico della Mirandola (1463-94)

- > Dignity due to the capacity of human beings of choice, self-creation, autonomy.
- > Inherent and native, not due to rank in any hierarchy (natural or social).
- > It is the proper place of humans to transcend their given place.



6

Immanuel Kant (1724-1804)

- > Dignity a value "raised above all price", an *inner*, unconditional, incomparable value due to our capacity for rationality and morality.
- > Strongly egalitarian: all human beings (of age) possess the same capacity for rationality and morality.



7

The values of human life (R. Dworkin)

1. Instrumental: The contribution of a life for others/society at large (*Market price*)
2. Personal: The pleasure, enjoyment, and satisfaction a life supplies for the person herself (*Affection price*)
3. Inviolable/sacred: Human life as an end in itself (Inner worth/ *Würde*)
 - a) External creation (*zoe*)
 - b) Internal autonomous creation (*bios*)


 Ronald Dworkin
(1931-2013)

8

“The life of a single human organism commands respect and protection no matter in what form or shape, because of the complex creative investment it represents and because of our wonder at the divine or evolutionary processes that produce new lives from old ones, at the processes of nation and community and language through which a human being will come to absorb and continue hundreds of generations of cultures and forms of life and value, and, finally, when mental life has begun and flourishes, at the process of internal personal creation and judgement by which a person will make and remake himself, a mysterious, inescapable process in which we each participate, and which is therefore the most powerful and inevitable source of empathy and communion we have with every other creature who faces the same frightening challenge. The horror we feel in the willful destruction of a human life reflects our shared inarticulate sense of the intrinsic importance of each of these dimensions of investment.”

(R. Dworkin, “What is Sacred” in *Life’s Dominion*, 1993)

9

Kant’s “Formula of Humanity”

”So act that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.”

- The wrongness of treating human beings as things to be disposed of.
- The wrongness of not letting people “have a say”.
- The wrongness of coercion and deception even in cases where they do not involve harm.

10

A right to dignity?

The *right* to be treated *with dignity* as one of the basic rights rather than dignity as the foundation for rights.

Implied in the Geneva Convention, The Torture Convention and Article 5 of the Universal Declaration: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Relational and process-oriented: dignity is constituted by respectful attitudes and behavior towards others.

11

Dignity as *rank*

Dignity was traditionally (in Roman thinking) linked to a high social *rank*. The privilege of a precious few *dignitaries*.

Modern, egalitarian conception of dignity: "Levelling up" the status of all human beings (or subjects before the law).

(Jeremy Waldron, *Dignity, Rights, and Rank*, 2012).



12

Law as dignity's "natural habitat"

1. Dignity as a moral concept, e.g. Kant's claim about an unconditional, incomparable inner value in humans → Dignity as a *metaphysical* concept.
2. Dignity as a legal concept, a claim about a fundamental (and high!) *legal status* of all humans → Dignity as a *political* concept, a driving force in the quest for equality and democracy.

13

Degrading systems of law

1. Legal standing based on race, e.g. nazi Germany
2. Legal standing based on gender, e.g. Sharia based systems in which a woman's testimony is worth half of that of a man(!)
3. Judicial processes that exclude subjects from being *claimants* by not letting them have *a say*.

14

”Legal archetypes”

- > Brutality and inhumanity are legal archetypes: They serve an emblematic, fundamentally symbolic role in a rule of law.
- > They are forbidden whatever else they might be: ”necessary”, ”the common will”, ”ordained by God”.
- > They have a ”no go”-sign attached.

15

The Torture Convention

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

→ Torture is wrong *because* it is exceptionally cruel, inhuman and degrading.

16

“Cruel” treatment

Cruelty involves “an inappropriate attitude towards suffering and distress” (in humans or other sentient beings): indifference, amusement, joy

Agent-oriented term: Cruelty is an inherent risk in punishment where people (criminals) are at the mercy of others.

17

”Inhuman” treatment

Agent-oriented: treatment that no one should inflict on others. Actions that reflect a character lacking “the qualities proper or natural to a human being; esp. destitute of natural kindness or pity” (OED)

Patient/victim-oriented: suffering that no human could reasonably be expected to endure. Treatment that ignores basic elements of human functioning: needs and structures in a recognizably human life

Characteristic that inhuman treatment can only be inflicted and suffered by humans (in contrast to the *inhumane*)

18

”Degrading” treatment

Primarily patient/victim-oriented: to be treated as of lower rank. Denial of dignity/equal worth.

- > Bestialization: to be regarded as an animal (being numbered, transported in cages, herded with cattle-prods etc.
- > Infantilization: losing control over one’s self-presentation.
- > Instrumentalization: being used as a mere thing or tool e.g. in sexual abuse.
- > Demonization: being reduced to nothing but a “vile embodiment of evil”.

19

Public humiliation

1939: Jews forced to clean sidewalks of Vienna with toothbrushes



20

The typology of misrecognition

1. Insult
2. Degradation: a) devalorizing; b) ascribing
3. Debasement: a) invalidating; b) imposing; c) de-individuating. Treating “as if”.
4. Humiliation: a) invalidating; b) imposing; dehumanizing → “Social death” (*Muselman-ex*)



21

“Treating as” vs. “treating as if”

Humiliation involves not merely treating humans *as* animals (or things or demons or children) in a *total* disregard of their humanity.

Humiliation is about treating someone *as if* they were animals (or things ...) knowing (more or less clearly) that they are not.

Humiliation *works* precisely because it is directed at *humans*.

22

The Atrocity Paradigm

Atrocity = widespread cruelty.
Paradigm of evil.

Two components:

- 1) Intolerable harm
- 2) Culpable wrongdoing: absence of excuses (i.e. even bad ones).



Claudia Card, b. 1940)

A few references!

Card, C. *Confronting Evils*, Cambridge UP 2010.

Dworkin, R. *Life's Dominion*, HarperCollins 1993. (Ch. 3)

— *Justice for Hedgehogs*, Harvard UP 2011. (Ch. 9)

Herrman, S.K., "Practices of Misrecognition", in: P. Kaufmann et al. (eds.), *Humiliation, Degradation, Dehumanization*, Springer 2011.

Margalit, A. *The Decent Society*, Harvard UP 1996.

Rosen, M. *Dignity: Its History and Meaning*, Harvard UP 2012.

Waldron, J. "Torture and Positive Law: Jurisprudence for the White House", *Columbia Law Review* 105/6 (2005): 1681-1750.

— "Cruel, Inhuman, and Degrading Treatment: The Words Themselves", *Public Law & Legal Theory Research Paper Series, Working Paper No. 08-36* (2008), N.Y. University School of Law.

— *Dignity, Rights, and Rank*, Oxford UP 2012.