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## Philosophy and Theology: Reflections on Interests and Regret

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## PHILOSOPHY AND THEOLOGY

Paul Formosa and Catriona Mackenzie raise an important question: to what degree are Kant's and Aristotle's ethics compatible with each other? To answer this question, they examine the synthesis of Kantian and Aristotelian insights offered by Martha Nussbaum:

Nussbaum attempts to integrate distinct and seemingly opposed Aristotelian and Kantian elements into her conception of human dignity. The Aristotelian elements involve linking dignity to species specific norms of flourishing and to the neediness and vulnerability of our embodied animal lives. The Kantian element involves the idea of each person as an end in themselves. Although Nussbaum draws on the Kantian conception of dignity, she also characterises her conception of dignity in contrast to what she refers to as the Kantian conception of the person. But does Nussbaum successfully integrate these two seemingly opposed conceptions of dignity into one coherent account and is her representation of the Kantian conception of dignity accurate?<sup>1</sup>

On the nature of dignity, Formosa and Mackenzie may overstate the contrast or tension between Aristotle and Kant. After all, are not the species-specific norms of flourishing for human beings inextricably tied to our rationality and freedom, in other words, to what makes us beings who are ends-in-themselves? Is not one of our fundamental needs as human beings to develop our rational faculties and our potential for moral virtue, so that we can do our duty and live in accordance with reason? No human being can fully flourish unless he lives a life that expresses both rationality and freedom by respecting other human beings and reciprocally being respected by other human beings as an end-in-himself.

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1. Paul Formosa and Catriona Mackenzie, "Nussbaum, Kant, and the Capabilities Approach to Dignity," *Ethical Theory and Moral Practice* 17.5 (November 2014): 876, doi: 10.1007/s10677-014-9487-y.

A greater tension between the Kantian and Aristotelian accounts lies in their answers to the question, who has dignity? Both Kant and Aristotle can be interpreted as advocating an ethics of exclusion, which holds that not all but only some human beings have dignity. However, both philosophers may also be interpreted as expressing a more inclusive and universalist view that all human beings have basic dignity. These interpretations are not equally plausible. Considered as a historical figure, Aristotle does not ascribe equal dignity to all human beings, because slaves and women did not have equal dignity with free men. However, a neo-Aristotelian like Alasdair MacIntyre can justify the dignity of each human being.<sup>2</sup> Kant ascribes dignity to all human beings because all human beings have a rational nature, which characteristically develops into an immediately exercisable capacity for rational activity and free choice.<sup>3</sup> However, neo-Kantians like Mary Anne Warren deny the equal dignity of all human beings.<sup>4</sup>

Formosa and Mackenzie call attention to an important distinction between what they call status dignity and achievement dignity. Status dignity belongs to the class of individuals who are due respect, have basic rights, and are part of the moral community. An individual either has or does not have this status. On the other hand, achievement dignity is measured by degrees. An individual might have achievement dignity while riding a ski lift, have less achievement dignity while struggling awkwardly to get off the lift, and have still less achievement dignity when losing control on the ski slope and crashing face-first into a snow drift:

I might have a high degree of achievement dignity when I do something dignified, such as respond with fortitude to a heavy loss, but lose (or lose a degree of) my achievement dignity when I do something undignified, such as make a fool of myself in public by losing my cool and unjustifiably abusing someone. In contrast, I don't lose my status dignity when I make a fool of myself in public (even if doing so is undignified), and my status dignity attaches itself primarily to me rather than to my beings and doings, such as my responding with fortitude to a heavy loss.<sup>5</sup>

Their last point is crucial. Status dignity is an essential trait of an individual rather than a trait linked to his actions. Put in metaphysical terms, status dignity is not an accidental characteristic, such as what I happen to be doing right now or what I have done in the past. Status dignity is an essential characteristic like being alive or being a human being, something that I do not lose until I lose my very existence. To have status dignity is akin to being the son of a king and queen. Nothing can reverse royal lineage, for the son always has regal status by virtue of his royal

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2. Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Peru, IL: Open Court, 1999).

3. Patrick Kain, "Kant's Defense of Human Moral Status," *Journal of the History of Philosophy* 47.1 (January 2009): 59–101, doi: 10.1353/hph.0.0083.

4. Mary Anne Warren, "On the Moral and Legal Status of Abortion," *Monist* 57.1 (December 19, 2014) 43–61, doi: 10.5840/monist197357133.

5. Formosa and Mackenzie, "Nussbaum, Kant, and the Capabilities Approach," 877.

parents. However, if a prince acts in foolish, dishonorable, and demeaning ways, he lacks regal behavior, or achievement dignity.

In her article “Respect for Human Dignity as ‘Substantive Basic Norm,’” Mary Neal takes up a different aspect of the debate and challenges the claim that dignity can be reduced to autonomy: “First, if autonomy and dignity *were* essentially synonymous, then logically, only autonomous individuals could be said to possess dignity.”<sup>6</sup> No one holds that an individual must actually be exercising autonomy to deserve respect—think, for example, of a sleeping doctor, a dead-drunk lawyer, or a politician undergoing surgery. Moreover, small children and mentally handicapped adults lack autonomy in its Kantian sense of a self-given rational law yet are respected by every sound legal system.

Neal’s challenge critiques a straw man inasmuch as no one thinks it is necessary to actually exercise autonomy to have either status or achievement dignity. The current discussion is between those who think that dignity depends on having the capability to immediately exercise autonomy, or a related characteristic, and those who hold that status dignity is enjoyed by anyone with a root capacity or nature oriented toward reason. Neal leaves both these views unaddressed.

Second, Neal writes,

I can violate your autonomy without violating my own, and fail to respect your autonomy while my own autonomy remains completely unaffected. By contrast, if we understand dignity as a moral relationship (*per* Maier) and the community as a party to that relationship (*per* Oliver) we can then understand dignity as attaching to human beings and their communities in a reflexive way, so that when I violate your dignity, I am simultaneously failing to respect my own dignity *and* offending against the “community of dignity.”<sup>7</sup>

This contrast does not really work, however, because it uses dignity ambiguously. When someone violates another person’s dignity, the perpetrator’s achievement dignity is degraded because he makes himself less worthy of moral praise from others. Yet the perpetrator retains his status dignity as a being who deserves fundamental respect. For this reason, even the most horrible mass murderers are due fair trials and legal representation as well as humane treatment after conviction, because their status dignity remains intact, an intrinsic characteristic lost only in death.

At another point in her essay, Neal turns to the topic of human dignity and rights:

In international human rights discourse and jurisprudence, “human dignity” is conceived of as inherent and inalienable: we are all born with dignity, and no-one and nothing can remove it from us. But if dignity is inherent, I do not need to acquire it; and if it is inalienable, I need no protection against its loss. If a “right to dignity” is a right to something everybody already has and cannot lose, it makes no sense.<sup>8</sup>

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6. Mary Neal, “Respect for Human Dignity as ‘Substantive Basic Norm,’” *International Journal of Law in Context* 10.1 (March 2014): 28, doi: 10.1017/S1744552313000359, original emphasis.

7. *Ibid.*, 29, original emphasis.

8. *Ibid.*, 32.

This passage misinterprets the meaning of an inalienable right, at least as it is classically understood. When the authors of the *Declaration of Independence* spoke of the inalienable rights to life, liberty, and the pursuit of happiness, they did not mean to imply that murder, enslavement, and oppression are impossible. Rather, an inalienable right is one that cannot be renounced. I cannot change murder and slavery into permissible acts by authorizing another person to murder or enslave me. I cannot waive my right to equal protection under the law and make my legal status like that of a plant. Because status dignity is inherent, human beings cannot relinquish their basic human rights and degrade themselves to mere things to be used. Status dignity is the basis for inalienable rights, which can be violated but not voluntarily given up.

But what exactly is the relationship between rights and dignity? Peter Schaber's article "Human Rights and Human Dignity: A Reply to Doris Schroeder" critically evaluates arguments that claim human rights cannot be derived from human dignity. One such argument is that dignity is an inherently religious concept and, therefore, cannot justify human rights in a secular society. Schaber points out that "non-believers might disagree with this justification; but if the relevant religious beliefs were true, they would simply be wrong. The fact that the non-believers were not convinced would be no reason to reject dignity as a justificatory basis for human rights. It would only reveal the cognitive limits of the non-believers."<sup>9</sup> A disagreement between persons of faith and persons of no faith cannot be adjudicated by a simple supposition that in such cases the views of nonbelievers are to be adopted. Why should a believer accept atheism by default any more than an atheist should unequivocally accept theism? If it is true that every human being has inherent worth regardless of age, disability, or health condition, then a denial of this belief is untrue. Belief in an untruth reveals cognitive limitations, as Schaber points out. Some religious convictions cannot be justified by philosophical arguments or scientific evidence. The doctrine that God is three divine Persons is a classic example. Other religious beliefs can be justified through philosophy and science. For example, recent psychological studies confirm the value of forgiveness.<sup>10</sup>

Is the inherent dignity of all human beings a distinctly religious belief like the Trinity, or is it akin to believing that forgiveness helps human flourishing? The affirmation of human dignity is found clearly in the Jewish and Christian Scriptures. The creation story in Genesis teaches that each human being is a member of God's royal family. Ancient pagan creation accounts suggest that only the king's family was made in the image and likeness of the gods. Genesis, by contrast, affirms that Adam and Eve were both made in God's image and became the origin of the human family. Genesis articulates in narrative form the insight that all human beings have royal lineage and thus have status dignity.

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9. Peter Schaber "Human Rights and Human Dignity: A Reply to Doris Schroeder," *Ethical Theory and Moral Practice* 17.1 (February 2014): 156, doi 10.1007/s10677-013-9427-2.

10. See Christopher Kaczor, *The Gospel of Happiness* (New York: Image Books, 2015), 115–132.

Of course, universal status dignity does not need to rest on the text of Genesis, and can be defended without appealing to revelation of any kind, much less sectarian religious beliefs.<sup>11</sup> Only Roman Catholics believe in the infallibility of the Pope as defined by the First Vatican Council. By contrast, the principle that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness” is espoused by people of many different faiths. A “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” was adopted by the United Nations General Assembly on December 10, 1948.<sup>12</sup> This proposition finds acceptance among atheists, agnostics, Muslims, Catholics, Protestants, Jews, Buddhists, and followers of innumerable other religions. If dignity as understood by the United Nations somehow counts a religious belief, it is hard to see what kind of ethical or political principles could count as nonreligious. Obviously, the fact that belief in human status dignity is found in the Bible should not count against its truth or its enforcement in a legal system any more than the Biblical passage “You shall not steal” delegitimizes laws prohibiting theft.

It appears that Schaber rejects the proposition that all human beings have basic rights: “I think that people in a permanent vegetative state should be cared about. But do they have the rights which adults have? They might have a moral status which does not give rise to rights; and this might be due simply to the fact that it would make no sense to ascribe rights to beings who are in principle unable to exercise them.”<sup>13</sup> Indeed, people in a PVS entirely lose their right to drive a car because of the limitations of their cognitive state. Similarly, such people cannot exercise their right to vote. Even if a proxy were to vote for him, the person in a PVS would not be the one actually exercising his right to vote. However, other rights surely are maintained even by people in a PVS. Rape is intrinsically evil, and everyone has a right not to be raped. If a woman in a PVS maintains the right not to be raped by virtue of the value of her bodily integrity, then *a fortiori* she also maintains the right not to be intentionally killed, the most serious violation of her bodily integrity possible. To exercise some rights, like voting or driving, an agent must knowingly and willingly do something. Other rights, such as the right not to be raped or the right not to be murdered, do not require that the one having the right do anything consciously and knowingly.

At times, Schaber’s article reflects a lack of familiarity with recent research about human dignity:

One can only justify the rights humans have as humans by referring to properties which are essential properties of human beings; it is not enough,

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11. See Patrick Lee, “Moral Status and the Margins of Human Life,” *American Journal of Jurisprudence* 60.1 (May 2015) 105–120, doi: 10.1093/ajj/auv008; and S. Matthew Liao, “The Basis of Human Moral Status,” *Journal of Moral Philosophy* 7.2 (2010): 159–179, doi: 10.1163/174552409X12567397529106.

12. UN General Assembly, “Universal Declaration of Human Rights,” December 10, 1948, preamble.

13. Schaber, “Human Rights and Human Dignity,” 158.

simply to refer to the fact that they are human beings. But then it is unlikely that the justificatory work will be done by properties shared by all beings who are human in a biological sense. It might be the case that we all share certain genes. But do we have a right not to be degraded, because we have these genes? This is highly implausible. The property we need to share has to be relevant for the justification of human rights. This property has, however, not yet been identified. And this is the reason why all justifications of human rights which refer to our humanity are unable to account for the idea that all humans have certain rights.<sup>14</sup>

One can claim that no successful justification for universal human rights has been given. But it is inaccurate to claim that no justification has been offered at all. In recent years, numerous accounts have been proposed. For example, Matthew Liao claims that all human beings have basic dignity and human rights because they have the genetic basis for moral agency.<sup>15</sup> Robert George, Christopher Tollefsen, Patrick Lee, and many others in the natural law tradition defend the same view on the basis of the shared rational nature of all human beings.<sup>16</sup> This inclusive view also has distinguished historical proponents, including Immanuel Kant.<sup>17</sup> In 1776, the founders held these truths to be self-evident truths that all human beings are created equal and have inalienable rights. They asserted, in other words, that the inherent dignity of every human being is a first principle, a foundation not in need of further justification, but rather a beginning point of reasoning in the moral and political order. Perhaps these or other attempts fail, but Schaber provides no reason for us to think so.

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14. Ibid.

15. Liao, "Basis of Human Moral Status," 159–179; and S. Matthew Liao, "The Genetic Account of Moral Status: A Defense," *Journal of Moral Philosophy* 9.2 (2012): 265–277, doi: 10.1163/174552412X625718.

16. Robert P. George and Christopher Tollefsen, *Embryo: A Defense of Human Life* (New York: Doubleday, 2008); and Lee, "Moral Status and the Margins of Human Life."

17. Kain, "Kant's Defense of Human Moral Status."