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### Moral Dignity and Moral Vulnerability in a Kantian Perspective

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#### Abstract

According to Kant, a human being has intrinsic value or dignity. In virtue of her or his dignity, a human being has a right to be morally respected. It also has a duty to respect other human beings, at least in so far as it is capable of free and responsible agency. This capacity does not only depend on being human, it also depends on having a healthy mind. Likewise, as Trudy Govier has put it, 'what is involved in showing respect for an entity depends on what kind of entity it is'. The dignity of a human being is an a priori normative status. The attribution of dignity to a human being does not depend on whether and to what extent this being can act as a free and rational agent. People who have dignity include very young children, very old people who have lost their mind as well as mentally handicapped people. All these people have the right to be treated with respect. The attribution of dignity to a human being does not depend on this being's actual (intellectual and emotional) intelligence. Nor does it depend on its moral merit. Human dignity, as an a priori moral status, is not meritocratic.

However, when it comes to the question of the dignity of an agent who is accountable for his deeds but fails to respect the moral law nevertheless, Kant seems to introduce an idea of meritocracy into his notion of dignity. An agent who does not respect the moral law thereby causes damage to his dignity. I shall explore the meritocratic implications of Kant's claims about the dignity of a moral offender and discuss whether and to what extent they can be made compatible with his idea of dignity as a non-meritocratic, a priori moral status.

When we talk about or hear speaking of human dignity and moral worth of a human being, the philosopher who comes to mind is Immanuel Kant. As for an example, the first sentence of the German Constitution says

Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist  
Verpflichtung aller staatlichen Gewalt.

Human dignity shall be inviolable. To respect and protect it shall be the duty of all  
state authority.

The constitution is supposed to be of Kantian spirit – and inspiration.

Now, compare the following two adjectives 'inviolable' and 'unreachable':

*Unreachable* (unerreichbar) is a place where you cannot get, even if you try to reach it.

But what is *inviolable* (unantastbar)? Is it something that is factually impossible to violate?

Or is it something you *should* not violate, even though you could do it?

The context of the German Constitution makes it quite clear that ‘inviolable’ is to be understood as a deontic term: Human dignity should not be violated. As it is factually possible to violate human dignity, it needs to be protected by law, by constitutional law. The historical background which inspired the authors of the German Constitution was, as it is well known, the Nazi regime and the Nazi’s crimes against humanity, their violations of the dignity of people: torture and killing of innocents who did not represent a danger for anybody.

Now, in which sense is human dignity in Kant’s sense of the term inviolable? In order to answer this question, we have to be aware of the fact that Kant speaks of human dignity in different senses. There is an aspect of Kant’s claim about humans having moral dignity according to which it does not make sense to say that human dignity is inviolable in the deontic sense of the term, namely because, according to this sense it is unreachable. Something that is out of everybody’s reach does not need to be protected from anybody.

In the *Metaphysics of Morals*, Kant uses the notion ‘dignity’ in different senses:

‘All those three authorities in a sense are dignities, and since they arise necessarily from the idea of a state as such, as essential for the establishment (constitution) of it, they are civic dignities [Staatswürden].’ (AA VI:315)

‘The rights of a supreme commander of a state also include : (1) the distribution of offices, which are salaried administrative positions; (2) the distribution of *dignities*, which are eminent estates without pay [Standeserhöhungen ohne Sold], based on honour [Ehre] alone, that is, a division of rank into the higher (destined to command) and the lower (which, though free and bound only by public law, is still destined to obey the former) ...’ (AA VI:328)

In these passages, ‘dignity’ means the quality of being honourable because of a position or title a person holds. This meaning of ‘dignity’ (Würde) is present in German expressions like ‘die Würde des Amtes’ or ‘Würdenträger’.

In the *Doctrine of Virtue*, in the section entitled ‘On Duties of Virtue toward Other Human Beings Arising from the Respect Due to them’, Kant writes:

‘The respect [Achtung] that I have for others or that another can require from me ... is therefore recognition [Anerkennung] of a *dignity* ... in other human beings, that is, of a worth [Wert] that has no price, no equivalent for which the object evaluated ... could be exchanged.’ (AA VI:462)

‘Every human being has a legitimate claim to respect from his fellow human beings and is in turn bound to respect every other. Humanity is itself a *dignity*; for a human being cannot be used merely as a means by any human being (either by others or even by himself) but must always be used at the same time as an end. It is just in this that his *dignity* (personality [die Persönlichkeit]) consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all things. But just as he cannot give himself away at any price (this would conflict with his duty of self-esteem), so neither can he act contrary to the equally necessary self-esteem of others, as human beings, that is, he is under obligation to acknowledge, in a practical way, the *dignity* of humanity in every other human being. Hence there rests on him a duty regarding the respect that must be shown to every other human being.’ (AA VI:462)

These passages recall the definition of human dignity from the *Groundwork of the Metaphysics of Morals*, according to which

... the dignity of humanity consists just in this capacity to give universal law, though with the condition of also being itself subject to this very lawgiving. (AA IV:440)

The dignity a human being has simply in virtue of being human, of being provided with reason and moral autonomy, has to be distinguished from any dignity a person might have that is due either to a position or to a rank of honour (AA VI:486). Nevertheless, the latter provides a model for the former, in so far as Kant talks about human dignity and the duty of self-respect in terms of ‘a human being’s self-consciousness of his own *nobility*’ (AA VI:483 *it CF*). The difference between the two kinds of dignity is that the former is due to contingent decisions (AA VI:468), whereas the latter is not. And whereas the nobility or dignity that every human being has excludes any distinction between them in terms of rank (nobleman, bourgeois, or member of the working class), it distinguishes humans from non-human animals and other things that do not have intrinsic value or dignity.

There are two aspects to the claim that the dignity of a human being is not dependent on contingent conditions:

- (1) The dignity of a human being gives rise to rights and duties: rights to be respected both by other human beings and by oneself and duties to respect others as well as oneself. But the dignity of a human being does not *depend* on anybody's respect for being constituted. Whether or not people act in accordance with their duties depends on contingent matters. Anyone can violate her or his duties at any time. Thus, a human being may be so unfortunate as to be deprived of everybody's respect. But the dignity of a human being does not depend on actual respect; it is an a priori normative status.<sup>1</sup>
- (2) In the beginning of the *Doctrine of Virtues*, Kant speaks about the 'strength of soul' of a person, defining it in terms of the 'strength of resolution in a human being as a being endowed with freedom, hence his strength in so far as he is in control of himself ... and so in a state of *health* proper to a human being' (AA VI:384 *it CF*). Now, whether a human being is mentally healthy or not, whether this person is actually capable of performing as a free and moral agent or not, depends on whether or not he was born mentally healthy and whether or not his upbringing was such as to allow him to become emotionally and socially healthy. These are contingent conditions which may or may not be fulfilled for a particular person. But neither does the dignity of a human being as an a priori normative status depend on her or his mental health, nor does it depend on her or his emotional and social capacities. Thus, it extends to those born mentally handicapped as well as to those whose upbringing was so terrible that they did not have a chance to become free and responsible moral agents.  
Human dignity is closely associated with freedom, autonomy and morality (AA VI:435). But the freedom, autonomy and morality of a human being do not have to be understood in naturalistic terms; we cannot exclusively attribute freedom, autonomy and morality to those humans who are mentally healthy adults. Kant makes it explicit that 'children ... are at all times free' and the reason for this is that 'everyone is born free' (AA VI:283) and has, originally, the same rights (AA VI:352).

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<sup>1</sup> Thomas Hill has raised the question whether 'respect' has to be earned. (See Thomas Hill, 'Must respect be earned?' In: Thomas Hill 2000, *Respect, Pluralism, and Justice*. Oxford: OUP, pp. 87-118.) The Kantian answer to this question, in so far as it concerns the respect we owe a human being in virtue of its innate dignity, clearly has to be 'No.'. This is what it means to claim that the intrinsic moral worth of a human being is not meritocratic.

Kant distinguishes between a human being in general, and a person, defining the person as ‘a subject whose actions can be imputed to him’ (AA VI:223). This means that only mentally healthy adults are persons. Whereas all human beings have rights in virtue of their dignity, only persons also have duties. Human beings can be citizens of a state, and the healthy adults among them actually have a duty to found a state and become citizens of it. Persons can and should be citizens of a state. Kant distinguishes between ‘active’ and ‘passive’ citizenship. Whereas active citizenship is the status reserved for the mentally healthy adult males who, in so far as they are ‘independent’, qualify for ‘being fit to vote’, passive citizenship is the status for all those who are members of a state without being ‘active citizens’. Kant relies on examples for explaining his notion of passive citizenship:

... an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor ...; all women and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state). (AA VI:314)

I hope that at least all Kant scholars will agree with me in thinking that the distinction between active and passive citizenship as made explicit with these examples is partly informed by cultural prejudices and economic contingencies. Passive citizens are, however, humans and, in virtue of this, they have dignity and the rights arising from it. They are persons in virtue of their ‘innate personality’. Furthermore, they have ‘civil personality’, they are protected by the laws of the state.

For a human being can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: his innate personality protects him from this, even though he can be condemned to lose his civil personality. He must previously have been found punishable before any thought can be given to drawing from his punishment something to use for himself or his fellow citizens. (AA VI:331)

Perpetrators who can be held responsible for the consequences of their actions can be punished by being deprived of their ‘civil personality’, and that, I think, includes both active and passive citizenship. If so, deprivation of civil personality has as its consequence the

denial of membership of a state. Such a denial can take the form of expatriation and, as we shall see, capital punishment.

Whereas a human being can be a person without being a civil personality, the loss of civil personality seems to include the loss of personality.

A person is a subject whose actions can be *imputed* to him. *Moral* personality is therefore nothing other than the freedom of a rational being under the moral laws (whereas psychological personality is merely the ability to be conscious of one's identity in different conditions of one's existence). From this it follows that a person is subject to no other laws than those he gives to himself (either alone or at least along with others). (AA VI:223)

This is because a human being can have 'personality' in the state of nature; but once such a being has become a citizen of a state, his personality becomes civil personality, and there is no way back from citizenship to the state of nature.

Certainly no human being in a state can be without any dignity, since he at least has the dignity of a citizen. The exception is someone who has lost it by his own crime, because of which, though he is kept alive, he is made a mere tool of another's choice (either of a state or of another citizen). Whoever is another's tool (which he can become only by a verdict and a right) is a bondsman ... and is the property ... of another, who is accordingly not merely his master ... but also his owner ... and can therefore alienate him as a thing, use him as he pleases (only not for shameful purposes), and dispose of his powers, though not of his life and members. No one can bind himself to this kind of dependence, by which he ceases to be a person, by a contract. (AA VI:330)

Given that a state is founded by contract, no citizen of a state is originally in the position of such a 'bondsman'. However, it seems that Kant holds the view that a criminal, by committing a crime, can lose his civil and thereby also his innate personality. Does this mean that criminals, at least those guilty of the worst of crimes, lose their status as human beings and the dignity that comes with it? Kant does talk about someone 'who by his crime has forfeited his personality':

...while it is true that someone can have as his own another human being who by his crime has forfeited his personality (become a bondsman), this right to a *thing* is not what is in question here. (AA VI:358).

This sounds as if the criminal had, by committing his crime, also lost his status as a human being. Rather than a human being, he is just a 'thing'. This is being confirmed by the passage where Kant talks about 'someone who has become a slave through his crime' (AA VI:283). Is the criminal, according to Kant, someone who has 'cease[d] to be a person', who has 'no duty to keep the contract but would recognize only force', as if he was a non-human animal (AA VI:283)?

There are passages in which Kant explicitly denies this: Thus, he says that the individual agent's duty towards other people includes the duty to pay some respect even to the vicious person, because even this person is a human being:

... I cannot deny all respect to even a vicious man as a human being; I cannot withdraw at least the respect that belongs to him in his quality as a human being, even though by his deeds he makes himself unworthy of it. (AA VI:463)

... the censure of vice ... must never break out into complete contempt and denial of any moral worth to a vicious human being ... (AA VI:463/4)

And from the point of view of the state and the sovereign, whose duty it is to protect the citizens from crime and whose right it is to punish the criminal, something analogous seems to be true:

... a human being can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: his innate personality protects him from this, even though he can be condemned to lose his civil personality. (AA VI:331)

But how can a sovereign express his respect for the human being in the criminal, the respect due to the criminal's innate personality, where the crime he committed is murder or high treason? Both kinds of crimes are, according to Kant, to be punished by the death penalty

(AA VI:333 and 320).<sup>2</sup> I must confess that Kant's accepting the death penalty to punish such crimes leaves me with a substantive amount of perplexity.<sup>3</sup> The need to protect civil society from the devastating effects of those who have endorsed 'a maxim of the criminal' (AA VI:320) can hardly be used as an explanation for this position. Kant rejects utilitarian arguments as possible counterweights to moral judgments and he allows for other kinds of severe punishment (like lifelong imprisonment or exclusion from civil society) which would have the same effect.

Given the definition of human dignity from the *Groundwork* which I quoted above, there is the question whether someone who has actually endorsed such 'a maxim of the criminal' has not thereby betrayed his dignity. Kant himself confesses that 'how it is possible for a subject to form such a maxim contrary to the clear prohibition of lawgiving reason absolutely cannot be explained' (AA VI:320). And it is probably even worse than that: Inexplicability is common beyond 'the mechanism of nature' (AA VI:320). Therefore, it extends to human dignity and morality. The real challenge is to account for the possibility of a free and autonomous, but nevertheless intrinsically criminal mind in the framework of a moral theory according to which freedom and autonomy are conceived as sufficient conditions for the endorsement of moral maxims. Kant's attempt at seeing the criminal as a *homo phaenomenon* exclusively does not solve the problem (see AA VI:335), because this move would make the criminal just a part of the empirical world and deny his accountability. Kant himself denies the possibility of such a solution to the problem (AA VI:418).<sup>4</sup>

There are passages where Kant speaks of the respect that even the worst of criminals has a right to. According to Kant, our intrinsic dignity or moral value is compatible with our actual moral imperfection. Whenever we fail to respect the dignity of a person, we fail to live up to our own moral dignity. But this failure does not mean that we completely lose our dignity:

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<sup>2</sup> For discussions of Kant's views on the death penalty see Hill, Thomas E., 'Kant's ant-moralistic strain.' In: Hill, Thomas E. (1992), *Dignity and Practical Reason in Kant's Moral Theory*. Ithaca and London: Cornell University Press, pp. 176-195.

<sup>3</sup> Thus, I agree with Attila Ataner who wrote: '... because it involves the *death* of the subject, capital punishment is an extraordinary form of punishment that does not have a place within the Kantian framework.' See Attila Ataner (2006), 'Kant on Capital Punishment and Suicide.' In: *Kant-Studien* 97, pp. 452-482, here p. 464, but see also p. 475.

<sup>4</sup> According to Patrick Riley, 'Kantian public legal justice is a kind of intersection between the facts of anthropology and the categorical imperative; if there were a kingdom of ends, the kingdoms of the earth would vanish.' (See Patrick Riley (1983), *Kant's Political Philosophy*. Rowman and Littlefield: Rowman and Allanheld Publishers, p. 3.) I agree with him. In a sense, Kant's theory focuses on what an ideally moral agent is and does (or rather would be and would do). The accountability of wrongdoing, common as it is in the real world, is a major problem within the framework of Kant's moral theory.



Nonetheless I cannot deny *all* respect even to a vicious man as a human being; I cannot withdraw at least the respect that belongs to him in his quality as a human being, even though by his deeds he makes himself unworthy of it. (AA VI:463)

This sounds as if there were different kinds of dignity and, accordingly, different kinds of the respect due to those who have dignity, and furthermore as if at least one kind of respect came in degrees: There is, on the one hand, the respect that is due to someone in virtue of his being human, and this a priori moral status does not allow for degrees – nor does the respect due to it. But then there is also the dignity and respect a moral agent has and deserves in virtue of his moral merits. And this dignity can come in degrees, and so does the respect due to it. Can this dignity and the respect due to it come down to zero? After all, there are people who have no moral merit at all. But even these people have some dignity, the kind of dignity every human being has, and they deserve some respect.

It is in virtue of this dignity that a human being is morally invulnerable:

What is dangerous is no object of contempt, and so neither is a vicious man; and if my superiority to his attacks justifies my saying that I despise him, this means only that I am in no danger from him, even though I have prepared no defence against him, because he shows himself in all his depravity. (AA VI, 463)

Thus, moral wrongdoing annihilates neither the dignity of the victim nor that of his perpetrator. Accordingly, we can conclude that the normative status of dignity we all share in virtue of being human is unreachable, and therefore impossible to violate.

Now, one might find this conclusion counterintuitive. However, the point is simply that the victim of the worst of crimes, if he survives at all, does not, as such a victim, lose his dignity, understood as the source of his moral rights (and duties). Violating a person's dignity means to disrespect his right to be respected; but this disrespect does not annihilate the right to be respected. The underlying dignity remains without violation.

But what then, does it mean that human dignity can suffer damage and therefore needs to be protected, that human dignity is deontically inviolable, as the first sentence of the German

Constitution prescribes? In order to answer this question one has to rise and answer another one: To what does a human being, in virtue of his dignity, have a right? Once we have provided an answer to this question, we can answer the original question: Violating the dignity of a person means depriving this person from what she has a right to, due to his a priori dignity. We need a theory of human rights as originating in a priori human dignity in order to understand what counts as a violation of this dignity (or rather the rights originating in it) and what it is that we have to protect a human being from. And while working out such a theory of human rights, we have to keep in mind what Trudy Govier has said, namely ‘what is involved in showing respect for an entity depends on what kind of entity it is’.<sup>5</sup>

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<sup>5</sup> Trudy Govier (2002) *Forgiveness and Revenge*, London and New York: Routledge.