Public Reason 8 (1-2): 51-64

Why Dignity is not the Foundation of Human Rights

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Abstract: This essay questions what is argued by many scholars today, namely that the moral concept of human dignity provides the basis for the establishment of human rights. More specifically, I critically discuss the two most prominent conceptions of human dignity, the 'status' and the 'value' (coming from the Catholic and the Kantian traditions) conceptions of dignity, which are suggested today as the foundations of human rights (sections I and II). Ultimately, I propose a different, 'duty-based' philosophical account for the justification of the latter (section III).

Key words: Dignity, justification, human rights, status, value, duties.

Since 1948, human rights have been widely accepted and ratified by most countries. However, a great number of human rights violations and abuses still occur worldwide. Even if there is a broad human rights' framework, the latter is considered to be ineffective. One of the main reasons of its ineffectiveness is the fact that in the Universal Declaration of Human Rights (UDHR), in the International Covenant on Civil and Political Rights (ICCPR), and in the International Covenant on Economic Social and Cultural Rights (ICESC), rights are described in abstract terms. But for human rights to be respected they have to be clear and concrete. I argue that the formulation of rights by the drafters of the major human rights documents should be supplemented by their philosophical establishment. It is argued by many scholars today that human dignity provides the basis for the establishment of human rights. In this essay, I question the claim that human dignity is the foundation of human rights. More specifically, I critically discuss the two most prominent conceptions of human dignity, namely the 'status' and the 'value' (coming from the Catholic and the Kantian traditions) conceptions of dignity, which are suggested today as the foundations of human rights (sections I and II). Ultimately, I propose a different, 'duty-based' philosophical account for the justification of the latter (section III).

I. THE STATUS CONCEPTION OF DIGNITY AS THE FOUNDATION OF HUMAN RIGHTS

1. Jeremy Waldron's Account

One of the most prominent dignitarian accounts for the justification of human rights today is status-based. Jeremy Waldron is one of its main supporters. In his Tanner lectures *Dignity and Rank* and *Law, Dignity, and Self-Control* (2012); in his essays: *Citizenship and Dignity* (2013), *The Image of God: Rights, Reason, and Order* (2010a), and *Is Dignity the Foundation of Human Rights* (2015); and in his paper *Dignity, Rights, and Responsibilities* (2010b), Waldron argues that dignity as a legal status may be seen as the genuine basis for

the derivation of our rights. In what follows, I briefly present the main points of his theory as it is developed in the previous works.

Initially, Waldron claims that given current failures and disagreements regarding human rights, we must examine them from scratch in order to understand them in depth (2010b). He then claims that to begin with morality is not the best way to understand human rights; rather we should start from the *law* of human rights. That is to say, if we want to see what human rights are, we should just focus on human rights law, namely the Declarations and Conventions – not on the moral idea underlying them. According to Waldron, the best way to understand human rights law is to start by examining its official justification, human dignity, treating it as a legal rather than a moral concept in the first instance (2010a; 2012).

More specifically, Waldron regards dignity as a type of status[1] traditionally connected with rank (2012, 14, 17, 21, 22, 24, 30; 2015, 133; 2013, 336)[2]. He writes: "My own view of dignity is that we should contrive to keep faith somehow with its ancient connection to noble rank or high office" (2012, 30). In his Tanner Lecture, *Law, dignity, and self control*, Waldron defines status as a "high-ranking status, high enough to be termed a *dignity*" (2012, 59). He claims then that to treat someone as dignified is to treat her as royalty (2010b); hence one whose dignity is not respected today should be seen as a prince or a duke who had not been respected in the past (2010b, 34-36).

In particular, Waldron argues that dignity is a *legal* status, namely something accorded to people by law. A legal status in law is, in principle, as Waldron says, a package of rights and duties accorded to a person or to a group of persons by law (2015, 134). For example, infancy is a legal status. Yet, Waldron considers a legal status not just as a given package of rights and duties, but as a *special* package that also entails a deeper explanation of *why* these rights and duties are accorded to persons (2015, 135). That is to say, a legal status, as Waldron understands it, can explain *why* rights and duties are attributed to

1] The status conception of dignity comes from the so called meritocratic dignity. That is a kind of dignity which was protagonist in archaic societies (750-479 BC). For example, in the Homeric epics dignity is accorded to persons with high status. The latter is the status arising from the possession of characteristics regarded as meritorious. Special characteristics such as family and friendships determine where one stands. Dignity, in this sense, is determined by the *place* people hold in the social hierarchy, and is ascribed only to those of high rank. We also see the status conception of dignity (*dignitas*) in the Roman world in which it is similarly associated with the respect and honor due to a person with an important position. For instance, in Cicero's *De Inventione*, dignity denotes one's role in the society, as well as the honors and the respectful treatment that are due whoever has this role. One possesses an elevated social status in the social order if one belongs, for example, to the nobility or to the church. The status conception of dignity continued to exist until the Enlightenment, in the 18th century. Then it started gradually to fade away, as a result of the abolition of aristocratic 'dignities' associated with aristocratic 'status'. But after years of latency, dignity as a status seems to have a sudden revival nowadays especially within the context of the human rights discourses. Waldron is today one of its main supporters. See, for example, Cicero, M. T. (84BC). De *Inventione*. Available at http://www.classicpersuasion.org/pw/cicero/dnv2-1.htm (accessed 24 October, 2017).

2] Waldron seems to have been influenced by Gregory Vlastos, a great classical scholar, who has argued that we organize ourselves like an aristocratic or caste society; see (Vlastos 1984, 41).

citizens by law. Eventually, this kind of dignity, namely dignity as a legal status, might be seen, as Waldron claims, as the foundation of human rights (2015, 133-36; 2012, 14).

Ultimately, Waldron sees the above legal status conception of dignity as perfectly combined with equality (2012, 14, 31, 33). That is to say, he claims that *all* people in modern democracies possess it. More specifically, he points to the Kantian passage in the Metaphysics of Morals (Ak. 6:329) according to which: "no human being in a state can be without any dignity, since he at least has the dignity of a citizen" (Kant 1996, 471). Waldron argues then that dignity as a legal status is combined with equality in the case of the "dignity of citizenship". He then claims that the legal status of the dignity of 'citizenship' can legitimately be proposed as the foundation of the rights of *all* citizens in modern democracies (2012, 60; 2013, 327-43). Recently, Waldron has examined the extension of the notion of legal citizenship from the domestic to the global level. To support this, he invokes the Kantian 'universal citizenship', which he understands as a "realization of the dignity of moral being" (2013, 332; 1996, 281).

2. Waldron's Claims Refuted

According to the above analysis, these are Waldron's main claims:

1. Because of the disagreements regarding human rights today, we must reconsider their grounds.

2. We should begin from human rights law, not its moral background, in order to understand the former.

3. We should start by examining the official justification of human rights law, that is, human dignity treating it as a legal rather than a moral concept in the first instance.

4. Dignity is a type of status traditionally connected with rank.

5. In particular, dignity as a *legal* status may guarantee our human rights.

6. The legal status conception of dignity can be combined with equality, in the sense that *all* citizens in modern democracies are considered to be dignified.

7. The extension of the notion of legal citizenship from the domestic to the global level through the Kantian 'universal citizenship' is feasible.

In this section, I respond to Waldron's claims, explaining why dignity as 'legal status' is not the foundation of human rights.

Initially, Waldron is right that the controversies regarding human rights law today force us to understand it in depth. For instance, many argue that human rights law is just a Western concept imposed by western cultural circles on non-western states, with other values, customs and mores, only for serving West's special interests. Hence, we should understand the *nature* of human rights law in order to cope with such disagreements. Surely, the need for the determination of the nature of human rights leads us to the examination of their grounds. However, I disagree with Waldron's claim that we must ignore morality, and start from law, in order to understand the latter. Here are two reasons: First, human rights law is not detached from the *moral* idea of human rights. I see the latter

as moral rights, with political connotations, which are protected by law. Consequently, in order to understand the *law* of human rights, we must not separate it from its *moral* nature and grounds. Incidentally, focusing on morality in order to understand human rights law, and not vice versa – as for example Hohfeld (1919) did and Waldron suggests – is, I think, a significant philosophical stance that brings philosophy at the heart of human rights' discourse connecting the two disciplines.

Secondly, let's say that we follow Waldron and posit human rights law as our starting point. The issue here is whether the law of human rights can effectively answer the question of what human rights are. Unfortunately, in most cases today there is a large controversy regarding the interpretation of our fundamental human rights. One example is the interpretation of the right to freedom of religion initiated by the landmark case of the ECJ, that is, Kokkinakis v. Greece (1993)[3]. As Rivers says: "There is no doubt in the minds of the Strasbourg judges that freedom of religion is important, but exactly what it is and why it matters remains elusive" (2013, 405). It seems then that the law itself – the article 18 of the UDHR in this case – does not provide the grounds for a deep understanding of the relevant right. But there must be an exact and correct interpretation of rights because without prior interpretation, there cannot be proper application of law (2013, 381). Hence I think we must not separate the law of human rights from morality. Only an investigation of the latter could enrich our understanding of the former.

Moreover, the fact that dignity seems to be the official justification of human rights in the major documents (UDHR, ICCPR, ICESCR), is not sufficient reason for us to conclude that dignity is *actually* the foundation of human rights. The meaning of dignity is not clearly delineated within the context of the major human rights documents. For instance, dignity does appear as the moral basis of human rights in the ICCPR, in which it is written that the rights it contains "derive from the inherent dignity of the human person"[4]. But, dignity does not appear as a straightforward foundational concept in the *Universal Declaration of Human Rights*, in which it is written that "all human beings are born free and equal in dignity and rights" (UN General Assembly, 1948). Hence, given the great confusion regarding the meaning of dignity in the fundamental human rights law, I think we should not focus on the latter to shed light on the obscure concept of human dignity. Incidentally, Waldron himself admits this claiming that law is not noted for its philosophical rigor (2015, 118). Hence, it is unclear why he still insists that the legal rather than the moral meaning of dignity should be our starting point (2012, 13-15; 2015, 118, 121, 123).

In addition, we must bear in mind that even though the legal concept of dignity is 'autonomous', it is still a rich concept with deep philosophical and theological roots.

3] See Human Rights Constitutional Right. 1993. *Kokkinakis v. Greece*. http://www.hrcr.org/safrica/religion/Kokkinakis.html (accessed 23 October, 2017).

4] See United Nations Human Rights. 1966. *International Covenant on Civil and Political Rights*. http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (accessed 26 October, 2017).

Thus, if we want to understand its legal meaning, we should not ignore, but examine in depth the moral theology (e.g. Aquinas), the natural law theory (e.g. Hobbes, Pufendorf, Rousseau), and of course the Kantian moral philosophy in the background (2015, 124). Hence, I think one should go back to dignity's *moral* roots treating it as a *moral* idea in the first instance (Waldron 2013, 383). However, this does not mean that we won't be able to return to the legal concept of dignity.

Furthermore, I disagree with the idea of grounding human rights in dignity understood as a status with references to aristocracy. I regard this anachronistic idea that cannot be applied in the post-Enlightenment world. Incidentally, we must not ignore the fact that there are many examples in history which show that not all princes and dukes had high status[5].

Also, I disagree with Waldron's connection of the legal status conception of dignity with human rights. This connection might lead one to the unreasonable claim that in political systems in which, say, legal status (i.e. dignity) is conferred only to men but not to women (e.g. in Saudi Arabia), only men's human rights are justified. But this would be an unacceptable claim. Therefore, I argue that dignity as legal status and human rights should be kept distinct from one another.

Further, I do not understand how Waldron's notion of the 'dignity of citizenship' can be the foundation of human rights. Here, I see four problems: 1) The dignity of citizenship which Waldron suggests refers by definition only to the citizens of democratic countries excluding all other people residing in it, for example the immigrants, refugees, and 'apatrides'; 2) it does not include the citizens who live in countries which have not the characteristics of a democracy (e.g. North Korea is a democratic republic only on paper); 3) it does not include all those who live in non-democratic countries (e.g. Qatar, Saudi Arabia); 4) it does not include those who still live in isolated jungle tribes in the world. Therefore, given that citizenship is a status not assigned universally, it cannot support any argument for the justification of human rights, namely the rights of men, not citizens (Waldron 2010b).

Finally, I cannot but disagree with the extension of 'legal citizenship' from the domestic to the global level via the Kantian notion of 'universal citizenship'. Contrary to what Waldron argues, I do not think Kant favors such a citizenship of the world. Even though Kant speaks about "the relation of theory to practice […] from a cosmopolitan perspective", surely he does not favor the notion of a universal citizenship (Kant 1996, 281). A universal citizenship presupposes a world or global state which Kant clearly rejects. For instance, in 8:367 in *Perpetual Peace* he writes:

> […] the *separation* of many neighboring states independent of one another […] is nevertheless better, in accordance with the idea of reason, than the fusion of them

5] See for instance the *Earl of Shrewsbury's Case*, 12 Co. Rep. 106, 77 Eng. Rep. 1383 (1612) cites the terms of an act of Parliament in the reign of Edward IV for the formal degradation of George Nevill, Duke of Bedford.

> by one power overgrowing the rest and passing into a universal monarchy, since as the range of government expands laws progressively lose their vigor, and a soulless despotism, after it has destroyed the seed of good, finally deteriorates into anarchy (Kant 1996, 336)[6].

Consequently, the rejection by Kant of the possibility of a world government makes it impossible further to be argued that there could be a kind of world citizenship. Hence, Waldron's conception of the dignity of the citizens of the world is not feasible[7].

II. THE VALUE (CATHOLIC AND KANTIAN) CONCEPTIONS OF DIGNITY AS THE FOUNDATION OF HUMAN RIGHTS

Apart from the status-conception of dignity, there are also two other significant value-conceptions of dignity: the Catholic and the Kantian. They are too suggested as the grounds of human rights. In this section I critically discuss both of them starting from the Catholic conception of human dignity.

1. The Catholic Value Conception of Dignity as the Foundation of Human Rights

According to the Catholic notion of the dignity of humanity, with roots in Stoic ideas, each and every person has intrinsic *value* (dignity), because he or she incarnates God's image (*Imago Dei*) (Waldron 2010b; Berman 2008). Aquinas defines dignity as the goodness of something on account of itself, that is, as the intrinsic value of something. This Catholic conception of dignity is very often used in the human rights discourse today. Recently, it has been argued that dignity in the Catholic sense grounds the rights of every human being, including embryos, even from the moment of conception (Ruston 2004, 10-12; Aquinas 1945, 220, 223; Lee and George 2008)[8].

Contrary to those who argue that the Catholic value conception of dignity is the foundation of human rights, my claim is that the Catholic and any other religious understanding of dignity is an inappropriate basis for human rights. Here are two reasons: firstly, as Jeremy Waldron indicates, we must not ignore the fact that many people are atheists, namely persons who do not share a religious worldview (2010a). There are also many people who are followers of other religious traditions than the Jewish-Christian one, or who are committed to an approach to rights that favors a multi-faith society. Waldron

6] For the rejection of the possibility of a world government by Kant, see also 8: 354 and 8: 357.

7] Similarly to Kant, I argue that serious problems would arise from the creation of a global political entity. There would be not only practical problems regarding the cohesion between the different political entities, but also the crucial problem of despotism as derived from a 'Leviathan-type' global governance. Thus, I think states should better exist autonomously in a soft-cosmopolitan model.

8] See, also, John Paul II, Original Unity of Man and Woman: Catechesis on the Book of Genesis, 1981, cited in Coughlin J.J. 2003. Pope John Paul II and the Dignity of the Human Being. *Harvard Journal of Law & Public Policy*, 27 (65): 72-4; Pope John Paul II's encyclical *Evangelium Vitae*, March 25, 1995, available at: http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jpii_enc_25031995_evangelium-vitae_en.html (accessed 20 October, 2017).

argues then in Rawlsian terms that if we wanted to ground human rights for *all*, we should not ground them in a concept that cannot by definition be shared by all. Incidentally, the grounding of human rights in dignity interpreted via a comprehensive dogma might lead one, for example, to torture another person on the basis of the religious deviation of the latter, and her alleged lack of dignity. But surely this would be an unreasonable, unacceptable, and punishable criminal act.

Secondy, dignity understood as the value attributed indiscriminately to all human beings including embryos from the moment of conception might lead to the unreasonable claim that abortion is impermissible even in serious pregnancy complications, e.g. eclampsia, in which the mother's life is threatened. Additionally, the association of the Catholic value conception of dignity with human rights contradicts certain women's rights such as their right to reproductive freedom. Therefore, I can hardly see how a religious understanding of the moral concept of human dignity, and human rights can be compatible (Waldron 2010a, 216-35).

2. The Kantian Value Conception of Dignity as the Foundation of Human Rights

But the Catholic is not the only value-conception of dignity suggested today as the foundation of human rights. There is also the Kantian moral concept of human dignity which is very often presented as the genuine basis of rights[9]. In this section I critically discuss the Kantian human dignity as the foundation of human rights.

To begin with, Kant discusses thoroughly the dignity of humanity in the first moral work of his critical period, namely in the *Groundwork of the Metaphysics of Morals*. Here is Kant's famous passage concerning human dignity (Ak. 4:434-35):

> In the kingdom of ends everything has either a *price* or a *dignity*. What has a price can be replaced by something else as its *equivalent;* what on the other hand is raised above all price and therefore admits of no equivalent has a dignity/What is related to general human inclinations and needs has a *market price;* that which, even without presupposing a need, conforms with a certain taste, that is, with delight in the mere purposeless play of our mental powers, has a *fancy price*; but that which constitutes the condition under which alone something can be an end in itself has not merely a relative worth, that is, a price, but an inner worth, that is, *dignity*./Now, morality is the condition under which alone a rational being can be an end in itself, since only through this is it possible to be a lawgiving member in the kingdom of ends. Hence, morality, and humanity insofar as it is capable of morality, is that which alone has dignity (1996, 88)

Also, in 4:436, Kant argues that every rational human being has intrinsic value (dignity), because he or she has autonomous will. Kant writes:

9] The Kantian value conception of human dignity is invoked as the foundation of human rights in several cases in courts today; see for example The German Airliner Case, available at: http://www.bverfg.de/e/rs20060215_1bvr035705en.html (accessed 21 October, 2017).

> But the lawgiving itself, which determines all worth, must for that very reason have dignity, that is, an unconditional, incomparable worth; and the word *respect* alone provides a becoming expression for the estimate of it that a rational being must give. *Autonomy* is therefore the ground of the dignity of human nature and of every rational nature (1996, 85).

Now, this Kantian value concept of dignity is proposed as the foundation of human rights. That is to say, Kant is understood as saying that we all have rights, namely entitlements to be respected and treated as ends, not as means (4:429)10, in virtue of the fact that we all possess an intrinsic value or worth, that is, dignity, which is further based on autonomy. Eventually, from our autonomy, namely our capacity to make our own decisions independently, without guidance or coercion from others, our dignity is derived, in which, through the Formula of Humanity (4:429), our human rights are further grounded (Habermas 2010, 464-80; Griffin 2009, 50; Bennett 2015, 76). Within this context, Kant is understood as claiming, for example, that slavery is wrong because it is incompatible with the idea that human beings, and all other rational beings, have to be treated as ends, namely as persons with dignity and autonomy; or that torture is wrong because the tortured man is not being treated as an end, namely as a dignified person with autonomy.

Nevertheless, despite its resonance, I see the above argument for the justification of human rights based on the Kantian moral concept of human dignity as mistaken. As it has been mentioned above, in 4:434-6 in the Groundwork of the Metaphysics of Morals, Kant explicitly says that human dignity is a value grounded in autonomy. In 4:440, he defines autonomy (of the will) as "the property of the will by which it is a law to itself (independently of any property of the objects of volition)…" (1996, 89). Hence, according to Kant, one is considered as a dignified person in virtue of her autonomy or autonomy of the will. Now, it might be argued that human and other rational beings possess human rights in virtue of the fact that they are persons who have to be treated as ends, that is, with dignity because they are autonomous, that is, capable of being independent and free to make their own decisions without supervision or coercion from others.

Contrary to the above interpretation of the Kantian moral principle of autonomy – on which the dignity-based Kantian argument for the justification of human rights is based – I see the Kantian autonomous person not just as a free and independent person who does as she pleases, but as a freely self-legislating person who, applying reason to her inclinations, passions, social conventions, religious beliefs, ideologies etc., does her (moral and legal) duty for duty's sake. Under this definition of autonomy, I see the Kantian human dignity, which is based on it, as the value of those who are eventually capable of doing their duties. That is to say, the dignified person is not the person who is simply independent and

10] According to Kant's 'Formula of Humanity': "So act that you use 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*" (1996, 80).

free from coercion, but the person who does her duty. Consequently, the Kantian human dignity is a value possessed not by the right-holders, but the duty-bearers.

Therefore, I consider the Kantian argument, according to which dignity is the foundation of human rights, as incorrect, because it is constructed upon the mistaken idea that dignity is a value possessed by right-holders who have the right to being treated as ends in virtue of the fact that they are autonomous, namely free and independent to act as they see fit. But dignity is actually a value attributed to autonomous duty-bearers who do their duty treating *others* as ends, that is, with respect. Hence, human beings are respected not because they have dignity as rational agents, but because others, namely those who (must) respect them, have dignity. Within this context, slavery and torture are wrong not because they are incompatible with the idea that slaves and the tortured persons have to be treated as ends, namely as dignified and autonomous persons themselves; rather such transgressions are wrong because they are irrational (decisions and) acts performed by heteronomous and non-dignified persons who fail to do their duties towards others. Eventually, I argue that if we simply respected others because of their dignity/autonomy/rationality, then babies, children, the insane, the mentally disabled, animals, and plants, which lack all these properties, would be left unprotected.

In addition, I do not consider the dignity-based Kantian argument for the justification of human rights as a *truly* Kantian *argument* given that it disregards the centrality and priority of the concept of 'duty' over the concept of 'right' within the Kantian duty-based ethics in general. Autonomy and duties are concepts which cannot be seen as detached from each other; rather they are concepts very closely related. My Kantian argument for the justification of human rights below has been constructed upon the idea that duties have full priority over rights. If we focus on rights, duties are not guaranteed; but if we focus on duties, then this, even if it is not politically 'catchpenny', surely it is legally more efficient. I think such a legal efficiency is needed more than ever in global justice today.

Finally, I would like to mention one more objection to the idea that the Kantian human dignity is the foundation of human rights. Any Kantian dignity-based argument for the justification of human rights disregards the fact that the Kantian moral concept of human dignity does not apply to the *external* domain of law. Rather, it is a moral concept belonging exclusively to the *internal* domain of morality. But if we restricted our 'justificatory horizons' only to the latter, without any recourse to the external domain of law, in which human rights typically reside, how could we plausibly and legitimately justify the latter?

III. CONCLUSION: A NEW PHILOSOPHICAL ACCOUNT FOR THE JUSTIFICATION OF HUMAN RIGHTS

Given that the status conception of dignity seems to protect only the rights of the privileged few, and promote 'meritocratic' societies and Court rooms[11]; and further in

11] See for example the recent 'Lavinia Woodward case': http://www.telegraph.co.uk/

view of the fact that the Kantian dignity-based argument for the justification of human rights is based on a mistaken interpretation of the moral concept of human dignity, I do not regard either the status or the value concept of dignity as appropriate grounds for human rights. In this section, I suggest a different Kantian, duty-based justification of human rights inspired by Onora O'Neill's theory of duty (1996). My starting point is Kant's supreme principle of morality, autonomy, as it is presented in the *Groundwork of the Metaphysics of Morals* (1996, 89).

Autonomy is the property of the will by which it is a law to itself (lawgiving) (Kant 1996, 89). Hence, autonomy is about lawgiving and further obeying our duties constraining our will in accordance with moral law's commands despite any other inclinations we might have. Hence autonomy is not simply identified with sheer independence or freedom from coercion. The question now is what that lawgiving function of morality is. In the *Metaphysics of Morals*, Kant distinguishes between two types of 'lawgiving'. On the one hand, there is the ethical lawgiving, "which makes an action a duty and also makes this duty the incentive" (1996, 218-21); and on the other hand, there is the juridical lawgiving "which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself" (1996, 218-19). The juridical lawgiving, as Kant argues, refers only to external duties, while the ethical lawgiving refers both to ethical internal/non-enforceable duties of virtue and ethical external/enforceable duties of right (1996, 383-4).

Yet, Kant says that, in the case in which the ethical lawgiving takes up external duties, the internal incentive to action, that is, the idea of duty must not be present in the relevant lawgiving[12]. That is to say, by removing the condition of the ethical motivation (in the external domain of law), and allowing for externality, we can derive *external* duties from the *ethical* lawgiving (Baiasu 2016). Eventually, the ethical lawgiving can be considered as the 'interface' between Kant's moral and his legal and political philosophy.

Further, the ethical external/enforceable duties, derived from the ethical lawgiving function of morality, are divided into four main categories[13]: 1) universal perfect duties of right, that is, duties held by all and owed to all; 2) specific perfect duties of right, that is, duties held by some and owed to specified others; 3) universal imperfect duties of virtue, that is, duties held by all, yet they are owed to none; and 4) specific imperfect duties of virtue, that is, duties held by some and owed to none. Specifically, the two first types of duties (universal perfect and specific perfect), as Kant argues, "[…] the capacity for putting others under obligation, that is, the concept of a right can afterwards be explicated" (Kant 6: 239) – while from the 3) and 4) no rights derive (O'Neill 1996, 152). What must be pointed out here is that the word 'develop' is a better choice, rather than Mary Gregor's word 'explicate' because: 1) the original Kantian word 'entwickelt' is closer to the English

news/2017/05/16/oxford-student-spared-jail-extraordinary-talent/ (accessed 24 October, 2017).

12] Incidentally, this is the main difference between ethical and juridical lawgiving (Kant 1996, 384).

13] I am following here Kant's schema of duties of right in 6:240-42, (1996, 395-97); also O'Neill's diagram of the four Kantian types of duty or obligation (1996, 152).

word 'develop' rather than Gregor's 'explicate', which simply means 'correspondence' or 'correlation' or 'connection', and 2) the word 'develop' expresses a deeper foundational relation between duties and rights. The latter are developed, or generated, or derive from the former. It is not accident that Kant talks about 'duties of right'. The word 'right' is itself entailed in a 'duty of right'. Eventually, I argue that **human rights are generated from** (see above, the division of the external duties of right, number 1) **the 'universal perfect duties of right'**[14].

According to this derivation of human rights from duties, one understands why rights are both moral (because they derive from ethical duties) and legal (because they derive specifically from the external ethical duties of right). Incidentally, only human rights, along with the so-called socioeconomic rights derive from morality – not other rights. Kant explicitly denies such a possibility. In 6:396 in the *Metaphysics of Morals*, he argues that the principle of right as analytic is not related to or derived from the principle of morality which is synthetic. Apparently, here Kant means rights in the strict sense such as those which he defines in 6:232. I see the strictly juridical lawgiving as the source of the latter. A right in the narrow sense is for example the right of the seller of a property in England to use the buyer's deposit between exchange of contracts and completion, in order to purchase another property. The latter is not a moral human or socioeconomic right such as those mentioned in the major human rights documents. Rather, it is a strict or legal right or right in the narrow sense, with practical scope that just renders transactions more efficient (Lestas 2014).

Here is a rough diagram depicting the development of human (and socioeconomic) rights, as we find them in the major human rights documents today (UDHR, ICCPR, ICESCR), from the Kantian duties of right:

Practical Reason

↓

Autonomy (4:440) > ***Ethical Lawgiving (6:219)*** >

↓ ↓

[Internally: Dignity (4:435)] ***[External Duties to Others (6:219)]***

↓ ***(6:239)***

- *Universal Perfect Duties of Right (6:240) → Universal Human Rights*
- *Specific Perfect Duties of Right (6:240) → Socioeconomic Rights*
- *Universal Imperfect Duties of Virtue (6:240) → No Rights*
- *Specific Imperfect Duties of Virtue (6:240) → No Rights*

Apparently, dignity is not the basis of rights. Rather, it is the value attributed to those who obey their duties – from which human rights are afterwards generated. Eventually,

14] While socioeconomic rights, namely the rights that need the establishment of certain institutions to determine the duty-bearers and their (negative and positive) 'distributed special obligations' are generated from the 'specific perfect duties of right' as it shown in the schema. See also (O'Neill 1996, 131-34).

Waldron's notion that dignity and rights might be *coordinate* ideas rather than ideas deriving one from the other seems to be true (2015, 118). Ultimately, UDHR's article 1 formulation is the correct one: "All human beings are born free and equal in dignity and rights…" (UN General Assembly, 1948).

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