



Swiss Initiative to Commemorate the 60th Anniversary of the UDHR

Protecting Dignity: An Agenda for Human Rights

RESEARCH PROJECT ON HUMAN DIGNITY:

“Human Dignity and Human Rights ”

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The year 2008 marked the 60th Anniversary of the Universal Declaration of Human Rights. To commemorate this occasion, and in order to make a meaningful contribution to the protection of human rights, the Swiss Government decided to launch "An Agenda for Human Rights". The initiative aims to explore new ways of giving human rights the weight and place they deserve in the 21st century. It is designed as an evolving and intellectually independent process.

The text *Protecting Dignity: An Agenda for Human Rights* was authored by a Panel of Eminent Persons, co-chaired by Mary Robinson and Paulo Pinheiro. This *Agenda* and the Swiss Initiative are designed to achieve two objectives: firstly, to set out some of the main contemporary challenges on the enjoyment of human rights, and secondly, to encourage research and discussion on a number of separate topics linked to the *Agenda*. These include: Human Dignity – Prevention – Detention – Migration – Statelessness – Climate Change and Human Rights – the Right to Health – and A World Human Rights Court.

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HUMAN DIGNITY AND HUMAN RIGHTS

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INTRODUCTION

Human dignity is the foundational concept of the global human rights regime, “the ‘ultimate value’ that gives coherence to human rights” (Hasson 2003: 83). The 1996 International Human Rights Covenants proclaim “these rights derive from the inherent dignity of the human person.”¹ The Vienna Declaration of the 1993 World Human Rights Conference likewise affirms “all human rights derive from the dignity and worth inherent in the human person.”² Such claims build on the opening words of the Universal Declaration of Human Rights (1948): “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.”³ And all of this can be traced back to the aim of the United Nations, as stated in the second paragraph of the Preamble of the Charter, “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” Yehoshua Arieli goes so far as to argue that the Universal Declaration and the concept of the dignity of man were “the cornerstone and the foundation on which the United Nations sought to reconstruct the future international order of mankind and of public life in general.” (2002: 1)

These documents,⁴ though, as one would expect from legal instruments, are unclear as to the exact meaning of human dignity and how it gives rise to or grounds human rights.⁵

¹ International Covenant on Economic, Social and Cultural Rights (ICESCR) second preambulatory paragraph and International Covenant on Civil and Political Rights (ICCPR) second preambulatory paragraph. See also ICESCR and ICCPR, first preambulatory paragraph (“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”); ICESCR, Article 13 (“education shall be directed to the full development of the human personality and the sense of its dignity”); ICCPR, Article 10 (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”).

² Second preambulatory paragraph. See also para. I.11.3 (“The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern”); para. I.18.2 (“Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated”); para. I.20 (“The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people”); and para. I.25 (“extreme poverty and social exclusion constitute a violation of human dignity”). In addition, §B of the Vienna Programme of Action is titled “Equality, Dignity, Tolerance” and para. 55 “emphasizes 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 activities.”

³ See also Article 22 (“Everyone, as a member of society, has the right to ... the economic, social and cultural rights indispensable for his dignity and the free development of his personality”) and Article 23(3) (“Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”).

⁴ See also International Convention on the Elimination of All Forms of Racial Discrimination first preambulatory paragraph (“the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings”), second preambulatory paragraph (“the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights”), and fifth preambulatory paragraph (stating the aim of “securing un-

We do not find an explicit definition of the expression “dignity of the human person” in international instruments or (as far as I know) in national law. Its intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors. When it has been invoked in concrete situations, it has been generally assumed that a violation of human dignity can be recognized even if the abstract term cannot be defined. (Schachter 1983: 849)

The framers of the international instruments did not define human dignity ... Nor were they precise about the relationship between human rights and human dignity. (Henkin 1992: 211; Cf. Beyleveld and Brownsword 2001: 11, 21)

This project explores the meaning(s) of human dignity and the various ways in which human rights rest on, give voice to, and seek to realize the dignity and worth of the human person. Although the ultimate focus is contemporary, principal attention is given to comparative historical analysis of both Western and non-Western societies. Only through such comparative analysis can we appreciate the truly radical nature of the claim in Article 1 of the Universal Declaration that “All human beings are born free and equal in dignity and rights” – a premise, and promise, that still frames the leading challenges for states and citizens in contemporary international society.

derstanding of and respect for the dignity of the human person”); Convention on the Elimination of All Forms of Discrimination against Women, first preambulatory paragraph (“the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person”), second preambulatory paragraph (“all human beings are born free and equal in dignity and rights”), and seventh preambulatory paragraph (“discrimination against women violates the principles of equality of rights and respect for human dignity”); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, second preambulatory paragraph (“those rights derive from the inherent dignity of the human person”); Convention on the Rights of the Child, first preambulatory paragraph (“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”), second preambulatory paragraph (“... faith in fundamental human rights and in the dignity and worth of the human person”), eighth preambulatory paragraph (“the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”), Article 23(1) (“a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity”), Article 28(2) (“States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity”), Article 27(c) (“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person”), Article 29 (“...an environment which fosters the health, self-respect and dignity of the child”), and Article 40(1) (“promotion of the child's sense of dignity and worth”). At the regional level, the American Declaration of the Rights and Duties of Man, in its first preambulatory paragraph, declares that “The American peoples have acknowledged the dignity of the individual” and in the next paragraph goes on to claim that “he essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality.” And Chapter VII of the Helsinki Final Act commits the parties to “promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person.”

⁵ The situation is even more obscure in the Unesco Universal Declaration on the Human Genome and Human Rights (2005), where “human dignity” appears eight times, without an attempt to specify its meaning, and usually separate from but in conjunction with “human rights and fundamental freedoms.” Compare (Häyry and Takala 2005). The situation is similar in the 1997 Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, where “dignity” appears four times in the Preamble and Article 1. It would appear, though, that dignity carries more independent weight in bioethics contexts than in standard international human rights contexts.

CHAPTER ONE: PRELIMINARIES

1. A COMMON STANDARD OF ACHIEVEMENT

This project adopts a conceptual and explanatory, rather than a philosophical or prescriptive, approach to human rights and human dignity. Rather than attempt to give the “best” philosophical account of human rights – what human rights (or human dignity) means in some deep or ultimate sense or how in some ideal world they ought to be understood – I try to explicate the conceptual logic that underlies the Universal Declaration and the body of international human rights law to which it has given rise.

This “Universal Declaration model” of human rights (cf. Donnelly 2003a; 2003b: ch. 3) has become an authoritative international standard. Philosophical analysis that was substantially inconsistent with the Universal Declaration would be largely without practical import.⁶ For the purposes of international law and politics, and the broader international discussions within which these practices are embedded, “human rights” means roughly what is in the Universal Declaration. However one evaluates the substance of contemporary international human rights law, any student or practitioner of contemporary international relations has an interest in understanding its conceptual logic.

At first this shared understanding operated primarily at the elite inter-state level of diplomacy and international law. In the mid-1970s, however – symbolized by, for example, the Helsinki Final Act of 1975, the election of Jimmy Carter as President of the United States in 1976, and the award of the Nobel Peace Prize to Amnesty International in 1977 – human rights came to be much more widely discussed internationally. For all the ideological contention of that era, there was a surprisingly wide consensus that the Universal Declaration represented an authoritative international standard. And in the ensuing years that consensus began to penetrate more deeply into societies and governments across the globe. With the end of the Cold War – an event that itself was facilitated by the spread of the ideas, values, and practices of the Universal Declaration – this process of normative diffusion and deepening increased its pace. By the 1993 Vienna World Human Rights Conference, virtually all states were able to reach consensus on a Declaration and Program of Action that gave even greater depth and meaning to the values of the Universal Declaration.

For the purposes of advocacy, this deeply embedded international consensus is immensely valuable. One need not debate whether people are entitled to, for example, nondiscrimina-

⁶ Although this is not a decisive argument against such an intellectual exercise, it does suggest looking for alternative analytical strategies with more practical significance. My goal is to clarify the underlying logic of the Universal Declaration, not simply for the intellectual value that this might have, but because explicating and understanding that logic can be a powerful tool in the further progressive development of international human rights law and practice. Rooting any critique that emerges within the dominant conceptual framework gives such criticism special force. Of course, if that framework is fundamentally misguided, such criticisms will end up largely “missing the point.” In the case of the Universal Declaration, however, as I suggest later in this section, this concern, fortunately, is not a valid one.

tion, but can simply get on with the practical work of debating the details of the implications of the right to nondiscrimination and how it should be implemented at a particular time in a particular place. Such a workable, internationally agreed upon account is of far more practical value than an abstractly “better” account that lacks international consensus.

But the attractions of the Universal Declaration are not merely instrumental. The Universal Declaration is a stunningly good document. There are a few omissions, most notably the right to self-determination. There is an occasional infelicity, most evidently in the clumsy construction and wording of Article 22.⁷ Nonetheless, I would contend that the Universal Declaration, in both substance and expression, is very good indeed.

The substantive conception of human rights embodied in the Universal Declaration is rich but thin. It ranges widely but not too widely. Its terms are precise enough to be genuinely directive and constraining but abstract enough to allow for appropriate historical, cultural, and political flexibility in implementation. This has facilitated development of an “overlapping consensus” on these rights.

John Rawls distinguishes “comprehensive religious, philosophical, or moral doctrines,” such as Islam, Kantianism, Confucianism, and Marxism, from “political conceptions of justice,” which address the political structure of society, defined (as far as possible) independent of any particular comprehensive doctrine. (1996: xliii-xlv, 11-15, 174-176; 1999: 31-32, 172-173) Adherents of different comprehensive doctrines may be able to reach an “overlapping consensus” on a political conception of justice. (1996: 133-172, 385-396)⁸ Such a consensus, I would argue, has come to develop on the rights of the Universal Declaration.

An overlapping consensus is partial rather than complete; comprehensive doctrines converge but do not completely coincide. It is political rather than moral or religious. But it is not merely political; it is more than a *modus vivendi* between irreconcilable views that are for practical reasons forced to coexist. Rather, it reflects a reasoned agreement that despite many important differences at a deeper philosophical level, there is a striking convergence on a vision of the limits of political legitimacy in the contemporary world; or, looked at from the bottom up, on the basic expectations that citizens may legitimately have of their societies and governments.

This strategy of “justificatory minimalism,” as Joshua Cohen describes it, “aims to avoid imposing unnecessary hurdles on accepting an account of human rights (and justice), by intolerantly tying its formulation to a particular ethical tradition. It is left to different traditions—each with internal complexities, debates, competing and conflicting traditions of argument, and (in some cases) canonical texts—to elaborate the bases of a shared view of human rights within their own terms.” (Cohen 2004: 213; Cf. Lindholm 1999: 69-73) And that shared vision represents not a lowest common denominator but rather the robust set of human rights enumerated in the Universal Declaration. In other words, by allowing appeals to different

⁷ For the drafting history that led to the awkward linkage of social security with economic, social, and cultural rights in general, see (Morsink 1999: 4-12, 199-210) and (Whelan 2006).

⁸ This and the following two paragraphs are drawn from (Donnelly 2003b: §3.2).

sets of foundational values we have in effect discovered that, at least in the conditions of the contemporary world, otherwise very different peoples, traditions, individuals, and groups turn out to share something very much like the robust vision of the conditions for a life of dignity outlined in the Universal Declaration.

Over the past few decades, more and more adherents of a growing range of comprehensive doctrines in all regions of the world have come to endorse human rights – as a political conception of justice. Human rights thus have no single philosophical or religious foundation. Instead they have many foundations – and thus much greater practical resonance than could be provided by any particular philosophy or religion. Christians, Muslims, Confucians, and Buddhists; Kantians, Utilitarians, Pragmatists, and neo-Aristotelians; liberals, conservatives, traditionalists, and radicals, and many other groups as well, come to human rights from their own particular path. It is striking, however, that today almost all the leading paths to social justice and human dignity centrally involve human rights. For their own varied reasons, most leading comprehensive doctrines today see human rights as the political expression of their deepest values. As Jacques Maritain famously put it “We agree about the rights but on condition no one asks us why” (Unesco 1949: 10) – not because there is no good answer but because there are many different good answers (and each tradition remains committed to its own).

The international legal consensus represented by the body of international human rights law thus is in fact, as an empirical matter, replicated at the level of moral and political theory. And both, I would argue, arise from the fact that the Universal Declaration presents a remarkably penetrating account of some of the major standard threats to human dignity posed by modern markets and modern states. It also advances a tested set of practices – internationally recognized human rights – to protect individuals, families, and groups against those threats. The Universal Declaration, in other words, crystallized a process of social learning about the fate of human dignity in the modern world.

It is an exaggeration to say that “the conception of humanity as expressed in the Universal Declaration of Human Rights has become the only valid framework of values, norms and principles capable of structuring a meaningful and yet feasible scheme of national and international civilized life.” (Weisstub 2002: 2) But this claim does contain a kernel of truth. The Universal Declaration may not be the only valid framework. It is, admittedly, an incomplete framework. Nonetheless, it does represent a realistically utopian cross-cultural vision of the demands and possibilities of our moral nature, a vision that has something like universal validity for us today.

The insight of the drafters of the Universal Declaration⁹ into some of the central social and political problems of modernity has proved immensely fruitful. “While protecting the ability of diverse consciences to disagree radically about the premises and principles of ethical theory, they found a way to emphasize a number of basic findings of practical reason, to which a sufficient majority of peoples around the world had been driven” (Novak 1999: 39) – and

⁹ For varying accounts, see (Humphrey 1984), (Agi 1998), (Alfredsson and Eide 1999), (Morsink 1999), (Glendon 2001), and (Waltz 2001, 2002, 2004).

continue to be driven.¹⁰ The hope of one of its drafters, Charles Malik of Lebanon, has indeed been realized, namely, that the Declaration would “either bring to light an implicit agreement already operative, perhaps dimly and unconsciously, in the systems and ways of life of the various states, or consciously and creatively advance further and higher the area of agreement.” (quoted in El-Hage 2004: 8) As a result, the Universal Declaration has in fact become what it rather grandly claimed to be in 1948, namely, “a common standard of achievement for all peoples and all nations.”

2. CONCEPTUAL FOUNDATIONS

This section focuses on three related but analytically distinct concepts: human rights, human dignity, and social justice. I will argue that human rights represent a particular strategy for realizing certain elements of social justice, based on a particular set of conceptions of human dignity. Both the range and the limits of this understanding of human rights must be appreciated.

A. Human Rights

Human rights are, according to the literal sense of the term, the rights that we have simply because we are human. This immediately poses a great number of conceptual and philosophical questions. Most obviously, “What is a right?” and “How does being human give rise to them?”

i. Being Right and Having a Right

“Right” in English, like equivalent words in several other languages, has two central moral and political senses: rectitude, in which we typically speak of “the right thing to do,” of something being right (or wrong), and entitlement, in which case we typically speak of someone having a right. Rectitude and entitlement link “right” and obligation in systematically different ways. Claims of rectitude (righteousness) – “That’s wrong,” “That’s not right,” “You really ought to do that” – focus on a standard of conduct and draw attention to the duty-bearer’s obligation under that standard. Rights claims, by contrast, focus on the right-holder and draw the duty-bearer’s attention to the right-holder’s special title to enjoy her right. Rights in this sense thus are sometimes called “subjective rights;” they have as their focus a particular subject (who holds them) more than an “objective” standard to be followed or state of affairs to be realized.

To have a right to x is to be entitled to x. It is owed to you, belongs to you in particular. And if x is threatened or denied, right-holders are authorized to make special claims that ordinarily “trump” utility, social policy, and other moral or political grounds for action (Dworkin 1977: xi, 90).

¹⁰ Thus I reject the suggestion of Anthony Langlois that the Universal Declaration makes “the implicit claim ... that human rights has the authority to stand over and above the multiplicity of traditions, religions, cultures, political ideologies and metaphysical traditions existent throughout the world..” (2005: 374) Quite the contrary, the drafters saw the Declaration as emerging out of deeper foundations. Internationally recognized human rights stand “above” these deeper foundations only in the sense that a house is “above” – that is constructed upon -- its foundation. This is particularly true given the above account of multiple foundations in an overlapping consensus.

Rights create -- in an important sense “are” -- a field of rule-governed interactions centered on, and under the control of, the right-holder. “A has a right to x (with respect to B)” specifies a right-holder (A), an object of the right (x), and a duty-bearer (B). It also outlines the relationships in which they stand. A is entitled to x (with respect to B). B stands under correlative obligations to A (with respect to x). And, should it be necessary, A may make special claims upon B to discharge those obligations.

Rights are not reducible to the correlative duties of those against whom they are held. If Anne has a right to x with respect to Bob, it is more than simply desirable, good, or even right that Anne enjoy x. She is entitled to it. And should Bob fail to discharge his obligations, besides acting improperly (i.e., violating standards of rectitude) and harming Anne, he violates her rights, making him subject to special remedial claims and sanctions.

Neither is having a right reducible to enjoying a benefit. Rather than a passive beneficiary of Bob's obligation, Anne is actively in charge of the relationship, as suggested by the language of “exercising” rights. She may assert her right to x. If he fails to discharge his obligation, she may press further claims against Bob, choose not to pursue the matter, or even excuse him, largely at her own discretion. Rights empower, not just benefit, those who hold them.

ii. Being Human and Having Human Rights

Legal rights, as the very term suggests, have the law as their source. Contracts create contractual rights. Human rights would appear to have humanity or human nature as their source. But with legal rights we can point to statute or custom as the mechanism by which the right is created. With contractual rights we have the act of contracting. How does “being human” give one rights? And what exactly does it mean to “be human” in the relevant sense?

As we shall see below, being human has been understood in various ways throughout history. Until rather recently, though, most understandings have stressed either being born into a particular group or living in a particular way. Today, in sharp contrast, by “human” we typically mean simply being a member of the species *homo sapiens*. To have human rights, one need be or do nothing other than be a member of the species. One of the principal purposes of this project is to demonstrate in some historical detail just how revolutionary an idea this is.

If human rights are the rights we have simply as members of the species, they are equal rights (we all either are or are not human, equally) and inalienable rights (no matter how one behaves or suffers, one cannot stop being a human being [and thus having human rights]). Human rights thus are universal rights,¹¹ in the sense that all human beings have them – although legally, duties to protect and provide these rights have been assigned principally to sovereign territorial states.

I do not want to underestimate the significance or difficulty of the underlying philosophical issues raised by this account. In the preceding section, however, I argued that we can prof-

¹¹ For an extended critical review of the various senses of “universal” and “relative” in international human rights debates, see (Donnelly 2007, 2008).

itably set them aside. This project is based on the simplifying methodological assumption that, in some important sense, there “are” equal and inalienable rights that each human being holds simply because she is human. My aim is to show a) that this understanding is historically quite recent and unusual, and b) that it represents a coherent and powerful progressive ethical and political response to the standard threats to human dignity posed by modern markets and modern states, which continue to dominate contemporary national and international societies.

B. Human Dignity

Our second key concept is human dignity. Again, we need to consider both the noun and the adjective. The discussion here, however, can be brief, because later chapters explore in some detail how these concepts have been understood in several exemplary Western and non-Western historical societies.

The first definition of “dignity” in the *Oxford English Dictionary*, which goes back to the early thirteenth century, is “The quality of being worthy or honourable; worthiness, worth, nobleness, excellence.” Other ethically and politically relevant senses include “Honourable or high estate, position, or estimation; honour; degree of estimation, rank;” “*collect.* Persons of high estate or rank;” “An honourable office, rank, or title; a high official or titular position;” “*transf.* A person holding a high office or position; a dignitary;” and “Nobility or befitting elevation of aspect, manner, or style; ... stateliness, gravity.”

Dignity, in other words, indicates worth that demands respect. As we will see below, such worth has typically been understood to be differential rather than equal. Dignity has, historically, usually been ascribed to an elite group; it has been tied particularly to high status or position and public recognition of rank.

The English term derives us from the (twelfth century) French *dignité*, from the Old French *digneté*. These in turn had their roots in the Latin *dignus*, worthy, from *dignitas*, which Lewis and Short define as “worth, worthiness, merit, desert.” *Dignitas* was often used in conjunction with notions such as *amplitudo* – literally, width, size, amplitude, and thus “dignity, grandeur, distinction, consequence (more general than *dignitas*, *auctoritas*, etc. ...)” – and *honestas*, honorableness, reputation, integrity. And it was clearly seen to be a characteristic of the patrician, the well-born, especially in his public presentation. In other words, the historically central English and French¹² senses continue a long tradition of viewing “dignity” in fundamentally inegalitarian terms. Only relatively recently – in the past two or three hundred years – has dignity been widely conceived as an attribute of all human beings.

The claim of human dignity is that simply being human makes one worthy or deserving of respect. Human rights can thus be understood to specify certain forms of social respect –

¹² The *Dictionnaire de l'Académie française*, which takes a less historical approach than the *OED*, lists as its first sense “Valeur éminente, excellence qui doit commander le respect. *La dignité de la personne humaine. La dignité de la pensée, du travail.*” But it too notes the more historical sense of “Fonction ou distinction qui confère un rang éminent dans la société. *Les premières, les plus hautes dignités de l'État, de l'Église. La dignité de cardinal. La dignité de maréchal de France. Être investi d'une nouvelle dignité. Parvenir à la dignité suprême. La dignité de grand officier, de grand-croix de la Légion d'honneur. Les marques, les insignes d'une dignité.*”

goods, services, opportunities, and protections owed to each person as a matter of rights – implied by this dignity. And the practice of human rights provides a powerful mechanism to realize in the social world the underlying dignity of the person.

Human rights thus are based on but not reducible or equivalent to human dignity (or related notions like human needs, well-being, or flourishing). Human rights are one particular mechanism – a particular set of practices – for realizing a certain class of conceptions of human dignity.

C. Rights, Justice, and Related Concepts

Human rights also need to be distinguished from concepts such as social justice, natural law, and moral duty. We do not have human rights to all things that are good, or even all important good things. And this is not only or even primarily because of the need to keep the Universal Declaration short. There are many good things that we not only do not but should not enjoy as matters of human rights.

For example, we are not entitled -- do not have (human) rights -- to love, charity, or compassion. Parents who abuse the trust of children wreak havoc with millions of lives every day. We do not, however, have a human right to loving, supportive parents. In fact, to recognize such a right would transform family relations in ways that most people would find deeply unappealing, even destructive. Most good things simply are not the object of human rights.

The emphasis on human rights in contemporary international society thus implies selecting certain values for special emphasis. And, no less importantly, it also involves selecting a particular mechanism -- rights -- to advance those values.

Human rights are not just abstract values such as liberty, equality, and security. They are rights, particular social practices to realize those values. A human right thus should not be confused with the values or aspirations underlying it or with enjoyment of the object of the right.

For example, protection against arbitrary execution is an internationally recognized human right. The fact that people are not executed arbitrarily, however, may reflect nothing more than a government's lack of desire. Even active protection may have nothing to do with a right (title) not to be executed. For example, rulers may act out of their sense of justice or follow a divine injunction that does not endow subjects with any rights. And even a right not to be arbitrarily executed may rest on custom or statute.

Such distinctions are more than scholastic niceties. Whether citizens have a right (title) shapes the nature of the injury they suffer and the forms of protection and remedy available to them. Denying someone something that it would be right for her to enjoy in a just world is very different from denying her something (even the same thing) that she is entitled (has a right) to enjoy. Furthermore, whether she has a human right or a legal right contingently granted by the state dramatically alters her relationship to the state and the character of her injury.

In what follows I will argue not only that human rights reflect and seek to realize a particular conception of human dignity but that they also represent and seek to realize a particular (in-

complete) conception of social justice. All societies have had notions that we would describe as involving at least an implicit conception of social justice. Only rather recently, however, has social justice come to be understood centrally in terms of human rights (and dignity).

In what follows, I will use “justice” in the broad Aristotelian sense of “giving to each his own.” Social justice refers to the justice or fairness of the basic structures and practices of society. All societies have conceptions of social justice. As we will see in more detail below, human rights is but one historically very distinct way to conceptualize and attempt to realize social justice.

This project, then, can be understood as an attempt to triangulate, historically and comparatively, the complex relationships between the ideas and practices of human rights, human dignity, and social justice. I will try to show that human rights are a particular set of social practices that aim to realize selected dimensions of the good life connected with the dignity or worth of the human being.

3. HUMAN RIGHTS AND HUMAN DIGNITY

When considered from a broad cross-cultural and historical perspective, two facts about human rights and human dignity stand out. First, the idea of human rights – equal and inalienable rights held by every human being that can be exercised against the state and society – cannot be found in any prominent Western or non-Western culture or society prior to the seventeenth century CE. Systems of political practice that claim to be based on such rights cannot be traced back beyond the last quarter of the eighteenth century. Second, prior to the late seventeenth and eighteenth centuries, we can find few traces of the idea of dignity (*dignitas*) as an inherent feature of all men that serves as a foundation for moral theory and political practice. Typically, dignity was an attribute of the few, either inherently or because it was considered to be a virtue that could only be realized through difficult and extended practice. Dignity, in other words, rather than a universal principle of equality, in most societies throughout most of history functioned instead as a particularistic principle of hierarchy.

The following chapters seek to demonstrate these claims and to show the transformations of the past three centuries with respect to human rights and human dignity. More particularly, I argue that the rise of the ideas of human rights and the inherent dignity of the human person are two inter-related manifestations of a broad transformation of modern societies towards more individual-centered and universalistic systems of social, political, and ethical life. Human rights and human dignity capture inter-related and foundational modern notions of the nature of “man” and his proper relation to society. And through the idea and practice of human rights, we have tried to construct societies worthy of truly human beings.

The following chapters fall into three parts, examining, respectively, Western theory and practice, non-Western approaches to dignity and rights, and contemporary understandings and practices.

I begin with the West not only because it is the case that I know best and it is the one case that I can approach it with the involvement of an insider rather than the deference of an

outsider. Of central substantive importance is the fact that the idea and practice of human rights – understood as equal and inalienable rights, held simply because one is a human being, that can be exercised by individuals against society and the state – first emerged in the West. I will argue, however, that many standard accounts, by both Western and non-Western scholars, misunderstand the nature of the relationship between the West and human rights, in large measure because of a very selective reading of the Western engagement with human rights.

Chapter 1 considers Western theories of (human) dignity. Chapter 2 examines Western practices with respect to issues that today we consider matters of human rights and human dignity. In both domains a striking pattern is evident: prior to the modern period, there is no widespread endorsement in the Western world of the idea of the moral equality of human beings – or even all adult male members of a particular society – or of basic political equality. Between the middle of the seventeenth century and the middle of the eighteenth century, we do see the beginnings of a transformation that eventually leads to ideas and practices of human rights, and their eventual hegemony in Western theory and practice. But this represented a fundamental break with two thousand years of Western theory and practice. And it was not until well into the twentieth century that most Western states began to have a vision of human rights that closely reflected that of the Universal Declaration.

Part Two considers two non-Western examples, Hindu India and Confucian China, the two largest Asian civilizational complexes. In both cases we see essentially the same pattern as in the West, namely, the predominance of particularistic and inegalitarian conceptions of dignity and of deeply hierarchical and inegalitarian political practices until the modern period. In the nineteenth and especially twentieth centuries, however, a fundamental reorientation occurs, with traditional cultural and religious resources increasingly being mobilized on behalf of ideas of equal rights, reflecting a new conception of equal human dignity.

Part Three consists of a single short chapter that tries to pull together the lessons of these comparative case studies and apply them directly to questions of human rights and human dignity in the contemporary world. I argue that human rights are tied to social structure not culture – and that standard “the West versus the Rest” formulations are therefore fundamentally misguided. In the contemporary world, leading comprehensive doctrines across the globe participate in a two-level overlapping consensus, on the idea that the social and political implications of one’s deepest beliefs are appropriately summarized in the idea of human dignity and that internationally recognized human rights provide a detailed specification of certain basic prerequisites of human dignity in contemporary circumstances and essential practices for realizing those that underlying conception of human dignity. Human rights, in other words, are both a roadmap and a set of practices for constructing a life of dignity in the conditions of the contemporary world.

PART ONE: WESTERN THEORIES AND PRACTICES

Our cross-cultural comparisons begin with the West. This partly reflects the fact that I know this material best and find it convenient to start with “my own” tradition. It also reflects the fact that many widespread understandings of human rights associate them particularly with Western society or culture. Such a view, I will argue, can only be accepted in very limited ways. Any special association between the West and the ideas and practices of human dignity and human rights is historically very recent – and represents a sharp break from the mainstream approach throughout the vast majority of Western history.

In the Western/Judeo-Christian tradition, the notion of the dignity of man has both religious and secular roots, going back respectively to the Hebrew Bible and Stoic ethics. As we will see, however, pre-modern theory and practice was quite different from contemporary understandings and practices. In religious contexts, human dignity was derivative from the dignity of God and served primarily to mark “man”¹³ off from the rest of creation. It did not regulate relations between men. In secular contexts, dignity typically was seen not as an attribute of all men but of particular types or classes of men. Only in the last half of the eighteenth century do we see fully developed theories and significant bodies of political practice in which dignity is seen as a defining feature of every person that demands social and political respect.

A comprehensive historical account would not be appropriate here, even if it were within my ability (which it is not). The approach in the two chapters in this part is instead exemplary and episodic. Chapter Two considers four historically important theoretical conceptions. Chapter Three examines five episodes of practice. Together, they provide a kaleidoscopic account that is nevertheless both loosely chronological and reasonably synoptic of the range of Western approaches to human rights and human dignity.

If the West not only lacks a long and deeply embedded historic culture of human dignity and human rights but for most of the past 2500 years has actually rejected these ideas, this has important implications for other regions, cultures, and civilizations. The absence of ideas and practices of human rights and a morally foundational shared human dignity in traditional non-Western societies, on its face at least, says nothing about the prospects for human rights and human dignity in those societies today. I will argue in Chapter 6 after completing a cross-cultural survey, that the important division with respect to human rights and human dignity is “modern” versus “traditional” or “pre-modern,” not Western versus non-Western, societies. Social structure rather than culture is central to ideas and practices of human rights and human dignity largely irrespective of time, place, and culture.

¹³ I eschew gender-neutral terminology in this historical discussion because it is both anachronistic and inaccurate. Until very recently indeed, “human being” was understood in profoundly gendered terms. Well into the twentieth century, men (or at least some men) were seen as what we would today call fully human but most women typically were not. Recall that there still was a certain radicalism in the slogan of the 1995 Beijing Conference that women’s rights are human rights.

CHAPTER TWO: WESTERN THEORIES OF HUMAN DIGNITY

This chapter briefly examines Western theories of (human) dignity. The following chapter looks more broadly at practice, with explicit attention on rights as well as dignity. Given the root of the term dignity in the Latin *dignitas*, we will begin our conceptual inquiries with Rome. I will also look at three other historically important conceptions: the concept of *kevod* in the Hebrew Bible; the Christian notion of *imago dei*, which roots the dignity of man in his creation in the image of God; and Kant, who laid the philosophical foundation for many of our contemporary understandings.

1. ROME AND THE CICERONIAN CONCEPTION

“Dignity” terms in classical Latin – the noun *dignitas*, the adjective *dignus*, and the verb *dignor* – refer to worth. Lewis and Short define *dignitas* as “being worthy, worth, worthiness, merit, desert,” and, used metonymically, “dignity, greatness, grandeur, authority, rank.” *Dignus* is similarly defined as “worthy, deserving (in a good or ill sense), of things, suitable, fitting, becoming, proper” and *dignor* as “to deem worthy or deserving.”

Three inter-related elements of the Roman conception are especially relevant to our concern here with the relationship between (human) dignity and (human) rights.

First, “dignity” was a term of hierarchical distinction, an attribute of a distinguished few (patricians or “optimates”) that marked them off from the vulgar masses. “*Dignitas* was the status that dignitaries had—a quality that demanded reverence from the ordinary common person—the vulgar, in the original meaning of that term.” (Brennan and Lo 2007: 44) In an English usage that is now largely obsolete, dignity in the Roman world was understood as an attribute of “worthies,” in the sense in which the *OED* defines a “worthy” as “A distinguished or eminent person; a famous or renowned man or woman; esp. a man of courage or of noble character.”

Second, “dignity” was seen as a virtue – or the consequence or reward of virtue – in the Aristotelian sense of a learned habit or disposition that realizes the potential for human excellence. Some or even all men may have a potential for virtue. The realization of that virtue may be the proper natural end of man; man’s *telos* or final cause in Aristotelian terms. But what gives one worth, and demands respect, is the realization of that potential. And the differential realization of virtue provides the ethical basis for the social distinction emphasized in the preceding paragraph. “Dignity, in Latin usage, refers especially to that aspect of virtue or excellence that makes one worthy of honor – which, as Aristotle put it, accompanies virtue as its crown.” (Shell 2003: 53)

Third, and following on the preceding two points, “dignity” was specially connected with public appearance, particularly formal office and informal social and political standing (and its associated honor). “In Rome the original meaning of dignity (*dignitas*) referred to an acquired social and political status, implying, generally, important personal achievements in the

public sphere and moral integrity.” (Englard 1999: 1904) Although *dignitas* certainly had an inner basis, at least equally important was its external manifestation and its public reception. It refers particularly to “the outer aspect of a person’s social role which evokes respect, and embodies the charisma and the esteem residing in office, rank or personality.” (Cancik 2002: 19)¹⁴

Dignitas, in sum, was characteristic of great men, those meriting special honor or distinction. Practices of dignity involved granting public recognition and respect – from one’s peers, from the vulgar, from society, and from the polity – that marked off the dignified as excellent, in the sense of excelling. *Dignitas* was “a manifestation of personal authority, majesty, greatness, magnanimity, gravity, decorum, and moral qualities.” (Englard 1999) The “worth” to which dignity referred was a feature of the few, rather than the many (let alone all men).

Consider Cicero’s *De Officiis* (*On Duties*), one of the most influential Roman works of ethical theory. The overarching theme is that the highest good for man is a virtuous life in accord with nature and reason. Although there are hints of a shared humanity, the emphasis is on the differential realization of virtue. And *dignitas* identifies what is most excellent and worthy of respect in the best men, rather than what is common to all.

Cicero regularly uses *dignitas* to refer to public office or social standing (1.38, 1.141, 2.65, 3.99) or in reference to general worth (1.42, 45, 97, 104, 2.31, 36, 83, 3.1, 2, 111). He refers to the *dignitas* of a man’s features (1.107), manly good looks (1.130), the state (1.124), and a commodious house (1.138, 139). Among particular virtues associated with “dignity,” Cicero identifies clemency and forgiveness (1.88), decorum (1.94), a refined sense of humor (1.104), gravity (1.137), conviviality (1.144), charity (2.52), and eloquence (2.66).

In characteristic Stoic fashion, he argues that *dignitas* is to be achieved and preserved by freeing oneself from disturbing emotions, especially desire, fear, pleasure, pain, and anger. (1.67-69) *Dignitas* clearly refers to the higher aspects of man. But these higher potentials can be made real only by the few. And they require a life of considerable leisure, or at least freedom from the burdens of life-sustaining labor. Thus Cicero strongly endorses the aristocratic contempt for physical labor or money-making endeavors, which he sees as degraded and degrading – although Cicero does allow that for those who must labor, agriculture is the one activity that is worthy of a free man (*homine libero dignius*). (1.151)

Only in one passage does Cicero attribute dignity to man in general. Given its historic importance – this appears to be the first preserved use of a term that can be translated as “human dignity” – it is worth quoting at some length.

¹⁴ We must thus reject Peter Berger’s claim that “dignity, as against honor, always relates to the intrinsic humanity divested of all socially imposed roles or norms. It pertains to the self as such, to the individual regardless of his position in society.” (1983 [1970]: 176) This may be true of contemporary, and more broadly post-Kantian, ideas of human dignity. But it is simply not the case in the ancient world – or, as we shall see, in medieval or early modern European either – where this (to us very useful) distinction between honor and dignity was not drawn. And even Berger seems to acknowledge this point, when he goes on to describe “the modern conception of dignity” as implying an identity that “is essentially independent of institutional roles.” (1983 [1970]: 177 [emphasis added])

It is essential to every inquiry about duty that we keep before our eyes how far superior man is by nature to cattle and other beasts: they have no thought except for sensual pleasure and this they are impelled by every instinct to seek; but man's mind is nurtured by study and meditation ... From this we see that sensual pleasure is quite unworthy of the dignity of man [*dignam hominis*] ... One's physical comforts and wants, therefore, should be ordered according to the demands of health and strength, not according to the calls of pleasure. And if we will only bear in mind the superiority and dignity of our nature [*natura excellentia et dignitas*], we shall realize how wrong it is to abandon ourselves to excess and to live in luxury and voluptuousness, and how right it is to live in thrift, self-denial, simplicity, and sobriety. (1.105-106)¹⁵

Here Cicero draws attention to the categorical distinction between men and beasts in order to focus discussions of duty on “higher” aspects of our nature. But there is no suggestion that all human beings possess, or even have a potentiality for, this *dignitas*. Quite the contrary, in an aside elided from the above quotation, Cicero notes that “some people are men only in name, not in fact [*sunt enim quidam homines non re, sed nomine*].” (1.105) And the pattern of his usage clearly indicates that most are incapable of dignity, which requires extensive “study and meditation,” as well as much disciplined self-control. In other words, *dignitas* is not an inherent and defining characteristic of human beings but rather a status achieved by a few.

None of this is to suggest that contemporary conceptions of dignity are unrelated to Roman *dignitas*. Quite the contrary, there is a shared core sense of worth that demands respect. Worth, however, in the Roman understanding, was deeply differential – particular and achieved rather than universal and inherent – and the respect it demanded was to be expressed principally in high status and public office.

2. BIBLICAL CONCEPTIONS: *KAVOD* AND *IMAGO DEI*

Three other Western conceptions of dignity have been of sufficient historical importance that they merit brief attention here. In this section I consider two influential religious conceptions, as expressed in the Hebrew and Christian Bibles.

The (old and modern) Hebrew term *kavod* is conventionally translated as dignity (as well as honor, glory, and respect). As I do not read Hebrew, my discussion here must be short and based entirely on secondary sources.

The crucial point for our purposes is that “the combination ‘human dignity’ (*Kvod Ha’adam*) is in fact not found in the Bible. Although the word Adam (man) can already be found in Genesis (1:26) and the word *Kavod* is widespread throughout the Bible, the term ‘human dignity’ itself is absent from the central book of Jewish thought.” (Shultziner 2006: 666; cf. Cancik 2002: 21) *Kavod*, instead, is an attribute of God. (Lorberbaum 2002: 56; Shultziner

¹⁵ Translated by Walter Miller, in (Cicero 1913 [44 BCE]), available on-line at <http://www.thelatinlibrary.com/cicero/off.shtml>.

2006: 666-667; cf. Kamir 2002) In much the same fashion, “no single expression found in the Rabbinical literature equals the twentieth century concept of human dignity. It would seem that it toys with the idea, but it is not as yet theoretically developed.” (Safrai 2002: 104)

Again, this distance from our current conception does not suggest any inappropriateness in seeing *kavod* as a conception of “dignity.” As in the Roman case, we are dealing with a certain kind of worth, connected with honor, glory, and (in this case especially) power, that demands respect. But that dignity is God’s not man’s. *Kavod* is one of the marks of the gulf between man and God. Man may have a special value or worth. Jews, as God’s chosen people, may have a special value. But their value or worth is not rooted in their “dignity.”

Such an historical fact about foundational texts (and practices) in a particular tradition should be neither overestimated nor underestimated. Later Jews are not in any way bound to attribute dignity/*kavod* solely to God – any more than later Italians or Europeans are bound by Roman uses of *dignitas*. But if we are to take seriously the history of “dignity” in the West, we must avoid anachronistically reading contemporary understandings into ideas and practices of past periods. Whatever protections human beings or Jews were thought to merit were not a result of their possession of *kavod*.

We should also emphasize that the absence of a concept of human dignity – and of human rights as well – in itself tells us nothing about how early Jews dealt with issues that today we consider matters of human rights. For example, the sanctity of life is a central theme in the Hebrew Bible. (Fishbane 1988: 17-20; Lorberbaum 2002; Shultziner 2006: 667, 673, 676-677) But it rested on neither human rights (equal and inalienable rights held simply because one is human) nor human dignity. And this had important theoretical and practical consequences.¹⁶

Genesis, however, is the source of another understanding of dignity that dominated the Western/Christian world for over a millennium and continues to be a powerful presence in contemporary discussions.

And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.

So God created man in his own image, in the image of God created he him; male and female created he them.

And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the

¹⁶ Doron Shultziner notes significant contrasts between even more modern Jewish thought and conventional liberal-democratic understandings. “Three characteristics of human dignity in Jewish thought can be identified based on the review of the preceding sections: 1) the extrinsic divine source of human dignity; 2) the precedence of “dignity of the people” over personal autonomy and liberty; and 3) the diminution of personal autonomy and liberty with regard to God’s dignity.” (Shultziner 2006: 672) For an alternative reading, however, that elides the difference between explicitly Jewish understandings and contemporary international human rights norms, see (Goodman 1996).

sea, and over the fowl of the air, and over every living thing that moveth upon the earth. (Gen. 1.26-28 [KJV])

The Christian tradition – and many later Jewish and Muslim traditions as well – emphasized that man was created “in the image of god” (*imago dei*) and given rule over the earth and its (other) creatures. This placement – below God but above the rest of His creation – gives man a certain dignity. But “we are honored and loved by God not because we are worthy; we are worthy because we are loved and honored by God.” (Englard 1999: 1908) And, in the Christian understanding, “closeness to God still requires redemption.” (Kraynak 2003: 83)

Dignity, in this Christian understanding, is not merely inherent and inalienable but in some important sense universal. It is something “that none of us has by merit, that none of us can receive from others, and that no one can take from us.” (Pannenberg 1991: 177) Nonetheless, this traditional Christian conception remained deeply hierarchical, both in the gulf between man and God (which is bridgeable only through divine Grace or Christ’s intercession) and in the emphasis on man’s placement in a cosmological hierarchy.

For example, Daniel Sulmasy notes (2007: 11) that “Aquinas uses *dignitas* and its cognates 185 times in the *Summa Theologiae* and it tends to mean the value something has proper to its place in the great chain of being; for example, plants have more dignity than rocks; angels more dignity than human beings.” And, as we will see below, in practice Christian society was deeply hierarchical. Much as in Cicero’s world, the dignities of the well-born and other dignitaries took practical priority over any inherent dignity of man.

This was in part facilitated by another dimension of the Christian tradition that also goes back to *Genesis*, namely, original sin and the fall of man. Adam and Eve were created, directly, by God. But after being expelled from the Garden of Eden their children, and all of mankind, were created through a sexual union that was understood as a burdensome punishment for sin. The nature of all of us thus was in a fundamental sense degraded. Real men and women have been far removed from their initial, idyllic creation in the image of God.

Within the Christian tradition, debate continues to rage over the relative importance of man’s creation in the image of God and his fall, the two inescapable sides of human nature. Augustine gave the problem its classic formulation in the conception of “two cities,” the City of God and the City of Man, governed by two loves, heavenly, eternal, and spiritual and earthly, temporal, and physical. Augustine sees both as mixed in each man and in every group of men. But the tradition usually labeled “Augustinian” emphasizes the corruption of original sin – with its associated reduction in the dignity of man.

In this understanding, human dignity becomes largely a potentiality with little earthly social or political significance. Realizing the human potential for a life of dignity depends on divine grace and/or has relevance principally in the heavenly city of god

rather than this earthly city of man. As children of God, made in his image, we are ultimately good and equal. In this temporal life, however, sin is the predominant fact and inequality the necessary if our corrupted, concupiscent nature is to be held in check. Politics is more about repressing evil than, in Aristotelian or Ciceronian terms, perfecting (the best) men. And given the depth of our fall, it is a significant achievement even to create a mildly peaceful space in which the less sinful or more virtuous may have some quiet and protection.

One powerful and historically important expression of this view can be found in (the future) Pope Innocent III's treatise *On the Misery of the Human Condition*, written at the end of the twelfth century. It is divided into three books, titled "The Miserable Entrance upon the Human Condition," "The Guilty Progress of the Human Condition," and "The Damnable Exit from the Human Condition." Illustrative of the general approach is the beginning of Chapter 2 of Book 1.

"Therefore the Lord God formed man from the slime of the earth," [Gen. 2:7] an element having lesser dignity than others. For God made the planets and stars from fire, the breeze and winds from air, the fishes and birds from water; but He made men and beasts from earth. Thus a man, looking upon sea life, will find himself low; looking upon creatures of the air will know he is lower; and looking upon creatures of fire he will see his is lowest of all. Nor can he equal heavenly things, nor dare put himself above the earthly; for he finds himself on a level with the beasts and knows he is like them. (Innocent III 1969 [c. 1200]: 6)

For most of the history of Christianity, this bleak account of the dignity of the human condition has been at least as powerful as more optimistic readings that emphasize the likeness of man to God.

In other words, there is a vast distance between "the Judeo-Christian tradition," as it existed through most of its history, and most late twentieth- and early twenty-first century conceptions of "human dignity," including most contemporary Christian and Jewish conceptions. The transformations of Jewish and Christian thought over the past century – transformations that are perhaps most striking in Catholic social teaching – show that the resources of a religious (or any other) tradition can be extraordinarily malleable, the same foundational texts being put to radically different but equally authentic uses. But we must be careful not to read contemporary understandings and practices back into a past that was quite dramatically different. Taking the reality of a culture, society, or religion seriously requires attention to change no less than continuity.

3. KANT

In Immanuel Kant (1724-1804) we first find a fully-formed account of human dignity, very similar to that of the Universal Declaration, that is placed at the center of moral and political theory. Kant appears to have drawn both directly on Cicero and the broader Stoic tradition, as well as the earlier work of Samuel Pufendorf (1632-1694), who did make significant use of

the concept of the dignity of man. (Cancik 2002: 30-35)¹⁷ The Kantian conception, however, was both more comprehensive and has had considerable impact on later ideas. In addition, as we will see below, Kant develops his ideas at roughly the same time that early practices of human rights are being implemented through the American and French Revolutions.

Kant's key move is to distinguish two kinds of value, which correspond to two sides of human nature: *dignity* (*Würde*, worth), understood as "an absolute inner worth" (Kant 1991 [1797]: 230 [435]), which is the standard of distinctively human or moral value, and price, the standard of value of the material world and man's animal nature. Man, understood as a human being, is a creature with a worth, a dignity, that is priceless; outside of the domain of instrumental value.

"Man regarded as a *person* ... is exalted above any price; ... he is not to be valued merely as a means ... he possesses a *dignity* (absolute inner worth) by which he exacts *respect* for himself from all other rational beings in the world." (MM¹⁸ 434-435; cf. MM 462) This in effect restates, in the language of dignity and worth, Kant's famous formulation of the "categorical imperative," the fundamental principle of morality: "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means." (Kant 1981 [1785]: 36 [429])

"In the system of nature [-- that is, viewing man in his animal aspect --] man (*homo phaenomenon, animal rationale*) is a being of slight importance and shares with the rest of the animals, as offspring of the earth, an ordinary value (*pretium vulgare*)." (MM 434) But as a human moral creature, what Kant calls "*homo noumenon*,"¹⁹ (MM 434) man exists in the moral realm of dignity. (Cf. Kant 1930: 124-125)

The dignity of humanity in each of us – in ourselves and in others alike – demands respect. Because of this dignity, "every man has a legitimate claim to respect from his fellow men and is *in turn* bound to respect every other." (MM 462) "Humanity in his person is the object of the respect which he can demand from every other man." (MM 435) Kant's use of the Latin *reverentia* underscores the importance of the respect that this dignity demands. (MM 436 Cf. Kant 1930: 121)

Of special interest to us here, Kant explicitly links "this duty with reference to the dignity of humanity within us" (MM 436) to rights. In listing a number of maxims that flow from and illustrate this dignity, he begins with "Be no man's lackey. Do not let others tread with im-

¹⁷ I am reading the Renaissance humanist conception, expressed most famously by Pico de la Mirandola, as an extension of the Christian conception that emphasized man's place is God's creation. There is no notion in Pico or his contemporaries of anything like the innate, universal dignity characteristic of our contemporary conception.

¹⁸ Many of Kant's most important observations on dignity appear in *The Metaphysics of Morals* (1991 [1797]). References here to this text are to MM, with pages from the standard "Academy" edition, that are usually provided in published texts and translations.

¹⁹ The *OED* defines noumenon as a chiefly philosophical term indicating "An object knowable only by the mind or intellect, not by the senses; *spec.* (in Kantian philosophy) an object of purely intellectual intuition, devoid of all phenomenal attributes." Man understood as a noumenal being is a rational and moral creature.

punity on your rights.” (MM 436) Human dignity dictates a life of personal freedom and respect for human rights.

This is particularly clear in Kant’s political theory; or, as he typically puts it, his account of political, public, or civil right. The political expression of man understood as a distinctively human creature is natural or human rights. A fully legitimate civil state or commonwealth, Kant argues, involves

the *right* of men *under public coercive law*, through which each can receive his due and can be made secure from the interference of others. ... *Right* is the limitation of each person’s freedom so that it is compatible with the freedom of everyone, insofar as this is possible in accord with a universal law; and *public right* is the totality of *external laws* that makes such a thoroughgoing compatibility possible. (1983 [1793]: 72 [289-290])

Kant then goes on to further specify the linkage between rights, freedom, and equality – and by implication dignity.

Regarded merely as a state of right, the civil state is based *a priori* on the following principles: 1. The *freedom* of every member of society as a *human being*. 2. The *equality* of each member with every other as a *subject*. 3. The *independence* of every member of the commonwealth as a *citizen*. (1983 [1793]: 72 [290])

And he insists that “this right of freedom comes to him who is a member of the commonwealth as a human being ... a being who is in general capable of having rights.” (1983 [1793]: 73 [291])

Human dignity, for Kant, is universal; possessed by every human being. It is inherent. (Man’s moral and immoral actions also give him another sort of moral worth, but this achieved moral state is independent of his inherent worth. Dignity identifies man’s special moral status. And the inherent dignity of humanity within each person lies at the foundation of both personal morality and political right, where it is expressed in the form of human rights.

Other conceptions of human dignity are also compatible with the vision of human dignity expressed in the Universal Declaration, as we will see below. The Kantian conception, however, is an historically important source of the idea that human rights rest on the inherent dignity of the human person, and it was clearly one of the inspirations for the Universal Declaration.

We can also, though, see elements of older hierarchical conceptions of dignity in Kant. Most strikingly, he enumerates the rights of the sovereign executive as the distribution of offices, the distribution of dignities, and the right to punish. (MM 328) By “civil dignities” here he means hereditary titles of nobility. (MM 329) This is very much the old Roman and medieval sense of the term. But reflecting a “modern” conception of politics based on equal rights, Kant argues that the creation of new dignities is incompatible with a fully legitimate regime (“the general will”), although it

may be prudent to continue to acknowledge and respect already established “dignities.” (MM 329)²⁰

Particularly interesting for our purposes is Kant’s claim that “humanity itself is a dignity.” (MM 462) Here we can see the move from the Roman-medieval conception to the modern. The old notion of dignity as a special status of the nobility (and clergy) has been universalized to all men. Humanity, which is present in even the lowliest of men, gives each individual a dignity/status that must be respected by all other individuals, society, and the state. And the details of that respect, especially in its political elements, are specified through human rights.

²⁰ Kant also speaks of the dignity of the citizen. (MM 329-330) This is a status, though, that may be lost, along with its associated rights, through certain crimes. The dignity of the citizen thus stands in sharp contrast to the inalienable dignity of humanity within each individual.

CHAPTER THREE: DIGNITY AND RIGHTS IN WESTERN PRACTICE

This chapter turns from theory to practice, approached, again, in an episodic historical fashion. These vignettes consider practices relevant both to human rights and to the underlying conceptions of human dignity. The focus is on whether, in social and political practice, emphasis is placed on a shared humanity or on distinctions among men; that is, on universalistic or particularistic conceptions of man, his dignity, and his rights.

We begin with ancient Greece in the Classical era (fifth and fourth centuries BCE), which is typically presented as the first full flowering of Western culture and the locus of the creation of a distinctively Western style of politics. The following sections consider the medieval and early modern periods, the American and French revolutions, and the contemporary era of liberal democratic welfare states.

1. CLASSICAL GREECE

Classical Greece – the Greek world, including Magna Graecia (southern Italy), in the period from the end of the Persian Wars (479 BCE) to the triumph of Alexander (no later than 323 BCE) – appears not to have had a term for what we call dignity.²¹ Virtue and valor (*aretè*), honor (*timè*), reputation (*doxa*), and glory (*kleos*), however, were important ethical and political values, based on a conception of worth very similar to the Roman notion of *dignitas*.²² Like the Romans, the Greeks saw the world in fundamentally hierarchical terms and placed the pursuit of personal distinction and public recognition at the heart of their vision of a truly excellent life – which was available only to the few, even in democratic polities.

The Greeks drew sharp categorical distinctions between the “best” men, whose worth merited social distinction and public recognition, and those “featherless bipeds” (to use the Aristotelian taxonomic term for man understood as an animal) who were less excellent; lacking in worth. In a pattern that we will see repeated again and again, this distinction between truly human men and mere human-shaped animals had both external and internal dimensions.

The ancient Greeks drew a fundamental distinction between Hellenes (the Greek term for “Greeks,” the Latin-derived name) and barbarians. Whether barbarians were a different species of creature, a defective version of Greek men, or capable of full “humanity”/Greekness was a matter of controversy. That barbarians were qualitatively different from Greeks, how-

²¹ The Latin *dignus* is close to the Greek *axios*, which is a commonly used term, both separately and in a great variety of combining forms. But *axiopropeia/axioprepēs*, the apparent equivalent of *dignitas*, is very rare. For example, Aristotle does not use it even once. Even *semnotēs*, which can reasonably be translated as dignity, is never used in the *Nicomachean Ethics* and appears only fourteen times in the complete surviving Classical-era corpus.

²² Cognate Latin concepts were equally important in the Roman world, although not a focus above because of our primary concern with dignity.

ever, was almost universally accepted.²³ For example, barbarians were widely considered to be both incapable of self-rule and fit to be enslaved, in sharp contrast to Greeks. Particular barbarians could be treated with compassion or, in rare cases, even admiration, as in Herodotus' account of the Persian Otanes (3.80-84) or in Aeschylus' *Persians*. Barbarians in general, however, did not have a worth or dignity that demanded respect. And this degradation of the barbarian remained a central feature of Western political thought right through to the collapse of the Roman Empire. "In the Greco-Roman political tradition the barbarian was the outsider. Rational human order was embodied in Greek or Roman society." (Markus 1988: 87)

Within the Classical Greek world, linguistic, cultural, and ethnic/regional differences were of considerable significance. In addition, political identity was centered on the *polis* not any larger entity. Nonetheless, a shared sense of Hellenic identity (*to Hellenike ethnos*), marked by shared gods, rituals, and festivals and a common literary culture, was an important feature of the Classical world.

We should not, however, overestimate its significance. Internationally, annual panhellenic religious and athletic festivals were socially and culturally important events that facilitated regularized peaceful linkages between varied and widely scattered *poleis*. But war between *poleis* was at least as characteristic and politically far more important. And in war any shared identity was of minor significance.

When Greeks waged war with barbarians they saw themselves a largely free of even the minimal legal or moral constraints that recognized in war among Greeks. And by the end of the fifth century, even those minimal constraints were eroding, as Thucydides' *History* suggests in events such as the destruction of Melos (5.116), the massacre at Mycalessus (7.29-30), and the civil war in Corcyra (3.70-85). It is true that in the fourth century, ideas of a "common peace" – derived, ironically, from the "barbarian" idea of The King's Peace – were floated. But such notions arose largely in reaction to the omnipresence of war and its growing destructiveness and brutality. A shared "human dignity," even understood narrowly in terms of shared Greekness, simply was not a significant international restraint. Nor was a sense of shared humanity/Greekness salient in internal politics.

Among Hellenes, life revolved around the *polis*, especially for elite citizens. (Burckhardt 1998 [1898-1902]: ch. 4; Hansen 2006; Vlassopoulos 2007) During the Classical era, virtually all *poleis* practiced citizen self-rule. In fact, the linkage between citizen self-rule and the *polis* was

²³ Recent scholarship has tended to emphasize the "Eastern" influences on Greek civilization; that is, its embedding in a broader cultural region centered on Asia Minor. (e.g., West 1997; Burkert 1992; Vlassopoulos 2007) In the Homeric epics, for example, no significant ethnic or cultural differences separate the "Asian" Trojans and their allies from the invaders led by Agamemnon, who are variously described as "Achaean," "Argive," and "Danaan." (In Homer (*Iliad* 2.684. Cf. Thucydides 1.32.), Hellenes is the name of a particular group of Thessalians.) And right through the sixth century, elite marriages with aristocratic foreign families were considered particularly prestigious. Although later generations may have understood the *Iliad* as "a poem which celebrated Hellenic heroism against the Asiatic foe" (Wyatt 1992: 173) there is no evidence of any such understanding in the Homeric text. Quite the contrary, the differences between, say, Odysseus' Ithacans and Priam and Hector's Trojans are neither greater than nor significantly different in kind from those between Ithacans and, say, Achilles' Myrmidons. Both Hellene and Barbarian are creations of, and defining features of, the Classical era. See, for example, (Hall 1989), (Georges 1994), (Malkin 2001), and (Harrison 2002).

so strong that some Classicists gloss *polis* not as city-state but citizen-state. (Hansen 1993; Runciman 1990: 348; Raaflaub 2001: 75) Kingship and tyranny – monarchy; rule by one man, however benevolent or enlightened – were seen as practices suited for barbarians (and Greeks of an earlier, ruder era) but not self-respecting Greek men. Only with citizen self-rule was a truly human life possible.

This did create a certain sense of formal equality among citizens. But within the *polis* there were sharp categorical distinctions drawn between citizens and non-citizens. Slavery was widely practiced in the Greek world, and central to the Athenian economy – in significant part because even the relatively commercially-oriented Athenian elite viewed manual labor as degrading.²⁴ Women were, “of course,” politically excluded and socially subordinated. In addition to these “natural” exclusions – Aristotle, expressing the common view, saw some “men” as natural slaves (*Politics* ???) and women as defectively rational (???) and thus, like natural slaves, less than fully “human” – citizenship marked a powerful social and political divide. Non-citizen residents usually were treated with a certain hospitality, based largely on their economic contribution, but enjoyed few rights beyond some limited property rights and, in some cases, a basic legal personality. This meant that the vast majority of even the adult population of large polities were excluded from politics and consigned to a reduced, and often degraded, social status. And it must be underscored that citizenship in most *poleis* throughout most of the Classical era was acquired almost exclusively through birth, to a citizen father or citizen parents; “naturalization” was rare, especially in the middle of the Classical era.

No less importantly, informal status distinctions and a struggle for differential honor and recognition were at least as central to Greek politics as citizen equality. In fact, much as in the earlier world recorded in the Homeric epics, political life, especially for the elite, was dominated by the struggle for distinction. Consider Athens, the *polis* about which we have the most information (by far). The Athenian example is particularly apposite in an account that stresses differences between ancient Greek and modern understandings and practices. Athens is the *polis* “most like us,” the iconic “first democracy,” and thus the “hard case” for my argument.

Democratic Athens prided itself, with some justice, on its practice of *isonomia*, equal application of the law to rich and poor alike, and even *isogoria*, the right of all to speak in the assembly. The Athenians went to considerable lengths to give practical, institutional expression to these values. Offices were kept to a minimum and were filled by lot wherever possible, including the *boulē*, the executive council (which handled necessary matters between meetings of the popular assembly and prepared its business). All important decisions were taken by the assembled people, in frequent, periodic mass meetings that for important issues had a quorum of 6,000. And in the later fifth and fourth centuries, attendance at the assemblies, and in the law courts, was compensated at roughly the wages of a day laborer, making it possible for even poor citizens to play an active political role.

²⁴ Sparta seems to have had few outright slaves, but the Spartiate elite brutally dominated an effectively enserfed *belot* population that provided their material sustenance and equipment.

But even among adult male citizens, sharp qualitative social and political distinctions were drawn between the well-born and the poorly-born and/or between those with and without exceptional talent and *aretē* (“virtue,” excellence). (There was also a widespread belief that birth and talent were closely, although imperfectly, correlated.) Our sources are subject to systematic bias; literary sources in particular were an elite product and tended to reflect elite privileges. Nonetheless, both birth and wealth remained socially and political central, even in Athens, where the democracy owed more to fear of tyranny and of class rule than to any sense of deep political, let alone moral, equality among all citizens. (Ober 1989, 1998)

Athens had a system of property classes that, at least in the fifth century, formally restricted the political rights of poorer citizens. In addition, the requirement that citizen-soldiers arm themselves was an effective bar to full participation by the poor, again particularly in the fifth century, when principal reliance was placed on heavy-armored infantry (hoplites). But more important than such formal barriers, which more or less steadily declined during the Classical era, informal barriers largely precluded mass participation beyond fighting and voting in assemblies and juries.

Political leadership was based on the assumption of a life that was at minimum largely free from the need to work for one’s sustenance. This was necessary to develop the rhetorical skills, the political contacts, and the body of knowledge needed to lead an unruly popular assembly, largely in the absence of anything that we would consider to be even close to political parties or a professional bureaucracy. Leaders were amateurs, in the sense of individuals without professional qualifications or a formal title.²⁵ But political success required close to full-time commitment throughout much of one’s adult life. Being an “amateur” politician was close to a full-time job that brought honor but no financial remuneration.

There were also formal and informal demands that required some substantial wealth. The practice of “liturgies,” by which public functions such as outfitting a ship or sponsoring a chorus in a play in a religious festival, were undertaken by private individuals, sometimes voluntarily, in a competition for social recognition, but sometimes, especially in times of hardship, under compulsion. Leaders also undertook public functions such as serving on diplomatic missions and hosting visiting dignitaries at their private expense. Leading men also were expected to practice private generosity. And contribution brought one both status, and, if we are to believe the evidence of forensic oratory, special treatment.

Most importantly, politics was in Athens the stage on which men sought distinction and honor. Class distinctions, at least among the elite, were seen as largely consonant with underlying moral distinctions. And among the elite there was an endless struggle to excel; to gain, competitively, superior status – and, above all, public recognition of that status. It certainly is true that in Athens, especially in the fourth century, that laws against public disrespect (*hubris*) restrained some of the more degrading demonstrations of elite disrespect. In addition, sumptuary laws considerably restricted some of the more blatant forms of elite display. But these only tempered a fundamentally hierarchical system of distinctions between

²⁵ In the fifth century, the office of general (*strategos*) was an important elected office. In many ways, though, it was more a sign than a source of political leadership.

citizens – built, it is worth repeating, on an even more fundamental hierarchical distinction between citizens and non-citizens.

In other words, even in Classical-era Athens, the ancient example that most closely suggests the roots of modern democracy, nothing like human dignity or human rights had any political salience. And in oligarchic cities, as well as many less open or less “radical” democracies, hierarchy was clearly the most salient social and political fact. Furthermore, it must be remembered, that at the end of the fourth century BCE, the Greek world was transformed from one of independent *poleis* to one of Hellenistic monarchies – to be followed by domination by Rome, in which the distinction between plebs and patricians lay at the institutional and practical heart of politics.

Athenian practices of *isonomia* and relatively widespread popular political participation may indeed have provided an important historic root of contemporary ideas of universal human rights. One might even see the equalities and bonds of citizenship as creating a sense of commonality and shared political participation that has certain functional analogues with our ideas and practices of human dignity and human rights. But we should not confuse limited legal and political equality for a privileged elite with contemporary ideas of human rights. (Even the term “rights” has no real equivalent in Classical Greek.) And, most relevant for our topic, even that limited equality had no significant basis in a conception of “human dignity” or any comparable idea of foundational equal moral worth.

Generalizing a bit from the Greek case, consider Peter Berger’s observation that “honor is a direct expression of status, a source of solidarity among social equals and a demarcation line against social inferiors.” (Berger 1983 [1970]: 174) In the Greco-Roman world, and in succeeding centuries as well, the class of social equals that possessed dignity that demanded honorable respect was small and the political emphasis was on the dividing line between these dignified and honorable men and their inferiors. Dominant notions of dignity, honor, and worth were particularistic rather than universalistic and were embedded in and reinforced hierarchical, inegalitarian political and moral theories and practices.

2. MEDIEVAL CHRISTENDOM

In medieval Europe – or, to use the local label, (Western, Roman, or Latin) Christendom – the division between Christian and heathen bifurcated the moral and political world. Furthermore, complex hierarchies were the norm within Christian polities. Neither being a human being nor being a Christian had significant implications for one’s rights or political status. The notion of a common humanity with social and political significance – let alone anything like the contemporary notions of human dignity and human rights – was, as in the Greek and Roman worlds, absent.

“Europe” designates a large and diverse geographical space. And “medieval” covers an immensely long period; more than a millennium, in contrast to the century and a half of the Classical era in Greece. Even restricting ourselves to the period from the middle of the eighth century – when a clearly post-Roman world was in place, the Muslim advance into Europe had been stopped, and a new era seemed to be dawning, with the birth of the Caro-

lingian monarchy in 751 – to the middle of the fifteenth century leaves us seven hundred years. And varied and tumultuous years these were.

Consider just the physical scale of polities. Charlemagne's glorious multi-ethnic empire, which encompassed all of Western Christendom except the British Isles, was divided in 843. A century later, internal strife and external invasion had plunged much of "France" into a dark age dominated by petty castellans who initially provided some protection against invading marauders but soon came to be nearly as dangerous and burdensome to those under their "protection." "Politically, the great question of the tenth century, outside Germany, was how far the disintegration of authority would go." (Southern 1953: 80) "Political life had become amazingly small scale. The mass of the population lived in miniature states controlled by knightly castellans who recognised no authority above themselves." (van Caenegem 1988: 177) An economic, cultural, and political "renaissance" in the twelfth century was only partially reversed by the Black Death in the middle of the fourteenth century. And by the end of the period, the outlines of "modern" "states" of France, England, and Spain (and hints of Italy) were beginning to be drawn. Politics, in other words, was organized at various times "globally" (in a single system encompassing almost the whole of Latin Christendom), locally (with petty castellan supported by half a dozen armed vassals controlling "polities" as small as a few square kilometers), and at various intermediate scales.

Add to this temporal and spatial variety the never-ending debates over both the relationship between secular and religious authorities and the relative ranking of different (and often competing) echelons within both the secular and the religious hierarchies and it becomes almost impossible to say anything of substance that holds for anything close to the whole medieval world. Just about every possible secular-religious combination, at virtually every scale, was at one time or another, in one place or another, the norm for at least a couple generations.

Nonetheless, there are some widely shared features of special relevance to our topic. The medieval world emerged out of the fusion of Roman and Germanic peoples. As Georges Duby notes,

Neither Roman nor Germanic society was composed of equals. Both alike acknowledged the pre-eminence of a nobility ... Both societies practiced slavery, and perennial warfare kept up the numbers of a servile class, replenished each summer by forays into the territories of neighboring peoples. The migrations had hardened these inequalities by ruralizing the Roman aristocracy and blending it with the barbarian nobility, as well as by extending the field of military aggression and thereby revitalizing slavery. (1974 [1973]: 31)

In practice, this tendency was strongly reinforced by Christianity, which in this era was interpreted in strongly hierarchical terms. God created the world and gave to each element of His creation its own place, with a status defined by ontological distance from Him. The resulting political emphasis, as in the Greco-Roman world, was on division and particularity, both in separating Christians from heathens (and heretics) and in the multitude of orders, grades, and statuses of Christians.

A. Hierarchy

An early and influential account of the cosmological hierarchy was provided by Pseudo-Dionysius/Denys the Areopagite, a late-fifth- or early-sixth-century Greek author who presented himself as the Athenian convert of St. Paul (and the patron saint of France). *On the Heavenly Hierarchy* (cited below as HH) and *On the Ecclesiastical Hierarchy* (EH)²⁶ exercised considerable influence throughout the medieval period.

God, “having fixed all the essences of things being, brought them into being.” (HH 4.1) And He arrayed them hierarchically. On this earth, men, as rational beings, were placed at the top, closer to god than irrational sentient beings, who were in turn higher than “things which merely exist.” (HH 4.2) Hierarchy was also the rule in heaven. “The most Holy thrones, and the many-eyed and many-winged hosts, named in the Hebrew tongue Cherubim and Seraphim, are established most immediately around God.” Below these lay the ranks of “Authorities, and Lordships, and Powers,” which in turn were above the ranks of “the Angels and Archangels and Principalities.” (HH 6) And at the intersection of the heavenly and earthly hierarchies lay the ecclesiastical hierarchy, itself also divided into three. (EH 6).

Dionysius presented hierarchy as “a sacred order and science and operation.” (HH 3.2) “Hierarchy is the assimilation and union, as far as attainable, with God ... each of those who have been called into the Hierarchy find their perfection in being carried to the Divine imitation in their own proper degree.” (HH 3.2 cf. EH 2.1) “Each rank of the Hierarchical Order is led, in its own degree, to the Divine co-operation, by performing, through grace and God-given power, those things” appropriate to their natures. (HH 3.3) “The inferior Ranks cannot cross to the superior functions.” (EH 5.7) Rather, the whole of the created world “divides itself into well-defined Ranks and powers, showing clearly the supremely Divine operation firmly established, without confusion, in most hallowed and unmixed Ranks” (EH 5.7)

Each higher rank, in furthering the ultimate aim of union with God, is responsible for raising or perfecting those below it. “It is a Hierarchical regulation that some are purified and that others purify; that some are enlightened and others enlighten; that some are perfected and others perfect.” (HH 3.2 Cf. EH 4.7) “The more divine are instructors and conductors of the less, to the Divine access, and illumination, and participation” (HH 4.3)

Walter Lovejoy’s classic study, *The Great Chain of Being*, (1936) places this notion in a context that runs back to the Greeks and forward, in a more modern version, through Leibniz and Spinoza and right through the eighteenth century. The Renaissance Humanist account of dignity considered above fits within this broad context. And, as we will see in the next section, the idea of a cosmological hierarchy continues to play a central role in early modern European politics. Hierarchy, however, is particularly deeply embedded in the medieval understanding both of the universe in general and of politics in particular.

²⁶ available online at <http://www.ccel.org/ccel/dionysius/works.html>

“Hierarchy,” however, comes in many forms. At least three important dimensions of variation should be noted. First, hierarchy can function both as a principle of unification, binding ranked elements into a broader whole, and as a principle of division, separating a whole into separate ranks. Whether one emphasizes shared membership in a single hierarchical order or differential placement within that order is likely to be of great theoretical and practical significance. Second, hierarchies may be either top-down or bottom-up in orientation; or, as Walter Ullmann [citation] puts it in the case of medieval political thought, “descending” or “ascending.” Again, these conceptions point in very different political directions. Third, hierarchies may be “simple” (in the sense of having more or less a single line that runs more or less directly from bottom to top) or “complex,” with multiple branchings and divisions. Complex hierarchies, especially when they involve multiple divisions of functional and territorial social and political authority, have been labeled heterarchies. (e.g., Hedlund 1986; Ehrenreich, Crumley, and Levy 1995; Stark 1999; Donnelly 2009: 63-71) The political differences between single-hierarchies and heterarchies are, again, quite significant.

Hierarchy in the medieval world tended to be conceived of as top-down or descending, with an emphasis, especially in social and political relations, on division rather unification. A well-ordered society was understood as one in which every man was in his proper place. More particularly, the emphasis was on the division of men in ranks and the importance of maintaining a hierarchically-structured system of ranks.

B. Internal Politics

Two basic lines of hierarchical internal political differentiation were central. The separation of rulers and ruled reflected the generally descending nature of medieval hierarchies. The division between secular and religious authority, along with the further hierarchical division of secular and lay authorities, provided the basis for complex, often cross-cutting, heterarchic relations.

The separation but conjunction of secular and religious authority was a hallmark of medieval thought. The proper functioning of both lay and clerical (hierarchical) authorities were seen as essential to peace and prosperity here on earth and salvation after death. The central New Testament injunction to render to Caesar the [secular] things which are Caesar's and to God the things that are God's appears in the Gospels of Matthew (22:21), Mark (12:17) and Luke (20:25). This division was rarely questioned.

The dividing line between secular and religious functions, however, and the relative rank of religious and secular authorities, were matters of intense dispute. At times, especially in the early medieval period, the highest secular authorities – anointed kings and emperors, and even some lesser princes – appointed bishops and treated the clergy legally more or less like other subjects of comparable rank and status. At other times, especially after the papacy of Gregory VII (1073-1085), clergy were covered by a separate body of law and managed their own hierarchy, largely independent of emperors, kings, and princes. Furthermore, later popes asserted a status above emperors and kings and used excommunication as a device to assert superior power. At still other times, there was a power-political struggle between secular and religious authorities that made a mockery of the idea of any coherent hierarchical order.

Each domain was ordered internally by a largely descending hierarchy. Bishops often chafed at assertions of papal authority and at times were able to use their own local resources, along with the advantages of distance, to establish considerable local autonomy. But bishops aggressively asserted their rank and its privileges over both subordinate clergy and the flocks to which they ministered. And the superior rank of the pope was usually acknowledged.

The position of monks and monasteries within the religious hierarchy was another matter of considerable contention. One tradition saw monks, because of their more complete renunciation of the world of the flesh, as more pure and thus above the bishops and the liturgical clergy. With the rise of powerful monasteries, symbolized by Cluny and its network of associated houses, such spiritual pretensions received powerful practical expression. But this period of monastic independence gave way in the twelfth century to the rising tide of papal power. Furthermore, within monasteries the hierarchical principle was strong: abbots, often of noble birth, ruled over their brothers no less than kings ruled over the people or bishops ruled over local priests. In addition, the belief was widespread that religious men were closer to God than lay men of similar birth, status, and rank.

In the secular domain, the imperial idea retained great ideological appeal across all of Latin Christendom. In the German lands, the Emperor's claim to superiority had considerable practical reality for most of the medieval period. In the West after the ninth century, however, kings struggled for power and position with other secular princes. Although the theoretical superiority of the king was usually acknowledged, his practical fortunes varied greatly with time and place. At one extreme was the powerful and rather highly centralized monarchy of England, especially after the Norman conquest. At the other extreme, the king of France in the late tenth and early eleventh century ruled over little more than the Ile de France and Orleans.

“Feudalism” presents another type of hierarchy that was of central importance for extended periods in much of the medieval world. Feudalism, understood narrowly, is a system based on contractual obligations of vassalage and land holding by fief or fee, that is, “An estate in land (in England always a heritable estate), held on condition of homage and service to a superior lord, by whom it is granted and in whom the ownership remains.” (*OED*) More loosely, “feudalism” also refers to various types of lordship characteristic of the early second millennium. George Duby (1974 [1973]: 174-177) describes these as “domestic lordship” (*seigneurie domestique*), based on control over the persons of subordinate laborers of varying legal status; “landlordship” (*seigneurie foncière*), based on possession of land and the rents and services it generated from those living on the land; and “banal” lordship, based on the *bannum*, the right of command and the administration of justice. In all three instances, though, largely autarkic local communities were under the often effectively absolute rule of a local lord or lords who had been granted and/or arbitrarily appropriated almost all legal and political authority from kings and other “higher” authorities.

Beneath the lords (*domini* or *seigneurs*) and their vassals (*vassi* or *homines*) – a class usually demarcated by noble birth and possession of horses and heavy arms – lay the vast bulk of the population. In the early medieval period, these were often divided into slave and free, although the exact significance of the distinction varied with time and place. In the centuries

following the division of the Empire, however, the number of both slaves and freemen declined, in favor of semi-free tenancy systems often described as “serfdom.” For example, “in the Chartres area the percentage of freeholds (*allodia*) fell from 80% in the period 940-1030 to a mere 8% in the years from 1090 to 1130 ... By the early twelfth century large areas of western Europe were practically without free peasants and freeholds.” (van Caenegem 1988: 196)

Consider still another standard medieval division, among those who fought (and thus ruled), those who prayed, and those who worked the land to support all three orders. In standard presentations, the emphasis was on the superiority of those who fought and prayed, and thus provided the ruling element of society. George Duby nicely summarizes the attitude, as expressed in Gregory the Great’s influential meditation on Job.

One part of society was worthy to rule over the remainder. Because they were morally of lesser value, ‘those behind’ were subordinated to ‘those in front’ (*prelati*) ‘who speak’ (*predicatos*), ‘who govern’ (*rectores*), who are ‘powerful’ (*potentes*). ... All hierarchy originated in the unequal distribution of good and evil, of flesh and spirit, of the heavenly and the terrestrial. As men were by nature differently inclined to sin, it was proper for the least culpable to assume responsibility, with care, affection, and firmness, for the leadership of the flock. (Duby 1980 [1978]: 67)

The absolute subordination of the ordinary man was usually emphasized with reference to Paul’s Epistle to the Romans.

Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God.
 Therefore he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation.
 For princes are not a terror to the good work, but to the evil. Wilt thou then not be afraid of the power? Do that which is good: and thou shalt have praise from the same.
 For he is God's minister to thee, for good. But if thou do that which is evil, fear: for he beareth not the sword in vain. For he is God's minister: an avenger to execute wrath upon him that doth evil.
 Wherefore be subject of necessity, not only for wrath, but also for conscience' sake.
 For therefore also you pay tribute. For they are the ministers of God, serving unto this purpose.
 Render therefore to all men their dues. Tribute, to whom tribute is due: custom, to whom custom: fear, to whom fear: honour, to whom honour. (Rom. 13.1-7)²⁷

²⁷ Douhay-Rheims translation of the Latin Vulgate, available online at <http://www.drbo.org/>.

Equally popular was the passage in Job in which it is noted that the Lord “maketh a man that is a hypocrite to reign for the sins of the people.” (34.30 [D-R]) And the example of Jesus himself was regularly used to counsel acquiescence even in unjust judgments of death. John 18:36 reports Jesus saying to Pilate, before he is turned over for execution, “My kingdom is not of this world. If my kingdom were of this world, my servants would certainly strive that I should not be delivered to the Jews: but now my kingdom is not from hence.”

Hierarchical division and descending rule were almost everywhere for almost all of the medieval period the norm, in both the statistical and prescriptive senses of that term. Popular protests, often reflecting a millenarian, eschatological vision, were common but almost always relatively easily suppressed. From the twelfth century on, cities, which often attained considerable freedom from royal or imperial control, became increasingly important features of the economic and political landscape. But for the most part this simply created further hierarchical differentiation amongst what in France became known as the third estate. The revival of kingly rule and the continuing power and prestige of the landed nobility kept the new bourgeoisie socially and politically subordinate, even as their “betters” became increasingly dependent on their money and administrative talents. And the free men of the Italian communes and the burghers of Northern Europe insisted on their rank and status, relative to the peasantry and proletariat beneath them, no less than the nobility did with respect to them.

Hierarchy and division, rather than any shared sense of a common humanity or equal rights, dominated political thought and practice. Any moral notion of equal dignity at best referred to the potential of every Christian to be saved in the afterlife. And no notion of equal political rights of “men,” or even Christians, had any theoretical or practical traction.

C. Heathens and Heretics

The Christian world, much like the Classical Greek world, saw itself as surrounded by savage and dangerous people. The boundary, however, was less cultural or geographical than religious. To the east were barbarian heathens, including prominently various Slavic peoples. The general attitude of superiority and disdain towards these people – at least until they converted to Christianity – is reflected in the term slave, which in many European languages is derived from Slav. To the south were Muslims, who may have had a high level of material civilization and culture, but were understood, even long after the Muslim advance was stopped in the mid-eighth century, as dangerous heathens, bent on the destruction of Christendom.

The medieval period was marked by three distinct movements aimed at converting, and thus civilizing, the surrounding non-Christian world. First, Christendom moved steadily north and east, with considerable success in the ninth and tenth centuries and with a new surge beginning in the mid-twelfth century. Second, much Muslim-held territory in Europe was “re-conquered” during the eleventh and twelfth centuries: by 1204, the Christian kingdoms of Castile and Aragon had reestablished Christian rule in about two-thirds of Spain as well as

Sardinia, Corsica, Sicily, and Southern Italy (Naples). Third, and most famously, a series of papally-sanctioned Crusades, beginning in 1095, attempted to recover the Holy Land. The initial successes, however, were reversed, with Jerusalem returning to Muslim rule in 1187 and the last Christian stronghold falling in 1291. The crusading form also was applied to the struggle in the pagan north and east in the thirteenth century, with much greater success.

In all of these “missionary” movements, Christians demonstrated a contemptuous arrogance backed by the savage violence. Those who resisted the one true faith were treated not as dignified beings who had made a most tragic error but as contemptible creatures; degraded beings without worth and undeserving of the least respect or consideration.

The same spirit of armed orthodoxy was regularly directed inwards, in the persecution of heresy, often with comparable savagery. In fact, in the later medieval period official crusades targeted Christian heretics no less than the Muslim occupiers of the Holy Land and the pagans of the Northeast. Consider the fate of the Cathars, a dualistic, anti-clerical heresy rooted in a particularly severe denigration of the flesh. Catharism spread widely and rapidly in Languedoc in the late twelfth and early thirteenth centuries. It was first met in 1184 by a not very effective Inquisition, which also targeted Waldensians in France and Northern Italy. In 1209, Pope Innocent III launched the Albigensian or Cathar Crusade, which began with the massacre and mutilation of many thousands, including women and children, in Béziers. And in 1229, a new Papal Inquisition was created. It is perhaps most famous for its torture and execution of Joan of Arc.

Hussites in Bohemia faced a similar attack two centuries later. Jan Huss was executed for heresy by the Council of Constance in 1415 (despite being present on a guarantee of safe passage). The resulting protests in Bohemia ultimately led Pope Martin V to launch a crusade in 1420, at the instigation and with the enthusiastic support of Emperor-elect Sigismund. That this crusade was much less savage than its Albigensian predecessor would seem to be explained largely by its lack of military success in the face of inspired and unusually effective resistance of the Bohemian Hussites.

In neither internal nor international practice can we find any support during the medieval period for human rights or the idea of a foundational, shared human dignity. The Western tradition, during its first two millennia of the ancient and medieval eras, was in theory and practice alike a most inhospitable environment for the development of human rights – in significant measure because it lacked anything even vaguely resembling our contemporary notion of human dignity.

3. EARLY MODERN EUROPE

With the benefit of hindsight, it is common to focus on certain modern-seeming features of sixteenth and seventeenth century Europe. Early modern Western political practice, however, was as alien to any plausible conception of human rights or human dignity as its ancient and medieval predecessors. Here I will emphasize the fact that the sixteenth and seventeenth centuries were dominated politically by religious warfare and dynastic empires. More generally, I want to suggest that with respect to politics and our themes of human rights and human dignity, the three centuries from the Council of Constance (1414-1418) to the Peace

of Utrecht (1713) are not only largely continuous but look much more like the medieval world than a prelude to “modern” politics in its nineteenth- and twentieth-century forms.

The story is often told of national and international politics moving from the heterarchic and heteronymous fragmentation of the medieval world to a Europe of territorial, and proto-national, states. In fact, however, “composite states” were the norm. This was most evident in the polities of Central and Eastern Europe (including Italy), which were created through processes of dynastic agglomeration in which smaller polities were incompletely, in varying degrees, and on varying terms, incorporated into a larger “imperial” polity. But even the more centralized and more national polities of Britain, France, and Spain were more composite than unitary; heterarchic, involving incomplete and cross-cutting hierarchies rather than a single dimension of hierarchy running from top to bottom.

“Spain,” at the turn of the sixteenth century, was composed principally of Castile and Aragon, which had only incompletely incorporated Catalonia and included Sicily and Naples, Sardinia, and the Balearic Islands. Navarre was effectively split between Spain and France between 1513 and 1620, the inclusion of Navarre into France resting principally on dynastic processes. And Portugal was “united” with Spain from 1580 to 1640.

England was in many ways an emerging nation state – at least if we ignore the very incomplete incorporation of the conquered territory of Wales. But Henry VIII created the Kingdom of Ireland in 1541, under his rule, based on a combination of religious and dynastic justifications. The seventeenth century brought the dynastic union of England and Scotland, under James VI/I. The political troubles over the last two thirds of the century, however, reflected both religious controversy and the incomplete incorporation of Scotland, which continued to be contested into the eighteenth century.

As for France, during the last third of the sixteenth century it was torn apart by religious warfare, in which the House of Guise and its allies acted essentially as independent political agents and in which repeated efforts at settlement typically imposed different rules for different parts of the country. Furthermore, France’s Valois and Bourbon rulers pursued fundamentally dynastic, not national, interests in international relations.

In addition, in all three countries – and even more so elsewhere in Europe – local nobles continued to exercise considerable independent political power and local rights, especially in Spain and France, continued to be important issues of controversy, and of resistance to the centralizing pressures exerted by the monarchy. Consider, for example, the Fronde, which plunged France into five years of factional strife immediately following the conclusion of the Thirty Years’ War.

Rather than revealing the beginnings of democratic politics or popular sovereignty, with which we associate politics based on human rights, national politics in early modern Europe was not merely primarily but increasingly monarchical. Kings did become more dependent on the financial resources concentrated in cities, which shared a common enemy in the old landed and titled nobility. But popular political participation in Europe in 1600 was not significantly different from 1400, with “advances” such as the Dutch Republic counterbalanced by the fall of republics in Italy, most notably Florence, and the increasing en-

croachment on the freedom of the cities of the Hanseatic League. At most, early modern Europe saw a modest opening towards limited political participation by well-to-do free men.

Much more important, at the time, was the rise of monarchical power. And we must not forget that the seventeenth century was the era in which the divine right of kings became the ruling orthodoxy of monarchs even in France and England. In addition, dynasticism was by no means on its last legs. For example, the two principal wars of the first half of the eighteenth century were the War of the Spanish Succession (1701-1714) and the War of the Austrian Succession (1740-1748). And in 1714, Britain obtained as its king the Elector of Hanover, whose inability to speak English was seen to be more than compensated by his combination of dynastic ties and Protestant religion.

Appeals to natural rights did begin to be advanced in England with some real political effect, both during the Civil Wars of the 1640s and in justification of the Glorious Revolution of 1688. But even here, the most we can say is that at the very end of the seventeenth century property gained a political footing comparable to birth. Dignity and rights were still seen in fundamentally hierarchical and particularistic terms that excluded the vast bulk of even the adult male population. And across Europe, uprisings by the poor were regularly repressed, typically with great brutality.

Consider the case of György Dózsa. In 1514 he was appointed military leader of a new Crusade that had been authorized by Pope Leo X against the Ottomans. Dózsa assembled a rag-tag army of 50,000 men or more, drawn largely from the lower ranks of society. This provoked considerable fear among the Hungarian authorities, who managed to get the papal bull authorizing the crusade rescinded. But when the army refused the call of the Hungarian king to disband, they were violently repressed. Dózsa was executed in a particularly gruesome fashion. He “was compelled to sit on a red-hot ‘throne’ and a burning ‘crown’ was placed on his head. His closest followers, who had been starved for twelve days, were then forced under penalty of death to bite into his burning body and to drink his flowing blood. This execution may be construed as the predictable finale in a revolt characterized by extreme cruelty on both sides.” (Housley 2002: 118)

Most of the early modern period is marked by just such savage cruelty in the context of politically mobilized religion, in both national and international politics. Consider just a few “highlights.”

- The Peasant Wars of 1524-1525, closely associated with the what we would today call “viral” spread of Lutheranism in southwestern Germany and surrounding areas, led to the deaths of about 100,000.
- In Munster, an Anabaptist revolt in 1534 established a violent theocratic regime that was quickly besieged by forces under the command of the local bishop. When the Anabaptist leader Jan Matthys was captured, venturing out of the city on a quixotic military operation, his head was placed on a stake and his genitals nailed to the city walls. But inside the walls, the revolution, under its new leader, Jan Bockelson (Jan of Leiden) only became more extreme. Jan soon declared himself king and became increasingly bizarre in his behavior: for example, personally beheading one of his six-

teen wives in the town square. When the city fell in the summer of 1535, Jan and his leading followers were subjected to lengthy torture. In January 1536 they were not merely publicly executed but had their bodies left in metal cages hung from the steeple of the church.

- On succeeding to the English throne in 1553, Queen Mary attempted to return the country to Catholicism, by force if necessary. Some two to three hundred prominent Protestant leaders were executed, by burning at the stake, and many hundreds more were forced to flee, while their less prominent co-religionists often suffered in lesser ways if they would not renounce, or at least hide, their religion. In fairness, though, it must be admitted that “Bloody Mary” did little more than continue the policies of her father, Henry VIII. The only real difference is that the victims switched from Catholics, like Thomas More, to Protestants, like Thomas Cranmer.
- In 1562, an attack on Calvinist worshipers led to a general massacre of Protestants in Vassy in Champagne that plunged France into three and a half decades of sporadically erupting religious warfare. Among the more famous episodes is the Saint Bartholomew’s Day Massacre in which, at the end of August 1572, acting out of fears of a Protestant coup, Catholics, under the leadership of the Duke of Guise, murdered the Huguenot leader Admiral Gaspard de Coligny and then slaughtered some 2000 Protestants in Paris. As the violence spread to the provinces, several thousand more were massacred. Only in 1598 did these “wars of religion” come to an end, when the Edict of Nantes granted substantial religious, legal, and political rights to French Huguenots.
- The Spanish Inquisition was an ecclesiastical tribunal founded in 1478 that became famous for the ferocity of its campaign against heresy during the Catholic Counter-Reformation. Torture – including a procedure very similar to waterboarding – was a standard inquisitorial practice as was execution, by burning at the stake, typically following a religiously solemnized public festival, the *auto de fe*. Historians today tend to be skeptical of the extreme picture painted by Protestant propagandists in the seventeenth and eighteenth centuries. (Kamen 1997) Nonetheless, many tens of thousands were tortured and several thousand executed in the name of protecting society against heresy.
- The Thirty Years’ War combined dynastic and religious rivalry in a particularly brutal form. The population of Germany as a whole declined by about a fifth or more – greater than Soviet losses during World War II – and in some areas, such as Wurttemberg, more than half of the population was killed.
- The English Civil Wars of the 1640s remind us of the persistence of brutal religious violence well past the era of the Renaissance and Reformation. The wars in England and Scotland together killed perhaps 200,000 people, or roughly 4-5% of the population. In Ireland, more than a third of the population was killed – more than twice the level of deaths during the potato famine (“the Great Hunger”) two hundred years later. And whatever Oliver Cromwell did to lay foundations for republican govern-

ment in Britain in first year or two following the execution of Charles I, he pursued genocidal policies against Irish Catholics. Furthermore, at least by the time of his assumption of the title of Lord Protector for life in 1653, Cromwell ruled as a military dictator claiming divine sanction. He did accept a certain degree of private liberty of conscience but his regime enforced religious uniformity in public worship and education. Not to be outdone, though, one of the early acts of the Restoration government was to disinter Cromwell's body, hang it in chains, and publicly behead it. And, we must recall that one of the central elements in the downfall of James II in the so-called Glorious Revolution of 1689 was his production of a Catholic heir to the throne.

- The second half of the seventeenth century also saw considerable violent repression of Protestants in Catholic countries. For example, in 1655, Charles Emmanuel II, Duke of Savoy, first forced his population of Waldensians (Vaudois) into the mountains in the midst of a harsh winter and then massacred many of the refugees, provoking outrage across Protestant Europe (including a commemorative poem by John Milton). In France, Louis XIV embarked on a campaign of forced conversions of Huguenots beginning in 1681, leading to a huge forced emigration. In 1685, he revoked the Edict of Nantes, destroyed Huguenot churches and closed Protestant schools. The following year, the King boasted of having removed or converted more than 98% of the Huguenot population.

At the end of the seventeenth century, a single state religion, combined with the active persecution of public worship in unapproved forms, remained the norm throughout most of Europe. In the history of human rights ideas, John Locke's *A Letter Concerning Toleration*, published in 1689, is rightly taken as a landmark event. But at this point even the idea or religious toleration was a deeply controversial, and decidedly a minority view, even in relatively liberal Britain. Any real practice of religious toleration had to wait to the eighteenth, nineteenth, and twentieth centuries. Much the same is true of John Milton's powerful 1644 tract *Areopagitica*, advocating freedom of the press – a practice that was still largely unheard of in Europe at the end of the eighteenth century.

Much the same is true of republican political ideas. They are encountered throughout the sixteenth and seventeenth centuries. Consider, for example, Machiavelli and Guicciardini in Florence in the first half of the sixteenth century; the anonymous *Vindiciae Contra Tyrannos*, a Huguenot tract from 1579 that justified rebellion against a king that was destroying his commonwealth; various tracts produced during the Dutch wars of independence; Johannes Althusius' *Politica Methodice Digesta* (1603); James Harrington's *Oceania* (1656); and Locke's *Two Treatises of Government*, published in the wake of the removal of James II. We even see some political movements that, at least with the benefit of hindsight, point in a democratic direction towards the American and French revolutions. Consider, for example, Gerrard Winstanley and the Diggers, who sought to seize vacant land for poor, dispossessed men, and the famous Putney Debates within Cromwell's Protestant army during October and November of 1647. But monarchical rule and dynastic politics remained the norm. And even in the few existing republican enclaves, such as the Dutch Republic and various Swiss

cantons, religious discrimination was the norm and the franchise remained restricted to a small propertied elite.

Increasingly through the sixteenth and seventeenth centuries, wealth came to compete with birth as the basis for political privilege. But even the most “liberal” of early modern states were ruled by an awkward coalition of an aristocracy of birth and an oligarchy of wealth. And any idea of the equal dignity of all men – or even of all resident men adhering to the state religion – was a fringe idea with little or no political impact.

To this dismal picture we need to add the development of overseas imperialism, often in the most brutal forms. In the Americas, indigenous peoples were conquered, massacred, forcibly converted, and, where they were not expelled, usually enslaved or enserfed. A few radical theorists, such as Francisco Vitoria and Bartolomé de las Casas, were willing to acknowledge that these barbarians were indeed fully human, and even that they rightly held dominion over their land before the arrival of Europeans. But as Vitoria put it, “if the barbarians nevertheless persist in their wickedness and strive to destroy the Spaniards, they may then treat them no longer as innocent enemies, but as treacherous foes against whom all rights of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones.” (in Brown, Nardin, and Rengger 2002: 237) And most of those who came to the New World simply went about their business without much thought to the legal or moral niceties, expelling, massacring, or subordinating the local populations with little or no thought to shared humanity, or even any sense that these were fellow humans over whom they exercised dominion.

Finally, we should also remember that the early modern period marked the revival of slavery among European peoples. If Europeans did not see their civilized Christian neighbors as rights-bearing fellow humans, it is hardly surprising that such an idea seems not even to have crossed the minds of most Westerners when they looked upon the barbarian and savage peoples of Africa, the Americas, and Asia.

During the medieval era, changing economic and political conditions combined with changing religious sensibilities with respect to enslaving Christians led to a very substantial decline in the practice of slavery. (It was replaced, however, by tenancy and serfdom, rather than personal legal freedom or freehold title to land.) With the Spanish Reconquista, though, Europeans found a ready supply of Muslim slaves and Pope Nicholas V explicitly endorsed the practice in 1452 and 1455. And over the following century, improved shipbuilding and navigation opened up both a vast supply of African “savages” to enslave and vast new lands (in Brazil, the Caribbean, and North America) in which to put this slave labor to productive use. Such creatures were not seen to share anything of moral significance with civilized European men; only a superficial bodily similarity.

4. THE AMERICAN AND FRENCH REVOLUTIONS

In the preceding section we noted the beginnings of calls for – although not the practice of – freedom of the press and religious toleration. The middle and late seventeenth century also saw the beginnings of claims of “natural rights.” John Locke’s *Second Treatise of Government* (1689) is often seen, with some justice, as presenting the first fully developed natural rights

theory.²⁸ But even England at the end of the seventeenth century had managed to achieve little more than some sort of balance between King, Lords, and Commons – which, it must be remembered, represented only a tiny, propertied elite. And on the continent, outside of the few republican enclaves, even that level of “popular” political participation was rare.

Only in the second half of the eighteenth century, especially with the American and French Revolutions, does something close to our ideas of human rights begin to have real political impact. Significantly, these political ideas were closely associated with new ideas about human nature and human dignity.

Lynn Hunt, in her superb book *Inventing Human Rights: A History* (2007) dates the transition to the years around 1750. Focusing on France she argues that fundamental changes in the ways in which men and women came to see themselves laid the foundations for the declarations of rights that were to follow. Hunt draws particular attention to a) the rise of moral ideas and theories, in both the French and Scottish Enlightenments, stressing sympathy and empathy and b) changing attitudes about the body, reflected in changing penal practices and the remarkably rapid success of national and transnational campaigns against torture.

The rise of sympathy – the driving force beneath the mid-century craze for epistolary novels – involved cultivation of a direct sense of fellow-feeling that cut across traditional barriers of birth, class, gender, and even race. In the mid-eighteenth century, “people learned to think of others as their equals, as like them in some fundamental fashion.” (Hunt 2007: 58) And they began to think of bodies, and the persons they housed, in radically new ways. “Torture ended because the traditional framework of pain and personhood fell apart, to be replaced, bit by bit, by a new framework, in which individuals owned their bodies, had rights to their separateness and to bodily inviolability, and recognized in other people the same passions, sentiments, and sympathies as in themselves.” (Hunt 2007: 112)

Consider the contrast between the 1689 English Bill of Rights and the American and French declarations.

The English Bill begins with “the Lords Spiritual and Temporal and Commons assembled at Westminster” presenting “unto their Majesties ... a certain declaration in writing.” The trappings are much more “medieval” than “modern” – as is the substance of their complaints.

The heart of their case is that “the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom.” In other words, Parliament acted to replace a bad king with a good one, understanding the badness of the old king in terms of his offenses against the Protestant religion and the traditional laws and liberties of the land.

When they moved on to asserting their rights, they did so “as their ancestors in like case have usually done” and for the purpose of “vindicating and asserting their ancient rights and

²⁸ There were, however, precursors, especially in the pamphlet literature of the English civil wars, and at least suggestions of such notions going back at least to Althusius and Grotius. See (Tuck 1979).

liberties.” The substance of those rights largely involve placing the crown under the law, properly balancing royal power against that of the Lords Spiritual and Temporal and Commons, and protecting citizens from abuses of the legal system. And they conclude with two oaths: to “be faithful and bear true allegiance to their Majesties” and to “from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.”

The English Bill of Rights, in other words, fits comfortably within the early modern framework of dynastic monarchy and religious warfare. William, who held a title from a small principality in southern France, and had succeeded his father as *stadthouder* of the Dutch Republic, become King of England as a result of his marriage to the daughter of James II. And he was granted this opportunity largely because of dissatisfaction with his wife’s father’s religion. It is true that political rights were also involved. But for our purposes the crucial point is that they were traditional rights, not natural rights, and the rights not of the people considered as a collective sovereign body but of the Lords Spiritual and Temporal and Commons.

Compare the 1776 American Declaration of Independence – paradoxically, against one of the successors of William and Mary, King George III. The claim of American independence was rooted not simply or even primarily in traditional rights and privileges but rather in “the separate and equal station to which the Laws of Nature and Nature’s God entitle them.” And, in the Declaration’s second paragraph a completely new conception of government is stated.

We hold these truths to be self-evident, 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. – That to secure these rights Governments are instituted among Man, deriving their just powers from the consent of the governed, – That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

God is still present, but not religion. Right and liberties remain central, but they are now natural or human rights, not traditional rights. Sovereignty resides not in the king and/or Parliament but in the people – who are free not just to replace a bad king with a good one but to replace kingship with a republic. Thus in the conclusion “We ... by Authority of the good People of these Colonies, solemnly publish and declare” American independence. And this Declaration is addressed not only to king and country, but no less importantly to “the opinions of mankind” and to “Nature’s God.”

In equally striking language, the 1789 French Declaration of the Rights of Man and the Citizen begins by asserting that “ignorance, neglect or contempt of the rights of man are the sole causes of public misfortunes and governmental corruption.” And, its first three articles assert that “Men are born and remain free and equal in rights;” that “The purpose of all political association is the preservation of the natural and imprescriptible rights of man;” and that “The principle of sovereignty rests essentially in the nation.” No less radical is the assertion in Article 6 that “All citizens have the right to take part” in the formation of the law, which “is the expression of the general will,” and that all citizens “are equally admissible to all public dignities, offices, and employments, according to their ability, and with no other distinction than that of their virtues and talents.”

For our purposes, this reference to public dignities is particularly revealing. We see here the old hierarchical conception of dignity in effect being democratized. Each man is worthy of public respect solely on the basis of virtue and talent. This is not quite the notion of an inherent moral dignity and worth that we saw above in Kant – who, almost certainly not coincidentally, developed his theory at the time of the American and French Revolutions. But it is remarkably close for such an early political expression of such a radical philosophical idea.

We should not, however, underestimate either the exceptional nature of these Revolutions or their very severe limits. Gender, race, and property remained fundamental constraints on “the rights of man.”

The rights in question in the American and French revolutions were indeed the rights of men, not of women. A few radical theorists claimed equal rights for women, perhaps most notably Mary Wollstonecraft, who wrote both (the now quite obscure) *A Vindication of the Rights of Men* and (the path-breaking) *A Vindication of the Rights of Woman*. Even in theory, however, such arguments made little progress. In legal and political practice, there was no change at all.

The men in question were also almost exclusively white. The American Constitution of 1787 not only entrenched the institution of slavery within the fundamental law of the new republic but infamously defined slaves as three-fifths of a person for the purposes of electoral apportionment. The French Revolution in its most radical phase did for one year officially abolish slavery. The practice, however, remained essentially unchanged. And the overseas imperial holdings, for which various revolutionary and post-revolutionary French governments fought, did not even make a pretense of conforming to the idea that men are born, let alone remain, free and equal in rights.

Furthermore, property restrictions on the franchise continued to exclude many free-born white male residents from full or active citizenship, particularly in the Old World. Economic and social rights were restricted largely to the right to property (although in America, where land still could readily be seized from the indigenous populations, this was a less severe limitation than in the Old World). And many basic civil and political rights continued to be deeply contested, as illustrated, for example, by

the Alien and Sedition Acts of 1798, which appear to have had the intent, and certainly had the consequence, of repressing political speech critical of the American government.

Nonetheless, by the end of the eighteenth century the mainstream of theory and practice included a new conception of political legitimacy based on a notion of (politically foundational) equal and inalienable rights of man. The historic significance of this transformation should not be underestimated. For now, though, I simply want to note that this was a radical change within the tradition of Western moral and political theory and practice – and that this change occurred only about 250 years ago; that is, in the last tenth of Western political history, dating its beginnings to the Persian Wars of the early fifth century BCE.

5. LIBERAL-DEMOCRACY, WELFARE STATES, AND DECOLONIZATION

In the nineteenth century, the United States continued to expand the depth and range of its rights-based republic – at least for white Christian men – moving in a general direction that can plausibly be described as liberal-democratic. Progress in the Old World was more limited, and much more sporadic, especially in the first half of the nineteenth century. But in the second half of the century, the tide shifted fairly decisively against the monarchical vision of Europe's future. By the time that Bismarck created the Three Emperors' League in 1873, even the most conservative of Europe's major powers were willing to engage in a direct conversation with a rights-based conception of politics – in sharp contrast to Metternich's Europe a half century earlier, where an anti-republican ideology was central to the Holy Alliance. Illustrative is the central role of Bismarck in laying the foundations of the German welfare state (*Sozialstaat*) in the early 1870s, well ahead of Germany's more liberal competitors.

For our purposes here, I want to suggest that we think about human rights in the nineteenth and early twentieth centuries in terms of the development of more expansive ideas of who held human rights. Having successfully introduced the idea that there were human rights, and having begun to elaborate the substance of those rights, the most contentious question became who had those rights; that is, who would (and would not) be treated as fully human, in the sense of possessing a dignity that granted them the same rights as those already entitled to claim in law the equal rights of man.

I would argue that the best single measure of progress is legal restrictions on the right to vote and hold public office. Recognition of full active citizenship is of immense theoretical and practical significance in the struggle for equal rights. In the Western world, however, property and religious restrictions were the norm through the first half of the nineteenth century, and restrictions based on gender and race did not give way until well into the twentieth century.

Universal manhood suffrage – primarily a matter of the abolition of property qualifications – was formally introduced in France in 1792 and firmly institutionalized in 1848. In Britain, The Peoples' Charter of 1838 initiated a sustained push towards universal manhood suffrage that culminated in the Reform Act of 1867 – which more or less doubled the size of the

British electorate. That half of the adult male population of Britain could not vote barely a century and a half ago indicates how late, in historical terms, even the most rudimentary notion of equal rights penetrated into the mainstream of European political practices. Germany followed suit in 1871. By World War I, it was the European norm (in the metropolitan states only, though, not their imperial holdings).

Religious exclusion was somewhat less of a problem, both because of the decline in the severity of religious repression in the eighteenth century and because the number of religious minorities in most states was much smaller than the number of unenfranchised working men. Nonetheless, very basic forms of legal religious discrimination were common in the nineteenth century. For example, in Britain Catholics were not allowed to vote in Parliamentary elections until 1829. Jews had to wait until 1858. And even in countries where formal discrimination against Jews had been largely eliminated, such as France and Germany, pervasive social discrimination was the norm until the mid-twentieth century. Atheists were not permitted to give testimony in British courts until 1870, when an affirmation instead of an oath was permitted prior to giving testimony. Not until 1886 could a member of Parliament be seated through an affirmation rather than a religious oath, effectively prohibiting membership by any “out-of-the-closet” atheist.

Gender discrimination did not begin to give way until the twentieth century. Finland, then an autonomous duchy within the Russian empire, granted women the right to vote and stand in parliamentary elections in 1906. Nineteen women (out of 200 members of parliament) were elected in 1907. Norway became the first independent state to allow women to run for public office, in 1913. Women’s suffrage came to the Netherlands in 1919, the U.S. in 1920 (although primarily only for white women), Spain in 1933 (although it was revoked from 1939 through 1975), France in 1944, Italy in 1945, and Belgium in 1948. In other words, until the same year that the Universal Declaration of Human Rights was adopted by the United Nations, Belgium disenfranchised half of its adult population. And Portugal, which granted limited women’s suffrage in 1931, did not remove the last of its gender restrictions until 1976.

Race provided an even more serious barrier to full active citizenship. In the United States, the abolition of slavery inaugurated a century of more or less effective disenfranchisement of the vast majority of the black population. Only with the Civil Rights Act of 1964 did the United States adopt truly universal manhood suffrage, nearly half a century after white women were enfranchised. Being “red” rather than black brought different forms of equally degrading and debilitating treatment. (Discrimination against Asian Americans in the first half of the twentieth century was somewhat less severe, but no less disturbing – especially in the case of the concentration camps created during World War II.)

Most of the rest of the Western world had only a small (and thus often less discriminated against) non-white population (although ethnic discrimination remained a serious issue, especially in Central Europe). The denial of basic electoral equality to African and Asian peoples and people took the form of colonialism, which became increasingly brutal in the second half of the nineteenth century, and only moderately less degrading in the first half of the twentieth century. One should note that the right to self-determination is not mentioned

in the Universal Declaration of Human Rights, for the simple reason that the Western states refused to acknowledge the idea that equal rights applied to the peoples of Africa and Asia. The language of savage and barbarian had been pushed from center stage, but the underlying attitudes persisted – and supported the continued denial of even basic political rights to those across much of the southern hemisphere.

In other words, it is not until after World War II – key symbolic markers are Indian independence in 1947, Ghanaian independence in 1956, and the adoption in 1960 of United Nations General Assembly Resolution 1514, The Declaration on the Granting of Independence to Colonial Countries and Peoples – that the Western world really came to accept the notion of equal political rights for all. More precisely, the West finally came to accept that equal political rights could not be legitimately denied on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, [or] birth,” as the Universal Declaration put it, or colonial status either. (Denials based on, for example, disability, age, and sexual orientation, however, continued to be accepted.)

But this only takes us half way to the Universal Declaration vision of human rights. In addition to acknowledging the equal political rights of something close to the full range of the members of the species, the Universal Declaration insists on the equal importance of economic and social rights. This change in the Western world is largely a phenomenon of the first half of the twentieth century.

The earliest legislation aimed at protecting workers can be traced back to the turn of the nineteenth century. In Britain, the reform of the poor laws in 1834 removed the old system that went back to Elizabethan times, but replaced it with another that was based largely on contempt for, rather than recognition of the equal rights of, the poor. Although legislation on particular issues accelerated in the second half of the nineteenth century, especially connected with workplace safety and public health and sanitation, it was not until the first two decades of the twentieth century that anything even close to a welfare state began to take shape in Britain. And only in the 1940s, following the more or less enthusiastic endorsement of the 1942 Beveridge Report by all the major parties, that the decisive legislation is adopted, culminating with a flurry of post-war legislation: the Family Allowance Act (1945), National Insurance Act (1946), National Insurance (Industrial Injuries) Act (1946), National Health Service Act (1946), Children Act (1948), and National Assistance Act (1948).

Elsewhere in Europe, the details differ. The German social state goes back to the early 1870s. In the 1920s and 1930s, there was considerable divergence, Sweden, Denmark, Norway, and U.K. leading, and Finland, Switzerland, France, Belgium and Italy lagging. (Flora and Alber 1981: 57) But by the late 1940s, almost all Western states were not merely politically committed to becoming welfare states but well on the way to realizing that commitment.

In terms of human dignity, this represents not an expansion of the category human but rather a fundamental rethinking of the preconditions of a life of dignity in an industrial world. That rethinking, in turn, rested primarily on the changing realities of industrial society and the long-run political consequences of enfranchising working men and women.

Historically, though, this means that the Universal Declaration simply did not reflect long-held Western ideas and practices. Western states did endorse the Universal Declaration, typically with considerable enthusiasm, but largely on the basis of what those states had become over the preceding several decades. Deep roots – as opposed to suggestive intimations – of this conception of human dignity and human rights do not go back much beyond two hundred years before the Universal Declaration. And the bulk of the gap between the mainstream of Western practice and the vision of the Universal Declaration was closed in the three or four decades prior to the Declaration.

6. CONCLUSION: RIGHTS AND DIGNITY IN THE WEST

Michael Meyer usefully identifies three senses of dignity: “social dignity,” associated with positions of high rank; “the virtue of dignity,” in the sense of “a more or less settled disposition, and attendant attitudes, that over time contributes to the constitution of a good moral or ethical temperament;” and “human dignity,” understood as “the special moral worth and status had by a human being.”(2002: 196-197) The thrust of the argument above is that traditional notions of “social dignity” and “the virtue of dignity” were hegemonic in ancient, medieval, and early modern Western societies but have largely given way over the past two centuries to ideas and practices of “human dignity” understood in terms of the inherent worth of the human person.

In a similar vein, Deryck Beyleveld and Roger Brownsword identify “two seminal notions of human dignity, one the idea that human beings, having intrinsic value, must not be treated simply as a means, the other the idea that dignified conduct is a virtue.” (1998: 662) These competing conceptions – which we might label Kantian and Ciceronian – have been dominant, respectively, in the modern and pre-modern Western worlds.

In the West prior to the Enlightenment, the exercise of the right to a full measure of dignity and self-determination was restricted to upper class and high-status groups: in Ancient Greece, only the male citizen of the polis, not the woman, noncitizen, slave, or non-Hellene; in Rome, male members of the upper orders, not noncitizens, male members of the lower orders, women, or slaves; in medieval Europe, male members of the nobility and highly-placed prelates (and, perhaps, wealthy burghers), not women, serfs, members of the urban lower orders, and non-Christians.” (Lewis 2007b: 96)

And, as we have seen, this rejection of ideas of the inherent worth of the human person and of practices of equal rights extended well into the eighteenth century, and beyond.

“The modern notion of dignity drops the hierarchical elements implicit in the meaning of *dignitas*, and uses the term so that all human beings must have equal dignity, regardless of their virtues, merits, actual social and political status, or any other contingent features.” (Brennan and Lo 2007: 47) Nonetheless, we must not lose sight of the fact that “the concept of human dignity evolved historically out of the idea of social honor.” (Margalit 1996: 43) This involved both incremental extensions of the category of honorable to more and more groups of people and a reorientation of the locus of honor and dignity from ascribed or earned characteristics to an inherent, universal humanity. Associated with these changing

conceptions of dignity, Western politics went through a gradual process of largely incremental liberalization that eventually led to full democratization, the granting of the full range of equal rights to all (citizens).

In Chapter 6 I will offer an explanation for this modern transformation, focusing on the rise of modern markets and modern states. Here I simply want to conclude by noting that in the Western world we do not see a long and steady path towards human rights. Rather, we see a sharp break that is hard to date back much beyond the eighteenth century and which came to look like the vision of human rights in the Universal Declaration of Human Rights only in the decades immediately prior to its adoption.

PART TWO: CROSS-CULTURAL COMPARISONS

“Different societies represent different ways of being human.” (Margalit 1996: 40) The preceding chapters have in effect demonstrated this for Western societies across time. The following chapters tell a similar story for the non-Western world, compared both geographically with the West and synchronically within particular regions.

The result of these comparison, however, is to place principal emphasis on difference of time and social structure – pre-modern versus modern – and to downplay the significance of differences of region or culture. As we will see below, traditional Western societies, when it comes to dignity and rights, had much more in common with traditional Hindu and Chinese, societies than with modern Western societies. Human rights, I will argue, represents a way of being human that is tied primarily to the conditions of modernity, which have become globalized, rather than any particular place or culture.

So-called non-Western peoples, states, and cultures share nothing except an absence; for better or worse, they are not Western (whatever that may mean). And their diversity is even greater when we extend our gaze backwards through history. In the following chapters I consider two major Asian examples, India and China, home today to more than a third of the world’s population.

I reject the conventional geographical categorizations common in the human rights literature today, as expressed in formulations such as “African conceptions of human rights” or “Asian values.” Although such framings may have some value for us now, they are, for earlier periods, at best deeply anachronistic and misleading. Prior to Western contact, there were no Africans or Asians, but rather (to use the Western terms) Chinese, Japanese, Koreans, Tswana, Fulani, Tiv, Bushmen, Eskimo, Arapahoe, Shoshone, etc. An essential prerequisite to understanding alternative cultural views is considering the actual units of those cultures. Furthermore, as with the West, we cannot restrict our attention to foundational texts but must also consider concrete systems of practice at particular times.

I begin with Hindu South Asia and the contemporary state of India. On its face, this is perhaps the least likely place to find traditional support for contemporary understandings of human rights and human dignity, given that the very concept “human” had no ontological or moral significance within the dominant mainstream of Hindu theory and practice. Nonetheless, I will argue that the similarities between the traditional Hindu world and the traditional Western world, especially in practice, but even in theory, are more striking than their differences, at least with respect to our topics of dignity and rights. In fact, the account of medieval Western hierarchy presented above is strikingly similar to dominant Hindu practices at the same time. Furthermore, much as in the West, this deeply inegalitarian tradition has been reappropriated in the nineteenth and especially twentieth centuries by democrats and human rights activists in India.

The next chapter considers Chinese civilization, understood within the framework of the Confucian tradition. Although the details are quite different, there are striking similarities to the Western case (especially ancient Greece and Rome), especially the fundamental distinction between civilized and barbarian and the limited internal political implications of being civilized/virtuous/cultivated. The referent of human/cultivated/civilized excluded most of the members of the species *homo sapiens* and respect for human or personal dignity had few political implications in the Middle Kingdom. And, I will argue, a similar process of reappropriation on behalf of human rights is underway in the Chinese world, although neither in theory nor in practice has it progressed anywhere near as far as in India or the West.

CHAPTER FOUR: HINDUISM

Hinduism, one of the world's oldest religions, counts close to one billion adherents, approximately ninety percent of whom live in its birthplace of India. Its foundational revealed texts (*śrutī*), the Vedas, took shape in the centuries around 1000 BCE, although they draw on sources and traditions that reach back much further. These scriptures are supplemented by vast store of oral traditions and texts (*smṛti*) that record the acquired wisdom of generation upon generation of sages. Especially important are the great epics (*itihāsa*, history) the *Mahābhārata* and the *Ramayana*, which took their canonical form in the several centuries on either side of the zero date in the Christian calendar. Also important are the Puranas, sacred texts that claim an ancestry even prior to the Vedas but were put in written form in the last half of the first millennium CE. More popular *bhakti* (devotional) songs and poems in vernacular (non-Sanskrit) languages also are important. In addition, sacred lawbooks, the most important of which is that attributed to Manu (*Manava Dharmaśāstra*, *Manusmṛti*), were especially relevant to social life and issues that today are addressed in terms of human rights.

Hindus recognize no central doctrinal or cleric authority. Quite the contrary, the Hindu tradition has been and remains unusually open to heterodox beliefs and practices. It is not unusual for an individual Hindu to adopt beliefs or practices of “another religion” and yet remain, in her own eyes and those of his community, a Hindu. Furthermore, dominant understandings and practices have repeatedly been transformed, both through internal movements of revival and reform and through encounters with others, especially Islamic invaders from Persia and Central Asia and Christian colonizers from Europe. Nonetheless, a readily identifiable Hindu community continues to share in a three-millennium-old tradition loosely defined by reference to a common body of sacred texts and more-or-less-widely-shared local and trans-local beliefs, traditions, and rites.

1. COSMOLOGY

Hinduism presents itself as a comprehensive theory of all of reality. What in the West appear as separate branches of religion, philosophy, science, and social theory appear in the Hindu world as dimensions of an all-encompassing, divinely-infused reality.

All of reality is composed of three basic *gūnas*, “substances”: *sattva* (“purity,” residing in the mind and providing true knowledge of reality); *rajas* (“virility,” residing in life and associated with egoism, selfishness, and violence); and *tamas* (“dullness,” residing in the body and giving rise to ignorance). Everything – deities, human beings, demons, animals, plants, objects – is composed of these three substances, but in different proportions. *Sattva* predominates in deities, *rajas* predominates in demons and animals, and *tamas* predominates in plants and objects. And, much as in the Western idea of the great chain of being, all of reality is seen as hierarchically ordered, with rank defined largely in terms of ontological distance from *Brahman*, the divine.

For sentient beings, every individual “self” or “soul,” *atman*, is enjoined to acquire knowledge of reality in order to prepare for (re-)union with the divinely infused cosmos. One’s separate self is, although a very real physical and social reality, a metaphysical illusion. True knowledge of “self” is recognition of the insignificance of the separate self. The meaning of life is, ultimately, recognition of self-estrangement – and through this recognition, an overcoming that reunites the person with all of nature (or, to say the same thing in different terms, the divine).

Three broad classes of paths to liberation (*trimarga*) have predominated in Hindu practice. *Karmamarga*, the path of works, focuses on achieving purity and merit through ritual practice. *Inanamarga*, the path of knowledge, stresses preparation for liberation through the study of sacred texts and philosophy. *Bhaktimarga*, the path of devotion, emphasizes personal, emotional, loving connection with god. There are, however, seemingly infinite variations rooted in particular times and places.

Likewise, the end, *Brahman*, “God”/nature/reality is variously conceived: in pantheistic terms (as encompassing all of reality); in personalistic, generally monotheistic, terms (although that one god is variously represented); and even in atheistic terms (as something more like a natural principle of right order). In most traditions, Hindus represent the divine through a wide array of personalized “gods” that appear in various guises (avatars).

2. SOCIAL PHILOSOPHY

The Hindu theory of the universe identifies four ends, goals, or interests that are particularly relevant to social life: *dharmā*, *artha*, *kama*, and *mokṣa*. (Mittal and Thursby 2004: Part IV; Sharma 2003: 10-16, 20-22) “In Hindu traditions *dharmā* is an encompassing category that incorporates and at the same time transcends the distinctions among religion, ritual, law, and ethics that are generally posited in Western traditions.” (Holdrege 2004: 213) *Dharma* regulates what in Western categories are the religio-moral dimensions of human life, combining the Thomistic categories of divine law and natural law. *Dharma* provides “a comprehensive concept of social regulation in relation to patterns of ethics in the Hindu tradition.” (Creel 1972: 155) But *dharmā* also links this ethical life with cosmic order. And it identifies the pursuit of “duty” as a prime driver of human life.

Artha (“polity”), which refers more directly to the political and economic domain, identifies the pursuit of worldly goods as the second principal driving force in human life. *Kama*, or bodily desire, is no less central to the comprehensive Hindu vision of man’s place in the cosmos. But the highest goal is *mokṣa*, liberation from the distractions and delusions of “this” world. This is the ultimate end of the three *margas* (paths) identified above.

Hindu ethics and social theory, looked at somewhat more narrowly, revolve around the closely inter-related concepts of *dharmā* (“duty”) and *karma* (“divine justice”) that generate *samsara*, the cycle of birth, death, and rebirth. Each type of creature has duties appropriate to its place in the hierarchy of nature. Individuals move their way up and down the chain of being through right and wrong behavior over a vast succession of lives. Each *atman* (self/soul) occupies a particular station that has been determined by compliance or noncompliance with duty (*dharmā*) in previous lives. One’s place in the order of nature – from king

to cockroach – is a reflection and expression of *karma*, the merit or demerit one has achieved through the practice of one's prior lives.

Any particular birth, however, is but the start of a transitory phase in a long progression towards the divine. And all of the particular paths to enlightenment and liberation aim to lead the practitioner ultimately to escape from the cycle of rebirth. The resulting state of *moksa*, "release," "liberation," "consciousness of unity," is very much like what Buddhists identify as *nirvana*.

As in the other "great civilizations" of the world, gender and age hierarchies have been historically central to Hindu society. Hindu society has also been stratified by "class." But "class" stratification takes a particularly rigid form that is typically described as "caste," the division of society into sharply distinguished and largely encapsulated hereditary groups, associated with a particular station and way of life. Each caste is further stratified by gender (and age, and other criteria). Caste identity, however, is the most important identity in traditional Hindu society.

The most ancient traditional formula recognizes four *varnas* ("castes"): *Brahmana* or Brahmin (priest), *Ksatriya* (warrior/ruler), *Vaiśya* (landowner and merchant), and *Śūdra* (servant). In addition, beneath this formal caste system reside *Chandalas*, "untouchables," outcastes, in the sense of outside of the caste system, and thus social outcasts. They practiced professions, such as sanitation, butchering, and leatherwork, that were socially necessary but ritually impure.

In the Hindu worldview, caste rests on natural distinctions not social convention; its justification is not functional but ontological and metaphysical, a matter of the fabric of natural reality and being. "In a just and stable society a correspondence was presumed between a person's qualities and his social position." (Béteille 1983: 10) One's station has its duties (*dharmā*), which are held to be suited to one's nature, and the discharge of those duties gives one a place in society and a certain personal dignity. "The various *varnas* or classes are part of a natural order, and social justice consists in there being a place for everything, and in everything being in its place" (Sharma 2005: 146) Both the *Bhagavad-Gita* (3.35) and the *Laws of Manu* (10.97) emphasize that it is better to perform one's own duties poorly, even to die doing so, than to perform another's well. And the proper discharge of the duties of one's station will be rewarded in the next life. Caste hierarchy is thus "the expression of a secret justice." (Bouglé 1971 [1908]: 76)

3. CASTE

Caste is in many ways simply the social expression of the central Hindu belief that the "cosmos is ordered by a premise of ranked inequalities." (Davis 1976: 8-9) The caste system (*varnadharma*), however, is so central to Hindu society, and to the relationship between Hinduism and human rights, that it merits extended consideration. "Whatever one's judgment may be, there is no doubt that caste has shaped Indian society throughout the last several thousands of years and that it is still of large practical significance." (Klostermaier 2007: 288)

A. The Priority of the Particular

The caste system divides society in three principal ways: “*separation* in matters of marriage and contact, whether direct or indirect (food); *division* of labor, each group having, in theory or by tradition, a profession from which their members can depart only within certain limits; and finally *hierarchy*, which ranks the groups as relatively superior or inferior to one another.” (Dumont 1980: 21) Separation, division, and hierarchy are common elements of most societies. All have social hierarchies, with a tendency of different groups to separate from one another. Hereditary occupational specialization and a tendency to group endogamy have usually been the norm – even in the West until very recently. Stratification by birth is also common, with many societies distinguishing between those of good or noble birth and those of common or ignoble origin. Only in Hindu South Asia, though, have separation, division, and hierarchy combined in the intensity characteristic of the traditional Indian caste system.

Whether the classic *varnas* were ever more than an ideal-type representation is a matter of continuing controversy among historians. By the third or fourth century CE (if not before), however, “caste” was associated primarily with the *jati*, an endogamous descent group linked to a particular occupation. What we typically call “the caste system” can be understood as the fusion of the social system of *jati* divisions and a religious/ideological justification in terms of *varna*, *karma*, *dharma*, and *samsara* (plus the category of outcastes or untouchables, which is not explicitly recognized in the most ancient sacred texts).

There are literally thousands of such “caste” divisions; three thousand is a commonly cited number. Where medieval texts identify just ten divisions among Brahmins, five in the north and five in the south, by the nineteenth century there are hundreds of separately named Brahmin *jatis*. For example, in a single Tamilnadu village André Bêteille found 12 distinct endogamous divisions within a Brahmin community of 92 households, plus 24 major and many more minor subdivisions among 168 non-Brahmin caste-Hindu households. (Bêteille 1965: 73, 80ff., and table 3)

Boundaries between castes were traditionally maintained by exquisitely detailed rules of ritual purity. Among the institutions for preserving purity, endogamy (marriage only within the group) was central. In traditional Hindu doctrine, marriage across caste divisions is unnatural, a type of (almost literally) unholy alliance. Such miscegenation was believed to lead only to miscreants, or at best offspring less pure than their fathers. For example, one traditional account places the origin of *Chandalas* (untouchables) in the offspring of Brahmin women and *Śudra* men. Hereditary occupational segregation, rules of commensality, and restricted access to temples and sacred texts were other important mechanisms for maintaining and reproducing caste hierarchy. Contact with, in some instances even the sight of, lower castes was viewed as polluting.

“Scruples concerning purity are the keystone, or better the foundation stone, of all Hindu construction, and ... the parts are only ordered and kept in place by sentiments of pious respect and sacred horror.” (Bouglé 1971 [1908]: 125) “Only” is clearly an

idealizing exaggeration. Power and wealth certainly interact with purity in maintaining hierarchy. Nonetheless, purity has been an important independent claim to social status in Hindu society. The doctrine of *varnas* separates ritual, political, and economic power in a way that has allowed Brahmins' claims of birth and purity (and knowledge) to achieve high social status even when substantially detached from political power and economic wealth. Even in the contemporary Hindu world, which recognizes and often values social mobility, traditional ideas of caste division that preserve some idea of hierarchical purity retain considerable social force.

The proliferation of *jatis*, however, indicates a certain historical flexibility in Hindu society. Furthermore, with intense but locally variable fissionings of society needing to be integrated into a single hierarchy, rankings will differ locally even when a single overarching principle of order is accepted. And over time, adjustments are to be expected, especially because caste status (*karma*) is a consequence of both birth and action.

Downward mobility is a very real possibility. Even for those born (relatively) pure, pollution can arise from both one's own acts and violation by others. And over time, that pollution can be cumulative. For example, there are *jatis* of "degraded Brahmins" who are shunned by most other castes.

Upward mobility is more problematic. Special individual merit, through particularly dedicated performance of the duties of one's station or by becoming a religious ascetic, will be rewarded by a higher rebirth. In a single lifetime there was almost no way for an individual to move to a higher caste. Collectively, however, a *jati* might move up in the hierarchy. Over time, with the right combination of skill, luck, and resources, a *jati* might reasonably aspire to mobilize its material wealth to create new (social, economic, and ritual) alliances and patronage relations, a new origin myth, and ultimately gain acceptance for its children in higher-status marriage networks. (Mandelbaum 1970: ch. 23-25)

Such changes, however, involve only relatively minor and local rearrangements of the parts; they leave the caste *system* untouched. Traditional Hindu society could be remarkably flexible about particulars. It was exceedingly unyielding about basic structures.

B. Dignity and Social Solidarity

Although the "inherited defilement" (Kolenda 1978: 65) of membership in the lower castes has historically been the central social fact, caste theoretically assures that each person is treated according to his or her desert. The person, however, is conceptualized in a very particular way. It is the temporary shell within which a particular soul lives out one cycle of mortal life in a multigenerational history of progress towards and falling away from the divine.

Caste membership also gives to each person a defined place in society. Inequality and group repulsion thus may be partially mitigated by the fact that all are bound together into an intricately articulated social and natural order. And, over time, one has the

opportunity to, as it were, earn one's way up – however closed and pre-defined one's opportunities in any particular incarnation in the cycle of *samsara*.

The caste system also permits each person to achieve a certain kind of dignity – worth that commands respect. That dignity is differential not equal; it is defined by and within the parameters of his or her place and status. And for both untouchables and those otherwise outside the caste system (e.g. various “tribal” peoples), even this is not possible. Furthermore, such dignity is not restricted to humans but famously extends to other creatures, with the result that cows are seen as having a dignity higher than many humans. But, as we saw above, such differential conceptions of dignity were equally central to the pre-modern Western world, even if the details differed.

The Hindu caste system represents an extreme form of what sociologists, following Emile Durkheim, call organic solidarity; i.e., social solidarity based on integrating qualitatively different social groups. Much as *Brahman*, the divine unity of all existence, provides a metaphysical point of reference toward which all reality aspires (to the extent that it is self-aware), the Brahmin caste provides not merely a social point of reference but the point toward which all social structures are directed and ultimately converge. Caste hierarchy provides membership for all within a coherent and integrated cosmic order.

A sense of solidarity through caste is especially important for those relatively privileged groups that fit into the classical *varna* scheme. This is true not only for high-caste groups but for low-caste groups that occupy a privileged position above “untouchable” outcastes. A subordinate place in society, if relatively secure and stable and a source of differential but still real (station-based) status and respect can be a powerful social glue – especially in with world in which there are many below one's place who have no real place at all. And even for those at the very bottom of the hierarchy, caste can be seen as a mechanism of solidarity to the extent that that hierarchy is perceived as both naturally just and open, over the fullness of time, to the claims of merit – although in contemporary India “acceptance” of one's place at the bottom typically owes more to poverty, discrimination, and violence than a strong sense of social solidarity.

4. HINDU UNIVERSALISM

So far we have emphasized the particularistic elements of Hinduism's hierarchical conception of reality, which both on its face and especially in the practice of the caste system seems deeply incompatible with human rights. The Hindu tradition, however, also includes universalistic dimensions that bring it into a closer relationship with contemporary human rights ideas. And, as we will see below, these elements have become increasingly important over the past two centuries, and especially since the 1930s.

A certain universalism can be found even in the ancient texts. For example, the *Laws of Manu*, the most revered – and most conservative and “Brahminic” – of the ancient legal texts, identifies five virtues that apply to all four *varnas*: abstention from injuring others,

truthfulness, abstention from anger or theft, purity, and control over the organs. (10.63) A somewhat more extended list of shared virtues is also specified (6.91-92) for the three highest castes.

Admittedly, most of Manu's other 2,600 verses focus on particular duties. But similar formulations appear throughout the Hindu tradition. For example, the *Yoga Sutras* of Patanjali identifies five *yamas* (2.30) – nonviolence (*ahimsa*), truthfulness (*satya*), abstention from stealing (*asteya*), self-restraint, especially with respect to sex (*brahmacharya*), and non-possessiveness (*aparigraha*) – that are “universal and are not restricted by any consideration of the nature of the kind of living being to whom one is related, nor in any place, time or situation” (2.31).

The *bhakti* or devotional tradition offers a very different kind of universalism, namely, the promise of salvation through devotion alone. For example, in the *Bhagavad-Gita* (9.32-33), Krishna offers liberation through devotional discipline to members of low and high caste alike and even to women, who are largely excluded from traditional Brahminic religious practice. By downplaying caste differences at the most fundamental spiritual level, this lays a certain foundation for movement towards a social egalitarianism more compatible with modern ideas of human rights.

At the broadest cosmological level, the oneness of all reality is also a powerful support for universalism. Consider this account of the *varnas* from the *Bṛhadaranyaka Upanishad* (1.4.11-15).

11. In the beginning this [universe] was Brahman – One only. Being One only, he had not the power to develop. By a supreme effort he brought forth a form of the Good, princely power (*ksatra*). ...
12. He had no power to develop further. He brought forth the common people (*vis*) ...
13. He had no power to develop further. He brought forth the class of serfs [*Sudra*]...
14. He had no power to develop further. By a supreme effort he brought forth a form of the Good – *dharmā* ... Right and law (*dharmā*) are the same as truth. ...
15. This Brahman [One divine being], [then], is [at the same time] the princely power and class, the common people, and the serfs.

The sense of a single order under one all-encompassing *dharmā* is striking. This presentation of caste is also striking for minimizing rather than emphasizing differences. (An alternative, more particularizing and elitist, account, near the end of the *Rig Veda* (10.90), presents the *varnas* as arising from the severed parts of a universal body, corresponding to the mouth, arms, thighs, and feet of this primordial cosmic body.) And it is in this context of opposition to caste discrimination that the universalistic elements of Hinduism have been most prominent – and of most immediate relevance to the issue of human rights.

5. OPPOSITION TO CASTE DISCRIMINATION

Opposition to caste discrimination has a history of over 2,500 years in the Hindu world. As is true of Christianity, Islam, and Judaism, Hinduism has always contained both traditional or conservative (“fundamentalist”) and progressive, reformist, and even radical variants.

Perhaps the best-known reform movements originated with two sixth-century BCE rulers, Gautama Buddha and Vardhaman Mahavira, who rebelled against the existing system of Brahminic-Vedic dominance and its rigidly elitist conception of caste. Abandoning their lives of power and privilege for a solitary ascetic existence, they developed traditions of teaching and practice that became Buddhism and Jainism. Although in some senses “new religions,” they can also be seen as reformist variants of the Hindu tradition, since both emphasize abandoning desire and the material world and practicing a life of nonviolence (*ahimsa*). For example, Jainism’s five basic principles of *ahimsa*, *satya* (truth), *asteya* (not stealing), *brahmacharya* (celibacy/self-restraint), and *aparigraha* (non-possessiveness) are the same cardinal virtues noted by Manu and Patanjali. And it has been common for Hindus to adopt some of the beliefs and practices of their Jain and Buddhist neighbors.

The *bhakti* (devotional or spiritualist) movements noted above, which began in the middle of the first millennium CE and continue to be a powerful presence in popular Hindu practice, have been another powerful source of internal opposition to caste discrimination. Internal reform movements have also been generated in response to Muslim and Western invasions throughout most of the second millennium CE. The combined impact of foreign domination and mass conversions proved a powerful stimulus to both popular and elite efforts at reform, especially because of the *religious* egalitarianism of Islam and Christianity (whatever the realities of foreign domination and the tolerance of the conquerors for maintaining traditional social structures and rules within dominated Hindu communities).

The conjunction of internal and external forces is particularly striking in what is often called the Hindu Renaissance of the nineteenth and early twentieth centuries. One conventional starting point is the reforming efforts of Raj Rom Mohan Roy (1775-1833), who is best known for his efforts to abolish the practice of *sati* (*suttee*), the ritual sacrifice of widows on the funeral pyres of their husbands. In the following decades, a great variety of movements of social, political, and religious reform gave a striking new vitality to Hindu society – and in Bengal in particular provoked a powerful artistic revival. As Arvind Sharma notes (2005: 38), “almost every major Hindu religious figure of modern Hinduism turned his attention to the conditions of the lower classes and attacked untouchability.” And this carried through into the independence movement, where Gandhi and Dr. B. R. Ambedkar in particular put opposition to untouchability at the heart of the struggle.

Just as one should not overemphasize the rigidity or particularity of the caste system, though, one should not overemphasize reformist movements. Even religious movements that began as hostile to dominant Brahminic interpretations typically have fallen victim to reabsorption. David Mandelbaum (1970: ch. 28) discusses one common pattern: a charismatic leader teaching ideas of personal purity largely distinct from notions of caste and ritual becomes the leader of a social movement, which then is reabsorbed into the dominant society as a new caste. This pattern is so common that a standard complaint about *bhakti* movements is that

“in historical retrospect, their function appears to have been to reinforce the existing social order by channeling discontent into a negative form, rather than bring about structural change.” (Ishwaran 1980: 74)

Once again, though, the picture is not all that different from the pre-modern West, where social movements from below have typically been either repressed or co-opted. The Hindu world, like the Western world, has throughout most of its history been dominated by social, religious, economic, and political hierarchies that have emphasized the differences, and distances, between men (and between men and women). But both traditions also provide resources for resistance against particularistic domination. And in the right conditions – the conditions of modernity – these alternative strands of the tradition have moved to the fore.

6. “HUMAN” AND “RIGHTS” IN THE HINDU TRADITION

Clearly many of the issues associated with caste are discussed today, within and outside of the Hindu world alike, in terms of human rights. But did traditional Hindu society have a concept of human rights?

If by “human rights” we mean the inalienable rights that all human beings have simply because they are human, then traditional Hindu culture has no such notion – especially if by “human being” we mean anything close to “member of the species *homo sapiens*.” The category of “human being” has no ontological or moral status. Sociologically, although those within the *varna* system of caste were all considered to be roughly what we would call human, the emphasis was on a) (caste) differences among these “humans” and b) differences between these “humans” (caste Hindus) and those creatures with merely human form, whether locals outside of the caste system or aliens, who were generally seen as savages or barbarians. Consider, for example, the verse in the *Laws of Manu* (10.62) that immediately precedes the passage quoted above that lists general virtues. “Dying, without the expectation of a reward, for the sake of Brahmins and of cows, or in the defense of women and children, secures beatitude to those excluded (from the Aryan community).”

Furthermore, Hindu moral and legal theory and practice has historically focused almost exclusively on duties rather than rights. Neither individuals nor groups were seen as having rights, in the sense of special entitlements that grounded claims with a special character and force. Rather, society was integrated through the duties that accrued to one as a result of occupying certain positions in society. In addition to the caste hierarchy emphasized above, gender and age hierarchies were also important sources of hierarchical status-based duties.

In other words, neither “human” nor “rights” played much role in traditional Hindu moral, social, and legal theory or practice. As Klaus Klostermaier puts it (2007: 296), in one of the leading surveys of Hinduism, “the Brahmins did not articulate ‘human rights’ but ‘caste rights’.”

Traditional Hindu society, however, is hardly unique in this way – as we saw in considerable detail above in the case of the West. Traditional Western society similarly downplayed the significance of what we now call “common humanity” and ordered social life through systems of duties rather than rights. For example, the three orders of medieval society (nobility,

clergy, peasantry) is strikingly similar to the traditional Hindu *varnas*. And from a broad historical and cross-cultural perspective, most cultures throughout most of their history have organized society around ascriptive classifications tied to birth.

We should neither overestimate nor underestimate the significance of the absence of the concept and practice of human rights from traditional Hindu society. As the West has clearly demonstrated, cultural legacy is not destiny. And, as we have seen, there are varying cultural legacies within the Hindu tradition. The real question is how individuals and groups appropriate, apply, and transform these legacies.

Over the past century, the universalistic strands of the Hindu tradition noted above and the opposition to caste discrimination have undoubtedly moved to the fore. But we should not project contemporary understandings and practices onto a past that was radically different. Much as in the Western world, traditional ideas and practices have been changed or abandoned as people in the new circumstances of modernity reinterpret the social, political, and legal implications of their cultural traditions.

7. HINDUISM AND HUMAN RIGHTS IN CONTEMPORARY INDIA

During the movement for independence, leaders such as Mohandas Gandhi and Dr. B. R. Ambedkar placed opposition to untouchability at the center of the struggle. Opposition to caste more generally, however, was a minority view that was largely sidelined. And at independence, Nehru's Congress government consciously chose to target untouchability in particular rather than caste in general. Thus the Indian Constitution, adopted in 1949, abolishes untouchability (as well as human trafficking and forced labor) but merely prohibits state discrimination on the basis of caste (as well as religion, race, sex, or place of birth) and assures equality before the law and non-discriminatory access to public places and facilities and public employment.

In the succeeding decades, the Indian federal government, and many state governments as well, have enacted and sought to implement increasingly aggressive programs of what in the United States would be called "affirmative action" on behalf of former untouchables – who typically today self-identify as *Dalits* – and "tribal" peoples (who were similarly outside of the traditional caste system), both groups of which together make up a quarter of India's population. The 1955 Untouchability Practices Act (amended and renamed as the 1976 Protection of Civil Liberties Act) and the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act provide the framework for a comprehensive system of not just protection but affirmative action, including reserved school places and public jobs.

Such measures certainly have reduced the level of suffering of many of those at the bottom of the Indian social hierarchy and created historically unprecedented opportunities for upward mobility. Nonetheless, both official and unofficial discrimination remain a serious problem, especially in relatively backward rural areas. And many Indians, both inside and outside the *Dalit* community, have attributed such persisting discrimination to Hinduism. Thus Dr. Ambedkar famously led the mass conversion to Buddhism of half a million *Dalits* in 1956, shortly before his death. At the end of 2001 there was a similar mass conversion of about 50,000. And smaller mass conversions occur regularly, on a local basis.

The caste system as a whole has been challenged by these measures directed at those at the bottom of the social hierarchy. No less importantly, though, *jatis* have been transformed by the same processes of occupational, educational, and geographical mobility that have undermined traditional social inequalities in other regions of the world. The persistence of older attitudes and practices may be understated in the judgment that today “most *jatis* consist of dispersed, named networks of families, also larger, internally stratified clusters of such networks, that attempt to preserve or raise their collective natures by the ways they intermarry, interline, and subsist.” (Marriott 2004: 358) It is clear, though, that in the modern sector of society and the economy at least, caste still influences, but typically does not determine, and often does not even fundamentally shape, one’s life opportunities – or at least not much more than class shapes life opportunities in contemporary Britain or the United States.

Perhaps a better analogy is with race in the contemporary United States. Indians know their own caste and the caste of most of those that they deal with regularly. They often suspect that they know something about the caste background of even many strangers. And this knowledge is by no means socially neutral. Quite the contrary, it subtly shapes interactions and decisions. But caste is not a formal barrier in any domain of life. And for those with “good” education and/or income, even informally it is usually an impediment but not a barrier.

This transformation of legal, political, and social practices has been accompanied by and associated with parallel changes in dominant understandings of Hinduism. The universalistic strands noted above have moved increasingly to the fore. And caste discrimination has increasingly come to be seen as an historical perversion of the essence of Hinduism.

Hinduism, however, in recent decades has also come to be mobilized in ways incompatible with human rights. Continued repression of *Dalits* is often justified (or at least rationalized) by appeal to Hindu scripture and tradition. And Hinduism has been mobilized by right-wing nationalists, under the label of *Hindutva* (“Hinduness”), exacerbating the recurrently violent “communal” struggles between “Muslims” and “Hindus.”

From a human rights perspective, we should be wary of arguments that this does not represent the “true” nature of Hinduism. Setting aside the problem of who is to decide what “true” Hinduism is – a problem that is especially severe in the absence of clerical authority – such an attitude falsely separates “religion” (or “values” or “culture”) from broader and related social and political realities. Hinduism, at least as a social reality, “is” what Hindus make it – just as Christianity is what Christians make it and Islam is what Muslims make it. And different Hindus, like different Christians and different Muslims, make many very different things of it.

In contemporary India, the home of the vast majority of the world’s Hindus, Hinduism functions as both a support for and an impediment to the exercise and enjoyment of internationally recognized human rights. The same, however, is true, for example, of Christianity in the contemporary United States. Leading proponents of human rights do so from within various Christian denominations. But some of the leading defenses of racism and sexism also root themselves in the Bible.

What is much more important to note is the relative balance between rights-protective and rights-abusive appropriations of traditional cultural resources. The Hindu tradition has proven no impediment to independent India's sustained and vibrant, if deeply imperfect, tradition of democratic political rule. Caste continues to be mobilized by the privileged to perpetuate their privilege. *Hindutva* has become a powerful support for discrimination and communal conflict. But the universalist elements of Hinduism – a single *dharmā* governing an integrated and everywhere-divinely-infused reality and regulating a universal struggle towards liberation – have not only provided a powerful critique of deeply entrenched inequalities but become an important indigenous support for internationally recognized human rights.

CHAPTER FIVE: CONFUCIAN CHINA AND ASIAN VALUES

The Confucian tradition can be traced directly back over 2500 years to Kong Qiu (551-479 BCE), a scholar and teacher born in the feudal state of Lu in eastern China. He was known to his contemporaries as Kongzi, Master Kong, and to later followers as Kong Fuzi, “our Master Kong” – Confucius.

The common Western label Confucianism suggests an exaggerated emphasis on a semi-sacred figure and his words. What in the West is called Confucianism is more commonly called in China *ru*xue, learning about *ru*, ancient knowledge, or *rujia*, the school of *ru*. Master Kong was his era’s leading *ru* scholar and teacher. He practiced at the cusp of the aptly named Warring States period (479-221 BCE), when growing internal and international disorder posed powerful practical and theoretical challenges to the ancient learning. Confucius neither created nor defined that tradition. Rather, at a pivotal point in history – pivotal in part because of the consequences of his work – he made a heroic effort to preserve and codify the ancient learning, and then transmit it, along with his own particular contributions. The record of some of his sayings, the *Analects*, is one of the central texts of Chinese civilization. And the ensuing conversation on his legacy, which continues even today, has helped to define many of the central elements of that civilization.

This chapter begins by considering the broad Confucian conception of the world and man’s place in it. Special attention is then given to the linkage between theory and practice in three episodes of imperial rule: the initial establishment of Confucian thought as state ideology in the Later Han dynasty (25-220 CE); Song era neo-Confucian theory and practice; and the rise of the Chosun Dynasty (???) in Korea. We then turn briefly to twentieth-century engagements with originally Western ideas of rights in China and the broader East and Southeast Asian world influenced by Confucian thought.

1. COSMOLOGY AND ETHICS

“Confucianism” has no fixed doctrine. It is bound together instead by a shared but constantly changing conversation centered around a loosely defined canon. Of special importance are the “Five Classics” (the Books of *Odes*, *Rites*, *History* (or *Documents*), and *Changes* (*I Ching*) and the *Spring and Autumn Annals* [with the *Zuo*zhuàn (*Zuo’s Commentary*)]²⁹ and the “Four Books” (the *Analects*, the *Mencius* [a collection of conversations of the fourth-century master Meng Ke (*Mencius*)], and *The Great Learning* (*Daxue*) and *The Doctrine of the Mean* (*Zhong-Yong*), chapters of the *Book of Rites* that became separate parts of the canon in the twelfth century. Other major contributors include Xunzi, who lived through much of the tumult of the third century BCE, and “neo-Confucians” of the Song and Ming (1368-1643) dynasties, especially the brothers Cheng Hao (1032-1085) and Cheng Yi (1033-1107), the

²⁹ Originally there were Six Classics, including a *Book of Music*, which was lost and then, for a considerable time, replaced by the *Rites of Zhou*.

great synthesizer Zhu Xi (1130-1200), and Wang Yang-ming (1472-1529). The Confucian tradition has also been deeply engaged with, and often unusually open to, other traditions, including Moism, Legalism, Daoism, Buddhism, and, more recently, Western philosophy. And this only begins to scratch the surface of the diversity of “Confucianism,” which is replete with the most serious internal substantive disagreements. To take just one example, Mencius saw human nature as originally good, with a natural propensity for humaneness, rightness, propriety, and wisdom (the “four beginnings”) in every man; Xunzi saw man’s nature as basically evil, or at best amorally selfish; and Tung Chung-Shu and Yang Hsiung saw human nature as dual, both humane and greedy.

Nonetheless, in addition to the historical and inter-textual connections, there are striking family resemblances across time and otherwise very different authors. What follows is an attempt to identify core themes, concepts, and principles that are widely acknowledged to be central to Confucian thought.

A. Heaven-and-Earth (*tiandi*) and Man

Confucians, and traditional Chinese philosophy more broadly, understand “the world” – nature, the cosmos, or the universe as we might call it – in terms of “heaven-and-earth and the myriad things” (*tian di wan wu*). Special ontological place, though, goes to Heaven (*Tian*), understood both as a space above the earth and, much more importantly, as the source and rule of all reality. As Roger Ames and Henry Rosemont nicely put it, “*Tian* is both *what* our world is and *how* it is.” (1998: 47)

Heaven has a Way (*Dao*) – The Way, The Way of Heaven. The world operates according to The Way. Thus *The Doctrine of the Mean* begins “What Heaven has endowed is called the nature. Following the nature is called the Way.” (De Bary and Bloom 1999: 334; Chan 1963: 98)³⁰

Heaven, especially in earlier Confucian thought, is often seen as an active principle. It is never, though, anthropomorphized and the language of “divine” is inappropriate. Although there is Confucian metaphysics, there is no Confucian theology. Heaven is more a rule rather than a ruler; *Dao* (The Way), *Li* (Principle), rather than god. Much like the Western notion of natural law, The Way has both natural/descriptive and moral/prescriptive senses, both of which are essential. And naturalistic, even rationalistic, understandings of Heaven and its Way predominate in the Confucian tradition.

Qi is the ontological substance out of which all things are formed. *Qi*’s two principle aspects are *yin* and *yang* (cold and hot, passive and active). (These notions also have considerable metaphysical significance, particularly in the *Book of Changes*.) Reality is governed by rules of change, involving combinations and transformations of *yin* and *yang* and the Five Agents or Phases (*Wu Xing*), wood, fire, earth, metal, and water.

Man is inescapably a part of “heaven-and-earth” (*tiandi*). For example, the five forms of virtuous behavior (humaneness, righteousness, propriety, wisdom, and trustworthiness) are ex-

³⁰ Wherever possible, page references are given to the two principal English-language readers, (Chan 1963) and (De Bary and Bloom 1999), the particular translation used being the first work cited.

pressions of the Five Phases in man (sometimes linked to the five principal organs, heart, liver, stomach, lungs, and kidneys). But man is also a unique kind of creature. In one standard story, man was originally in a category comparable to the birds of the sky and the beasts of the land but came to be qualitatively distinguished when the Former Kings (*xian wang*) and Sage Kings (*sheng wang*) created civilization, government, and human communities. In any case, man is qualitatively different from the rest of nature because of his capacity for morality. Thus “the world” is often spoken of as Heaven and Earth and Man.

Confucian thought is centrally concerned with understanding the natural principles, rules, and rites of well-ordered human communities. Confucius’ own central contribution was to put the Classics in proper order and thus begin to reveal the models, practices, and principles of a true civilization in harmony with the One, the Ultimate (*Yi, Tai Yi*).

The proper functioning of man and the world is often expressed in terms of *Cheng*, which can variously be translated as integrity, sincerity, equilibrium, centrality, or the mean. “Just as a person of integrity is someone who holds fast to his or her principles, so too the cosmos is seen as possessing integrity because it keeps to certain principles of action.” (Zhang 2002: 140) As *The Mean* (par. 20, 2) puts it:

Sincerity is the Way of Heaven. To think how to be sincere is the way of man. He who is sincere is one who hits upon what is right without effort and apprehends without thinking. He is naturally and easily in harmony with the Way. Such a man is a sage. He who tries to be sincere is one who chooses the good and holds fast to it. (Chan 1963: 107; De Bary and Bloom 1999: 338)

Equilibrium [*cheng*] is the great foundation of the world, and harmony its universal path. When equilibrium and harmony are realized to the highest degree, heaven and earth will attain their proper order and all things will flourish. (Chan 1963: 98; De Bary and Bloom 1999: 334)

The Great Learning, a brief but incredibly influential source, famously lists the “eight items” that link individuals and families with both nature and society.

Those in antiquity who wished to illuminate luminous virtue throughout the world would first govern their states; wishing to govern their states, they would first bring order to their families; wishing to bring order to their families, they would first cultivate their own persons; wishing to cultivate their own persons, they would first rectify their minds; wishing to rectify their minds, they would first make their thoughts sincere; wishing to make their thoughts sincere, they would first extend their knowledge. The extension of knowledge lies in the investigation of things. (De Bary and Bloom 1999: 330-331; Chan 1963: 86)

The sequence is then worked back up. “It is only when things are investigated that knowledge is extended; when knowledge is extended that thoughts become sincere; ... when the state is well governed that peace is brought to the world.” And then the final conclusion is drawn. “From the Son of Heaven [the Emperor] to ordinary people, all, without exception,

should regard cultivating the person as the root.” (De Bary and Bloom 1999: 331; Chan 1963: 87)

B. Humanity [*ren*] and the Exemplary Man [*junzi*]

The Confucian vision of man and his place in the world revolves around learning and self-cultivation, understood as the key to realizing The Way and achieving earthly harmony and well-being. Self-cultivation is a matter of becoming truly human, *ren*. “The character *ren* is composed of the graph for human being and that for the number two. It is expressive of the relations that should pertain among human beings. Hence it has been translated as ‘humanity,’ ‘benevolence,’ ‘love,’ and, to bring out the sense of relationship, ‘co-humanity.’ It is also the supreme virtue that encompasses all others and so is rendered ‘goodness,’ ‘perfect virtue.’” (Zhang 2002: 285) *The Mean* (par. 20) gives a particularly clear statement, emphasizing the links between man, society, and nature.

Men must be active in matters of government, just as the earth is active in making things grow: the government is a growing reed. Therefore, the conduct of government depends on having the man, one obtains the man through one’s own person, one cultivates one’s own person through the Way, and one cultivates the Way through humaneness [*ren*]. Humaneness [*ren*] is what it means to be human [*ren*], and being affectionate toward one’s kin is the greatest part of it. (De Bary and Bloom 1999: 336; Chan 1963: 104)

This kinship model of society, viewed in distinctly patriarchal and paternalistic terms, is distinctively Confucian. Again, *The Mean* (par. 20) provides an unusually clear and succinct statement.

The universal Way of the world involves five relations, and practicing it involves three virtues. The five are the relations between ruler and minister, between parent and child, between husband and wife, between older and younger brother, and among friends. The three – knowledge, humaneness, and courage – are the universal virtues of the world. And the means by which they are practiced is oneness. (De Bary and Bloom 1999: 336-337; Chan 1963: 105)³¹

The core relation, though, is between father and son, and filial piety – a relation available to all men of all stations – is the organizing principle of Confucian ethics.

The aim of self-cultivation, of becoming truly human, is to become a *junzi* or exemplary person (often translated “gentleman”). In the second paragraph of the first book of the *Analects*, Master You is quoted as saying: “Exemplary persons (*junzi*) concentrate their efforts on the root, for the root having taken hold, the way (*dao*) will grow therefrom. As for filial and fraternal responsibility, it is, I suspect, the root of authoritative conduct (*ren*).” (Ames and Rosemont 1998: 17; Chan 1963: 20; De Bary and Bloom 1999: 45) Much of Confucian eth-

³¹ The *Analects* mentions only three of these five relations (ruler, father, elder) but the *Mencius* (3.???) notes all five. “From the Han dynasty onward, when most philosophical works mention human relations they generally have in mind the Mencian set of five.” (Zhang 2002: 325)

ics is devoted to understanding how to become an exemplary, fully-realized man – or, put in slightly different terms, what it means to act out of *yi*, righteousness.

It is a useful oversimplification to see “classical” and “neo-Confucian” accounts of ethical behavior. In the classical account, *ren* is but one of the Five Constant Virtues, along with *yi*, propriety (*li*), wisdom, and loyalty, with considerable emphasis placed on propriety, and loyalty. *Li* is often translated as “rites” or “ritual” but also includes notions of etiquette, custom, and the rules of ethical behavior; that which is proper in many senses of the term, but with a special focus on external behavior – with, in the Confucian tradition, special attention to ancient models and formulas.

So-called Neo-Confucian thinkers, beginning in the eleventh century, shifted the emphasis from rites and rituals towards understanding the principles underlying the ancient models and practices. *Ren* came to be understood as a master or summary virtue, encompassing the other four. More generally, the emphasis shifted from the external to the internal; or, rather, the external dimensions of cultivation were downgraded in significance. At a broader metaphysical level, primary attention was focused on “Principle,” the central neo-Confucian concept – which also is transliterated as *li*, but is a different Chinese character.

However they were to be achieved, though, *ren* and *yi* represent the core of The Way (*dao*) for human beings in their interactions. As Han Yu, one of the founders of the Neo-Confucian moment, put it, “What I call the Way (*dao*) and Power (*de*) means combining humaneness (*ren*) and righteousness (*yi*). This is the definition accepted by all under Heaven.” (quoted in Kuhn 2009: 100)

Taken together, the ideas of *ren*, *yi*, *li* and the *junzi* provide the equivalent of a Confucian account of human dignity. For our purposes here, three points bear special emphasis.

First, although every human being has an innate potential for becoming *ren* – truly and fully human – it is the achievement of very few. *Ren*

is an aesthetic project, an accomplishment, something done. The human *being* is not something we are; it is something that we do, and become. Perhaps “human *becoming*” might thus be a more appropriate term to capture the processional and emergent nature of what it means to become human. It is not an essential endowed potential, but what one is able to make of oneself given the interface between one’s initial conditions and one’s natural, social, and cultural environments. (Ames and Rosemont 1998: 49)

As in our other pre-modern cases, “human dignity” is understood as the achievement of a small elite.

Second, humanity is to be achieved in this world. The Indian notion of withdrawal from the world is utterly foreign to the Confucian understanding – as are the Hindu and Buddhist notions of the fundamental unreality of this earthly existence. Full, human self-realization is to be achieved in the here and now. It requires knowledge of heaven-and-earth and The Way but does not involve leaving this world for “heaven” or forsaking the mundane for the “divine.”

Third, humanity is to be achieved in and through society. Although the individual person is the object of cultivation, he is inescapably embedded in society, particularly the family and the polity. The Confucian sage is, ideally, a ruler. The Confucian scholar is, ideally, a minister or civil servant. And the exemplary Confucian man is, for all his life, a householder. Confucius thus quotes (*Analects* 2.21) the *Book of Documents*: “It is all in filial conduct (*xiao*)!” (Ames and Rosemont 1998: 80; De Bary and Bloom 1999: 47) The ethical and the political, the personal and the social, are not only inseparable but governed by a single Way that applies to all under heaven.

This is not an entirely balanced account of Confucian thought. Metaphysical strands have been subordinated. The rationalist emphasis on the control over desire merits more attention. The central ethical concept of the Mean has been addressed only in passing. And Confucian statecraft, which will be addressed in the following sections, has been slighted. Nonetheless, for our topic of human rights and human dignity, the above covers most of the essential material on cosmology and anthropology. We are ready, then, to turn to practice.

2. CONFUCIANS AND THE EARLY EMPIRES

Throughout its long history, Confucianism has had its philosophical and practical ups and downs. Its mid-twentieth-century decline, almost to the point of obscurity, and its contemporary revival are simply the latest stages in the unfolding of a constantly changing tradition. In this and the following sections I try to illustrate some of these vagaries.

Confucianism in the early Warring States period was only one of many competing schools – and by no means obviously the most promising. The creation of a truly imperial polity, in the Qin (221-206 BCE) and Han (206 BCE – 220 CE) dynasties, did not immediately improve its prospects. Quite the contrary, Qin and early Han theory and practice were much closer to the Legalist tradition in China, which has striking similarities with modern Western notions of *Realpolitik*. For example, Han Fei (d. 233 BCE) accused Confucians of being either stupid or evil in their reliance on virtue and ancient models. “I know that awe-inspiring power can prohibit violence and that virtue and kindness are insufficient to end disorder.” “It is clear that humanity is not adequate to government.” “Customs differ between the past and the present. Old and new things are to be applied differently. To try to govern the people of a chaotic age with benevolent and lenient measures is like to drive wild horses without reins or whips.” (Chan 1963: 253, 258, 257) Confucians thus were at best marginalized and often actively repressed when they stated views on politics. The First Emperor of Qin went so far as to remove all copies of the Five Classics and related works from private hands (which led to scholarly disaster when the imperial library was burned by invaders in 206 BCE).

During the course of Han rule, however, Confucianism emerged as a state ideology. During the brief Xin dynasty (9-23 CE), which separated the two periods of the Han dynasty (Western and Eastern or Former and Later), Wang Mang ruled as a self-styled Confucian sage. And Confucian ideology was central to Eastern/Later Han rule.

Qin and Han fundamentally reshaped China, from a world of competing feudal states to a single polity under a single ruler. By 154 BCE, all of the old states had been effectively sup-

pressed. “The old justification through military power faded. Instead, the state increasingly claimed to rule as the patron of a Chinese civilization embodied in the canon, the imperial academy, and the classical virtues.” (Lewis 2007a: 67) The Emperor and the *ru* scholars of the ancient learning now had a common cause – although an awkward and contested relationship.

Han rulers revived the ancient idea of The Mandate of Heaven, which goes back to the ancient *Book of Odes* and the *Book of History*. Rulers were seen to rule under a mandate or destiny of Heaven. Virtuous King Wen is glorified in Odes 235 and 267, where it is noted Heaven’s mandate is unceasing and the source of glory and bounty and yet not easy to keep. And the *Book of History* recounts the transfer of Heaven’s mandate from the Yin dynasty (1384-1112 BCE) to Zhou, noting that “those who have lost the mandate did so because they could not practice and carry on the reverence and brilliant virtue of their forefathers.” (Chan 1963: 7) The Han emperor now simply ruled, by Heaven’s mandate, over all of China; the whole civilized world, not just one of many civilized states.

The doctrine of the Mandate could easily be put to both conservative or authoritarian and progressive or reformist uses, much like the Christian idea that all power is from God. Like the Christian doctrine, in practice the principal use was to justify incumbent power (although the Chinese never went so far as to present tyrants as divine retribution for an evil people). But the explicit link between virtue and Heaven’s mandate provided an entry point for criticism, and even arguments of the necessity of reform in order to retain the Mandate.

All of this, however, took place in a world that was even more deeply hierarchical than the medieval West. Kingly rule was unquestioned. Citizen self-rule in city states was never a historical reality, and when Chinese looked back to the depths of their (very ancient) history for an idealized vision of the good society it was always of a harmonious regime under the rule of a wise and virtuous king. Hierarchy in imperial China was unitary, not divided, and most definitely “descending” in character.

The Emperor – known in Chinese as *huangdi*, “celestial magnificence” – was presented as standing at the intersection between Heaven and Earth and functioning as the point of mediation between Man and Heaven. The blessings of heaven flowed from, or at least through, him to his people, whose virtues were seen as largely dependent on the ability of the Emperor, and his court, to inculcate and realize them. And he was nearly as inaccessible as Heaven itself. “To be allowed to see him was a privilege even for his officials, and to actually come into his presence was the highest of honors” (Lewis 2007a: 80)

Here, of course, the Confucian conception of the five relations, understood paternalistically in terms of filial piety, obviously were attractive to China’s new rulers. But there were potentials for opposition and reform in the reciprocal nature of these relationships. Parents were entitled to respect from their children, but children had legitimate claims against their parents as well. Likewise, subjects could expect proper treatment from their rulers – although in practice demanding it was rarely an option, at least before the situation deteriorated to the point of peasant rebellions, a regular feature of Chinese political life, usually triggered by actual and impending famine. The closest typical approximation was for virtuous government

officials to remonstrate their superiors, even the Emperor himself, reminding them of their duties. And even this often was met by loss of office and banishment from court, or worse.

Broader egalitarian tendencies in the Confucian sources should also be noted. The Mencian idea that all men are born good, combined with the hierarchical responsibility of rulers, could be, and regularly was, used to criticize Emperors, their ministers, and the court for the shortcomings of the people. Confucian prejudices against trade and landlordism and in favor of small peasant production regularly generated sincere proposals for political and financial reform. The classical model of the “well fields” system of small peasant plots laid out on a grid was regularly mobilized for locally egalitarian purposes. And the central government could be a source of protection against local social and economic hierarchy – although in practice it often was instead a source of ruinous taxation. Furthermore, the general emphasis on education, wisdom, and virtue as a potential check on hierarchical abuses of power should not be overlooked – or overemphasized.

All of this was made more complicated by the rise of powerful new family lineages. Qin and Han rulers dispersed and when necessary destroyed their old competitors from the Warring States and broader Zhou eras. But these were replaced by new great families, which used patronage and kinship networks based on land, mercantile wealth, marriage, education, and office holding to establish powerful new sources of power outside the control of the Emperor and the central government. It was common for a single lineage to dominate entire villages, and even communes and regions. And the limited administrative powers of the Han state required the Emperor and his officials to work largely through these local elite families.

Ordinary landholding peasants and tenant sharecroppers thus faced two sets of superiors, local and central, each of which was able both to provide benefits and impose burdens. For example, charity, especially in times of shortage, was a standard means by which local elite families won local clients. But these same local elites were often oppressive landlords, traders, and money lenders whose excesses could only be restrained by the central government – which sometimes acted on its shared interest with the peasantry in reigning in local elites, and sometimes provided direct assistance as well, but as often as not was simply another burdensome claim on the small surplus produced by peasant farmers.

What is missing in all of this is any idea of the dignity of the ordinary man. Confucian, as well as Moist, and broader humanitarian ideas counseled decent and humane treatment for those at the bottom of the social scale. But that was the vast majority of the population, who were seen as essentially uncultivated, and thus at best potentially human.

This was essentially the Han attitude towards the peoples on their borders, especially the nomadic Xiongnu, who could not be subdued. (In the middle of the first century CE, the southern Xiongnu settled in Han territory, accepted allegiance to the Emperor, and even provided the core of the imperial frontier army, but the northern Xiongnu remained aggressively outside of the empire.) The Han pursued a “peace and kinship” (*he qin*) policy that sent Chinese goods and princesses north in return for “peace,” or at least periodic cessations of conflict.

This, though, was of immense historic significance.

In contrast with the Warring States period, when regional cultures constituted the primary divisions of the Chinese sphere, the imagining of a world divided between nomads and Chinese marked a major step. It posited the fundamental unity of a single Chinese civilization defined by what was not nomadic, and it reduced regional divisions to secondary status. China first emerged as a unity through the invention of a Chinese/nomadic dichotomy, and this bipolar concept remained central to Chinese civilization. (Lewis 2007a: 135-136)

Attitudes and practices of Chinese superiority waxed and waned, as did Chinese power to act on them. But a sharp categorical distinction between civilized and barbarian remained essentially unquestioned for two millennia. That distinction, it should be emphasized, was based on culture not birth. But the fundamental categorical distinction between civilized and uncivilized featherless bipeds was an essential part of Han and later Chinese moral and cosmological hierarchies. Civilization for the barbarian was, like cultivation for the peasant, an abstract theoretical possibility – and usually nothing more.

3. “NEO-CONFUCIANISM” AND SONG IMPERIAL RULE

The tenth-century transition from the late Tang to the early Song empire marks the most decisive rupture in the history of imperial China. The ‘old world’ of the northern hereditary aristocratic families, with genealogies going back hundreds of years, finally vanished in the turmoil and civil wars between 880 and 960 ... A newly emerging class of scholar-officials, trained in Confucian doctrine and graduated in a competitive civil service examination system, was willing and well-prepared to take on responsibility for reshaping Chinese tradition. ... a new self-consciousness and self-esteem took shape among the people who identified themselves as descendants of the Han Chinese. The social system they invented during the Song empire became the paradigm for what Chinese and Westerners of the twentieth century would refer to as “traditional China.” (Kuhn 2009: 1-2)

Once again we see Confucians in an ambivalent relationship with the ruling hierarchy. On the one hand, Confucian ideas did not simply provide an imperial ideology, Confucian scholar-bureaucrats made up most of the administrative cadre of the Song state, especially at the higher echelons. And life for ordinary subjects was regularly very hard indeed. On the other hand, Confucian doctrine and Confucian scholars and bureaucrats were often leading forces for reform, at both the central and local levels. Nonetheless – and of central importance for our purposes here – even the most humane and progressive proposals for reform had no relation to ideas of human rights or human dignity. And humanity, *ren*, continued to be thought of something to be realized by a small elite.

Song repeated the classical Chinese pattern of a strong and virtuous founder of a dynasty emerging in a time of disorder to rescue the people from internal and international violence – in this case, the century of chaos of the end of the Tang dynasty (617-097) and the ensuing Five Dynasties and Ten Kingdoms era (907-960). The first two Song emperors in particular,

Taizu (r. 960-976) and Taizong (r. 976-997), were not unreasonable approximations of the Confucian ideal, working tirelessly to establish not just order but justice (along with their own power and the power of their emerging dynasty). The Song were more harried than any of the other Chinese empires, controlling less territory than their predecessors and successors, and being under almost constant external military pressure, including humiliating defeats in 1005, 1123, 1142, and 1208 before their final collapse in 1279. Nonetheless, this was one of the high points in Chinese culture and China has rarely if ever known better central rule than under the Song. And the Confucian contribution was essential to both cultural and political reform and development.

The Han hegemony of Confucianism was short-lived, the following centuries being marked by a dramatic rise in the popularity of both Daoism and Buddhism. Confucianism began to undergo a prolonged period of revival and revitalization in the late eighth and ninth centuries. But its preponderant position was not secured until the Song era, during which it solidified its hold on the bureaucracy and underwent immensely creative and productive further development that in the West usually goes under the label of neo-Confucianism and the School of Principle (*li*) and the Learning of the Way (*dao*xue) in Chinese.

Following the reassertion of strong central control by Taizu and Taizong and their successor Zhenzong (r. 997-1022), the focus shifted to reform. “Reform is the keyword for understanding the Song politics of the eleventh century.” (Kuhn 2009: 49) With some serious oversimplification, three main groups can be identified.

Conservatives, symbolized by Sima Guang (1019-1086), favored modest incremental reforms at home and a pacifist policy with China’s neighbors (feeling unable to recover lost lands or assert traditional imperial ideas of universal overlordship). Advocates of reform fell into two groups. A powerful faction in the bureaucracy, led by Wang Anshi (1021-1086) favored an aggressive, state-led program of economic, military, financial, and educational reforms. Another reform faction, at this point not well-represented in the top bureaucracy, favored extensive reforms but with a more Confucian focus on education and individuals, rather than the state. Until the mid-twelfth century, the neo-Confucians were not merely in the minority but often subject to repression, their moralistic demands on the state being considered too extreme. For example, the work of Cheng Yi was prohibited from 1103, five years before his death, to 1155. But soon afterwards, the neo-Confucians, who had come to dominate independent Chinese intellectual life, controlled the bureaucracy as well. And their understanding of the ancient learning and its place in modern politics became the basis for the civil service exam for the remainder of the Chinese empire.

Indicative of the general neo-Confucian orientation is the so-called Western Inscription of Zhang Zai (1020-1077).

Heaven is my father and Earth is my mother, and even such a small creature as I finds an intimate place in their midst.

Therefore that which fill the universe I regard as my body and that which directs the universe I consider my nature.

All people are my brothers and sisters, and all things are my companions.

The great ruler (the emperor) is the eldest son of my parents (Heaven and Earth), and the great ministers are his stewards. Respect the aged – this is the way to treat them as elders should be treated. Show deep love towards the orphaned and the weak – this is the way to treat them as the young should be treated. The sage identifies his character with that of Heaven and Earth, and the worthy [junzi] is the most outstanding man. Even those who are tired, infirm, crippled, or sick; those who have no brothers or children, wives or husbands, are all my brothers who are in distress and have no one to turn to. (Chan 1963: 497)

Here we see the characteristic Confucian fusion of the cosmic and the human. We also see a strong expression of a universalistic ethical concern for all human beings. But we also see the strong Confucian sense of social differentiation and hierarchy. And these elements ended up predominating in Song practice.

Song emperors, in no small part due to Confucian and neo-Confucian influence, did attempt to improve the lot of ordinary peasants, for both intrinsic and instrumental reasons. They introduced military reforms that lessened the burden on ordinary peasants and tried to use central government power and resources to protect the vulnerable from local oppression. They were also more open to commerce than their predecessors and they supported a substantial expansion of education, greatly facilitated by the widespread adoption of printing in the eleventh century. And in relying primarily on officials recruited through the civil service exam, they provided some limited mechanism for upward mobility for a somewhat wider segment of society, at least compared to the domination of the great aristocratic families during the Tang.

Nonetheless, in Song China, like its Han predecessor, we can find no serious notion of political freedom or equality, even among radical reformers. Daoism and especially Buddhism held out the hope of personal salvation. But as neo-Confucians liked to complain, with some justice, visions of personal salvation were not matched by programs of political reform. By contrast, neo-Confucians were very much concerned with social action here and now in the world. But that action was within a unquestioned system of hierarchy and imperial rule.

The most that people could reasonably hope for, or even seriously contemplate asking for, was protection from external invasion and local oppression, efficient administration, a somewhat reduced taxation burden, and food in time of need. And all of this was to be asked for, humbly, as a matter of *ren, yi*, or justice, not demanded as a matter of right. When one's "elders" and "betters" failed to discharge their obligations of support, the only option, as in the medieval West, was to wait for divine assistance – or, as in the West, rise up in a desperate rebellion that was sure to be crushed, the only question being when and with what severity.

4. KOREAN CONFUCIANISM AND THE CHOSUN DYNASTY

For the third, and much briefer, example of Confucian practice, I want to leave China for Korea. The story, though, is much the same, namely, responding to contemporary disorder

by reappropriating ancient learning for new public purposes – in this case, the overthrow of the corrupt Koryo dynasty (918-1392) by the military leader Yi Songgye, with the active involvement of neo-Confucian officials and scholars, and the creation of the Choson dynasty (1392-1910).

Koryo inefficiency and corruption were seen by the Confucians as rooted in the falling away from traditional values. This degeneration was expressed in the spiritual predominance of Buddhism, which turned men's attention to private salvation rather than a well-ordered polity and society, and in the social, economic, and political predominance of the hereditary yongban class, which likewise pursued private over public interests. The solution, in their eyes, was to create a new, powerful, reforming monarchy – much as in early Song China.

The early Choson Confucians envisioned a program of reform at least as radical as Wang Anshi's three centuries earlier in China. And they made considerable progress in that direction. The king acquired a new prestige and the revenue needed to support central power. Local, semi-feudal authorities were placed under central control, as was industry and commerce. Civil service exams became the basis for entry into the highest bureaucratic posts and a national school system opened the bureaucracy to a much wider range of society. Buddhism came to be subordinated to Confucian thought, both among the elite and among the masses, who adopted Confucian ancestor worship and its associated family system (to the substantial detriment of the place of Korean women).

But the yongban class remained predominant, in part because of its continued control over land. And hereditary slavery, which afflicted perhaps a third of the population in the later Koryo period, went largely unchallenged and unchanged. "Neo-Confucians in the first two centuries of the dynasty barely raised the question of the moral conflict between Confucian principles and semihereditary bureaucracy and hereditary slavery." (Palais 1996: 1005) This not only weakened the state both financially and militarily but fundamentally undermined the Confucian meritocratic vision. And the bureaucracy itself became increasingly inefficient and corrupt, helping to prepare the way for the disastrous Japanese invasions of 1592-1598, followed by the Manchu invasions of 1627 and 1637.

The Choson dynasty, however, survived these invasions, as did the dominance of Confucianism. And Confucians were at the heart of reform movements in the seventeenth and eighteenth centuries. By 1801 official slavery was abolished and private slaves had been reduced to less than ten percent of the population (although slavery was not completely abolished until the end of the nineteenth century). The tax system was also revised – although land, revenue, and military issues continued to bedevil the regime. And although Korea remained in a subordinate relation of suzerainty to the Xing dynasty in China, it was an active participant in a rich and complex civilizational milieu.

This very inadequate survey is intended to underscore two fundamental points about Confucian thought and practice. First, although backward looking in its emphasis on ancient learning and virtuous ancient founders of dynasties, Confucian thought has regularly served as an inspiration for reform. Second, although emphasizing essentially timeless knowledge of The Way, heaven-and-earth, and the self-cultivation of fully developed humanity, Confucian

thought and practice can be deeply pragmatic – in both positive and (as the case of Korean slavery indicates) pejorative senses of that term.

Are we in another era today when a pragmatic reappropriation of the tradition can point the way forward for East and Southeast Asians? That is one possible explanation of the considerable revival of interest in Confucian thought in the past two or three decades. If so, though, this is in large measure a result of the ongoing efforts of Confucians and their neighbors to grapple with the continuing consequences of the encounter with the West, which brought in its wake new kinds of states, new economic realities, and associated ideas and practices of rights and democracy.

5. TWENTIETH-CENTURY ENCOUNTERS WITH “RIGHTS”

Let us now turn to the late nineteenth century. China, although still under imperial rule, was increasingly burdened by an increasingly oppressive and demeaning series of “unequal treaties” that restricted (but did not extinguish) Chinese sovereign and granted burdensome economic, military, political, and religious privileges to the Western powers. The state had not completely collapsed, as in the Warring States and Five Dynasties eras, but collapse was not far away. Chinese officials, intellectuals, and citizens largely across the political spectrum were grappling with the meaning of this degradation of China and possible remedies. And the remedies they considered were quite varied.

One powerful strand of thought traced Chinese decline to the backward looking rigidities of Confucianism. Scholar-bureaucrats, trained primarily in the classics, still dominated the civil service. In the eyes of their modernist critics, the sufferings of China were ample evidence of the shortcomings of the doctrines and policies. And those critics began to look to the West, whose power could not be denied, for remedies.

Some saw science and technology as the way forward for China, posing in effect a challenge to the traditional Confucian view of nature and man’s relation to it. For our purposes here, a more interesting challenge was posed by those who took on traditional Confucian statecraft, with its emphasis on the virtue of the emperor and the civil service and its reliance on order and progress from above. Western ideas of political rights thus became of considerable interest.

Marina Svensson, in *Debating Human Rights in China* (2003), tells a nuanced story of the Chinese engagement with ideas of rights. And for our purposes here, I want to stress the idea of engagement. Chinese came to Western ideas of rights, rather than have them imposed upon them. And they came to those ideas largely as a result of their dissatisfaction with the sufferings of China at the hands of Western state power and the global economy. “The concept of human rights was embraced by Chinese writers as useful in their struggle to save China, although its primary target was the Chinese government.” (Svensson 2003: 73)

As Svensson emphasizes, “national survival rather than the freedom of the individual from an oppressive state was the main preoccupation” of early twentieth century advocates of rights. (2003: 98) Ancient ways, these critics argued, had turned Chinese men and women into weak, slavish beings and thus brought on foreign domination. Rights to freedom of

thought, speech, and publication, which were a central concern of these critics, were to be used to make the Chinese people, and thus China, strong and dignified again. “This justification of rights was based on the premise that individuals enjoying rights would promote national rights and national salvation.” (Svensson 2003: 115) And once the Qing empire fell, criticism was increasingly focused not on the Manchu rulers but on the Confucian doctrines that had weakened China.

But the relationship between these new ideas and Confucianism was complex. For example, Svensson notes the creation of the term *renge* to translate the Western notion of personality. The traditional notion of *ren*, humanness, was thus reconceptualized, creating

a semantic field in which personality and enjoyment of rights are used to characterize citizens in contrast to slaves, who have no personality or rights and are completely at the mercy of their masters. ... The early twentieth-century discourse shows that the concept of human rights, to some extent, could build on Confucian notions of human dignity and human nature, while at the same time it was explicitly formulated as an attack on other aspects of the Confucian tradition, such as its hierarchical nature and submission of women. (Svensson 2003: 104)

In a similar fashion, Stephen Angle argues that the neologism *quanli*, created to translate the Western idea of rights, “does not represent a radical break with the Confucian tradition,” (2002: 175) but rather its appropriation in new circumstances and its extension in new directions in light of those circumstances. As Svensson puts it, “new words and concepts were introduced, domesticated, and contested” (2003: 82) and in the process made Chinese – in much the same way, I would add, that these and similar concepts were introduced, domesticated, and contested in the West in the preceding two centuries.

Of course, ideas of rights were hardly the whole story of the Chinese reaction to Western domination. And as the history of post-imperial China indicates, in practice rights did not fare very well under either the Nationalists or the Communists. Power politics, more than human rights or Confucian humanity, was the order of the day. Nonetheless, in addition to Chinese embraces of rights – which have been deep and powerful in recent decades in both Hong Kong and Taiwan – the Confucian tradition is arguably undergoing a regeneration not dissimilar to that of the Song era. Although such a reading is deeply contentious, it is worth considering seriously here.

For example, Feng Youlan (1895-1990) provided a new synthesis of Confucian thought that offered a firmer logical foundation and pointed toward doctrines of transcendence. (see Chan 1963: 751-762) A new generation of self identified “New Confucians” developed in Hong Kong and Taiwan in the 1960s and 1970s. (see Liu Shu-Hsien 2003: ch. 8) And an even younger generation is trying today to apply Confucian ideas to contemporary social problems. (e.g. Bell and Hahm Chaibong 2003) In a rather different vein, the remarkable economic and political success of Singapore is attributed by its architect, Lee Kwan Yew, to a creative synthesis of Western and Chinese, especially Confucian, ideas and practices.

I have neither the expertise nor the desire to speculate on the success efforts. I do, however, want to suggest that they put a very different perspective on debates over “Asian values.”

Rather than see Asian values as frozen in an ancient past, they need to be seen as no less dynamic than Western values, Indian values, or values anywhere else in the modern world. Rather than see Asian values as fundamentally opposed to Western values, we need to ask, as an empirical question, where Asians and Westerners converge in their values, and where they diverge. And rather than take at face value the claims of authoritarian rulers, we need to ask ordinary Asians what they believe – and insist that they have an inalienable right to act politically on those beliefs. Certainly post-communist party-state dictatorships in China and Vietnam, personalist dictatorship in North Korea, and unusually brutal military rule in Burma have nothing to do with “Asian values” in any plausible sense of that term. We must be particularly careful not to confuse what people can be forced to acquiesce to with what they value.

It is possible that forms of truly egalitarian politics that differ substantially from Western liberal democracy will be chosen freely by Asian peoples. I am skeptical. And certainly we have seen nothing like that yet. Singapore, which has evolved into a surprisingly liberal non-democracy is perhaps the closest we have come to a stable viable alternative. (Malaysia’s semi-democracy seems to be moving towards either greater openness, following the path of Indonesia, or greater conflict and repression. And Thailand seems mired in a state of perpetual political crisis.) Furthermore, Japan, South Korea, and Taiwan strongly suggest that where Asians are freely given the choice, they choose human rights no less than those in other parts of the world. The burden, it seems to me, is on advocates of a distinctive Asian way (or ways) to explain why their societies respond differently from those elsewhere in the world to the disruptions of modernity. Why do Asians, uniquely, given the choice do not choose human rights – and only East Asians at that (given the firm embrace of human rights and democracy in India)?

The contribution of the analysis above is to suggest that the whole Asian values debate is misguided, because it rests on a view that human rights are especially associated with Western values. Human rights did not come easily or naturally to the West. And they came only rather late. But Westerners, as we have seen, have learned to reshape their values and practices around new ideas of human rights and human dignity. Indians have as well. I think that the same argument can be made for Africans and, especially, Latin Americans. I would make it for the Muslim world as well. And it seems to me that East and Southeast Asia, in Confucianism, as well as Daoism and various forms of Buddhism, has more than enough indigenous resources to draw on in coming to embrace human rights.

PART THREE:
HUMAN RIGHTS AND HUMAN DIGNITY
IN THE CONTEMPORARY WORLD

Having considered the evolution of ideas and practices of justice, dignity, and rights in the West, South Asia, and East Asia over the past 2,500 years, we are ready to return to the contemporary world. How do contemporary ideas of the rights and dignity of men and women relate to this historic past? What does this largely rights-ignoring, if not positively rights-abusive, past suggest about the universality of shared ideas of human dignity and shared practices of human rights? I address these questions here in a single brief concluding chapter.

CHAPTER SIX: HUMAN RIGHTS AND THE POLITICS OF MODERNITY

1. STRUCTURE NOT CULTURE: PRE-MODERN VS. MODERN NOT WEST VS. THE REST

How can we explain the modern rise of human rights ideas and practices across the globe, as illustrated by the cases of the Western, Hindu, and Confucian worlds? One class of answers points to the same forces reshaping societies in all areas of the globe. The other prominent answer attributes primary responsibility to “the West.” My repeated use above of the language of modernity clearly indicates that I favor the first explanation.

Human rights are rooted in “structure” rather than “culture,” as those two notions are conventionally used in Sociology. They depend more on common participation in a world shaped by material forces, social relations, and institutions than on a shared body of symbolic resources. (Of course, the two are closely inter-related. They are, however, analytically distinct. And I am claiming that culture tends to follow structure much more regularly and directly than vice versa.)

The West, as I have argued elsewhere (Donnelly 2003b: ch. 4), developed ideas and practices of human rights not because of some pre-existing cultural predisposition but rather in response to the new threats to the dignity of individuals, families, and groups posed by increasingly powerful bureaucratic states and the penetration of capitalist markets into more and more domains of economic and social life. As the rest of the world came to experience similar disruptions and threats, they gradually came to see in human rights the most effective means yet devised to protect human dignity in a world of markets and states.

Traditional society, hierarchical and exclusionary as it was in both the Western and (literate) non-Western worlds, had two great advantages. First, its institutions and exclusions were not merely familiar – traditional – but understood as reflecting the basic moral structure of the world. For most people, anything else was largely unthinkable (unless they were thinking of a place a rung or two further up the ladder, or perhaps even higher than that – but still on the same ladder). Second, traditional societies typically were integrated by forms of social solidarity that provided limited protections and a sort of differential status-based dignity or respect. For those not at the bottom of the social hierarchy, this meant some privileges (or at least fewer indemnities). Even for those at the bottom, there was not only the relative security of “the devil you know” but often even limited elements of reciprocal obligations from their “betters.”

Modern states and modern markets, each in their own ways, and often in conjunction, disrupted and often destroyed these traditional routines and their associated securities. In the Western case, for example, increasingly powerful monarchs abolished local privileges and imposed new taxes and obligations on their increasingly accessible subjects. Money replaced land as the focal point of the economy, undermining old hierarchies and creating new ones. Commercialization, enclosure, industrialism, and urbanization moved much of the popula-

tion, not only socially but often physically as well. And new forms of solidarity and social protection were slow to develop.

Modernity, in other words, created new kinds of men and women, new families, and new communities, in need of new ways of organizing their relations with society, the economy, and the state. Ripped out of traditional social, political, legal, and economic relations and practices, they needed new forms of life to provide security, and a bit of dignity. Various alternatives were tried. Initially, monarchy, religion, and identification with new local and national communities were leading choices. Gradually, however, natural or human rights became the preferred mechanism for protecting new notions of dignity, of new men (and eventually women), in the new conditions of modernity. And modern markets and modern states, properly humanized by human rights (in the form of liberal-democratic and social-democratic welfare states) have increasingly come to be seen as essential to the effective enjoyment of a life of dignity in the contemporary world.

That this happened first in the West had nothing to do with any special cultural predisposition to human rights. Rather, it arose from the fact that the dangers and indignities of modern economic, political, and social life happened to be first experienced there. As these threats spread globally – often at the instigation of Western actors to be sure, but not because of any special “Westernness” – individuals and groups in the non-Western world have increasingly come to practical and theoretical conclusions similar to those of their Western predecessors. The choice of human rights admittedly had something to do with the fact that they were an already-tested mechanism that was readily at hand and endorsed by the world’s leading powers. Much more fundamental, though, has been the fact that similar threats have provoked similar responses from similarly situated individuals, groups, and societies, despite their different cultural, geographical, and historical contexts.

But just as Westerners remained Western after they chose human dignity over their traditional commitment to status-based conceptions of honor and dignity and chose human rights over traditional inegalitarian, hierarchical politics, so Indians and Hindus who have chosen human rights remain Indian or Hindu; Confucians who in South Korea and Hong Kong have chosen human rights remain Confucian and Korean or Chinese; and, although we did not consider the case here, Muslims across the world who have chosen human rights and democracy – perhaps most prominently in Turkey and Indonesia – remain Muslim. Ideas of human dignity and practices of human rights have made, for example, modern Indians and modern Muslims, not Westernized residents of Asia. Their culture is not the same as it was several generations ago. But neither is Western culture. And Asian (and African) cultures simply have not become Western.

Whether something is or is not “our way” cannot be determined by looking at how our great-grandparents, let alone earlier ancestors, did things. One of the more striking features of the contemporary world is the vast distance between us – especially the older of us – and our great-grandparents with respect to our understandings of human beings and their rightful political place in the world. “Traditional” enclaves exist in even very modern societies, especially in some of the vast open spaces of the United States. “Modern” ideas and practices of dignity and rights have made much less progress in China and many parts of the

Muslim world than have capitalist markets and bureaucratic, sovereign, territorial states. Nonetheless, across the globe most people live in a world that with respect to dignity and rights not only is fundamentally different from the world of their great-grandparents but bears surprisingly little resemblance to the world of their great-grandparents.

The universality of human rights is largely social structural and functional, not cultural. Common responses to common problems have indeed helped to foster what many people today refer to as an emerging global human rights culture. But that common culture arises principally from the existence of common problems, not shared “cultural” resources. In fact, as I suggested in §1.1 above, as the evidence of Parts One and Two suggests, and as I will argue in more detail in the following section, people across the globe have and continue to come to the idea of human dignity and the practice of human rights from a great variety of cultural traditions and philosophical and religious foundations.

2. DIGNITY AND THE FOUNDATIONS OF HUMAN RIGHTS

How does “human dignity” provide a foundation for human rights? In the contemporary literature there are three basic types of answers.

“Human dignity” is sometimes presented as a hopelessly vague notion that at best appears to provide some deeper foundation. “The concept of dignity is itself vacuous. As a legal or philosophical concept it is without bounds and ultimately is one incapable of explaining or justifying any narrower interests. ... the term is so elusive as to be virtually meaningless.” (Bagaric and James 2006: 260) “The concept of human dignity does not give us enough guidance ... it has different senses and often points us in opposite directions.” (Davis 2007: 177) “Dignity is a fuzzy concept, and appeals to dignity are often used to substitute for empirical evidence that is lacking or sound arguments that cannot be mustered.” (Chalmers and Ida 2007: 158; quoting Macklin 2002: 212)

Admittedly, some uses of “human dignity” do indeed lack clear substance. I will argue, however, that this is an accidental feature of those uses rather than an essential feature of the concept. We thus need to move on to the other two conceptions, each of which, I will argue, has something to be said in its favor.

Human dignity is often presented as rooted in some particular characteristic. For example, Alan Gewirth defines human dignity as “a kind of intrinsic worth that belongs equally to all human beings as such, constituted by certain intrinsically valuable aspects of being human.” (1992: 12) Following Kant, autonomy and reason are frequently mentioned foundations of human dignity. In contemporary Christian accounts, the notion that human beings are created by and in the image of God is often appealed to as the substantive foundation of human dignity.

The leading alternative to this essential attributes approach is to see human dignity as “foundational, declaratory, and undefined” (Beyleveld and Brownsword 1998: 663); something more like “a sort of axiom in the system or as a familiar and accepted principle of shared morality” (Harris and Sulston 2004: 797); “a bedrock concept that resists definition in terms of something else” (Weisstub 2002: 2). Such accounts take a variety of particular forms.

Klaus Dicke presents human dignity, as it functions in the context of the Universal Declaration, as “a formal, transcendental norm” or “a formal background value.” (2002: 118, 120) Joel Feinberg suggests that attributing human dignity involves “expressing an attitude – the attitude of respect – toward the humanity in each man’s person.” (1973: 94) William Parent argues instead for understanding attributions of human dignity “as essentially ascriptive. Sentences of the form ‘I have dignity’ and ‘she has dignity,’ when used to make moral claims, serve to ascribe the fundamental moral right not to be unjustly debased.” (Parent 1992: 64) They all, however, share an understanding of human dignity as foundational and yet substantially resistant to analysis.

I want to argue for an account that combines these two standard answers. Human dignity is not an unanalyzable “Ur-principle” (Witte 2003: 119). Neither, though, is it reducible to one, a few, or any particular set of attributes. It is rather an intermediate concept that links human rights to comprehensive doctrines. This, I believe, appropriately responds to Paul Kristeller’s important injunction that “when we try to make sense out of the idea of human dignity, we should not settle for too cheap and easy a solution.” (1972: 21)

Recall the Rawlsian distinction, discussed in §1.1, between comprehensive doctrines – foundational moral or religious systems of thought or worldviews – and political conceptions of justice. I suggested that human rights should be understood as a political conception of justice around which an international overlapping consensus has formed over the past half century. Now I want to suggest that human dignity is a quasi-foundational notion that lies deeper than human rights but on which there is (only) an overlapping consensus. Different comprehensive doctrines provide different accounts of human dignity. But these accounts are sufficiently convergent that they allow human dignity to serve as an “accepted principle of shared morality” (Harris and Sulston 2004). And for those who for whatever reason do not want to push deeper, it does function as an axiom or Ur-principle.³²

“Although ambiguous, dignity is a signaling term that goes to the heart of what constitutes the quality of humanness.” (Weisstub 2002: 269) That ambiguity, however, arises not from any special lack of clarity or from the absence of deeper substantive foundations. Rather, it arises from the fact that for different people human dignity points to different deeper foundations. These deeper foundations simultaneously provide personal or moral meaning and remove at least some of the ambiguity of meaning from the concept.

This, I believe, helps to explain the fact that “the dignity of the individual is a cliché, yet it retains surprising force.” (Tinder 2003: 238) The summary or signaling term human dignity is indeed something of a stale cliché – or a seemingly empty or hopelessly vague concept, or a merely formal principle. But lurking beneath this apparent lack of content is in fact a wide range of powerful specifications of the meaning of human dignity, specifications that despite

³² There is a strong similarity between this account and David Weisstub’s suggestion that dignity “has emerged as a convergence point for what is perceived to be a non-ideological humanistic point of departure towards a social liberal ideal.” (2002: 263) But dignity is equally a religious conception, as is especially evident in contemporary Catholic social teaching. One of the great attractions of an overlapping consensus account of human rights and human dignity is that it sets aside the controversy between religious and secular/humanistic foundations. Each side can have it its own way, because for the purposes of agreement on human rights and human dignity, this disagreement doesn’t matter.

their differences in detail converge enough to provide a bridge between the body of international human rights law and most of the leading comprehensive doctrines of the contemporary world. Although “the concept of human dignity has become ubiquitous to the point of cliché,” (Witte 2003: 121) it is not simply a cliché, because of the deeper foundation in comprehensive doctrines.³³

I thus agree with Jeff Malpas and Norelle Lickiss that “the breadth of the concept, its ubiquity, especially in legal and biomedical contexts, and the difficulty of giving it a clear and unambiguous definition, all point towards its absolutely fundamental character.” I also agree with them that “dignity connects up with too many other concepts, and in too many ways, for it to be amenable to any simple rendering.” (2007: 1) I want to go further, however, and suggest that the range of the concept is set both by the various foundational doctrines that participate in the overlapping consensus on human rights and by the contemporary substantive consensus on list of human rights in the Universal Declaration.

Some loosely defined but not empty conceptions of human dignity underlie, and thus help to shape, contemporary conceptions of human rights. But the body of established international human rights law also shapes our understandings of human dignity.

The concept of human dignity originally emerged largely separate from idea of human rights. Kant, for example, regularly discusses the notion in the context of duties to oneself. Today, however, human rights and human dignity have increasingly become fused. Although one can think of human dignity independently of human rights, that is becoming increasingly infrequent, as the prominence of human rights increases and the link between human rights and human dignity is increasingly seen as normative rather than accidental.

I thus want to emphasize the mutual co-constitution of human rights and human dignity. Human rights reflect – or at least analytically can be understood to reflect – a particular specification of certain minimum preconditions for a life of dignity in the contemporary world. But our detailed understanding of human dignity is shaped by our ideas and practices of human rights. And the practice of human rights can be seen as justified, in some ultimate sense, by its production of beings able to live a life of dignity.

3. HUMAN RIGHTS AND THE CONSTRUCTION OF A LIFE OF DIGNITY

Human rights thus go beyond the inherent dignity of the human person to provide mechanisms for realizing a life of dignity. Human rights both specify forms of life that are worthy of beings with inherent moral worth and provide legal and political practices to realize a life of dignity that vindicates the inherent worth of the human person. In other words, human

³³ Drawing a distinction between “thin” and “thick” conceptions of dignity (e.g. Shultziner 2004) makes much the same point. My formulation, however, emphasizes the simultaneous presence of multiple converging thick accounts. The concept of human dignity, in other words, is inherently thin – at least as it functions in contemporary international human rights discourse. That concept, however, rests on a variety of thick conceptions that converge on the thin account. Still another way to make the point would be to consider human dignity an “essentially contested concept” over which contestation concerning justificatory details does not prevent agreement on its quasi-foundational use in international human rights law.

rights insist that the inherent worth of human beings must not be left in an abstract philosophical or religious domain but rather must be expressed in everyday life through practices that respect and realize human rights.

This is the challenge we face today: to use human rights to construct the foundations for lives of dignity all across this planet. This is a project that is, in broad historical terms, very new – in the West no less than the non-Western world. It goes back before the Universal Declaration of Human Rights, but really not all that much before it. Nonetheless, today, drawing on a great variety of historical, cultural, and material resources, individual, groups and societies across the globe are actively grappling with the threats and opportunities provided by modern social life as they try, by claiming and practicing human rights, to make for themselves lives of dignity worthy of truly human beings.

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