Human Rights and Human Dignity: A Non-Political Justification

Abstract: An increasing number of theorists are seeking to defend what they call a ‘political’ conception of human rights. This conception grounds human rights in the political facts of the international human rights regime. This paper will argue against such a conception of human rights and will, instead, argue that human rights should be grounded in a conception of human dignity as a lofty, or high, status. In order to do so I will first critique the political conception to make clear the need for a solid foundation. I will then explore the concept of human dignity, its possible meaning and significance. I will finally combine the idea of human dignity as a lofty status with an interest theory of the functions of rights. By doing this I will show that dignity can, and does, provide a solid and coherent foundation for human rights.

Introduction
Article 1 of the Universal declaration of Human Rights (UDHR) states that “All human beings are born free and equal in dignity and rights.” Despite the UDHR having been drafted over fifty years ago there is still significant academic debate over the justification of the rights enshrined within it. This paper will provide a contribution to this debate by examining how we can justify human rights through appeals to human dignity. Many of the problems that confront the literature on human rights have been articulated by Onora O’Neill. O’Neill has long been a vocal supporter of the idea of human rights whilst also critiquing both the theory and practice associated with this idea. She views the way in which human rights are commonly justified as being problematic, with knock-on problems for how we specify the duties associated with those human rights. As O’Neill discusses, the international human rights regime assigns these duties on the basis of being party to certain treaties or conventions. This is problematic as “If human rights are independent of institutional structures, if they are not created by special transactions, so too are the corresponding obligations; conversely if obligations are the creatures of convention, so too are the rights” (O’Neill; 2005, pp. 431-432). If the duties associated with human rights are created by conventions and treaties, then human rights exist only as a result of these conventions. This leaves both human rights and their associated duties open to significant attacks by questioning the nature of their justificatory foundations, and gives us no clear basis for stating...
which rights are *human* rights and which are special rights generated by our institutional ties. It is clear that there are rights and duties created by membership of institutions. However, if human rights are simply those rights that are called such in international treaties then they are justified for all only if all states have signed up to the relevant treaties. This leaves their justification on worryingly ephemeral grounds. From this it follows that by not having a solid justification for human rights and their associated duties it is difficult to be specific about who bears those duties; this is especially evident since we do not want to endorse an understanding of human rights that ties their justification to institutions. As Jerermy Waldron has observed “Foundations matter: they are not just nailed on to the underside of a theory or a body of law as an after-thought.” (Waldron; 2010, p. 233), and as a result how we justify human rights will have a significant impact upon how the duties associated with those rights are specified. This problem of justification is the primary concern of this paper.

The aim of this paper is to articulate and defend a justification for human rights grounded in the concept of human dignity. This justification of human rights is in stark contrast to a currently dominant approach in the human rights literature which can be loosely termed as a ‘political’ or ‘practical’ justification. The political conception is ascribed to by a wide variety of theorists. However, each proponent of the political conception specifies it slightly differently. Charles Beitz describes a ‘practical’ conception, Thomas Pogge an ‘institutional’ conception, and Joseph Raz a ‘political’ conception. I will refer to this broad school of thought as the political conception. These three theorists are a representation of some of the main different formulations of the political conception of human rights. There are some significant differences between them (most notably between Pogge and the rest). However, they are all three unified by utilizing a justificatory approach that is based in some component of politics- not in a metaphysical principle.
This paper will achieve three distinct objectives. The first part of the paper will describe and critique the political conception, the second part of the paper will articulate and defend the human dignity approach, and the final section will examine the implications for how we think about the duties associated with human rights. The construction of the argument from human dignity will be in two parts; firstly, an examination of what human dignity is; secondly, an articulation of how the concept of human dignity, when combined with an interest theory regarding the functions of rights, can generate human rights. The argument regarding the implications for how we think of duties will be that by basing human rights in human dignity we bring our duties to the fore, granting them equal priority with human rights in our moral furniture. This approach will, subsequently, help to solve some of the problems that O’Neill has with the human rights project- namely the absence of coherent thinking about the justification for human rights and how this impacts our thinking about the obligations involved.

**What is wrong with the ‘political’ conception?**

The political conception of human rights reflects an understanding of human rights that is common within the general literature on the topic. Different theorists call it by different names. Thomas Pogge calls it an institutionalist approach – “I focus, however, on a variant of institutional cosmopolitanism” (Pogge in Pogge and Moellendorf; 2008, p. 357), Charles Beitz calls “a conception of human rights arrived at by this route a “practical” conception” (Beitz; 2009, p. 102), and Joseph Raz says “that accounts which understand their task in that way manifest a political conception of human rights” (Raz; 2007, p. 8). Whatever their differences, however, all three of these theorists take existing human rights practice as being in some way foundational for the concept of human rights. The main difference between

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these three theorists is that both Beitz and Raz explicitly reject a metaphysical foundation for human rights and seek to justify human rights based on some fact of global politics; whereas Pogge leaves the metaphysical question open for debate, but grounds human rights by defining them as a certain class of moral rights individuals can claim from coercive social institutions. The unifying thread running through all three theorists is their appeal to global social and political institutions in justifying and defining human rights- Beitz and Raz appeal to certain components of the content of those institutions for justifying human rights, whereas for Pogge the mere existence of such institutions is sufficient. I will now examine these three theorists- Joseph Raz, Thomas Pogge, and Charles Beitz explicating how their distinct theoretical standpoints fit into a single broad school of thought. I will then point out how the political conception generally, and each of the three theories examined here within that, mis-conceptualise, and do not provide a solid foundation for, human rights. Finally in this section I will articulate why these flaws in the political conception necessitate a metaphysical (or non-political) conception of human rights.

For Pogge the key component in his theory of human rights is that there is a shared institutional order. He argues that “We should conceive of human rights primarily as claims on coercive social institutions and secondarily as claims against those who uphold such institutions” (Pogge; 2008, pp. 50-51). Pogge’s argument is a Rawlsian one in that he views human rights as being a necessary constituent part of any credible theory of global justice, and believes that justice is, as Rawls famously stated, “the first virtue of social institutions” (Rawls; 1999, p. 3). Therefore, for Pogge, global justice requires global social institutions which should respect human rights. This makes his conception fit into the bracket of ‘political’ as it defines human rights in light of their roles in global politics. On Pogge’s conception social and political institutions are required in order for human rights to become
relevant. Pogge conceives of human rights primarily as rights that can only be claimed from an institution. Pogge acknowledges that his conception does not tackle the question of which rights should count as human rights. Pogge claims to “not address the ontological status of human rights” (Pogge; 2008, p. 59). However, he makes his account rest upon his institutional claim, and the idea that human rights protect basic human needs- “A commitment to human rights involves on in recognizing that human persons with a past or potential future ability to engage in moral conversation and practice have certain basic needs, and that these needs give rise to weighty moral demands. The object of each of these basic human needs is the object of a human right” (Pogge; 2008, p. 64). Thus whilst Pogge claims to not tackle the issue of the ontological basis of human rights, he commits himself to basing them on needs the objects of which can be claimed from institutions. In Pogge’s conception of human rights, without a sufficiently weighty institution to claim them from human rights cease to be important, despite the needs, from which he seems to derive human rights, remaining as morally weighty. His conception is political in the sense that human rights are defined by reference to the existence of global political institutions.

Beitz views “the doctrine and practice of human rights as we find them in international political life as the source materials for constructing a conception of human rights” (Beitz; 2009, p.102). Beitz states that his understanding of human rights is implicit within John Rawls’ *The Law of Peoples*. His conception takes the current political practice of human rights as foundational. Beitz asks what he views as a rhetorical question- “Why should we insist that international human rights conform to a received philosophical conception rather than interpret them, as they present themselves, as a distinct normative system constructed to play a certain special role in global political life?” (Beitz; 2009, p. 67) and in doing so he sets out his argument as being one that explicitly rejects justifying human rights through appeals
to any sort of philosophical understanding of what a human rights should be. Beitz wants to strengthen the international human rights project, but in doing so he risks jettisoning crucial components of a functional understanding of human rights. He is correct to argue that human rights need to perform a discursive function in global politics - they have to motivate individuals and institutions to act - but he is wrong to claim that conceptions of human rights that utilise a non-political justificatory strategy cannot do this.

Beitz additionally critiques what he calls ‘naturalistic’ accounts of human rights, those which seek to base human rights in some form of principle or value that is external to the actual doctrine of human rights as it exists in international treaties by arguing that these accounts would “rule out substantial parts of contemporary human rights doctrine” (Beitz; 2009, p. 53). Beitz argues that as these conceptions of human rights “must proceed from more-or-less narrow foundations” (Beitz; 2009, p. 66) then the conclusions that they reach will be correspondingly narrow. For Beitz this results in an undesirable narrowing of human rights, excluding some of the rights (which rights, for Beitz, depends on the foundation used) included in some of the current international doctrine of human rights. Beitz thus views his conception of human rights as being a solution to restrictive nature of an understanding like Maruice Cranston’s. Cranston argued that a key “test of a human right is that it must be a universal right, one that pertains to every human being as such- and economic and social rights clearly do not” (Cranston; 1983, p. 13). Beitz views Cranston’s reduction of the range of rights included as human rights as being detrimental to the overall human rights project. However, Beitz has constructed something of a straw-man here as there are many ‘naturalistic’ accounts that do not narrow the range of human rights significantly, but which do provide a solid standard with which to measure the validity of a human rights based claim. The understanding of human rights I will propose in this paper being one such.
Beitz also argues that naturalistic accounts do not give sufficient weight to “the discursive functions of human rights within the existing practice” (Beitz; 2009, p. 65). Beitz’s argument is that human rights perform an important discursive role within international politics, acting as triggers for allowing intervention in other states affairs, and that naturalistic conceptions of human rights do not take this role of human rights seriously. However, Beitz underestimates the ability of naturalistic conceptions to allow for a discursive role for human rights. The dignity based conception of human rights that I shall propose encourages human rights to have a strong discursive role within global politics- they must still provide us with reasons to act, and we must still debate and discuss the different forms of action that they motivate. Beitz’s final criticism of naturalistic conceptions of human rights is that they do not tackle the issue of contribution. Beitz argues that naturalistic conceptions focus on the beneficiaries of rights as opposed to the suppliers of the content of rights, and that they thus struggle to assign duties and obligations. His argument is that naturalistic theories “by framing the central problem as one about which interests of beneficiaries human rights should protect…deflect attention from what are frequently the more difficult questions” (Beitz; 2009, p. 65) about which agents are required to act, when they are required to act, and what it is that motivates them to act. Again, I shall argue that Beitz firstly underestimates the capacity for naturalistic theories to emphasise the contributors as well as the beneficiaries of human rights, and secondly that he underestimates the ability of naturalistic theories to provide answers to the important questions he cites.

Beitz’s solution to these problems is to prioritise the practice of human rights within international doctrine as opposed to developing a conception of human rights that can stand apart from the messiness of political practice and provide a basis upon which that practice
can be critiqued and praised. He argues in favour of a conception of human rights that is explicitly based upon current global political practice, thus making his conception a political one. Beitz states that “According to a practical view… to say there is a human right to X is simply shorthand for a complex description of regularities in behaviour and belief observed among the members of some group” (Beitz; 2009, p. 104). So, Beitz argues that human rights are defined by the ‘regularities in behaviour’ that we find in the international practice of human rights. As a result of this, Beitz’s theory places too much emphasis on the status quo of international human rights practice. It would, based upon this, be conceivable for the regularities of behaviour in international politics to change in such a way as to significantly damage the human rights project, and to potentially make provision for human rights significantly more difficult. Beitz seeks to defend himself against this criticism by arguing that “we should construe the doctrine so that appeals to human rights, under conditions that will need to be specified, can provide reasons for the world community or its agents to act in ways aimed at reducing infringements or contributing to the satisfaction of the rights in societies where they are insecure” (Beitz 2009, p. 106). By this Beitz means that human rights should be conceptualised in such a way that they are those rights which provide reasons for global political actors to intervene in each other’s affairs in order to maximise enjoyment of those human rights. However, in mounting this defence Beitz collapses his argument into the claim that a human right is any right that would justify intervention in the affairs of a sovereign state, which then begs the question of which rights those might be. There is nothing within Beitz’s theory that allows us to clarify which rights should count as human rights and which should not. Some individuals may believe that if a state does not provide free primary education then we would be justified in taking significant action against that state, whereas others would say that we would not be so justified. However, both individuals might agree that there is a human right to an education. In order to solve this
problem we need a way of settling the argument about what counts as a human (and so allows for intervention) and what does not. Beitz’s theory does not provide us with this.

Raz follows Rawls in taking “human rights to be rights which set limits to the sovereignty of states, in that their actual or anticipated violation is a (defeasible) reason for taking action against the violator in the international arena” (Raz 2007, p. 9). Raz’s argument is that human rights are those rights which disable states from claiming sovereignty to protect them from external interference. Raz argues that this is the common understanding within international human rights practice and that this (the defeasibility of the international community intervening) provides human rights with their moral justification. For Raz, justifying intervention in another state’s affairs is not only the “essential feature[s] which contemporary human right practice attributes to the rights it acknowledges to be human rights” but is also “the moral standard[s] which qualify anything to be so acknowledged” (Raz; 2007, p. 8). So, Raz argues “human rights are those regarding which sovereignty-limiting measures are morally justified” (Raz; 2007, p. 10). Raz does not see the need for there to be any sort of justifying value beyond this (as Beitz allows for) as he argues that theorists have misconstrued the relationship between values and rights. Raz argues that many theorists simply argue that something (like autonomy) is valuable and that thus anything that is necessary to secure this valuable thing should be considered a right. Raz, correctly, points out that this is a non-sequitur. It is not a sufficient reason for justifying a right that the object of the right be valuable (Raz 2007). Raz’s view of human rights as being those rights which provide defeasible reasons for violating a state’s sovereignty would not, necessarily, preclude also utilising a metaphysical principle as part of a justificatory strategy for human rights. However, Raz does not go down this route and does not seem to see the need for any such metaphysical principle. Raz also does not commit himself to an institutional account of
human rights like Pogge. Rather he argues that human rights are rights that can be claimed from a variety of actors, including individuals, states, or international organisations, but that the defining feature of human rights is that they justify over-ruling a state’s sovereignty in order to intervene and protect human rights (Raz 2007). Thus Raz’s approach is similar to Beitz’s in that the role that human rights play in international politics is crucial for his understanding of what human rights are. It is also similar to Pogge’s conception in that he places institutions at the centre of his theory of human rights.

Whilst there are some differences between these three approaches, they are unified by their focus on political practice and institutions. Kenneth Baynes has observed some of the threads that tie the political conception together. He observes that:

According to each, human rights are primarily (though not exclusively) claims against political institutions and their officials as opposed to claims against arbitrary individuals; secondly, human rights are understood primarily in connection with the basic conditions of membership in a political society…and, finally, and most importantly, human rights are political in that the type of justification given for them is determined by their political role or function (Baynes; 2009, p. 375).¹

So, whilst each of these conceptions emphasises different aspects of the international human rights regime they are unified by their focus upon that regime. For Pogge human rights are those rights which perform the role of protecting us from coercive social institutions; for Beitz human rights are defined by the actual practice of international human rights- they are defined as those rights which we collectively believe to be important enough to justify breaching national sovereignty; and for Raz they are those rights which provide defeasible

¹ Baynes examines the work of four theorists- Joshua Cohen, Michael Ignatieff, Thomas Pogge, and John Rawls. This shows the breadth of the political conception and its saliency within the current literature.
reasons for interfering in the affairs of another country. Thus all three are unified by their attempt to justify human rights through appeals to certain aspects of the international political order, whether that be the substantive role of institutions or simply the existence of those institutions.

I will now discuss four basic criticisms of the political conception. First, the political conception of human rights is uncritical regarding the current list of rights adopted by international political practice. Secondly, the political conception is undesirably restrictive in what it characterizes as a human right. Third, the political conception has little, if anything, to say about behaviour on an individual level. Finally, the political conception can generate perverse incentives. I will work through these four criticisms in the order listed here, looking at how they apply to the three different specifications of the political conception of human rights of Pogge, Raz, and Beitz.

The first criticism is applicable primarily to more substantive conceptions of the political theory of human rights such as those of Beitz and Raz. By taking some aspect of current international political practice as foundational, their conception of human rights can be uncritical. One of the things we want our conception of human rights to do is to guide us in criticising current practice. However, by basing their conception on some aspect of the international human rights regime it is much more difficult for Raz and Beitz to hold a mirror up to current practice and identify places where it requires improvement. This means that their only recourse to criticise current political practice regarding human rights is empirical—that is whether or not the practice is actually fulfilling its as prescribed by international political practice— as opposed to theoretical, which would involve being able to critique those roles and functions international political practice ascribes to human rights. Raz is less prone
to this particular problem than Beitz as his conception is based upon an understanding of human rights that does set a boundary to what counts as a human right, although it is not a particularly clear one (for example it is unlikely that we would consider a failure to provide effective primary education as grounds for coercive involvement in another state’s activities). However, by going down this path Raz’s conception can tack too far and become prone to the second criticism listed above- it can be too restrictive.

Raz’s conception would potentially exclude some of the rights in the Universal Declaration from being human rights, such as the right to paid leave and the right to education. It is likely that we want to be able to say that these are genuine human rights, as on at least a prima facie examination they appear to be of great importance for the pursuit of a genuinely dignified human life- which, as we shall see, is what human rights protect. Raz could seek to defend his conception against this criticism by arguing that he understands human rights to be those rights that justify all forms of action “against the violator in the international arena” (Raz; 2007, p.9) not merely aggressive action. So whilst we might say that a failure to provide primary education is not grounds for violating the physical security of another state, we might say that it is grounds for action of a less aggressive form such as economic sanctions with education related strings attached. However, this defence is flawed. If we accepted Raz’s conception of human rights we will still have to determine what is a “defeasibly sufficient ground for taking action” (Raz; 2007, p.9). That is, we will then have to determine which rights allow us to violate state sovereignty, and in which ways different rights allow us to violate said sovereignty. Thus, Raz must either commit to a distressingly narrow conception of human rights and as a result accept that current political practice is massively overstepping its self-imposed boundaries, or he must introduce an additional concept, value, or principle into his theory in order to allow us to determine which rights are defeasible grounds for

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interference. Either Raz settles the argument by stripping human rights of much of their content, or his conception of human rights does not get us any closer to having a clear and accepted understanding of which rights are human rights.

Beitz is also open to the criticism that his conception might be too restrictive, but from a different direction. Beitz argues for what Ronald Dworkin might call a fox style justification for human rights. In his book Justice for Hedgehogs (Dworkin; 2011) Dworkin advocates for a unity of value as opposed to a multitude of values. In Dworkin’s terminology a fox style justification is one which utilises a variety of ideas and values. This is problematic, however, for as mentioned above, the foundations we use for human rights could (arguably, should) change what we believe about human rights. Thus Beitz’s approach is problematic as by allowing for a variety of values as foundational for human rights it makes his justification more ephemeral and open to additional contestation. This leaves at least some of those rights which we would normally consider to be basic human rights open to attack from a crude utilitarian like Peter Singer, who contends that there is nothing morally significant about humanity that should differentiate how we treat humans and animals. Singer argues that the key moral consideration is the capacity to suffer, and thus he argues that animals, such as dogs, with a significant capacity to suffer should have the same level of moral consideration as any human. (Singer; 1989, pp. 148-162). Following this the concept of human rights would seem to cease to be of any real significance in our moral furniture. Rather we should talk about ‘sentient being rights’ or ‘ability to suffer rights’ something which would significantly narrow the content of justifiable rights. This would result in many of what are currently considered basic human rights (like the right to free assembly, free speech, etc) ceasing to be

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2 Dworkin takes his inspiration for this dichotomy between foxes and hedgehogs from Isaiah Berlin’s essay The Hedgehog and the Fox: An Essay on Tolstoy’s View of History, (1953). Berlin, in turn, took inspiration from the Ancient Greek poet Archilochus.
considered in any sense basic. This is clearly contrary to what we want human rights to do. Whilst this argument is perhaps slightly reductionist, the criticism of Beitz is still valid. By allowing for appeals to multiple justificatory principles Beitz makes the foundations of human rights much less stable than we would desire for one of the core concepts of modern global politics.

Pogge’s institutional understanding of human rights is primarily prone to the latter two of the four criticisms outlined above. Firstly, by allowing for human rights only to be claimed against shared social institutions Pogge has very little (if anything) to say about how human rights should moderate behaviour between individuals. Thus, it would be impossible on Pogge’s account to describe an individual acting without sanction from a social institution as a human rights violator. For example, on Pogge’s account there is no human rights violation if I, acting as an individual, torture someone. Whilst the tortured individual is unlikely to invoke human rights when seeking recourse for the torturer’s actions that does not mean that a human rights violation has not occurred. It seems clear that if you are tortured, irrespective of who the torturer is, your human rights have been violated. A human rights violation is not mutually exclusive from a crime. Secondly, Pogge’s account could generate some perverse incentives. On Pogge’s account justice only pertains when there are shared social institutions. Thus, for Pogge, human rights only kick in if there are global, shared coercive social institutions, which he argues, not uncontroversially, there are. If we do not share these institutions then you cannot claim your rights from me. This could generate perverse incentives for some states or corporations to either disentangle from global institutions or to not enter into them in the first place. Thus Pogge’s understanding of human rights doesn’t restrict the content of human rights in the way that Beitz and Raz’s conceptions do, but rather restricts the scope of human rights.
Additionally, both Beitz and Raz argue that a significant component of what defines a human right is that it justifies interference in a state’s internal affairs. It is extremely unlikely that this sort of interference could be justified by an individual’s actions. If, for example, an individual citizen in a developing country was consistently preventing children from his community from attending school by maliciously damaging school buses then he is, of course, committing a crime, but he is also denying those children their human right to an education. The institutional and political conceptions of human rights view this individual’s actions as nothing more than the crime of vandalism. Additionally, an individual citizen has very little say or influence over whether interference occurs, and what form interference might take. As a result both Beitz and Raz have very little to say about individual’s behaviour as regards the fulfilment of human rights. It is difficult for individuals to fulfil their potential obligations if it requires them having the influence to ensure national-level interference. Additionally, they have very little to say about human rights violations carried out by non-state actors. As a result both Beitz and Raz are subject to the third criticism I outlined above.

Whilst the flaws I have highlighted in the political conception are significant they do not, on their own, necessitate a move to a more metaphysical approach. This need is grounded by the observation of O’Neill from earlier that “if obligations are the creatures of convention, so too are the rights” (O’Neill; 2005, pp. 431-432). We thus need human rights to be based on more than simply convention or political practice, as otherwise they would be rights that could be discarded by undermining certain treaties or institutions. Additionally, as Waldron observes “Foundations matter: they are not just nailed on to the underside of a theory or a body of law as an after-thought.” (Waldron; 2010, p. 233). In order to have a coherent theory of human rights
rights we need to have a foundation that is based not in convention or political practice but is rather based in some aspect of the right holders, namely humans.

By grounding human rights in some aspect of humanity we are able to coherently set them apart from other special rights created through other methods, whilst also seeking to provide a consistent method for determining what counts as a human right and what does not. This aspect of humanity that I will utilise, human dignity, is one that is common both within the literature on human rights, and in the founding documents of the international human rights regime. It is not immediately evident that this need for foundations requires us to develop an account of human dignity. Alan Gewirth (Gewirth; 1982, pp. 43-44) identifies within the literature five different ways of grounding human rights— by intuition, by institution, by interests, by intrinsic worth or dignity (including religious conceptions), or via a Rawlsian original position. The institutional position can be discarded as it is essentially Pogge’s approach and is thus prone to all the problems outlined above. The Rawlsian positon that Gewirth outlines--“that if persons were to choose the constitutional structure of their society from behind a veil of ignorance of all their particular qualities, they would provide that each person must have certain basic rights” (Gewirth; 1982, p. 44)--is specifically concerned with the rights that would be enshrined within an individual society constructed from behind the veil of ignorance and so it is not directly relevant to discussions of global universal human rights (although some other approach based on Rawls’ original position methodology might produce favourable results, it would require careful specification and would necessitate some form of global social institutions, it is not the role of this paper to discuss the problems with a Rawlsian methodology). The intuitionist conception can be discarded as rather than providing a foundation, claims to intuition are rather denying the need for a foundation and it is “impotent in the face of conflicting intuitions” (Gewirth; 1982, p. 44).
This leaves us with a dignity approach and an interest approach. The dignity approach, for Gewirth, holds “that persons have moral rights because they have intrinsic worth or dignity” (Gewirth; 1982, p. 44). The interest approach is, for Gewirth, “that persons have rights because they have interests” (Gewirth; 1982, p. 44). These two approaches are for Gewirth distinct from each other. As we will discuss at length later, the two approaches are not necessarily incompatible. The main problem with the interest approach is that it can lead to a proliferation of rights unless a concept or principle external to the theory is utilised to narrow the set of interests which can translate into a right. Whilst the concept of human dignity does not on its own provide a clear pathway from the moral worth of individuals to compiling a list of rights as it simply allows us to define the interests and duties that are associated with being human, but without an interest theory understanding of the function of rights as protections for specific interests it cannot translate those interests into rights. My contention will be that by combining the two --the interest theory and human dignity-- we can determine a clear and coherent understanding of the justification for human rights that allows for the construction of a complete set of human rights. Before I can do this, however, I need to explain why it is human dignity that I will appeal to rather than some other value or a broad account of human nature.

Why Dignity?

My aim in this paper is not to determine the entirety of what makes humans human; nor am I arguing that human rights are the sum total of human dignity. Dignity is simply one particular aspect of humanity that I am highlighting, some part of which is the appropriate foundation...
for a specific set of rights and duties that adhere to humans alone. Additionally, there are almost certainly other values and principles that can justify other sets of rights or duties (such as membership within a community being the foundation for certain political rights and duties). Similarly, there are almost certainly values or principles that humans share with other creatures that justify yet another set of rights and duties (such as ability to feel pain, put forward by Peter Singer). However, these other sets of rights and duties cannot sensibly be called *human* rights or duties as they are not based upon any aspect of our shared humanity. Rather they are either more expansive in their scope or less expansive in their application. This would mean that either the range of creatures in possession of the rights and duties are considerable broader, or that the range of rights is considerably narrower. Additionally, the relative weight of these other sets of rights and duties in comparison with human rights and duties is not my concern here, as this would require a much more complete moral theory than I am in a position to posit. However, dignity is one part of what it means to be human, and is a part that can justify the possession of a fairly extensive set of rights. Thus the rights derived from human dignity can be coherently called human rights as they are shared by all humans in virtue of being human.

My argument here, as will be explored in more detail below, is that by utilising an interest theory of rights in combination with human dignity we can construct a coherent foundation for human rights. The interest theory of rights, in brief, asserts that rights protect specific interests. However, this theory of the function of rights has a significant problem of overshoot--it tends to overestimate the number of rights available to us by potentially attributing a right to every single possible interest. Thus, a principle that can allow us to sensibly and coherently restrict the set of interests that are to be protected by human rights is

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3 This is assuming the non-existence of other creatures, Martians for example, that might fulfil the necessary criteria to qualify for human rights.

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required. This is the role that human dignity will play in the theory of human rights posited in this paper. I will explore in more detail the interest theory of rights below. Our concern now is to explore the definition of dignity and how we can get from that definition to a coherent set of rights.

Human dignity is a commonly-cited and -used concept in theorising about law and human relations. As Jeremy Waldron observes, “Dignity…is a principle of morality and a principle of law. It is certainly a principle of the highest importance, and it ought to be something we can give a good philosophic account of.” (Waldron; 2012, Kindle Locations 203-204). However, despite its apparent importance and the amount of research dedicated to the concept there is no singularly accepted understanding of human dignity. In most of the documents that found the international human rights regime, human dignity is the value or component of humanity that is cited as being, in some sense, the foundation of human rights. However, as Charles Beitz has argued, the framers of these documents did not have a precise understanding of what they meant by human dignity when they were framing these documents. He illustrates this point by citing Jacques Maritain, who was a member of the UNESCO committee on the Theoretical Bases of Human Rights, as saying “‘we agree about the rights but on condition that no one asks us why’” (Beitz; 2009, p. 21). Additionally, theorists and philosophers have not, on Beitz’s arguments, constructed a suitable definition of human dignity with which to ground human rights. However, Michael Rosen⁴ has developed a rigorous historical account of four separate strands of the meaning of dignity. According to Rosen’s analysis these four different strands of human dignity have been present within the discourse on dignity for significant portions of its existence as a concept within our moral theorising. It is this fact- that human dignity has meant different things to different people at

⁴ Beitz refers weird word choice heavily to Rosen’s typology of dignity.

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different times in history- that likely causes confusion when trying to utilise human dignity as a foundation for human rights. These four strands are (Rosen; 2012):

1. Dignity as Status

2. Dignity as inherent Value

3. Dignity as indicating commendable behaviour (acting in a *dignified* manner)

4. Dignity as giving and requiring respectful treatment (thus dignity as a specific right, rather than a foundation for rights)

In order to solve the problem with our understanding of human dignity that Beitz observes-- I will now examine the meaning of and outline a definition of human dignity that will be of use in providing a foundation for human rights. I will utilise some components of Rosen’s framework- specifically the idea of human dignity as a status, and of human dignity as an inherent value. I will argue that the best way of understanding human dignity in the context of human rights is as a status. Rosen’s framework is of great use for explicating how our understanding human dignity has evolved over time. However, I will not rely solely on Rosen’s analysis as my aim is not to identify what dignity has meant at different times, but rather to elucidate what it now means and how it might justify human rights. It is likely that human dignity is a synchronically universal concept -- that is, what it means is exactly the same for all people at a given time, but it is not necessarily exactly the same for all people at all times-- and so it is important that we understand how it was previously understood, but only insofar as it assists us in understanding what it means today. I will then seek to show that by understanding the function of rights in terms of the interest theory we can determine how the concept of human dignity can serve as a foundation for a coherent specification of the nature and content of human rights.
Human Dignity

In this section I will examine a number of different understandings of human dignity that have, at times, been utilised in a conception of human rights. I will then commit myself to supporting an understanding of human dignity as a status-concept. By examining these other understandings of human dignity I want to show two things - firstly, that this is more to human dignity than simply a set of rights; secondly, that conceptions of human rights that cash dignity out as something other than a particular status will run into significant problems.

Human dignity is undoubtedly a broader concept than human rights, and so human dignity can certainly be used to do more than ground a set of rights. However, unpacking the entirety of what human dignity is and can do is beyond the scope of this paper. Rosen’s historical analysis identifies four different conceptions of dignity that Rosen argues have been found at different times throughout history. I will not spend significant time with either dignity as dignified behaviour or dignity as respect as neither of these are of use in grounding human rights. I will additionally examine James Griffin’s understanding of human dignity as ‘personhood’ cashed out as human agency. I will firstly examine dignity as commendable behaviour and dignity as respect very briefly, before looking at dignity as inherent value, and then Griffin’s personhood understanding of dignity. I will then, finally, explicate human dignity as a status, drawing heavily on the work of Jeremy Waldron.

The third strand of dignity that Rosen identifies is that of dignity as indicating commendable behaviour. This conception of dignity is based on the idea of behaving in a dignified manner, or with dignity. Rosen identifies this strand historically within aesthetics and art history. He draws heavily upon Friedrich Schiller for understanding this conception of dignity. Rosen states that for Schiller “Dignity is…‘tranquillity in suffering’” (Rosen; 2012, pp. 31-32). He states that “the conception of dignity as what is dignified is part of an account of morally

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admirable behaviour—dignity in this sense is an expression of steadfastness of purpose and tranquillity in suffering” (Rosen; 2012, p. 56). Thus this understanding of dignity is facing difficulty and reacting to it in a stoical manner. This understanding of dignity is not particularly useful for assisting us in finding a foundation for human rights as it is primarily concerned with a very specific form of behaviour under certain circumstances. It does not provide a foundation for any rights, but rather posits an ethical standard of behaviour when presented with some form of adversity.

Rosen identifies two different forms of respecting dignity. Rosen identifies “respect-as-observance” and “respect-as-respectfulness.” Respect-as-observance Rosen derives from Joel Feinberg’s argument that “Just as I respect the speed limit by driving below a certain speed, I respect rights by not infringing them (if they are negative) or doing what they require if they are positive” (Rosen; 2012, p. 57). Thus, for Feinberg, as Rosen identifies, respecting a person’s dignity is simply equivalent to respecting their rights. In contrast to this Rosen identifies respect-as-respectfulness as treating someone with dignity. By this he means “To respect someone’s dignity by treating them with dignity requires that one shows them respect, either positively, by acting toward them in a way that gives expression to one’s respect, or, at least, negatively, by refraining from behaviour that would show disrespect” (Rosen; 2012, p. 58). Rosen cites Article 3 of the Geneva Conventions from 1949 as an example of a text using dignity to mean respect-as-respectfulness. What is required of a person is not to respect a person’s rights, but to behave towards that person in a specific, namely respectful, way. From this we can see that dignity as respect cannot provide a foundation for human rights as it either assumes the existence of those rights or it specifies an ethical principle of how we should treat others in order to be living a good life.
These two historic strands of dignity are not helpful for grounding human rights, although they would be of great interest in developing a larger dignity-based morality (as Rosen does). A third of the understandings of dignity that Rosen identifies is of more interest in our understanding of human rights. The conception of dignity as an inherent value is possibly the most prima facie obvious conception to use when seeking to provide a foundation for human rights. What is meant by dignity as a value is that it is the “sense of dignity as the intrinsic value of something” (UN Document E/CN.4?AC.1/SR.8 20th June 1947, p. 17). As such it is identifying the specific transcendental or a priori value of something and treating that thing in accordance with its value. Thus it is not restricted in its subject solely to humans the way that dignity as a status is. Non-human creatures can have some form of significant value associated with them. For example, creatures that are at least bordering on sentience (such as dogs or dolphins) have a significant value associated with them. We could in these cases talk of the dignity associated with near-sentience. This particular conception of dignity, as Rosen identifies, is prominent in the history of Catholic thinking on dignity. In this conception dignity is the sense of intrinsic value of a part of creation combined with it being situated in its appropriate place in the hierarchy of creation. Rosen teases out this way of viewing dignity through the work of Thomas Aquinas and Giovanni Pico Della Mirandola. We are not concerned with the dignity of non-humans as their dignity cannot justify human rights. The view that “human beings do indeed have dignity, but dignity is not essentially restricted to human beings” (UN Document E/CN.4?AC.1/SR.8 20th June 1947, p. 17) would appear to provide an easy path to identifying human rights. We would, in order to provide a foundation for human rights, have to identify the value of humans (as opposed to other, non-human entities) and then examine which rights that value would necessitate. However, whilst this approach, on the face of things, would be a relatively straightforward way to found human rights, it is significantly more problematic than it might seem.

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The problem with this approach is that if dignity is the comparative transcendental value of humanity then we are no closer to determining what that actually is. We have simply said that humans have a value, which is called human dignity. This does not, on its own, provide us with a foundation for human rights. It does seem plausible to argue that humanity has a certain high value associated with it and that this value has something to do with the concept of human dignity. My argument is that the intrinsic value of humanity may be what supplies humanity with its lofty status, and so may be the foundation upon which the status of human dignity is built, but that is a much broader moral discussion that goes far beyond the aim of this paper. Before examining human dignity as a status, however, I want to briefly examine an alternative way of cashing out human dignity that Rosen does not explore in detail.

In addition to three conceptualisations discussed above, there is a fourth way of cashing out dignity that Rosen does not discuss. James Griffin argues that human rights should be based upon human dignity. However, he cashes human dignity out as ‘personhood’ defined as normative agency. Griffin’s is an extremely sophisticated account of the grounds of human rights. He argues that there are two grounds required for compiling a complete list of human right -- “I propose…only two grounds for human rights: personhood and practicalities” (Griffin; 2008, p. 44) -- I will deal with the second first as it is the less controversial and more straightforward component of Griffin’s theory. For Griffin the practicalities component of his theory is a modifier of the personhood grounding for human rights in order to discern the specific objects of specific rights. Griffin argues that personhood alone still produces rights with some level of indeterminacy as it operates at a level of abstraction from the real world that makes it difficult to discern the specific objects of rights. To use my own example, personhood would tell us that we have a right to free speech, but practicalities would allow us
to say that we have a right to access a reasonably free press as a result of that more abstract right to free speech. Griffin’s argument, then, is that “we need to introduce features of human nature and of the nature of human societies as a second ground” (Griffin; 2008, p. 38). This does not seem to be particularly controversial. It is intuitively clear that in different social circumstances our more abstract rights (such as those enumerated in the UDHR) will yield different concrete rights. It would be absurd to say that an isolated Amazonian tribe have a human right to access a free press as no such thing exists for them. However, we would still say that the members of that tribe have a human right to freedom of expression. As we can see then, Griffin’s practicality criteria for determining the content of human rights is relatively uncontroversial and straight forward. However, the personhood criteria that he outlines is significantly more problematic.

Griffin argues that from personhood we can derive the majority, if not all, of those rights canonically thought of as human rights. However, he also claims that personhood applies a constraint to the range rights that can be called human rights that “they are rights not to anything that promotes human good or flourishing, but merely to what is needed for human status” (Griffin; 2008, p. 34, emphasis in original). Griffin then goes on to argue that this human status is to be equated with some form of agency, and that the “human” in human rights refers to “roughly, a functioning human agent” (Griffin; 2008, p. 35). As a result of this Griffin explicitly excludes certain members of the human species from possessing human rights – “Infants, the severely mentally retarded, people in an irreversible coma, are all members of the species, but are not agents” (Griffin; 2008, p. 34). Griffin goes on to define the form of agency that he thinks is relevant in defining and grounding human rights as ‘normative agency’ by which he means “our capacity to choose and to pursue our conception of a worthwhile life” (Griffin; 2008, p. 45). Griffin identifies one objection to his account of
normative agency as being that an individual can be denied certain rights, such as religious freedom, and still be an agent. He defends himself against this potential criticism by arguing that his account of agency requires both autonomy and liberty. By this he means the ability to both choose our goals and to, within limits, pursue them. He uses his defence against this criticism to also argue against a capacities account of human rights. He argues that we must be able to exercise the capacities that human rights protect, as we “can trample on a good many of a person’s human rights…without in the least damaging these capacities” (Griffin; 2008, p. 47, emphasis in original).

Griffin’s personhood account of human rights is a compelling one. However, it suffers from a significant flaw. By cashing dignity out as normative agency Griffin excludes human individuals who do not fulfil his relatively expansive account of agency from possessing human rights. This would, on his own admission, exclude the profoundly mentally handicapped and those in a long-term coma. As a result of this Griffin’s account excludes from the protection of human rights some of the most vulnerable of human individuals, who are arguably those who most need the protection of human rights. This would appear to be a significant flaw with Griffin’s conception of both human rights and of dignity. Within Griffin’s own account he acknowledges that not exercising a right due to it not being something you particularly desire does not negate the existence of the right. He draws upon the example of a shy individual and the right to free expression and argues that “if I am terribly shy and have no wish to speak, I may mind much less that I am not allowed to” (Griffin; 2008, p. 49). This aspect of Griffin’s argument then cannot answer the question as to why we would exclude a mentally handicapped individual from the class of person’s in possession of human rights. These individuals may be less interested in exercising certain of their human rights, but that does not mean that they should not still be afforded the protection...
of their rights. This flaw in Griffin’s account does not entirely undermine his account. Rather it merely necessitates a reconfiguration of what human dignity is and entails.

Whilst Griffin cashes dignity out as being normative agency Jeremy Waldron presents a different picture of dignity as a status. My argument will be significantly more in line with Waldron’s than with Griffin’s. However, I will draw upon certain elements of Griffin’s understanding of dignity and human rights. Waldron depicts human dignity as being a lofty status, stating:

This is what reactionaries always say: if we abolish distinctions of rank, we will end up treating everyone like an animal, ‘and an animal not of the highest order.’ But the ethos of human dignity reminds us that there is an alternative: we can flatten out the scale of status and rank and leave Marie Antoinette more or less where she is. Everyone can eat cake or (more to the point) everyone’s maltreatment—maltreatment of the lowliest criminal, abuse of the most despised of terror suspects—can be regarded as a sacrilege, a violation of human dignity, which (in the words of Edmund Burke) ten thousand swords must leap from their scabbards to avenge (Waldron; 2012, Kindle Locations 1132-1137).

The status that Waldron associates with human dignity is one that was, in time gone past, associated with those at the top of the feudal hierarchy. Thus Waldron’s understanding of human dignity is as a lofty status. What Waldron has articulated is that dignity as a status is “comparable to a rank of nobility—only a rank assigned now to every human person, equally without discrimination: dignity as nobility for the common man.” (Waldron; 2012, KL 351-353). Waldron is not arguing to create a levelling up ex nihilo. Rather he has identified a form of dignity that has historically existed, that of nobility, and that some of the rights that
were previously restricted to a few are extended to all (whilst some are removed from the concept of human dignity entirely).

Every man a duke, every woman a queen, everyone entitled to the sort of deference and consideration, everyone’s person and body sacrosanct, in the way that nobles were entitled to deference or in the way that an assault upon the body or the person of a king was regarded as a sacrilege (Waldron; 2012, KL 548-550).

This extension of a previously existing dignity of status thus extends to all the rights that were previously associated with specific stations in a human hierarchy. It is important at this point to comment that the statuses of a feudal lord and human dignity are not perfectly commensurate. The status of human dignity is something which must be synchronically universal--that is it is the same for all people at a specific time, but not for all people at all times. This results in us being able to say that all individuals have a status that is equivalent to that of a feudal lord, without it being exactly the same. We are essentially saying that the value of humanity is such that we all have a status that is akin to being a lord in feudal times. Rather than a hierarchy of humanity we have all humanity with a shared lofty status. By focusing on our equally lofty status we can define and defend a particular set of rights as “a status comprises a given set of rights rather than defining them as instrumentalities” (Waldron; 2012, KL 329-330).

The above means that a key component of the idea of dignity as a status is that those endowed with that status are entitled to have certain interests protected. As Waldron states “In law, a status is a particular package of rights, powers, disabilities, duties, privileges, immunities, and liabilities accruing to a person by virtue of the condition or situation they are in” (Waldron, in Cruft, Liao, and Renzo; 2015, p. 134). In addition to this, if we accept that
the function of a right is to protect a specific interest, as argued by the interest theory of rights, then if a status is at least partially comprised of a set of rights then there are specific interests that need to be protected in order for the holder of a status to enjoy that status. Humans have a status and this status is comprised of their rights, based upon the interests that are required for us to enjoy that status. Just as a lord did not lose his dignity or title when he was denied the rights associated with his status, so being denied our rights does not deny our dignity - it simply prevents us from enjoying it. Human dignity is not predicated upon the fulfilment of these rights; rather human dignity, on this understanding, defines what these rights are. Thus our task is to determine what rights and duties might be associated with this particular status by examining the rights that are associated with the lofty status of nobility and determining which ones fit with being shared by all of humanity - this then defines the content of the status of human dignity.

Waldron’s arguments regarding dignity as a status are compelling. When combined with certain aspects of Griffin’s account they become increasingly so- “the sort of dignity relevant to human rights,’ Griffin says, ‘is that of a highly prized status: that we are normative agents.’ He says that our human rights are derived from our dignity, understood in this way” (Waldron; 2012, KL 323-324). Griffin’s definition of normative agency leaves something to be desired, but his argument captures something that is at the core of understanding human dignity as a status- our human dignity it is not simply something we have but it is something which we have the potential to use- that is enjoy our rights and fulfil our duties. Thus we all have dignity, as we all have this potential, which is a status partially defined as a particular set of interests (the other part being a set of duties) - one which Waldron describes as being similar to the rights and interests previously associated with lordship. Obviously Waldron is not asserting that the two sets of rights are identical. He is
simply arguing that the status of human dignity is not a low one. However, the analogy with lordship is a useful one in another way. There is more to being a normative agent than the simple bearing of rights. Normative agency is also associated with duties. Feudal lordship was a reciprocal relationship; the lord had an extensive set of rights, but he also had an extensive set of duties. In a similar way human dignity as a status should also be associated with a particular set of duties.

The aim of this discussion has been to follow Waldron in attempting to “get at what dignity—the status—in general involves” (Waldron; 2012, KL 295). We are beginning to see the entirety of what this status involves—it involves a specific set of rights and a specific set of duties. These rights and duties are commensurate in some way with the rights and duties associated with lordship in times past—freedom of political association, freedom of speech, rights to a particular way of life etc. Similarly with duties to assist those needing assistance in gaining subsistence, duties to treat others in particular ways—not torture, murder, arbitrarily detain, etc. The synchronic universality of human dignity predicates that these rights will not be identical to those of lordship. They will depend significantly upon the contingencies of modern life—the nature of modern life and the expansion of this noble status to all human individuals will necessitate the specific rights being change and modified. We can utilise something along the lines of what Griffin terms as practicalities to work out the specifics here. Simply put, the argument is that all humans share a lofty status of human dignity. A status is comprised of certain interests and duties. The interests associated with human dignity are those which would be required for a human individual in their current situation to be able to live a genuinely and recognisably dignified life. Waldron’s argument is that these will be similar, although not identical, to the interests previously protected by the status of nobility. These will need to modified by the practicalities of modern life and the removal of

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those rights which are clearly at odds with the extension of this status to all--such as the right to command service from some individuals.

To conclude this section I want to turn briefly to a quote from Rene Cassin that Beitz cited. Cassin, commented that “The text was trying to convey the idea that the most humble men of the most different races have among them the particular spark that distinguishes them from animals, and at the same time obligates them to more grandeur and to more duties that any other beings on earth” (UN Document E/CN.4/AC.1/SR.8 20th June 1947, p. 2). He was claiming that humans are, to return to the original Latin meaning of “obligate”,\(^5\) bound to a certain grandeur and certain duties that are in excess of any other creature on the planet. This is entirely in concert with the concept of dignity as a lofty status that we have discussed and defended here. There is a certain grandeur associated with the concept of lordship just as there are particular duties- a lord was not only a ruler but a protector. The linking of grandeur and duties by Cassin, although not direct, is intriguing as it suggests that for the framers of the UDHR the two concepts were in some way twinned- we have grandeur and we have duties, and this is what dignity is. In this case, then, the status of human dignity is to have the rights associated with our grandeur (which is roughly commensurate with those formerly afforded only to the nobility) and to fulfil the duties required of such a status.

The status of human dignity requires the protection of a set of interests that then translates into a set of rights. This paper is arguing for an understanding of human rights that is in line with the interest theory of rights. As we shall see in the next section, a problem with the interest theory is that of overshoot--by basing human rights on interests can be difficult to specify which interest should translate into human rights and this can lead to an undesirable

\(^5\) “Obligate” is derived from the Latin words \textit{ob} and \textit{ligare}, which literally translate as “to bind to.”
proliferation of rights. Obviously not every interest should translate into a right, much less a human right, but it is important that we have some way of determining where the line is to be drawn. The concept of human dignity, in this conception of human rights, provides us with a status concept with which we can restrict the list of interests that should translate into human rights, without denying the validity of other rights derived from other interests. The next section of this paper will examine the interest theory, and its main rival, the will theory, to show how we can get from a status based upon our inherent value to a coherent conception of human rights.

The Next Step

This discussion of human dignity does not provide the necessary moral toolbox to generate a complete foundation for human rights. Rather, it provides us with a starting point. In order to get from human dignity to human rights we need a clear understanding of what rights are supposed to do. Broadly speaking there are two theories about what the function of rights are—the interest theory and the will theory. I will not here be picking a side in this debate. Rather I will be utilising the interest theory as a bridge between human dignity and human rights. As I will explore, the interest theory of rights is a more apposite understanding of the functioning of rights in the context of human rights founded on human dignity. This does not mean that the interest theory is superior to the will theory in all circumstances; my argument is that understanding the function of human rights in line with the interest theory is a more useful way of thinking about human rights.

The interest theory of rights is most clearly stated by Matthew Kramer, who describes the interest theory as being “Best encapsulated in the following two propositions:
(I) Necessary though insufficient for the holding of a legal right by X is that the duty correlative to the right, when actual, normatively protects some aspect of X’s situation that on balance is typically the interest of a human being or collectivity or nonhuman animal.?

(II) Neither necessary nor sufficient for the holding of some specified legal right by X is that X is competent and authorized to demand or waive the enforcement of the duty that is correlative to the right.” (Kramer; 2010, p. 32)

Kramer also gives a clear account of the will theory. According to this theory, “Both necessary and sufficient for the holding of some specified legal right by X is that X is competent and authorized to demand or waive the enforcement of the duty that is correlative to the right” (Kramer; 2010, p. 32). So the will theory of rights argues that only those individuals capable of demanding/waiving the enforcement of a duty can hold rights, and that the primary function of a right is to provide individuals with a particular power. The interest theory of rights, however, allows for individuals that do not possess that capability to also bear rights (this seems intuitively plausible as we do talk about some animal rights in a relatively uncontroversial way) and views the primary function of rights as being to protect certain specific interests. As Kramer points out, a common critique of the interest theory is that it ascribes rights too broadly. Kramer uses the example of a municipality forbidding people from walking on the grass in specific areas. “Consider, for example, a municipal ordinance that forbids people to walk on grass in public parks” (Kramer; 2010, p. 34). As Kramer then points out the municipality does so in order to allow the grass to flourish and grow. It is an interest of the grass to not be trampled, and so interest theorists might be committed to conferring legal rights upon the lawns or the individual blades of grass. However, as Kramer also points out the interest theory can avoid this problem. On his
description of the interest theory quoted above having an interest is a necessary but not a sufficient criterion for the holding of rights. Thus whilst the ascription of rights to the lawns in the example referenced are not entirely ruled out by the interest theory as it stands, they are not required by it either. Kramer argues that “Before the Interest Theory can be applied, the class of potential right-holders has to be demarcated; the task of demarcating that class has to be undertaken on the basis of factors outside the Interest Theory itself. Such a task is a moral endeavour” (Kramer; 2010, p. 35). So, the interest theory necessitates some external moral principle or value that allows us to determine who the rights-bearers are, but also to allow us to determine the specific content of those rights- in the case of human rights that external moral principle is human dignity.

My contention is that, following from this, we can utilise the concept of human dignity to fill the role of this external moral principle or value. So if we draw upon human dignity as being a particularly high or lofty status that is associated with a set of synchronically universal interests and duties roughly commensurate with those of the noble classes of the past made then we can say that the interests being protected are those that are necessary to allow all individuals to enjoy that particular status today. This allows us to say that the bearers of human rights are all those creatures that are human, and that the rights that are to be protected are those that are necessary to ensure that the interests necessary for the enjoyment of the lofty status of their human dignity. It is beyond the scope of this paper to work through a detailed list of what those interests and rights are, but we can likely assume for now that they

Of note, Justice Clarence Thomas’ recent dissent in Obergefell v. Hodges comments that “human dignity cannot be taken away by the government. Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved.” Whilst Justice Thomas is right in saying that they did not lose their dignity, they were denied the ability to enjoy their dignity. Slaves were not granted the rights that protect the interests that comprise one half of their dignity. Additionally, they were also largely denied the means to fulfil the other half of their dignity- their duties. Thus Justice Thomas is only partially correct when he states that the government cannot take away an individual’s dignity. The government cannot take away dignity, but it can take away the rights that protect our enjoyment of our dignity. Please consult the rules for citing U.S. Supreme Court cases—there’s a very particular format that’s appropriate. It’s worth getting familiar with it—given your interest in human rights, this will probably not be the last time you cite a court case.
would be at least similar to the rights enumerated in the Universal Declaration of Human Rights.

**Implications for Duties**

The final section of this paper will examine some of the possible implications of grounding human rights in human dignity for how we think about the duties associated with human rights. I will examine three possible implications of utilising human dignity as a foundation for human rights. Firstly, I will look at the differing rhetorical weight or position this would give duties within our moral furniture. Secondly, I will examine how some of the duties associated with human dignity may not perfectly correlate with specific human rights. Thus, the realm of duties might be expanded beyond what is normally associated directly with human rights. This might assist us in bringing greater clarity to the assignment of duties for the fulfilment of rights that do not appear to have an obvious one-to-one correlation with any specific duty. For example, if I have a right to healthcare it is unclear who is supposed to supply the object of that right. However, by allowing for some duties to not directly correlate with a single specific duty we will be able to argue that such a right should be supplied by a specific form of institutional arrangement which a number of individuals are obligated to construct. Finally, I will show that the social nature of human dignity allows us to talk coherently about someone acting with dignity despite being materially deprived of many of the rights necessary for them to enjoy that dignity. We are able to say that someone who is in a state of extreme deprivation is still in possession of their dignity as they have the ability to fulfil their duties and to thus act with dignity.

It is common for people to make rights claims based on the assumption that rights are, in some sense, one of the most important components of our moral furniture. By grounding

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human rights in human dignity we do not deny the contention that human rights are of great
importance. However, we are able to causally sever duties from the rights, whilst maintaining
their conceptual link. A causal relationship between rights and duties would view the rights
as in some sense prior to the duties— it is because we have rights that other people then have
duties. This means that rather than saying that all individuals have certain rights and therefore
other agents have certain duties we can say that all individuals have certain rights and certain
duties. This allows us to push the associated duties forwards in our moral landscape without
detracting from the importance of the rights. By providing increased priority for our duties,
whilst not decreasing the priority of our rights, we increase the rhetorical force of appeals to
the duties associated with human rights, and thus may be able to drive towards greater
fulfilment of human rights with greater success. This is not to say that being in possession of
a right does not imply the existence of a duty elsewhere— it does— it is simply arguing that by
making rights causally prior to duties we run the risk of rhetorically de-emphasising the
urgency of the duties. By making the initial rights and duties causally separate we are able to
avoid this. However, we still maintain their conceptual link through their common basis in
human dignity— thus we can still coherently talk about these duties as being associated with
human rights.

The second implication is connected with the first. By severing the causal link between rights
and duties we can coherently talk about duties that are associated with human rights but that
are not directly correlated with any specific individual’s right. For example, it is difficult to
say whose right has been violated if we do not pursue the construction and maintenance of
just institutions. I do not violate any specific individual’s right if I do not contribute towards
the maintenance of just institutions that ensure and protect human rights. However, we can
coherently say that I am not fulfilling my duty to do so and that this duty has some significant

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bearing upon fulfilling a wide array of human rights. It becomes more theoretically coherent to do this if we use human dignity as a foundation for human rights because the status of nobility was not simply associated with a set of specific rights, but was also associated with a set of duties. Lords had duties towards their subjects, and so if our status of human dignity is in some sense commensurate with that nobility, then it is clear that part of that status is also the possession of certain duties. One of these duties is today undoubtedly to promote just, human rights respecting institutions as the nobility had duties to maintain the institutional structure of society. These duties are associated with human rights for two reasons. Firstly, they stem from a shared foundation in human dignity. Secondly, the fulfilment of these sorts of duties has a significant impact upon the fulfilment of a wide array of rights for, often, a large number of people. However, this part of their relationship is not a clear correlation—there are ways imaginable in which an individual could enjoy all of their human rights without an institutional framework in place, but the practicalities of modern life make it such that the existence of certain types of institutions make the enjoyment of human rights significantly more secure.

If we apply this lordly duty to today’s context with all individuals endowed with equal status then it results in our all having duties to promote a just institutional framework. This comes about as one of the duties that was most associated with nobility was maintaining a certain social and political order. As the nature of the social order associated with the status changes (human dignity is a different, though similar, status to nobility) then the duty will also change. Thus in the case of the status of human dignity it makes sense to talk about promoting an social and political institutional order that protects human dignity and thus human rights. Thus even in a scenario in which by failing to fulfil our duty we are not clearly violating a specific right, we can be said to be clearly failing to fulfil a specific duty. This
implication for how we think about our duties is particularly important as a common criticism of human rights is that it is unclear by whom certain duties are owed.

A similar example would be the right to a basic level of health care. It is often argued that there is no clear duty bearer that correlates with this right. However, on this understanding all individuals are duty bound to promote the dignity of others. To use the connection with lordship again, Lords were obligated to not damage the prospects of their peers (for them other nobles). For example, Magna Carta enshrined certain of the legal rights of the nobility both against each other and against the monarch. In a modern context this would translate into requiring all individuals to ensure that the prospects or well-being of another individual are not damaged. We can then say that we must promote an institutional structure that provides for basic healthcare to all individuals that share the status of human dignity. There are obvious practicality constraints on this- I cannot be directly responsible for providing healthcare when I am not trained as a physician. Similarly, I cannot be directly held responsible for the healthcare provision in Bangladesh. However, I can be held responsible for my role in not promoting a fairer and just global order that would allow for better healthcare provision in Bangladesh. This does not mean that the idea of human rights is simply everything that would be associated with a just world. There is much more to a complete conception of justice than human rights, although they are almost certainly a key component of any plausible theory of justice. By loosening the causal relationship between duties and rights we are able to maintain duties that are essential for the protection and maintenance of human rights but that have no clear, specific right-bearing beneficiary and to more easily specify duty-bearers in difficult cases. A significant implication of this severance is that we cannot fulfil our duties and enjoy our rights in isolation-- I, on my own, cannot fulfil every duty that I bear due to my status of human dignity-- I have to co-operate with
others. This shows how the human dignity approach to human rights emphasises both the importance of our individuality at the same time as emphasising the importance of our nature as social creatures.

Finally, by basing human rights on human dignity we can coherently talk about someone living up to, or fulfilling the expectations of, their human dignity whilst they are also being materially denied the rights necessary for them to enjoy that dignity. Basing human rights on human dignity provides us with a more social role for the foundation of human rights. Human dignity decreases the atomistic nature of human rights by ensuring that it is of equal importance for us to fulfil our duties as it is for us to be in possession of our rights. Lack of one does not deny us the other. If we do not fulfil our duties we cannot be denied our rights, and if we are denied our duties we are still bound to fulfil those duties of which we are capable. Additionally, we cannot fulfil all of our duties without engaging in co-operation with others, which allows us to both highlight the importance of our individuality as well as our sociability. For example, in apartheid South Africa many individuals were denied a significant number of the rights they needed to enjoy their human dignity. However, many of those individuals still behaved with great dignity by fulfilling their social obligations derived from that same dignity. Nelson Mandela by seeking to ensure that South Africa remained unified through the transition away from the apartheid regime fulfilled his duties, even whilst being denied his rights. He also ensured that South Africa maintained a level of social cohesion that allowed for more individuals to enjoy their human rights and fulfil their duties. There are many examples throughout modern history of individuals fulfilling their duties whilst being denied their rights. By basing human rights on human dignity we emphasise the social nature of humanity and thus we can implore all individuals, even those who are denied their rights, to work with each other to fulfil their duties.
Conclusion

This paper is quite modest in its aims whilst also seeking to achieve a lot. I have shown that the political conception of human rights that is becoming increasingly popular within the literature provides a flawed basis for human rights. I have then sought to show that a more metaphysical conception is necessary if we are to have a coherent conception of human rights. I then examined human dignity before positing a way of bridging the gap between human dignity and a coherent conception of human rights by utilising an interest theory of rights. Finally I looked at some of the possible implications as regards our duties of human dignity being the metaphysical foundation stone upon which we base human rights. The ultimate conclusion of this paper is that by basing human rights on human dignity we shift the priorities within our moral furniture to provide greater priority and rhetorical force to the duties associated with human dignity. Additionally, we are able to construct a more social understanding of our duties, whilst also being able to coherently talk about duties that do not neatly correlate with a specific individual duty. Thus, this paper has advanced us towards a greater understanding of both the foundations of human rights and a more complete conception of the duties that involved with those rights.
Bibliography


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