

# KANT'S CONTRIBUTION TO THE PHILOSOPHY OF HUMAN RIGHTS

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## INTRODUCTION

Kant's thought has played a central role in contemporary philosophy. It is a source of inspiration for John Rawls' theory of justice, Onora O'Neill's normative approach to bioethics, and Jürgen Habermas' philosophy of law and his ethics of discourse. In addition, Kant's ethics and political philosophy touch on several current issues, namely, cosmopolitan law, peacekeeping, the philosophical foundations of rights, and the nature of autonomy and human dignity, among others. Despite Kant's undeniable legacy, Luigi Caranti, in his book *Kant's Political Legacy*, has recently raised some concerns including the idea that "scholars have been interested either in debating specific hermeneutical issues or in isolating very broad moral and political principles to use them (often reshaped according to need) for their own theories" (2017, p. 02). According to him, hermeneutical work has thus far been carried out without much attention to the biggest challenges for our world. In this way, the book shows a commitment to achieving intellectual and practical progress by addressing three main issues, namely, the philosophical foundations of human rights, the promotion of peace, and the progressive view of history. In what follows, my comments on Caranti's work will focus on the first part of his book. This is mainly because of my interest in his general thesis, namely that of using the innate right to freedom as the basis for a plausible theory of human rights<sup>2</sup>. I will raise some questions concerning the way Caranti makes it support human rights and the connection that he establishes between the concepts of external freedom, respect, autonomy, and dignity.

## CARANTI'S APPROACH TO THE FOUNDATIONS OF HUMAN RIGHTS

Caranti holds that many of the accounts of human rights considered in his book (Griffin, Nickel, Shue, Gewirth and others) turn out to be unsatisfactory (2017, p. 54). He points out that what is missing in all of them

is the simple intuition, latent in all major documents of human rights, that human beings are worthy creatures, despite the atrocities for which they have been responsible. Within ‘humanity’, by virtue of which, the documents say, we have human rights, there is supposed to be something extraordinarily valuable and awe-inspiring that serves as an insuperable barrier against certain forms of degradation (CARANTI, 2017, p. 55).

The value of dignity, which Caranti specifies along Kantian lines (he says: “inspired by Kant, not cut and copied from him” p. 63) serves as protection not only against the violations of our dignity that others cause to us, but also against the degradation we can bring upon ourselves.

Caranti maintains that our peculiar ability to act on moral imperatives grounds human worth and dignity. His reconstruction of Kant’s argument shows that “the essence and worth of our humanity consists of our capacity to conform to the moral law. That is: it consists of our autonomy” (CARANTI, 2017, p. 31). According to him, it is “the human capacity to act on duty, no matter what its specific form, that is at the centre of [his] approach, not the actualization of that capacity” (CARANTI, 2017, p. 63). He continues, arguing that “this is the most fundamental layer of our worth, it is what our dignity consists of”. And he assumes “that recognizing this feature in us generates respect for human beings” (CARANTI, 2017, p. 63). Then, his argument grounds human dignity, and, as a consequence, human rights, in the Kantian notion of autonomy.

Despite his argument being inspired by Kant, two main points distinguish Caranti’s position from Kant’s theory. On the one hand, he assumes that “authentic moral behaviour does not occur only when the agent acts under the constraints of one of the formulas of the Categorical Imperative, but also when agency is inspired by other moral principles, as long as they conform to broadly accepted constraints of the kind implicit in the Golden Rule” (CARANTI, 2017, p.63). He defends that humans are conscious of moral constraints, with some version or another of the moral law serving as the guiding rule for practical deliberation. On the other hand, he denies that moral behaviour is a prerogative of human beings. He holds that “some features of moral behaviour we usually attribute to human moral agency (e.g. consideration for the well-being of other members of the species, readiness to sacrifice and so on) take place among primates and other mammals” (CARANTI, 2017, p.63). The implications of his expansion are unclear: how exactly could we rethink Kant’s conception of indirect duties to non-human animals and to the environment? Kant argues that there can be no direct duties in relation to nature as a whole and to nonrational beings (TL 06: 442-443). However, we have indirect duties or duties with *regard to them*. Indirect duties can be defined the duties of moral agents regarding nonhuman animals and the environment because of their relationship to people’s interests or rights.

It is a common view in the literature that Kant conceives of human dignity as an absolute inner value all human beings possess. It is also widely believed that this value is the reason why one should respect others. Allen Wood (1998) argues that the idea of human dignity, which is linked to the formula of humanity as an end in itself (FH), is the Kantian principle that has most resonance in the conscience of our culture and the greatest universal appeal because it

grounds human rights. However, some interpreters disagree with this position. Oliver Sensen (2010) holds that the contemporary way in which human dignity is used to support human rights does not relate to how human dignity was understood by Kant. Sensen distinguishes three paradigms of dignity:

1) In the contemporary paradigm of dignity, “human dignity is conceived as a non-relational value property human beings possess that generates normative requirements to respect them” (SENSEN, 2010, p. 312). According to Sensen, this pattern of thought is most prominent both within and outside the Kantian literature, and it *is present in the UN documents*.

2) The archaic paradigm is based on the Ancient Roman usage of *dignitas* that “was primarily a political concept; it referred to the elevated position or higher rank of the politically powerful in society” (SENSEN, 2010, p. 312). The archaic paradigm makes clear that dignity does not have to be conceived of as a value human beings possess, but can refer to an elevation, for instance in rank.

3) The ‘traditional paradigm’ grew out of the archaic conception of dignity. Cicero universalized the archaic conception by applying *dignitas* to all human beings. In the traditional paradigm, human beings are special in nature by virtue of a certain capacity (e.g. reason, freedom), *and have a duty to make proper use of it*. Sensen argues that Kant used the traditional rather than the contemporary paradigm of dignity. Kant’s conception of dignity is a Stoic one: “Kant conceives of dignity as sublimity (*Erhabenheit*) or the highest elevation of something over something else. Ontologically ‘dignity’ refers to a relational property of being elevated, not to a non-relational value property” (SENSEN, 2010, p. 310). What it is raised above, and in virtue of what, depends on the context in which Kant uses ‘dignity’. For instance, he talks about the dignity of a monarch to refer to his rank as the ruler of his subjects. According to Sensen, “when he talks about the *Würde der Menschheit* (dignity of humanity) he is expressing the view that human beings are elevated over the rest of nature in virtue of being free. When he talks about dignity in connection with morality, he is saying that morality is raised above all else in that morality alone should be valued unconditionally” (SENSEN, 2010, p. 310).

According to Sensen, four main differences between the *contemporary* and the *traditional* paradigm of dignity can be identified (SENSEN, 2010, p. 312-3). **First**, in the *traditional* paradigm ‘dignity’ is not the name for a non-relational value property human beings possess; it refers rather to elevation, a relational property. This contrasts with the *contemporary* paradigm, in which dignity is a non-relational value property. The **second** difference is that in the traditional paradigm there are two stages of dignity. In the traditional pattern of thought, one’s initial dignity can be realized but also wasted. In this account, everyone has an initial dignity since they have certain capacities (e. g. reason, freedom), but only if *one makes a proper use* of one’s capacities does one fully realize one’s initial dignity. **Third**, in the traditional conception, dignity was said to be connected to duties and not rights. **Fourth**, the traditional paradigm is primarily concerned with the dignity of the agent, and not with the dignity of others. It is a perfectionist framework, which expresses the duty to make proper use of one’s own capacities.

I do not agree completely with Sensen's interpretation of Kant's conception of dignity. Of course we can find in Kant's texts the use of "dignity" to mean "sublimity" or "the highest elevation". However in many passages Kant uses "dignity" to refer to an inherent or intrinsic value that cannot be lost. For example, in the section on duties of virtue deriving from respect in *TL*, Kant writes:

The *respect* that I have for others or that another can require from me (*observantia aliis prestanda*) is therefore recognition of a *dignity* (*dignitas*) in other human beings that is, of a worth that has no price, no equivalent for which the object evaluated (*aestimii*) could be exchanged (TL, AA 06: 462).

In this passage, Kant explicitly speaks of dignity as an unconditional and incomparable value from which we derive duties towards others, namely respect for others. Finally, Kant says that

I cannot deny all respect to even a vicious man as a human being; I cannot withdraw at least the respect that belongs to him in his quality as a human being, even though by his deeds he makes himself unworth of it. So there can be disgraceful punishments that dishonor humanity itself (such as quartering a man, have him torn by dogs, cutting off his nose and ears (TL AA: 06: 463).

Kant continues to argue that we cannot deny moral worth to a vicious human being "for on this supposition he could never be improved, and this not consistent with the idea of a *human being*, who as such (as a moral being), can never lose entirely his predisposition to the good" (TL AA: 06: 464). This passage overrides Sensen's position which says that dignity in Kant implies a double notion, namely that we have an original dignity, and that to realize it proper behavior is necessary. Clearly, Kant says that a person who behaves viciously should not be disrespected. He still has dignity and must not be treated as a mere means. Then, I believe that Kant's theory can indeed serve as a source of inspiration for the contemporary paradigm of dignity mainly because Kant describes dignity as an unconditional and incomparable value (GMS, AA 04: 436; TL, AA 06: 462). But some of Sensen's concerns can be addressed to Caranti's conception of dignity: 1) is Caranti's conception of human dignity a relational or non-relational property? 2) is it committed to an absolute or intrinsic value? And 3) does it depend on agency (e.g., a criminal loses his dignity)? 4) How autonomy/human dignity generates human rights?

## ASSESSING KANT'S PHILOSOPHY OF HUMAN RIGHTS

Another point I would like to explore is the contribution of Kant's theory of rights and his concept of innate right to the development of the contemporary conception of human rights. The contemporary conception of universal human rights was consolidated after the Second World War, with the publication of the Universal Declaration of Human Rights (UDHR, UN, 1948). But its origins can be traced from earlier philosophical theories of rights, especially those formulated by natural law and by liberal political theories, including Kant's own theory of law.

According to Nickel (2017), human rights are norms that help to protect all people everywhere from severe political, legal, and social abuses. He attempts to explain the generic idea of human rights by identifying four defining features: 1) Human rights are *rights*; 2) Human rights are *plural*; 3) Human rights are *universal*; 4) Human rights have *high-priority*. In what follows, I will consider some of these features to assess Kant's contribution to the philosophy of human rights.

1) Human rights are *rights*: Kant is one of the main philosophers to provide a rational, anti-dogmatic foundation of law and to promote rights in his ethical and political theory. He systematically studies the concept of law (*Recht*) in the “*Doctrine of Right*” (RL, 1797), but he deals with this concept also in smaller political writings, namely *Theory and Practice* (TP, 1793) and in *Perpetual Peace* (ZeF, 1795). Many commentators also call attention to the importance of *right* in the *Lectures on ethics* (Vorl, AA 24 ff). For example, Manfred Kuehn points out that the lectures that deal with natural law (*jus naturae*) are based on the work of Gottfried Achenwall (1763). Despite following this work, Kant also criticizes it at specific points. For example, Kant rejects the definition of law as being independent of morality and argues against consequentialism and eudaimonism being present in it (KUEHN, 2010, p.19). Leslie Mulholland holds that the concept of *Recht* for Kant is ambiguous and calls attention to a passage in the *Nachlass (Notes and Fragments)* where three senses are mentioned: “*Recht (iustum)* is that free action of which coexist with the freedom of all according to universal law .- *Das Recht (scientia)* is the system of law according to which what is *Recht* or *Unrecht* is determined. *Ein Recht* (of which one may have several) is a capacity of the right to bind others” (HN, AA 23: 262). In this sense, the hermeneutic work of interpreting Kant's philosophy and the terms he uses is not irrelevant. Finally, in exploring the characteristics of right, Kant considers the moral concept of right as that which refers to a corresponding obligation (RL, AA 06: 230), something implied by the notion of a claim right. Kant ultimately concluded: “Right and authorization to use coercion therefore mean one and the same thing” (RL, AA 06: 232). This shows that right denotes a part of morals that can and should be accomplished through coercion. In Gregor's words: “a right is, Kant holds, a capacity to put another under obligation, and his theory of rights is dependent upon his analysis of obligation” (GREGOR, 1993, p. 52). Most of all human rights are claim rights that impose duties or responsibilities on their addressees. “Rights focus on freedom, protection, status, or benefit for the rightholders. The duties associated with human rights often require actions involving respect, protection, facilitation, and provision” (NICKEL, 2017).

2) Human rights are *plural*. As it is well known, Kant does not advocate a comprehensive list of human rights such as that presented in the UDHR of the UN (1948) and its subsequent treaties. Kant uses the expression “the rights of men” (*der Rechte der Menschen*) in only a few passages of his works, for example, in *GMS*, when analyzing the maxim of false promise in the Formula of Humanity (GMS AA 04: 430). As Caranti correctly observes, for the most part, Kant speaks in the singular of a right of humanity (*Recht der Menschen* or *Recht der Menschheit*). It is in the *Doctrine of Right* that Kant justifies his position, namely, there is

only one innate right<sup>3</sup>: *freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity" (RL AA 06: 237). A being who has humanity is a being with free will, capable of exercising their freedom of action and autonomy: "in the doctrine of duties a human being can and should be represented in terms of his capacity for freedom, which is wholly supersensible, and so too merely in terms of his *humanity*, his personality independent of physical attributes (*homo noumenon*)." (AA 06: 239).

It is important to be clear on what Kant understands by humanity. In the *Groundwork* (GMS), this concept is defined as the ability to establish ends: "rational nature is distinguished from the rest of nature by this, that it sets itself an end" (GMS, AA 04: 437). Similarly, in the *Metaphysics of Morals*, Kant argues that "the capacity to set oneself an end – any end whatsoever – is what characterizes humanity (as distinguished from animality)" (TL, AA 06: 392). For some commentators on Kant's works, "the ability to set our own ends is clearly the fundamental form of the exercise of the freedom of choice, and the capacity to realize or pursue our freely chosen ends is equally clearly the fundamental form of the freedom of action" (GUYER, 2005, p. 250). Guyer takes the command always to treat humanity as an end and never merely as a means as the recognition of the unconditional value of freedom itself.

The innate right to freedom is an original and moral right, that is, a universal human right, independent of the positive law and the constitutional laws of a State. From the innate right to freedom, four other rights are analytically derived: 1) the inherent right to equality, 2) the right of the individual to be his own master, 3) the right to be an irreproachable man, 4) the right to do to others what does not harm them in what is theirs (RL, AA 06: 237-8). Kant considers the derivation of these 'four implicit human rights' (HÖFFE, 2010, p. 87-88) from the right to freedom as analytical ('they are not really distinct from it'). Kant's system of rights is derived from a human right (not from autonomy or human dignity), namely the innate right to freedom that belongs originally to each one by virtue of humanity.

Obviously, there is a tension in Kant's position because he simultaneously asserts that (1) there is only one innate right to freedom and (2) that freedom involves other innate rights, for example, the innate right to equality, among others. But this controversial position seems to be readily accepted by Caranti when he states that "Kant interestingly infers from our sole innate right, in a way that seems to be analytical, four more innate rights among which, importantly, is the right to perfect formal equality" (2017, p. 20-21).

According to Höffe, one way to dissolve this tension is to consider that Kant should have said that only the criterion to classify an innate right is singular, whereas a plurality of rights fulfills this criterion. Höffe states that "Kant thereby sets foot on more concrete terrain that opens the floodgates to a whole range of human rights and relativizes the singularity of innate right" (HÖFFE, 2006, p. 12). Even the right of children "to the care of their parents until they are able to look after themselves is for Kant an original innate (not acquired) right" (RL, AA 06: 280). It thus belongs in a catalogue of human rights and reinforces the possibility of human rights in the plural (HÖFFE, 2006, p. 13). In this way, it is plausible to argue that

a plurality of human rights can follow from the innate right to freedom. Then “if someone accepted that there are human rights but held that there is only one of them, this might make sense if she meant that there is one abstract underlying right that generates a list of specific rights” (NICKEL, 2017).

3) Human rights are *universal*. Kant starts his system by distinguishing between innate right (*angeborene Recht*) and acquired right (*erworbene Recht*). “An innate right is that which belongs to everyone by nature, independently of any act that would establish a right; an acquired right is that for which such an act is required” (RL, AA 06: 237). Obviously, the notion of universality is implicit in the definition of innate right. All human beings by virtue of humanity have an innate right to freedom. Characteristics such as race, gender, social status, religion and nationality would not be necessary to determine who has an innate or human right. Innate rights are universal in the sense that they extend to all. But some of Kant’s considerations seem to undermine his commitment to universal human rights. For instance, Kant’s discussion of citizenship that appears in TP and in RL. In TP, Kant presents the three *a priori* principles to establish a rightful condition: freedom, equality and civil independence (TP, AA 08: 290). Kant says that a citizen is a subject who possesses certain qualities. The first quality is a natural one, of not being a child or a woman. The second quality is the independence of the citizen, which Kant calls “being your own master” (TP, AA 08: 295). This involves having some property that supports the citizen. Kant does not explain why the natural quality of being a woman changes the *a priori* principles and why it makes a person unfit to vote.

The qualifications for citizenship in RL differ from those in TP. In the RL (AA 06: 314), Kant does not set any natural qualification to vote, only the quality of being independent. Kant draws a distinction between ‘passive’ citizens who are merely protected by the law and ‘active’ citizens who may also contribute to it. He maintains that all women, domestic servants, helpers, minors, private tutors, and those who do not support themselves, but are dependent on others, *lack civil personality* (RL AA 06: 315). They are passive citizens and therefore will have to be commanded or protected by other individuals. This difference justifies the inequality of rights between two different groups within a society, namely men who can contribute to the formulation of laws and participate in elections, and women (and those who lack property) who must obey, be protected and be commanded. However, the contemporary view of human rights embodied in the UN Charter (1948) and subsequent treaties is more egalitarian than the liberal conception of rights provided by Kant. The egalitarianism present in current human rights documents is given by the emphasis of equality before the law and by protections against different forms of discrimination. Although the eighteenth-century Declarations promulgated equality, the reality at that time was that basic rights were denied to certain people by virtue of their race, nationality, gender, or social position. As we have seen, fragments of this discrimination are present in Kant’s thinking despite all his contribution to the philosophy of human rights.

## FINAL REMARKS

In his book, Caranti ably reconstructs Kant's view of the innate right to freedom and demonstrates its repercussions on the contemporary debate concerning the philosophical foundations of human rights. I have presented here some difficulties with the way Caranti links Kant's humanity principle, autonomy, and the derivation of human rights. Despite that, his book succeeds in using Kant's practical philosophy as a basis for establishing a new interpretation for the philosophical foundations of human rights.

## LIST OF ABBREVIATIONS

References to Kant's works follow the *Akademie-Ausgabe* (AA). The translation of Kant's writings used in this article is the Cambridge edition of the works of Immanuel Kant. The list of abbreviation is provided below.

- GMS* Groundwork of the metaphysics of morals (AA 04)  
*RL* Metaphysical first principles of the doctrine of right (AA 06)  
*TL* Metaphysical first principles of the doctrine of virtue (AA 06)  
*TP* On the common saying: That may be correct in theory, but it is of no use in practice (AA 08)  
*ZeF* Toward Perpetual Peace (AA 08)  
*HN* Notes and Fragments (AA 23)  
*Vorl* Lectures on ethics (AA 24)

**ABSTRACT:** In this paper I present some comments on Caranti's book *Kant's Political Legacy*, mainly on his approach to the foundations of human rights. I raise some questions on the way Caranti links Kant's humanity principle, autonomy, human dignity, and the derivation of human rights. Besides that, I try to assess Kant's true contributions to the philosophy of human rights by exploring questions on their nature and foundations.

**KEYWORDS:** Kant; dignity; human rights; humanity; autonomy.

**RESUMO:** Neste artigo, apresento alguns comentários sobre o livro *Kant's Political Legacy* de Luigi Caranti, principalmente a sua abordagem sobre os fundamentos dos direitos humanos. Levanto algumas questões sobre a maneira como Caranti liga o princípio de humanidade de Kant, a autonomia, a dignidade humana e a derivação de direitos humanos. Além disso, tento avaliar as efetivas contribuições de Kant para a filosofia dos direitos humanos, explorando algumas questões sobre sua natureza e fundamentação.

**PALAVRAS-CHAVE:** Kant; dignidade; direitos humanos; humanidade; autonomia.

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## NOTES

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2 In the book *Direitos Humanos em Kant e Habermas*, I hold that Kant's system of rights is derived from a human right, namely the innate right to freedom that belongs originally to each one by virtue of humanity (TONETTO, 2010).

3 "Das angeborne Rechte ist nur ein einziges" (RL, AA 06: 237).

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