

# Human Dignity of “Offenders”: A Limitation on Substantive Criminal Law

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**Abstract** The paper argues for attaching a significant role to the dignity of *offenders* as a limitation on *the scope of substantive criminal law*. Three different aspects of human dignity are discussed. Human dignity is closely connected with the principle of culpability. Respecting the dignity of offenders requires that we assign criminal liability according to the actual attitudes of the offenders towards the interests protected by the offence. The doctrine of natural and probable consequence of complicity, which allows us to assign liability for *mens rea* offenses to a negligent offender, violates the dignity of the offender; it treats the incautious offender **as if** she had willfully expressed disrespect towards the protected interest. The human dignity core of privacy is invaded by criminalizing the private possession of child pornography. By extending the prohibition of the creation, sale and distribution of child pornography to the private possession of pornography, the State attempts to control the way the individual expresses an essential part of the self—his sexual fantasies—within himself. Dignity demands that our actions convey an attitude of respect towards human beings. The expressive meaning of disrespect is culture-dependent. The historical association with totalitarian regimes explains our reluctance to impose a legal duty to report past crime: the individual who is legally required to turn a suspect into the police is viewed as an “informant.”

**Keywords** Human dignity · Criminal law · Offenders

## Introduction

Human dignity is incorporated in international documents (UDHR 1948, art. 1; UN Charter, preamble; ICCPR 1966, art. 10; ICESCR 1966, preamble) and protected by the

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