

First Tanner lecture

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NOTE TO COMMENTATORS:

The lectures, as delivered, will be what is in the text, *not* the footnotes. The text may be polished a bit before April 21, but the sense won’t change. The footnotes are half bibliographic, half rubbish I couldn’t bear to delete, and half relevant material that there is no time to include in the lectures but that may or may not be included in the book version. Please feel free to develop commentary and criticism for the formal presentation at Berkeley as though the footnotes were not there.

**Tanner Lectures: DIGNITY, RANK, AND RIGHTS
Berkeley, April 2009**

**Lecture 1: Dignity and Rank¹
Jeremy Waldron**

0. My subject is...

My subject is human dignity. Dignity, we will see, 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. That’s what I am going to try and do in these lectures.

1. Morality or Law?

It is a topic that we can come to through law—analyzing the preambles of various declarations of human rights, for example, or in the rules prohibiting inhuman and degrading treatment—or it is something we can treat as, in the first instance, a moral idea.

¹ Much of the argument in this first lecture is based on my essay “Dignity and Rank,” *Archives Européennes de Sociologie*, 48 (2007), 201-37. But I have modified the positions taken in that essay in a number of ways.

On the second approach, which seems like a natural one to adopt, we begin with dignity as a moral idea, and then we look and see how adequately or how clumsily it has been represented in the work of the drafters of statutes or constitutions or human rights conventions or in the decisions that constitute our doctrines and our precedents. Before we get anywhere near the law, we look for the sense that moral philosophers have made of it—Immanuel Kant,² for example, or modern philosophers like Stephen Darwall of Michigan (in his book *The Second-Person Standpoint*)³ or James Griffin in his recent book *On Human Rights*.⁴

That’s a tempting approach. But moral philosophy is not our only philosophical resource for exploring an idea like dignity. What if we were to try the opposite approach? Dignity seems at home in law. Let’s begin by analyzing how it works in its native habitat, and see whether the jurisprudence of dignity can cast any light on its use in moral discourse. Joseph Raz said to me a few weeks ago that “dignity” is not a term that crops up much in ordinary moral conversation.⁵ Its presence is an artifact of philosophers’ trying to make sense of ordinary moral ideas (like value and respect). Like “utility,” it’s a constructive idea, with a foundational and explicative function. If it has been imported from law to perform this constructive function, then we had better turn first to jurisprudence to find out something about the distinctive *legal* ideas that the moral philosophers have appropriated.⁶

So for example: the moral philosophers tell us that dignity is a matter of status; but status is a legal conception and not a simple one. Dignity, we are told, was once tied up with rank: the dignity of a king

² Immanuel Kant, *Groundwork*, 4: 435.

³ Stephen Darwall, *The Second-Person Standpoint: Morality, Respect and Accountability* (Harvard University Press, 2006).

⁴ James Griffin, *On Human Rights* (Oxford University Press, 2008).

⁵ Joseph Raz’s point, that dignity is not a feature of ordinary moral discourse: we don’t complain to one another about affronts to dignity. Indeed, doing so, in those terms, would make one sound like fool or a prig. Notice also that Raz’s points at Balliol lunch were about its use in ordinary interpersonal morality (as opposed to political morality (which is not the same as law and not the same as moral philosophy).

⁶ A good start, albeit a moderately skeptical one, would be Christopher McCrudden’s fine essay, “Human Dignity in Human Rights Interpretation,” *European Journal of International Law* 19 (2008), 655-724..

was not the same as the dignity of bishop and neither of them was the same as the dignity of a professor. If our modern conception of human dignity retains any scintilla of its ancient and historical connection with rank—and I think it does: I think it expresses the idea of the high and equal rank of every human person—then we should look first at the bodies of law that relate status to rank (and to right and privilege) and see what if anything is retained of these ancient and historical conceptions when dignity is put to work in a new and egalitarian environment. Dignity is intimately connected with the idea of rights—as the ground of rights, and the content of certain rights, and perhaps even the form and structural character of rights. It would be a brave moral philosopher who would say that the best way to understand rights (or a concept connected with rights) is to begin with moral ideas and then see what the law does with those. Surely, it is better to begin (like Hohfeld, Hart and many others)⁷ with rights as a juridical idea and then look and see how that works in a normative environment (like morality) that is structured quite differently from the way in which a legal system is structured.⁸

And I think the same may be true of dignity. Even as the ground of rights—as when we are told in the preamble to the International Covenant on Civil and Political Rights that the rights contained in the covenant “derive from the inherent dignity of the human person”—even as the ground of rights, dignity need not be treated in the first instance as a moral idea. After all it is not just the surface-level rules that are legal in character (as though anything deeper must be “moral”). I am enough of a Dworkinian to believe that grounding doctrines can be legal too—legal principles, for example, or legal policies.⁹ Law contains, envelops and constitutes these ideas; it doesn’t just borrow them from morality.

⁷ Cites.

⁸ Even if we say in our model-theoretic conceptions that natural rights preceded legal rights in the order of coming-into-being (in Lockean social contract theory, for example), still we should not infer that this corresponds to the order of our understanding of rights, with natural rights being understood in a way that is independent of any legal understanding.

⁹ Cite to Dworkin, *Taking Rights Seriously*.

So there's the point I want to begin with. It is probably not a good idea to treat dignity as a moral conception in the first instance or assume that a philosophical explication of dignity must begin as moral philosophy. Equally we should not assume that a legal analysis of dignity is just a list of texts and precedents, in national and international law, in which the word "dignity" appears. There is such a thing as legal philosophy, and it is a jurisprudence of dignity, not a hornbook analysis that I will be pursuing in these lectures.

2. A variety of uses

There doesn't seem to be any canonical definition of "dignity" in the law. One esteemed jurist has observed that its intrinsic meaning seems to have been left to intuitive understanding."^{10 11}

If you glance quickly at the way in which "dignity" figures in the law, you will probably get the impression that its usage is seriously confused.¹² The indignant recording of such impressions is what passes for analytic philosophy in some circles, but thoughtfulness and patience actually pay off in this area, as they often do in responding to analytic critique.

The human rights charters tell us that dignity is inherent in the human person; they also command us to make heroic efforts to establish everyone's dignity. Is this an equivocation? Jeremy Bentham used to make fun of a similar duality in the use of "liberty": Defenders of natural rights would say that men are born free, but then complain in the

¹⁰ Cf. Oscar Schachter, "Human Dignity as a Normative Concept," *American Journal of International Law*, 77 (1983), 848, at 849: "We do not find an explicit definition of the expression "dignity of the human person" in international instruments or (as far as I know) in national law. Its intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors."

¹¹ And the Supreme Court of Canada said recently that dignity is "an abstract and subjective notion ... confusing and difficult to apply." --R. v Kapp 2008 SCC 41 at § 22. See also McCrudden, "Human Dignity in Human Rights Interpretation," __.

¹² This is the view of Stephen Pinker, who says of the concept of dignity that "it spawns outright contradictions at every turn. We read that slavery and degradation are morally wrong because they take someone's dignity away. But we also read that nothing you can do to a person, including enslaving or degrading him, can take his dignity away." Steven Pinker, *The Stupidity of Dignity*, *The New Republic* May 28, 2008, available at http://www.tnr.com/story_print.html?id=d8731cf4-e87b-4d88-b7e7-f5059cd0bfd

name of rights that so many of them were born into slavery.¹³ Here, the appearance of equivocation is easily dispelled. In a slave society, a person might be identified as a free man in a juridical sense—that is his legal status—even though he is found in conditions of slavery. (He may have been enslaved by mistake or kept erroneously in chains even after his emancipation.) So similarly one might say that every human person is free as a matter of status—the status accorded to him by his creator—even though it is the case that some humans are actually in chains and need to have their freedom represented as the content of a normative demand. The premise may be problematic for those who reject its implicit metaphysics, but the overall claim is not incoherent. And the same logic may work for “dignity.” On the one hand, the term may be used to convey something about the *rank* or *status* of human beings; on the other hand, it may be used concomitantly to convey the demand that that rank or status should actually be respected.

A more interesting duality of uses has to do with the distinction between dignity as the ground of rights and dignity as the content of rights. On the one hand, we are told that human rights “derive from the inherent dignity of the human person.”¹⁴ On the other hand, it is said that people have a right to be protected against “degrading treatment”

¹³ Defenders of natural rights would say that men are born free, Bentham observed, but then complain in the name of rights that so many of them were born into slavery. If challenged to justify their demands for liberty, they would cite human liberty as the ground of these demands. But liberty, which they were citing as an existent justification for rights, was also what they were demanding, and because they thought they had to demand it, they were acknowledging that men were not free. So what became of the alleged justification for their claim? “Men ought to be free because they are free, even though they are not”—was that the claim? Such reasoning, which Bentham called “absurd and miserable nonsense” (Bentham 1987, p. 50), seemed to veer between the incoherent and the tautological. And the dual usage of “dignity” appears to partake of this logic. The blurring of the distinction between content (“a right to dignity”) and justification (“rights based on dignity”) means at best that the claim of right is being put forward as self-justifying. As Bentham said (not specifically about dignity but in an analogous context): “It is from beginning to end so much flat assertion: it neither has anything to do with reason nor will endure the mention of it. It lays down as a fundamental and inviolable principle whatever is in dispute.” (Bentham, *Anarchical Fallacies*, in Jeremy Waldron (ed.) *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man* (London: Methuen, 1987) 46, at p. 74).

¹⁴ The International Covenant on Civil and Political Rights, Preamble. In this sense, “dignity” conveys “a formal, transcendental norm to legitimize human rights claims.” (Klaus Dicke, “The Founding Function of Human Dignity in the Universal Declaration of Human Rights,” in David Kretzmer and Eckart Klein (eds.) *The Concept of Human Dignity in Human Rights Discourse* (Martinus Nijhoff Publishers, 2002) 111, at 118.

and “outrages on personal dignity.”¹⁵ Dignity is what some of our rights are rights *to*; but dignity is also what grounds all of our rights. I have my doubts about the claim that rights derive from any single foundation, be it dignity, equality, autonomy, or (as it is now sometimes said) security. In any case, I want to leave this duality of ground and content in place. It is perfectly possible that human dignity could be the overall *telos* of rights in general, but also that certain particular rights could be oriented specifically to the explicit pursuit of that objective or to protecting it against some standard threats to dignity, while others were related to this goal in a more indirect sort of way.

I will actually argue against a reading of the dignity idea that makes it the goal or *telos* of human rights. I think it makes better sense to say that dignity is a normative status and that many human rights may be understood as incidents of that status. (The relation between a status and its incidents is not the same as the relation between a goal and the various subordinate principles that promote the goal.)

Still, if human dignity is regarded as a rank or status, there remains a duality between general norms establishing that status and particular norms like those that prohibit degradation.

I think the relation between these two sorts of norms is like the relation between the general status or dignity of a judge and the specific offense of contempt. Protection against contempt of court is not all there is to being a judge, but a ban on contempt might be thought indispensable to judicial dignity. And not just a ban on contempt. More affirmative provisions may also be important. The Constitution of Poland stipulates that “[j]udges shall be granted ... remuneration consistent with the dignity of their office....”¹⁶ And there may be other accoutrements too—gowns, wigs, modes of address. Still these do not exhaust the status of a judge either; her status has to do also with her role and with her powers and responsibilities.¹⁷ And similarly for human

¹⁵ Geneva Conventions, Common Article 3. Also Rome Statute of International Criminal Court, Article 8.

¹⁶ Constitution of Poland, Article 178(2). Refer to Bibliography.

¹⁷ Traditional dignities, like those of nobility also have this aspect. Nobles have to be able to maintain themselves or they can lose their dignity. See *Earl of Shrewsbury's Case* 12 Co. Rep. 106, 77 Eng. Rep. 1383 (1612): “[T]he

dignity. We can distinguish between the general status and particular rules that protect it. Some of these particular rules are affirmative, like the provision in the Universal Declaration of Human Rights which says that “[e]veryone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity....”¹⁸ And some are negative, like the ban on degrading treatment. Both kinds of protection are important. But they are not all there is to human dignity.

3. Humiliation and degradation

Maybe this is too ambitious. Perhaps we should take the various specific prohibitions on degradation just at face value and not necessarily assume that they are ancillary to the broader enterprise of upholding a general rank or status of human dignity.¹⁹ The prohibitions on “degrading treatment” in the human rights covenants²⁰—can’t we just say these are intended to protect people against a very specific evil of

cause of degradation of George Nevill, Duke of Bedford ... was done by force of an Act of Parliament, 16 June, 17 Ed. 4. which Act reciting the making of the said George Duke, doth express the cause of his degradation in these words: ‘And forasmuch as it is openly known, that the said George hath not, or by inheritance may have any livelihood to support the same name, estate, and dignity, or any name of estate; and oftentimes it is to be seen, that when any lord is called to high estate, and hath not convenient livelihood to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great extortion, imbracery and maintenance to be had, to the great trouble of all such countries where such estate shall happen to be: wherefore the King by advice of his Lords Spiritual and Temporal, and by the Commons in this present Parliament assembled, and by the authority of the same, ordaineth, establisheth, and enacteth, that from henceforth the same creation and making of the said duke, and all the names of dignity given to the said George, or to John Nevill, his father, be from henceforth void and of none effect, &c.’” But Blackstone disputes this: “A peer cannot lose his nobility, but by death or attainder; though there was an Instance in the reign of Edward the fourth, of the degradation of George Nevile duke of Bedford by act of parliament, on account of his poverty, which rendered him unable to support his dignity. But this is a singular instance.” (Blackstone, *Commentaries on the Law of England*. I, Ch. 12.) But still their dignity is something more than this specific requirement.

¹⁸ UDHR in Article 23 (3). Also Locke (*Second Treatise*, § 15): “[F]or as much as we are not by ourselves sufficient to furnish ourselves with competent store of things needful for such a life as our Nature doth desire, a life fit for the dignity of man, therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others.”

¹⁹ I am grateful to Carol Sanger for urging this point. See also Daniel Statman, “Humiliation, Dignity, and Self-Respect” in Kretzmer and Klein, *The Concept of Human Dignity*, p. 209: “Tying the concept of humiliation to that of human dignity makes the former too philosophical ... and too detached from psychological research and theory.”

²⁰ The Universal Declaration of Human Rights of 1948 (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) both provide that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.” (ECHR, Art. 3. omits “cruel”).

gross humiliation, particularly in situations like detention, incarceration, hospitalization, and military captivity—situations of more or less comprehensive vulnerability with total control by others of a person's living situation? Can't we just say that that's all that these provisions are for?²¹ Why do we have to work up a general account of dignity? All we require is a retail theory, which may be no more extensive than is needed to make sense of these particular prohibitions. We do not need a grand wholesale account of dignity.

But that still leaves the question of what the law is doing when it also talks in more general (wholesale) terms about the dignity of the human person. And it does. Since we have to give an account of that *anyway*, it is certainly worth striving to produce a theory that unifies what we say about dignity in general and what we say about these specific (or retail) dignitarian requirements.

4. The need for a foundation?

Human rights law suggests that dignity is the ground of rights or (in the words of the International Covenant of Civil and Political Rights) that rights “derive from the inherent dignity of the human person.” Does this assume a moral ideal of dignity that serves as an extra-legal grounding for human rights?

Not necessarily. The Covenant gives us the *legal ground* of the rights set out in the body of its text, but it's a further question whether this is supposed to be the legal representation of a moral conception. Maybe every legal idea has a moral underpinning of some sort; but it would be a mistake to think that the moral underpinning has to have the same shape or content as the legal ground.

²¹ I have even heard it said that the prohibition on degradation is simply intended to work with the prohibitions on cruel and inhuman treatment to define progressively more serious layers of unacceptable official treatment of individuals, and that's all there is to it. (Human rights lawyers in Europe say this about the Article 3 provision.) I don't have much time for that view myself. It seems to me that “degrading treatment” marks out a qualitatively different prohibition than “inhuman treatment.” I have pursued this in “Cruel, Inhuman, and Degrading Treatment: The Words Themselves,” available at <http://ssrn.com/abstract=1278604> But as I say, I can imagine someone insisting that we can understand why the law prohibits degradation without having to predicate that on any more general theory of dignity.

Consider as an analogy Hannah Arendt's account of the ancient Athenian commitment to political equality among free-born male citizens. The Athenians adopted a legal principle of treating one another as equals, not because of any moral conviction about real equality between them, but because such a principle made possible a form of political community they could not otherwise have. For their engagement in the joint enterprise of politics, the community created for each of them an artificial *persona*—the citizen—that could take its place on the public stage, presenting them as equals for political purposes. They did this using artificial techniques like the equal right to speak in the assembly, the equality of votes, the equal liability to be drafted into a jury, and so on.²²

Human dignity might be something similar: there might be a point to its legal recognition, but that point need not be an underlying moral dignity.

That's a possibility. Of course many philosophers do believe in an underlying moral dignity. In his recent book *On Human Rights*, James Griffin has defended a moral account of dignity, which he thinks underlies human rights. He adopts a conception of dignity from a fifteenth century writer, Pico della Mirandola—though he drops most of the very substantial theology that Pico associates with dignity—and he comes to the conclusion that the key to dignity is the human capacity “to ... be that which he wills” (which Griffin re-labels normative agency).²³ “The sort of dignity relevant to human rights,” Griffin says, “is that of a highly prized status: that we are normative agents.”²⁴ He says that our

²² Hannah Arendt, *On Revolution* (Penguin Books, 1977), p. 278: “[T]his equality was not natural but political, it was nothing they had been born with; it was the equality of those who had committed themselves to, and now were engaged in, a joint enterprise.” By nature they might be utterly different from one another in background, abilities and character; but by political convention they held ourselves to be one another's equals. (See also the reflections on the wording of the Declaration of Independence in Hannah Arendt, “Truth and Politics,” in *Between Past and Future: Eight Exercises in Political Thought* (Penguin Books, 1977) pp. 246-7.)

²³ James Griffin, *On Human Rights*, p. 31 (drawing on Giovanni Pico della Mirandola, *Oration on the Dignity of Man* (1486), available at <http://cscs.umich.edu/~crshalizi/Mirandola/>).

²⁴ Griffin, *On Human Rights*, p. 152.

human rights are derived from our dignity, understood in this way.²⁵ Sometimes the way he says this indicates that normative agency is the *telos* of our rights: human rights are a means to normative agency as an end;²⁶ we have a right to welfare, for example, because you can't exercise normative agency when you are hungry.²⁷ Other times what he says conveys the point that protecting our rights *vindicates* our normative agency (e.g. by respecting our choices), which is a rather different idea.²⁸

The second of these is more closely connected to dignity as status. In general a status is not a goal or a *telos*: a status *comprises* a given set of rights rather than defining them as instrumentalities. I am attracted, as I have said, to the status account; and much of the rest of these lectures is devoted to it. I mention the uncertainty in Griffin's account, just so that we do not have too simple a picture of dignity as a foundation. A status account will present dignity (however defined) as foundation-*ish* (or, as we might say, *foundational*) but it may not be a foundation in the simple way that (for example) the major value-premises of a consequentialist argument are a foundation of everything else in the consequentialist's moral theory.

5. Dignity and bearing

We place a high value on human dignity, but height can be understood in different ways. We might just mean that dignity counts for more than other values.

Or height might mean something like rank.²⁹ Consider again the idea of status. Some legal statuses are low and servile, like slavery and

²⁵ Griffin, *On Human Rights*, p. 192.

²⁶ I mean they are a means to an end *in the case of each agent*. The structure of the suggested account is that normative agency is utterly and equally important for each person. It's an individualized teleological account, quite different from saying (e.g.) that rights are a means to aggregate utility or political stability or whatever.

²⁷ Griffin, *On Human Rights*, p. 179-80

²⁸ Griffin, *On Human Rights*, p. ___ .

²⁹ Consider the use of the phrase "the height and dignity of the Pope" in a case entitled *Of Oaths Before An Ecclesiastical Judge Ex Officio* 77 Eng. Rep. 1308 , 12, Co. Rep. 26.

villeinage (or, in the modern world, felony or bankruptcy). Others are quite “high,” like royalty or nobility. “Highness,” here, is not like moral *weight* (as in the moral weight of a particularly prolonged or intense episode of pleasure for the purposes of Jeremy Bentham’s felicific calculus). It is more a matter of *rank*, and it conveys things like authority, and deference.

The high character of dignity also has physical connotations—a sort of “moral orthopedics of human dignity”—what some Marxists, following Ernst Bloch, used to call “walking upright.”³⁰ “Dignity” has resonances of something like noble bearing. In one of the meanings the Oxford Dictionary ascribes to the term, it connotes “befitting elevation of aspect, manner, or style; ... stateliness, gravity.”³¹ When we hear the claim that someone has dignity, what comes to mind are ideas such as: having a certain sort of presence; uprightness of bearing; self-possession and self-control; self-presentation as someone to be reckoned with; not being abject, pitiable, distressed or overly submissive in circumstances of adversity.³²

These connotations resonate with what I called earlier the retail use of “dignity” in humanitarian law and human rights covenants. The ban on degrading treatment can be read as requiring that people must be

³⁰ See Jan Robert Bloch & Caspers Rubin, “How Can We Understand the Bends in the Upright Gait?” *New German Critique*, 45 (1988) 9, at pp. 9-10. A wonderful article.

³¹ OED “dignity” meaning 4.

³² See also the account in Aurel Kolnai, “Dignity,” *Philosophy*, 51 (1976), 251 at pp. 253-4: “Here, then, are the features typifying Dignity that most vividly occur to me. First—the qualities of composure, calmness, restraint, reserve, and emotions or passions subdued and securely controlled without being negated or dissolved (verhaltene Leidenschaft in German). Secondly—the qualities of distinctness, delimitation, and distance; of something that conveys the idea of being intangible, invulnerable, inaccessible to destructive or corruptive or subversive interference. Dignity is thus comparable, metaphorically, to something like ‘tempered steel’. Thirdly, in consonance therewith, Dignity also tends to connote the features of self-contained serenity, of a certain inward and toned-down but yet translucent and perceptible power of self-assertion: the dignified type of character is chary of emphatic activity rather than sullenly passive, perhaps impassive rather than impassible, patient rather than anxiously defensive, and devoid but not incapable of aggressiveness.”

permitted to present themselves (even in detention, even in the power of the police) with a modicum of self-control and self-possession.³³

I think it is a good thing in a philosophic account of dignity, not just to unite the retail and the wholesale uses of “dignity” in the law, but to do so in a way that makes illuminating sense of these intuitions about moral orthopedics. A good account of human dignity will explain it as a very general status. But it will also generate an account of it as noble bearing and an account of the importance of the ban on humiliating and degrading treatment. That is what I am trying to do with an account of dignity as a high-ranking status, 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.

6. Stipulative uses of “dignity”—Dworkin³⁴ —*omit*

³³ Refer to Waldron, in “Cruel, Inhuman, and Degrading Treatment: The Words Themselves” (available at <http://ssrn.com/abstract=1278604>) at pp. __, for the ways in which the bestialization or infantilization of detainees is at odds with this (in the “war on terror”).

³⁴ Some philosophers’ definitions of “dignity,” seem quite unrelated to these themes of nobility, bearing, and non-degradation. Consider, for example, Ronald Dworkin’s use of “dignity” in his most recent books, *Is Democracy Possible Here?* and *Justice for Hedgehogs*. At the beginning of *Is Democracy Possible Here*, Dworkin states two principles which he says ‘identify ... abstract value in the human situation’ (p. 9). One has to do with the objective value of a human life. (This is connected with the idea of the sacredness of human life, to which Dworkin devotes some enormously insightful discussion in Dworkin, *Life’s Dominion*, pp. 68-101.) The other states that each person has a special responsibility for how his or her own life goes. Dworkin says: “These two principles ... together define the basis and conditions of human dignity, and I shall therefore refer to them as principles or dimensions of dignity” (p. 10). He says, quite rightly, that these principles reflect values that are deeply embedded in Western political theory. They have not always been labeled “principles of dignity,” but of course there is no objection to calling them that, if this is what Dworkin wants to do. However, he nowhere suggests that the “dignity” label adds any illumination to the principles, and his elaboration of them is conducted in a way that does not rely on any of specific connotations we have noticed. (It is interesting that in his early work on rights, Dworkin distinguished his own position, which he articulated in terms of equality, from positions that he called Kantian, which were associated with dignity: see Dworkin, *Taking Rights Seriously*, pp. 198-9. (For a discussion see Parent ____, pp. 70-1.) Of course we might just *make* the term mean what Dworkin says it means, by linguistic stipulation. But there is no particular reason why we should assign “dignity” to this task. Other words would do as well. We could use the word “glory,” and talk about the inherent glory of the human being, respect for glory, humans having an inalienable right to glory, and so on. We’d acknowledge that of course “glory” has some other connotations, which may or may not resonate with its use here, but we’d say we are giving it new work to do, where it will stand for the these two Dworkinian principles. I hope I will not be misunderstood as making fun of Dworkin’s stipulation when I remind you that the word “glory” has a history of being used in his way. (Cf. Lewis Carroll, *Through the Looking Glass* (1899), Ch. 6.) It can be put to work in political philosophy just as Humpty Dumpty puts it to work in logic (as

7. Value: Kant

I might as well say now that the account I am going to give is at odds with one of the best-known philosophical theories: the definition of dignity in Immanuel Kant's *Groundwork to the Metaphysics of Morals*, which says (in the translation I use):

In the kingdom of ends everything has either a price or a dignity. What has a price can be replaced by something else as its equivalent; what, on the other hand, is raised above all price and therefore admits of no equivalent has a dignity. Now, morality is the condition under which alone a rational being can be an end in itself.... Hence morality, and humanity insofar as it is capable of morality, is that which alone has dignity.³⁵

The first thing to say about this definition is that “dignity” here is the English translator’s term, not Kant’s. Kant uses the German term “*Würde*.” There’s a well-established practice of translating *Würde* as “dignity.”³⁶ But the two words have slightly different connotations.³⁷ “*Würde*” is certainly much closer to “worth” than our term “dignity” is.

The second thing to say is that although “value beyond price” and “the intrinsic non-negotiable non-fungible worth that inheres in every human being in virtue of his or her moral capacity” are wonderful and important ideas, there is no particular reason to use our term “dignity” to convey them. “*Würde*,” in sense of the passage in Kant’s *Groundwork*, expresses a type of *value* or a fact about value. “Dignity,” by contrast, conveys the idea of a type of *status* that a person may have. The

a term for a certain sort of argument). But we would have to pay it extra and it may turn out that “dignity” comes cheaper for this task, being more manageable, less temperamental, and so on

³⁵ Kant, *Groundwork*, 4: 435. Kant goes on to say that the moral will is “infinitely above all price.” He says it cannot be brought into comparison or competition with any other value at all “without, as it were, assaulting its holiness.” Cite. Notice also that James Griffin is wary of associating his view with Kantian dignity; he says that dignity in the Kantian sense is supposed to be characteristic of all morality, not just human rights (op. cit., p. 201)

³⁶ It’s a general practice, not just in translations of Kant’s work. I was wrong about this in “Dignity and Rank,” pp. 212-3.

³⁷ For a suggestive discussion of some differences, see Kolnai, op. cit., at pp. 251-2. See also the comment in the *Dignity: Ethics and Law—Bibliography* (Copenhagen: Centre for Ethics and Law, 1999), p. 9: “The Scandinavian and German nouns *vædighed* and *Würde* are derived from the Germanic **werpa-* (werd, wert) which means that these languages point to worth and value more than to dignity.”

distinction may seem a fine one, particularly if we acknowledge that in moral theory a person's status can derive from an estimation of that person's fundamental worth.³⁸ A person may have dignity (in the sense that interests us) *because* he or she has worth (or “*Würde*” in Kant's sense): but this is genuine derivation, not synonymy. We can distinguish the ideas also in terms of appropriate responses to value and status, respectively.³⁹ The thing to do with something of value is promote it or protect it, perhaps maximize things of that kind, at any rate to treasure it.⁴⁰ The thing to do with a ranking status is to respect and defer to the person who bears it.

Now Kant does also say that the basis of human worth commands respect. But this is not exactly respect for persons.⁴¹ What commands respect is the capacity for morality; and I agree with Michael Rosen that

³⁸ McCrudden, “Human Dignity,” p. 679, follows Gerald Neuman, “Human Dignity in United States Constitutional Law,” in D. Simon and M. Weiss (eds), *Zur Autonomie des Individuums: Liber Amicorum Spiros Simitis* (2000), at 249, 249-50, in identifying the core meaning of “human dignity” (if it has a core meaning) with the intrinsic worth of the individual.

³⁹ Kolnai's discussion of this is very fine: see *ibid.*, pp. 252-4.

⁴⁰ For the claim that it is not always appropriate to maximize value; that the appropriate responses to a certain type of value is to treasure it, not necessarily to see that as much of it as possible comes into existence, see Ronald Dworkin's discussion of secular notion of “sacredness” in *Life's Dominion*. Does he connect this with dignity in *Justice for Hedgehogs*? **{check}**

⁴¹ It is not entirely clear that Kantian respect, important though it is in his moral philosophy, is really the right sort of shape for our purposes. Kant's awe in the famous passage from the *Second Critique* is more like *amazement* and “admiration” that there should be this moral capacity. How, exactly, is my amazement at a person's having the capacity for moral action—a sort of moral aesthetic—supposed to motivate a sense of constraint on treating them in certain ways. Why exactly does the awe-inspiring fact—that even the most hardened sinner possesses a residual capacity to act morally—mean that he mustn't be shot or tortured? How do we get from the one position to the other?

In the *Critique of Practical Reason*, Kant presents respect as a feeling of awe that a person experiences when he notices how pure practical reason strikes down his inclinations and his self-conceit. (Immanuel Kant, *Critique of Practical Reason*, Part I, Ch. III, in Immanuel Kant, *Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996), pp. 199 ff. (V: 73 ff. of the Prussian Academy Edition of Kant's *Works*). It is something that takes place in the internal economy of the exercise of moral capacity. It's a response that I have to my own sense of duty; it's not independently a way of *generating* duties. Kant himself seems to recognize this because, as he puts it, “the concept of duty cannot be derived from respect”—*ibid.*, p. 172 (V: 38) --since respect for pure practical reason just “is morality ... subjectively considered as an incentive” (*ibid.*, p. 201 (V: 76)). Kantian respect is not our response to something that matters, but rather our response *to* our response to something that matters. Kant used the term ‘respect’ very carefully. We tend to use it quite loosely, and we may be led to see in his account not what it strictly implies but what we need.

this, in the first instance, is a sort of Platonism;⁴² it involves respecting something within a person, not a person him- or herself. Our respect for the workings of the moral law within ourselves is subjectively a sort of quivering awe at the way the moral law can strike down our inclinations.⁴³ Rosen argues that it is a quasi-aesthetic ideal, and I'm inclined to agree with him.

I am sure there some in the audience who will regard my turning my back on the conception of dignity in the *Groundwork* as a *reductio ad absurdum* of my whole enterprise. "If not Kant, then who?"—they will ask. But Kant's use of dignity (or "*Würde*") is complicated. He does also use the term in ways that line up much more closely to the traditional connotations of nobility that we've been talking about. In his political philosophy, Kant talks of "the distribution of dignities"; he describes nobility as a dignity which "makes its possessors members of a higher estate even without any special services on their part"; and he says that "no human being can be without any dignity, since he at least has the dignity of a citizen."⁴⁴ These sayings associate dignity with rank in more or less exactly the way that I want to associate them.

Additionally, *The Metaphysics of Morals* contains a long, priggish passage "On Servility," where Kant talks of our "duty with reference to the dignity of humanity within us":

Be no man's lackey.—Do not let others tread with impunity on your rights.—Contract no debt for which you cannot give full security.—Do not accept favors you could do without. ... Complaining and whining, even crying out in bodily pain, is unworthy of you, especially if you are aware of having deserved it....—*Kneeling down or prostrating oneself on the ground, even to show your veneration for heavenly objects, is contrary to the*

⁴² See Michel Rosen, "The Shibboleth of All Empty-Headed Moralists": The Place of Dignity in Ethics and Politics," (2007 Boston University Benedict Lectures), Lecture 3.

⁴³ In the *Critique of Practical Reason* (V: 74), Kant says: "If something represented as a determining ground of our will humiliates us in our self-consciousness, it awakens respect for itself insofar as it is a positive and a determining ground. Therefore the moral law is even subjectively a ground of respect"

⁴⁴ *The Metaphysics of Morals* 6: 328-30.

dignity of humanity. . . . Bowing and scraping before a human being seems in any case unworthy of a human being.”⁴⁵

This Polonius-like account of dignified bearing sounds like the sort of thing I am pursuing. But the problem is to connect back to what dignity is said in the *Groundwork* to be: namely, value beyond price. That’s what I have trouble with. There is no doubt that Kant has some such connection in mind. The “absolute inner worth” of our moral personality begins as a basis of self-esteem,⁴⁶ but it is also a sort of asset by which a person “exacts respect for himself from all other rational beings in the world” and measures himself “on a footing of equality with them.”⁴⁷ Stephen Darwall makes much of this passage in his recent book.⁴⁸ He believes that there is an important conception of dignity to be found in Kant’s work, which has much more to do with the way in which we elicit respect for ourselves from others by making what he calls “second-person” demands on them, than with any notion of the objective preciousness of our moral capacity.⁴⁹ Darwall, though, is reluctant to give up on the *Groundwork* definition. He pays lip-service to it. He says that the “moral requirements that interest him “structure and give expression to the distinctive value that persons equally have: dignity, a ‘worth that has no price.’”⁵⁰ But that last expression is a wheel that turns nothing in Darwall’s account. Everything has to do with the generation of respect through second-person demands. “Worth beyond price” is just decoration.

⁴⁵ *The Metaphysics of Morals* 6: 435

⁴⁶ “[F]rom our capacity for internal lawgiving and from the (natural) human being’s feeling himself compelled to revere the (moral) human being within his own person, at the same time there comes exaltation of the highest self-esteem, the feeling of his inner worth, in terms of which he is above any price and possesses an inalienable dignity, which instills in him respect for himself.” Kant, MM, 6: 435-6.

⁴⁷ *Ibid.*, 6: 435-6.

⁴⁸ Stephen Darwall, *The Second-Person Standpoint: Morality, Respect and Accountability* (Harvard University Press, 2006), Ch. 6

⁴⁹ This is not the place to consider the criticisms of Darwall’s broader position by Jay Wallace etc.

⁵⁰ Darwall, *The Second-Person Standpoint*, p. 119.

A more promising approach is indicated in a recent paper by Darwall's colleague at Michigan, Elizabeth Anderson.⁵¹ Anderson has been exploring the notion of "commanding value," which if it works may bridge the gap between dignity as value-beyond-price and dignity as rank or authority. She's interested in the way Kant appropriated and transformed ideas about honor: a man of honor treats his independence and self-esteem as something above price; he would not trade it for anything in the world, certainly not for the sake of material interest. This bridges exactly the gap that I'm worrying about. And Kant's transformation of it is precisely a universalization of the ethic of honor.⁵² If Professor Anderson is right about this, then I should rethink my claim that the *Groundwork* definition has little to offer the modern jurisprudence of dignity.

I have no doubt about the importance of the ideas that Kant associates with "dignity" in the *Groundwork* definition: fundamental worth or value beyond price, the insistence that human persons are not to be traded off against each other. But, taken on its own, it has had a deplorable influence on philosophical discussions of dignity and it has led many lawyers, many of whom are slovenly anyway in these matters, lazily to assume that "dignity" in the law must convey this specific Kantian resonance.⁵³ Kant's later work does indeed accord with the idea of dignity as a ranking status. But not his fundamental equation in the *Groundwork* of "Würde" with value beyond price," at least not without the elaboration that Elizabeth Anderson has offered.

I am going to say more in a moment about conceptions that equate human dignity with the sacred worth or value of human life. Before I do,

⁵¹ See Elizabeth Anderson, "Emotions in Kant's later Moral Philosophy: Honor and the Phenomenology of Moral Value," unpublished draft.

⁵² Anderson, "Emotions in Kant's Later Moral Philosophy," p. 21: "The ethic of honor reserves respect, the status of being a bearer of commanding value ... exclusively to people of superior social rank. [But] Kant's ethic universalizes respectful standing to all rational agents."

⁵³ See, for example Stephen J. Heyman, *Free Speech and Human Dignity* (New Haven; Yale University Press, 2008), p. 39, simply defining dignity as "near absolute worth." See also Schachter, "Human Dignity as a Normative Concept," 849 equating dignity with "the Kantian injunction to treat every human being as an end, not as a means and G.P. Fletcher, "Human Dignity as a Constitutional Value," 22 *U. W. Ontario L. Rev.* 171 (1984).

let me just cite one example of the legal use of a Kantian conception of dignity as a simple conception of human worth precluding trade-offs.⁵⁴ In a well-known case, the Constitutional Court of Germany considered a statute passed in the wake of the 9/11 terrorist attacks, permitting the *Luftwaffe* to shoot down airliners that had been taken over by terrorists. The German Constitutional Court held that was not compatible with Article One of the Basic Law, which says “[h]uman dignity is inviolable.” It is “absolutely inconceivable,” said the Court, under the Article One guarantee of dignity to intentionally kill ... the crew and the passengers of a hijacked plane,” even when they are in a situation that is hopeless for them,⁵⁵ that is, even when they are “doomed anyway.” “[H]uman dignity enjoy[s] the same constitutional protection regardless of the duration of the physical existence of the individual human being.” It’s an admirable and brave decision, and it may be right. But it takes “dignity” in a direction that leaves behind many of its familiar connotations.

8. Catholic teaching on human dignity

There are “absolute worth” accounts of dignity and there are “ranking status” accounts. I favor the second, but right now I am trying to do justice to the first, at least in the currency of the scarce time available for this lecture. So here’s another well-known conception on the “absolute worth” side of things.

⁵⁴ For the Kantian provenance of the dignity provision in the German Basic Law, see Fletcher, “Human Dignity as a Constitutional Value,” at 178, and the sources cited therein. Fletcher is convinced that the modern constitutional notion of dignity is entirely Kantian: see *ibid.*, 174. See also Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights,” *European Journal of International Law*, 19 (2008) 655, at 665.

⁵⁵ Bundesverfassungsgericht, Feb. 15, 2006, 115 BVerfGE 118, available at http://www.bundesverfassungsgericht.de/en/decisions/rs20060215_1bvr035705en.html. “[T]he assessment that the persons who are on board a plane that is intended to be used against other people’s lives ... are doomed anyway cannot remove its nature of an infringement of their right to dignity from the killing of innocent people in a situation that is desperate for them which an operation performed pursuant to this provisions as a general rule involves. Human life and human dignity enjoy the same constitutional protection regardless of the duration of the physical existence of the individual human being ... Whoever denies this or calls this into question denies those who, such as the victims of a hijacking, are in a desperate situation that offers no alternative to them, precisely the respect which is due to them for the sake of their human dignity.”

Roman Catholic social teaching about the absolute worth of each human life (starting from conception) about the sanctity of life, and the absolute character of the prohibition on murder, abortion, euthanasia, and scientific exploitation of embryos is sometimes expressed using the term “dignity.”⁵⁶ We are told of “the almost divine dignity of every human being.”⁵⁷ We are told that “human beings have a special type of *dignity* which is the basis for ... the obligation all of us have not to kill them”?⁵⁸ This theme is particularly familiar from Catholic doctrine concerning abortion, which cites “the dignity of the unborn child” as the basis for an absolute prohibition on abortion,⁵⁹ and holds also that “the use of human embryos or fetuses as an object of experimentation constitutes a crime against their dignity as human beings.”⁶⁰ What do we make of this?

Well, the view that I take is similar to my view of Kant’s definition of “*Würde*” in the *Groundwork*. I don’t understand why “dignity”—with its own distinctive connotations—is a good term to use to do work that might be done as well by “worth” or “sacred worth”.

I am aware that nothing I say here will persuade Catholics or Kantians to adopt different terminology. And the Catholic account does not altogether ignore alternative approaches to dignity. The sort of conception I am developing in these lectures presents dignity as a rank or status that a person may occupy in society, display in his bearing, and exhibit in his speech and actions. But what about the dignity of those

⁵⁶ See Pope John Paul II’s encyclical, *Evangelium Vitae* (March 25, 1995), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html

⁵⁷ *Ibid.*, § 25. See also *ibid.*, §§ 34 and 38). “Why is life a good? ... The life which God gives man is quite different from the life of all other living creatures, inasmuch as man, although formed from the dust of the earth ... is a manifestation of God in the world, a sign of his presence, a trace of his glory. ... Man has been given a sublime dignity, based on the intimate bond which unites him to his Creator: in man there shines forth a reflection of God himself. ... The dignity of this life is linked not only to its beginning, to the fact that it comes from God, but also to its final end, to its destiny of fellowship with God in knowledge and love of him.”

⁵⁸ Patrick Lee and Robert George, “The Nature and Basis of Human Dignity,” *Ratio Juris*, 21 (2008), 173.

⁵⁹ EV § 44.

⁶⁰ EV §63. For discussion, see also *Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics* (Washington D.C., 2008), available at http://www.bioethics.gov/reports/human_dignity/index.html

who cannot control their self-presentation or cannot speak up for themselves? John Paul II's encyclical, *Evangelium Vitae* condemns "the mentality which equates personal dignity with a capacity for verbal and explicit ... communication."

[O]n the basis of these presuppositions there is no place in the world for anyone who, like the unborn or the dying, is a weak element in the social structure, or for anyone who appears completely at the mercy of others and radically dependent on them, and can only communicate through the silent language of a profound sharing of affection.⁶¹

The critique is a little overstated. As we saw earlier, dignitary provisions are particularly important for those who are "completely at the mercy of others."⁶² But I think the former pope was referring to those who are incapable of speaking for themselves or controlling their self-presentation even if they were permitted to. Certainly we do have to give an account of how human dignity applies to infants and to the profoundly disabled. My own view is that this worry should not necessarily shift us away from a conception that involves the active exercise of a legally-defined status. But it does require attention. I believe it can be addressed by the sort of structure that John Locke introduces into his theory, when he said of the rank of equality that applies to all humans in virtue of their rationality: "Children, I confess, are not born *in* this full state of equality, though they are born *to* it."⁶³ Like heirs to an aristocratic title, their status looks to a rank that they *will* occupy (or are destined to occupy); but it doesn't require us to invent a different sort of dignity altogether for them in the meantime.

Nothing I have said is intended to refute or cast doubt on the Catholic position regarding the sanctity of life.⁶⁴ (any more than my

⁶¹ *Evangelium Vitae*, § 19.

⁶² *Supra*, section 3 (beginning).

⁶³ Locke, *Two Treatises*, II, § 55. [Value derived from dignity – like the value of a infant prince of the royal blood.]

⁶⁴ It would be wrong to give the impression that the Catholic use of "dignity" is confined to issues like abortion and stem-cell research. It is also used as the basis of an extensive and far-reaching doctrine of human rights, and in that

critique of Kant casts doubt on his view about trade-offs.) We are arguing here about “what” dignity means, not about the permissibility of abortion.

And I certainly don’t think that any of this shows that dignity (whether in the Catholics’ hands or in general) is a stupid or useless concept. Stephen Pinker and Ruth Macklin⁶⁵ say it does. But they say this just because they are annoyed that Catholics and other “theocons” oppose substantive positions (e.g., about stem-cell experimentation) that they support and because they fear that the word “dignity” might intensify that opposition. Pinker and Macklin are not really interested in the analysis of dignity. They oppose the Catholic use of the word because they are politically annoyed by the positions it conveys.⁶⁶ They have little interest in what “dignity” might mean if it were not associated with such opposition to abortion or stem-cell research or whatever.⁶⁷

regard it covers a lot of the ground that any theory of dignity has to cover: “Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or wilful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons; all these things and others like them are infamies indeed. They poison human society, and they do more harm to those who practise them than to those who suffer from the injury. Moreover, they are a supreme dishonour to the Creator.”-- Second Vatican Council Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 27, quoted with forceful approval in EV, § 3.

⁶⁵ Stephen Pinker says that “‘dignity’ is a squishy, subjective notion, hardly up to the heavyweight moral demands assigned to it.” He adds: “The sickness in theocon bioethics [involves] imposing a Catholic agenda on a secular democracy and using “dignity” to condemn anything that gives someone the creeps.”—Steven Pinker, *The Stupidity of Dignity*, *The New Republic* May 28, 2008, available at http://www.tnr.com/story_print.html?id=d8731cf4-e87b-4d88-b7e7-f5059cd0bfbf See also Ruth Macklin, “Editorial: Dignity is a useless concept,” *British Medical Journal* 327 (2003) 1419, at 1420 (available at <http://www.bmj.com/cgi/content/full/327/7429/1419>).

⁶⁶ The tone of Pinker’s annoyance is given by questions like this: “How did the United States, the world’s scientific powerhouse, reach a point at which it grapples with the ethical challenges of twenty-first-century biomedicine using Bible stories, Catholic doctrine, and woolly rabbinical allegory?”

⁶⁷ This is perhaps less true of Pinker than it is of Macklin. Macklin (op. cit.) simply says that “autonomy” can do anything useful that “dignity” is supposed to do. Pinker (op. cit.) says: “The perception of dignity ... elicits a response in the perceiver. Just as the smell of baking bread triggers a desire to eat it, and the sight of a baby’s face triggers a desire to protect it, the appearance of dignity triggers a desire to esteem and respect the dignified person. This explains why dignity is morally significant: We should not ignore a phenomenon that causes one person to respect the rights and interests of another. But it also explains why dignity is relative, fungible, and often harmful. Dignity is skin-deep: it’s the sizzle, not the steak; the cover, not the book. What ultimately matters is respect for the person, not the perceptual signals that typically trigger it. Indeed, the gap between perception and

9. Rank

My view of dignity is that we should contrive to keep faith somehow with its ancient connection to noble rank or high office.

In Roman usage, *dignitas* embodied the idea of the honor, the privileges and the deference due to rank or office,⁶⁸ perhaps also reflecting one's distinction in holding that rank or office.⁶⁹ Of course Latin "*dignitas*" is not necessarily English "dignity" any more than Kantian "*Würde*" is. But the Oxford English Dictionary gives as its second meaning for the term "Honourable or high estate, position, or estimation; honour; degree of estimation, rank" and as its third meaning "An honourable office, rank, or title; a high official or titular position."⁷⁰

So people would talk about the dignity of the monarch. A 1690 indictment for high treason against a Jacobite spoke of an "intent to depose the King and Queen, and deprive them of their Royal dignity, and restore the late King James to the government of this kingdom."⁷¹ Blackstone tells us that "the ancient jewels of the Crown are held to be ... necessary to maintain the state, and support the dignity, of the sovereign for the time being."⁷² And the 1399 statute that took the crown from off the head of Richard II stated that he "renounced and cessed of

reality makes us vulnerable to dignity illusions. We may be impressed by signs of dignity without underlying merit, as in the tin-pot dictator, and fail to recognize merit in a person who has been stripped of the signs of dignity, such as a pauper or refugee."

⁶⁸ See Teresa Iglesias, "Bedrock Truths and the Dignity of the Individual," *Logos: A Journal of Catholic Thought and Culture*, 4 (2001), 111, at pp. 120-1: "The idea of *dignitas* was central to Roman political and social life and closely related to the meaning of honor. Political offices, and as a consequence the persons holding them, like that of a senator, or the emperor, had *dignitas*. ... The office or rank related to *dignitas* carried with it the obligation to fulfil the duties proper to the rank. Thus 'decorum,' understood as appropriate dignified behavior, was expected of the person holding the office. ... The Roman meaning of *dignitas* played a role in determining distinctions of people in front of the law. There was no equal punishment for everyone for equal offenses in Roman law; everyone was not equal in front of the law. Punishment was conditioned, measured, and determined according to one's *dignitas*."

⁶⁹ So the *dignitas* of a Caesar might be different from that of other generals or that of other holders of the office of *pontifex maximus*.

⁷⁰ And Samuel Johnson defined dignity as "a rank of elevation" (Samuel Johnson, *A Dictionary of the English Language* (Philadelphia 1819, cited by Michael Meyer in "Dignity as a (Modern) Virtue," in Kretzmer and Klein (eds.) *The Concept of Human Dignity*, 195, at p. 196.

⁷¹ *Patrick Harding's Case*, 86 Eng. Rep. 461, 2 Ventris, 315. And a felony would be said to be committed "against the peace of our ... Lord the King, his crown and dignity."

⁷² Comm. Bk. II, Ch. 28

the State of Kyng, and of Lordeshipp and of all the Dignite and Wirsshipp that longed therto.”⁷³

It is not just monarchy. Kant talks about the various dignities of the nobility.⁷⁴ In England, nobles had dignity, in the order of duke, marquis, earl, viscount, baron.⁷⁵ Degrees have dignity according to law; certainly a doctorate does.⁷⁶ Clergymen have dignity, or some do;⁷⁷ and a bishop has higher dignity than an abbot.⁷⁸ Ambassadors have dignity according to the law of nations.⁷⁹ ⁸⁰ And the French *Declaration of the Rights of Man and of the Citizen*, approved by the National Assembly in 1789 says in Article 6 that “[a]ll citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.”

Now, this equation of dignity and rank may seem an unpromising idea for human rights discourse, inasmuch as human rights ideology is associated specifically with the *denial* that humans have inherent ranks distinguishing some of them as worthy of special dignity in the way that

⁷³ 1399 Rolls Parl. III. 424/1, as cited in the *Oxford English Dictionary*, entry for “dignity.”

⁷⁴ MM 6: 330

⁷⁵ In Blackstone’s descending order: Blackstone, *Commentaries*, I, Ch. 12.

⁷⁶ *The King v. The Chancellor, Masters and Scholars of the University of Cambridge, or Doctor Bentley's Case*, 92 Eng. Rep. 818, Fortescue, 202 (1737): “[A doctorate is a dignity] It is a dignity meerly civil, granted originally by the Crown, and conferred by the university; the dignity is the same, whether applied to a civil or spiritual person. What was said about degrees being only licences to teach was wrong said ; for licences to teach were long before degrees, which were about the year 1200, and there was teaching in the schools long before there were universities.”

⁷⁷ Though note that not all holy orders are technically dignities: “The civilians divided spiritual functions into three degrees. First, a function, which hath a jurisdiction; as bishop, dean, &c. Secondly, a spiritual administration, with a cure; as parson of a church, &c. Thirdly, they who have neither cure nor jurisdiction; as prebends, chaplains, &c. And they defined a dignity to be *administratio ecclesiastica cum jurisdictione, vel potestate conjuncta*, and thereby they exclude the two last degrees from being any dignity; ... an archdeacon is not a name of dignity: ... a parson is not a name of dignity. ... a provost is not a name of dignity. ... a precentor is not a name of dignity. ... a chaplain is not a name of dignity.” (*Boughton v. Gousley*, Cro. Eliz. 663 78 Eng. Rep. 901 (1599).)

⁷⁸ *Cootes v. Atkinson*, 75 Eng. Rep. 1072, Gouldsborough, 171.

⁷⁹ *Taylor v. Best*, 139 Eng. Rep. 201, 14 C. B. 487.

⁸⁰ Poland’s Constitution says that “[j]udges shall be granted ... remuneration consistent with the dignity of their office....” (Article 178(2).)

a duke or a countess might be.⁸¹ However, I am reluctant to leave the matter there. I suspect that this *ranking* sense of “dignity” offers something more to an egalitarian theory of rights than meets the eye.

Some have suggested that the old connection between dignity and rank was superseded by a Judaeo-Christian notion of the dignity of humanity as such,⁸² and that this Judaeo-Christian notion is really quite different in character. I’m not convinced. I don’t want to underestimate the breach between Roman-Greek and Judaeo-Christian ideas,⁸³ but I believe that as far as dignity is concerned the connotation of *ranking status* remained, and that what happened was that it was transvalued rather than superseded.⁸⁴

Let’s explore some ways in which the idea of noble rank may be made be compatible with an egalitarian conception of dignity.⁸⁵

(i) I said a few moments ago that the Catholic equation of dignity with sacredness of life seems quite different from the idea of dignity as

⁸¹ In America, for example, we associate the egalitarian rights-talk of (say) the opening lines of the Declaration of Independence with the Constitution’s insistence that “[n]o title of nobility shall be granted by the United States.”— U.S. Constitution, Article 1: 9 (8)

⁸² Who?

⁸³ See, for example, Joshua A. Berman, *Created Equal: How the Bible Broke with Ancient Political Thought* (Oxford: Oxford University Press, 2008).

⁸⁴ Even those who think in terms of a fundamental opposition between the rank notion of dignity and the human rights notion of dignity also discern a dynamic connection. Teresa Iglesias (“Bedrock Truths”) distinguishes between what she calls “the Universal and Restricted Meanings of Dignity.”

Consulting the dictionary we can find that the term “dignity” connotes “superiority,” and the “decorum” relating to it, in two basic senses. One refers to superiority of role either in rank, office, excellence, power, etc., which can pertain only to *some* human beings. I will identify this as the “restricted” meaning. The other refers to the superiority of intrinsic worth of every human being that is independent of external conditions of office, rank, etc. and that pertains to *everyone*. In this universal sense the word “dignity” captures the mode of being specific to the human being *as* a human being. This latter meaning, then, has a universal and unconditional significance, in contrast with the former that is restrictive and role-determined. (Iglesias op. cit., p. 120)

She associates the restrictive use with classical Roman culture and the universal use with notions of inherent human worth that emerged in Jewish ethics and theology. But though, as she says, “the meaning of dignity has been historically marked, up to the present time, by a tension between its universal and its restrictive meanings,” what has happened is that “historically, the restrictive Roman meaning of *dignitas* assigned to office and rank, and used as a discriminatory legal measure, began to be used with a new meaning of universal significance that captures the equal worth of everyone.” (Iglesias p. 122.)

⁸⁵ JW, “Dignity and Rank”

status.⁸⁶ Yet when you think about it the Catholic notion is not unconnected with rank.

When we talk about *human* dignity, we may be saying something about rank but not about the rank of some humans over others. We may be talking about rank of humans generally in the great chain of being. The dictionary cites Richard Hooker as writing in *Ecclesiastical Polity*, about stones' being "in dignitie of nature inferior to plants."⁸⁷ Well, presumably in this ranking, plants are in turn inferior in dignity to beasts, and beasts are inferior to humans, and humans are inferior to angels, and all of them of course are inferior in dignity to God. Catholic dignitary teaching continues to draw on this idea of the special rank accorded to all humans in the great chain of being. Unlike the lower beings, each of us is made in the image of God and each of us bears a special dignity in virtue of that fact.⁸⁸

It is often a striking implication of this sort of ranking that, *within* each rank, everything is equal.⁸⁹ This has been hugely important for theories of human equality (in John Locke's work, for example).⁹⁰ Humans rank higher than other creatures because, with reason and free

⁸⁶ In section 9: text accompanying note 74.

⁸⁷ The OED citation is as follows: "1594 HOOKER Eccl. Pol. l. vi. (1611) 12 Stones, though in dignitie of nature inferior to plants."

⁸⁸ This may be something that Darwin is supposed to have destroyed, though there is also the observation of George Eliot to the effect that "[i]f Darwin's theory should be true, it will not degrade man; it will simply raise the whole animal world into dignity, leaving man as far in advance as he is at present."

⁸⁹ There may, however, be divisions of ranks—as in the ranks of different kinds of beast. See, for example, Locke 1988, p. 158 (First Treatise, § 25): "[I]n the creation of the brute inhabitants of the earth, [God] first speaks of them all under one general name, of living creatures, and then afterwards divides them into three ranks."

⁹⁰ So, for example, John Locke wrote at the beginning of the *Second Treatise* that there is "nothing more evident, than that creatures of the same species and *rank*, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection ... [B]eing furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses, as the inferior *ranks* of creatures are for ours." (Locke, *Second Treatise*, §§ 4 and 6; pp. 269-71.)

will, they have God's special favor and are created in His image; this is a rank in which each of us shares, without distinction or discrimination.⁹¹

(ii) Or picture this. In an earlier article on "Dignity and Rank,"⁹² I mentioned a certain *transvaluation of values* that seemed to happen in late-eighteenth-century romantic poetry. One begins with an idea of dignity associated with the high rank of some humans (compared to others), and then one *reverses* that ordering ironically or provocatively to claim that the high rank of some is superficial or bogus, and that it is the lowly man or the virtues of very ordinary humanity that enjoys true dignity. The OED cites a passage from William Wordsworth to illustrate this: "True dignity abides with him alone, [w]ho, in the silent hour of inward thought, [c]an still suspect, and still revere himself, [i]n lowliness of heart."⁹³ Robert Burns is the real master of this move, with the remarkable reversal of rank/dignity in the three central stanzas of "For A' That and For A' That."⁹⁴

⁹¹ Get cite from Aquinas in Eckhart's essay in Kretzmer and Klein (eds.) *The Concept of Human Dignity*, 44. Also figure out where to use Lorberbaum on the idea that originally it was just the king (in Babylonian ideology) who was held to be created in the image of God: Lorberbaum, in *ibid.*, 55.

⁹² Waldron, "Dignity and Rank," p. __.

⁹³ OED: "1795 WORDSW. Yew-tree Seat, True dignity abides with him alone Who, in the silent hour of inward thought, Can still suspect, and still revere himself, In lowliness of heart."

⁹⁴The words of Robert Burns:

What though on hamely fare we dine, / Wear hoddin grey, an' a that;
Gie fools their silks, and knaves their wine; / A Man's a Man for a' that:
For a' that, and a' that, / Their tinsel show, an' a' that;
The honest man, tho' e'er sae poor, / Is king o' men for a' that.

Ye see yon birkie, ca'd a lord, / Wha struts, an' stares, an' a' that;
Tho' hundreds worship at his word, / He's but a coof for a' that:
For a' that, an' a' that, / His ribband, star, an' a' that:
The man o' independent mind / He looks an' laughs at a' that.

A prince can mak a belted knight, / A marquis, duke, an' a' that;
But an honest man's abon his might, / Gude faith, he maunna fa' that!
For a' that, an' a' that, / Their dignities an' a' that;
The pith o' sense, an' pride o' worth, / Are higher rank than a' that.

The lowly person's toil, clothes and diet may be homely, but "the man of independent mind" does not pay attention to things like that. He pays attention to honesty and good sense in his attribution of "true rank." Notice also how Burns straddles two positions: one is that merit is and ought to be the basis of true rank and dignity; the other is that rank and dignity are associated with the inherent worth of human beings:

A prince can mak a belted knight, / A marquis, duke, an' a' that;
But an honest man's abon his might, / Gude faith, he maunna fa' that!
For a' that, an' a' that, / Their dignities an' a' that;
The pith o' sense, an' pride o' worth, / Are higher rank than a' that.

And Burns looks forward to a time when “Sense and Worth, o'er a' the earth, / Shall bear the gree, an' a' that.” And then the great peroration of human brotherhood, founded on this equality:

For a' that, an' a' that, / It's coming yet for a' that,
That Man to Man, the world o'er, / Shall brothers be for a' that.

The use of “dignity” in this poetry is but an instance of a broader transvaluation that I believe has taken place with regard to dignity generally: a sea-change in the way “dignity” is used, enabling it to become a leading concept of *universal* rights (as opposed to special privileges), and bringing into the realm of rights what James Whitman has called “an extension of formerly high-status treatment to all sectors of the population.”⁹⁵ But we see this only if we understand the *dynamics* of the movement between modern notions of human dignity and an older notion of rank. The older notion is not obliterated; it is precisely the resources of the older notion that are put to work in the new.⁹⁶

Then let us pray that come it may, / (As come it will for a' that,)
That Sense and Worth, o'er a' the earth, / Shall bear the gree, an' a' that.
For a' that, an' a' that, / It's coming yet for a' that,
That Man to Man, the world o'er, / Shall brothers be for a' that.

⁹⁵ James Whitman, “Human Dignity in Europe and the United States” in G. Nolte (ed.) *Europe and US Constitutionalism* (Council of Europe Publishing, 2005), 95, at p. 97 argues that “[t]he core idea of ‘human dignity’ in Continental Europe is that old forms of low-status treatment are no longer acceptable. ... ‘Human dignity,’ as we find it on the Continent today, has been formed by a pattern of leveling up, by an extension of formerly high-status treatment to all sectors of the population.”

⁹⁶ You can read Blackstone as an apostle of dignity as differential rank, for example in his figure of “that gradual scale of dignity, which proceeds from the peasant to the prince; rising like a pyramid from a broad foundation, and diminishing to a point as it rises” (Blackstone, *Commentaries*, I, Ch. 2), in his list of the different ranks of noble dignity—prince, duke, marquess, viscount, earl, and baron (*ibid.*, I, Ch. 12)—and his insistence that even “[t]he commonalty ... are divided into several degrees” with various ranks of knighthood (garter, banneret, baronet, bath, and bachelor); then “colonels, serjeants at law, and doctors; Esquires, Gentlemen, Yeomen; Tradesmen, Artificers, Labourers.” (*ibid.*, I, Ch. 12). But even Blackstone discerns a dynamism in the dignities of the British polity: the abolition, first, of the lowest ranks of servility (the villeins and the bondsmen), which moved a large number of

So there's my hypothesis: the modern notion of *human* dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly accorded to nobility.

11. Rank and Equal Rights⁹⁷

Something like this was noticed many years ago by Gregory Vlastos, whom I knew at Berkeley in the '80s, in a neglected essay "Justice and Equality."⁹⁸ In an extremely interesting discussion of equality and rights, Vlastos argued that we organize ourselves not like a society *without* nobility or rank, but like an aristocratic society which has just one rank (and a pretty high rank at that) for all of us. Or (to vary the image slightly), we are not like a society which has eschewed all talk of caste; we are like a caste society with just one caste (and a very high caste at that): every man a Brahmin.⁹⁹ Every man a duke, every woman a queen,

people *up* in rank (Blackstone, *Commentaries*, IV, Ch. 33: "From so complete and well concerted a scheme of servility, it has been the work of generations, for our ancestors, to redeem themselves and their posterity into that state of liberty, which we now enjoy"). And he also traced a broader reform in which the general spirit of liberty, which he thought had always pervaded the constitution, began to be taken seriously in its application to individuals—"Though a notion of general liberty had strongly pervaded and animated the whole constitution, yet the particular liberty, the natural equality, and personal independence of individuals, were little regarded or thought of; nay even to assert them was treated as the height of sedition and rebellion." Blackstone, *Commentaries*, IV, Ch. 33—as an enlightened, scientific, and industrious people "began to entertain a more just opinion of the dignity and rights of mankind" (Blackstone, *Commentaries*, IV, Ch. 33). The sense here is not of an abandonment of distinctions of rank, but as Whitman calls it, "an extension of formerly high-status treatment to all sectors of the population" (Whitman, "Human Dignity in Europe and the United States" at p. 97). Of course relics of aristocratic nobility remain—and remained forceful and important in Blackstone's day—but even the old Tory jurist himself could see that there was change in the air, and that we were not just leveling down, but that we were beginning to treat the common person as something to be reckoned with.

⁹⁷ "Dignity and equality are interdependent,"—Arthur Chaskalson, "Human Dignity as a Constitutional Value" in Kretzmer and Klein (eds.) *The Concept of Human Dignity*, 133, at 140

⁹⁸ Gregory Vlastos, "Justice and Equality," in Jeremy Waldron (ed.), *Theories Of Rights* (Oxford University Press, 1984), 41, originally published in 1962.

⁹⁹ Vlastos, "Justice and Equality," p. 54. Now, unlike Robert Burns, Vlastos wanted to separate the issues of merit and inherent worth. He imagined an interlocutor who only understood merit—what a person had done to deserve something or what skills and abilities he had that might make him useful to others or to society—and whose whole basis for thinking about human beings was a merit system (or, as Vlastos abbreviates it, the *M*-system). A person who was accustomed to the *M*-system, says Vlastos, would be puzzled by the idea of inherent human worth:

This last comparison is worth pressing: it brings out the illuminating fact that in one fundamental respect our society is much more like a caste society (with a *unique* cast) than like the *M*-system. The latter has no place for a rank of dignity which descends on an individual by the purely existential circumstance (the

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.

I take Vlastos's suggestion very seriously indeed. If he is right, then we can use aspects of the traditional meaning of dignity, associated with high or noble rank, to cast light on our conceptions of human rights.¹⁰⁰

Think of the change that comes when one views an assault on an ordinary man or woman, not just as a crude physical interference, but as a sort of sacrilege (like assaulting a prince or a duke). It is a salutary recharacterization of this familiar right, for it reminds us that a dignitarian attitude towards the bodies of others is one of sacral respect, not just nonchalant forbearance.

Or think of the proverbial saying "An Englishman's home is his castle." That too reflects something of the generalization of rank. The idea is that we are to live secure in our homes, with all the normative force that a noble's habitation of his ancestral fortress might entail. The modesty of *our* dwellings does not signify that the right of privacy or security against incursion, search, or seizure is any less momentous.

A third example: the rights of prisoners of war, and the insistence in Common article 3 of the Geneva Conventions that "outrages upon personal dignity, in particular humiliating and degrading treatment" shall be prohibited. In ages past, chivalry might require that noble warriors, such as knights, be treated with dignity when they fell into the hands of hostile powers; but this was hardly expected in the treatment of the common soldier; they were abused and probably slaughtered. Traces

"accident") of birth and remains his unalterably for life. To reproduce this feature of our system we would have to look not only to caste-societies, but to extremely rigid ones, since most of them make some provision for elevation in rank for rare merit or degradation for extreme demerit. In our legal system no such thing can happen: even a criminal may not be sentenced to second-class citizenship. And the fact that first-class citizenship, having been made common, is no longer a mark of distinction does not trivialize the privileges it entails. It is the simple truth, not declamation, to speak of it, as I have done, as a "rank of dignity" in some ways comparable to that enjoyed by hereditary nobilities of the past. (Vlastos op. cit. p. 54)

¹⁰⁰ Here I draw on some extensive work at the end of my "Dignity and Rights" essay.

of differential dignity remain: you'll remember Colonel Nicholson (played by Alec Guinness) in the David Lean movie, *The Bridge on the River Kwai*, who insists to the Japanese commander of a prisoner-of-war camp that he and his officers are exempt by the laws of war from manual labor, even though the private soldiers under his command may legitimately be forced to work.¹⁰¹ But modern prohibitions on degrading treatment are oriented specifically to the common soldier, the ordinary detainee, solicitous of their dignity in ways that would have been inconceivable in times past for anyone but officers and gentlemen.

(I don't have to remind you how fragile this change is and how close we have come in recent practices of detention in the war on terror to a frightening leveling-*down*, as we characterize the extension of formerly high status treatment to all detainees as "quaint and obsolete." I shall say more about these unpleasant realities tomorrow. For now, it is important to remember that, in these lectures, we are exploring the shape of a *normative* universe, which may or may not succeed in governing or modifying all aspects of our practice. This is as true in law as it is in morality.)

No doubt there are some aristocratic privileges that cannot be universalized, cannot be extended to all men and women. Some we wouldn't want to universalize: a *droit de seigneur*, for example, in matrimonial relations. And some when they are extended will change their character somewhat: a nobleman might insist as a matter of dignity on a right to be consulted, a right to have his voice reckoned with and counted in great affairs of state; if we generalize this—and *really* generalize it—giving *everyone* a right to have his or her voice reckoned with and n counted in great affairs of state, then what was formally a high and haughty prerogative might come to seem as mundane as the

¹⁰¹ David Lean, *The Bridge on the River Kwai* (based on Pierre Boulle's novel, *The Bridge over the River Kwai* (1957). Colonel Nicholson clearly believes that forcing the officers to work would be degrading, and he suffers a great deal as a result of the Japanese reaction to his refusal to accept this degrading treatment. Intriguing though this is, however, it is pretty clear that the reference to degrading treatment in the modern Geneva Conventions is not about insensitivity to military rank. It depends on an idea of dignity that is more egalitarian than that. See also the discussion in Waldron, "Cruel, Inhuman, and Degrading Treatment: The Words Themselves," available at <http://ssrn.com/abstract=1278604>.

ordinary democratic vote accorded to tens of millions of citizens. And citizens sometimes complain that their votes are meaningless, and philosophers support them in this complaint.¹⁰² But the dignity hypothesis reminds us that, although it is shared with millions of others, this vote is not a little thing. It too can be understood in a more momentous way, as the entitlement of each person, as part of his or her dignity as an (equal) peer of the realm, to be consulted in public affairs

There's more to say. But I think all this is tremendously helpful in deepening our talk of human dignity and enriching our understanding of rights. The idea that both notions are connected with ideas of status and rank is a stimulating one, and I am heartened by the fact that other theorists are also beginning to explore this line.¹⁰³ In tomorrow's lecture, I want to say more about the way status works in law, and more too—much more—about how the law defines a powerful dignity for us all, in the ways it gives distinctive *dignitarian* content to the ideal of equality before the law.

¹⁰² See Dworkin, for example, in *Freedom's Law*, pp. _____. In a different way, Benjamin Constant, "The Liberty of the Ancients Compared with that of the Moderns," in *Constant: Political Writings*, edited by Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), 309, at 316, gives voice to this concern when he contrasts the participatory rights of the ancients with those of modern suffrage: "The share which in antiquity everyone held in national sovereignty was by no means an abstract presumption as it is in our own day. The will of each individual had real influence: the exercise of this will was a vivid and repeated pleasure. ... Everybody, feeling with pride all that his suffrage was worth, found in this awareness of his personal importance a great compensation. This compensation no longer exists for us today. Lost in the multitude, the individual can almost never perceive the influence he exercises. Never does his will impress itself upon the whole; nothing confirms in his eyes his own cooperation. The exercise of political rights, therefore, offers us but a part of the pleasures that the ancients found in it." But maybe the better view is that of Judge Learned Hand, quoted in Dworkin, *Freedom's Law*, pp. 342-3 who contemplated the possibility of being "ruled by a bevy of Platonic Guardians"

I should miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs. Of course I know how illusory would be the belief that my vote determined anything; but nevertheless when I go to the polls I have a satisfaction in the sense that we are all engaged in a common venture. If you retort that a sheep in the flock may feel something like it; I reply, following Saint Francis, "My brother, the Sheep."

¹⁰³ E.g., Allen Buchanan, "The Egalitarianism of Human Rights," forthcoming in special issue of *Ethics* on Griffin's book, *On Human Rights*.