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What do the Philosophers Have against Dignity?

Jeremy Waldron

Professor Morris¹ has not used the term “dignity” much in his work but, as I tell the students in my seminar, the fact that you do not use the word doesn’t mean you are not accessing the concept. A concept can be referred to by a word or by a paragraph. Much of what Herbert Morris has written about respect for person in the determination of punishment is about dignity—in this area of law where dignity has some of its hardest work to do. Professor Morris aside, my topic this evening is the disdain in which some philosophers appear to hold the concept of dignity—human dignity in particular. I want to try to see what that disdain involves, and whether it can be mitigated. What does it involve? Well, think of it this way...

1. “Glory”

Suppose I were to come here today and give you a lecture on glory—on the glory of the human person, about how the glory radiates from us in the fulfillment of obligations and is enhanced by respect for our rights; if I were to urge you to nurture the resplendence of human glory and the moral networks through which glory circulates; if I were to say that certain things like drug abuse and same-sex marriage dim the glory of the human person—if I came to say all this in the solemn tones of a voice-over in a Terence Malik movie (“The Tree of Life” or “The Thin Red Line”), you would rightly stand up and walk out as from a lunatic speaker. Some of you would walk out saying, “I don’t have to listen to this nonsense!” The more thoughtful of you would leave because you did not think this elevated talk of “glory”—with its attendant concepts, like resplendence and moral radiation—that all this talk of glory added much to our existing vocabulary. It was just more verbiage, redundant verbiage, and pompous redundant verbiage at that.

The two-fold character of the response would be interesting in itself. Defensively, against the charge of speaking nonsense, the theorist of glory might try to explicate his usage of the term in more familiar language, relating the use of “glory” to terms like “rights,” “obligations,” and “values” in some particular bright and shining array. I might come up with an elaborate definition, with all sorts of terms and conditions. And if my departing audience said—what Alice said about Humpty Dumpty’s use of “glory”—“Gosh, that’s an awful lot to make one word mean,” I would give Humpty Dumpty’s response: “When I make a word do a lot of

¹ This was originally presented as the 2013 Herbert Morris Lecture at UCLA Law School.

work like that”, said Humpty Dumpty, “I always pay it extra.” But however much I paid the word, I wouldn’t be able to avoid the other horn of my audience’s attack. If dignity can be explicated in more familiar terms, albeit in some lengthy formulation, what’s the case for introducing it all? Why not just use the more familiar moral terms (in this elaborate combination if that is necessary)? Why go to the trouble of defining and introducing this new and rather pompous word?

I might reply, “Well, there’s nothing wrong with redundancy per se. Who says that our moral vocabulary has to use the fewest terms possible? That seems a bit colorless and reductive.” But then both my interlocutors would join in saying, “Yes but this is not just redundancy. This new term has unanalyzed overtones of pomposity and mystery, and we think those are doing more work—perhaps mischievous work, perhaps work that is preventing other more important philosophical work from being done. It is dulling people’s faculties, putting them to sleep at exactly the points where it is important for them to be most alert.

*

Well, I don’t want to put words into anyone’s mouth, But I sometimes get the impression that the attitude of some of my philosophical colleagues to the use of the term “dignity” in human rights law, and in legal and political theory generally—“human dignity,” “the dignity of the human person,” “dignitarian concerns” and so on—is somewhat similar to the reaction I am imagining to this gratuitous attempt to introduce the world to “glory” as an important moral term. And since I think I would be among the glory-skeptics, if there were any, I want to think out loud this evening about the suggestion that “dignity” should be equally the object of our skepticism.

2. Dignity

“Dignity” differs from “glory,” of course, in that its presence in our moral vocabulary is not the result of any individual’s willful effort to bring grandeur, pomposity and mystical obscurity into moral philosophy. It there already, is delivered to us by our philosophical traditions, from Cicero to Kant, or stretching back in the other direction from James Griffin to Pico della Mirandola. It seems already to be doing some work in moral theory whether we like it or not.

It is certainly doing work in law and legal theory. The German Basic Law makes dignity a fundamental principle, insisting that all other laws must be understood through the lens of human dignity. And that first principle has a very considerable impact on the rest of the law. The South African Constitution cites human dignity as one of a small set of values on which the new Republic of South Africa is founded. The French *Conseil d’État* credited dignity as an important principle of public administration in the infamous “dwarf-tossing” case. The

American courts, without benefit of any mention of dignity in the text of the Constitution, have invoked it repeatedly as a concept that is necessary to make sense of the Eighth and Fourteenth Amendments. And the great charters of human rights—the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights—associate dignity so closely with rights in their preambles – they say...

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ... Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, [and] in the dignity and worth of the human person

—this associates dignity so closely with human rights that many human rights lawyers see us as being committed to the proposition that (in the words of the Covenant) “rights [actually] derive from the inherent dignity of the human person.”

All this legal talk of human dignity is there; we didn’t invent it; it’s not going anywhere; and in some way or other we have to come to terms with it.

Yet I sense some considerable unease about it among moral philosophers—particularly those who take part of their job to be the maintenance of intellectual hygiene in our normative vocabulary. They squint at dignity suspiciously or at best they raise quizzical questions about the term, as though it were intriguing and they had never heard of it before, and I think that when they hear talk of dignity in the classroom or in our colloquia, alarm bells go off; they go into analytic alert; they worry that something bogus is going on, and that an insidiously unanalyzed conception is being surreptitiously introduced.²

² It’s like the way people used to think about rights themselves, natural rights, or the rights of man. Remember Bentham’s reaction to the 1789 Declaration of the Rights of Man and the Citizen? Well, maybe philosophers have gotten used to rights-talk, but they still worry that all this adjacent talk of dignity is

a perpetual vein of nonsense, flowing from a perpetual abuse of words,—words having a variety of meanings, where words with single meanings were equally at hand—the same words used in a variety of meanings in the same page,—... words and propositions of the most unbounded signification, turned loose without any of those exceptions or modifications which are so necessary on every occasion to reduce their import within the compass, not only of right reason, but even of the design in hand, of whatever nature it may be;— ... stale epigrams, instead of necessary distinctions,—figurative expressions preferred to simple ones,—sentimental conceits, as trite as they are unmeaning, preferred to apt and precise expressions,—frivolous ornament preferred to the majestic simplicity of good sound sense,—and the acts of the senate loaded and disfigured by the tinsel of the playhouse.

Or to use his more familiar characterization, “rhetorical nonsense,—nonsense upon stilts.”

3. Philosophers' Objections

Now who exactly am I talking about? Well, there's the difficulty. It is actually hard to pin down, because there is no well-known locus of philosophical skepticism concerning the human dignity principle. No article or essay epitomizing the anti-dignity position. I don't have any particular philosopher in mind.

My sense that there is a considerable amount of philosophical skepticism is the product of a number of conversations with philosophical colleagues, a few hints here and there, and the whiff of hostility—dumb insolence, perhaps, consisting in the determination of most philosophers to proceed as though it were not an important concept, and their refusal to devote any real attention to the matter. There has been a sort of sullen silence, broken only by a few: Michael Meyer of Santa Clara, who has been writing about dignity for ages; Jim Griffin, in his book *On Human Rights*, though he quickly allows his discussion of dignity to morph into a discussion of autonomy; and of course Stephen Darwall, of Yale, in *The Second-Person Standpoint* and in his recent book of essays, *Morality, Authority, and Law*.

So far as explicit expressions of hostility are concerned: Raz has expressed some skepticism to me and others in conversation, though he himself cited dignity as a crucial underlying rationale for the rule of law in a 1977 article. Michael Rosen's work on dignity has a strong critical edge. In a paper that he presented to a large conference on dignity at Oxford in 2012,³ Michael Rosen says that when he gave the Benedict Lectures at Boston University on the subject of dignity in 2007, "a leading moral philosopher"—he doesn't say who—"a leading moral philosopher" regretted that he would not be able to come to the lectures "but wished me luck and added 'I hope you give it a good kicking'." Rosen says he doesn't think he gave it a good kicking in the lectures or in the little book on dignity that emerged from them—though in fact some reviewers have seen it as such.⁴ Anyway, Rosen did say it was worth noticing that his philosophical "friend's animus against dignity [was] widely shared."

The dignity skeptics are not only those who are resolved to avoid the use of the term. There are also those whose introduction of a new meaning for the term is predicated on an argument that existing uses are hopelessly confused. My late friend and colleague Ronald Dworkin made a conception he labeled dignity the keystone of his unifying work on ethics and political philosophy in *Justice for Hedgehogs*. But when he introduced the term he said this:

The idea of dignity has been stained by overuse and misuse. It appears regularly in human rights conventions and political constitutions and, with

³ Rosen's paper is now in McCrudden (ed.) *Understanding Human Dignity*.

⁴ cf. Darwall's review at <http://ndpr.nd.edu/news/33053-dignity-its-history-and-meaning>

even less discrimination, in political manifestos. It is used almost thoughtlessly either to provide a pseudo-argument or just to provide an emotional charge: campaigners against prenatal genetic surgery declare it an insult to human dignity for doctors to repair disease or deficiency in a fetus.⁵ Still it would be a shame to surrender an important idea or even a familiar name to this corruption.⁶

It doesn't help that, apart from its use in Kant's philosophy, —about which, more in a moment—dignity has not been put to much work in the canon of moral and political philosophy. The Kantians don't seem unhappy with this idea—but they are not particularly interested in putting it to work apart from its immediate context in discussion of the kingdom of ends (and of treating people as ends) in the *Groundwork*. They are not particularly interested, I think, in following up philosophically the suggestion, from the human rights conventions, that it is an absolutely indispensable foundational idea.

The enduring verdict might be that, even if Kant made responsible use of the idea of dignity, it is not been used since Kant by any philosopher of substance on his or her own account; as Michael Rosen reminded us, it has instead become, what Schopenhauer called “the shibboleth of all ... perplexed and empty-headed moralists,” whom Schopenhauer accused of concealing “behind that imposing expression” their lack of any real understanding of the basis of morality.

It is not just philosophers. In legal studies, Christopher McCrudden's masterly survey of the modern use of the term has a strong critical edge with his suggestion that “dignity” was written into the preambles of the great human rights covenants not to convey any particular meaning, but to operate as a sort of empty place-holder in circumstances where the drafters wanted to sound grand and philosophical but couldn't agree on what to say.⁷

Charles Beitz, with characteristic moderation has wondered whether “human dignity” adds anything more than a phrase to our understanding of human rights, functioning at best “only as a kind of pointer to other values (autonomy perhaps)” that carry the real weight. He doesn't quite commit himself to this skepticism, but he says that the obscurity of the term, and the extravagance of the references to it” encourage such a jaundiced view.

Outside the area of human rights, commentators have been quiet skeptical about the meaning of “dignity.” Addressing its use in bioethics debates, Stephen Pinker called it “a subjective squishy” notion and Ruth Macklin observed that “the

⁵ Dworkin cites Leon Kass's book.

⁶ *Hedgehogs* 204. -- although Dworkin notes that he is using the term “as an organizing idea” because it facilitates his project “to collect widely shared ethical principles under one portmanteau description.” (205)

⁷ McCrudden, “Human Dignity in Human Rights Interpretation,” 19 *EJIL* 655 (2008).

concept remains hopelessly vague. ... [T]o invoke the concept of dignity without clarifying its meaning is to use a mere slogan, hardly up to the heavyweight moral demands assigned to it.”⁸ Between them, Pinker and Macklin are like the two groups I imagined walking out of my lecture on “glory”—one of them denouncing my talk of glory (or in this case dignity) as nonsense, the other insisting that it could be replaced without loss by more familiar and clearer concepts.

4. The religious (re)turn

I suspect that Stephen Pinker’s hostility in “The Stupidity of Dignity” is in large measure associated with its religious overtones. And in general, philosophical suspicion of dignity may reflect some concern among philosophers about the infiltration (or the return) of religiously-loaded ideas into moral and political analysis. Commenting on its use by members of President Bush’s panel on bioethics, Pinker exclaimed incredulously: “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?”

It’s not just bioethics. It’s also animal rights. It is part of the point of a commitment to human dignity to privilege humans over other sentient beings. Those who believe in animal rights, or who oppose special status for humans in a Benthamite way, often believe that the special status position is motivated by irrational religious views, and they will likely view human dignity as a culprit vehicle in this regard.

At a time when many are trying to construct a frame of moral analysis that excludes what they think of as “irrational religious ideas,” they may worry that the recent cult of dignity represents an opportunity for these ideas to find their way back in. Certainly dignity occupies an important role in recent Catholic moral theology, connecting with ideas about the image of God in every human being—though we should note that the papal encyclicals complain with equal vehemence about the danger of dignity becoming a purely secular concept!

I guess Pinker’s concern is that even when it is used by secular thinkers, the term “dignity” retains many of the characteristics that (in his eyes and in the eyes of the other critics I have in mind) make religious language irrational—pomposity, a lurch towards transcendence, a lack of definition, grand-sounding equivocation, and so on. (Many of the things that disfigured my vocabulary of “glory” at the beginning of this lecture.)

⁸ Steven Pinker, “The Stupidity of Dignity,” *The New Republic*, May 28, 2008 and Ruth Macklin, “Dignity is a Useless Concept,” *British Medical Journal*, 327 (2003), 1419.

Too, there is a worry that dignitarians are offended by the demand for clarity; users of dignity imply that it is somehow blasphemous to demand analytic clarity here. Klaus Dicke once suggested that defining dignity is like the sacrilege, in some religions, of depicting God.⁹ The impression they give is that their terminology is too grand for that and its use is often associated with various critiques of analytic philosophy—in the style of Alasdair Macintyre—alleging that it is philosophical analysis that leads us away from human grandeur to nihilism, relativism and so on. Sixty years ago, Bertram Morris observed that “[f]ew expressions call forth the nod of assent and put an end to analysis as readily as ‘the dignity of man.’”¹⁰

I am actually not as worried as the critics are on this front. I believe we are still in the process of extricating morality from its traditional religious foundations or seeing whether it can be extricated altogether from those foundations. That it seems to me is a work-in-progress, and human dignity might be the name of one of the sites where this is being worked out—whether our sense of the momentous importance attached to every human individual can be altogether expressed and understood in purely secular terms. I said in *God, Locke and Equality* that I had my doubts, and I am not about to abandon them here.

5. Competing definitions

More generally, my hunch is that philosophical suspicions of dignity—assuming we can pin them down—are mostly overblown. They raise a challenge to be sure, but it is a challenge I think that can be answered.

Consider for example the concerns that people have about the absence of a shared definition for the term—the proliferation of rival definitions of dignity and the absence of any canonical understanding. A respected human rights jurist, now sadly no longer with us, Oscar Schachter observed that there is no explicit definition of “human dignity” in any of the charters that invoke it. “Its intrinsic meaning has been left to intuitive understanding,” says Schachter

A first point to make is that this is a concern, in the first instance, about dignity as a concept to be used in legal judgment, to guide action in a legal norm. “Without a reasonably clear general idea of its meaning,” said Schachter, “we cannot easily draw specific implications for relevant conduct.”¹¹ These are concerns about its normative use in law, about the determinate guidance that it provides or fails to provide to those whose conduct it is supposed to govern. The

⁹ Klaus Dicke, “Human dignity in international law,” David Kretzmer and Eckart Klein (eds.) *The Concept of Human Dignity in Human Rights Discourse* (Kluwer Law International, 2002)

¹⁰ Morris 1946, p. 57.

¹¹ Oscar Schachter, “Human Dignity as a Normative Concept,” *Am. J. Int’l Law*, 77 (1983) 848.

idea seems to be that if it is to do in useful work in law it has to be clear. This was one of the issues when the Canadian Supreme Court turned away from the use of dignity as a touchstone for distinguishing invidious from non-invidious discrimination in *R. v. Kapp* in 2008, saying that it is an abstract and subjective notion that is confusing to apply and has proven to be an additional burden on equality claimants.

I am not entirely sure that I accept this. I hope the critics of dignity won't be too upset when I associate their concerns with those of a famous skeptic, President George W. Bush. In 2006, President Bush professed himself alarmed and bewildered by the indeterminacy of the language of dignity in international humanitarian law (in Common Article III of the Geneva Conventions, for example):

It's very vague. What does that mean, "outrages upon human dignity"?¹² That's a statement that is wide open to interpretation. ... [T]he standards are so vague that our professionals won't be able to carry forward the program, because they don't want to be tried as war criminals. ... These are decent, honorable citizens who are on the front line of protecting the American people, and they expect our government to give them clarity about what is right and what is wrong in the law."¹³

Sometimes clarity and determinacy are over-rated. There are an awful lot of legal terms, mostly evaluative terms used in high-flown standards, that are also bereft of clear definition – think of terms like “cruel,” in the 8th Amendment, or “inhuman,” and “degrading” in constitutions and bills of rights the world over—and in many ways it is a good thing that they are not pinned down in a determinate definition. Such terms are supposed to operate as sites for some of the thoughtfulness that the rule of law sponsors. It's a mistake to think that we always want legal norms to be mechanically and applicable in an operationalized way; it is a mistake to think of the demand for clarity as though it were supposed to be a way of implacably ruling out thought and argumentation in the law. I have talked about that elsewhere.

In any case, the lack of a canonical definition is not necessarily a problem for dignity's foundational use in human rights law.¹⁴ Foundational work is often owl-of-Minerva work; we begin working out the foundations of our legal norms once we are reasonably confident in our possession of them. International human

¹² Bush was referring to one of the requirements of Common Article III of the Geneva Conventions.

¹³ *Press Conference of the President*, September 15, 2006: <http://www.whitehouse.gov/news/releases/2006/09/20060915-2.html>

¹⁴ Elsewhere I have discussed the point that “dignity” has the interesting characteristic of being used both in the foundations of human rights and in the content of certain human-rights requirements. Nothing inconsistent there.

rights law in its modern form is no more than 65 years old, and it is no surprise that the project of working out its foundations, under the auspices of dignity and some other concepts, is still a work in progress. There is still no settled consensus about what it means to say that the right is a human right, apart from the minimum claim that it is a right that all humans are now conceived to have. And we are still disagreeing about which rights are human rights. It should not be surprising then that dissensus about rights is associated with indeterminacy in rights' foundations. Building a determinate theory is going to involve work at both back-and-forth levels. (I am going to come back to this point, because it's important.)

Some will be struck not by the indeterminacy, but by the diversity of definitions of "dignity"—because of course the problem is not really that we have too little in the way of definitions, but too much. (In philosophy, as elsewhere, complaints about there being too many definitions are usually a preface to then adding one's own new definition as version n+1.) But the array of currently available definitions of dignity is quite striking in its variety and variegation.

There is the classic Kantian definition from the *Groundwork*—dignity as value beyond price. There is the Christian definition—dignity as the high calling of mankind in our relation to God. There is Ronald Dworkin's definition in *Justice for Hedgehogs*—dignity as the overall responsibility one takes for one's life. There's Stephen Darwall on dignity as the basis of second-person claims. And there is my own work on dignity as the equalization of high social rank.

a. Complementary aspects

I wonder though: is this diversity necessarily a problem? Maybe it is a tribute to the multifaceted character of dignity and the work that it does in law and political morality. Maybe the different "definitions" highlight complementary, rather than rival contributions, to its meaning.

Consider an analogy. Some people say that "democracy" means "rule by the people." Some say democracy means "political equality" Joseph Schumpeter notoriously tried to deflate democratic theory by saying that it is just a political system that secures stability over time by providing for regular competition for power among élites on an institutionalized basis. Now we can see these three meanings as rival definitions if we like, and complain about the ambiguity of the term. But we should first check whether the alleged ambiguities might not be combinable as complementary contributions to a single multi-faceted idea: democracy is a system of regularized competition among political élites, organized on the basis of political equality, with the effect of giving the common people substantial control on the overall direction of government. We combine the three meanings in a single consistent, but complex definition.

So it might be with human dignity. As a foundational idea, human dignity might ascribe to each person a very high rank, associated with the sanctity of her body, her control of herself, the demands she can make on others, and her determination of her own destiny, values and capacities that are so important that they must not be traded off for anything.

On this account, the alleged definitions we have been considering make disparate but complementary contributions to this complex idea. The rank definition tells us about the ontological basis of dignity, the Kantian contribution tells us about the axiological status of the values involved, the Darwall definition tells us about the demands that it generates, and the Dworkinian idea points us towards the capacities that are going to be privileged and treasured in this way.

b. Work in progress

Or, even if the idea is being defined in incompatible ways by different thinkers, bear in mind the point we made earlier that dignity is a work in progress. There are two ways in which a term can become important in philosophy: it can become important as a technical idea that already has clear understanding, which is going to help illuminate something else for us—in morality, an idea such as lexical priority is in this category; it would be no use if it wasn't well-defined. Other conceptions we introduce to see what we can do with them, or what we can make out of some promising (or perhaps unpromising) materials from ordinary moral discourse.¹⁵ The idea of *virtue* falls into this category. And so, I think, with dignity.

The amorphous character of the concept may be an indication that we are in the early stages of its elaboration: our understanding of its meaning is a work-in-progress. It is a term with multiple shades of meaning in ordinary discourse and we are at the early stages of figuring out how to present these in a more organized fashion. Terms don't become clear by magic; it is something that we work on, and some of that work is dialectical or adversarial. Let me mention some aspects of this work in progress.

First, it is worth emphasizing that modern discussions of dignity involve a term that everyone knows is in transition —from the hierarchical notion of *dignitas*, as something attached differentially to rank or office—the transition from that to a notion that applies equally to everyone in virtue of their bare humanity. In my work I have given great attention to that transition, and to the way in which human dignity holds onto some of element of high rank. For others it has been less prominent; but it is still characteristic of what is being worked out with the term.

¹⁵ I don't mean to imply that "dignity" is going to end up as a technical term that will have a stipulative meaning, which we are currently trying to construct.

Secondly, bear in mind what I mentioned earlier about the religious aspects of the concept of dignity. Dignity is an important site for belated consideration of whether we want to purge religious considerations and religious overtones from ethics and from social, political and legal morality altogether.

Thirdly, we are still trying to figure out the exact relation between human dignity as an important moral and legal idea and the notion of “the dignified” as an ideal of personal aesthetics, but no one is quite clear what it is.

One indication of the difficulty we are working with is the connection between *dignity* and *the dignified*. In one of the meanings the Oxford Dictionary ascribes to the term “dignity”, it connotes “befitting elevation of aspect, manner, or style; ... stateliness, gravity.” Dignity has long had a connection with something like physical bearing—standing upright: a sort of moral orthopedics,¹⁶ a certain sort of serious presence; uprightness of bearing; self-possession and self-control.¹⁷ Obviously this is something that can be carried too far. Stephen Pinker complains, in “The Stupidity of Dignity,” that Leon Kass’s obsession with dignity has led him to denounce people licking ice-cream cones in the street. Michael Rosen, in an extremely helpful critical discussion, thinks that this obsession with noble bearing brings discredit on the concept—as though theorists of dignity can’t take a joke.

So we are all trying to figure out how to loosen this connection—and not commit ourselves to saying that the principle of human dignity requires everyone to go around looking upright, serious, and tranquilly grand¹⁸ all the time, as befits the image of God or whatever.

But we don’t want to break the connection altogether. In the area of human rights and international humanitarian, the ban on degrading treatment (which is strongly underpinned by dignity) can be read as requirement that people must be permitted to present themselves (even in detention, even in the power of the police) with a modicum of self-control and self-possession.¹⁹ It’s not just “personal aesthetics.” Indignity on these matters may presage much more substantial affronts: is it an accident that, at the beginning of the war against terrorism, Guantanamo Bay detainees did not walk to their interrogations but were carried to and fro in wheel barrows like scarecrows?

¹⁶ By the “moral orthopedics” of human dignity, I have in mind what some Marxists, following Ernst Bloch, used to call “walking upright.” (See Jan Robert Bloch & Caspers Rubin, “How Can We Understand the Bends in the Upright Gait?” *New German Critique*, 45 (1988) 9, at 9-10: a wonderful article.) See also the account in Aurel Kolnai, “Dignity,” *Philosophy*, 51 (1976), 251 at 253-4.

¹⁷ See also the account in Aurel Kolnai, “Dignity,” *Philosophy*, 51 (1976), 251 at pp. 253-4.

¹⁸ Winkelmann, cited in Rosen p. 33.

¹⁹ See Jeremy Waldron, in “Cruel, Inhuman, and Degrading Treatment: The Words Themselves” (available at <http://ssrn.com/abstract=1278604>) for the ways in which the bestialization or infantilization of detainees is at odds with this (in the “war on terror”).

In all these areas, our work is still tentative – one step forward, a couple to the side. Sometimes it is worth acknowledging honestly the tentative character of much of our philosophical work, and not having it discredited by the big boys just because it is hesitant and incomplete.

c. The meaning of dignity versus theories of dignity

Bear in mind, too, that there is a distinction between the meaning of dignity and theories of dignity. Consider Pico della Mirandola's 1486 *Oration on the Dignity of Man*—that dignity is an especially high calling or high standing for human beings cosmically and theologically based on their ability to make something new of themselves, to decide whether they will be more like angels than like animals. This involves both the concept of dignity as high calling or status, and a particular theory of what that amounts to—potential competition with the angels—and what it is based on—our ability by our own free will to establish the lineaments of our own nature. Someone can share with Pico the basic account of the shape of what dignity means but yet advance a different theory of what our special status is based on and maybe too a different theory of what that status amounts to.

It would be wrong to conclude from the diversity of theories of dignity that the concept itself was unclear.

d. Productive contestation

Not only that, but we might well want to say that contestation between rival theories or conceptions is actually productive, and by no means confusing. Here I draw to a certain extent on W.B. Gallie's work on *essentially contested concepts*²⁰—not all of it by any means, but certainly the possibility he indicated, that one way of making progress in our grasp of a concept is to watch and perhaps participate in the contestation between rival accounts of it. Gallie suggested that this is true of contestation about the true nature of art, for example, and also democracy; and I have argued elsewhere that it is true also of the rule of law.) That contestation might generate for us a richer sense of what the concept involves than we would have with a concept that had been arbitrarily pinned down for example with a stipulative definition.

So—those are some points about the alleged definitional unclarity. And I could hammer away a bit more at the criticisms that are made on this front. But this is the easy part; and it doesn't really get us to what I think is the fundamental source of philosophical unease.

²⁰ Proceedings of the Aristotelian Society, vol. 56, 1956.

6. What category of concept?

The hard issues come up when we ask not what dignity means but what sort of concept it is. We know it is something like a normative or evaluative concept. It is not a descriptive concept although it may supervene on certain descriptive characteristics—bearing in mind that metaphysical or even theological characteristics can count as the supervened-upon descriptions. So it is a supervenient normative or evaluative concept.

But the phrase “normative or evaluative” covers a variety of possibilities. Some see human dignity as a deontological principle; and some of those see it as a right (although not necessarily an alienable or emancipatory right). Kant presented *dignity*, initially in the *Groundwork*, in a very famous passage, as a species of *value*—value beyond price:

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.

But, as Stephen Darwall has noted, Kant also presented dignity as a sort of commanding value—it is basis on which each of us “exacts *respect* for himself from all other rationale beings in the world.” This gives dignity a more direct and compelling normativity than that which is associated with values generally, even values beyond price. (It makes it more like the rights-based end of a principle?) he also associated dignity with some self-regarding duties, which hooks up with some of the perfectionist and other non-emancipatory uses of the concept.

And, it is worth noting, Kant does also use the term in ways that line up much more closely to the traditional connotations of nobility and rank. In his political philosophy, Kant talks of “the distribution of dignities” in a state. 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.”²¹ I have written about this use of the term elsewhere in an article on “The Dignity of the Citizen,” forthcoming in the volume of contributions to that Oxford conference on dignity to which Michael Rosen also contributed. There is a wealth of different uses of dignity in Kant’s work.

²¹ Immanuel Kant, *The Metaphysics of Morals*, in Kant, *Practical Philosophy*, p. 470-2, (6: 328-30 of the Prussian Academy Edition of Kant’s *Works*).

7. A Status Concept

I actually find it most helpful to think of dignity as a status concept, rather than as a value-concept (as it is in the Groundwork) or rather than as a principle or a set of principles (as it is, say, for Dworkin's *Hedgehogs*). In some ways it is a false contrast since, as we shall see in a moment, it is in the nature of a status to comprehend various aspects of value and principle, rights, powers, and obligations. So we might want to say as a sort of a preliminary "walking around" account of the shape of the concept: human dignity is a sort of high status that humans have, in virtue of which they are to be treated and not treated in certain ways, valued in certain ways, empowered in certain ways, respected in certain ways, and constrained in certain ways.

Treating dignity as a status helps us with some superficial difficulties that have been thought to afflict the term. Some philosophers complain that if human dignity is inalienable, something that can never be taken away, then its normative implications are mysterious since it seems to connote a sort of invulnerability.²² In his article "The Stupidity of Dignity," Stephen Pinker complains that the concept "spawns outright contradictions at every turn." He says:

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.²³

In fact the appearance of equivocation here is easily dispelled. Status-terms are normative. Dignity tells us something normative about the status of human beings; as such it conveys the demand that status should actually be respected, in face of the factual possibility that some people may be being treated as though they didn't have that status or as though it were unimportant. So the status approach helps us there.

At the same time, however, the idea of dignity as *status* gives rise to a whole new set of difficulties. And here I think we begin to isolate what might be the distinctive basis of philosophical dissatisfaction with the term.

8. Summary terms

There is thought to be a set of terms, in use in morality and in our moralizing, that seem to operate, at best, as summary concepts—concepts whose real function—to the extent that they have a function—is just to sum up and bring into focus much of what we already know. That is all they respectably do, although their use is also usually associated with tones of pomposity that make them appear grander.

²² Daniel Statman, "Humiliation, Dignity, and Self-Respect" in Kretzmer and Klein, *The Concept of Human Dignity in Human Rights Discourse*.

²³ *The New Republic* May 28, 2008,

One of these terms is “respect.” And since it is closely connected with dignity—in his latest work, Stephen Darwall defines dignity in part as that which is fitting respect²⁴—what some philosophers have said about respect might provide a clue to what the same philosophers or perhaps other philosophers think about dignity. So, for example, according to Harry Frankfurt in his article, “Equality and Respect,”

Treating a person with respect means dealing with him exclusively on the basis of those aspects of his particular character or circumstances that are actually relevant to the issue at hand. ... [A] lack of respect consists in the circumstance that some important fact about the person is not properly attended to or is not taken appropriately into account. In other words, the person is dealt with as though he is not what he actually is. The implications of significant features of his life are overlooked or denied. Pertinent aspects of how things are with him are treated as though they had no reality.²⁵

This is no doubt important, and Frankfurt is willing to gloss it by saying that in denying someone suitable respect, “his very existence is reduced.” To respect someone you have to pay attention to them and their situation. But morality requires us to do this anyway. And so it doesn’t really add much to the instruction to deal with people as one ought to deal with them. There is no special duty of respect; it just sums up or epitomizes the demands of morality generally.

Joseph Raz said in Chapter 4 of his book, *Value, Attachment and Respect*—the Seeley Lectures he gave at Cambridge in 2000—that he would prefer a slightly more substantial account of the distinctive duty of respect if one were available, and he does in fact develop a subtle and interesting account. I’m afraid I can’t go into the detail of that here. But it is Raz’s negative remarks about respect—however inconclusive they are for him—that trouble me the most, and that promise the most difficulty for our topic of concern, namely dignity. I think they get at what worries philosophers about the concept.

Raz is particularly interesting in his critical remarks on *status-based* accounts of respect, that is, accounts which identify a class of beings as having a certain standing and thus being worthy of a special sort of concern (which special concern is supposed to be summed up in the idea of respect.) So for example, one says that

²⁴ Though he also talks of dignity as the authority people have to make claims on one another and hold each other accountable. Look also at Darwall in new book (*Morality, Authority, and Law: Essays in Second-Personal Ethics I*) on value and buck-passing.

²⁵ ‘Equality and Respect’ in *Necessity, Volition and Love* (New York: Cambridge University Press, 1999), p. 150).

people ... enjoy a moral status, and therefore one should look for moral reasons, moral duties or prohibitions regarding their proper treatment. [*He uses the example of plants*] Plants ... differ from people in that regard. There is no doctrine of respect for plants, and that means that they do not enjoy moral standing. They do not count, as people say. Therefore, we need not seek for moral prohibitions, or duties, regarding the ways [*plants*] must or must not be treated.

That's Raz's account of status; and—oversimplifying somewhat—I am going to say that he subjects it to a two-prong attack.

On the one hand—and this is the best case—all that the idea of a moral status does is to summarize, in portmanteau form, moral information (or a range of the moral information) that we have already. We morally consider things that are morally considerable, which means that we do unto them the things that ought to be done, and refrain from doing the things that ought not to be done (unto them). The status is just a container, and we only know what to put into it from moral work that has been done already, quite independently of the status idea. That's the best case, and, applied to dignity—considered as a very special status—dignity just epitomizes what we know about human persons already. They are not to be killed—we know that, so the sanctity of their life becomes part of their dignity. They are not to be shoved aside, or treated cruelly, or locked up, or silenced, or punished without due process—we know that. So: respect for these rights is also part of their dignity. And they are to be empowered politically and empowered personally too, to run an autonomous life, and –guess what?—that's going to be part of their dignity as well.

Dignity on this account is just a status marked out as special on account of its contents. But we bring those special contents to the status, rather than having the status do the work of establishing their specialness for us. So in a way it is redundant or eliminable. That would be the best case scenario—marked out as the first prong of this critique of status-based accounts of respect.

The second prong of the critique is more disturbing. According to the first line of attack, the status adds nothing. But, says Raz, if it is supposed to add anything to the moral picture, what it adds is going to be invidious. Moving his example from plants to animals, he says this:

The only possible effect of introducing a separate doctrine of status is to deny the application of reasons where they do in fact apply. [*For example, the implication might be that*] Whereas we must respect people, there is no similar doctrine of respect regarding other mammals, and therefore, we must not cause pain to people, but there is no reason not to cause pain to other mammals, since they do not count. But if the reason for not causing pain

applies to all animals, how could a doctrine of status absolve us from following it?

In particular—and again we can apply this to dignity—how could anything called the special dignity of human beings, mean that they are to be treated in an especially considerate way, if that considerateness means we respond differentially to moral reasons in their case as opposed to the same moral reasons applying to a non-human case? Once again, I am thinking of the animal rights critique. If it is wrong to confine any sentient being in a space where it cannot stretch or move, why don't we just follow that reason where it leads us, rather than minimizing its effect for farm animals and amplifying its effect for humans (in a dignitarian critique of torturous confinement) because humans have a special status—human dignity—and animals do not. It seems that human dignity is a prejudicial and discriminatory device which heightens our attention upon some applications of moral reasons while deafening us to other applications.

And what's worse it generates this distorting effect, not in the shame-faced way that is associated with most discrimination, but triumphally under the auspices of something grand-sounding and highly decorative—the concept of human dignity—which, as a pompous status-concept is directing us to distort moral applications in this way.

Of course there may be something morally respectable which explains away the impression of distortion. There may be moral reasons why it is worse to confine humans—who will suffer under the auspices of their distinctive sense of the future, through the experience of hopelessness, --reasons which don't apply to farm animals. But then we are back on the first prong. The thing to do is to gather all the moral reasons there are and respond appropriately to them. Packaging them under the heading of dignity does no additional work.

So there we have the two-prong attack on dignity as a status concept. On either prong, it is a grand-sounding word. On one account, though, the grand decoration is a cover for distorting the application of moral reasons. On the other account: at best, the grand decoration is just a way of packaging information we already have; it is pompous but eliminable; it adds nothing in itself.

9. Status concepts in jurisprudence

Well, how to respond? What can be said to answer these concerns? The first prong of Raz's critique is a line we have heard before in discussions of status. It takes us back to a dispute between John Austin and Jeremy Bentham on the proper way to characterize status terms in positive law.

According to Austin, in his *Lectures on Jurisprudence*, status-terms like infancy, bankruptcy, felony, lunacy, alienage, and royalty exist “merely for the

sake of commodious exposition.”²⁶ A status-term, he said, is nothing but an abbreviation for a list or bundle of rights, powers, disabilities, duties, privileges, immunities, and liabilities. It is a “device of legal exegetics,” an abbreviation, purely a matter of expository convenience.²⁷ But there is an alternative view in the tradition of utilitarian jurisprudence. It is the view of Jeremy Bentham. In a chapter in the *Traité de Législation* which treats of *États*, Bentham defined a status thus: *un état domestique ou civil n’est qu’une base idéale, autour de laquelle se rangent des droits et des devoirs, et quelquefois des incapacités*.²⁸ It is an *underlying idea* around which are arrayed various rights and duties and sometimes incapacities. The idea of “*base idéale*”—underlying idea—is crucial.

The list of rights etc. abbreviated by a status term is not arbitrary; it is a list that *makes sense* relative to some *underlying idea* that informs the status in question. This is not just a matter of each item (in the list abbreviated by a given status) having some rationale. It is a matter of their having a common rationale which explains how the various rights, duties, and powers hang together; it explains the underlying coherence of the package. So, for example, the contractual incapacities of infants are understood in relation to the duties of their parents to make the provision for them that for most of us is made by our own ability to enter into contracts. Because an infant lacks contractual capacity, someone else must make provision for them.²⁹ Abstracted from the whole package, a given incident of a given status may not make much sense. But, in the package, it makes sense in relation to the underlying idea which it shares with all the other incidents. And the whole thing is united by a special sort of social and legal concern relative to the predicament and vulnerability of infants. No doubt Austin is right that status also has an exegetical use, in helping us organize and present existing legal knowledge in treatises and so on. But its expository function is not just mnemonic, it is dynamic. The underlying idea generates the list of incidents.

We can say something similar about bankruptcy, alienage, royalty, being a prisoner, and all the other status-terms I mentioned. Each of them is not just an

²⁶ John Austin, *Lectures on Jurisprudence, or The Philosophy of Positive Law*, 5th edition, ed. Robert Campbell (John Murray, 1885), vol. II, Lecture XL, pp. 687-8.

²⁷ *Ibid.*, p. 700

²⁸ Austin, p. 699, original emphasis. (Compare Jeremy Bentham, *The Theory of Legislation*, ed. C.K. Ogden (London: Kegan Paul, Trench, Trubner & Co., 1931), p. ___.)

²⁹ For example, the situation of an infant is special and calls for special care and solicitude: the determination of the legal incidents associated with infancy flow from this. The underlying reason explains how the various rights, duties, etc. hang together; they explain the underlying coherence of the package. Particular provisions often hang together: the legal disabilities of a bankrupt are understood in relation to the process of adjudication in bankruptcy; the contractual incapacities of infants are understood in relation to the duties of their parents to make the provision for them that for most of us is made by our own ability to enter into contracts. Statuses package certain arrays of rights, duties, etc. under the auspices of a certain entrenched and ongoing concern in the law.

abbreviation of a list of legal “if-then” propositions; each of them packages a list of propositions deemed to make sense, jointly and severally, in virtue of a certain underlying idea about a particular circumstance or vicissitude of the human condition.

Accordingly, if human dignity is a status, then we should say not just that it comprises a set of human rights, responsibilities, empowerments etc. but its doing so reflects an *underlying idea* which explains both the importance of each of these incidents in relation to our being human and the importance of their being packaged together coherently in this regard. Dignity as a status term is not just an abbreviation of existing moral knowledge; it is the organization of that knowledge in relation to an underlying idea of the special and momentous importance of the human person. And everyone who uses the term “human dignity” makes an implicit promise to give an account of that importance.

Now, Bentham advised us to look at status as a matter of legal dynamics, not just legal statics. If something similar is true in the realm of morality, then we should think of the use of “human dignity” as telling us something about how we are to generate and arrive at our moral ideas. And that indicates a subtle but important change of perspective.

So long as we are assured, so long as we are complacently certain that we already possess a full and adequate body of moral knowledge, we won’t see much useful work for dignity to do. But if we think non-complacently, if we think (as we should) of our moral knowledge as a work-in-progress—particularly our reflection on the distinctive importance of the human person—if we think of that as a work-in-progress, then proceeding under the auspices of dignity will appear to be one way of taking that work forward. Maybe not the only way, but one possible way of taking that work forward.

And the same change in outlook will help with the second prong of the attack as well. Raz’s concern that talk of status may distort what we already know of morality. Something that looks like a distorting factor when related to an existing body of material that is already well understood, may look like a helpful and productive organizing idea in relation to a body of moral thought that is still under construction.

10. What sort of status?

That’s the general idea of the response that I want to make. But we can also say a little bit more about the general shape of the conceptual structure that human dignity offers for the organization and development of our moral ideas. Everyone thinks there is something morally special about the human person, and we need to understand what it is. We can either approach it piecemeal, or we can lay it out on a certain sort of framework—a status framework—that is offered by the concept of

human dignity. I said earlier that we should distinguish between conceptual accounts of dignity and particular theories of what dignity is based on and what it entails. It is the former that I am now going to try to clarify. – the very use of the language of dignity indicates that one’s theory is going to be of a certain shape and character, though it by no means settles questions about substance and details. So, in closing, here are four or five points I want to emphasize.

The first point is that, among status concepts, dignity will be a sortal rather than a conditional status. Let me explain. Some distinctions of status are still with us. There are legal statuses that apply to individuals in virtue of certain conditions they are in, that they may not be in forever, or that they may have fallen into by choice or happenstance: they embody the more important legal consequences of some of the ordinary stages of human life (infancy, minority), or some of the choices people make (marriage, felony, military service, being an alien), or some of the vicissitudes that ordinary humanity is heir to (lunacy) or that through bad luck or bad management may afflict one’s ordinary dealings with others (bankruptcy, for example). I call these condition statuses. They tell us nothing about the underlying personhood of the individuals who have them: they arise out of conditions into which anyone might fall. This is what I call “condition-status.”

Condition-status may be contrasted with sortal-status. Sortal-status categorizes legal subjects on the basis of *the sort of person* they are. One’s sortal-status defines a sort of baseline (relative to condition-status). Modern notions of sortal-status are hard to find, but we can come up with historical examples: villeinage and slavery. Racist legal systems such as that of apartheid era South Africa or American law from 1776 until (at least) 1867 recognized sortal statuses based on race. Some legal systems ascribe separate status to women. Sortal status represents a person’s permanent situation and destiny so far as the law is concerned. It is not acquired or lost depending on actions, circumstances, or vicissitudes. The historic idea behind sortal-status is that there are different kinds of person.

But **secondly, human dignity presents itself as a limiting case of sortal status.** It is the sortal status to end all sortal statuses. The use of *human* dignity involves a denial that there are different kinds of person, at least different kinds of human persons.³⁰ We once thought that there were different kinds of human—slaves and free; women and men; commoners and nobles; black and white—and that it was important that there be public determination and control of the respective rights, duties, powers, liabilities and immunities associated with

³⁰ There might be different kinds of corporate personality. See Graveson, *Status in the Common Law*, pp. 72-8.

personhood of each sort. We no longer think this. There is basically just one kind of human person in the eyes of the law and any conditional status is going to be defined by contrast with this baseline. In other words, human dignity makes aggressive demands on status-space. It crowds out other sortal statuses.

It follows, **thirdly, that dignity is an equal status among human beings.**

And fourthly—and very importantly—it is a high status—considered in relation to sortal statuses that have been recognized among humans in the past; it is more like the status of a noble, in (say) medieval theory, than like the status of a peasant or a serf. Or—forget the medieval conceits: it is more like the status of a free man than like that of a slave or bondsman; it is more like the status of a person who is *sui juris* than the status of a subject who needs someone to speak for him; it is the status of a right-bearer—the bearer of an imposing array of rights—rather than the status of someone who mostly labours under duties; it is the status of someone who can demand to be heard and taken into account in his or her own right; as Rawls and Feinberg put it and as Darwall has elaborated, a self-originating source of valid claims.³¹

It is high also—and it has to be acknowledged—that this is an important part of the dignitarian idea, in comparison to the claims that may be made by or on behalf of other types of being. I think an implicit contrast with the moral standing of animals is an important part of what is conveyed by the idea of human dignity. But instead of introducing this as a distorting factor in relation to a set of already well-understood moral conceptions, we introduce it as a framework hypothesis, to see whether it can be worked out and substantiated. And that will be partly a matter of focusing on some aspect or characteristic of our being, which in its importance and in its universality is substantial enough to ground the foregoing. It doesn't need to be transcendent—although some accounts will have that characteristic—but I think it does need to be momentous, both in its inherent significance and in the remarkable fact that we see it in everyone.

³¹ Of course it remains an equal status. We are all chiefs; there are no Indians. At this point it is customary for philosophers to explain to me—patiently, as though to a child—that in order for something to be high, other things have to be low. (Rosen: As the Grand Inquisitor says in Gilbert and Sullivan's "The Gondoliers", "when everybody's somebody then no one's anybody".)

But we can make sense of this—good sense of the idea of what James Whitman has called "the generalization of high status treatment." Whitman's own work on punishment. If we all—each of us—issue commands or demand to be taken seriously or insist on speaking for ourselves, it is everyone else—our peers, who have similar standing—who have to obey or make room or listen. But this does not mean that we might as well all be peasants or squires or bondsmen. High status can be universalized and still remain high, as each of an array of millions of people regards him- or herself (and all of the others) as a locus of respect, as a self-originating source of legal and moral claims. We all stand proud, and—if I may be permitted a paradox—we all look up to each other from a position of upright equality. I am not saying we always keep faith with this principle. But that's shape of the principle of dignity that we're committed to.

That – 1 through 5– is the agenda that accounts of dignity offer to moral and political philosophy and which they offer to fill out in a particular theory of dignity. Different theorist of dignity will fill this out in various ways.

And as the constructive process goes on, different working versions of this may be put to work in addressing particular issues in normative ethics and legal theory—like dignity in punishment, or the dignity of children, or death with dignity, or dignitarian character of anti-discrimination law. Workers in these vineyards may be justified in thinking they can make more progress with even a tentative dignitarian conception, or by exploring productive competition among a range of such conceptions, than by working with a more austere and reductive set of moral ideas, such as elementary consequentialism.

Maybe it can be shown that in some cases, this is a mistake. But it will not always be a mistake, and when it is it is not a silly analytic mistake. At worst, it is an annoying challenge to the immodestly of moral philosophers who have shown themselves reluctant to entertain ideas that might challenge their complacency or force to retool a little but to bring the instruments of their analysis into line with the use that politics and law are making of this particular part of our moral heritage.