

For Workshop at Brown: this paper is a little longer than your rules permit. It's about 12,000 words, not including notes and bibliography. But the part I would like to concentrate on, for the purposes of our discussion, is the part that begins at the bottom of page 12 (§13) and goes on to the end. The early part of the paper is mainly ground-clearing and distinction-establishing. Apart from the first paragraph of the Introduction, it can be skipped by anyone who wants move quickly through to focus on the particular case I am making. –JW

## Jeremy Waldron **Dignity and Rank**

*for the memory of Gregory Vlastos (1907-1991)*

### **1. Introduction**

When we use a term like “dignity” to anchor or elaborate our understanding of human rights—when we say that the function of human rights is to promote, protect, respect or vindicate dignity or that the most important thing to understand about certain rights violations, such as torture, is the affront they pose to human dignity—when we say anything like this, what role exactly is the term “dignity” or the idea of dignity playing? In sections 2 through 6 of this paper I will address this meta-theoretic question about the use of the language of dignity. Then in sections 7 to 22, I will canvass various suggestions about the particular meaning that we might accord to “dignity” in a human rights context. In sections 13 to 22, I will pursue a particular suggestion or set of suggestions about the meaning of “dignity” that I find very attractive. I shall argue there that the distinctive contribution that “dignity” makes to human rights discourse is associated, paradoxically, with the idea of rank: once associated with hierarchical differentiations of rank and status, “dignity” now conveys the idea that all human persons belong to the same rank and that that rank is a very high one indeed, in many ways as high as what were formerly regarded as ranks of nobility.

I think I am doing something different in this paper from what is commonly done in papers that purport to reflect upon the use of “dignity” in human rights discourse. Many such papers begin by saying that it is worth asking what “dignity” means in this context. But then the answer they give is just a review of its uses, followed quickly by their own participation in its usage. They put their own use of “dignity” on display and they say nice things about it; but they do not ask hard questions and they do not ask whether it conveys any meaning that could not be conveyed by other means.<sup>1</sup> Alternatively an examination of dignity is sometimes just a prelude to the advocacy of a particular right or particular approach to rights (such as socio-economic rights).<sup>2</sup> Associating the term “dignity” with the

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<sup>1</sup> For a prime example of this, see Schachter (1983).

<sup>2</sup> See e.g. the essays in Goldewijk et al. 2002.

advocacy of a certain kind of rights or a certain approach to rights is a way of gaining rhetorical advantage without having to be distracted by any serious consideration of the meaning of the term.

My approach will be neither of those. I want to ask hard questions about our use of this term. And I do not want to argue either for the existence of any particular rights, or in favor of emphasizing any particular set of rights, though I shall at the end use some common claims of right to illustrate the interest and tendency of the definition of “dignity” that I am proposing.

## **2. Questions about Meaning**

My aim in this paper is by no means skeptical. I know that people feel comfortable using “dignity” in a variety of human rights contexts and often its use is very important—e.g. in opposition to torture or to the death penalty. It is important, too, in end-of-life issues: the idea of death with dignity has been an important motif of a number of humane initiatives. My aim is not to cast doubt on any of this, not even in the first part of the paper where it will appear that I am turning a corrosively analytic eye on the way that the term “dignity” is used. For even there, my aim is not destructive; it is to open up our awareness of various points at which and various ways in which “dignity” might be contributing to human rights discourse. At worst, I will be saying something like: “The use of the term in *this* context is something of a mystery, in light of its use in *that* context” or “It is not clear what ‘dignity’ is conveying at this point.” My language of bewilderment is not disingenuous. It is meant to be open to response and explanation.

We are all aware that the language of dignity might be condemned as mere decoration. It is a fine-sounding phrase and there may be reasons to use it in human rights rhetoric that do not have much to do with the conveying of any determinate content. 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’” (Morris 1946, p. 57). Perhaps we can treat this as a sort of null hypothesis, albeit in an effort to dispel the impression of fatuity.

## **3. “Dignity” in Human Rights Discourse: Source and Content**

Consider the following examples of the use of the term “dignity” in human rights and constitutional law. Article 1 of the Universal Declaration of Human Rights tells us that “All human beings are born free and equal in dignity and rights.” The United Nations Charter says that the enterprise of setting up the UN is predicated upon “faith ... in the dignity and worth of the human person.” The International Covenant on Civil and Political Rights begins its preamble with the acknowledgment that the rights contained in the covenant “derive from the inherent dignity of the human person.” The first paragraph of the first article of the Constitution of Germany tells us that “[h]uman dignity is inviolable” and that “[t]o respect and to protect it is the duty of all state authority.”

Examples of similar uses could be multiplied.<sup>3</sup> But already there is an interesting ambiguity or duality of uses. On the hand, it is stated that humans have dignity and that this dignity inhering in the human person is the source and ground of human rights. And on the other hand, it is said that people have a right to dignity, or a right to have their dignity protected. In the former usage, dignity is presented as the ground of human rights; in the latter usage “dignity” is presented as the content of human rights, what the human rights are rights to.

A skeptic about the language of rights such as Jeremy Bentham (1987) might take this duality as illustrative of the meaninglessness of such discourse. Bentham used to complain about a similar duality in the use of “liberty.” 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 1987a, p. 74)

Now, Bentham’s critique is not quite as damning as it sounds. There are ways of answering it in the case of liberty, for instance—ways of parsing “liberty” as ground and “liberty” as the content of a demand that do not reduce the rights claim to tautology or self-contradiction. 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

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<sup>3</sup> “Dignity” is also invoked in American constitutional law: Chief Justice Warren in *Trop v. Dulles* 356 US 86, at 100 (1958) stated that “the basic concept underlying the Eighth Amendment is nothing less than the dignity of man.” For a discussion of the differences between American and German law in this regard, see Neuman 2000, Bognetti 2005 and Whitman 2005.

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 or tautological.

So, similarly, we may say of “dignity” that the term is used to convey something about the status of human beings and that it is also and concomitantly used to convey the demand that that status should actually be respected. This, it will emerge, is the overall shape of the account I want to pursue in sections 14-21.

#### **4. Questions about Meaning in Two Contexts**

The difficulty we have just been exploring is not exactly the one we began with. What we wondered at the beginning was what the meaning of “dignity” was supposed to be: what substance does the term convey in human rights discourse? But now we have noticed that that question about meaning can be asked in these two contexts:

- (i) If dignity is supposed to be the *content* of a rights-demand, then what does that content amount to? What entitlements, precisely, are conveyed? What actions or states of affairs are demanded? (And why, exactly, is the use of the word “dignity” a good way of conveying or summarizing this information?)
  
- (ii) If dignity is supposed to be the *ground* of rights, then what exactly are the justificatory considerations that it conveys? What is the meaning of this justificatory use of “dignity”? What in detail does it tell us about the grounding or basis of our rights? (And again: why exactly is the use of the word “dignity” a good way of conveying or summarizing this information?)

We want to know the answer to (i) or the answer to (ii) or the answer to both of them. And if we get the answer to both, we want to know whether (i) and (ii) can be related to one another in a way that avoids Bentham’s logical critique.

#### **5. Value or Description?**

There is also the question—concerning either or both of these uses—about whether “dignity” is operating mainly as a value term or as a descriptive term or as a “thick” term conveying both evaluative and descriptive elements.

Some Kantians<sup>4</sup> write as though “dignity” were synonymous with “worth,” or as though it were a word that we could substitute for the phrase “the intrinsic worth that inheres in every human being.”<sup>5</sup> This gives an evaluative meaning to

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<sup>4</sup> I will look at more detail at Immanuel Kant’s own use of “dignity” in section 9 below.

<sup>5</sup> See e.g. Hill 1992.

the term “dignity” that is quite thin. It is not conveying all that much more than the word “value” conveys.

A slightly thicker evaluative meaning might be given to it by associating “dignity” with a normative doctrine about “trade-offs.” In this usage, “dignity” means something like “a value which is not to be traded off against other values.” On this account, the use of “dignity” in human rights discourse tells us some thing about the shape or form of the normative content that rights discourse is supposed to have. (It works rather like the phrase “side constraints” in Nozick 1974, pp. 28-53.) Everyone may know that normative commitments of this shape are characteristically associated with certain substantive claims. (To stick with the analogy, the Nozickian use of “side constraints” is associated with libertarian content or with property entitlements.) But the term “dignity” may not necessarily itself convey the substance of those claims (any more than Nozick’s term “side constraint” conveys his Lockean theory of property).

That is one possibility. The other possibility is that “dignity,” for all its positive overtones, is a descriptive term, used primarily to convey information. This is what we might expect of its use in context (i), with regard to the content of rights. If we say that P has a right to x, we expect that “x” will be a descriptive term specifying the good or the liberty that P is to be accorded or the state of affairs that P is to be put in.

But this may be too quick. Sometimes when we begin the task of specifying what a person has a right to, we use thick evaluative or quasi-evaluative terms that are designed to operate as intermediate place-holders, to help us figure out the detailed content of the right. Here is an analogy: in American constitutional law, we say that people have a right not to be subject to *cruel* punishment.<sup>6</sup> The value term that is used in this formulation does not indicate the exact content of the rights-demand, but it indicates a way of thinking about the according of descriptive content to the right: we think about whether Americans have a right (e.g.) not to be executed by asking ourselves whether execution is *per se* cruel (or whether it is commonly regarded as cruel or regarded as cruel by those who wrote the constitution or whatever). After all, “cruel” is not an all-purpose term of evaluation (like “bad” or “wrong”). “Cruel” sets us down certain paths and not others in our quest for content. And that may be true of “dignity” as well, in formulations like “All person have a right to dignity.”

What about usage (ii)? Unless we are naturalists, we will not think that an explication of the grounds of a right (or of human rights in general) necessarily or ultimately has to be some factual attribute that can be conveyed using a descriptive term. The process of grounding or justification may involve connecting some intermediate values (like rights) to some deep or foundational values. And so

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<sup>6</sup> United States Constitution, Eighth Amendment: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” (Note how this provision is riddled with non-descriptive terms: “excessive,” “cruel,” etc.)

“dignity” might operate as an evaluative term in (ii). We would expect, however, that it would operate as a thick evaluative term, rather than a thin one like “good” or “right” or even “intrinsic value.” We would expect the term “dignity” in this context to be conveying some descriptive content embraced by and entangled with its evaluative content, in the way that a term like “courage” entangles descriptive and evaluative meaning.<sup>7</sup> Once again—and foreshadowing a claim that I will make much later in the paper<sup>8</sup>—“dignity” may entangle description and evaluation together in the way that certain predicates of status do. When we say that human rights are based on dignity, we might be implying that human rights are based on a descriptively-specific evaluative understanding of humans as having a certain rank or status in the created order of things or as being the sort of beings whose most valuable dealings with one another assume such status.

## **6. Ordinary and Stipulative Uses**

As we look for a distinctive meaning for “dignity,” perhaps along the lines just mentioned, we might want to consider the relation between “dignity” as it is used in human rights contexts and “dignity” as it is used in other contexts of ordinary usage. In ordinary usage we say things like “He showed great dignity as he walked to the gallows” or “There was very little dignity in the way the wounded were treated in the field hospital” or “It is beneath my dignity to scrub the floor.” We understand, more or less, what “dignity” means in these contexts. How are these usages connected to the use of the term in human rights discourse?

(α) One possibility is that they are not really connected at all, except in very loose way. Human rights discourse might ascribe a technical meaning to the

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<sup>7</sup> But the two dimensions of its meaning may not necessarily be separable. Some crude versions of non-cognitivism assume that moral positions are subjective responses to factual features of the world that can be independently identified. They say, for example, the term ‘courage’ refers descriptively to a certain steadfastness in the face of danger and that, quite separately, it connotes an evaluative attitude of approval to that character-trait. But some philosophers have their doubts about the general applicability of this pattern of analytic disentanglement, e.g. McDowell 1981, at p. 144:

[I]t seems reasonable to be skeptical about whether the disentangling manoeuvre here envisaged can always be effected: specifically, about whether, corresponding to any value concept, one can always isolate a genuine feature of the world—that is, a feature that is there anyway, independently of anyone’s value-experience being as it is—to be that to which competent users of the concept are to be regarded as responding when they use it; that which is left in the world when one peels off the reflection of the appropriate attitude. ... If the disentangling manoeuvre is always possible, that implies that the extension of the associated term, as it would be used by someone who belonged to the community, could be mastered independently of the special concerns which, in the community, would show themselves in admiration or emulation of actions seen as falling under the concept. ... According to the position I am considering, the genuine feature to which the term is applied should be graspable without benefit of understanding the special perspective, since sensitivity to it is singled out as an independent ingredient in a purported explanation of why occupants of the perspective see things as they do. But is it at all plausible that this singling out can always be brought off?

<sup>8</sup> See below, sections 14-21.

term, or it might draw on a technical meaning that the term has, say, in moral philosophy—a technical meaning that has only a vague affinity with the ordinary meaning of “dignity.”<sup>9</sup> I will call this the *stipulative* option: the meaning that “dignity” imports into a human rights context is meaning associated stipulatively with the term.

(β) The other possibility is that the use of “dignity” in the human rights context actually imports some aspect of the term’s ordinary meaning. I shall call this the *independent* option: “dignity” introduces independent meaning of its own into its use in human rights contexts or in moral philosophy more generally. On this account, we appeal to the independent natural-language sense of the term—independent of any function the philosopher might have ascribed to the term—to illuminate or elaborate some point we want to make about human rights.

Obviously the distinction between (α) and (β) will not withstand too much pressure.<sup>10</sup> What I am calling the independent option will evidently require some selection among the vague and various senses that ordinary language ascribes to the term, and that selection may well be motivated philosophically in more or less the same way as the stipulative option is motivated. On both accounts, something is being pinned down, in a sort of technical way. On the other hand, even a purely stipulative use of the term will no doubt retain some resonance of its ordinary use. There will be an explanation of why “dignity” has been chosen for this stipulative use, rather than “blueness” or a made-up expression like “x-itude.” There is also the possibility that what began as a technical use of the term in philosophy, for example, has become so well-established that it is now part of the term’s natural meaning. I suspect some Kantians think this is true of the use of the term “dignity” to convey Kant’s use of “Würde” in the Groundwork and elsewhere.<sup>11</sup>

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<sup>9</sup> Not all technical meanings are philosophical. According to the *Oxford English Dictionary*, “dignity” has a technical use in astrology to mean “[a] situation of a planet in which its influence is heightened ... by its aspects with other planets.” It also is the technical term for a company of canons (“canons” in the ecclesiastical sense). See [http://dictionary.oed.com/cgi/entry/50063966?single=1&query\\_type=word&queryword=dignity&first=1&max\\_to\\_show=10](http://dictionary.oed.com/cgi/entry/50063966?single=1&query_type=word&queryword=dignity&first=1&max_to_show=10) (web page of OED entry for “dignity,” last visited July 20, 2007).

<sup>10</sup> Also it would be wrong to rest too much on the dictionary. I refer often to the *Oxford English Dictionary* (see citation in note 9, above) only because it is suggestive and informative about possible meanings for “dignity,” not because it is definitive. (See Austin 1956, at pp. 1-2.)

<sup>11</sup> See below, section 9.

## $\alpha$ : Stipulative Uses of “Dignity”

### 7. Pure Stipulation

Let us begin with ( $\alpha$ ), the stipulative option. It is sometimes said that, in the contexts that interest us, “dignity” means something like “The intrinsic non-negotiable non-fungible worth that inheres in every human being.”

How would we know that this is what it means? Well, we might just *make* the word mean this by stipulation. There is no particular reason why we should assign “dignity” to this task. Maybe other terms would do as well. We could use the word “glory”. We could talk about the inherent glory of the human being, respect for glory, humans having an inalienable right to glory, and so on. We might acknowledge that of course “glory” has other connotations in other contexts, which may or may not have a loose relation to or resonance with its use here, but we are giving it new work to do, where it will stand for these technical ideas about value and respect for persons etc. I hope I will not be misunderstood as making fun of the stipulative option when I remind you that the word “glory” has a history of being put to work in his way, notably by Humpty Dumpty in Alice Through the Looking Glass.<sup>12</sup>

“Glory” could be put to work in human rights discourse just as Humpty Dumpty puts it to work in logic (as 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

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<sup>12</sup> Lewis Carroll, Through the Looking Glass (1899), Ch. 6 at <http://www.kellsraft.com/throughthelookingglassch6.html> (last visited July 20, 2007).

“There’s glory for you!”

“I don’t know what you mean by ‘glory,’” Alice said.

Humpty Dumpty smiled contemptuously. “Of course you don’t—till I tell you. I meant ‘there’s a nice knock-down argument for you!’”

“But ‘glory’ doesn’t mean ‘a nice knock-down argument,’” Alice objected.

“When I use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master—that’s all.”

Alice was too much puzzled to say anything; so after a minute Humpty Dumpty began again. “They’ve a temper, some of them—particularly verbs: they’re the proudest—adjectives you can do anything with, but not verbs—however I can manage the whole lot of them! Impenetrability! That’s what I say!”

“Would you tell me please,” said Alice, “what that means?”

“Now you talk like a reasonable child,” said Humpty Dumpty, looking very much pleased. “I meant by ‘impenetrability’ that we’ve had enough of that subject, and it would be just as well if you’d mention what you mean to do next, as I suppose you don’t mean to stop here all the rest of your life.”

“That’s a great deal to make one word mean,” Alice said in a thoughtful tone.

“When I make a word do a lot of work like that,” said Humpty Dumpty, “I always pay it extra.”

this task and it is more manageable, less temperamental, especially as there is a history of its being used in this way.

### **8. Dworkin on Dignity**

I think something like this is what is going on in Ronald Dworkin's use of "dignity" as a key term in his most recent book, Is Democracy Possible Here? At the beginning of this book, Dworkin states two principles which he says 'identify ... abstract value in the human situation' (Dworkin 2006, p. 9). One has to do with the objective value of a human life.<sup>13</sup> The other states that each person has a special responsibility for how his or her own life goes. He then 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" (Dworkin 2006, p. 10). He says, quite rightly, that the two 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. However, Dworkin nowhere suggests in the book that the "dignity" label adds any illumination to the principles.<sup>14</sup> His elaboration of them is conducted in a way that does not rely on any connotations of the term.

### **9. Kant on Dignity**

To show that I do not intend to be heard as objecting to or mocking such stipulative uses of "dignity," let me say that I think the Kantian use of the term is probably best understood in a similar way. The use of "dignity" to convey something important—albeit something technically quite specific about what humans are owed in the way of respect—is a venerable and highly respectable employment of the term.

Kant said this in the Groundwork to the Metaphysics of Morals (in the translation that 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. Whatever has reference to general human inclinations and needs has a market price; ...but that which constitutes the condition under which alone something can be an end in itself has not merely a relative worth, that is, a price, but an inner worth, that is, dignity. Now, morality is the condition under which alone a rational being can be an end in itself....

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<sup>13</sup> This is connected with the idea of the sacredness of human life, to which Dworkin devotes some enormously insightful discussion in Dworkin 1993, pp. 68-101.

<sup>14</sup> 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 1977, pp. 198-9. (For a discussion see Parent 1992, pp. 70-1.)

Hence morality, and humanity insofar as it is capable of morality, is that which alone has dignity. (Kant 1981, pp. 40-1)

I think this passage involves a stipulative use of “dignity.”<sup>15</sup> That is a first point. A second and very important point is that “dignity” in this passage is the translator’s term, not Kant’s. Kant uses the term “Würde.” Now, there is a very old and well-established practice of translating “Würde” as “dignity.” It has some support in Kant’s own words, though not in the Groundwork. In a later work, The Metaphysics of Morals, Kant twice used the term “Würde” with the Latin term “dignitas” in parentheses.<sup>16</sup> We could pass a decade or two arguing about whether this is an indication that “Würde” is always to be translated as “dignity” or whether it is only to be translated as “dignity” when accompanied with this parenthesis (because Kant uses the term sometimes in The Metaphysics of Morals without such parenthetical accompaniment). And there is the further question of how this should bear on our translation of “Würde” in the Groundwork, used without the accompanying parenthesis some twelve years earlier.

A further question would be whether the Latin term “dignitas,” which Kant uses in parentheses in The Metaphysics of Morals and which resembles our word ‘dignity’ actually has the same meaning as our word “dignity.” A final question would be about the term “Würde” itself: how is it being used and is its meaning independent or stipulative?

So there is a whole mess of meanings and stipulations here: original word-meanings, translation conventions, and meanings which are possibly stipulative (and possibly not) for any and all of the following terms: “Würde,” “dignitas,” “worth” and “dignity.” My own view is that none of these terms naturally means—or means independently of a technical philosophical usage—the same as

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<sup>15</sup> But the situation is complicated. Not everything that is said about dignity in this passage is stipulation. I think the stipulation comes in the first couple of sentences, and then in the long paragraph what we are offered (what is argued for) are certain theorems about dignity (so defined). See also the discussion in section 10 below.

<sup>16</sup> For this note and the next, I am using the German text of Kant 1991 from web-site: <http://www.ikp.uni-bonn.de/kant/suche.html>. The citation for the first passage in the Prussian Academy edition of Kant’s works is 6: 436; the equivalent English passage is Kant 1991, p. 231:

[A]ber daraus, daß wir einer solchen inneren Gesetzgebung fähig sind, daß der (physische) Mensch den (moralischen) Menschen in seiner eigenen Person zu verehren sich gedrungen fühlt, zugleich Erhebung und die höchste Selbstschätzung, als Gefühl seines inneren Werths (valor), nach welchem er für keinen Preis (pretium) feil ist und eine unverlierbare Würde (dignitas interna) besitzt, die ihm Achtung (reverentia) gegen sich selbst einflößt.

The citation for the second passage in the Prussian Academy edition of Kant’s works is 6: 462; the equivalent English passage is Kant 1991, p. 255:

Achtung, die ich für andere trage, oder die ein Anderer von mir fordern kann (observantia aliis praestanda), ist also die Anerkennung einer Würde (dignitas) an anderen Menschen, d. i. eines Werths, der keinen Preis hat, kein Äquivalent, wogegen das Object der Werthschätzung (aestimii) ausgetauscht werden könnte.

“value beyond price” or “the intrinsic non-negotiable non-fungible worth that inheres in every human being.” But for a long while some or all of them have been made to bear this sense in moral philosophy.<sup>17</sup>

### **10. “Dignity” as an Evaluative Term in Kant**

We should notice a couple of further points about the Kantian sense of “dignity.”

First, Kant’s stipulative usage makes “dignity” a mainly evaluative term, at least in the first instance. It is not as thin an evaluative term as (say) “good” and “right,” but it is thickened mainly by complications of normative shape rather than by any descriptive entanglement. To say that humans have dignity is to say that they have value of a certain normative kind, but it does not so far indicate any content for that proposition. Of course Kant did also maintain and defend certain theorems about human dignity that did have content. He said that dignity inheres in morality and in humanity insofar as it is capable of the moral cast of mind (Kant 1997). He said also that autonomy is the basis of the dignity found in human nature (Kant 1997, 436). These are synthetic propositions.

It may be that when “dignity” is used in the comparatively less precise language of human rights, *both* elements are intended to be conveyed: the meaning that Kant associated with “*Würde*” by stipulation (and which we associate with “dignity” as that German term’s translation) *and* the substantial claims about reason, autonomy, morality, and humanity that Kant also defended.

Secondly, Kant’s sense of dignity is most apt for use in relation to the ground of rights. This is use (ii) of the two uses we noted in section 4. It makes little sense as a basis for saying what rights we have, or what the content of our rights actually is. However, its use may also help to indicate what it is for something to be a right and thus make a contribution to question (i) in section 4. If rights are matters of dignity, then like dignity itself they are non-negotiable, beyond price and thus not to be traded off against other considerations or even against one another.

## **β: Non-Stipulative Meanings**

### **11. Dictionary Definitions**

I now want to consider some possibilities for a non-stipulative meaning for “dignity” in human rights discourse: that is, I want to explore some options under heading (β) which we set out in section 6. This involves exploring the contribution

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<sup>17</sup> In a presently unpublished paper (Anderson 2007), Elizabeth Anderson has developed a powerful argument to the effect that the Kantian notion of dignity is not confined to the axiological idea of worth but reaches out towards ideas of esteem associated with honor. If that is—and I suspect, from what Anderson says that it may be—then there is much less distance between the Kantian account and the account I develop in sections 14-21 of this paper.

that “dignity” might make to human rights discourse in virtue of its non-technical, non-philosophical meaning.

The first meaning that the *Oxford English Dictionary* (OED) gives the term is a fairly thin and bland evaluative meaning: “The quality of being worthy or honourable; worthiness, worth, nobleness, excellence.”<sup>18</sup> If we said that this is the meaning that “dignity” contributes when it is used in human rights discourse, it would not amount to much. It would remind us that rights-talk is normative or evaluative, not much more. Certainly it would not help with question (ii): what does the idea of a right to dignity tell us about the content of the rights we actually have? So in what follows, I will be looking for independent elements of the meaning of “dignity” which have something substantial to contribute to this task.

## **12. Bearing and Gravitas**

One idea is that dignity has to do with the way one bears oneself or presents oneself in social life. The *Oxford English Dictionary* (OED) gives as one of the meanings of “dignity”— “Nobility or befitting elevation of aspect, manner, or style; becoming or fit stateliness, gravity.”<sup>19</sup> As well as ascribing dignity to someone who presents himself as self-possessed in this way in his bearing, we also sometimes associate dignity with the demand that people be permitted—even in adversity—to control their self-presentation. So we talk about the dignity of patients in a hospital, or death with dignity, or the dignity that people ought to be allowed even as they go to the gallows.<sup>20</sup> The norm of dignity condemns forms of treatment that involve explicit and visible humiliation.

I think this is a very interesting idea. It is connected also with some conceptions and images of what it is to be the bearer of rights (e.g. Bloch 1988, 192). But it is not one that I will explore at length in this paper.

## **13. Dignity and Rank**

Several of the dictionary definitions of “dignity” associate it with the idea of rank. Dignity is sometimes identified with high rank or high office itself,<sup>21</sup> as in this

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<sup>18</sup> For the web citation for the Oxford English Dictionary, see note 9 above.

<sup>19</sup> For the web citation for the Oxford English Dictionary, see note 9 above. The OED cites, among others, the following instances: “1667 MILTON P.L. VIII. 489 Grace was in all her steps..In every gesture dignitie and love. ... 1752 FIELDING Amelia I. viii, He uttered this..with great majesty, or, as he called it, dignity. 1811 SYD. SMITH Wks. ...1854 J. S. C. ABBOTT Napoleon (1855) II. xxx. 557 He opposed the effect of these instructions with such silent dignity as to command general respect.”

<sup>20</sup> CNN reported on January 4, 2007 that “President Bush said ... that he wished Saddam Hussein's execution had ‘gone in a more dignified way.’” This was reported by CNN on the following web-page: <http://www.cnn.com/2007/WORLD/meast/01/04/iraq.main/> (last visited July 20, 2007).

<sup>21</sup> The OED cites this passage: “1781 GIBBON Decl. & F. III. 231 He ... distributed the civil and military dignities among his favourites and followers.” For the web citation for the Oxford English Dictionary, see note 9 above.

provision from the French Declaration of the Rights of Man and of the Citizen, approved by the National Assembly in 1789—

Article 6: All 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.<sup>22 23</sup>

And sometimes it refers to the privileges and appurtenances of rank or office, as in this OED citation from the statute taking the crown away from Richard II<sup>24</sup>—

1399 Rolls Parl. III. 424/1 Ye renounced and cessed of the State of Kyng, and of Lordeshipp and of all the Dignite and Wirsshipp that longed therto.

Taken together, these are the meanings that I would particularly like to explore. I want to consider the possibility that when we attribute rights to people in virtue of their dignity, we do so on account of some high rank we hold them to have.

Now, this may seem an unpromising idea for human rights discourse, for such discourse is characteristically egalitarian, and it is associated with the denial that humans have inherent ranks that distinguish some of them as worthy of special dignity in the way that say a duke or a bishop might be. An equation of dignity and nobility seems to fly against the spirit of human rights discourse, which eschews the sorts of distinctions that an aristocratic theory licenses.<sup>25</sup> It might seem then that we should look elsewhere in the dictionary for the specific meaning of “dignity” that is present in its use in the discourse of human rights. Some of the other dictionary meanings might be bland—like “[t]he quality of being worthy of something; desert, merit” or “[t]he quality of being worthy or honourable; worthiness, worth, . . . excellence”—but at least they avoid the air of discrimination and distinction, the element of class or even caste, that nobility connotes. However, I am reluctant to leave the matter there, and abandon the equation of dignity and rank on account of objectionable aristocratic connotations. I suspect that this sense of “dignity” offers something more to a genuinely egalitarian discourse of rights than meets the eye.

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<sup>22</sup> See also note 54 below and accompanying text.

<sup>23</sup> Sometimes (though this is almost an archaic use) “dignity” refers to the people who hold such rank or office, as in this OED citation: “1793 BURKE Corr. (1844) IV. 149, I cannot see the dignity of a great kingdom, and, with its dignity, all its virtue, imprisoned or exiled, without great pain.”

<sup>24</sup> For the web citation for the Oxford English Dictionary, see note 9 above.

<sup>25</sup> 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 in Article 1: 9 (8) that “No title of nobility shall be granted by the United States.”

#### **14. The High Rank of the Human Species**

For consider this: when we talk about human dignity as such (as opposed to the dignity of humans belonging to this or that class) 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.<sup>26</sup> Now it is often a striking implication of this sort of ranking that, *within* each rank, everything is equal:<sup>27</sup> and this has been important for theories of human equality. So, for example, John Locke writes 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, unless the lord and master of them all should, by any manifest declaration of his will, set one above another. ... [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 1988, pp. 269-71 (Second Treatise, §§ 4 and 6))<sup>28</sup>

The idea of rank is here used to articulate an aggressively egalitarian position. Humans are basically one another's equals, because denial of equality in this fundamental sense would relegate some to the status of animals or elevate some to the status of gods.<sup>29</sup> But there are other places where he uses "dignity" in a sense that seems to correlate with the equal rank of all humans, as when he says (apparently following Hooker) that

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<sup>26</sup> For example, the OED cites Richard Hooker as writing, in *Ecclesiastical Polity*, of stones' being "in dignitie of nature inferior to plants." 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: "1594 HOOKER Eccl. Pol. I. vi. (1611) 12 Stones, though in dignitie of nature inferior to plants." (For the web citation for the Oxford English Dictionary, see note 9 above.)

<sup>27</sup> 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."

<sup>28</sup> See, however Waldron 2002, pp. 44-82, for the difficulty of reconciling all this with Locke's philosophical nominalism about species.

<sup>29</sup> It is interesting too that Locke sometimes associates this idea with dignity. Not always; in one or two places, he uses "dignity" in a way that correlates with some specific intra-human hierarchy, like kingship, or with its attributes. Locke says of a king that "[t]he people ... can never come by a power over him unless he does something that makes him cease to be a king; for then he divests himself of his crown and dignity, and returns to the state of a private man.... (ibid., Locke 1988, p. 423 (Second Treatise, § 237)).

for 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.<sup>30</sup>

The idea seems to be that we could live, in solitude like beasts, but if we want to live up to our specifically human rank or human dignity, we must obtain the sort of subsistence one gets from cooperating with others. (The Universal Declaration of Human Rights makes a similar claim in Article 23 (3), saying that “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity . . . .”)<sup>31</sup>

I think this idea of a special dignity for human beings in God’s creation is predicated in theistic thought specifically on the point that unlike lower beings are each made in the image of God (imago Dei). It is not simply that they happen to be ranked higher (say) than the animals, but that they bear a special dignity in virtue of their being created in the image of God.<sup>32</sup>

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<sup>30</sup> Locke 1988, pp. 277-8 (Second Treatise, § 15).

<sup>31</sup> There is a brief discussion of this idea in Gewirth 1992, at p. 18: ‘Human dignity, in such a perspective, is to be accounted for by this theological-cosmological context, which sets the ontological status of human beings, and it consists in or derives from all humans’ possession of reason or free will or both.’ But Gewirth is skeptical about whether this can really afford a basis for rights.

Also, I believe that some Catholic dignitary teaching continues to draw on this idea of the special rank accorded to all humans in the great chain of being. As Jean Elshtain has argued, talk of human dignity in this context “is not some arbitrary principle picked up on and found useful; rather this dignity is lodged in the fact that human beings are creatures of a certain sort” (Elshtain 1999, p. 62). (Actually, I think this flatters Catholic usage a little bit: often the dignitary aspect of Catholic human rights doctrine is pretty empty or tautological. Consider this from Jacques Maritain:

The dignity of the human person? The expression means nothing if it does not signify that, by virtue of the natural law, the human person has the right to be respected, is the subject of rights, possesses rights. (Maritain 1951, p. 65)

But this is tautological. As Alan Gewirth has pointed out (1982, p. 28), in this passage “[t]he attribution of dignity adds nothing to the attribution of rights, and someone who is doubtful about the latter attribution will be equally doubtful about the former.” We are back with the issues that we discussed in section 3, above.)

<sup>32</sup> The connection between species, rank, equality and imago dei is made clear by Locke 1988, pp. 161-2 (First Treatise, § 30), in a passage insisting on the equality of Eve and Adam in regard to God’s gift of dominion over the world:

God in this Donation, gave the World to Mankind in common, and not to Adam in particular. The word Them in the Text must include the Species of Man, for ‘tis certain Them can by no means signifie Adam alone. ... They then were to have Dominion. Who? even those who were to have the Image of God, the Individuals of that Species of Man that he was going to make, for that Them should signifie Adam singly, exclusive of the rest, that should be in the World with him, is against both Scripture and all Reason: And it cannot possibly be made Sense, if Man in the former part of the Verse do not signifie the same with Them in the latter, only Man there, as is usual, is taken for the Species, and them the individuals of that Species ... God makes him in his own Image after his

## 15. The Irony of Humble Rank

A second point about dignity in the sense of rank or nobility that should interest us has to do with a certain transvaluation of values that happens a lot particularly in romantic poetry. One begins with an idea of dignity associated with the high rank of some humans (compared to others), and then one reverses the 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.<sup>33</sup> Robert Burns is the real master of this move, which one can see by considering the remarkable reversal of rank/dignity in the three central stanzas of “For A’ That and For A’ That” (Burns 1872, pp. 201-2).<sup>34</sup>

The transvaluation of “dignity” embodied in this poetry is but an instance of a broader transvaluation that I believe has taken place with regard to dignity generally. The hypothesis that I want to pursue in this paper is that—perhaps

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own Likeness, makes him an intellectual Creature, and so capable of Dominion. For wherein soever else the Image of God consisted, the intellectual Nature was certainly a part of it, and belong’d to the whole Species...

<sup>33</sup> The OED cites a passage from Wordsworth to illustrate this: “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.”

<sup>34</sup> 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:

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.

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.

aided by the ontological rank conception that we find in Locke and the Catholic thinkers—there has been a sea-change in the way “dignity” is used now, 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.”<sup>35</sup>

## 16. Vlastos on Dignity

Something like this reversal or transvaluation of rank/dignity was noticed some time ago by Gregory Vlastos (1984), in a neglected essay “Justice and Equality,” as the possible basis or content of a theory of rights. Vlastos argued that we organize ourselves like a caste society but with just one caste, or like an aristocratic society but with just one rank (and a pretty high rank at that) for all of us (Vlastos 1984, p. 54.)<sup>36</sup>

I think Vlastos’s suggestion bears a great deal of exploration. For if Vlastos is right, there may be a useful connection between the independent meaning of dignity, associated with high or noble rank, and the egalitarian claims about human dignity that we make in human rights discourse. Instead of being simply opposed—which, of course, in a sense they are—we might see them as standing in a dynamic relation to one another in this reversal-of-rank conception.<sup>37</sup>

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<sup>35</sup> Whitman 2005, p. 97, pursues this idea in the particular context of European constitutional law, arguing 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.”

<sup>36</sup> 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 “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 1984, p. 54)

<sup>37</sup> 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. In a very interesting essay, Teresa Iglesias (2001) 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

The significance of Vlastos's suggestion can be understood in various ways. One possibility is that we use the idea of a dignity-reversal to understand the very idea of human worth and the respect it commands. Another possibility is that we also use the idea to think about the detail of particular rights that all people now, not just nobles, are conceived to have. I will explore the first possibility in section 17 and the second in section 18.

### **17. Dignity and Respect for Persons**

The use of "dignity" in rights discourse is strongly associated also with the language of "respect."<sup>38</sup> I believe that the meaning of "dignity" that connects it with rank and nobility opens up an interesting perspective on this also.

Some (e.g. Darwall 1977, p. 36) have analyzed "respect for X" as meaning either "giving an accurate (moral) assessment of X" or "responding to X as X ought to be responded to." But this is not enough. Respect tells us something about a particular sort of response that is appropriate for a certain kind of being; it is not just a synonym for "appropriate response." The ordinary meaning of "respect" has strong overtones of deference, and the idea of someone respecting another conveys some sense of deferring to her, making room for her, listening to her, allowing her will rather than one's own to prevail, and so on.

As long as rank has been settled, as long as caste and nobility have been established, respect has had an important role to play in defining the posture,

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"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 2001, 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. See also Iglesias 2001, 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." 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 2001, p. 122.)

<sup>38</sup> "Respect" is also a term of Kantian provenance in moral philosophy, though Kant used the term 'respect' very carefully whereas we tend to use it quite loosely. I think he used it as a technical term. Kant associates respect with a certain sort of quailing before the ability of the moral law to strike down one's inclinations rather than with any particular attitude of deference to persons. Kant 1956, at pp. 78-9. Respect is not our response to something that matters, in Kant's moral philosophy, but rather our response *to* our response to something that matters.

behavior and attitude appropriate in the presence of one's superiors. Perhaps, to the extent that rank and dignity are associated with public office or with the performance of important public functions, then respect can be oriented primarily to the office and the function rather than to the person. This is the sort of respect that a judge claims when he threatens someone with punishment for contempt of court. But for a large array of cases the idea of respect for someone's rank was not just a matter of attending to the importance of his office and behaving accordingly: it was deference due to him, as such, and it mattered over the whole range of ways that one might have dealings with him. It was a diffuse and functionally undifferentiated respect focused on rank as a general attribute of a person.

And so, if we were to make the radical move—the reversal—and transfer this demand for respect from the nobility to every last ordinary person, what we would be transferring would not be a functional deference,<sup>39</sup> but this diffuse deference owed to the whole person. Or—and this is what I really want to say—we might think about the respect demanded by ordinary people as right-bearers in this light. A right bearer is an ordinary person to whom this extensive and diffuse deference is due.

We often talk, in the human rights context, of respect for persons. We often think of the principle of respect for persons as a demand that we should simply esteem personhood, i.e. responding to personhood as an important value. It is interesting, however, that the idea of respect for persons also once had this original meaning of deference to rank and distinction. God, St. Peter tells us, is “no respecter of persons,”<sup>40</sup> by which he of course does not mean that God fails to take personhood seriously, but that God does not distinguish between the deference due to a king or a bishop and the deference due to an ordinary person. By contrast, a respecter of persons would make these discriminations on the basis of rank. And so when we talk about respect for persons, maybe once again this reversal-of-rank idea is playing a significant role.

In an aristocratic system, the ordinary non-noble individual is not entitled in to anything like the generalized person-focused deference that a noble is entitled to. He lacks the dignity that commands respect, according to the system of nobility. Dignity is something to which he has an obligation, but not something to which in any form he has an entitlement.<sup>41</sup>

When we finally turn against this system of stratification, we could imagine turning against it in two ways. (1) We might say that no one is entitled to the sort of respect that nobles have been claiming. Or (2) we might say that everyone is entitled to the sort of respect that nobles have been claiming. I believe that our

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<sup>39</sup> However, “citizen” may perhaps be seen to connote something like a generalized functional deference: cf. the distinction in the title of the French Declaration of the Rights of Man and the Citizen.

<sup>40</sup> Acts 10: 34: “Then Peter opened his mouth, and said, Of a truth I perceive that God is no respecter of persons” (King James Version).

<sup>41</sup> See Loyseau 1994, pp. 82-115.

talk of human dignity is an indication that the position we have adopted is (2), rather than (1).

There will certainly be some matters as to which (1) is appropriate. Sometimes we will want to simply do away with noble privilege rather than try to universalize it. Certainly there are some aspects of the so-called dignity of nobles that we will treat in this way. According to Dicey (1982, p. 112), a certain French duke once ordered his lackeys to thrash Voltaire for some remark Voltaire made at his table, and he seemed to think that he was entitled to have this order obeyed; but we say that no one is entitled to have such an order obeyed. We now think that no one is entitled to have people thrashed just because they are offended by them.

If our approach were (1) *across the board*, we might say that the proper response to persons, all of whom are now of equal rank, eschews comprehensively the sort of respect that nobles commanded. We might say, with Bentham for example (or with Peter Singer) that persons are entitled to the same concern as animals; they have no special status or dignity compared to other creatures.<sup>42</sup> “On this scheme of things,” as Edmund Burke put it, “a queen is but a woman; a woman is but an animal, and an animal not of the highest order.”<sup>43</sup> Humans are entitled to jostle one another, shout one another down, make no room for each other, pay no mind to each other’s preferences or opinions. The dignity of being one another’s equals would be purely negative, so far as respect was concerned.

Alternatively we might try to build up an affirmative notion of respect on utterly independent foundations. We might infer it, as I suggested at the end of section 14, from some conception of *imago dei*, for that is not necessarily a generalization across all men of the sense that the king and the nobles stand nearest to God. Or we might construct our notion of respect for equal human dignity from scratch, without analogy with previous rank-laden notions of dignity. Maybe this is what Kant is doing in his idea—which really has only a tenuous

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<sup>42</sup> See e.g. Bentham 1970, pp. 282-3:

The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor (see Lewis XIV’s Code Noir). It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they reason? nor, Can they talk? but, Can they suffer?

<sup>43</sup> Burke 1968, p. 171, lamenting the loss of all the “decent drapery” which contributed to human dignity:

All the decent drapery of life is to be rudely torn off. All the superadded ideas, furnished from the wardrobe of a moral imagination, which the heart owns, and the understanding ratifies, as necessary to cover the defects of our naked, shivering nature, and to raise it to dignity in our own estimation, are to be exploded as a ridiculous, absurd, and antiquated fashion. On this scheme of things, a king is but a man, a queen is but a woman; a woman is but an animal, and an animal not of the highest order.

relation with noble dignity, perhaps via the idea of noblesse oblige and aristocratic self-control—that respect for persons is just a projection of the awe that is inspired in us by a realization of the power of moral law within us.

But I think it is plausible that option (2) has a role to play as well: we construct our notion of the respect due to persons by experimenting with the idea that everyone might occupy the high level that hitherto nobles have occupied. I think it is plausible to think that this may be one of the specific ideas which the use of the term “dignity” conveys.<sup>44</sup>

### **19. Universalizing Rank**

How might dignity in this sense of radical rank-reversal help us think about the basis or content of rights? I think it may help in elaborating a conception of rights in the following way. It is a constructivist idea, that is, it provides a basis for constructing a model of how to determine rights which might possibly illuminate our thinking about the rights we have or ought to have.

What I have in mind is a sort of unwieldy thought-experiment. The experiment involves taking each incident of privilege, right or power associated with nobility, rank or caste and applying it to the common people as well. I do not mean just a crude Jacobin turning-of-the-tables, where (for example) one endows the common people with the sort of power of (say) life and death over the nobility that the nobility once had over the people. Or, like Pol Pot, one puts the bourgeois or the fancy intellectual to work in the fields and authorizes the common peasantry to order them about (and kill them when they shirk their labor). That is hardly a recipe for a good human rights theory, and it is certainly not the model I had in mind.

Instead of simply reversing the direction of the relations of dominance and subordination associated with rank, one might simply universalize them. One comes across a noble, N, with a certain privilege  $R_n$ , which has hitherto been treated as part of the dignity of his rank; one allows N to keep  $R_n$ , but one

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<sup>44</sup> Cf. the conception of rights in Williams 1991, pp. 146-165:

For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one's status from human body to social being. For blacks, then, the attainment of rights signifies the respectful behavior, the collective responsibility, properly owed by a society to one of its own. ... “Rights” feels new in the mouths of most black people. It is still deliciously empowering to say. It is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power. The concept of rights, both positive and negative, is the marker of our citizenship, in relation to others.

attributes it also to everybody else, including those who were previously regarded as vastly inferior to N.<sup>45</sup> Several things might happen when we do this:

(I) An attempt to universalize  $R_n$  in this way may reveal that it simply cannot be attributed, without contradiction, to everyone.<sup>46</sup> Suppose  $R_n$  is the right to speak first in any debate (which N might have had as king or whatever). This is not something everyone can do.

(II) An attempt to universalize  $R_n$  in this way may reveal that it loses a lot of its point or attraction.  $R_n$  may be valued by N as a positional good, and he may not be interested in it as a universalized good. Suppose  $R_n$  is the right to have his voice count in matters of great policy. This may be worth something for N as long as he is one of ten or fifty or even a thousand nobles, treated as one another's peers, in the highest councils in the land. But he might disdain an equal voice in a democracy, where he has to share this with a hundred million others.

(III) An attempt to universalize  $R_n$  may preserve the viability and value of  $R_n$  (even though it might undermine other privileges formerly associated with  $R_n$ ). Suppose  $R_n$  is the right not to be struck (in the sense of assaulted). Nobles may have had this right in an aristocratic system, but we might imagine that serfs did not, at least when the striker was a noble. Now suppose we give everyone the right not to be struck. It seems to me that we preserve the value of  $R_n$  even though, concomitantly, N might lose a different right, namely the right to strike serfs as he pleases.

Obviously, in this thought-experiment, category III will be of special interest. Privileges in category III are those that can be established as human rights. But category II should not be neglected. This is a category of rights whose universalization makes them less attractive (than they were as privileges of rank). But so far that is a point about their significance for N. When they are universalized they may lose that sort of attractiveness and significance, but they may take on a somewhat different attractiveness or significance. The example I used—the transformation to democratic vote from aristocratic voice in the great councils of the land—illustrates this very well. Someone who is used to being a dictator or used to being one of a few entrusted with great affairs of state may disdain voting with the masses; and occasionally even ordinary citizens take on

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<sup>45</sup> I use the term “privilege” here in its loose colloquial sense of a right (of whatever sort) that accrues to some people (those who are privileged) and not others; I am not using it in the technical sense expounded by Hohfeld 2000 and others.

<sup>46</sup> Consideration of this possibility is of course reminiscent of the first formulation of the categorical imperative in Kant 1977, p. 14.

this haughty perspective when they complain that their votes are meaningless.<sup>47</sup> But still there may be pleasure and significance in having the vote—certainly indignity in being denied it—even when it is shared equally among the masses of society.<sup>48</sup> I have in mind something like Judge Learned Hand’s observation about democracy (in his attack on judicial review):

For myself it would be most irksome to be ruled by a bevy of Platonic Guardians.... If they were in charge, 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.”<sup>49</sup>

And so we learn something, from the use of this model, even from rights in category II. We learn how to think anew about certain rights whose significance was previously characterized only on the assumption that they were confined to a few.

Even category I may hold some lessons for us. It is tempting to simply dismiss a claim of right based on the universalization of privilege when it appears that such rights will inevitably clash with one another. But there are different kinds of conflict. Some privileges may be inherently positional. (Earlier I mentioned the right to speak first in any debate, as an example). But others may generate conflicts contingently, and it is imaginable that a skilful casuistry of rights and rights-conflicts will lead to some new conception or new understanding of the (now universalized) privilege, an understanding that resiles a little from its most extravagant formulations but does not necessarily give up on the underlying idea altogether. Marie Antoinette may have had the right, associated with her royal status, to be supplied with cake, no matter what the expense. Universalizing that

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<sup>47</sup> Benjamin Constant gives voice to this 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. (Constant 1988, p. 316).

<sup>48</sup> See Waldron 1999, pp. 108-110.

<sup>49</sup> These observations by Judge Learned Hand were quoted in Dworkin 1996, pp. 342-3.

may be difficult, in conditions of moderate scarcity. But we might still keep hold of the idea that everyone is entitled to a reliable food supply, with the same sort of urgency (if not the same luxury) that the Queen of France was entitled. And if circumstances turn out to be such that even this may not be possible for literally everyone, still there may be ways of dealing with the conflicting claims that result which treat everyone as having high rank in regard to this entitlement (as opposed to ways of responding to shortages that take hierarchy for granted). A potential conflict is not proof against a hypothesis about the rights we have; it indicates only that there are difficult issues to be resolved in a rights-respecting manner.<sup>50</sup>

## **20. A Thought Experiment**

I do not mean to propose this as an algorithm for generating and defending claims of right. The aim of the thought-experiment is not to determine what rights we have. It is just to help us think about the relation between rights and dignitary regimes in a way that illuminates our continued use of “dignity” (this term so intensely associated with rank) in an egalitarian context. It may yield some new and startling results, none the less, and it would do our thinking about rights no harm for us to ask ourselves: why has this or that incident of nobility not in fact been universalized as a human right (in the way this thought-experiment indicates it might be). But of course that question might have an answer; and that answer itself will tell us something about our current conceptions of human rights.<sup>51</sup>

Someone might say: Why not drop the reference to specific schemes of nobility altogether and just do the thought experiment directly and abstractly over the whole domain of imaginable content for rights? For all actions A and for all goods G, let us consider what it would be like to attribute a right to G or a right to do A to everyone. This would be a straightforward Kantian test, and it would have the advantage of not being bounded by the conventional contingencies of historically existing systems of nobility.

There is surely no objection to such a thought-experiment, but it would differ from the one I am imagining in failing to give us any specific perspective on the way this idea of dignity operates or could operate in a human rights theory.

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<sup>50</sup> See also Waldron 1989 for a discussion of the difficulties involved in resolving conflicts of rights and the way in which different conceptions of rights affect that issue.

<sup>51</sup> Someone may ask: How do you choose which system of rank or nobility to use as the starting point of this thought-experiment? Even within a given system, how do you choose the value of N? Which elevated status do you focus on: king, duke, bishop, baron, or what? The answer is that we may choose any system of aristocracy, nobility, or caste, and any high rank in such a system. The idea is that, for each and every incident of dignity that has been found viable as a matter of rank in an existing social system or might be found viable, we should consider what things would look like if that incident of dignity were universalized. This strategy is connected with the idea of setting human rights at as high a level as possible consistent with equality. See Vlastos 1984, pp. 62-7 for the thesis that the logic of equality requires setting the basic human entitlement as high as possible. The thought-experiment I am proposing is irresponsibly promiscuous (in a good way).

“Dignity” is not a purely abstract term; it has roots in the thick reality of historically existing schemes of rank and nobility. And when we move it out of that context into the realm of rights for humans generally, there is a real and interesting question of how much of that thick, rich reality it can bring with it. That is what interests me.

## **21. Existing Human Rights as Universalized Rank**

In section 19, I imagined a way of thinking about the generation of rights-claims in relation to this idea of dignity/rank. We might also put the idea to use in the opposite direction—in thinking about the human rights that we are already sure we have. The idea is that we may use dignity/rank to characterize (or recharacterize) these rights. The idea is to see how they look when they are, so to speak, invested with the aura of high rank and dignity—high rank and dignity for all. Two examples of this I have already mentioned:

- I mentioned the right not to be struck. We might understand this as something very mundane, as ordinary as the offenses or torts of assault and battery. Or we might understand it in the spirit in which it was originally seen as an entitlement of nobility: it was a matter of the inviolability of the person, so that striking a noble was almost a sacrilege. There is no difficulty keeping hold of this element of sacral inviolability when we generalize the right for all persons, as part of basic human dignity. 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.
- I also mentioned entitlement to a voice, the entitlement to speak freely on matters of public concern and, in a context of public decision, the right to speak formally so that one’s voice is not just heard but counted in the determination of public policy. This too can seem like something utterly mundane and even insignificant, in the way in which citizens sometimes take the vote for granted in a well-established democracy. But this too can be understood in a more momentous way, as the entitlement of each person, as part of his dignity as an (equal) peer of the realm, to have his voice reckoned with and counted in the resolution of great affairs of state.

It is not hard to think of other examples. In each case, we take an existing right, and think of it as it might have been in its original habitat, so to speak, as an exclusive privilege of rank, we consider what significance it might have had in that context, and then we try to hold on to as much of that significance as possible, i.e. as much of that originally rank-privilege significance as its subsequent universalization will permit. For example:

- Consider the fundamental right of each person to have his or her own wishes respected in conduct of his or her own personal life, along with the right to grant consent as to what is done in and around his or her body. This is an idea we take for granted (though its implications for reproductive freedom—the right to abortion, for example—are more controversial). But it used to be regarded as the privilege of a particular rank—the privilege of the head of a household, but not the right of say women in the household or slaves. A gentleman might have the right to refuse or dictate medical treatment; but a slave had no such right.<sup>52</sup> By insisting on this now as a universal right, we level up from slavery, giving everyone the privileges once associated with the dignity of a highly ranked subset of the members of society.
- We think of ourselves as entitled to a certain degree of inviolability not only of person but also of home. The proverbial saying “An Englishman’s home is his castle” reflects a version of the dignitary idea I am using. The idea here is that we live secure in our homes, with all the normative force that a noble’s habitation of his ancestral fortress might entail. The ordinariness of our dwellings does not signify that the right of privacy or security against incursion, search, or seizure is any less momentous.
- We have rights to religious freedom: each person has the right to adopt and practice any religious belief he likes (or none). This seems so much a point about the claims of the conscience of the ordinary individual that we may also lose sight of its rank-dignitary significance. But consider the right of a Westphalian sovereign under the mid-seventeenth century settlement: the right to practice whatever religion he likes and have his realm follow him in that. Each of us claims not just individual rights but something like sovereign rights over our beliefs and religious practices. I think too that this is connected with the conviction that our religious freedom rights do not just protect our privacy:<sup>53</sup> they mean that we do not have to be coy about or dissimulate or hide our religion in the presence of others (any more than the Elector of Hanover had to conceal his Lutheranism from the Bishop of Mainz).
- The right to hold government accountable is connected to the right to voice and vote mentioned a moment ago. There is a degree of proud entitlement to scrutinize public affairs, conveyed in the French Declaration of the Rights of Man and the Citizen, when it is said that “All citizens have a

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<sup>52</sup> See the discussion in Della Vorgia et al (2001).

<sup>53</sup> I am grateful to Carol Sanger for this point.

right, individually or through their representatives, to assure themselves that a need for taxation exists [and] to accept it by free consent.” No one can dismiss such a demand for accountability as impudent or say it is none of the citizen’s business, any more than they could say that about the similar demands of the highest counselor of state.

- Rights of equal opportunity, especially in regard to public office, can be seen as generalizations of the privileges of rank. (I think this helps explain recent and contemporary controversies of the right to serve on juries or in the military.)<sup>54</sup> It was a momentous claim for the authors of the French Declaration of the Rights of Man and the Citizen to make when they insisted 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.”<sup>55</sup> Historically these positions have been associated with rank and privilege; within a given set of those deemed eligible, there might be pressure to select the best; bias or unresponsiveness to merit might seem an insult to those who are, by virtue of their rank, in principle eligible for these honors. But a meritocracy rooted in rank—even equalized rank—makes different demands than a meritocracy favored for purely technocratic or utilitarian reasons.
- Consider the rights associated with trial and criminal punishment. In aristocratic societies, special forms of due process were often reserved for nobility; a noble was entitled, for example, to trial by his peers (that is, by people who were not of a lower rank than he was). But now we have changed that, so that in a sense we are all one another’s peers and entitled to insist on trial on that basis.<sup>56</sup> It used to be thought that punishments were appropriately differentiated by rank, and that nobles, for example, might be spared some of the cruelty and humiliation associated with the terrifying punishments visited upon the lower orders. They might be subject only to punishments thought consistent with their dignity. We might think of the modern guarantee against cruel punishment as a way of generalizing this for everyone, outlawing the dehumanizing forms and aspects of punishment that were formerly visited upon low-status persons, on the grounds that now no-one was to be treated as of low status: everyone

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<sup>54</sup> See e.g. Kerber (1998).

<sup>55</sup> See text accompanying note 22 above.

<sup>56</sup> (This is very important in evaluating the rights to jury trial that one finds in common law countries: the right to be tried by a jury, not by a judge alone, is something like a noble’s insistence that being arraigned before an official will not do.)

who was punished was to be punished as though he were an errant noble rather than an errant commoner or slave.<sup>57</sup>

- Common article 3 of the Geneva Conventions insists that “outrages upon personal dignity, in particular humiliating and degrading treatment” shall be prohibited in the treatment of captured combatants, detainees, or civilians falling under military power. The right, here, is a right to dignity; but it is also the generalization of a right that was originally based on the dignity associated with particular ranks. 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 of the treatment of the common soldier. But now our democratization of the treatment of captives and detainees has not led to a generalized enforcement of the rights (such as they were) that were attributed to humans as such, but to an attribution to humans as such of the rights and privileges that were formerly confined to nobles and knights. Once again, our dignitary human rights are generalizations of the exclusive rights that used to be associated with the dignity of certain high ranks of mankind.

These have been brief thumbnail sketches of the dignitary aspects of certain rights, explaining how the importance of a right now deemed universal might be understood not in terms of plain equality, but in terms of the generalization of the respect and solicitude for dignity that was previously confined to a particular high and exclusive rank of humanity.

Obviously, much more could be said along these lines. I believe it gives us a useful and salutary perspective on these rights. For, in each case, there is a worry that familiarity with these rights may breed if not contempt then an underestimation of what they mean so far as our implicit rank is concerned. I think that if we review each right and ask what its equivalent would have meant to some noble in a pre-egalitarian society, we can get a better grip on the real significance of the right to all of us who enjoy it now, and see something special and distinctive about the dignity that its possession by each of us indicates. I do not say that this is the only way or the best way of understanding the rights in question. But it yields a distinctive perspective and gives the concept of dignity more work to do than if it is simply associated rhetorically with understandings of rights which we have arrived at quite independently of that rhetoric.

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<sup>57</sup> There is an extremely interesting discussion of this in Whitman 2005, at pp. 98-102. Whitman believes, however, that U.S. penal practices are definite outliers in this regard. As he notes (Whitman 2005, p. 101), the Thirteenth Amendment to the U.S. Constitution, which is devoted to the abolition and prohibition of slavery, makes a specific exception for those condemned to penal servitude. For a further discussion of the situation in the United States, see also Dayan 2007.

## 22. Interpreting Dignity.

Let me end with some reflection on what I have been doing in this paper. One might reasonably ask: What sort of account is being offered here? I have associated dignity with the idea of rank, and specifically with a sort of universalization, for all humans, of privileges that have historically been associated with particular ranks of nobility. Am I saying that this is the way “dignity” is used in human rights contexts? Am I saying that this is what people mean already when they say we have a right to dignity or that rights are based on dignity? Such a claim would be easy to refute. Or am I saying that, although it is not what they do mean, this is what they ought to mean or this is the way the term ought to be used? I am not quite saying that either.

I think about what I have offered here as an interpretive account, in Ronald Dworkin’s sense of “interpretive.”<sup>58</sup> The analogy I have found suggestive is Dworkin’s illustration of an interpretation of the practice of courtesy in Law’s Empire (Dworkin 1986, pp. 46-49). To illustrate the broad idea of interpretation that he uses in his jurisprudence, Dworkin asks us to imagine the members of a community who for a long time have practiced conventions of courtesy—some people raising their hats when they meet others, or giving them precedence going through doors or in the seats of railway carriages, and so on. But when controversy breaks about some aspect of courtesy, they turn their attention to what this (previously unreflective) practice means. And they offer rival interpretations: some associating it with the deference of the strong to the weak, some associating it with efficiency, and so on. In asking themselves what their practice of courtesy means, they are not asking what they have had in mind as they engage in this practice; they are trying to figure not what they themselves think but what they should think or what it is worth thinking about this practice. They try to show it in a good and illuminating light which will enable them to participate in it more intelligently.

I think I have been offering something analogous for the discourse of dignity. One notes that “dignity” is used in human rights discourse. For a while its use is largely unreflective; certainly its use by human rights advocates and others is innocent of the pedantries and fine analytic distinctions I have been pursuing in this essay. But in certain circles it becomes reflective: people wonder what the point is of using “dignity” in this context; they offer various hypotheses about what the point may be;<sup>59</sup> and they make suggestions to reform or tidy up our usage

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<sup>58</sup> Cite to Dworkin 1986, pp. 45-86. (This is quite separate from the issue of Dworkin’s own use of “dignity, discussed above in section 8. I am now just drawing an analogy with, or rather drawing methodologically from, some separate work that Dworkin has done on interpretation in jurisprudence.)

<sup>59</sup> Dworkin 1986, p. 52: “[C]onstructive interpretation is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong. ... A participant interpreting a social practice ... proposes value for the practice by describing some scheme of interests or goals or principles the practice can be taken to serve and exemplify.”

of “dignity” in human rights contexts in light of those of their hypotheses that seem most plausible.

I share with Dworkin the sense that an interpretative exercise of this kind is not necessarily held hostage to the conscious thoughts or intentions that are in people’s minds when they use the term “dignity.” People use the term in this discourse for all sorts of reasons: it sounds good; it has great rhetorical power; everyone does it; and so on. They may be dimly aware of its more technical uses in moral philosophy and they may want to hook up too with its other uses in social advocacy. There may be an element of “semantic deference” in most people’s uses of the term.<sup>60</sup> Most human rights advocates use it pretty unreflectively and they do so on the implicit assumption that somewhere, in some ivory tower, someone has taken on the task of figuring out exactly what “dignity” means and what it can contribute. As we have seen, this assumption may possibly be misplaced. But if it is not, then the work that is done at this level (in the ivory tower) can hardly itself depend on intentions associated with the very uses that are supposed to be deferring to it. Moreover, since the use of dignity in relation to human rights is relatively new, there is no reason to suppose that the specialized ivory-tower work in figuring out what it means should not be on-going. I would like to present the work done in this article in that spirit.

One final point about the Dworkin analogy. I do not want to say that the interpretation I have offered is the best or the correct understanding of dignity. I think it is an important line of understanding that has been neglected and that bears much more exploration. Sometimes Dworkin’s conception of interpretation is associated—rightly or wrongly—with the view that there is just one right answer to every interpretive question.<sup>61</sup> I want to avoid any such idea here.<sup>62</sup>

This article has been haunted by the idea—which I described at the outset as a sort of null hypothesis—that the use of “dignity” in human rights discourse is just meaningless decoration, and that it dresses up as grand or solemn-sounding argument what is really just tautological or circular reasoning. I said at the outset that I thought it worth exploring whether we could find alternatives to this null hypothesis. Certainly the stipulative uses of “dignity”—Ronald Dworkin’s or Immanuel Kant’s uses—avoid that result. They may be artificial but they are by no means disreputable, and in the case of the Kantian usage, we may have to acknowledge that this is perhaps the best account of what is now going on, at least among moral philosophers and philosophically literate rights advocates. But I thought it worth exploring an even more flattering hypothesis—that the use of this term that interests us is not just decoration, and not just technical and artificial, but

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<sup>60</sup> The idea of semantic deference—that most people’s use of a term presupposes implicit reference to the expertise of a few who know more about the conditions of its proper application than they do—is set out for example in Burge 1979.

<sup>61</sup> For Dworkin’s early work on the “right answer” thesis, see Dworkin 1977, esp. pp. 331-8.

<sup>62</sup> I am grateful to Liam Murphy for discussion of these issues.

really conveys something substantial embodied in the independent natural-language meaning of the term. I thought it worth exploring the challenging and paradoxical possibility that the historical connection of the meaning of “dignity” with ideas about rank and nobility should not be ignored in our modern egalitarian and anti-aristocratic discourse of rights.

As we have seen there are at least two ways of taking this possibility. One is ontological, and it draws on the theological idea of there being ranks within God’s creation and of human’s occupying a very high rank—well above the beasts, a little below the angels. The idea is that something like this—with the associated notion of *imago dei*—may afford a basis for thinking seriously about rights. The other way is more constructivist. It takes its notion of dignity from actually existing systems of rank and nobility and presents human rights as a radical universalization of the status of inviolability and so on traditionally associated with high rank. I am by no means confident that I have given a full or even a coherent account of this idea, but I hope I have said enough to open up and enliven our sense of what is going on when we associate dignity with rights.

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