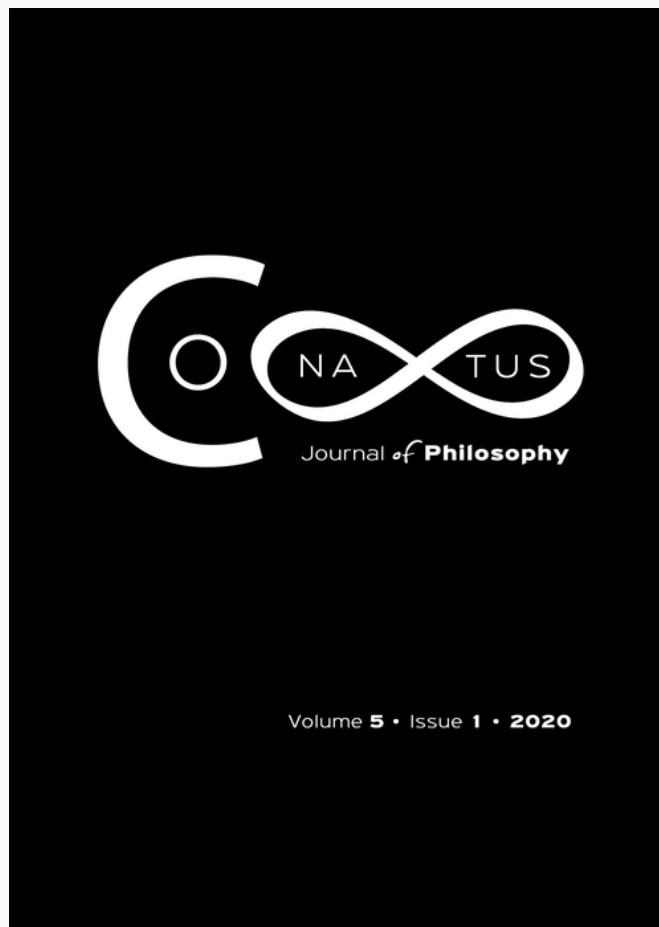


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Making Sense of Dignity: A Starting Point

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Abstract

Although appeals to human dignity became quite popular after the end of War World II in various moral and legal settings, the term retained an air of semantic indeterminacy, and scholars are of opposing minds concerning its usefulness and significance. In this essay I intend to offer a sketch of a “deflationary” account of human dignity – viewed as one moral value among many others – according to which it is conceived as the minimal respect we *prima facie* owe to our own personality, as well as to the personality of everyone else without any restriction or exception. This account is accompanied by a justification, which does not presuppose the endorsement of a particular moral theory, and envisages dignity as a bulwark to counter the morally abhorrent consequences of many categorical and normatively tainted dichotomies western societies have created.

Key-words: dignity; self-respect; respect for personality; Immanuel Kant; offense; instrumentalization; discrimination; group inequality

1 The understanding of moral values and principles is burdened by a long history, the different meanings they had in different historical periods, and the fact that most of them can be aptly characterized as “essentially contested concepts.” As if these were not enough, any attempt to make sense of dignity as a moral value and give a plausible account of it has to deal with the diametrically opposing judgments concerning its role and significance that abound in recent literature.¹ On the one hand, there are

¹ Philosophical discussions start with the treatment of *dignitas* in Cicero’s *On Duties*. It should be noted that the study of past conceptions of dignity is not only of historical interest, since they often re-surface in one way or another in relevant contemporary debates. For historical studies see Panajotis Kondylis and Viktor Pöschl, “Würde,” in *Geschichtliche Grundbegriffe, Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, eds. Otto Brunner, Werner Conze, and Reinhart Koselleck, 637-677 (Stuttgart: Klett-Cotta, 1992); Marcus Düvell, Jens Braarvig, Roger Brownsword, and Dietmar Mieth, eds., *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge: Cambridge University Press, 2014); Martha C. Nussbaum, *The Cosmopolitan Tradition: A Noble but Flawed Ideal* (Cambridge, MA: Belknap

those who outright dismiss it as a useless normative concept, either because of its inherent ambiguity and indeterminacy, or because of its redundancy. In their view, there are other values that could more appropriately highlight and accurately describe a cluster of moral transgressions that are mistakenly dubbed as violations of dignity.² On the other hand, there are eminent philosophers, such as Jürgen Habermas, who confer dignity a highly elevated status and envisage it as a kind of supreme value, which

performs the function of a seismograph that registers [...] those rights that the citizens of a political community must grant themselves if they are to be able to *respect* one another as members of a voluntary association of free and equal persons.³

In this essay I intend to explore the possibility of a middle-of-the-road, “deflationary” approach, which professes neither the abandonment of dignity nor the de-evaluation of a plurality of other crucial values *for the sake of* dignity. I am also interested in an approach that takes into account our pre-theoretical relevant intuitions, conceives dignity as a distinct value – one among many – that does not trespass on the scope of other values, and endorses a justification of it that does not rely on the wholesale acceptance of a particular comprehensive moral theory. I realize that this is a book-length project, but I would like to present here some preliminary basic remarks, that could serve as a starting point for further reflection.

2. On condition that we are seeking a conception of dignity that preserves its role as a distinct and clear value without overshadowing other equally basic values, we could start with the following description: *Dignity can be conceived as the *prima facie* moral claim to minimally respect our own personality and the personality of anyone else without any restriction or exception.* Given that

Press, 2019), 64-96; see also Remy Debes, ed., *Dignity: A History* (Oxford: Oxford University Press, 2017). For a detailed discussion of dignity as an essentially contested concept see Philippe-André Rodriguez, “Human Dignity as an Essentially Contested Concept,” *Cambridge Journal of International Affairs* 28, no. 4 (2015): 743-756.

² See, for instance, Kondylis, “Würde,” section VIII; Ruth Macklin, “Dignity is a Useless Concept,” *British Medical Journal* 327, no. 7429 (2003): 1419-1420; Matti Häyry, “Another Look at Dignity,” *Cambridge Quarterly of Health Care Ethics* 13, no. 1 (2004): 7-14, and Andrea San-giovanni, *Humanity without Dignity: Moral Equality, Respect, and Human Rights* (Cambridge, MA: Harvard University Press, 2017), 13-71. The latter author takes great pains to show that the foundation of moral equality and basic rights does not depend upon the notion of dignity.

³ Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” *Metaphilosophy* 41, no. 4 (2010): 469. Donelly and Griffin also belong to those who share the view that dignity grounds all basic human rights. See Jack Donelly, *Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 2013), 29, 130-132; also James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 200-201.

this kind of treatment is due from anyone to everyone, dignity treats people as equals in this respect.

3. It has been argued that human dignity is subject to *variations* or *degrees* in the sense that people have more or less dignity depending on their character, their actions and omissions, and their way of life in general.⁴ There is some confusion in this contention. Dignity as a distinct moral value should be kept apart from the plausible view that the moral assessment of others is conditioned by responsible agency on their behalf. The minimal respect for the personality of third parties dignity commands should be invariable and independent of any achievement, excellence, vice or malfeasance. In this sense, Dr. Pap (the Greek doctor who saved women from cervical cancer) and the worst criminal are equals as far as their dignity is concerned. Of course, this may not prevent us from having much higher esteem for Dr. Pap and show it on every occasion. We should not conflate dignity with personal *desert* in the wide sense and the endlessly debated obligations and duties ensuing from it.⁵

4. Failure to show the required respect for others' personality constitutes a form of moral harm that it is distinguished from other moral harms related to onslaughts on people's life, bodily integrity, well-being, freedom, and autonomy, or violations of various forms of distributive or non-distributive justice. I could degrade someone's dignity without causing her any other form of moral harm. I could also morally harm a third person without affecting her dignity. Let me give two examples from personal experience.

A. When I was doing my military service, a non-commissioned officer ordered a small group of us to run around a courtyard half-naked and holding our rifles over our head under the excruciating Greek summer sun. This was not some kind of punishment for a petty offence we had committed, nor part of an officially approved training course. He just wanted to spite us for his own unfathomable reasons. Fortunately, as soon as we had started feeling the pain, a passing officer realized what was going on and ordered him to put an end to this absurd hazing. I cannot say that I suffered from this abuse of power any other moral harm apart from a personal humiliation.

⁴ Suzy Killmister, *Contours of Dignity* (Oxford: Oxford University Press, 2020), 15.

⁵ See among many others Serena Olsaretti, ed., *Desert and Justice* (Oxford: Clarendon Press, 2003). In this paragraph I rely on Darwall's distinction between "appraisal respect" and "recognition respect." Stephen Darwall, *The Second-Person Standpoint: Morality, Respect and Accountability* (Cambridge, MA: Harvard University Press, 2006), 122-126.

B. A reckless driver was driving backwards in a one-way street and fell upon my parked car causing serious damage to it. It goes without saying that my property rights were violated and that my wellbeing was slightly affected, but I cannot maintain that he did not display the minimal required respect to my personality.

However, it is common for assaults on dignity to be accompanied with all sorts of moral harms. One of the most appalling examples one can think of is the treatment of the inmates in Nazi concentration camps. It would not be far from the truth to say that these individuals suffered any moral harm imaginable including a total and constant degradation of their personality and humanity.

5. How can dignity as described here be morally justified? A heuristic that was first used by the Stoics, and since then remains popular, consists in selecting one or more commonly held human features, which are supposed to make all humans bearers of a special value called dignity. In the Christian theological context, the dominant feature is man's likeness to God's image.⁶ In a secular context, it is common for this purpose to single out one or more natural and/or cultural traits such as our ability to make crucial choices,⁷ rationality, our supposedly unparalleled communication and interaction skills, humanity's brilliant record in the arts and the sciences,⁸ etc. However, this approach is not devoid of problems. If one chooses a single common feature of ours and argues that this confers dignity upon humankind, one has first to establish how common this feature is in the real world, and then explain why it is more significant than others. Why is rationality more appropriate than communication skills? Could not one equally argue for just the opposite? If one opts for a mixture of common features, one will keep wondering whether one's list can be ever finalized.⁹ Moreover, one has to determine whether this feature (or features) possesses the necessary *normative* force to justify dignity, since we cannot derive values from facts. This is not an easy task, since it cannot be denied that most of these traits can be used – and have been used – for manipulating, humiliating and degrading our fellowmen. For instance, lying requires good communication skills and being instrumentally

⁶ Kondylis, "Würde," section II.

⁷ Giovanni Pico Della Mirandola, *On the Dignity of Man*, trans. Charles Glenn Wallis (Cambridge - Indianapolis: Hackett, 1998), 4-5.

⁸ George Kateb, *Human Dignity* (Cambridge, MA: Harvard University Press, 2011).

⁹ Cf. the difficulties surrounding the complete description of a person in terms of sufficient and necessary conditions as they are exposed in Dennett's seminal article "Conditions of Personhood," in *The Identities of Persons*, ed. Amélie Oksenberg Rorty, 175-196 (Berkeley, CA: University of California Press, 1976).

rational is a *conditio sine qua non* for succeeding in using someone as inferior for your own purposes. Not to mention our scientific achievements which allow us to turn the whole planet into a lifeless wasteland.

More promising seems the heuristic which aims to ground dignity on our capacity for moral agency, which is here regarded as a value in itself. This approach has two advantages. The first is that it avoids the naturalistic fallacy. The second is that by putting emphasis on the “capacity for moral agency” rather than “moral agency” it does not exclude from the scope of dignity minors, who are in the process of developing their moral capacities, and those adults whose capacity for doing the right thing has been impaired due to a variety of natural or social reasons. We can roughly discern two versions of it.

a. The Kantian version

Dignity does not have in Kant’s moral universe the pivotal role of other concepts such as the moral law, the good will or the categorical imperative. It is briefly discussed in the second chapter of the *Groundwork of the Metaphysics of Morals* in which it is made clear that if x has dignity it cannot have a price, and thus it cannot be exchanged with something else. Rational beings (including humans) have dignity because of their capacity to legislate according to the moral law in a kingdom of ends and commit themselves to perform the moral duties this law prescribes. This capacity for universal and autonomous moral legislation gives human beings an elevated status and renders them superior to other natural creatures. Thus, according to Kant, the defining mark of an undignified person is one’s contempt for this sort of demanding moral agency characterizing autonomous and rational beings.¹⁰

What is most troublesome with this justification of dignity is that it is part of a complex and comprehensive philosophical moral theory and it cannot be detached from its main body. It commits us to endorse the conception of a kingdom of ends populated by purely rational and abstract beings, the notion of the moral law, the idea of an absolutely good will, a particular account of how theoretical reason can be practical and other basic elements of Kant’s moral discourse. This in turn implies that the justification sought can be formulated only within an exclusively Kantian philosophical context that is burdened with the well-known problems that concern the more theoretical part of the *Groundwork*.¹¹ Perhaps, someone might offer a

¹⁰ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. Mary G. Gregor (Cambridge: Cambridge University Press, 1996), 4:434-4:440. See also Paul Sourlas, “Human Dignity and the Constitution,” *Jurisprudence* 7, no. 1 (2016): 30-46, and Thomas E. Hill, “Kantian Perspectives on the Rational Basis of Human Dignity,” in *The Cambridge Handbook*, 215-221.

¹¹ Cf. my *Autonomy and Sympathy: A Post-Kantian Moral Image* (Lanham, MD: University Press

charitable interpretation of Kant's ethics that can more or less accommodate these problems, but still the justification of dignity cannot be given in non-Kantian terms. In brief, if one seeks to dissociate dignity from inscrutable and ongoing exegetical controversies, the Kantian version cannot be her choice.

b. The non-Kantian version

Here one can invoke as a ground of dignity a wider and less demanding and sophisticated conception of moral agency that is not associated with a particular comprehensive moral theory.¹² Along these lines, moral agency may simply mean our ability to contain the pursuit of personal interests for the sake of others. Presumably, if people are so much self-absorbed that are completely indifferent to the good of others, they cannot show the minimal respect required by dignity. Moral agency is a prerequisite for honoring dignity. However, if we are to show that dignity is *grounded* in this type of moral agency, we have to establish that the latter *necessarily* implies the recognition of dignity.

Is this a tenable position? I think not. From the fact that people might care for the good of third persons we cannot infer that they regard them as their equals in the special sense required by dignity. Let us think of charity as it was practiced before the advent of the welfare state. Certain parts of the upper class who were aiding those at the bottom of the social ladder often entertained feelings of profound contempt for them. They believed that the poor were inherently inferior, since they were thought incapable of self-control and high feelings, as well as of cultivating the excellences of the ruling class. The desire to act for one's benefit does not necessarily imply respect for one's dignity.¹³ It is consistent with insulting, humiliating and manipulating the object of our moral concern. Thus, special moral argumentation should be adduced for the justification of dignity and this leads us back to square one.

Let me explore another route. In the history of western civilization, there are many examples of well-entrenched categorical normative dichotomies that divide people to superior and inferior based on their natural and/or social characteristics. The composition of the groups formed by each dichotomy is on certain occasions subject to change, since there might be upward and downward mobility, but this does not affect the moral, financial, legal, political, and social inequalities that exist between the two groups. From

of America, 2005), 28-32.

¹² Cf. Griffin, *Human Rights*, 200.

¹³ At the same time, we can think of people who are so committed to the wellbeing of others and so eager to work for their benefit, that they end up compromising voluntarily or involuntarily their own dignity.

classical antiquity the moderns have inherited the distinction between men and women, freemen and slaves, rich and poor, nobles and commoners, civilized and barbarians, the powerful and the powerless; from Christianity the distinction between the faithful and the infidels as well as between the orthodox and the heretics; from European colonial expansionism the distinction between whites and non-whites; from the rise of the nation-state the distinction between compatriots and aliens; from the development of medicine and its institutionalization the distinction between the healthy and the sick and so forth.

However, gradually the propriety of these dichotomies started being challenged in theory and in practice. The dismal consequences they usually had for those who were cut off from the dominant groups could no longer be accepted or tolerated by certain groups or parts of the body politic. There was a moral reaction to the injustices perpetuated by these categorical divides, which, despite certain occasional failures or extremities, served as a justification for a variety of public interventions. This onerous and painful process has started taking shape with the two revolutions of the late 18th century and it continues until now with remarkable results. Slavery was abolished and the term “barbarian” is now used only by historians and in inverted commas. The establishment of representative democracy and universal franchise empowered common people at the expense of nobility, while religious freedom saved “infidels” and “heretics” alike from indescribable hardships. The poor enjoy now a better quality of life thanks to the welfare state and the introduction of certain redistributive schemes. Men and women are officially regarded as politically and legally equal, although we cannot claim that we have won the war against sexism. In a similar vein, racism has received many blows, but it has not been defeated yet. Supranational political institutions, such as the European Union, have done great progress in reconciling European nations, although we are far from forging a shared European identity. Finally, the reaction against the dominance of medical discourse and its constant intervention in people’s lives gave rise to the postwar movement for the rights of patients, contributed to the improvement of conditions in mental institutions and helped changing our perceptions towards certain forms of sexual behavior, which in the past were wrongly classified as diseases.

The abolition of these distinctions and the eradication of the harms they generate where possible, the reduction of the existing gaps and in all cases the re-evaluation of the supposed normative categorical differences between superior and inferior groups – or to put it bluntly realizing that whites are not better than non-whites, men than women, or the English than the Irish – continue to be an objective of mainstream contemporary moral and political theory, although it is doubtful whether in an era where so many

things are said and written by so many people it could be as influential as it was in the past. If there is moral progress, it depends heavily on the extent to which this objective can be achieved. However, there is no royal road to this destination as attitudes do not change easily, people tend to invent novel normatively tainted categorical dichotomies and there is no guarantee that our moral achievements will last forever.

Dignity as it has been described can be seen as a moral value, which is justified by its role in the struggle against the above categorical dichotomies and the harms suffered by those who are not favored by them. It urges us to react against these divisions – or not to create new ones – by showing the necessary self-respect and by minimally respecting the personality of our fellowmen irrespective of who they are or what they have done. In this manner, it *ascribes* people a basic form of moral equality concerning the treatment of their personality that functions as a bulwark against the dreadful hierarchical and discriminatory relations and the illegitimate exclusions arising from the above divides our civilization has abundantly produced. Undoubtedly, the pursuit of dignity does not suffice to bring about the desired result, given that a whole cluster of values and attitudes should come in to play, but its role is distinct and not at all negligible. In addition, this way of understanding the value of dignity does not commit us into endorsing a particular comprehensive philosophical moral theory.¹⁴

6. Shifting now to a more mundane level it is helpful to identify particular types of action that could count as violations of dignity as it is understood in this essay.¹⁵ Providing a complete list would be unfeasible, but if we focus on acts that degrade the personality of others either by *offending* them or by using them as mere *instruments*, it would seem that we are on the right track. In the first category we can include rudeness,¹⁶ hate speech, racist, sexist and xenophobic behavior, various humiliating practices, bullying, hazing, sexual harassment, forms of legal punishment that aim at degrading the offender,¹⁷

¹⁴ This particular understanding of dignity and its justification is incompatible with the view that dignity is the founding principle of all rights. As Rosen correctly points out, the right to respect one's dignity is the only right our conception of dignity could justify. See Michael Rosen, *Dignity: Its History and Meaning* (Cambridge, MA: Harvard University Press, 2012), 62.

¹⁵ See Killmister, *Contours*, chapters 3 and 4, and J. M. Bernstein, *Torture and Dignity: An Essay on Moral Inquiry* (Chicago and London: The University of Chicago Press, 2015); in both works there are in depth and nuanced discussions that shed light on how assaults on dignity can be carried out.

¹⁶ A rude person is someone who does not show respect for the personality of others par excellence.

¹⁷ These are rare now, but they have not been eliminated. To give an example from Greece, statutory decree no 4000/1958, which was in force until 1983, allowed the public humiliation of youngsters who were found guilty of certain forms of provocative and offensive behavior.

vulgar satire, the disrespectful treatment of hospital patients, and so forth. The second category contains types of action where agents use other people as instruments according to their desires and interests.¹⁸ In all these cases, they assume a position of superiority, which makes them oblivious of their duty to regard others as equals regarding the minimal respect for personality owed to them. Here we can think of lying, deception and manipulation,¹⁹ torture, rape, practices of exploitation, modern forms of slavery like human trafficking etc. As said before in many of these cases assaults on dignity coexist with causing other moral harms of various sorts. However, a caveat is in order here. The moral depravity of these affronts on dignity does not render them *ipso facto* legally punishable. Even if we agree that prostitution violates the dignity of sex workers, this cannot be the only reason for prohibiting it.

7. As said before, dignity as minimal respect for personality is something that is *prima facie* owed to everyone without any prior restriction or exception. However, at which age human beings can be regarded as bearers of dignity? I would say from the moment they come into this world and become subject to many of the aforementioned categorical dichotomies. We are not allowed to humiliate or degrade a newborn baby because of its sex or its color or to use it merely as an instrument for our own purposes. It is reasonable to assume that the harm resulting from violations of dignity is felt more easily and intensively by subjects whose personality has been developed, but this does not affect our relevant obligations. Moreover, in certain occasions the harm done may be felt with delay, since the subject might have had not understood the violation the moment it took place and have had taken cognizance of it much later.

Does it make any sense to say that we can show disrespect for the “dignity” of embryos or *in vitro* fertilized human eggs? Neither the history of the term, nor the justification offered here, nor its everyday use condone the ascription of dignity to unborn human beings. To speak of the personality of an embryo in the sense that personality is being discussed in this essay would be a category mistake. The harms we can impose on unborn human beings are open to discussion and are often acrimoniously debated but appeals to their dignity just add to confusion.

¹⁸ The above description retains a high level of generality. A more detailed approach could produce a classification of violations of dignity of this type drawing on Margalit's scheme according to which instrumentalization might mean treating people (a) as objects, (b) as animals, (c) as machines or (d) as subhumans. Avishai Margalit, *The Decent Society*, trans. Naomi Goldblum (Cambridge, MA: Harvard University Press, 1996), 89.

¹⁹ It should be noted at this point that some cases of manipulation are regarded morally justifiable all things considered. A standard example is A's decision to deceive B in order to save C's life. This does not mean that B's dignity has not been compromised. It is just that in A's best judgment the moral gains from saving C's life outweigh the losses resulting from B's violation of dignity. That's why our obligation to show self-respect, and also to respect the personality of third parties is a *prima facie* obligation.

8. Some adults may not be affected by assaults on their dignity either because they do not realize what is going on, or because they are used to them. For example, in the Stoic tradition agents are urged to acquire sufficient control on their emotions so as to counteract the adverse effects of offense. Gaius Musonius Rufus, a Stoic philosopher who lived in the 1st century AD, argued that allowing yourself to suffer by insults is a token of pettiness, while remaining undisturbed in the face of them is a sign of magnanimity.²⁰ However, the manner people react to violations of their dignity does not affect our obligation to honor it. From the fact that they may decide not to react for a variety of reasons to these violations it does not follow that they waive their expectations of being treated with respect.

9. From the description given it follows that individuals can compromise their own dignity. This idea is also incorporated in everyday morality as it is attested by the fact that we expect others to behave in a dignified manner throughout their whole life. This means among others that we want them to show self-respect, be sincere and straightforward, not act in ways that make others pity them when they can do otherwise, avoid being obsequious and be vigilant about not ridiculing or humiliating themselves. We also realize that this is not something easily accomplished especially “in times that try men’s souls.” Admittedly, there are differences in the way agents understand self-inflicted violations of dignity, but the following passage from Kant, although it was written a long time ago, expresses some of the relevant intuitions at least of those sharing a secular conception of morality.

Be no man’s lackey. Do not let others tread with impunity on your rights. Contract no debt for which you cannot give full security. Do not accept favors you could do without, and do not be a parasite or a flatterer or (what really differs from these only in degree) a beggar. [...] Kneeling down or prostrating oneself on the ground, even to show your veneration for heavenly objects is contrary to the dignity of humanity, as is invoking them in actual images; for you then humble yourself, not before an ideal presented to you by your own reason, but before an idol of your own making.²¹

How should we react when we see adults compromising their own dignity regardless of any other moral harm they might cause to themselves and third

²⁰ Gaius Musonius Rufus, *Lectures and Sayings*, trans. Cynthia King (Scotts Valley, CA: Create Space, 2011), 50-51.

²¹ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary G. Gregor (Cambridge: Cambridge University Press, 1996), 6: 436-437.

parties? We should take into consideration that they violate only a duty to themselves. This implies that we can warn them about the moral significance of their actions (of which they might be unaware) and give counsel, but we are not allowed to stop showing the minimal owed respect for their personality. These individuals have not breached some kind of contract or a binding agreement they made with us. Therefore, we are not free from our obligation to treat them in the same way we treat persons who show self-respect. Two wrongs do not make a right. Besides, we have to bear in mind that these persons might have found themselves in such adverse circumstances that they were compelled to sacrifice their dignity for the sake of other overarching values.

10. It is commonly held that there is a close connection between the protection of human life and the protection of dignity. For instance, one of the aims of UNESCO's *Universal Declaration on Bioethics and Human Rights* (2005) is "to promote respect for human dignity [...] by ensuring respect for the life of human beings," while Killmister points out that dignity "grounds the value of human life."²²

Claims like these are plausible but they still should be qualified. They fail to take into account the possibility of dying to avoid an undignified life or the prospect of an undignified life. In extreme circumstances, people may decide that death is preferable to a life in which their dignity is (or will be) constantly violated and there is no way out of the horns of the dilemma they face. One could think of the scores of women who committed suicide to avoid becoming spoils of war and in the hands of victors or of many public officials who put an end to their life to spare the embarrassment and humiliation of a public trial and subsequent imprisonment. We could also think of seriously ill patients who do not want to live any more an undignified life with no prospect of recovery. Judging the decisions of these people draws heavily on the views about the morality of suicide, medically assisted suicide or euthanasia one holds, and this is not the place to discuss such controversial issues. My point is simply that respecting my dignity does not *necessarily* imply respecting my life, and that respecting my life does not *necessarily* imply respecting my dignity.

11. Surveying the history of the understanding of the value of dignity from Cicero to Kateb, one cannot but observe a common theme that is not missing from most accounts: dignity is something that man possesses and animals lack. This makes us superior to other natural creatures. Can we accept this claim as easily as our predecessors did? It cannot be disputed that our conception

²² Suzy Killmister, "Dignity: Not Such a Useless Concept," *Journal of Medical Ethics* 36, no. 3 (2010): 164.

of the normative value of the animal world has been substantially improved. Bentham introduced the idea that we have an obligation not to inflict pain on them and Kant first pointed out that being cruel to animals is a sign of wickedness, but, only recently, certain forms of maltreatment of animals became in many countries an offense punishable by law. Some philosophers argue that these developments do not suffice, and that we should impose a general banning on the killing of animals of any kind. In this changing context, the question about the dignity of animals should be posited again. One could turn to the biological differences between humans and animals, which reveal a completely different picture from the one most philosophers had in the past, but any effort to formulate a novel conception of dignity that is not confined to *homo sapiens* will run into considerable difficulties. Our efforts to seek one or more indisputably common characteristics to ground such a conception of dignity are likely to prove at least as troublesome as our effort to ground human dignity in our characteristics.²³ Is it possible to construct a conception of animal dignity that would be *different* from human dignity? In a deplorable zoo that the Municipality of Thessaloniki still refuses to shut down, a wolf was being kept in captivity in a small enclosed space. The poor animal kept endlessly moving in circles, which resulted in a ditch as deep as to hide the largest part of the wolf's body. It was a disheartening sight. It occurred to me that, irrespective of any other obligations we might have to animals, we show proper respect for their dignity if (a) we do not detach them from their natural environment and (b) we do not make them behave in ways not befitting their nature. This idea in my view could give an edge in the efforts to promote animal welfare, and it should be further explored.

12. Up to now, I have been arguing on the not unanimously held assumption that dignity is a *moral* value.²⁴ The question now is how the moral conception I put forward or some other conception affects the law. A cautionary approach

²³ Perhaps, one could try to ground this common conception of dignity on De Waal's theory according to which primates have certain primitive moral emotions, such as sympathy, which are encountered in more evolved and complex forms in humans. However, it can be objected that the differences between their and our moral emotions are so big (not to mention non-primates) that they render this endeavor unworthy of the effort. See Frans de Waal, *Primates and Philosophers: How Morality Evolved* (Princeton, NJ: Princeton University Press, 2006).

²⁴ Waldron, for instance, claimed in a well-known work that the notion of dignity makes sense only as a legal value. However, the arguments he uses to show the impossibility of a purely moral approach, such as the problems surrounding the Kantian conception of dignity or the existence of racist moral philosophers in the past, are not strong enough to justify his conclusion. Moreover, he tends to see in many legal rules and provisions a strong concern for the protection of dignity, which is not obvious to me. For instance, the maxim that all defendants are entitled to legal representation is better justified by law's concern to protect the freedom and the welfare of its subjects and to avoid injustice rather than to honor their dignity. See Jeremy Waldron, *Dignity, Rank and Rights* (Oxford: Oxford University Press, 2012), 13-78.

is here appropriate. Presumably, legislators can incorporate references to dignity in official legal texts, a practice that is common after the end of World War II. What they cannot incorporate are long philosophical essays explaining in detail the manner they understand it. Consequently, dignity in legal texts retains its ambiguity and as it has been aptly remarked this semantic indeterminacy can pave the way to novel and more comprehensive and sophisticated philosophical explorations of the term, but “when dignity is elevated from its status as a moral value to that of a judicially enforceable legal rule, its ambiguity is less a virtue than a liability.”²⁵ It is not accidental that the Supreme Court of Canada in 2008 abandoned the use of dignity as a legal test in cases of violations of equality rights as inappropriate for the administration of justice.²⁶ Does this mean that dignity should have no place in legal systems?

Not necessarily. Ordinary legislators when they decide which forms of human behavior should be within the scope of criminal law, they could take into account actions that violate human dignity (understood in a strictly defined sense) and inquire whether these violations are so serious as to be accompanied by legal sanctions. When, for instance, the form of punishment for rape is determined, legislators will have to take into consideration that rape constitutes among other things a serious assault on woman’s dignity.

²⁵ Thomas M. J. Bateman, “Human Dignity’s False Start in the Supreme Court of Canada: Equality Rights and the Canadian Charter of Rights and Freedoms,” *The International Journal of Human Rights* 16, no. 4 (2012): 577. Let me give an example of a controversial judicial decision involving the protection of dignity. In 2006, the German Federal Constitutional Court reached a landmark decision. It struck down as unconstitutional §14.3 of the Aviation Security Act, which authorized the Federal Government to shoot down passenger planes that had been hijacked by terrorists with the intention to crash them down causing multiple casualties. The Court invoked among others the first article of the German Constitution (Basic Law) that safeguards the inalienability of human dignity. According to the Karlsruhe judges this provision makes it “absolutely unthinkable to legislate the purposeful taking of the life of persons who are in such a desperate position,” that is, the passengers of the hijacked plane. Contrary to the Court’s ruling, one could argue that in such cases the innocent passengers are doomed anyway, since they can do practically nothing to overcome the terrorists and regain control of the plane. Taking this into account, which of the following two possible decisions would better respect the dignity of those unfortunate passengers? According to the judges we should allow them to be used (along with the plane) as tools in the hands of terrorists to bring havoc. According to the opposite view, we respect better the passengers’ dignity by sacrificing them in order to save the lives of many more unsuspected people and thwart the terrorists’ plans. This also allows us to honor them posthumously as martyrs and heroes, something that cannot be done if we opt for non-interference. If I had to decide what I would like to happen to me – and discounting temporarily any harm I may inadvertently cause to third parties – I would prefer the second option because dignity as self-respect includes my current desire that others may have a justifiably positive opinion of me after my death. For a synopsis of the court’s decision see <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2006/bvg06-011.html>.

²⁶ R v Kapp 2008 SCC 41, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5696/index.do>.

Thus it would be easier for ordinary judges to apply rules of the type, say, “rape which is defined as any type of sexual penetration without the consent of the victim is punished as follows” rather than rules of the type “violations of dignity are punished as follows.” I am not saying that legislators have an easy job to do or that their judgment would be infallible and immune to criticism, but in this manner the danger of using dignity in courts as an elastic concept which allows for a wide array of meanings is minimized.²⁷

13. In this essay I set out to take down certain thoughts and ideas that could be used to defend a plausible conception of dignity viewed as a distinct moral value. In my view, the philosophical endeavors to make sense of dignity should avoid its underestimation or overestimation, not render its endorsement dependent on the wholesale acceptance of a particular moral theory and take into account some of our relevant pre-theoretical intuitions. I do not claim that my arguments suffice for constructing a full-blown theory of dignity, the final form of which is unknown to me, but I believe they could serve as raw materials for starting to work on it.

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²⁷ Admittedly, this suggestion does not apply in cases in which the promotion or protection of dignity is prescribed by the constitution [Constitution of the Republic of South Africa (article 10), German Basic Law (article 1, §1)]. Here judges are free to invoke the relevant constitutional provisions, but the establishment of a common understanding of dignity by courts will reduce the risk of arbitrary judicial interpretations of this value.

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