

Replies to Jeremy Waldron: Dignity, Rank and Rights

Tanner Lectures, Berkeley, April 21-23, 2009

I

I want first to thank Jeremy for his wonderful lecture. It is a privilege – a daunting one, but a privilege nonetheless – to respond to a presentation that combines in such high degree analytical depth, richness of scholarship and moral seriousness, to say nothing of the grace and clarity with which its content is communicated. So far, I have said nothing that is not, I am sure, in the minds of everyone in Jeremy’s audience this afternoon.

I am very much in sympathy with Jeremy’s basic project but I also have some disagreements both about analytical matters and historical ones. In what follows, I shall start by re-tracing some of the steps that Jeremy took in his lecture and enlarging on what he said at some points. I am not sure whether he will find all of what I have to say congenial to his project, but my points are offered in what is, I hope, a constructive spirit.

Let me start though by emphasizing my agreement with Jeremy, because, although I shall spend longer on the points where we diverge, my agreement with him is, I think, more fundamental. Jeremy presents his views about the nature of dignity in the context of a wider conception of the history of equality that we can call an “expanding circle” view, or, as we could also say (and I think that Jeremy will not see this label as the slur that it might be to some) a “Whig” view. Put simply, this is the thought that a political (and social and legal) conception that was originally applied to a relatively narrow class of beings has come to be extended over time until it is, to all intents and purposes, universal. There are those who would quarrel with this picture both historically

and philosophically – because it casts a complacently meliorist glow over many historical crimes and horrors and because, they believe, to universalize originally contrastive value-language is to cover over its oppositional character. To the first objection, I can say nothing except that I think that one can accept the historical facts without having to see them in the perspective of a providentialist teleology. The philosophical objection can, of course, be formulated in different ways, in the language of Derridean deconstruction or of Carl Schmitt, according to taste, but the basic thought was well enough expressed by W.S. Gilbert’s Grand Inquisitor in *The Gondoliers*: “When everybody’s somebody/nobody’s anybody.” Against that, Jeremy sides with the gondoliers:

The Aristocrat who banks with Coutts –

The Aristocrat who hunts and shoots –

The Aristocrat who cleans our boots –

They all shall equal be!

The Noble Lord who rules the state –

The Noble Lord who cleans the plate –

The Noble Lord who scrubs the grate –

They all shall equal be!

I am with Jeremy. I see nothing incoherent in the idea that we should all be of high rank, however that came about. If you think that there is *nothing more* to that status than the differentiation of superior and inferior – if, like e.e. cummings, you think that freedom is “some under’s mere above” – then the exercise will seem absurd and fruitless. But it seems only right to recognize that, if we are all Aristocrats and Noble Lords (and Ladies!)

then it is an open question what elements of aristocratic status behaviour we carry with us. The story that Jeremy tells is principally one of “levelling up” – that we should all be accorded the treatment previously reserved for those with the highest status – and this is, I think, generally true. But it is not always so. A simple example is to hand. I have referred to our distinguished lecturer as “Jeremy” (and will continue to do so). I am assuming that this slight informality on an important occasion will not be seen as disrespectful (it is certainly not intended to be!) But we should recognize that that would not always have been the case – indeed, it would not be acceptable in many other democratic cultures today – for not only am I using the form of address that we use between friends, it is also the form that superiors once used with social inferiors (and would certainly have found unacceptable if used back at them in return).

I am also intrigued, if not exactly convinced, by Jeremy’s idea that we can understand important moral conceptions by moving, if I can put it this way, from politics to metaphysics. In contrast to what might seem to be a common-sense view of the enterprise of moral theory – that we should first discover what are fundamental moral values and then look to legal and political forms within which they may be realized – we may do better, he thinks, to see those values as themselves *products* of social (that is, legal and political) institutions. This may sound like *conventionalism* (I was going to say “mere conventionalism”) – the idea that there is nothing more to the concept of human equality, for example, than the fact that we have decided to treat one another as equals. In which case, you may ask, who are *we* to decide? And why should our choice have any normative force? I do not believe that this is quite what Jeremy means, but his view does, I think, have a “bootstrapping” quality that some may find off-putting. His position, to

my mind, has more in common with Rawlsian moral constructivism than with conventionalism, but I shall say no more about these important issues of methodological principle because I have issues more specific to the idea of dignity to discuss.

And now I come to my disagreement. I have reservations about what Jeremy has to say that are strategic, historical, conceptual and (I say this with all diffidence as a non-lawyer) legal. These different aspects are connected. In short, I am sceptical about his strategy of using reflection on the law to resolve moral disagreement because I think that there is a lot more conflict (and downright confusion) about dignity in its use in the law than he allows. Moreover, I think that such disagreement and lack of clarity is by no means accidental. On the contrary, it seems to me that the agreement on dignity which coincided with the conclusion of the most fundamental modern legal and human rights documents in which “dignity” plays a prominent role – I am thinking above all of the Universal Declaration of Human Rights and the Basic Law of the German Federal Republic – was the product of a very particular confluence of ideas (and a willingness to make political compromises) on the part of different groups and interests at an unusual, exceptionally important, point in history. In my view, that time has gone. It is not that the agreement that it contained has been abrogated but rather that its scope has been revealed to be insufficient to cover the disagreement that was already latent. That disagreement about dignity has re-emerged is because the concept has an independent background that is more complex and antagonistic than Jeremy recognizes. I shall develop this argument (and offer my more constructive thoughts) in our final meeting. For the present, I should like to say something about Jeremy’s approach to the concept and his account of its history.

Jeremy canvasses two alternative approaches – one by which we advance from philosophy to the law, in the other from law to philosophy. In the first case, he explains, “we look for the sense that moral philosophers have made of [dignity]” (I, 2) and then “we look and see how adequately or how clumsily it has been represented in the work of the drafters of statutes or constitutions or human rights conventions or in the decisions that constitute our doctrines and our precedents” (I, 2). Jeremy, however, endorses the opposite approach. Dignity, he asserts, has its “natural habitat” in the law. It is a “constructive idea, with a foundational and explicative function” like “utility” (I, 3). It has been imported by philosophers in order to make sense of ordinary moral ideas, although it is, he claims (on the authority of a lunch-time conversation with Joseph Raz) “not a term that crops up much in ordinary moral conversation” (I, 3). So dignity, even if we acknowledge it as the ground of rights, “need not be treated in the first instance as a moral idea” (I, 4); it should, rather, be seen as a “juridical” one.

I have to say that I disagree with everything that has just been said. It proceeds, first of all, from what is, in my view, a false alternative: either we move from moral philosophy to law or from law to moral philosophy. But why should we not move backwards and forwards between the two; why give one or the other priority? And why not acknowledge the law as one of the forms (a particular form, of course) of moral discourse? Jeremy’s view is that there is a class of concepts that he calls “juridical” that are endogenous to the law, even though they may at the same time provide law with its grounding doctrines. “Law”, he says, “envelops and constitutes these ideas; it doesn’t just borrow them from morality.” (I, 5) This is an intriguing and ambitious claim. I must say that I doubt that there are such purely legal foundational ideas, but, if there are, then, as I

hope to show, dignity is not one. (Which is not to say, I should emphasize, that it is “just borrowed” from morality – the fact that “dignity” has extra-legal origins does not entail that it is not transformed by being placed in a legal context.)

The assertion that dignity does not crop up much in “ordinary moral conversation” seems to me so obviously wrong that I can’t see how anyone except a distinguished moral philosopher whose “ordinary moral conversation” takes place in an atmosphere of sophisticated analytical reflection could reasonably think so. I have no time to give extensive evidence, so I shall just give an example from recent experience. Just after receiving the draft of Jeremy’s lectures I was talking with a friend in the U.K. who has the misfortune to be receiving treatment at the country’s leading cancer hospital. As she arrived for her treatment, she told me, she could hardly get into the building for a crowd of press photographers scrambling and fighting for a shot of a well-known tabloid celebrity, then in the terminal stages of cancer. My friend (who is not a lawyer and has never, to my knowledge, opened a philosophy book) shouted at them “For God’s sake! Give her some dignity!” “Dignity” appears in ordinary moral conversation all the time, it seems to me. If anything, it is moral philosophers in the academy – Anglo-American ones at least (the situation is somewhat different in Germany) who have given it little attention.

If I understand Jeremy’s argument rightly, the best evidence that dignity is an autonomous legal concept – a “juridical” one, in his sense – is that it is legal in origin. It is, he says, “a matter of status” and “status is a legal conception” (I, 3). Hence “we should look first at the bodies of law that relate status to rank (and to rights and privilege) and see what if anything is retained of these ancient and historical conceptions.” (I, 3-4) If we

are to follow him, dignity is a tolerably well-defined juridical concept that is suitable to play a foundational role (or, as he charmingly puts it, “foundationish” role – he doesn’t go the whole hog) for human rights discourse.

I, on the other hand, see a concept whose history reveals deep conceptual ambiguities and tensions, tensions that require clarification. As it seems to me, the agreement that came about at the end of the Second World War represented a moment of precarious though precious compromise – but it is an agreement that has subsequently, unsurprisingly, fallen apart as the compromise proved incapable of playing the foundational role hoped for. But I shall leave these reflections for later. For now, I should like to sketch an account of the concept of dignity that is rather different from Jeremy’s.

Although I shall not trace the origins of dignity in all its details, it seems to me indisputable that the main classical source is Cicero. He writes in the *De Officiis*, for example: “But in every investigation into the nature of duty, it is vitally necessary for us to remember always how vastly superior is man’s nature to that of cattle and other animals: their only thought is for bodily satisfactions.... Man’s mind, on the contrary, is developed by study and reflection....From this we may learn that sensual pleasure is wholly unworthy of the dignity of the human race” (*De Officiis*, I, 30). The phrase “*cum dignitate otium*” (dignity with leisure) is used by him to characterize the condition of the *optimates* in a well-ordered republic (“Speech on Behalf of Publius Sestius”, also *De Oratore*). Certainly, dignity here is a status term in a general sense, although not, I think, a juridical one. But it is to Cicero too that we can trace another seminal sense of dignity: the contrast between “grace” and “dignity” as rhetorical modes – the light and sparkling against the weighty and sonorous. [*De Oratore?* Lord Kames, *Elements of Criticism*] This

rhetorical context, although limitations of time mean that I shall have little to say about it, should not be forgotten for it inflects the way in which the idea of dignity has been given content – the way in which users of the term have connected the idea of dignity with an understanding of what it is to be *dignified*.

Let me leap now to the early modern world and come to earth with Francis Bacon who, conveniently for me, short of time as I am, uses “dignity” in more than one language and with more than one sense. Thus (in 1623) Bacon published an expanded translation into Latin of his *Advancement of Learning* under the title *De dignitate et augmentis scientiarum*. I suggest that the most immediately natural translation for *dignitate* here is “worth” or “value” (I will argue in support of this later). Note that “dignity” is being applied to an abstract entity – learning – so it cannot be in any legal sense of the term a status concept. Here, on the other hand, is a quotation from Bacon’s Essay “Of Great Place”. “The rising into place is laborious, and by pains men come to greater pains; and it is sometimes base, and by indignities men come to dignities.” So here we also have an opposition of high and low status, as well as a description of the behaviour associated with such status of just the sort that Jeremy calls our attention to. These different senses are evidently co-existent.

The use of “dignity” as an evaluative term of general application rather than as a status term of a social or legal character applied to human beings is widespread by this time. Milton in the Preface to his 1644 essay “Of the Doctrine and Discipline of Divorce” argues that the value of marriage lies in the character of the social relationship between men and women. Thus he writes “... God in the first ordaining of marriage, taught us to what end he did it, in words expressly implying that the apt and cheerful conversation of

man with woman, to comfort and refresh him against the evil of solitary life, not mentioning the purpose of generation till afterwards, as being but *a secondary end in dignity, though not in necessity.*” (my emphasis) Is this use of dignity to characterize the nature of the value that something has deeply rooted or merely idiosyncratic? I think it is clearly the former. Indeed, the most seminal of Catholic thinkers, St Thomas Aquinas, gives us an explicit definition of dignity in his *Commentary on the Sentences* that says just that: “Dignity signifies something's goodness on account of itself.” (Thomas Aquinas, *Scriptum super libros Sententiarum*, Book III, distinction 35, question 1, article 4, solution 1c) In other words, “dignity” is a term for, as we would now put it, something's intrinsic value – the value that it has by occupying its appropriate place within God's creation, as revealed by Scripture and by natural law.

I am convinced that this sense of dignity as the intrinsic value of something permeates dignity discourse, particularly Catholic. So Pico della Mirandola's now-famous oration (which only received its title *De dignitate hominis* quite some years after Pico's death) asks the question of what the proper place and value of human beings is within God's creation, *De dignitate et augmentis scientiarum* the place and value of learning, and so on. In 1659, for example, Bishop Bossuet, no less, preached a sermon “Sur l'eminente dignité des pauvres dans l'Eglise”. Bossuet, you may recall, was court preacher at the court of Louis Quatorze and (to put it mildly) no friend to social equality. His attribution of “eminent dignity” to the poor is not to give them equal (or even higher) status with the nobility but to assert their value within a properly-ordered hierarchy. The distinction between this and the status conception of dignity presented by Jeremy may seem subtle, but it is indispensable if we are to understand the Catholic view of dignity.

To show this let me jump again over a couple of centuries to Pope Leo XIII. Leo XIII is no doubt best known today for the encyclical *Rerum Novarum* of 1891, dealing with the relationship between Labour and Capital, that established the idea of the “dignity of labour” within the Catholic tradition. We would be quite wrong to think that Leo defends the dignity of labour in terms of a conception of status equality. Here, for example, is an extract from Leo’s encyclical, *Quod Apostolici Muneris* of 1878:

For, He who created and governs all things has, in His wise providence, appointed that the things which are lowest should attain their ends by those which are intermediate, and these again by the highest. Thus, as even in the kingdom of heaven He hath willed that the choirs of angels be distinct and some subject to others, and also in the Church has instituted various orders and a diversity of offices, so that all are not apostles or doctors or pastors, so also has He appointed that there should be various orders in civil society, differing in dignity, rights, and power, whereby the State, like the Church, should be one body, consisting of many members, some nobler than others, but all necessary to each other and solicitous for the common good. (6)

Leo is not simply concerned to assert the propriety of a hierarchically ordered society. In *Arcanum divinae sapientiae* (1880), he asserts the inequality of men and women in marriage:

The woman, because she is flesh of his flesh and bone of his bone, must be subject to her husband and obey him; [an invalid inference from a false premise if every I saw one!] not, indeed, as a servant, but as a companion, so that her obedience shall be wanting in neither honour nor dignity. (11)

Note that “dignity” here is not an attribute of the person in question – the wife – but is applied to an aspect of a social relationship in which she finds herself, “her obedience”. The ascription of “dignity” is not being used to raise the status of a subordinate being but to ascribe value to subordination itself. This corresponds to something fundamental about the way in which “dignity” has been used in the Catholic tradition (it may also explain, incidentally, why so many egalitarians I know who have had a Catholic education are allergic to the concept.)

But why have I belaboured this point and skipped over the egalitarian dimension of dignity whose development we owe to some complex combination of Kant’s moral philosophy, Schiller’s moralized aesthetics and the abolition of status hierarchies associated with the French Revolution? It is not by any means to deny or belittle the development which Jeremy has very ably depicted. My point rather – the point of this contribution – is to argue that we need to understand the Catholic conception of dignity to appreciate the very special character of what took place when the fundamental documents for the use of dignity in modern legal-political discourse – that is, in my view, the Universal Declaration of Human Rights (1948) and the *Grundgesetz* (Basic Law) of the German Federal Republic (1949) – were agreed. In both cases, we have an understanding of dignity that merits the label “overlapping consensus”. Dignity takes a primary place in both documents – in the first article of each. More significantly, dignity is closely associated with a universal conception of human rights. This is obvious in the Universal Declaration, which starts with the words “All human beings are born free and equal *in dignity and rights*” and only slightly less so in the *Grundgesetz* in which the second clause of the first article states that “The German people therefore [that is, in virtue of the

inviolable dignity of human beings] commits itself to inviolable and inalienable human rights as the basis of every human society ...” (Art. 1, 2) To those who read these documents with eyes informed by post-1789 egalitarianism, the connection between dignity and rights may seem evident and trivial. Looking back at the anti-egalitarianism with which the concept of dignity is associated in the Catholic tradition, however, shows that it should not be taken for granted. Indeed, the contrast between dignity and rights is still alive. Take the Cairo Declaration on Human Rights in Islam (1990 by the Organization of the Islamic Conference) whose Article 6, in contrast to the Universal Declaration, asserts that women have “equal dignity” but, conspicuously, not equal rights.

Both the Universal Declaration and the *Grundgesetz* were adopted with the support of the Catholic Church which participated actively in the drafting process in each case. The result was a clear endorsement on the part of the Church of a Christian commitment to a democratic, rights-respecting polity and to a social order based on a fundamental equality of status. It represented nothing less, I think, than the Church’s final peace treaty (after a mere 160 years) with the principles of the French Revolution. For expanding-circle Whiggish egalitarians like Jeremy and myself, this is a development to be welcomed with open-hearted joy. Indeed, for those of us whose egalitarianism has a touch of sociological Hegelianism, it is a fact of prime importance for the understanding of international political society in the last sixty years.

Nevertheless, this did not represent the acceptance by Catholicism of the status-based conception of equality that Jeremy endorses, so much as a confluence of different traditions. If I am not so sanguine as Jeremy about the concept of dignity, it is not

because I think that the Catholic commitment to a conception of human dignity that entails political and social equality is anything other than robust, avowed differences regarding its philosophical foundations notwithstanding. Although a few die-hards may still fight on, I think that there is not the slightest chance that the Church will go back to its anti-egalitarian past. Nevertheless, foundational differences lead to disagreement regarding both the scope and the content of the idea of dignity – differences that make themselves apparent in the use of “dignity” both within and outside the law. I shall try to explain what I have in mind and make some more constructive suggestions as to how to move forward with the concept in two days time.

II

In his lectures, Jeremy has given us an account of dignity by which “‘dignity’ is a term used to indicate a high-ranking legal, political and social status, and that the idea of *human* dignity is the idea of the assignment of such a high-ranking status to everyone.” (II, 2) In my comments on his first lecture, I argued that Jeremy’s picture is oversimplified. It ignores, I claimed, a very important strand of thought proceeding from Aquinas’s idea that “Dignity signifies something’s goodness on account of itself [*propter seipsum*]” (*Scriptum super libros Sententiarium*, Book III, distinction 35, question 1, article 4, solution 1c) To the extent that this conception has dignity as a status concept it is only that everything that has intrinsic value does so in virtue of occupying its proper place in a divine order. Dignity in this sense can be found in all parts of God’s creation – in human beings, certainly, but also in abstract objects (such as “learning”) and human

relations (such as marriage or obedience). From this perspective, the question of human dignity is an open question – it invites an account of the proper place of human beings in the world and what their essential, valuable characteristics are. The answer that all share in a high rank just in virtue of being human is one, but only one, such account.

I emphasized this point to indicate how remarkable an achievement it was to bring together the theological conception of dignity with the liberal conception of equal human rights in the founding documents of modern dignity-based law and politics – the Universal Declaration and the German *Grundgesetz*. In my remarks today, I want to continue this theme and to argue that the tensions in the notion of dignity are deep and fundamental, both conceptually and socio-politically. The picture that Jeremy gives of an emerging egalitarian consensus is too optimistic because its scope is, at best, narrow. However, I also want to use these conceptual and historical reflections positively, to propose a constructive suggestion about the proper use of the notion of dignity which, although it differs markedly from Jeremy's, is, I hope, complementary to his and in its spirit.

Why is the placement of “human dignity” at the outset of both Universal Declaration and *Grundgesetz* so important? For Jeremy the mere presence of the phrase “human dignity” entails the acceptance that all human beings share a “high-ranking legal, political and moral status”. If I am right though, the acceptance of a common “human dignity” leaves it open whether they share legal, political and social equality – the Catholic tradition, at least until recently, saw no incompatibility between human dignity and a strongly hierarchical view of human society. [It was no accident, surely, that the notion of human dignity was embedded in the pre-war constitutions of countries such as

Portugal and Spain – no paradises of equal rights and democracy!] What is crucial, then, about the Universal Declaration and the *Grundgesetz* is the close connection between human dignity and equal human rights. Does that mean that the idea of dignity falls away – like the wrapping on the Easter egg – and that it is to the rights themselves that we must look for substance? Not necessarily, for it might be that the idea of dignity could be connected to our conception of human rights, whether by giving them a foundation or by fixing their content – or perhaps (best of all!) fixing their content by giving them a foundation. Jeremy, of course, has given us a distinctive account of how this might work. Dignity, he argues, is a legal conception that requires no extra-legal (that is, moral or metaphysical) foundation, but that can itself play a foundational role (or, as he says, “foundationish”) for human rights. I shall return to Jeremy’s account below but, for the moment, I want to draw attention to two quite different moral conceptions, both of which, I claim, are at work in modern dignity and rights discourse. Not only do they offer quite different foundations for the concept of dignity – that may be no very bad thing if the effect is that of an overlapping consensus – but they also give quite different answers to the question of who (or what) has dignity and what content (in the form of rights?) the possession of dignity entails. The first conception can be found expressed with characteristic economy and precision by James Griffin:

Autonomy is a major part of rational agency, and rational agency constitutes what moral philosophers have often called, with unnecessary obscurity, the dignity of the person.

“A Note on Measuring Well-Being”, in C.J.L. Murray (ed.), *Summary Measures of Population Health*, p.131

A similar view – if more polemically and less subtly expressed – has been advanced by Ruth Macklin (“Dignity is a Useless Concept”, *BMJ*, Dec. 20, 2003). Dignity, she claims, “means no more than respect for persons or their autonomy”. Who are “rational agents”? What does it mean to say that they are “autonomous”? And how is that autonomy to be “respected”? Of course, the answers to those questions are various and complicated, but for my purposes here it is not necessary to pursue them in detail. What is important is the connection that is made between dignity and rational agency, on the one hand, and (via autonomy) to that of choice on the other. On this view, it is rational agents who are the central (if not the only) beneficiaries of dignity and it is their power of choice that requires respect.

Does this conception of dignity play a central role in modern dignity discourse? Yes indeed! Consider the celebrated “Philosophers’ Brief” on assisted suicide (*NYRB*, March 27, 1997). The six philosophers (Dworkin, Nagel, Nozick, Rawls, Scanlon and Thomson) argued that the patient-plaintiffs in the case before the Supreme Court had what they termed a “constitutionally protected liberty interest” in hastening their own deaths. Such a “constitutionally protected liberty interest” could be inferred, they argued, from the Court’s own jurisprudence. Significantly, they quoted the Supreme Court’s decision in *Planned Parenthood v. Casey* (505 U.S. 833, 851 (1992)) in which the Court referred to “the right of people to make their own decisions about matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy”. Dignity, then, requires individuals to be allowed the power of choice over matters that they consider to be of the highest importance to themselves.

Not surprisingly, the voluntarism associated with the autonomy conception of human dignity is forcefully rejected by the Catholic Church (as well as by many other religious groups), for example by Pope John Paul II in his encyclicals *Veritatis Splendor* (1993) and *Evangelium Vitae* (1995). In *Veritatis Splendor* the Pope recognizes that “[the] heightened sense of the dignity of the human person ... certainly represents one of the positive achievements of modern culture.” (31) On the other hand, it is characteristic of atheism and “doctrines which have lost the sense of the transcendent” that they should “exalt freedom to such an extent that it becomes an absolute, which would then be the source of values” (32). In *Evangelium Vitae*, John Paul II identifies a “remarkable contradiction” between “the various declarations of human rights” that acknowledge “the value and dignity of every individual as a human being” and what he sees as the repudiation of those rights in practice. (18, 19) The problem, in the Pope’s view, is a voluntarist conception of human dignity, “the mentality which carries the concept of subjectivity to an extreme and even distorts it, and recognizes as a subject of rights only the person who enjoys full or at least incipient autonomy.” (19)

There, you might think, we have the problem in its starkest form. Certainly, the liberal-humanistic and the theistic conceptions of human dignity (at least in the latter’s modern, Catholic form) have come to agree on a very great deal in accepting certain central social and political rights for adult human beings – the rights associated with democratic self-government and basic social equality – but, when it comes to questions of medical and biological ethics – issues such as abortion, suicide, sexual morality, medical experimentation and genetic engineering – there is simply no common ground. On the one side, valuable beings are seen as rational agents and what is to be protected is,

fundamentally, their autonomous agency; on the other, we have the denial that human choice can every override the intrinsic and inviolable value that attaches to all “human life”.

Here is where Jeremy – brave man! – enters the fray. His idea is that we should not look for a foundational concept to act as a basis for human dignity but that it should be understood as “a high-ranking legal, political and social status” that is assigned to “everyone” (II, 2) Will this bold proposal bring peace to the battlefield of (moral) metaphysics? I fear not. First of all and most obviously, who is “everyone”? Does it include zygotes, embryos, fetuses, the severely mentally handicapped and those in persistent vegetative states? If there was an answer to this question in Jeremy’s lectures I have missed it. Moreover, what substantive consequences follow from extending the idea of high status to all human beings? Many of the forms of social interaction characteristic of high status when the latter was part of a hierarchical society were forms of deference and submission. Jeremy has given us several vivid and (to me) persuasive examples of ways in which the law may be used to defend the “high rank or dignity of the ordinary person” (II, 3) by protecting her from degradation, insult and contempt. (Jeremy mentions as a separate category the use of dignity in order to protect against invidious discrimination. To my understanding, in those jurisdictions within which dignity has been invoked to distinguish benign from invidious discrimination, it is the contempt and insult implicit in discrimination that is held to constitute the dignitary harm, so I don’t see this as a separate case.)

What these cases show, however, in my opinion, is somewhat different from what Jeremy has in mind. They turn, it seems to me, on the notion of *respect*. To make my

point, let me start with a little piece of analysis. We are agreed that human dignity is to be respected. But what does that amount to? If I respect the speed limit, I do so by driving below a certain speed. If I respect your right to free speech, I do so by not placing any impediment on your speaking. In general, I respect the law by keeping to it and I respect rights by not infringing them. Let me call this “respect-as-observance”. Is that what is involved in respecting human dignity? If so, we need to know the content of dignity; without it we could not respect dignity any more than we could observe the law without knowing what it was. Does dignity entail something distinct from the “inviolable and inalienable human rights” that the *Grundgesetz* says follow from human dignity (in which case, what might that be?) or is it simply a way of saying that human beings are entitled to this package of rights, whatever they are? But Jeremy (I don’t know how deliberately) is, it seems clear to me, invoking a different kind of respect. In protecting the individual from degradation, insult and contempt we are requiring that people act towards her in ways that are substantively respectful. To respect their dignity in this sense means to treat them *with respect*. Let me call this “respect-as-respectfulness”.

If I am right, this is a very important point indeed. On the one hand, it gives content to the idea of human dignity – gives an answer to those who allege that there is nothing more to the idea of “dignity” than rhetorical wrapping paper for a set of substantive rights-claims. On the other, it implies that dignitary harms are harms of a special kind. What degradation, insult and contempt have in common is that they are expressive or symbolic harms, ones in which the elevated status of human beings *fails to be acknowledged*. I agree with this understanding of dignitary harm very much (and would amplify Jeremy’s examples with ones of my own if time permitted) but note that

this understanding of dignity as requiring “respect-as-respectfulness” has a very important consequence. If we take the view that dignitary harms are essentially symbolic – failures to express respect for status – then we must believe *either* that all violations of fundamental human rights are essentially symbolic *or* that dignity cannot fulfil the role assigned to it in our basic human rights documents – to provide a foundation for the rights embodied in them.

For my part, I embrace the second option. It seems to me evident that not all violations of rights are symbolic harms. When you torture me, you do indeed humiliate and degrade me, but the harm is not just that: you cause me extreme pain and thereby deprive me of effective self-control. To do so would be impermissible and would violate a human right whether or not it was associated with expressions of contempt. (A moral position exists by which *every* wrong consists in acting in ways that fail to express respect – according to which the wrong I do you when I punch you on the nose does not consist in the pain that I cause you so much as the lack of respect it shows for your personhood. But here is not the place for a discussion of Kantian ethics, fascinating and pertinent as it might be.)

Thus there is, I think, a distinct class of dignitary harms of a symbolic or expressive character and it is here that the value of dignity may properly be connected with the wider, aesthetic idea of the *dignified*. Respecting someone’s dignity involves treating them “with dignity”. What that amounts to varies, naturally, between cultures and contexts, but there are some striking common themes. One, on which Jeremy has concentrated, is that when there are (or were) marked demarcations of social status between human beings, to treat someone with dignity is to treat them in a way that

expressively attributes to them the highest status. Another characteristic demarcation, however (which goes back to Cicero's *De Officiis*) is that human dignity is expressed by behaviour that marks the distinction between human beings and animals – for example, in upright gait, through the wearing of clothes, in eating subject to a code of table manners, defecating (and copulating) in private, and, finally, by disposing of human remains according to prescribed rituals. The precise content of such rituals varies widely – should corpses be buried, burned or left to be eaten by vultures? – but their existence and, as it seems, symbolic force, is strikingly general. To compel human beings to violate such symbolic codes is to subject them to gross indignity.

But if I am right in thinking that this is what is distinctive about dignitary harm, then, shocking though it may be (remember the shameful pictures from Abu Ghraib prison) it leaves a possible doubt about its fundamental importance. Not that symbolic harms are not real harms – but they cannot, surely, be the most fundamental. After all, the worst of what the Nazi state did to the Jews was not the humiliation of herding them into cattle trucks and forcing them to live in conditions of unimaginable squalor; it was to murder them.

If, like me, you feel the force of this, I offer in conclusion a thought that has been extensively supported by Jonathan Glover in his wonderful book, *Humanity: a Moral History of the Twentieth Century*. One of the features which have characterized many of the most violent and destructive acts of the twentieth century has been the humiliation and symbolic degradation of the victims. We can find examples in the Nazi concentration camp, the Soviet *gulag*, Cambodia or the Balkans. It seems to be a fact about human nature that human beings are able more easily to engage in the most violent behaviour

towards one another if at the same time they can expressively deny the humanity of their victims. If this is so then the preservation of our fellow human beings from dignitary harm is also fundamental to the defence of their humanity.

Michael Rosen

Department of Government

Harvard University

14.iv.2009