

What Is Orientation in Dignitarian Thinking? Self, Other, Time and Space

Law, Culture and the Humanities
1–25

© The Author(s) 2020



Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/1743872120982287
journals.sagepub.com/home/lch



Stephen Riley

University of Leicester, UK

Abstract

Drawing upon Kant's analysis of the role of intuitions in our orientation towards knowledge, this paper analyses four points of departure in thinking about dignity: self, other, time and space. Each reveals a core area of normative discourse – authenticity in the self, respect for the other, progress through time and authority as the government of space – along with related grounds of resistance to dignity. The paper concludes with a discussion of the methodological challenge presented by our different dignitarian intuitions, in particular the role of universality in testing and cohering our intuitions.

Keywords

Dignity, self, other, time, space, intuitions

Introduction

Dignity discourse has settled into a stable network of debates and functions. It is also accompanied by a well-defined set of opposing critical positions. These critical positions – questioning its intelligibility, functional indispensability and ideological presuppositions – encompass reasonable disagreement about the normative precision of dignity as well as more radical criticism of its use as anachronistic or incoherent. What follows is not a defence of the concept in the light of these criticisms. Rather it takes the existing network of dignitarian ideas, along with their critical counterpoints, and attempts to reduce these to a set of basic points of orientation. These points of orientation – time, space, self and other – allow us to resist conventional starting points in human rights,

Corresponding author:

Dr Stephen Riley, Lecturer in Law, University of Leicester, L59 Fielding Johnson Building, University Road, Leicester LE1 7RH, UK.

Email: stephen.riley@le.ac.uk

Kantian moral philosophy or Roman thought. They are possibilities for reassessing our first principles and intuitions regarding dignity.

This aspires to accomplish two shifts in thinking. First, it invites methodological reflection on the role of our intuitions in our normative theories and the special challenges posed by dignity's multiple and heterogeneous meanings. Second, it invites a more open consideration of how dignity might interact with justice. Without bringing to bear a conception of justice as a standard of normative coherence or of practicability, we can approach dignity as an unconditioned normative commitment. It may be the case that our ideas of dignity have to be rendered compatible with a theory of justice. It may be that our theories of justice rest on dignitarian intuitions. Either way, before deciding upon any ordering or priority, we have to acknowledge and explore an established network of ideas about dignity and its implications.

The paper takes Kant's *What Is Orientation in Thinking*¹ broadly as its model. In this short work Kant demonstrated that certain basic, internal, intuitions must form a starting point for all other possible certainties in knowledge. The difference between left and right must be felt before they can be mapped onto west and east. And the experiences of time and space must be experienced in their combination before we can disentangle the pure intuitions of experience (time and space themselves) from what takes place within them (cause and effect). This is meant to be productive, insofar it roots knowledge in the subject's own inner intuitions rather than in putative foundations (God or nature) that the subject is required to 'access'. This is also meant to be constraining or restrictive, denying access to knowledge directly through the intuitions (through 'inspiration' or 'insight') that are unconditioned by tests of universality, be it universal constraints on human knowledge or the test of universal law-making to identify what is permissible. Accordingly, to think of 'orientation' is to think of the range and possibilities of starting points that our existing knowledge – our intuitions in a direct phenomenological sense – provide us with. But this is not 'intuitionism' in the sense of making the subject's experiences the final arbiter of truth. It is an invitation to explore how our intuitions are necessary for gaining a foothold on truth-claims, claims thereafter verifiable as rational or universal.

As a point of departure 'dignity' can relate to ourselves and relate to our treatment of others. These are two different directions of travel that may or may not show us different aspects of the same conceptual and experiential territory. Accompanying those starting points, two more general categories encompass many of our other intuitions about dignity, namely how it interacts with time and space. These, I will argue, are especially significant in dignity discourse. Dignity transcends the spatial boundaries created by authority. And dignity creates obligations to both the human past and human future. These different points of orientation and the debates they give rise to cover crucial themes in contemporary dignity scholarship. This does not provide comprehensive coverage of relevant debates about dignity. However, taken together, they offer a survey of the roots of agreement and disagreement regarding dignity.

1. Immanuel Kant, *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991), pp. 237–49.

The Self

The self is our predominant moral concern, the starting point of moral reflection and, potentially, an illusion. If we try to articulate its moral significance we can rapidly encompass the rest of morality. That is, to be a self – a locus of experience, the subject of a life – is to have a claim, or at least a drive, to self-continuation. This drive and its ineluctable status as a basic good², or basic rational end³, can be expressed as a right. The object of such a right is not confined to the continuation of our own lives, but also to the proper means of that continuation, to live as humans and not merely survive. Such a right to continue living is a right against others against interference but also a right to the proper, permissible or appropriate means to the end of survival. We have a right to live as humans, not merely to survive.

This ‘life as humans’ is contentious in its meaning and implications. At a minimum, it limits how others can treat us. But it also entails a critical or conditional relationship with our own choice of actions. The self stands in a critical relationship with its own ends and the means to those ends. Such distance from our immediate drives is the basis of self-control and self-determination. At the same time, it also means our selfhood cannot be definitively stabilised. The self is a reflexive process of self-understanding and self-criticism; the self stands in a diachronic relationship with its own history and embodiment. As such it is an imprecise ground for normative claims. To ‘live as a human’ is to live in a state of flux, not to inhabit a stable identity and to therefore pose stable normative claims.⁴

To be a self is to stand in a conditional relationship with reasons for action, both ends and means. We cannot endorse all necessary means to our ends, and our choice of means is conditioned by the *reasonable*, not simply a product of instrumental rationality. Some ways of pursuing our ends or satisfying our preferences come at too great a cost to the self and others even when they are rational options. Moreover, we can have reasons to act that we do not know or understand. Our good, and the means to it, may be neither self-evident nor stable. To have reasons to act that are not reducible to our impulses or inclinations – to be constrained by the reasonable, or to acknowledge that we may have reasons we do not yet know or fully understand – is to stand in a conditional and dynamic relationship with our impulses and drives.⁵

Dignity has always tracked these aspects of selfhood. It denies that our ends and preferences are morally primary. Rather it gives primacy to our *capacity* to distance ourselves from our ends and preferences. Sometimes the link between this capacity and our obligations is direct, as in the Stoic conception of dignity, that is, being impervious to fate, to resist all too human aspirations to fleeting social valuation.⁶ Sometimes this link is indirect, through rational limits on our choice of action.⁷

2. John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 2011).

3. Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1981).

4. Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984).

5. Harry Frankfurt, “Freedom of the Will and the Concept of a Person,” *The Journal of Philosophy* 68(1) (1971), 5–20.

6. Marcus Aurelius, *Meditations* (London: Everyman’s Library, 2009).

7. Wang Xiaobo, “The Dignity of the Individual,” *Contemporary Chinese Thought* 30(3) (1999), 83–7.

More precisely, our capacity for self-governance can be formalised in two normative frameworks: on the one hand *virtue*, and on the other treating individuals as *ends-in-themselves*. Virtue is the exercise of rational self-constraint in both the choice of our ends and the means to accomplish them; virtue depends upon adopting a model of a life well lived, and adopting the ends and means that typically accompany a life well lived. To treat our selves (and in turn others) as ends-in-ourselves is not only to deny that we are ‘merely means to others’ ends’ but that we are inescapably the *determinants* of ends and the bringers of *value* into the world. Our dignity (our status or value) lies in being, and creating, the final ends of action, ends of action requiring no further justification. This is different to virtue ethics (and other ‘objective list’⁸ conceptions of morality) where final ends do not arise from the choices of individuals but exist as ‘external’ reasons. What is good, and therefore justified, is ultimately exterior to choice. The good represents objective reasons arising from our species nature (our teleology, our *proper* ends as human beings).⁹ The difference, then, between a Kantian morality of rational ends, and a virtue ethics centred on the moderation of the virtuous person, is a difference between the dignity of rational action, and the dignity of a flourishing life produced by self-control and self-mastery.

These dignities represent different conceptualisations of self and reasons. What should I be motivated to do given that my reasons for action are potentially incomplete or potentially unreasonable? Act only on what is universalisable? Or act on a model of virtuous persons whose behaviour is characterised by self-control? This difference – being guided by what is autonomous (but formal) or by what is heteronomous (but imitative) – not only represents a perennial dimension of debate on normative ethics, but speaks directly to the challenge of the Enlightenment and the courage to use one’s own reason. To act only on what I can rationally endorse is to act courageously.¹⁰ But refusing to rely on the ethical examples of others is (as has been argued in various ways) both inhumanly individualistic and a rejection of a legitimate source of knowledge.¹¹ Two more specific themes illuminate this problematic interplay of autonomy and heteronomy within dignity discourse itself. The first is authenticity, the second is labour and work.

In the idea of authenticity, a tension is established between the accidents of the self – its history, its context – and its freedom.¹² Freedom, understood as pure rational choice and the absence of any external limitations, is conditioned by the historicity of the self. Our freedom cannot be unconditioned because what we are, and where we are, are never wholly within our power. Conversely, this should not be thought to justify the ‘bad faith’ assertion of the impossibility of freedom.¹³ Choice is always possible, and the accidents

8. Parfit, *Reasons and Persons*.

9. Steven D. Smith, “Persons Pursuing Goods,” *Legal Theory* 13(3) (2007), 285–313.

10. Immanuel Kant, “An Answer to the Question: What is Enlightenment?,” in *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991), pp. 54–60.

11. Julian A. Sempill, “Law, Dignity and the Elusive Promise of a Third Way,” *Oxford Journal of Legal Studies* 32(2) (2018), 217–45.

12. Richard Gravil, *Existentialism* (Humanities-Ebooks, 2014). Paul Edwards, *Heidegger on Death: A Critical Evaluation* (La Salle: Hegeler Institute, 1979).

13. Jean-Paul Sartre, *Being and Nothingness: An Essay in Phenomenological Ontology* (London: Routledge, 2007).

of the self can be accepted or rejected. The challenge of authenticity is to combine these choices (of action, and elective affinity with at least part of what we are) into a coherent whole with integrity through time. This cannot rely on external or heteronomous models of a good life. Because all humans are in this position of critical distance from the accidental components of their selves there is no model of 'human' or 'humanity' to be followed. Existence precedes essence, and choice precedes obligation¹⁴: we can assume obligations, but they cannot arise from a model of humanity, be it the model of the virtuous person or even from a model of the autonomous human.

This kind of narrative has been associated with dignity since Pico's Renaissance defence of the mutability of human nature and humanity's unstable place within the cosmic order.¹⁵ This narrative, however, still permitted a categorical understanding of an essential humanity, where humanity's changeable form and ends nonetheless secured its sovereignty or dominion relative to the other parts of Creation. On the existentialist account of authenticity, no such valorisation of human choice and self-determination is possible. We are not sovereign choosers, rather condemned to be free; we do not shape ourselves like Gods, rather struggle to find integrity between our choices and our accidents. This move from Renaissance dignity to existentialism presents a complex challenge of connecting dignity with authenticity without, at the same, making appeal to a 'truly human life'.¹⁶ *Pace* Kant, our judgements cannot be vouchsafed by any standard of rational humanity. For the existentialist it is equally human to pursue the self-negating (suicide) or the self-frustrating.¹⁷ Here the Dostoevskian anti-hero is exemplary in consistently chooses what is bad or self-frustrating and is 'all too human' in making that choice.¹⁸ From this perspective, a dignitarian philosophy that valorises the radical freedom of the self to self-determine, is paradoxical. It is to valorise self-determination that has no final rational ground or direction.

Accordingly, more recent attempts to reconcile theories of dignity with theories of authenticity, for example that of Ronald Dworkin,¹⁹ face a similar paradox. Dworkin makes authenticity one of two key 'principles of dignity' along with self-respect. "Authenticity is the other side of self-respect. Because you take yourself seriously, you judge that living well means expressing yourself in your life, seeking a way to live that grips you as right for you and your circumstance."²⁰ Such authenticity "demands that, so far as decisions are to be made about the best use to which a person's life should be put, these must be made by the person whose life it is."²¹ As Weinrib rightly asserts,

14. Jean-Paul Sartre, *Existentialism and Humanism* (London: Methuen, 1960).

15. Pico Della Mirandola, *Oration on the Dignity of Man: A New Translation and Commentary* (Cambridge: Cambridge University Press, 2012).

16. Jean-Paul Sartre, *Existentialism and Humanism*.

17. Albert Camus, *The Myth of Sisyphus* (UK: Penguin, 2013).

18. Fyodor Dostoevsky, *Notes from the Underground* (Oxford: Oxford University Press, 1999). Friedrich Nietzsche, *Human, All too Human: A Book for Free Spirits* (Cambridge: Cambridge University Press, 1996).

19. Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011).

20. Ronald Dworkin, *Justice for Hedgehogs*, p. 209.

21. Ronald Dworkin, *Justice for Hedgehogs*, p. 212.

Dworkin's position stands in a problematic relationship with the intrinsic or unearned status typically associated with dignity. "Dworkin understands human dignity to be what one has by virtue of living in accordance with the principles of self-respect and authenticity. Because some people fail to live in accordance with these principles, he accepts that not all persons possess human dignity."²² To see all others as equally responsible for taking up the task of self-creation, indeed censuring or punishing failures to do so, seems both inescapable in pursuit of social order, and illegitimate given the unique challenges faced by every individual to live authentically. As such the normative implications of authenticity are either limited or repressive: a demand for the status quo or an illiberal assertion of how individuals should use their freedom.²³ This tension within authenticity discourse and its connection with dignity are made much more concrete in the phenomenon of work.

The ostensibly very different field of work and labour immediately brings into play wider structures of social practice (law, contract, divisions of labour in society) and lived experience (the experience of work, exploitation or self-determination through work). Dignity discourse connects with two counter-veiling lines of thought, the 'dignity of labour' and 'degradation in labour'.²⁴ The former is a defence of the value of work to the self, its being a precondition of self-respect, self-understanding or non-domination. The latter invokes a range of possible objections to dehumanising or alienating labour, as well as the permissibility of protecting others from forms of labour that may expand self-determination through wealth but involve impermissible self-degradation.²⁵ Dignity seems to be consistent with an evaluative continuum between self-enhancing work and self-degrading work.

The prevalent moral conceptualisations of work invokes a movement *from* the self: the mixing of ourselves, through labour, with the material²⁶; the freely accepted contract of work; or the division between work and slavery turning on an initial assent on the part of the individual.²⁷ What unites these is not the ends of work in terms of material outcomes, but orientation of the self to work and by extension to the material or social world. There are other equally fundamental movements of self to world (love, beauty) but work (in this respect like love) seems to produce a dynamic and problematic interplay of dignity and the self, a dynamics between *what I must do* and *what may I allow*

22. Jacob Weinrib, "Human Dignity and its Critics," in *Comparative Constitutional Theory*, ed. Jacobson, (Cheltenham: Edward Elgar Publishing, 2018), p. 174.

23. The illiberality of authenticity is evident in Heidegger's work, see Theodor Adorno, *The Jargon of Authenticity* (London: Routledge, 2013).

24. On the latter see Michelle Yates, "The Human-as-Waste: The Labor Theory of Value and Disposability in Contemporary Capitalism," *Antipode* 43(5) (2011), 1679–95. Also, Virginia Mantouvalou, "Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers," *Industrial Law Journal* 35(4) (2006), 395–414.

25. Michael J. Sandel, "What Money Can't Buy: The Moral Limits of Markets," *Tanner Lectures on Human Values* 21 (2000), 87–122. See also UN Human Rights Committee decision: *Manuel Wackenheim v France*, Communication No 854/1999, U.N. Doc. CCPR/C/75/D/854/1999 (2002).

26. John Locke, *Second Treatise of Government* (London: John Wiley & Sons, 2014).

27. R. F. Galvin, "Slavery and Universalizability," *Kant-Studien* 90(2) (1999), 191.

myself to do; in other words, it is a point of necessary interaction of heteronomy and autonomy. Accordingly, *if* there is a normative continuum between self-enhancing and self-degrading work, it is difficult to treat dignity as its underlying standard. Because dignity concerns the basic point of interaction between self and necessity in work – work is either consistent, or not consistent, with dignity, there are no degrees – dignity should provide a more precise point of division between the permissible and impermissible. Autonomy and choice may be important, but their meaning is variable, contextual and scalar. They require supplementing with a more precise dignitarian standard, a threshold at which self-respect is diminished or negated, in particular whether this relates to work degrading in one's own eyes or in the eyes of others.

In fact, precision in the significance of dignity here is nearly impossible without a whole apparatus of theory to support it: a theory of distributive justice, rights, human vulnerability and the good. For example, to treat any employment relationship as potentially exploitative requires a theory of value, not only of labour as producing value, but also the value of work to the individual.²⁸ Conversely, to treat contract and the free sale of labour as the dignity-enhancing aspect of labour is to invoke a theory of liberty and choice that must be at once legal (under what conditions contracts truly reflect consent) and political (what limits if any can we place on what can be contracted to). Arguably, the Kantian idea of not treating others merely as means to ends allows a certain limitation on slavery and grossly exploitative labour:

in the context of work relationships, where employees tend to be considered by employers as disposable and interchangeable production units, increasingly exclusively identified as mere figures, such as their economic cost for the employer or the financial income they generate, the Kantian distinction between value or market price that can be attributed to things and animals, and dignity or intrinsic worth which is an exclusively human quality, has never been more relevant.²⁹

But, as Parfit argues, this Kantian distinction is never wholly dispositive of obligations:

If it would be wrong to impose certain harms of people *as a means* of achieving certain good aims, these acts would be wrong even if we were *not* treating these people *merely* as a means. And if it would *not* be wrong to impose certain lesser harms on people as a means of achieving such aims, these acts would not be wrong even if we *were* treating these people merely as a means.³⁰

Outside the grossly exploitative, the 'lesser harms' associated with work may involve treating us as means to ends, but they do not necessarily negate their value to us through remuneration or even in self-enhancement though the discipline of work.

28. Lisa Rodgers, *Labour Law, Vulnerability and the Regulation of Precarious Work* (Cheltenham: Edward Elgar Publishing, 2016).

29. Catherine Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe* (London: Bloomsbury Publishing, 2016), p. 124.

30. Derek Parfit, *On What Matters, Vol. 1* (Oxford: Oxford University Press, 2011), p. 232, emphasis in the original.

What, then, is the ‘grossly exploitative’ and does this have a neater fit with dignity discourse? The interaction of discourses of dignity and sex work are an useful illustration of the interaction of self, autonomy and heteronomy and how dignity remains a problematic normative standard.³¹ Countervailing discourses of dignity are invoked by sex work: of self-degradation as inimical to dignity, and sex work as autonomous and potentially empowering. The rhetoric of dignity here is an interplay of choice constraining ideas of dignity as self-respect, and dignity as the correlate of freely chosen and autonomy-enhancing paid work. More complex discourses are possible (and undermine simple conservative-progressive oppositions) when we see any paid work as potentially exploitative (sex work is only a directly risky variant of the exploitation found any paid work) and, conversely, where the idea of sex work as empowering is treated as false consciousness.³² Here the question of heteronomy and authenticity returns. Work (if it is not to be slavery) must move from the will of the individual despite the fact that the individual has no choice but to pursue their material interests and survival. What authentic choices are then possible? Dignity and authenticity might lie in making choices which best reconcile our abilities, our possibilities and our limits.³³ But dignity also lies, potentially, in planned social limitations on the range of choices that are made available. The former is congenial to libertarian individualism where our authentic preferences are not only morally central but connected to choosing our own means to fulfilment.³⁴ The latter is congenial to the liberal perfectionist, for whom political choices must facilitate, but also dictate, the exercise of freedom. In essence, dignity is especially useful here in affording normative significance to both lived experience and to wider systems of justice. At the same time, normative clarity depends upon its alignment with wider moral and political theories that themselves make competing claims to be dignitarian philosophies.

The self and its authenticity, and the self’s relationship with work, provide two very different starting points in relation to dignity. Their points of intersection include virtue and the impermissibility of instrumentalising others.³⁵ These themes will recur, but it is the other to which we should now turn.

The Other

The other can represent an equal or an opposite. The other can represent an equivalent: the bearer of an equal humanity. The other can also represent a struggle. A struggle to condition my own interests to the interests of others, or the struggle to define myself in a

31. Stewart Cunningham, “Reinforcing or Challenging Stigma? The Risks and Benefits of ‘Dignity Talk’ in Sex Work Discourse,” *International Journal for the Semiotics of Law* 29(1) (2016), 45–65.

32. Alissa C. Perrucci, ‘The Transformative Power of Sex Work’ *Humanity & Society* 24(4) (2000), 323–37.

33. Clare L. Stacey, “Finding Dignity in Dirty Work: The Constraints and Rewards of Low-Wage Home Care Labour,” *Sociology of Health & Illness* 27(6) (2005), 831–54.

34. John O. McGinnis, ‘The Limits of International Law in Protecting Dignity’ *Harvard Journal of Law & Public Policy* 27 (2003), 137, p. 137.

35. Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

dynamic and uncertain interaction with others. That struggle can be quite direct: with the dangerous or deviant other who is unable or unwilling to share our reasons for action or forbearance from action, and whose vulnerability (as the prisoner, the reviled) reveals our unconditioned impulses. Two aspects of moral discourse represent key points of contestation regarding the other. First, the moral recognition of animals. Second, the tension between the *human* and the *humanitarian* as defining the proper scope of dignitarian entitlements.

The moral status of animals is significant, in the first instance, for the pressure it puts on human rights, both in terms of their content and their attendant relationship with rights theory. The extension of rights to animals has been premised, at least in part, on the coherence of our own rights claims with those of other animals.³⁶ A number of our foundational commitments regarding human rights are undoubtedly applicable to animals.³⁷ But this invites a rethinking of the scope and application of rights. The adaptation of the prevailing menu and justification of human rights to non-human animals would have radical consequences in creating numerous strict or perfect duties to animals.³⁸ Conversely, human rights are – at least in their typical functioning – associated with will theory, that is, they imply conscious choice in the exercise or waiving of the right. If animals cannot claim their rights this, on the will theory of rights, precludes their having such rights at all. Nonetheless, human rights seem track the interests of all embodied subjects of a life. Therefore, an interest theory of rights seems to encompass the content of many of our most fundamental rights, as well as those of animals, better than a will theory. Championing an interest theory of rights comes at a cost, namely the intuitive connection between a will-based conception of rights and human rights protecting distinctive human capacities for cognition and autonomy. This, in particular, challenges a connection between human rights and dignity.

Human dignity can be held to justify a range of human rights, including economic and social rights, that protect our freedom, our well-being, and do so in a way that recognise our distinctively human reasons for action and our social embeddedness. To be sure, the value of human rights discourse is to reject a *single* form of life as proper to humans. Human rights combine minimum common entitlements with prevention of the sacrifice of the vulnerable to the will of the majority, thereby encompassing basic aspects of freedom and well-being within a broadly liberal framework. Dignity as a justifying foundation seems, however, to do more than this. Dignity provides standards for judging the adequacy of entitlements, but also provides a wider standard of reasonableness allowing judgements about the adjudication and modification of human rights among themselves and vis-à-vis other legal claims. In doing so, dignity may also privilege human difference and superiority. While not authorising instrumentalisation of animals, human dignity undoubtedly emphasises the human of human rights: “The core idea of human dignity is

36. Joel Feinberg, “The Rights of Animals and Future Generations,” *Philosophy and Environmental Crisis* (1974), 43–68.

37. Steven M. Wise, “Hardly a Revolution: The Eligibility of Nonhuman Animals for Dignity-Rights in a Liberal Democracy,” *Vermont Law Review* 22 (1997), 793–915.

38. Christine M. Korsgaard, “Kantian Ethics, Animals, and the Law,” *Oxford Journal of Legal Studies* 33(4) (2013), 629–48.

that on earth, humanity is the greatest type of being – and that every member deserves to be treated in a manner consistent with the high worth of the species.”³⁹ Is this an innocuous speciesism necessary to justify the special status of human rights, or a more illegitimate and dangerous assumption?

Many discourses of dignity take their orientation in distancing humans from animals and the treatment of animals. The injunction not to reduce humans to the status of animals (including ‘dogs’, ‘vermin’, etc.)⁴⁰ represents a general concern with humane treatment and a specific concern with the basic entitlements that differentiate us from animals. That is, basic concerns which turn on self-understanding (not being degraded in our own eyes) but also recognition: to be seen as fully human where this means a distinctive animal with reason and standards of reasonableness. Much turns here on humans’ relationship with means rather than ends. We have to pursue our natural ends in ways which acknowledge the distinctive human relationship with privacy and the body; we have to be able to pursue our natural ends in ways that work with, rather than against, our capacity for choice. Not every meal, and perhaps not every crucial life choice, can be the product of pure rational choice among a reasonable range of possibilities. External circumstances, and external social and political choices, may curtail our free choice in these matters. Nonetheless, to bypass choice altogether, and for basic needs to be met in ways that are dictated by others, may be fitting to animals but is a distinctive insult to humans. This opens a number of significant normative pathways. Among other things, it may intersect with the question of work and how we work in ways that are not dehumanising. It intersects with the distinction between obligation on the part of the state and the supererogatory.⁴¹ What unites them is a factual, qualitative, difference between humans and non-humans related to both means and ends.

Hence the charge of speciesism. To posit a qualitative difference between human and other animal forms of life would require moving from the quantitative difference in cognitive ability, in particular the cognitive capacity for self-understanding, reflection and governance, and treat this a qualitative difference in fact (no other animal has this admixture of capacities) and value (no other animal is as worthy of respect given this admixture of capacities). The latter has been expressed in terms of ‘recognition respect’ as opposed to ‘appraisal respect’: to be recognised and respected not for our comparative merit but for our being an instance of a type worthy of respect.⁴² That special respect for the human – the human species – appears to be an innocuous speciesism. But for many critics this is one among many instances in practical philosophy of a more radical supremacism:

human dignity is defended on the backs of animals. [. . .] I am only diagnosing one strand of the proliferating dignity literature. However, it is an important strand, and while human

39. George Kateb, *Human Dignity* (Harvard: Harvard University Press, 2011), pp. 3–4.

40. Margalit and others chart the dehumanising discourse produced in the context of genocide, see Avishai Margalit, *The Decent Society* (Harvard: Harvard University Press, 1998).

41. Our material survival may be an obligation for the state. But if this is accomplished partly or wholly through additional *charitable* contributions on the part of citizens, basic obligation and the supererogatory are blurred.

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

supremacism is not inherent in the concept of human dignity, I would also suggest that it is no accident that the word dignity is the vehicle for supremacist theories.⁴³

This is, for Kymlicka, ‘supremacism’ with all the negative connotations that this entails: a degrading discourse authorising abuse even when ideologically masked in arguments that we and the other animals are ‘separate but equal’. Nonetheless, as Kymlicka acknowledges this need not be an element in all human dignity discourse. First, dignity discourse need not preclude animals having rights proper to their species, that is, a difference in rights and entitlements without this entailing superiority. Second, we should note that different generations of rights track different vulnerabilities, not cognitive capacities: we have distinctive rights instruments for women, children and the disabled, not because they are distinct from humanity but because they experience distinctive challenges and because barriers to realising their human interests should be removed. Third, ‘human’ is arguably constructed not discovered. It is on this dynamics of the human that we should focus.

What general normative standard does the *human* of human dignity or human rights represent? Here a tension between *humanism* and *humanitarianism* is crucial. If the former is a thicker theory or ideology of what is proper or owed to the human, the latter is a theory of humanity *in extremis* and the avoidance of the worst forms of degradation.⁴⁴ The principal feature of international humanitarian law is its symmetry between aggressor and victim, that minimum standards are owed to anyone regardless of the actions that may have provoked their potential mistreatment. This is a neatly minimal and unconditional set of concerns with avoiding dehumanisation that intersects with negative liberalism, negative utilitarianism and theoretical parsimony. We need not have a theory of humanity when we have a theory of the basic wrongs that can be done to others.⁴⁵ There are a number of reasons (moral, legal and theoretical) for constraining the use of dignity to a humanitarian standard. Above all, highlighting distinctively humanitarian concerns about what is universally prohibited leaves the normative and conceptual field clear for other wide-ranging theories of philosophical anthropology and justice.⁴⁶

Theories tying dignity to the centrality of *vulnerability* reflect this demand for a more constricted, humanitarian, idea of dignity. These would argue that vulnerability captures much of the philosophical anthropology and the normative demands of liberal rights

43. Will Kymlicka, “Human Rights Without Human Supremacism,” *Canadian Journal of Philosophy* 48(6) (2018), 763–92, p. 770.

44. See Human Rights Committee ‘Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016’ (2020). It is significant that this important Comment – concerning the interaction of climate change, climate migration, and human rights – invokes dignity as a standard of living (‘a life lived with dignity’). Dignity, conversely, is not used as normative principle to decide the general scope and implications of law.

45. Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Harvard: Harvard University Press, 1986).

46. Mark Lagon and Anthony Arendt, eds., *Human Dignity and the Future of Global Institutions* (Washington: Georgetown University Press, 2014).

theory without problematic philosophies of the self and obligation.⁴⁷ If we are to identify shared, human, grounds of obligation that break down barriers between self and other, it is our shared vulnerability as embodied creatures and as dependent creatures. Not only can this be defended as a form of resistance to privileging models of humanity that involve illegitimate conceptions of autonomy,⁴⁸ they do not exclude moral concern for other animals.

At the same time, there are specific criticisms of the ‘kitsch’ of universal vulnerability that would render humanity actual or potential victims.⁴⁹ Attempts to thicken autonomy-focussed dignity with theories of vulnerability are not, on this view, simple and universalisable inclusions of embodiment within a formal conception of the individual. Rather these are to be viewed as attempts to displace actual (social and political) obligations with a protective network of rights, liberties and entitlements that exclude the common good in favour of individual preferences and vulnerabilities.

The relative – political and moral – priority of the right and the good seems an inescapable question if we are to adjudicate between humanistic and humanitarian readings of dignity. Dignity sits in an uncomfortable position in deciding if and how the human good – vulnerability, but also human choice and potential – have a place in politics. Between, on the one hand, accepting the priority of the right, that is, treating the law-governed state as necessary (and potentially sufficient) condition for dignity. And, on the other, the insistence that dignity must be connected with a positive conception of the good. This contrast takes its most pressing practical form as the question of plurality: regarding the *minority* who cannot or will not share a community’s shared conception of the good, and the *non-national* who continues to make demands on a polity that is not their own.⁵⁰ The protection of minorities can be a minimal humanitarian concern with their safety, or a more expansive demand for plurality in a polity, an open and committed plurality making difference part of any conception of the good. Arendt’s conception of dignity as the ‘right to have rights’ may be thought to justify both, that is, the basic demand to have membership of a polity to ensure safety, and a more fulsome demand that anyone present within a state or nation should be treated as a potential political actor and participant.⁵¹ These concerns recur with regard to space and cosmopolitanism (below). But intimately related debates – about the other, about the scope of political obligations, and about basic humanitarian obligations – are especially prevalent in questions of the treatment of criminals.

47. Anna Grear, “The Vulnerable Living Order: Human Rights and the Environment in a Critical and Philosophical Perspective,” *Journal of Human Rights and the Environment* 2 (2011), 23.

48. Marina Brilman, “Canguilhem’s Critique of Kant: Bringing Rationality Back to Life,” *Theory, Culture & Society* 35(2) (2018), 25–46.

49. Avishai Margalit, “Human Dignity between Kitsch and Deification,” in *Philosophy, Ethics and a Common Humanity: Essays in Honour of Raimond Gaita*, (Cordner ed.) (London: Routledge, 2011), 106–20.

50. Angela C. Stuesse, ‘What’s “Justice and Dignity” Got to Do with It?: Migrant Vulnerability, Corporate Complicity, and the State,’ *Human Organization* 69(1) (2010), 19–30.

51. Steve Buckler, *Hannah Arendt and Political Theory: Challenging the Tradition: Challenging the Tradition* (Edinburgh: Edinburgh University Press, 2011).

As humanity's other (those who, for Kant, have refused to enter the civil condition⁵²) the prisoner is susceptible to being 'treated as an animal':

we cannot fully understand the brutality of these programs until we refuse to accept that dogs deserve to be treated this way, any more than humans do. [Certain punishment regimes] fail to respect [prisoners] as flesh and blood creatures, with corporeal and intercorporeal needs that go beyond the basic conditions of survival.⁵³

Discussions provoked by the Eighth Amendment in the United States, or Article 3 of the European Convention on Human Rights in Europe, turn in part on what is humane in the treatment of the detained. Dignity here provides a basic *humanitarian* standard and a more general call for a shared *humanity*, the former inviting a negative comparison with how we treat animals, the latter sometimes inviting a vision of the indivisibility of rights and the individual's right to the full range of interests and choices the canon of human rights represent.⁵⁴ These poles are significant because equivocation between these frameworks lies behind crucial jurisprudential debates. In particular, how much precision is needed in our norms ('dignity', 'cruel', 'inhuman') in order for them to be legally efficacious. Waldron is significant in this case for both stressing a link between dignity and the rule of law⁵⁵ (and by extension the moral value of legal precision) and at the same time valorising symbolic or archetypal norms in our systems⁵⁶ (like the prohibition on torture) that can remain broad principles without this impugning the lawfulness or validity of their legal status.

Sometimes clarity and determinacy are over-rated. There are an awful lot of legal terms, mostly evaluative terms used in high-flown standards, that are also bereft of clear definition – think of terms like 'cruel,' in the 8th Amendment, or 'inhuman,' and 'degrading' in constitutions and bills of rights the world over – and in many ways it is a good thing that they are not pinned down in a determinate definition. [. . .] It's a mistake to think that we always want legal norms to be mechanically and applicable in an operationalized way; it is a mistake to think of the demand for clarity as though it were supposed to be a way of implacably ruling out thought and argumentation in the law.⁵⁷

These questions, apparently narrow questions of legal precision, link dignity as a general commitment to humanity with the greater ease with which law can operationalise

52. Immanuel Kant, *The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1996), 45–6.

53. Guenther quoted in Kymlicka 'Human Rights Without Human Supremacism', p. 776.

54. James W. Nickel, "Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights," *Human Rights Quarterly* 30 (2008), 984.

55. Jeremy Waldron, "The Rule of Law in Contemporary Liberal Theory," *Ratio Juris* 2(1) (1989), 79–96.

56. Jeremy Waldron, "Is the Rule of Law an Essentially Contested Concept (in Florida)?," *Law and Philosophy* 21 (2002), 137–64.

57. Jeremy Waldron, "What do the Philosophers Have against Dignity?" *NYU School of Law, Public Law Research Paper* 14–59 (2014), p. 14.

humanitarianism as a standard. The limiting of dignity to the humanitarian is more than theoretical parsimony, it emphasises the link between normative precision and normative efficacy: if ought implies can, our standards must be sufficiently precise to be reason-giving.⁵⁸

Our concern with ‘our other’ – animals and the socially deviant – both turn in part on our conception of the significance of plurality. The *substantive* plurality of real and irreconcilable differences among humans. The standard of *reasonable* plurality that – one way or another – must form a feature of any liberal state as a limit on permissible reason-giving.⁵⁹ These questions are not wholly distinguishable from our conception of *plurality among living creatures as a whole*: whether we have to take positive or negative steps to ensure a plurality of environments, ecosystems and animal species either for instrumental purposes (human survival may depend upon ecological diversity) or for intrinsic reasons (the protection of biodiversity as an end in itself). These different aspects of plurality are rarely brought together except at the abstract level of how and why intrinsic value may form part of our practical reason and whether this is tethered only to basic human interests, the interests of any living creature, or can inhere in the inanimate.⁶⁰ But human plurality is inseparable from our political thought and from our relationship with the past and the future. It is to this we should turn.

Time

Time as remembrance, and time as anticipation of the future, point in the first instance to the situatedness and the virtues of the individual. That is, of being thrown into a present not of our choosing, and the future as the horizon of our actions and choices. Our own self-understanding – our constitution as selves – involves the force of the past and future in our present.⁶¹

Time is equally important at the level of *collective* self-understanding and collective identity. What are *our* obligations vis-à-vis the past and future? Does a collective commitment to dignity turn on a polity’s conception of its own past and future? Can a polity ask ‘are we progressing towards greater realisation of dignity’? Disentangling individual and collective relationships with time is complex, and instead we can identify two forms of *change* that are relevant to dignity and the interplay of individual and collective: deliberate changes to the physiology of the human being, and change to the external conditions of humanity over time. These will be addressed broadly through ‘posthumanism’ and ‘progress’.

Time forms the background of the ‘enhancement debate’ and the challenge of the ‘posthuman’.⁶² To be ‘post-human’, that is, consciously controlling the accidents and

58. See Peter Bieri, *Human Dignity: A Way of Living* (London: John Wiley & Sons, 2017).

59. John Rawls, “The Idea of Public Reason Revisited,” *The University of Chicago Law Review* 64(3) (1997), 765–807.

60. Vilks, Leena. *The Intrinsic Value of Nature*, (Rotterdam: Rodopi, 1997).

61. A model of time that Arendt illustrates using Kafka. See Hannah Arendt, *Between Past and Future* (London: Penguin, 2006).

62. James Hughes, Nick Bostrum, and Jonathan D. Moreno, *Human vs. Posthuman Hastings Center Report* 37(5) (2012), 4–7.

deterministic forces which condition the nature and form of the human is to turn a quantitative aspect of the human condition (how, in what environment, and in what ways, a child is produced, gestated, nurtured) into a qualitative change. A possibility of conscious design or formation that significantly and consciously changes the capacities and possibilities of the child. Whether and at what point this qualitative change has or will take place is a matter of reasonable disagreement. That it engages questions of dignity is certain. In what is a typical contrast between technological innovation and dignity, it can be asked whether technology

may pave the way to a redesigned humanity without ever directly intending to. We have seen so far how – by defining human dignity in terms of ceaseless selfovercoming – the transhumanists open the door to an incomprehensible human future. In so doing, they deprive the term ‘dignity’ of any determinate moral meaning. Nevertheless, the conjectured ‘happiness’ of our descendants proves serviceable to the transhumanists for cultivating a low opinion of human beings as we now are.⁶³

A faster, human-directed, change in the species may enhance the dignity of the human condition in a humanitarian project of reducing unnecessary vulnerability to nature, or be seen as a display of hubris both denigrating and diminishing our humanity. The possibility of self-governed alteration of the human species, and the application of ‘improvement’ to our own species as a deliberate and general project, is a conflicted aspect of our future-orientated self-conception. That is, whether we see ourselves as progressively separating from the given-ness and contingency of nature, or as undermining the equality that nature imposes on us. Dignity is a frequent normative standard in this debate (or basic normative given in the form of ‘sanctity’), a standard that posthumanism or enhancement is potentially disregarding and violating.

An analysis of dignity and the post-human is offered by Habermas, where dignity is tied in particular to the self-perception, and evaluation by others, of the altered human. He asks how our normal and normatively justified self-conception as self-governed and autonomous is altered by radical intervention in genome or DNA. If, says Habermas, our conception of another includes their having been altered or shaped in such a way as to be less vulnerable or more competent, the other-regarding element of dignity is engaged.

‘Human dignity’ [. . .] in a strict moral and legal sense [depends upon] relational symmetry. It is not a property like intelligence or blue eyes, that one might ‘possess’ by nature; it rather indicates the kind of ‘inviolability’ which comes to have a significance only in interpersonal relations of mutual respect, in the egalitarian dealings among persons.⁶⁴

This interpersonal equality is at threat not because of the enhanced ‘superiority’ of certain humans, but because of a change in self-understanding:

63. Charles Rubin, “Human Dignity and the Future of Man,” in *Human Dignity and Bioethics (The President’s Council on Bioethics)* (US), ed. *Controversies in the Determination of Death: A White Paper of the President’s Council on Bioethics* (Barbara Langham, ed.) (New York: Nova Science Publishers Inc., 2008) p. 114, footnote removed.

64. Jürgen Habermas, *The Future of Human Nature* (Cambridge: Polity Press 2003), p. 33.

genetically programmed persons might no longer regard themselves as the sole authors of their life history; and second, that they might no longer regard themselves as unconditionally equal born persons in relation to previous generations.⁶⁵

This is then a question of both a change to self-understanding and a generational or epochal change in humanity itself.

Up to now, only persons born, not persons made, have participated in social interaction. In the biopolitical future prophesied by liberal eugenicists, this horizontal connection would be superseded by an intergenerational stream of action and communication cutting vertically across the deliberately modified genome of future generations.⁶⁶

Conversely, a Foucault-inspired criticism of biopolitics would perceive this as the continuation of the modern project of governance, the life of the species coming within the normative and disciplinary care of the community.⁶⁷ Consciously eschewing a viewpoint of humans and humanity as proper grounds for criticism in this context (or rather their being implicated in the emergence of biopolitics) the grounds for possible dignitarian critique are, for Foucault, confined to grounds of tactical resistance and refusal.⁶⁸ If life and death are not legitimately or authoritatively governed by the state, a resistance to the posthuman must lie in a radical defence of plurality and difference, one not valorised by preserving our natural biological inheritance but a more general refusal against selves being treated as objects of power and knowledge.

Indeed, both Foucault and Habermas question the ‘sanctity of life’ as a barrier to intervention. The invocation of sanctity in posthumanism and bioethics – and the implication that it should be seen as a synonym of dignity – can be construed in a number of ways. Put negatively, it denies dignity should be treated as synonymous with autonomy: what we are, by nature, is always prior to what we choose to be. Put positively, it can imply the bare biology of life as Divinely shaped, or our being tied to a species-essence, or the product of processes of life-creation that are related to natural ends that should not be directly frustrated. That ‘sanctity’ is potentially equivalent to bare life – raw biology – is a problem noted among others by Benjamin.⁶⁹ That we are valorising a nature that is otherwise harmful (disease) and at least in part the product of conscious human intervention and not simply blind forces (the avoidance of disease, the choice of partners), means that appeals to sanctity seem to be based on an unstable mixture of biological fact and inscrutable spiritual value.⁷⁰ The dignitarian discourse that accompanies this may well be teleological and speciesist appealing to the distinctiveness and elevation of the human.⁷¹

65. Jürgen Habermas, *The Future of Human Nature*, p. 79.

66. Jürgen Habermas, *The Future of Human Nature*, p. 65.

67. Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-1976* (London: Macmillan, 2003).

68. Michel Foucault, *Society Must Be Defended*.

69. Walter Benjamin, ‘Critique of Violence’ in Benjamin, *One-Way Street and Other Writings* (UK: Penguin, 2009), pp. 152–3.

70. Aurel Kolnai, ‘The Ghost of the Naturalistic Fallacy,’ *Philosophy* 55(211) (1980), 5–16.

71. George Kateb, *Human Dignity*.

Note that this is not incompatible with the valorisation of reason in understanding dignity (in the Kantian tradition and beyond) which makes no use of sanctity but which valorises our natural reasoning capacity. But we should note that the relationship between humanity and ‘reason’ equivocates between reason as a special, fixed, human *capacity* and reason as a driver of *change*.

If dignity has been resistant to intervention in the biological (as life itself, both pure biology and the sacred), for different reasons it has demanded *change* in the state. This could be the Kantian idea of progress towards the *Rechtsstaat*, the oversight of international law drawing states towards compliance with a discourse of human rights, or progressive expansion of our idea of the human, dignity is part of a liberal discourse of progress. This has most recently been systematised by Weinrib:

The task of a constitutional theory of human dignity is not to justify that concept, but to give an account of how that concept justifies the modern constitutional state. On this view, justification consists in the relationship between a general principle (or set of principles) and the ordered sequence of particulars that it supports.⁷²

And it is inseparable from the realisation of democracy:

[D]emocracy [is] the ‘organisational consequence of human dignity’. As a result, a new type of democracy, with respect for human dignity at its heart, is arguably beginning to emerge, challenging and developing a purely procedural, i.e. majoritarian democracy. From this analytical perspective, the concept of human dignity is much more than the individual (intuitive and elusive) sense of self-respect and respect of others, it positions human beings at the heart of democracy, determining thus the exercise of political power.⁷³

This should be compared with socialist models of progress where a liberal (law or rights-based) conception of governance and entitlements is transformed or superseded by forms of progress and development that embed the formal demands of equality within the lived and material reality of needs, production and biological reproduction of the species. In either case, this is not an alteration of humanity, or of its material reality, but a restructuring of our necessary relationships with world and other. An alteration such that structures of authority are either altered to recognise individual status, or revolutionised to realise human potential in our social and biological forms of life. This socialist dignitarian narrative thereby draws together discourses of the dignity of labour, of authenticity and respect for the other.⁷⁴

As narratives of progress both the liberal and socialist models are contested and contestable, both in their conceptions of the ends of humanity and the drivers of change. But the dignity of humanity is either way dependent upon the ‘not yet’, the movement of rejecting or finding limitations in the present, and finding the elements of hope for the future in the present. Human rights law, for instance, is not simply an expression of the

72. Jacob Weinrib, “Dignity and its Critics,” p. 20.

73. Dupré, *The Age of Dignity*, p. 264, footnotes removed.

74. Werner Bonefeld and Kosmas Psychopedis, *Human Dignity: Social Autonomy and the Critique of Capitalism* (London: Taylor & Francis, 2017).

accidental vulnerabilities of humans in a modern polity, but always contains a more general commitment to a form of life lacking degradation and allowing flourishing. That element of hope has connections not only with conventional or teleological narratives of progress, but also more recent concern with an open future where humanity manages to keep possibilities open for future generations:

In most constitutions, dignity's key role in this respect is to keep the future of the constitution (and that of democracy) open. [. . .] In this sense, an open future contrasts with a 'utopian' future, and promotes a future that is gradually constructed, one step at a time, by a range of actors and following a range of processes, including human rights adjudication. Seen from this perspective, judges have a crucial role to play in the step-by-step construction of the future, and the transparency and publicity of judicial reasoning, together with the possibilities of dissent and appeal form an integral and essential part of dignity's construction. Therefore, allowing people to choose and build their own future as they imagine or wish it [. . .] is arguably a crucial part of dignity's definition.⁷⁵

Arguably these themes equivocate not only between utopian and progressive, but between dignity as humanism and humanitarianism: between a vision of emancipated humanity, and the continual rejection of dehumanisation. Nonetheless, strands of both liberal and socialist thought would treat these as two sides of the same coin: the present, but imperfect, fragments of a better future⁷⁶ or a negative liberalism of preventing degradation that is at the same time a politics of humanity rather than a minimal humanitarian law preventing egregious abuse.⁷⁷

What is potentially extrinsic to both posthumanism and narratives of progress are changes to the human condition that will be driven by catastrophic environmental change. These drivers are not mere encouragement to 'change and adapt' in our use of the material world, but potentially destructive of any hopeful or progressive narrative for the species as a whole. The circumstances of justice will change: relative scarcity, and the bonds of sympathy to those immediately around us, are potentially meaningless or uniquely challenged in catastrophic futures. To change the human condition – the possibilities of work, labour and action as we have hitherto known them, and to render the conditions of the possibility of justice impossible – would be make many of the present normative implications of dignity meaningless or impossible. Two possibilities emerge here that are already reflected in some dignity discourse and its criticism. On the one hand, this is reason to favour a stronger cosmopolitanism of international institutions that can govern resources and authority so that our best chance of mitigation is realised. Human dignity must then take an institutional form and lead a dynamic change in our understanding of both international law and human rights such that the burdens of change are equitable, principled and resistant to the self-interest of states.⁷⁸ On the other hand,

75. Dupré, *The Age of Dignity*, p. 277.

76. Ernst Bloch, *The Principle of Hope* (Cambridge, MA: MIT Press, 1986).

77. See Shklar, *Legalism*, also Hannah Arendt, *The Origins of Totalitarianism* (London: Penguin Books, 2017).

78. Thom Brooks, "Climate Change Ethics and the Problem of End-State Solutions," *EOS* 90 (2009), 286–300.

accepting a catastrophic future would be to accept the deficiency of dignity discourse as a guide to the future and accept instead the appropriateness of consequentialism as the only normative framework able to properly consider the future.⁷⁹ This would dismiss dignity as too closely tied to a rights-regime that reflects the assumptions of an affluent present and too little able to guide collective action.⁸⁰

Dignity, if not central to these discussions, is surely a symbol of normative bedrock (humanness, humanity) or substantive bedrock (how and by what means we should survive into the future, what future should we choose). That it sometimes brings a philosophical anthropology to bear (humanity and its self-conception) or a thinner claim of normative consensus to bear (the established political and rhetorical force of human rights) is not necessarily a sign that it is conceptually unstable or better translated into precise normative commitments. It is, perhaps, a reminder that we cannot separate philosophical anthropology, normativity, and plurality. We have the responsibility to decide who 'we' are. And it is inimical to most discourses of dignity to define 'we' narrowly.

Space

Everyone must be permitted to occupy a space on the surface of the earth. And, as the earth is a globe, every space connected with every other space. These two ideas, expressed by Kant in his political writings⁸¹, are pregnant with many of the familiar ideas of globalisation and global obligation. They are also far removed from many standard elements in our practical philosophy especially property and territory. Because of the physical and imaginative distance between ourselves and others, space is always an implicit element in any theory of norms and obligation. In the 'circumstances of justice' where theories of obligation meet the natural limits of our sympathies and concerns; and in the functional or nationalistic justifications of the state and their justified claims to exclusive jurisdiction in bounded territories. Moreover, space and distance are the point where 'non-ideal theory' may have especial force. We can create a theory of obligations using dignity, but we cannot easily overcome the limits of our lived experience and direct bonds.

Accordingly, the interaction of normativity and space lies in the conjunction of lived experience (how our lived space generates or makes morality possible, the reach of our moral concerns), and authority (how space is governed and managed given the custodial and political functions of the state). These each require brief consideration.

We take our orientation from our own *lived experience* and envisaging a scope of moral obligation far beyond the here and now is hampered by failures of imagination and the possibility of radical difference. Conversely, the immediately cosmopolitan or universalising implications of most discourses of human dignity can render immediate lived experience secondary or irrelevant: we want to know what is owed to humans everywhere and this cannot be extrapolated from the parochial and contingent concerns of the here and now. This immediate tension in our connecting obligation and space is overlaid

79. Tim Mulgan, *Ethics for a Broken World: Imagining Philosophy After Catastrophe* (London: Routledge, 2014).

80. Tim Mulgan, *Ethics for a Broken World*.

81. Immanuel Kant, *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991).

with another aspect of lived experience. Our lived experience encompasses both material entitlements (what it is to ‘live in dignity’) and regulated space (respecting dignity though the closedness of the private sphere and the openness of the public sphere).⁸² Note that these latter conceptualisations of dignity are not easily combined. Dignity as a *standard* (lives of dignity, a dignified form of life) does not map neatly onto our regulatory divisions of space (the proper reach of the public and the limits of the private).⁸³ Differently, our lived experience also interacts with humanity and the humanitarian. It concerns the possibility of moving from here to there, from us to them, in the humanitarian sense of recognising the basic needs and basic humanity of those different to us. This is also the deeper project of seeing accidents of space as morally irrelevant with all the distributive and compensatory requirements that this entails. The psychological challenge of impartiality between persons not only requires thinking beyond immediate bonds of sentiment, but eschewing statist conceptions of the scope of justice altogether.⁸⁴

Dignity’s potentially expansive moral implications are conditioned by *authority*, the formal need for co-ordinated action through a single source of norms, and the substantive need for authority as the necessary condition of basic safety (a monopoly on violence) and basic survival (the ability to protect and distribute resources). These conceptions of authority are challenged by the cosmopolitan concern with obligations transcending the immediate boundaries of community, state and nation:

In a world of strong and increasing economic interdependencies [. . .] people’s lives may be more affected by what happens in and among other countries than by what their own community decides. Dignity seems to require that people everywhere be permitted to participate in some way – even if only in some minimal way – in the enactment and administration of at least those policies that threaten the greatest impact on them. An unmitigated Westphalian system makes that impossible.⁸⁵

A vision global democratic accountability combined with standards of right conduct governing all and any authorities – dignitarian standards that are not conditioned by *realpolitik* or the vagaries of different distributions of resources and characters of societies – is a plausible regulative idea if not easily realised through existing international law.

82. The connection between nudism and dignity exposes some important tensions between the public and public. See Bouke de Vries, “The Right to be Publicly Naked: A Defence of Nudism,” *Res Publica* 25(3) (2019), 407–24, at p. 415: “nudists’ dignity is undermined by such pressure, as treating autonomous beings in dignified ways requires that they be left free to act upon their conceptions of the good life when this does not impose unreasonable costs on others [. . .].”

83. See McCrudden on the fragmentation of legal dignity discourse. Christopher McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’, *European Journal of International Law* 19(4) (2008), 655–724.

84. Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard: Harvard University Press, 2009).

85. Ronald Dworkin, “A New Philosophy for International Law,” *Philosophy & Public Affairs* 41(1) (2013), 2–30, p.18.

Economic globalisation and the emergence of transnational law suggest that collapses in geographical distance need not mean the collapse of regulation, but this is not the same as federal or cosmopolitan governance under public international law.

Moreover, stronger claims for a cosmopolitan ethic or cosmopolitan imagination threaten an ideological ‘kitsch’ of hollowed-out, Panglossian, visions of humanity. A more realistic ‘politics of the human’ seeks rather to challenge unnecessary exclusions. Anne Phillips’ work on such a politics both embraces a dignitarian concern with universal entitlements and respect for plurality, while at the same time criticising prevailing discourses of dignity as both essentialist and better construed in terms of equality. ‘While agreeing [. . .] with the core of the notion of human dignity – that pain and suffering are not the only harms we can do to people [. . .] I believe we can adequately address this through ideas of human equality.’⁸⁶ Her demand for progressive engagement with what and who is excluded from the scope of the ‘human’ has led to charges of arbitrariness: humanity is ‘an expression of our will. In short, human rights for Phillips become a matter of decisionism.’⁸⁷ Dignity does not seem compatible with the idea that our affinities are purely chosen. But nor does it sit easily with the idea that identities and affinities are fixed. In this regard Arendt’s limited and statist cosmopolitanism remains an attractive model. While predominantly humanitarian (i.e. centrally concerned with the conditions making genocide possible), the ‘human condition’ represents Arendt’s vision of humanity both conditioned by time (finitude) and material conditions (labour and survival). Neither humanitarianism nor the human condition require or imply a negation of the state, and Arendt attaches the dignity of the individual to the concrete protections of states and authorities.⁸⁸ She rejects the requirement of a ‘cosmopolitan imagination’ negating accidental differences among humans. For Arendt the categories of the human (whether biologically determined, or dynamic and elective) are products of the human condition, including our institutions which collectively and politically preserve the past and determine the future. But it is important to stress that Arendt is properly read as having a strong conception of human dignity – quite specifically in the sense of requiring us to recognise the status of the individual through extending citizenship to the individual – which is quite different to insisting that human dignity was falsified by the creation of the stateless and that there is nothing more than ‘civic’ status. Reading Arendt as a human dignity sceptic is not only to obscure her moral cosmopolitanism but, more dangerously, to conflate her position with a political decisionism to which she was fundamentally opposed.

We should compare this vast cosmopolitan space of our moral geography to the importance of the private space, as a lived environment, as it features regularly in dignitarian thought and jurisprudence. In both German and United States jurisprudence dignity is closely connected with the sphere of the private as one of choice and self-determination.⁸⁹ For all their differences, these constitutional traditions draw upon a

86. Anne Phillips, *The Politics of the Human* (Cambridge: Cambridge University Press, 2015) p. 97.

87. Will Kymlicka, “Human Rights Without Human Supremacism,” p. 780, footnotes and references removed.

88. Arendt, *The Origins of Totalitarianism*.

89. Bindeshwar Pathak, “Technologies for Human Dignity: The Sulabh Sanitation and Social Reform Movement,” *Innovations: Technology, Governance, Globalization* 4.3 (2009), 43–57.

conception of dignity based on autonomy (as rational self-determination) and freedom (as the absence of external interference) that are equally criticised from the left (feminist and Marxist criticisms⁹⁰) as well as the right (the communitarian criticism of the priority of the right over the good⁹¹). For both, dignity can be a ‘Trojan Horse’, importing objectionable standards into law. More frequently associated with conservative uses of dignity in otherwise progressive constitutions, examples like *Planned Parenthood vs Casey*⁹² represent liberal ideas of dignity being imported into a potentially conservative conception of the divide between public and private. This defence of private choice has important connections protection of ‘private conscience’ against public law. That is, whether we have ceded the right to act upon our own reasons for action (our comprehensive vision of the good), or whether and how the exclusionary reasons given by law (normally displacing private reasons for action) must be taken as primary in a well-structured state. Dignity can speak for the priority of private conscience⁹³ or the moral primacy of shared public laws.⁹⁴

The private also points closely to the privileging of the particular over the general, a persistent phenomenological, as well as moral dimension, of dignity’s functioning. The private is where the particular (the different, idiosyncratic) is legitimately cultivated, and the thrust of both liberal theory and much law of human dignity has functioned to preserve a space for ‘experiments in living’.⁹⁵ The private admits, indeed is defined by, plurality in models of virtue and conceptions of the good. These will have some normative parameters, principally care of the self and of others. Accordingly, the public expression of private standards of care is problematic.⁹⁶ The virtue of care is predominantly private. Care must move from the carer if it is not to be pure obligation; it potentially loses its meaning if it moves from a heteronomous obligation to support others. Only in the private sphere, it might be said, is care truly possible, and imposing ‘public standards of care’, even where these rest on a seemingly objective standard of dignity in our treatment of others, seem both paradoxical and intrusive. In essence, the private sphere is a site of distinctive freedoms but where public standards are imposed. Those standards can be obviously repressive (e.g. criminalising consensual homosexuality), arguably repressive (regulating consensual sex their involving payment) or blur the boundaries between justice and virtue (standards of care). Normative judgements here depend upon our conception of the role of the state and the proper calibration of the divide between public and

90. Ruth Gavison, “Feminism and the Public/Private Distinction,” *Stanford Law Review* 45 (1992), 1–45. Nancy L. Schwartz, “Distinction between Public and Private Life Marx on the *zōon politikon*,” *Political Theory* 7(2) (1979), 245–66.

91. Michael J Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1998). John Rawls, “The Priority of Right and Ideas of the Good,” *Philosophy & Public Affairs* 17 (1988), 251–76.

92. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

93. Martin Luther King Jr, ‘Letter from a Birmingham Jail. April 16 (1963)’ available at https://web.cn.edu/kwheeler/documents/Letter_Birmingham_Jail.pdf [accessed March 20, 2020].

94. Alan Gewirth, ‘Individual Rights and Political-Military Obligations’ in *Conscripts and Volunteers*, (Fullinwider, ed.) (NJ: Rowman & Allanheld Publishers, 1983), 89–105.

95. John Stuart Mill, *On Liberty and Other Essays* (Oxford: Oxford University Press, 1998).

96. *McDonald v United Kingdom* [2014] ECHR 942 (20 May 2014).

private. Dignity itself is an expression of the problem rather than its solution: dignity demands the existence of a public–private divide and also demands that it not be a source of repression or a shield for abuse.

These concerns with space turn in large measure on the governance of space and the jurisdictional and moral scope of the state. Debate over political and legal authority is no doubt frequently conducted without explicit reference to dignity. Nevertheless, when we consider the moral implications of boundaries – both between states, and within states – their implications for dignity, and their ultimate justification in dignity, are at the root of many of the most fundamental normative debates, and fundamental intuitions, in practical philosophy.

Discussion

Attempts to systematically reconstruct the function of dignity must always have a chosen starting point. Whether it is the international human rights regime, Roman stoicism, Kant's *Groundwork*, or the phenomenology of (self-)respect, we choose a vantage point from which to survey dignity or privilege a discourse which may or may not encompass elements of these other perspectives. These are chosen as rational points of departure, that is, for methodological reasons concerning the special importance of certain commitments, or as best capturing the prevailing grammar of our dignity discourse. Importantly, in contemporary practical philosophy, these are also to be tested – if they are to have normative significance – against settled intuitions and as a potential contribution to either ideal or non-ideal theories of justice.⁹⁷ Our theories must match our settled reflective judgements in established cases. And our theories must admit tailoring to prevailing social and political conditions. In sum, a *theory* of dignity is possible only through *exclusions* (of methods, of histories) and through the *conditioning* of theory to normative certainties or what is practicable.

The foregoing has not sought to provide a theory. It has sought to minimise exclusions, and it has sought to identify, not impose, putative conditions on the applications of dignity. The connections between dignity and the self, the other, time, and space, rely on extrinsic moral, legal and political commitments. This demonstrates that dignity is rarely, of itself, dispositive of difficult normative questions. Identifying what dignity brings, in particular, to normative debate relies upon applying two other tests: of universality and of coherence.

Universality remains a contested epistemic and moral test, and dignity betrays some reasons why this might be treated as problematic. Behavioural dignity cannot be universalised and nor can the 'upright gait'⁹⁸: we are not obliged to be Stoics and nor can we avoid disability, labour or some submission to the will and knowledge of others. Finding the universal in the human and humanity may well be descriptively irrelevant or normatively beside the point. To be just we need to know what is owed, to whom and why. 'Human' in itself will not answer this. At the same time the idea of the human condition

97. Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map," *Philosophy Compass* 7(9) (2012), 654–64.

98. Ernst Bloch, *Natural Law and Human Dignity* (Mass.: MIT Press, 1986).

understood as a shared environmental condition – and shared environmental fate – seems to transcend a number of practical and species boundaries. To the extent that we want to *ground* dignity on something universal, the least unstable grounding would be to look to *conditions of the possibility of agency*, justice the good and the right: the continued habitability of the planet. This is not a theory of dignity. It is rather a way to find the material and conceptual ground of our universality claims, out of which one, or perhaps multiple, understanding of dignity may be possible.

Coherence offers a different and more conceptually problematic path. The starting points surveyed above are ostensibly incompatible not because they yield different aspects of dignity discourse but because their principal normative correlates – authenticity (in the self), respect (for the other), progress (through time) and authority (in the government of space) – are both expansive and imply a moral and ethical comprehensiveness that is uncongenial to contemporary practical philosophy. If they are to be coherent, that coherence must (it might be argued) be secured through a theory of justice. This is problematic, both as a shift to a different vision of what is normatively fundamental and because it may well imply structures of democratic decision-making that build both consensus and compromise into our norms. Dignity's coherence would depend, thereby, upon its shaping to the actually existing forces of modernity, including democracy, but also the especial importance of democratic deliberation and the public–private divide. Coherence in these terms leads to a theory of communicative rationality, of public reason, or to forms of non-ideal theory.⁹⁹ But it need not. That is, provided we are willing to pay the methodological price of accepting dignity's multiplicity of implications and with it accept a holistic conception of dignity straddling the ethical, moral, legal and political.

Taking universality and coherence together, the question of our pathways in the exploration of dignity cannot be separated from the question of Enlightenment. If Enlightenment is freeing ourselves from received and unchecked opinion, this can only be done through giving and testing our reasons from a public position to a universal audience: to speak using our own unconditioned reason to a public forum. All of our pathways represent ways of expressing basic human concerns that need not be justified as being disinterested or having a claim to a priori priority. They are each legitimate points of departure for rational discourse. And this means that a certain methodological pluralism is legitimate. We cannot demand that accounts of dignity justify their validity by reference to privileged discourses, be it the work of Kant or dignity's grammar. Discourse on dignity is only problematic if grounded on intuitions that cannot be shared.¹⁰⁰ This is compatible with dignity being a dynamic normative idea, one that is properly re-conceived in different contexts and epoch. As Bloch, Habermas and others argue dignity tracks what is demanded but 'not yet' realised in our moral and political practices. To put

99. Rachel Bayefsky, "Dignity, Honour, and Human Rights: Kant's Perspective," *Political Theory* 41(6) (2013), 809–37.

100. This is characteristic of some 'place-holder' accounts of dignity, allowing it to symbolise agreement even in the absence of agreement. See Pritam Baruah, "Human Dignity in Adjudication: The Limits of Placeholder and Essential Contestability Accounts," *Canadian Journal of Law & Jurisprudence* 27(2) (2014), 329–56.

it another way the law of human dignity tends to fulfil the functions dignity was assigned in the Enlightenment, to found universal entitlements and to assert the possibility of rational coherence within our practical reasoning. It is, however, *politics* that keeps these universalising and coherence-aspiring impulses from being essentialist, hegemonic or repressive. Law attempts to stabilise dignity as a universal set of prohibitive norms (and frequently appeals to Kant in doing so). These norms – prohibiting degradation and objectification – are ineluctable. But every attempt to *reduce* dignity to these functions, and every attempt to universalise in this narrowly prohibitive way, is properly felt to be a betrayal of the critical core of the concept. Kant and the Enlightenment give us part of the story, but they cannot complete it.

Moreover, because dignity unlike justice does not possess a stable form in legal judgement and political theory, dignity lacks a privileged praxis. Pursuing or defending dignity sits legitimately in both the public and private spheres, in both institutional and interpersonal practices. But, again, this is not to say that its normative implications are reducible to moral intuition. Rather, our current discourse – and the intuitive starting points discussed above – have been formed by an interplay of moral theory, legal application and political resistance to dignity's reduction to either legal norms or morality. Law gives us precision, but the politics of dignity is a continuing attempt to push the significance of dignity beyond what is found in legal judgement and authorised moral and political discourses. As such, moving from our dignitarian intuitions to dignitarian obligations cannot be purely a legal *procedure* of normative specification or a political *choice* of collective commitments. The characteristic function of dignity is to resist the finality of either.