

Human Dignity as High Moral Status

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Article abstract

In this paper I argue that the idea of human dignity has a precise and philosophically relevant sense. Following recent works, we can find some important clues in the long history of the term. Traditionally, dignity conveys the idea of a high and honourable position in a hierarchical order, either in society or in nature. At first glance, nothing may seem more contrary to the contemporary conception of human dignity, especially in regard to human rights. However, an account of dignity as high rank provides an illuminating perspective on the role it plays in the egalitarian discourse of human rights. In order to preserve that relational sense regarding human dignity, we can use the notion of moral status, to which some moral philosophers have paid attention in recent years. I explore the possibilities of the idea of moral status to better understand the idea of human dignity and its close relationship with human rights.



HUMAN DIGNITY AS HIGH MORAL STATUS¹

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ABSTRACT

In this paper I argue that the idea of human dignity has a precise and philosophically relevant sense. Following recent works, we can find some important clues in the long history of the term. Traditionally, dignity conveys the idea of a high and honourable position in a hierarchical order, either in society or in nature. At first glance, nothing may seem more contrary to the contemporary conception of human dignity, especially in regard to human rights. However, an account of dignity as high rank provides an illuminating perspective on the role it plays in the egalitarian discourse of human rights. In order to preserve that relational sense regarding human dignity, we can use the notion of moral status, to which some moral philosophers have paid attention in recent years. I explore the possibilities of the idea of moral status to better understand the idea of human dignity and its close relationship with human rights.

RÉSUMÉ

Cet article défend la thèse que l'idée de la dignité humaine a un sens précis et philosophiquement pertinent. À la suite de travaux récents, il est possible de trouver des moments-clés importants dans la longue histoire de cette idée. Traditionnellement, la dignité exprime l'idée d'une position haute et honorable dans un ordre hiérarchique, soit dans la société ou dans la nature. À première vue, rien ne semble plus contraire à la conception contemporaine de la dignité humaine, en particulier en ce qui concerne les droits de l'homme. Toutefois, une explication de la dignité comme rang élevé offre un éclaircissement sur le rôle qu'elle joue dans le discours égalitaire des droits de l'homme. Afin de préserver ce sens relationnel concernant la dignité humaine, nous pouvons utiliser la notion de statut moral, à laquelle certains philosophes de la morale ont accordé une attention soutenue ces dernières années. J'explore les possibilités de l'idée de statut moral pour mieux comprendre la dignité humaine et sa relation étroite avec les droits de l'homme.

Since the Second World War, human dignity has become a leading idea widely used in moral, legal and political arguments. More than anything else, this prominence is due to its close association with human rights. Despite its philosophical pedigree, such influence would be incomprehensible if the concept of human dignity did not appear in major international human rights documents, from the Charter of the United Nations and the Universal Declaration of Human Rights on.

As with human rights, the appeal to human dignity has become common in public debates, in some cases as a formulaic invocation, in others as a powerful rhetorical device. Of course, the inflationary use ends up having deleterious effects on the meaning of words. Thus, the notion of human dignity may sound like a platitude, or be regarded as “mere decoration”, just a “fine-sounding phrase”.² Moreover, in recent years the use of the concept has generated much controversy. To critics, appeals to human dignity represent vague statements, or a resort to a mere slogan without a fixed content, useless for normative theory. As we shall see, much of this controversy has taken place in bioethics, but the issues raised are pertinent for the use of the term “human dignity” in the theory and practice of human rights.

Among the criticisms, I would like to address the objection about the vacuity of the notion.³ For this task we must begin by looking at the long history of the term, which provides some interesting clues. Traditionally, *dignitas* conveys the idea of a high and honourable rank in a hierarchical order, either in society or in nature. That old hierarchical meaning strikes us as just the opposite of the contemporary conception of human dignity in human rights talk. Nevertheless, an account of human dignity as high rank offers a promising viewpoint on the use of the notion in the egalitarian framework of human rights.

In order to preserve that relational sense of human dignity, we can use the notion of moral status, to which some moral philosophers have paid attention lately. Analogous to legal status, moral status is defined as the rights and obligations assigned to someone by moral argument, not by law. The moral status of human beings determines how it is morally justified to treat them, or what is morally permissible to do to human beings. So the notion of human dignity should be understood as a high moral status consisting of a set of rights that guarantees a high degree of inviolability and respect.

The article has three parts. Part I is introductory and consists of two sections. In the first, I will consider briefly the use of the term “dignity” in international legal instruments on human rights. Such use raises some puzzling questions concerning the lack of normative meaning of the word and the symbolic role assigned to it. In the second section, I offer a quick survey of recent critical views about the notion of dignity in bioethical discussions. These criticisms are a good reason to look more closely at its meaning and role in moral arguments.

There are two sections in part II. In the first, I will discuss two conceptions of dignity, known as “restricted” and “universal”, usually differentiated in the spe-

cialized literature. One can be traced back to its origins in the Roman notion of *dignitas* as high rank or office, while the other leads to the contemporary understanding of dignity as the inherent worth of human beings. I argue that this contrast provides a very inaccurate historical overview and that we should take into account what Oliver Sensen calls the “traditional paradigm”. In the second section, I give an account of this traditional conception of dignity concerning the high place of man in nature. According to this perfectionist view, human dignity is regarded first and foremost as the ground for duties.

Part III consists of three sections. In the first, I consider Jeremy Waldron’s hypothesis, according to which the traditional sense of dignity as high rank offers a promising approach to understand the critical contribution of human dignity to the theory and practice of human rights. The last two sections explore the advantages and implications of understanding human dignity as (high) moral status, resting on rights and duties, and not as a special kind of value. On the one hand, its moral significance as a moral status remains unsettled and open to debate between opposing interpretations, as the resurgence of the traditional paradigm reveals. On the other, taking dignity as a moral status raises the question about how it relates to human rights and whether it can be seen as their ground.

I

1. HUMAN RIGHTS

Certainly the moral, political and legal significance of the idea of dignity in our time is inseparable from its association with human rights. After the Second World War, the phrase “human dignity” appears on the main international human rights documents. For example, in the Preamble to the Charter of the United Nations (1945), where in the name of the peoples of the United Nations it is proclaimed “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.⁴

It has definitely been the Universal Declaration of Human Rights (UDHR, 1948) that has done most to popularize the use of dignity in human rights discourse. At the UDHR the phrase appears five times: twice in the Preamble (“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”) and in three articles (article 1: “All human beings are born free and equal in dignity and rights”; and also in articles 22 and 23 about socio-economic rights).⁵ Following the UDHR, the mention of dignity has become commonplace in international human rights law and humanitarian law.⁶

The overwhelming use of dignity language in international law instruments shows a remarkable degree of consistency.⁷ At least the same formulas are ritually invoked. There are some noteworthy points about this use. First, human dignity is closely related to human rights as a separate but interdependent concept,

while “dignity” and the “worth of persons”, both used with the adjective “inherent”, are taken as mere synonyms.

Second, the relationship between human rights and dignity is left unexplained in the UDHR and other texts; simply they are mentioned on equal footing, just connected by a coordinating conjunction. Only later in the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966) the kind of relation between the two notions is explicitly formulated: “Recognizing that these rights *derive* from the inherent dignity of the human person”. Of course, this represents a major move whose significance should not be overlooked. It establishes a priority in the order of justification. Dignity is assigned a foundational role in human rights discourse as the ground for human rights.⁸

And third, there is no definition of human dignity in declarations, treaties and other international human rights instruments. Its meaning is simply left to an intuitive understanding, assuming that everyone knows roughly what it is.⁹ But is this a reliable assumption?

Needless to say, this kind of legal texts is not intended to address theoretical discussions on concepts and there may be sound political reasons to avoid them in order to achieve the widest possible international consensus on human rights. But the problem is how to reconcile this lack of clarity about the meaning of dignity with the justificatory burden assigned to the concept in relation to human rights, according to which people have rights *because* they have dignity. The problem is serious because there are widespread suspicions in contemporary debates about the meaninglessness of the term, as we shall see.

But even this may be seen as an advantage. The case is well described by Doron Shultziner, who explains the two features of human dignity as it is used for justifying rights in legal documents: the symbolic role and the lack of fixed content. By symbolic role, he understands that human dignity *seems* to offer a firm starting point for would-be universal legislation. But it does not really determine the content of this ultimate rationale, thus leaving the philosophical question open. Otherwise, human dignity works as a symbolic label, open to different interpretations. For that reason it is a rhetorical device useful for justifying political agreements concerning human rights “on a *seemingly shared ground*”.¹⁰ Obviously, the price for playing that role is the lack of definite meaning. In fact, the content changes depending on the political agreements reached at different times. And this versatility is possible because “there is not fixed or universal content that spouts out of human dignity”.¹¹

So considered, human dignity seems to be just a political expedient. From this point of view, what matters is the undeniable rhetorical force of the phrase “human dignity”, suitable for concealing disagreements under the guise of an alleged common ground. Moreover, this rhetorical effect seems to be directly linked to the absence of critical examination: “Few expressions call forth the nod of assent and put an end to analysis as readily as ‘the dignity of man’. It

sounds wholesome and real, and its utterance easily quiets our critical faculties”.¹² This is a disturbing conclusion, to say the least, and completely unsatisfactory in philosophical terms. Is the vacuity of the concept of dignity, or the restraint on critical scrutiny about it, the price to pay for consensus? It would be a shaky consensus indeed. Expediency cannot stop critical inquiry on this issue, especially taking into account what is happening with the idea of dignity in bioethics.

2. BIOETHICS

In recent years, human dignity has been the subject of intense controversy in bioethics debates. The term became popular in the seventies in connection with the discussion of life prolonging medical treatment and what was called “death with dignity”. But it is interesting to recall that, for example, it does not appear in the Belmont Report (1979), which sets out the major ethical principles for the discussion in bioethics.¹³ In the last years, however, the concept has been also used in debates on biomedical innovations, especially those concerning human genetics, modes of assisted reproduction and enhancement techniques. By the way, the US President’s Council on Bioethics, an advisory panel of experts created by George W. Bush in 2001, played a decisive role in placing the issue of dignity at the center of those debates.¹⁴ In fact, the Council’s first report, issued in 2002, was titled Human Cloning and Human Dignity.

Right away, the concept of dignity as applied to bioethics was fiercely questioned. The following year bioethicist Ruth Macklin developed a keen criticism as an editorial of the *British Medical Journal*. Of course, her discussion was limited exclusively to medical ethics, but it is interesting to note that it represented, and it still represents, a strong denunciation of the widespread use of the concept and its normative futility:

“Is dignity a useful concept for an ethical analysis of medical activities? A close inspection of leading examples shows that appeals to dignity are either vague restatements of other, more precise, notions or mere slogans that add nothing to an understanding of the topic”.¹⁵

In other words, the argument assumes, we can get rid of this concept without any real loss. Macklin severely criticizes the first report of the US President’s Council on Bioethics by constantly appealing to dignity without providing an analysis of it or explaining how it is related to other ethical concepts and principles. Given the lack of criteria about its meaning, “the concept remains hopelessly vague”.¹⁶ In other cases, as she shows, the references to human dignity can be replaced easily by the principle of respect for persons or their autonomy, one of the traditional principles of bioethics. In short, Macklin confronts us with the following alternative about the use of dignity: either it is an empty slogan or it is merely redundant.¹⁷ One cannot help but wonder whether Macklin’s criticism can be pertinent outside bioethics.

Dieter Birnbacher, among others, has expressed similar concerns about the use of the idea of human dignity in European biomedical debates. As normative principle, it has played a more important role than in Anglophone bioethics, but its inflationary use provokes a similar reaction of intellectual discomfort and raises similar questions to those already mentioned. Birnbacher holds two major objections against it. As expected, the first alludes to the suspicion about the lack of meaning:

“Partly it is due to the unclarities and ambiguities of the concept itself, inviting the suspicion that *Menschenwürde* functions more as a ‘*Leerformel*’ with no fixed content of its own, lending itself to a merely rhetorical and opportunistic application”.¹⁸

The second has to do with the rigid and stubborn way in which the rhetorical force of the phrase is usually used:

“*Menschenwürde* is typically invoked, both by ethicists and lawyers, as a kind of ultimate article of faith rather than as a principle open to rational debate. It typically functions as a ‘conversational stopper’ settling an issue and tolerating no further discussion”.¹⁹

Again, the discussion is limited to bioethics. But it is worth noting that there is a near-perfect fit between both objections and the two features identified by Shultziner regarding the use of human dignity in the international legal instruments on human rights. Human dignity is regarded as an empty label, and yet supposedly apt to block rational debate. Understandably, critics as Birnbacher or Macklin present these two features under an unfavourable light.

II

3. TWO CONCEPTIONS OF DIGNITY

We can start by asking if it is truly impossible to find something like a fixed content in the uses of dignity, or at least some lines of continuity through its historical layers of meaning. For if we look at the history of the term we can find two different senses of dignity, which have been labelled as restricted and universal.²⁰ In fact, the history of the term is usually told as the relation between these two meanings, and how and when the former, restricted sense evolved into the second, universalistic one. Of course, my aim here is not to trace the history of the term “dignity”, but just to look for some clues to better understand its current use in the moral and political arguments.²¹

The origin of the restricted sense of dignity can be traced to its roots in ancient Rome. For the Romans, *dignitas* was a complex idea referring to the superiority and distinction of a high social position or rank. It was identified with political offices and persons holding them; for instance, a senator, or a consul, had *dignitas*. As expected, it was an intensely hierarchical notion closely linked to honour, privileges and deference due to high office or rank.

Therefore, we have to take it properly as a high status, determining distinctions between individuals and how they should be treated. So understood as a positional good, only a few in an elevated position could have dignity. Being exclusive, it was sought and fought zealously in Roman political life, as the case of Julius Caesar shows, because this kind of dignity could be gained, for example, by appointment to public office, but also lost.

It is important to notice that the dignity of a high position entailed obligations for those holding it: “The office or rank related to *dignitas* carried with it the obligation to fulfil the duties proper to the rank. Thus ‘decorum’ understood as appropriate dignified behaviour, was expected of the person holding the office”.²² This close association with *decorum* and *gravitas* is a key point to understand the traditional usage, because dignity is manifested in public behaviour. In that sense, noble bearing, self-control and manners are the outer aspects of dignity.

This old hierarchical conception has had a long life after the demise of the Roman world and the traces are still present in our dictionaries. To give one example, the French Declaration of the Rights of Man and Citizen (1789) maintains the use of “dignities” as public offices, even if the text is claiming for the equality of all citizens in the access to them:

“All citizens, being equal in its eyes, are equally eligible to all public *dignities*, places, and employments, according to their capacities, and without other distinction than that of their virtues and talents” (article 6).²³

This usage referred to high offices and people who occupy these honorary positions is alive in the old-fashioned parlance about “dignitaries” in official ceremonies or ecclesiastic “dignities” in the Church. Naturally we keep talking of “dignified behaviour” in relation to the mode of conduct and self-presentation in social life, as recorded by the Oxford English Dictionary: “Nobility or befitting elevation of aspect, manner and style; becoming or fit stateliness, gravity”. And, of course, the close relationship of honour and public esteem with a high rank or office is a topic that can be found in classic political texts.²⁴

The universal meaning of dignity is completely different and is usually defined by opposition to this hierarchical and exclusive conception. In this sense, dignity is not something linked to a higher social rank or political position, or exclusive of a few men. Rather, it is a type of value that belongs to everyone as a human being, regardless of his or her social status and institutional position. Moreover, this value is seen as something given, an endowment, not something acquired or conquered; therefore, it cannot be lost or removed.²⁵ Finally, it is a kind of value that does not support scales or grades, so that every human being has the same equal worth.

This conception of dignity is perfectly suited to the discourse about human rights, unlike the other. Under the influence of Kant, or some of his influential readings,

the term “dignity” has become shorthand for “the inherent worth of human being”. Regarded as a value, it is typically described with adjectives as “inherent”, “intrinsic”, “inner”, “absolute” or “incomparable”. These adjectives express the essential character, not contingent or dependent on external circumstances, of dignity as a value that human beings have by virtue of their being human. As such, all human beings have it and each of them equally, regardless of social circumstances or personal achievements. Obviously, it fits nicely the universalistic and egalitarian spirit of the contemporary discourse on human rights.

We should highlight some philosophical aspects of this universal, currently prevalent, conception of dignity. First, the attribution of this inherent, inner, absolute or essential value to human beings, just for being human, sounds like an ontological claim. Indeed, that is exactly what it is, the assertion of a moral fact about the kind of value we can find in the world: human beings are valuable in themselves, each one having a worth different from anything else; and they have this great value because of some defining features of their common humanity.

Second, this ontological claim is usually understood as a perfect instance of what Teresa Iglesias calls “bedrock truths”, “because they have to be acknowledged—they cannot be proved”.²⁶ Thus it plays a basic role in some ethical normative theories and Christian and humanist views of common morality. According to them, the core of morality is respect for persons.²⁷ But why should we respect people? Naturally, the answer lies in the bedrock truth about the inherent value possessed by all human beings as such. In other words, people have dignity and dignity, understood as the inherent worth that people have, is the ultimate reason that justifies the way in which it is permissible to treat them. Accordingly, if we assume that morality is concerned with respecting people, the ontological claim about human worth seems to be the ground upon which the entire edifice of morality rests. So considered, the moral fact of human dignity amounts to the final reason in the moral order and the underpinning for human rights.

4. THE TRADITIONAL PARADIGM

In the literature on dignity it is very common to contrast both conceptions of dignity. But that gives a distorted historical view, overly simple, in which it is easy to overlook important elements. Inevitably it raises questions, for example, about the historical origins of the so-called universal conception; or about the change of the old hierarchical meaning of dignity as high rank or status into something so different, if not opposed.

According to one standard account, the origin of the universal conception of dignity lies in the biblical sources of Jewish and Christian thought, particularly in the theological view of man as created in God’s image (*imago Dei*). For those seeking secular sources, the topic of human dignity became central in the European Enlightenment and the real turning point for the modern understanding of the concept of dignity is to be found in Kant’s philosophical writings. But this is still historically inaccurate, since the *dignitas hominis* was a classical theme developed by the Stoics and particularly by Cicero.²⁸

However, although these classical authors attributed dignity to all humankind, it would be a gross misunderstanding to assimilate their view to the contemporary conception set out in the previous paragraphs. For this reason Oliver Sensen has distinguished carefully what he calls “the traditional paradigm” from the contemporary understanding of human dignity, but also from the restricted social sense of the “archaic paradigm”, as he calls it.²⁹ The traditional view is developed from the hierarchical conception of *dignitas* as a high rank, but universalizing it to all human beings. In fact, it preserves the hierarchical meaning of dignity, but displacing it from society to the natural order: it is a way of talking about man’s place in the cosmos, stressing that man is in a superior position, elevated above all other natural beings.³⁰

This move was possible, according to the metaphysical tradition, because both the world and society were conceived as hierarchical orders. Thus human dignity meant the high rank man holds within the hierarchy of beings in the world. As a result, this traditional view also preserves the overtones of esteem and respect due to such honourable position. The reason why man occupies that elevated position is to be found in certain defining features of human nature, mainly reason and free will. This is the characteristic pattern of the traditional conception of dignity, as Sensen explains:

“The same basic structure can be found from Cicero onwards in Christian and Renaissance thinkers: Human beings are special in nature in virtue of a certain capacity (e.g. reason, freedom), and have a duty to make a proper use of it”.³¹

It is important to notice here a first significant difference with respect to the contemporary concept of dignity outlined above. Nowadays, we are accustomed to associate dignity with rights; in the traditional paradigm, however, dignity is regarded as the ground of duties, not of rights. In this regard the traditional paradigm is also akin to the old Roman sense of dignity as a high social rank that carries obligations with it. *Noblesse oblige* is the idea in both cases: one is obliged to behave in an appropriate manner, because of the honourable position one occupies. Understood as nobility in the natural order, human dignity requires men to behave according to their nature as rational and free beings, without stooping to the animal condition.³²

At this point there is another element of contrast with the contemporary conception of dignity, because the traditional paradigm “is a perfectionist framework which expresses the duty to make a proper use of *one’s own* capacities”.³³ If the first duty is to make an appropriate use of attributes of human nature like reason or free will, this amounts to an obligation to preserve and respect our own dignity. So, dignity is focused on the agent and the duties associated with it are considered as agent-centred. They are not duties we owe to others, as in the case of rights, but first and foremost duties to ourselves.

There is a third feature in the traditional view of dignity related to this perfectionist framework. Under its contemporary sense, dignity is taken as a value that people have, no matter what they do. They cannot increase it or waste it; sim-

ply they have it as human beings, irrespective of their behaviour. The traditional view is more complex, since it recognizes two stages in dignity. All human beings occupy the same rank in the world order because of the common attributes of human nature, but only those who fulfil the duty to make a good use of them fully realize their dignity. So to speak, there are two grades within the same rank.

Undoubtedly, the key point of divergence lies in the very way of conceiving dignity. In the contemporary usage, it is a value-property that human beings have as such, unrelated to anything else; that is, a non-relational attribute. By contrast, in the traditional paradigm dignity keeps the sense of a relational property,³⁴ suggesting the upper echelons of a hierarchy, and thus superiority and subordination. Literally, it expresses the elevation of one thing above others, so that the elevation brings distinction, nobility or excellence. With this relational meaning in mind, dignity can be applied to different things or activities, not just to human beings. For example, we can speak of the dignity of philosophy in order to raise it as a noble activity above others. In this sense, Kant spoke of the dignity of morality; the labour movements in the nineteenth century clamoured for the dignity of work; or at present we hear about the dignity of parliament, the dignity of the medical profession, the dignity of languages, and so on.

III

5. WALDRON'S HYPOTHESIS

This relational sense is an important key to understanding the rhetorical use of the term and its evolution. It is easy to see how the idea of a high rank was transferred from society to nature, both regarded as hierarchical orders. At first glance, however, the traditional hierarchical view seems to clash with the egalitarian spirit of the contemporary usage. But maybe not, all things considered. While the old Roman concept referred to the superior social position of some men over others, and hence was radically anti-egalitarian, the traditional view presented man's place in the cosmos as a higher rank, above all other natural beings. In this traditional view of the world, all natural creatures are subordinated to mankind, *but all men belong to the same high rank*. By sharing the same high status in the natural world, all men have the distinction and nobility that corresponds to that elevated position, therefore deserving the same esteem and honours.

It is true that this is framed in a metaphysical or theological picture of the world. But we cannot underestimate the political consequences of bringing back to society this idea of the high rank of man in God's creation. Indeed, the major effect of dignity applied to humankind is to elevate and ennoble men, all of them. If by nature men are entitled to the honour and deference due to such elevated rank, it is inevitable to draw conclusions about how human beings are treated in society and how they should be treated according to such high position. Historically it was so in modern political thought. The idea of mankind's dig-

nity, understood as noble rank in the natural world, challenged the established social order and the relations of domination and subordination between men.

In the same vein, the potential to articulate an egalitarian approach was available in the traditional view of human dignity: If all men share by nature the same rank, being equal in nobility or excellence, how can we justify the huge inequalities in society?³⁵ Paradoxically, the hierarchical conception of the world provided ammunition for a more egalitarian society inasmuch as these differences in the natural order rank enhanced equality in the same rank shared for all human beings. This is a story well known and I will not dwell on it. Simply, we have to bear in mind this line of progression from the traditional paradigm to the contemporary, egalitarian sense of dignity.

Nevertheless, there is a point worthy of attention about this evolution. As Jeremy Waldron points out, the sense of equality related to human dignity is upwards, meaning equality in sharing the same high, noble rank. This is a crucial issue. As he suggests, that should be considered the essential contribution of the idea of human dignity to the modern egalitarian discourse. In his words:

“[...] The distinctive contribution that ‘dignity’ makes to human rights discourse is associated, paradoxically, with the idea of rank: once associated with hierarchical differentiations of rank and status, ‘dignity’ now conveys the idea that all human persons belong to the same rank and that rank is very high indeed”.³⁶

I’ll call it the “Waldron’s hypothesis”. It is an interpretative proposal about how we can better understand the use of the term³⁷. Recalling the old restricted meaning of *dignitas* as high social status, he takes the contemporary usage as claiming to universalize that high rank to all human beings. If we examine the hypothesis, Waldron seeks to rescue the traditional association between dignity and high rank; but he places such a high position again back in society; and last, that high social status has to be allocated in an egalitarian and universalistic way, i.e., to all persons alike. In other words, we need to gain some historical perspective regarding the contemporary use of the concept of dignity, understanding it as an egalitarian transformation derived from the old socially-exclusive sense; an egalitarian drift, as we could add, in which the traditional paradigm has historically played a key role.

The point of Waldron’s proposal is to recover the idea of high social rank for the egalitarian discourse on human rights. Paradoxical as it may sound, the suggestion is really attractive. At first glance it seems paradoxical because the discourse of human rights is based precisely on the denial of differences in rank between humans beings. This is usually understood as the abolition of ranks in democratic societies. But Waldron’s hypothesis is subtler. It suggests that our democratic societies are not organized as societies without ranks, but as societies in which everyone belongs to the same high social rank. It may look similar, but the

difference is significant when thinking about the kind of social equality that we seek. Rather than abolish nobility, it aims to extend it to all members of society. So everyone should be treated according to the highest standards of respect and deference due formerly to a few men. The language of dignity just marks that difference: Instead of lowering the noble to the condition of the common man, as the elimination of ranks seems to suggest, it elevates the common man to a noble position. In short, it represents nobility for the common man, as Waldron puts it.³⁸ He thinks that this hypothesis offers a very promising approach for thinking about the rights we enjoy in democratic societies.

Waldron's proposal can be supported for instance by the work of the jurist James Q. Whitman. Whitman has studied the differences in the legal cultures of continental Europe and the United States, emphasizing the role that dignity plays in the European legal systems, notably in France and Germany. His research offers a broader sociological perspective, taking into account both laws and social practices, to examine what he calls "everyday social forms of dignity". Moreover, according to Whitman, the contemporary social forms of dignity should be understood in historical perspective, as the result of a history that goes back to the *ancien régime* in Europe. His main historical claim fits in perfectly with Waldron's hypothesis:

"Human dignity" as contemporary Europeans embrace it in continental Europe has been shaped by a rich and complex collective memory of the obnoxious past of the old regime. The core idea is that old forms of low-status treatment are no longer acceptable. [...] 'Human dignity', as we find it on the continent today, has been formed by a pattern of levelling up, by an extension of formerly high-status treatment to all sectors of the population".³⁹

So, the language of human dignity cannot be understood without realizing how it has evolved from the old hierarchical sense of dignity as high social rank. In aristocratic times, the main institutions of dignity were institutions of privilege meant to secure rights and better forms of treatment for high-rank persons. In line with Waldron, Whitman argues that such history cannot be interpreted simply as the mere elimination of social ranks and privileges in Europe's modern democratic societies. If so, that would amount to an egalitarian society with no favour or special treatment for high-status people. But what Whitman discovers in his research on the idea of dignity in European laws and institutions, especially in the case of criminal law, is just the opposite pattern: The rejection and progressive elimination of old forms of low-status treatment. Again, the point of the idea of human dignity is that everyone has a high rank and should receive a respectful and dignified treatment corresponding to that elevated status. It means high-status egalitarianism.

6. MORAL STATUS AND CONSTRAINTS

Is the concept of human dignity too nebulous or vacuous to serve as the firm ground for human rights, as some critics claim? The brief review of the history of the term reveals instead a thick concept carrying a complex historical background. Drawing on this complex past, Waldron uses the ideas of high rank and nobility to provide an illuminating account for the use of the notion of human dignity in human rights discourse. His hypothesis is an invitation to see in a refreshing way the rights we take for granted, considering them as the old privileges of nobility now universalized. In a nutshell, he draws our attention to the core meaning of dignity as elevated status.

Engaging as it is, his account leaves some interesting questions open. Actually, Waldron goes no further discussing the notion of status, surely because he takes it to be clear enough in a legal sense; and for him status is a legal concept. Accordingly, the notion of dignity is at home in the law, as he says, being imported from its natural habitat to moral discourse. And, oddly enough, in his Tanner Lectures Waldron regards dignity as a philosophical artefact playing a constructive role in moral thinking, but “not a term that crops up much in ordinary moral conversation”.⁴⁰ But is dignity a term of art? Indeed, this is a striking statement when one sees the ease with which lay people use the term in everyday talk or in political discourses, and how often⁴¹.

Certainly, the concept of status deserves further attention. Some lessons can be drawn regarding our current understanding of human dignity. Moreover, to make sense of the use of dignity in ordinary language and in human rights discourse we should turn to the idea of status as a moral concept, not just a legal notion. Although recognized in national constitutions and international human rights law, human dignity as a kind of status is not only a creature of law, so to speak. It figures in moral claims when people feel mistreated or in moral arguments for critically assessing laws, policies or customs. As a matter of fact, many advocates of human rights take human dignity as something that should be recognized by law, though not created by law. Fortunately, the idea of moral status has drawn increasing attention in recent ethical theory and the works of some leading moral philosophers, as Frances Kamm, Thomas Nagel or Allen Buchanan, provide fruitful discussions.

What is a moral status? Broadly defined, the status of an entity is a normative condition that determines how this entity should be treated. Obviously, the status in question depends on the kind of normative system that establishes how the entity should be treated. Think of the legal status of X, where X is an agent or class of agents: it is the normative position of X as defined through the prerogatives or duties the law assigns to X. National citizenship is an obvious example of legal status today. By contrast, moral status can be defined as how it is morally justified to treat X; or, in the words of Frances Kamm, what is morally permissible or impermissible to do to X.⁴²

So understood, moral status is a normative notion *stricto sensu*, since it has to be spelled out in deontic terms as permissions, prohibitions and obligations. A noticeable consequence follows from stressing this normative character: the usual description of human dignity as the inherent value of human beings is not accurate enough. Conceived as a (high) moral status, it cannot be the formula for a kind of value, no matter how precious, at least not directly as it is usually assumed in contemporary usage. Some things do not fit that description. Take for instance a familiar feature of axiological terms: their gradability.⁴³ Value concepts, unlike deontic concepts, can take the form of gradable adjectives, which support both their comparative use and the presence of a submodifier. Traditionally this was the case with “dignified”. Yet the contemporary use of “human dignity” seems to break with this pattern. Understood as the inherent and exclusive worth of human beings, it is a unique kind of value for which there can be no comparisons or differences in degree. There cannot be little, enough or too much human dignity in a person, nor do some people have more than others, since it is assumed that every human being has exactly the same worth.

It might seem that there is a contradiction here, as we present human dignity as *higher* status, that is, using it in a comparative sense. Of course, status is definitely a comparative notion.⁴⁴ As we have seen, there may be higher and lower status. Indeed, this is why the notion is recommended to us, suitable as it is for keeping the hierarchical meaning of dignity as elevated position.

Nevertheless, an explanation of human dignity as a moral status avoids these apparent difficulties since status is properly understood as a threshold concept, not a scalar one.⁴⁵ As such, moral status is ascribed to a group of beings because of certain features they possess, regardless of the lesser or greater degree to which such beings have them. Reaching a threshold, i.e. being in possession of certain traits or features, is a sufficient condition for having the appropriate status. Assigned on the basis of the relevant properties, X has (or does not have) a certain status, but X cannot have more or less of it. So there are no scales or degrees in the enjoyment of status. A completely different thing is that beings having different features enjoy different moral statuses. As noted before, we use the notion assuming that there may be a plurality of statuses. Furthermore, in order to grasp human dignity as moral status, we assume that there must be a hierarchy within the plurality of moral statuses, arranging beings in higher or lower ranks because of their features. So, the scale exists between different types of status, but not within them.

Needless to say, the hierarchy of moral statuses expresses distinction according to an order of importance. There is a strong intuition behind this hierarchy, as Frances Kamm points out: “the more important an entity is, the more matters how one treats it”.⁴⁶ In this sense, the status always displays, albeit indirectly, how valuable is the entity in comparison with others. But this worth is seen through the constraints that we should consider when dealing with it. If the moral status of X is defined as the treatment we owe to X, or what is morally allowed or not allowed to do to X, the lowest status would be equivalent to a lack of sta-

tus, since it would be morally permissible to do anything to X. By contrast, the higher the status of X, the more constraints on how X should be treated.

Thus, the practical force of a moral status lies in a set of constraints on behaviour. In other words, moral status is better explained in terms of rights and duties. Talking about human dignity in the context of human rights, this sounds quite natural. As mentioned above, the popularity of the notion of human dignity in the decades after the Second World War is inextricably linked to human rights. However, it is worth noticing that this association has not been always so close as it is today. As we have seen, traditionally the idea of human dignity took shape in a perfectionist cast and related to duties rather than rights. Furthermore, recalling the traditional paradigm is not just a historical curiosity, for some current uses of human dignity call to mind that traditional sense. Otherwise, focusing exclusively on the relationship with rights, we risk leaving out of sight the most controversial issues about dignity nowadays.

Thus, legal scholars as Stéphanie Hennette-Vachez reports a significant trend in the legal understanding of human dignity today: “a critical enhancement of the HDP’s (human dignity principle) obligations-grounding function, to the detriment of its rights founding one”.⁴⁷ She sees this trend as a major shift that departs from the use of human dignity in human rights discourse after Second World War, representing a return to the old Roman sense of *dignitas*. Or, as she says, the legal morphing of human dignity in “human *dignitas*”, because the *fin-de-siècle* usage shares with the ancient *dignitas* two features: first, a similar function of grounding obligations, and remarkably duties towards oneself; second, the same régime of inalienability. Well understood, the crucial point in her account is the statutory conception of dignity, that is, presenting humanity as a status and every human being as depositary of it.

From a historical point of view, what is missing in her account is the traditional paradigm, where dignity of man was seen as high rank or status in the world order, similar to an entrusted office that comes with responsibilities and duties. Indeed, the features of *fin-de-siècle* dignity highlighted by Hennette-Vachez correspond neatly to that traditional understanding and her discussion reveals that it never faded away. Rather, it is quite recognizable in current discussions, and not just in jurisprudence and legal scholarship. Considering the current controversies on the use of dignity in bioethics, it is easy to hold the suspicion that the source of troubles is not the concept’s lack of clarity, but precisely the reappraisal of the traditional sense, enhancing constraints on detriment of autonomy.

If so, there is an important lesson to be drawn. The explanation of human dignity as a high moral status, well anchored in history, does not go into details and leaves undecided the crucial issue of how to understand accurately the moral significance of this status. So, appeals to human dignity do not resolve problems at all. The fact, patent in bioethical debates, is that there are different interpretations at stake; to put it blatantly, more rights-oriented versus enforcing-duties (even against oneself) approaches. This explains why for example in controversies about dignified death and

euthanasia appeals to human dignity can be found on both sides. Understood as a moral status, whose content is open to disagreement, there is reason to doubt that it could count as rock-bottom truth in moral discussions.

7. DIGNITY AND RIGHTS

Our concern, however, was to deal with the concept of human dignity in human rights discourse. Therefore, we should turn now to comment on the link between human dignity as a high moral status and rights to wonder how exactly they are related and whether the concept of human dignity can be taken as the foundation for human rights, as it is usually argued.

Of course, status and rights are closely-related notions. Judith Jarvis Thomson once said that having a right is to have some kind of status⁴⁸. But it is perfectly possible to turn her sentence the other way around and say that having a status is to have some kind of rights. Both notions are spelled out in terms of constraints on behaviour. For instance, take the right-claim that X has against Y that Y does P. The claim means that Y is under a duty towards X, namely to do P. Rights are then regarded as duties owed to a rights holder.⁴⁹ The same goes for status. As said above, the status of X determines how X should be treated, namely what is permissible or impermissible to do to X. All this is naturally formulated in terms of rights. The treatment due to X corresponds to the duties other agents owe to X, or, correlatively, to the rights that X has against other agents.

Hence the close link we assume between status and rights. That way it is easy to think about the latter as a sort of boundary or “protective perimeter”, adapting Hart’s aptly phrase. Indeed, this protective perimeter delineates the idea of personal inviolability guaranteed by rights that contemporary authors identify with the very concept of moral status.⁵⁰ To be more precise, the degree of inviolability is contingent on the kind of status, higher or lower. So, the higher the status, the greater and the stronger will be the protective perimeter, namely the number and stringency of rights ensuring the inviolability of the holder.⁵¹

Following a suggestion by Nagel, we take rights as aspects of status, since they express that kind of inviolability, i.e., the place that the rights holder should occupy within the moral (or legal, in the case of legal rights and legal status) community.⁵² So considered, the link between human rights and dignity is even closer because the different human rights set forth by the Universal Declaration of Human Rights and subsequent international treaties have to be seen as constituents of the highest moral status called “human dignity”. If so, they are not two separate things, for human rights are the features delineating and composing that status. Plainly, the protective perimeter defines what counts as high status and inviolability.

Nevertheless, this changes the usual account of how dignity and human rights are related. Understood as a moral status, dignity cannot be seen as a separate ground for human rights. Of course, we may go on saying that human rights derive from dignity, but it is a rough way of speaking, pointing out simply that the two no-

tions are interdependent. It is true that people have those rights because they have dignity, but the claim works the other way around too: they have that status because they have the rights protecting their personal inviolability and imposing constraints on how they should be treated. That way it is not something previous or antecedent, as it is suggested when dignity is presented as the sort of separate value upon which the ultimate justification of human rights rests.

Hence, apparently, the notion of dignity looks redundant when referred to human rights.⁵³ Is it really so? Joel Feinberg in his essay on the nature and value of rights seems to hold a similar view. For him rights have a special moral significance as claims against others. They are moral devices well suited “to be claimed, demanded, affirmed, insisted upon”. For this reason, they are closely connected with “the customary rhetoric about what is to be a human being”, which includes ideas such as respect for persons and the dignity of human beings. Moreover, according to him, what is essential in these notions can be reduced to the idea of having rights:

“Indeed respect for persons (this an intriguing idea) may simply be respect for their rights, so that there cannot be the one without the other; and what is called ‘human dignity’ may simply be the recognizable capacity to assert claims. To respect a person then, or to think of him as possessed of human dignity, *is* to think of him as a potential maker of claims”.⁵⁴

However, Feinberg adds something that we should not overlook. As he says, there are facts about possessing rights that explain their greatest moral significance, but cannot be packed in the definition of rights. He highlights one of these facts as especially remarkable: “Having rights enables us to ‘stand up like men’, to look others in the eyes, and to feel in some fundamental way as the equal of anyone”.⁵⁵ It is not coincidental that his words evoke accurately the upright bearing, the independent and self-assured attitude traditionally associated with dignity. For they convey what is the point of having rights and that is just what the concept of dignity, regarded as high moral status, is meant for.

In this sense dignity can be taken as a fundamental concept in human rights discourse. Of course, this is not to say that it is an indefinable notion and other terms should be defined in relation to it, for we have seen that human dignity can be spelt out in terms of duties. Nor is it the case that statements containing the notion are taken as basic premises from which all other statements derive. It is just to say that statements on dignity should be regarded as catching what is the point of human rights⁵⁶.

The idea of human dignity is not redundant as far as it expresses the moral significance of being in possession of a set of rights ensuring the inviolability, independence and equal standing of human beings. Human dignity plays a distinctive moral role in human rights discourse, showing their sense or purpose: they form the moral status that people have by virtue of their humanity. Other-

wise, they would be a disparate list of rights. As we have seen, the decisive contribution of the concept of dignity in relation to human rights is to convey two things: that all human beings enjoy the same moral status and that this moral status is very high. Indeed, it means that human beings occupy the uppermost point in the hierarchy of moral statuses, thereby guaranteeing them a high degree of protection and inviolability.

According to its hierarchical background, dignity implies that all human beings deserve respect and deferential treatment, because of the noble and elevated moral position they occupy. Human rights come to translate this deferential treatment in different normative requirements. In this respect, the concept of dignity plays a guiding or regulatory role in human rights theory and practice. The treatment due to a high status may vary in response to changing historical circumstances, but the idea of high-ranking status can guide the search, selection and adjustment of various rights, as well as weighing their relative importance in the whole scheme.

Obviously, human dignity is a *moral* status because it does not depend on positive law, but on sound moral arguments. Besides, in the context of human rights discourse it is chiefly a political claim, namely that a just social order should be organized as a single high-rank society, guaranteeing the same inviolability and high regard to all its members because of this shared upper status.

NOTES

- ¹ Previous versions of this article were presented at workshops and conferences held at Málaga, Tromsø, San Sebastián, Valladolid and Jyväskylä. I am grateful to the participants, especially to José María Rosales, and the journal's referees for their helpful comments. This paper is part of the research project The Rhetorics of Democracy (FFI2008-00039), funded by the Spanish Nacional R + D Plan.
- ² Waldron, Jeremy, «Dignity and Rank», *Archives Européennes de Sociologie*, vol. XLVIII, no. 2, 2007, pp. 201-237, p. 203.
- ³ Bagaric, Mirko & Allan, James, «The Vacuous Concept of Dignity», *Journal of Human Rights*, vol. 5, no. 2, 2006, pp. 257-270.
- ⁴ See <http://www.un.org/en/documents/charter/preamble.shtml>
- ⁵ See <http://www.un.org/en/documents/udhr/>
- ⁶ See McCrudden, Christopher, «Human Dignity and the Judicial Interpretation of Human Rights», *European Journal of International Law*, vol. 19, no. 4, 2008, pp. 655-724, for a comprehensive review of the use of “dignity” in international law and national constitutions. As a matter of fact, it is routinely included in the Preambles of general treaties like, for example, the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), and in more specific international law documents: the Slavery Convention (1956); International Convention on the Elimination of All Forms of Racial Discrimination (1965); Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); on the Rights of Children (1989); the Rights of Migrant Workers (1990); etc. The same applies to regional human rights documents as the American Declaration of the Rights and Duties of Men, the Arab Charter on Human Rights, or the African Charter on Human and Peoples' Rights. The curious exception is the European Convention for the Protection of Human Rights and Fundamental Freedoms, the oldest of regional charters (1950), which only refers to “the full recognition of the inherent dignity of all human beings” in its Protocol 13 on the abolition of death penalty, added in 2002 (See <http://conventions.coe.int/treaty/en/Treaties/Html/187.htm>).
- ⁷ McCrudden, «Human Dignity and the Judicial Interpretation of Human Rights», p. 672.
- ⁸ Shultziner, Doron, «Human Dignity: Functions and Meaning», *Global Jurist Topics*, vol. 3, no. 3, 2003, pp. 1-23, p. 4.
- ⁹ Schachter, Oscar, «Human Dignity as a Normative Concept», *The American Journal of International Law*, vol. 77, no. 4, 1983, pp. 848-854, p. 849.
- ¹⁰ Shultziner, «Human Dignity: Functions and Meaning», p. 5 (my emphasis).
- ¹¹ “The very fact that various worldviews and ideologies are strongly related to the concept of human dignity produces a paradoxical situation in that human dignity as for itself does not contain any concrete content or meaning. Because human dignity anchors different worldviews, it cannot represent any particular set of values or meaning that ‘naturally’ stem out of it”, *Ibid.*
- ¹² Morris, Bertram, «The Dignity of Man», *Ethics*, vol. 57, no. 1, 1946, pp. 57-64, p. 57.
- ¹³ See <http://ohsr.od.nih.gov/guidelines/belmont.html>
- ¹⁴ See the old website: <http://bioethics.georgetown.edu/pcbe/>. In 2009 President Obama created a new advisory committee, The Presidential Commission for the Study of Bioethical Issues, chaired by the philosopher Amy Gutmann. See the new website: <http://www.bioethics.gov/>.
- ¹⁵ Macklin, Ruth, «Dignity is a Useless Concept», *British Medical Journal*, vol. 327, no. 7429, 2003, pp. 1419-1420, p. 1419.
- ¹⁶ *Ibid.*, p. 1420.
- ¹⁷ The brief article of Macklin had an extraordinary impact. The US President's Council took it as a challenge and published in response a volume of 28 commissioned essays and commentaries, *Human Dignity and Bioethics* (Washington, President's Council on Bioethics, 2008). Almost immediately, Steven Pinker harshly attacked this report in “The Stupidity of Human

Dignity”, *The New Republic*, May 28, 2008, available at <http://www.tnr.com/article/the-stupidity-dignity>. Pinker follows the lead of Macklin to point out that “‘dignity’ is a squishy, subjective notion, hardly up to the heavyweight demands assigned to it”. Once we have the principle of autonomy in bioethics, he says, the loose talk about dignity adds nothing (p. 1). But he wonders why this talk has become fashionable. According to Pinker, there are political reasons behind: dignity is a conservative device used to reject medical innovations that would improve the lives and health of people. More precisely, it is a rhetorical weapon used by the spokesmen of religious approaches in bioethics, especially those related to the Catholic Church.

¹⁸ Birnbacher, Dieter, «Ambiguities in the Concept of Menschenwürde», in Kurt Bayertz, ed., *Sanctity of Life and Human Dignity*, Dordrecht, Kluwer Academic Publishers, 1996, pp. 107-121, p. 107.

¹⁹ *Ibid.*

²⁰ Iglesias, Teresa, «Bedrock Truths and the Dignity of the Individual», *Logos*, vol. 4, no. 1, 2001, pp. 114-134, p. 120.

²¹ About the sources and history of the concept, see Schulman, Adam, «Bioethics and the Question of Human Dignity», in *Human Dignity and Bioethics*, Washington, President’s Council on Bioethics, 2008, pp. 3-18, and McCrudden, «Human Dignity and the Judicial Interpretation of Human Rights».

²² Iglesias, «Bedrock Truths and the Dignity of the Individual», p. 120.

²³ Available at <http://www.historyguide.org/intellect/declaration.html>

²⁴ See Hobbes’s definition: “The public worth of a man, which is the value set on him by the commonwealth, is that which men commonly call *dignity*. And this value of him by the commonwealth, is understood, by offices of command, judicature, public employment; or by names and titles, introduced for distinction of such value”, in *Leviathan*, chapter X: «Of Power, Worth, Dignity, Honour, and Worthiness», *The English Works of Thomas Hobbes of Malmesbury*, London, Bohn, 1839-45. vol. 3, accessed from <http://oll.libertyfund.org/title/585/89836/2025503> on 2010-08-10.

²⁵ Iglesias, «Bedrock Truths and the Dignity of the Individual», p. 122.

²⁶ *Ibid.*, p. 116.

²⁷ See Frankena, William, «The Ethics of Respect for Persons», *Philosophical Topics*, vol. XIV, no. 2, 1986, pp. 149-167. Here I do not tackle the tricky issue of distinguishing between persons and human beings, and I simply take them as roughly equivalent.

²⁸ Nussbaum, Martha, «Human Dignity and Political Entitlements», in *Human Dignity and Bioethics*, Washington, President’s Council on Bioethics, 2008, pp. 352-354.

²⁹ Sensen, Oliver, «Kant’s Conception of Human Dignity», *Kant-Studien*, vol. 100, no. 3, 2009, pp. 309-331, p. 311ff. The point of Sensen’s article is to demonstrate that Kant held the traditional conception of dignity, with some nuances, but not the contemporary one. Certainly, this is a startling conclusion, given that Kant is always presented just as the philosophical champion of the contemporary understanding of human dignity. Based on the reading of a very well-known passage of the *Grundlegung zur Metaphysik der Sitten*, this is simply taken for granted in the discussions about human dignity, even by Kantian scholars. Through an exhaustive textual analysis of the 111 times in which the word “dignity” appears in Kant’s writings, Sensen explains why this represents a serious misunderstanding of Kant’s use of the term and, in general, of his ethical thinking.

³⁰ Incidentally, this talk about the high place of man in the universe was perfectly compatible with the widespread social practice of slavery, and authors like Cicero or Seneca saw no contradiction in it.

³¹ Sensen, «Kant’s Conception of Human Dignity», p. 313.

³² For instance, in a passage from *De Officiis*, Book I, 30, Cicero speaks of sensual pleasure as unworthy of man: “Indeed, if we will only bear in mind what *excellence and dignity belong to human nature*, we shall understand how base it is to give one’s self up to luxury, and to live voluptuously and wantonly, and how honourable it is to live frugally, chastely, circumspectly, soberly” (my emphasis).

- ³³ Sensen, «Kant's Conception of Human Dignity», p. 314 (emphasis in original).
- ³⁴ *Ibid*, p. 313.
- ³⁵ For a clear example of this political use, see the next passage from John Locke's *Second Treatise* (chapter Two: «Of the State of Nature»): "To understand political power right, [...] we must consider, what state all men are naturally in, and that is, a state of [...] equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that *creatures of the same species and rank*, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection [...]" (cited by Waldron, «Dignity and Rank», p. 217, my emphasis).
- ³⁶ Waldron, «Dignity and Rank», p. 201.
- ³⁷ *Ibid*, p. 203.
- ³⁸ Waldron, Jeremy, «Dignity, Rank and Rights» (The 2009 Tanner Lectures at UC Berkeley), New York University School of Law, Public Law Research Paper no. 09-50, p. 12, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1461220.
- ³⁹ Whitman, James Q., «'Human Dignity' in Europe and the United States: The Social Foundations», in Georg Nolte, ed., *European and US Constitutionalism*, Strasbourg, Council of Europe Publishing, 2005, pp. 95-107, p. 97.
- ⁴⁰ Waldron, «Dignity, Rank and Rights», p. 2.
- ⁴¹ See Michael Rosen, "Replies to Jeremy Waldron: Dignity, Rank and Rights", p. 6, available at <http://scholar.harvard.edu/michaelrosen/publications/replies-jeremy-waldron>.
- ⁴² Kamm, Frances M., *Intricate Ethics*, Oxford, Oxford University Press, 2007, p. 227. See also her *Morality, Mortality*, vol. 2: *Rights, Duties and Status*, Oxford, Oxford University Press, 1996, pp. 259-289.
- ⁴³ For an interesting analysis of the differences between evaluative and deontic terms, see Ogien, Ruwen and Tappolet, Christine, *Les concepts de l'éthique*, Paris, Hermann, 2008, pp. 37-75.
- ⁴⁴ Buchanan, Allen, «Moral Status and Human Enhancement», *Philosophy and Public Affairs*, vol. 37, no. 4, 2009, pp. 346-381, p. 346.
- ⁴⁵ Buchanan, «Moral Status and Human Enhancement», p. 357.
- ⁴⁶ Kamm, *Intricate Ethics*, p. 227.
- ⁴⁷ Hennette-Vauchez, Stéphanie, «A Human *Dignitas*? The Contemporary Principle of Human Dignity as a Mere Reappraisal of an Ancient Legal Concept», European University Institute Working Papers, LAW No. 2008/18, p. 4.
- ⁴⁸ Thomson, Judith Jarvis, *The Realm of Rights*, Cambridge (Mass.), Harvard University Press, 1990, p. 38.
- ⁴⁹ By rights I mean the collection of Hohfeldian incidents: claims, liberties, powers and immunities, or clusters thereof. For simplicity I just mention claims. I also assume here that all human rights contained in international documents are real rights in this regard, but the issue would deserve a longer discussion.
- ⁵⁰ Nagel, Thomas, «Personal Rights and Public Space», *Philosophy and Public Affairs*, vol. 24, no. 2, 1995, pp. 83-107, p. 89. Nagel draws on previous works by Kamm: «Harming Some to save Others», *Philosophical Studies*, vol. 57, 1989, pp. 251-256; «Non-consequentialism, The Person as an End-in-Itself and the Significance of Status», *Philosophy and Public Affairs*, vol. 21, no. 4, 1992, pp. 381-389; and *Morality, Mortality*, Vol. II.
- ⁵¹ Kamm, Frances M., «Nonconsequentialism», in Hugh LaFollete, ed., *The Blackwell Guide to Ethical Theory*, Oxford, Blackwell, 2000, p. 217.
- ⁵² Nagel, 'Personal Rights and Public Space', p. 85.
- ⁵³ The French Catholic thinker Jacques Maritain, who played an important role in the preparatory works of the Universal Declaration, held this position: "The dignity of the human person? The expression means nothing if it does not signify that, by virtue of the natural law, the human person has the right to be respected, is the subject of rights, possesses rights", Maritain, Jacques, *The Rights of Man and Natural Law*, New York, Charles Scribner's Sons, 1951, p. 65, cited by Waldron, 'Dignity and Rank', p. 219.

⁵⁴ Feinberg, Joel, «The Nature and Value of Rights», *The Journal of Value Inquiry*, vol. 4, no. 4, 1970, pp. 243-257, p. 252.

⁵⁵ *Ibid.*

⁵⁶ Mackie, John L., «Can There Be a Right-Based Moral Theory», in Jeremy Waldron, ed., *Theories of Rights*, Oxford, Oxford University Press, 1984, p. 180.