

Dignity in “the Streets”: A Comment on Gilabert*

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In these comments, I want to focus on the second section of Pablo Gilabert’s book, *Human Dignity & Human Rights* (OUP, 2019). This is where Gilabert presents his theory of *human dignity* (or at least the *kind* of human dignity that he believes is relevant to, or operates within, human rights discourse).

The first thing that strikes me about Gilabert’s theory is its power and plausibility. If human dignity is going to do all of the things that human rights discourse *asks* it to do, then it must be *something* like what Gilabert understands it to be. That is, if human dignity is going to (one) justify the standard *content* of human rights, (two) ground the *very idea* of human rights, (three) be the content of [some] human rights, (four) explain the unique moral *weight* or *high-priority* of human rights, (five) clarify the *role* of human rights within the “arc of humanist justice,” and (six) operate within human rights morality, politics, and law – then it will no doubt have to possess the sort of richness, interpretive flexibility, dynamicity, pluralistic grounds, and moral basicness that Gilabert attributes to it.

Gilabert’s theory manages to imbue human dignity with all of these attributes without falling into incoherence, which is an impressive feat in its own right. He also presents his account in accessible, lively prose – and with characteristic learnedness, intellectual generosity, creativity, and philosophical rigor. The book was a joy to read.

One particularly helpful aspect of Gilabert’s work on human dignity is his distinction between so-called “status” and “condition” dignity. In his dissenting opinion to the US Supreme Court’s decision in, *Obergefell*

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v. Hodges (which made same-sex marriage legal in the United States), Justice Clarence Thomas argued that the court was mistaken in thinking that the recognition of same sex marriage is a requirement of human dignity (or “*equal dignity in the eyes of the law*”). Legally recognizing same-sex marriage *couldn't* be a requirement of dignity, he argued, because *no* governmental action (that is, no law, policy, or political circumstance) could either grant dignity or take it away. He explains:

“...human dignity cannot be taken away by the government. Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved. Those held in internment camps did not lose their dignity because the government confined them. And those denied governmental benefits certainly do not lose their dignity because the government denies them those benefits. The government cannot bestow dignity, and it cannot take it away.”

Justice Thomas was not the first to make this point about dignity. As Gilabert notes early on in the book, we often use the term in two ways. On the one hand, dignity is meant to be universal and “inherent” to the individual – something one cannot lose no matter what happens to them in the course of (social, political, or personal) life. On the other hand, dignity is also something that we speak of as being “taken away,” in unfortunate circumstances: “trampled,” “destroyed,” “besmirched,” “degraded,” “stripped,” or “outraged,” etc.

Both of these ways of speaking generate philosophical puzzles. If dignity is “inherent” – if it cannot be taken away – then (as Justice Thomas points out), why bother worrying about it? If external events in the world do not affect dignity, then there is no reason to either preserve or alter anything in the (external) legal, social, political, or interpersonal world for its sake.

If dignity *can* be taken away, however, another puzzle arises. In this case, violations of dignity seem to generate a peculiar result. For example, if torture “strips” its victim of dignity – as it is sometimes said – does it not follow that torture can, in a sense, make itself permissible

(or at least less impermissible), by destroying the very dignity that is supposed to prohibit it? It's a strange thought.

The best, most elegant solution to these puzzles, I think, is the one Gilabert presents in his book. Gilabert's suggestion is that we think of dignity as coming in two basic varieties: *status* and *condition* dignity. Status dignity is an inherent and universal normative property. It is what *calls for* dignified treatment, bearing, and material conditions in the case of its possessor, i.e., all human beings. Condition dignity, by contrast, is a descriptive (and not necessarily universal) property. One has it only if one *actually* enjoys or attains the treatment, bearing, and material conditions that their status dignity prescribes.

If we think of dignity in these dualistic terms, we can resolve the puzzles described above. For one, though torture may "strip" us of condition dignity, it need not alter anyone's *status* dignity: that is, our status as persons whom it is unconditionally wrong to torture or enslave. And second, though status dignity is, indeed, "inherent" and (in some sense) untouchable, this in no way means that it is indifferent to worldly events: to how we are treated and regarded by governments and/or other persons. On the contrary, as a normative property, our status dignity is the opposite of indifferent: it is what *calls for* certain treatment and regard from others.

This is a distinction I've fully taken on board in my own work. It helpfully allows us to stay true to common, intuitive ways of speaking about dignity, but also to regiment that talk in a coherent, puzzle-avoiding way. I think it's one of the most valuable contributions of Gilabert's research on this topic. So, thank you for that, Gilabert.

But enough being nice! I also want to raise a few concerns about the theory. I suppose that's my job, after all.

First, I want to say something about the grounds of human dignity, as Gilabert understands them. Gilabert argues that the features making up the "basis" of human dignity must be "*general, valuable, and important.*"

(p. 126) These three criteria provide us with a long list of grounding features, including: the human capacities for “*sentience, knowledge, prudential and moral reasoning and choice, aesthetic appreciation, self-awareness, creative production, social cooperation, and sympathy.*” (p. 127)

I don’t have any reservations about this list, per se – which I understand to be (in any case) *provisional*, and a plausible start. However, I am less sure about the idea that *every* entry on the list must pick out a “valuable” feature of human beings – the second criterion. Gilabert is inclined to believe this, so far as I can tell, because it helps him address the so-called “naturalistic fallacy.” The grounds of human dignity are not just a bunch of descriptive capacities (though they are that), if they (also) pick out *valuable* features of persons. This gives them intrinsic normative significance. Dignity, Gilabert writes, “*signals the value of certain features of human beings.*” (p. 120)

This sounds perfectly reasonable in the abstract. But in practice, it narrows the grounds of human dignity in uncomfortable ways. From a pre-theoretical or “intuitive” point of view, it is hard to imagine how dignity – and its concrete practical requirements – could fail to be grounded in certain basic human vulnerabilities. For instance, dignity is presumably at least *partly* grounded in the fact that human beings can suffer terribly from (a) physical pain, as well as (b) emotional distress caused by, say, gross forms of humiliation and psychological intimidation. These vulnerabilities (or capacities for suffering) must form at least *some* part of the explanation of why torture is wrong, and of why dignity prohibits it. How could they not?

And yet, while they are no doubt “*important,*” is it really plausible to think of these as “*valuable*” features of human beings? Of course, they may have some *evolutionary* value. The capacity to experience pain has its evolutionary advantages: it teaches us to avoid harmful elements in our environment. But I take it that this is not the sort of value that makes a capacity eligible to ground human dignity, on Gilabert’s view. Though vulnerabilities to pain and emotional distress may be “*instrumentally*” valuable for survival – they seem like the kind of thing

most of us would (quite reasonably) prefer to do without if we possibly could. In this respect, they are unlike the “*intrinsic*” goods of sentience, knowledge, and creativity that Gilabert lists among the proper grounds of human dignity. These are goods that we plausibly regard as valuable *in themselves*; and, again, I take it that (alongside their generality and importance) this intrinsic goodness is what makes them eligible to ground human dignity, on the view in question.

But if the grounds of human dignity can only include *intrinsically* valuable goods, this leaves us with a strangely narrow set of grounding considerations. The requirements of human dignity, on this view, will not be anchored in a number of basic facts of human psychology and physiology: our capacity to suffer pain (both physical and mental), to feel afraid, threatened, belittled, humiliated, excluded, etc. It is both normatively impoverishing and deeply counter-intuitive for an account of human dignity to leave these supremely relevant considerations out.

It’s also perhaps worth noting here that the non-intrinsically good capacity for physical pain is more *universally* shared than any of the capacities on Gilabert’s favored list. Unlike self-awareness or creativity, the capacity to experience pain is shared even by infants and the profoundly disabled. In this respect, such capacities may provide us with a more natural basis for explaining the universality of human dignity than exclusively “*general, valuable, and important*” features of human beings do. In any case, that completes my first concern.

My second concern has to do with the *normative scope* of human dignity, on Gilabert’s view. This scope is enormous, as he himself asserts. Not only does human dignity ground the content and idea of human rights (more or less as we know it), it also grounds more ambitious principles of social justice (“*such as those of liberal egalitarianism and democratic socialism*” [pp. 121, 167]). Human dignity does not just call for a decent life, but also the conditions of a “*flourishing life.*” (Idem.) Indeed, the concept of human dignity is so morally basic – effectively equivalent to “*moral status*” (p. 147) – on Gilabert’s account, that *all* requirements of justice and/or morality seem to be grounded in it. Perhaps I am

misinterpreting, but so far as I can tell, virtually *all* moral wrongs and political injustices will count as violations (or “affronts”) to human dignity, on this view: everything from *minor infractions* (such as shoplifting, dogmatic pedagogy [p. 166], and line-cutting) to the *gravest injustices* (such as torture and genocide).

But how plausible is this? Can we really have it all, when it comes to human dignity? Perhaps an expansive conception of human dignity is ultimately what human rights practitioners must have, given the myriad things they want dignity to do. Still, it remains worth asking: is there anything that speaks in favor of a *less* expansive view? As something of a dignity “purist,” I think there is. I think it’s more illuminating to leave dignity in its usual place, as a specific normative tool, rather than an all-purpose “Swiss Army Knife” of sorts.

One way to see the advantage of normative specificity (or restricted scope) here is to consider Gilabert’s response to the so-called “redundancy” critique of human dignity. As Gilabert notes: “*Some critics argue that when it has a precise meaning, ‘human dignity’ does not amount to anything other than respect for persons or their autonomy. We can then use those terms and eliminate ‘human dignity’ without loss.*” (p. 146). Indeed, several commentators, such as Ruth Macklin and Stephen Pinker, have dismissed the concept of human dignity as “useless” or “stupid” for just this reason. Why put up with the confusions of human dignity when its normative content can be effectively captured by other, clearer and less confusing ideas, such as (a) respect for persons or (b) respect for autonomy?

At least that’s the challenge. And Gilabert is to be credited for being the only theorist of human dignity (that I know of) to explicitly address it.

In response to this complaint, Gilabert admits that, in his own case, the concept of human dignity can indeed be effectively replaced by a separate, and (quite possibly) clearer idea. This is the idea of “moral status.” (p. 147), which is effectively equivalent to that of human dignity, in his view. Nevertheless, he argues that we should hold onto

the term “human dignity” as a special designator. And this is because it picks out a certain *species* of moral status: one that performs various complicated functions within human rights discourse, including (as mentioned earlier) justifying the content of such rights, grounding the general idea of human rights, and so on.

He then adds to this a further thought, however:

“... even if we managed to substitute ‘human dignity’ with some other phrase without existential loss, we would still have practical reasons to keep using a phrase that features so strongly in the real political life of human rights struggle. People who take to the streets to defend their dignity might find a philosophical approach that characterizes their activism instead as a defense of their moral status quite remote from their experiences.” (p. 147)

This sounds right to me. An account of human dignity that reduces it to “moral status” is remote from everyday experience. More specifically, it is remote from the normal, everyday understanding of dignity (and, indeed, of *human* dignity) as something essentially bound up with our “social” status or “rank”: pride, identity, position, power, and standing in the eyes of others. But, as I see it, this is not so much a reply to the worry about redundancy, as it is a reason to abandon the all-encompassing “moral status” view.

The most effective way to respond to the redundancy critique, I think, is to adopt an understanding of human dignity that is, indeed, as *close as possible* to everyday usage and experience. And this everyday understanding is, so far as I can tell, comparatively specific. Dignity, as commonly understood, is (again) about social status, rank, pride, and position. Jeremy Waldron’s rank-based theory represents one helpful attempt to work this everyday conception out. And, in a footnoted concession to its familiarity, Gilibert himself admits that “*It may be true that, as a matter of historical genealogy, the term ‘dignity’ comes from the idea of ranking status.*” (p. 123, fn. 20)

I say that this conception of human dignity is comparatively (normatively) specific because not *all* moral wrongs or injustices will count as violations (or affronts) to dignity, on this view. A simple (morally wrong) act of shoplifting, or line-cutting, is not necessarily an affront to anyone's status in society: it is not necessarily degrading or humiliating. And only genuine degradations and humiliations count as violations of human dignity, on this view. The most salient examples of dignity violations will (accordingly) be *expressive* or *symbolic* wrongs: that is, what Michael Rosen calls violations of "respect-as-respectfulness." These involve "*displays*" of disrespect, insult, and contempt – whether verbal, gestural, attitudinal, or physical.

If we adopt this kind of view or understanding of dignity (and indeed, of *human* dignity), then it simply makes no sense to raise the so-called "redundancy" critique. That is, it makes no sense to suggest that we could just as well get rid of the term "dignity" and go straight to the normative heart of the matter: (this being) the importance of avoiding, and protecting people from, serious forms of humiliation and/or degradation. And that's because, in common parlance, "dignity" *just is* the term or idea we use to directly refer to such concerns. If that's true, then to say that we can dispense with the term "dignity" is like saying that we can dispense with the term "apple" – and refer instead to round, sweet and (sometimes) tangy fruits that grow on trees and come in varieties like Granny Smith, Royal Gala, and Pink Lady, etc. This is just cumbersome and unhelpful.

But if we have an all-encompassing view of dignity like Gilabert's (one that travels a significant distance from everyday usage and common sense), or if we yoke our understanding of dignity to some other normative concept like agency or autonomy (as James Griffin does), then it becomes much more sensible to push the "redundancy" critique. It becomes very sensible to say, to the theorist of dignity, "*Why call this 'dignity', or 'human dignity,' when we can just as well use the term 'moral status' or 'autonomy' in its place – with no loss of content or clarity?*" Even worse, for such a view, it becomes much harder to *answer* this critique. And this strain shows, I think, in Gilabert's reply.

In the end, theorists are faced with a difficult choice here. Either they “construct” a theory of human dignity that is (miraculously) able to meet all of the functional demands of human rights discourse – and thereby distance themselves from common sense, everyday usage, and shared experience (not to mention open themselves up to the redundancy critique). Or, alternatively, they “re-construct” the everyday notion of human dignity in faithful detail – and thereby leave human rights practitioners (and their search for a comprehensive dignitarian foundation) in the lurch. I agree with Michael Rosen that a theory of dignity that is focused on social status – and expressive harm – will not be able to do all of the work that human rights practitioners might like.

Gilbert evidently prefers the former route. And that’s certainly fair enough. Neither option is perfect. But I prefer the latter. Perhaps I’m just too timid to venture far from my experience, or to risk drawing a puzzled glance from “*people who take to the streets.*”