

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

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06/2020

I

These comments focus on Part II of Pablo Gilabert’s, *Human Dignity & Human Rights*.¹ This is where Gilabert develops a powerful and plausible theory of human dignity – or at least the kind of human dignity that he believes is relevant to, and operates within, human rights discourse.

This may sound facetious, but if human dignity is going to do all of the things that, on Gilabert’s reading, it is meant to do, then it must be something like what he understands it to be. That is, if human dignity is going to (1) ground the universality of human rights, (2) justify their content – explaining both (3) their unique moral weight or high-priority, and (4) solidaristic ethos – (5) characterize the virtue of “standing up” for one’s rights, and (6) point the way towards broader norms of “humanist justice,” then it will surely have to possess the sort of interpretive flexibility, deontic dynamicity, pluralistic grounds, and moral basicness that Gilabert attributes to it.²

Gilabert’s theory manages to imbue human dignity with all of these attributes without collapsing into incoherence, which is an impressive feat in its own right. He also presents his account in accessible, lively prose, and with characteristic learnedness, creativity, and philosophical rigor. The result is an invaluable contribution to the understanding of a fraught and confusing topic.

II

One particularly helpful aspect of Gilabert’s work is its distinction between so-called “status” and “condition” dignity.³ In his dissenting opinion to the US Supreme Court’s 2015 decision in, *Obergefell 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

* Forthcoming in *Journal of Global Ethics*. Please cite published version.

¹ Pablo Gilabert, *Human Dignity & Human Rights* (Oxford: Oxford University Press, 2018), pp. 113-229.

² See *Ibid*, pp. 119-21, for an overview of these roles.

³ See *Ibid*, pp. 3, 17, 122, 125-6.

of human dignity (or “equal dignity in the eyes of the law”).⁴ Legally recognizing same-sex marriage *couldn't* be a requirement of dignity, he argued, because no government 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.⁵

Justice Thomas was not the first to make this point about dignity.⁶ As Gilabert notes early on in the book, we often use the term in two ways.⁷ On the one hand, dignity is meant to be universal and “inherent” to the individual: something one possesses no matter what happens in the course of (social, political, and personal) life. On the other hand, dignity is also something that we speak of as being “stripped” or “taken away” in unfortunate circumstances: “trampled,” “destroyed,” “besmirched,” “degraded,” or “outraged,” etc.

Both ways of speaking generate puzzles. If dignity is “inherent” – if it *cannot* be taken away – then (as Justice Thomas points out), why bother worrying about it? If events in the external world do not affect dignity, then there is no reason to do (or refrain from doing) anything in that world for its sake. If dignity *can* be taken away, however, then another puzzle arises. In this case, violations of dignity seem to generate a peculiar, disheartening result. If torture and other degradations “strip” victims of dignity – as it is sometimes said – does this not mean that such acts can, in a sense, *make* themselves permissible (or at least less impermissible), by destroying the very dignity that is supposed to prohibit them?

The best, and most elegant solution to these puzzles, I think, is the one Gilabert presents in this book. Gilabert’s suggestion is that we think of dignity as coming in two basic varieties. *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

⁴ US Supreme Court, *Obergefell v. Hodges* (June 26 2015), p. 28.

⁵ *Ibid*, p. 17.

⁶ See also Martha Nussbaum, “Compassion & Terror” in *Daedalus* (2003), Vol. 132, p. 18; Stephen Pinker, “The Stupidity of dignity”, in *The New Republic* (May 28, 2008), p. 30.

⁷ Gilabert 2018, p. 3.

attains the treatment, bearing, and material conditions that their status dignity prescribes.⁸

If we think of dignity in these dualistic terms, we can solve the puzzles described above. For one, though certain actions and conditions may indeed “strip” us of *condition* dignity, they need not alter anyone’s *status* dignity: that is, our status as persons whom it is unconditionally wrong to torture or otherwise degrade. 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* appropriate treatment and regard from others.

This distinction helpfully allows us to stay true to common, intuitive ways of speaking about dignity, but also to organize that talk in a coherent, clarifying way. I think it’s one of the most valuable contributions of Gilibert’s work on this topic.

III

All this improves our understanding of the *nature* of human dignity, or “what” it consists in. But Gilibert also has much to say about dignity’s *grounds* – i.e., the conditions upon which one has it – as well as its normative *scope* or *content*. I have concerns on both fronts.

First, consider the grounds of human dignity, as Gilibert understands them. Gilibert argues that the features or capacities that underwrite the dignity of all persons must be “general, valuable, and important.”⁹ These three criteria provide us with a long list of grounding capacities, including “sentience, knowledge, prudential and moral reasoning and choice, aesthetic appreciation, self-awareness, creative production, social cooperation, and sympathy.”¹⁰ This is a fine list. But why must it be restricted to *valuable* features of human beings, as per the second criterion?

Gilibert is inclined to believe this, so far as I can tell, to avoid the naturalistic fallacy – the invalid derivation of normative conclusions (about the demands of dignity) from mere descriptive facts (about human nature). If the grounds of human dignity pick out *valuable* features of persons, then they will not just be a bunch of descriptive facts; they will have intrinsic normative significance. Dignity, Gilibert writes, “signals the value of certain features of human beings.”¹¹

This all sounds well and good, in the abstract. But in practice, it narrows the grounds of human dignity in uncomfortable ways. Presumably, the demands of

⁸ Jeremy Waldron defends a somewhat similar distinction in *Dignity, Rank and Rights* (Oxford: Oxford University Press, 2012), p. 17.

⁹ Gilibert 2018, p. 126.

¹⁰ Ibid, p. 127.

¹¹ Ibid, p. 120.

dignity at least partly reflect basic human *vulnerabilities*, not just valuable capacities. These include our susceptibility to pain, hunger, illness, humiliation, misery, fear, and helplessness, etc. It is the cruel exploitation of such vulnerabilities (or capacities for suffering) that makes, for example, torture so morally repugnant. And this is surely part of what makes it such an egregious affront to dignity, too.¹²

And yet, while “important,” such vulnerabilities are not plausibly understood as “valuable” features of human beings. Of course, they may have *evolutionary* value. The ability to feel pain has its selective advantages: helping us more urgently 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 the capacity for pain (or hunger) may be *instrumentally* valuable, for survival, it seems more like the kind of thing most of us would (quite reasonably) do without if we possibly could. In this respect, it is unlike the *intrinsic* goods of sentience, knowledge, and creativity that Gilabert lists among the proper grounds of human dignity.

But if the grounds of human dignity include only such intrinsic goods, this leaves us, once again, with a strangely narrow set of grounding considerations. The demands of dignity won’t reflect profound human vulnerabilities that, it would seem, they should. Moreover, many of these vulnerabilities are more universally shared than capacities on Gilabert’s favored list. Unlike self-awareness or creativity, the capacity to experience pain, for example, is shared even by infants and the profoundly disabled. Expanding the grounds of human dignity, then, may help explain not just its practical content but also its universality.

IV

My second concern has to do with the all-encompassing *scope* or *content* of human dignity, on Gilabert’s account. Not only does human dignity ground all human rights (more or less as we know them, from international law), it also grounds more ambitious principles of social justice, “such as those of liberal egalitarianism and democratic socialism.”¹³ Human dignity does not just call for a decent life, but also the conditions of a “flourishing life.”¹⁴

Indeed, the very concept of human dignity is so morally basic – effectively equivalent to the idea of “moral status,” on Gilabert’s account – ¹⁵ that all requirements of justice and/or morality seem to be grounded in it. I take it that *any*

¹² See Jean Améry, *At the Minds Limits: Contemplations by a Survivor on Auschwitz and its Realities* (Bloomington: Indiana University Press, 1980), p. 27 (on torture, dignity, and “helplessness”).

¹³ Gilabert 2018, pp. 121, 167.

¹⁴ *Idem*.

¹⁵ *Ibid*, p. 147.

moral wrong (or political injustice) will count as a violation or affront to human dignity, on this view. This includes everything from *minor* infractions (such as shoplifting, dogmatic pedagogy,¹⁶ and line-cutting) to the *gravest* injustices (such as torture and genocide).

But how plausible is this? Human dignity may need an expansive scope if it is going to do all that human rights discourse asks of it – and this is, of course, Gilabert’s main concern. Still, we lose something by turning human dignity into an all-purpose Swiss Army Knife of sorts. And one way to see this is to consider Gilabert’s response to the so-called “redundancy” critique. 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.¹⁷

Why put up with the confusions of human dignity when its normative content can be effectively captured by other, (possibly) clearer ideas, such as respect for persons or their autonomy? Gilabert’s response is to bite the bullet here. On his account, the concept of human dignity can indeed be replaced, without loss, by a separate and (quite possibly) clearer idea: that of moral status.¹⁸ Still, he recommends we hold onto the term “human dignity” as a special designator. This is because it helpfully picks out a *species* of moral status invoked, in the various ways mentioned earlier [(1)-(6)], by human rights discourse.¹⁹

He then adds to this a further thought:

... even if we managed to substitute “human dignity” with some other phrase without extensional 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.²⁰

This sounds right to me. Reducing the idea of human dignity to that of “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 concerned with something more specific: not moral but *social* status – that is, rank,

¹⁶ This example appears on p. 166.

¹⁷ Gilabert 2018, p. 146. See Ruth Macklin, “Dignity is a Useless Concept” in *BMJ* (2003), Vol. 327, pp. 1419-20 for a paradigmatic example of this objection.

¹⁸ Gilabert 2018, p. 147.

¹⁹ *Idem*.

²⁰ *Idem*.

pride, identity, position, and one's standing in the eyes of others.²¹ Gilabert himself admits that "It may be true that, as a matter of historical genealogy, the term 'dignity' comes from the idea of ranking status."²²

V

Dignity is more (normatively) specific, on this view, because not *all* moral wrongs or injustices will violate it. Bad behavior like shoplifting or line-cutting, while immoral, may not be an attack on, or affront to, anyone's status in society; it may not constitute humiliating or degrading treatment. It may just be bad (or unfair, or inconsiderate, or unjust). But that is not yet enough for it to violate dignity, on this restrictive account.²³ And, again, this is consonant with everyday experience. We don't normally think of all moral wrongs – take, for example, bicycle thefts – as violations of human dignity; only a subset of wrongs intuitively fit that bill.

Whatever one makes of Gilabert's response to the redundancy critique, it raises a deeper, related concern – of a semantic nature. Any theory that equates human dignity with a normative concept to which it is *not* already equated in everyday speech (such as "inviolability,"²⁴ "agency,"²⁵ or "moral status") risks changing the subject. Why even consider it a theory of *dignity* at all? The only sure way to avoid this risk is to bind one's theory, as closely as possible, to the meaning of human dignity in everyday language and thought – a meaning that, as Gilabert himself seems to admit, has more to do with social status (and the importance of respecting it), than moral status per se.

In the end, theorists face a difficult choice here. Either they *construct*, in herculean fashion, a theory of human dignity that (miraculously) meets the expectations of human rights discourse, but abandons dignity's ordinary meaning, i.e., "changes the subject." Or, alternatively, they *reconstruct* the everyday notion of human dignity in faithful detail, but leave human rights discourse, and its polyvalent reliance on human dignity, at least partly in the lurch. I agree with Michael Rosen that a theory of dignity focused on social status – and the associated

²¹ See Jeremy Waldron, *Dignity, Rank, and Rights* (Oxford: Oxford University Press, 2012), for an articulation of this view. See also Adam Etinson, "What's So Special About Human Dignity?" (DRAFT), for a further articulation and defense.

²² Gilabert 2018, p. 123, fn. 20.

²³ I say more about this in Etinson (DRAFT).

²⁴ See e.g. Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), p. 198; John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Harvard University Press, 1999), p. 513; John Tasioulas, "Human Dignity as a Foundation for Human Rights" in *Understanding Human Dignity* (Oxford: Oxford University Press, 2013), ed. Christopher McCrudden, pp. 307-8.

²⁵ James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), pp. 33, 249.

harm of humiliation or degradation – will not be able to do all of the work that human rights practitioners might like.²⁶

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."

²⁶ Michael Rosen, *Dignity: Its History and Meaning* (Cambridge: Harvard University Press, 2012), pp. 58-60.