The idea of human dignity is ubiquitous in the contemporary discourse of human rights. It occupies a prominent place at the beginnings of the UN Charter and the Universal Declaration of 1948. Both international covenants state, in identical passages, that human rights “derive from the inherent dignity of the human person,”¹ and most of the international human rights instruments adopted subsequently include similar provisions. The Helsinki Final Act goes so far as to say that “all” human rights (“civil, political, economic, social, cultural and other”) “derive from the inherent dignity of the human person.”² Reflecting thirty years ago about human dignity in international legal thought, an eminent international lawyer could write, “No other ideal seems so clearly accepted as a universal social good.”³

Although the framers of modern human rights declined to propose a philosophical view about their foundations, many friends of human rights believe that we cannot understand their special importance without a grasp of the value of human dignity. On the other hand, it is easy to be suspicious of the idea that human dignity can do useful work in our thinking about the nature and basis of human rights. It might

¹ See, e.g., International Covenant on Civil and Political Rights (ICCPR), Preamble.
seem, for example, that human dignity is too abstract a value to be informative about the grounds of human rights or that it functions only as a kind of pointer to other values that carry the weight in explaining their importance and content. Or one might be tempted by a more thoroughgoing skepticism holding that the references to human dignity in the documents are only ornamental—as George Kateb puts it (without endorsing the view), that "human dignity adds nothing but a phrase to the theory of human rights." The elasticity of the idea in common usage encourages such a view, and the extravagance of the references to it in the declarations and treaties might make it seem inevitable.

The appearance of book-length studies by George Kateb, Michael Rosen, and Jeremy Waldron affords a chance to consider what might be said about human dignity as an element in the justification of human rights. In doing so, I am motivated in part by the inescapability of references to the idea in the contemporary discourse of human rights and in part by a more general interest in the political theory of the subject. These motivations are complementary. If one accepts that human rights constitute a public, normative practice, then one might think a theory of the practice should take seriously an idea that occurs so often in its public discourse. Eventually, one might hope for an account that clarifies the role—if any—that an idea of human dignity plays in explaining the nature and significance of human rights. First, though, we need a better understanding of the idea of human dignity as it arises in the discourse of the practice.

Some of what I am about to say about the context of international human rights—for example, about the human rights movement before World War II and the more immediate circumstances of the founding of the postwar human rights regime—may seem to be an unnecessary detour. It might seem that the task for political philosophy is to examine the idea of human dignity, distinguish among its various senses, and consider how, if at all, it might contribute to an understanding of the justification of individual human rights or of the human rights regime as a whole. I should say why it seems to me to be a mistake to dismiss the historical context, even though the more purely philosophical project is of course independently worthwhile (indeed, some of what I say here merges with it). One reason to take an interest in the idea of human rights is that it is central to an existing practice whose norms profess to impose responsibilities on various agents. In reflecting about these responsibilities, we are drawn to consider the grounds of the commitments that constitute the practice. Questions arise at two levels, at least: we want to know how best to understand the purpose of a practice of this general kind and which requirements should count among its norms. Although I do not believe that either question can be answered simply by inspecting the practice—a theory of human rights should supply some critical distance—I believe that even a critical theory should be responsive to the normative materials within the practice, at least when these possess a degree of authority for its participants. In the end, of course, it is up to us to judge how, if at all, we should engage in and with the practice, and for this reason we shall have to decide how much weight to accord to its materials as resources for construing its purposes and requirements. But to the extent that we carry out this project as participants or potential participants in the practice, we cannot avoid taking seriously ideas that present themselves as basic to it.

I. THE FRAMING OF THE INTERNATIONAL HUMAN RIGHTS REGIME

A natural first step is to look to the context from which the practice emerged. I have in mind, in particular, the movement for an international human rights declaration or treaty that developed in the interwar years as well as the immediate circumstances of the drafting of the UN Charter and the Universal Declaration, whose references to human dignity have been so influential in the subsequent public
discourse. We should ask: what might be inferred from this context about the content of the idea of human dignity and its significance for the contemporary practice?7

Two bodies of thought originating before 1900 associate an idea of human dignity with something like the idea of basic or fundamental rights. One derives from Kant and the period of the French Revolution and the other from the reorientation of Catholic social thought in the papacy of Leo XIII (1878–1903).8 These were both independently influential, so it is striking that the idea of human dignity is largely missing in the main sources of the human rights movement after World War I—for example, the draft declarations produced in the 1920s and 1930s, H. G. Wells’s influential essay The Rights of Man (1940), Franklin Roosevelt’s “Four Freedoms” speech of 1941 (perhaps influenced by Wells), and various efforts during World War II to envision the reconstruction of international order after its end. “Human dignity” and cognate ideas are absent from the “Declaration des droits internationaux de l’homme” of 1929, produced by the Institut de Droit International and a common reference in the 1930s.9 None of the (few) references to dignity in Wells’s The Rights of Man claim it among the grounds of human rights,10 nor does either reference in the “Four Freedoms” speech. (The passages identifying the four freedoms describe them simply as “essential human freedoms” whose recognition distinguish a “moral order” from the order of the “dictators.”)11 The American Law Institute’s “Statement of Essen-

7. For a detailed survey of references to human dignity in pre- and postwar legal texts (and related sources), see McCrudden, “Human Dignity and Judicial Interpretation of Human Rights.” For the pre- and postwar texts, see pp. 664–68, 675–78.
8. The most important source is the encyclical Rerum Novarum (1891), which holds that employers should not burden workers “with conditions repugnant to their dignity as human beings.” <http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html>. Accessed February 16, 2013. For discussion, see Rosen, Dignity, pp. 48–51.
tial Human Rights” (1944), which was to become a principal textual source of the declaration, contains no reference to human dignity.\(^\text{12}\) The absence of references to human dignity in all of these sources is telling, but the point I wish to make goes beyond this. The central values advanced in these texts are those of civil and political liberty, equality before the law, and material and social well-being. These values are presented as if their importance is obvious. Almost without exception there is no further appeal to ideas distinctive of the notion of human dignity like those of a high status held by all human beings or of the high intrinsic value of human persons.\(^\text{13}\)

Things change when we come to the war years, when efforts to promote the international protection of human rights accelerated. For example, a “Catholic, Jewish, and Protestant Declaration on World Peace” (1943) issued by three American religious organizations urges that “the dignity of the human person as the image of God must be set forth . . . in an international declaration of rights.”\(^\text{14}\) The report on human rights of the influential Commission to Study the Organization of Peace (1944) describes the “repression of the human mind and conscience which marks the Fascist States,” where “human beings are little more

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\(^{12}\) The Statement was prepared in 1943–44. For the text, see *Annals of the American Academy of Political and Social Science* 243 (1946): 18–26. There is no indication in the lengthy discussion of the ALI project at its 1943 annual meeting that an idea of human dignity, or any close cognate, was understood to be essential to human rights. American Law Institute, *Proceedings* 20 (1942–43): 183–251.

\(^{13}\) If nowhere else, one might at least have expected to find a reference to human dignity, or anyway to the dignity of labor, in the founding document of the International Labor Organization, established at the Versailles conference of 1919 (its constitution formed part of the peace treaty). The term itself does not appear, but perhaps one aspect of the idea is reflected in the statement that the “guiding principle” of the ILO is “that labour should not be regarded merely as a commodity or article of commerce.” The Versailles Treaty, June 28, 1919, art. 427. <http://avalon.law.yale.edu/imt/partxii.asp>. Accessed July 5, 2013.

\(^{14}\) Federal Council of the Churches of Christ in America; Social Action Department, National Catholic Welfare Conference; Synagogue Council of America, “Catholic, Jewish, and Protestant Declaration on World Peace,” in *International Conciliation* 21 (1942–43), doc. no. 394, p. 587. None of the substantive articles refer to human dignity in explaining the importance of human rights.
than cogs in a war machine,” as evidence that these regimes fail to respect their people’s “worth as human beings.”15 The Philadelphia Declaration of the International Labor Organization (1944) asserts that individuals “have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity.”16 By that year, too, Roosevelt had begun referring to dignity as a value for which the war was being fought.17 But while we can observe a proliferation of references in this period to human worth and human dignity, it is difficult to say how they were understood. The references are brief and invariably left without elaboration.

It is an interesting historical question why references to human dignity, which occurred so infrequently in the materials from the interwar period, became more prominent in the later years of the war. If that history has been written, I have not discovered it. As a matter of armchair speculation, three elements of the wartime context seem obvious: revulsion against Nazi racial doctrines and the policies to which they led;18 a belief that world peace is threatened by regimes that do not treat their own people decently (an inversion of the “democratic peace” hypothesis); and (in the West, anyway) a rejection of “collectivist,” antidemocratic ideologies that gave priority to considerations of collective advantage over protection of individual interests. In addition to these factors unique to wartime conditions, one must not overlook the influence of Catholic moral theology as it developed in the 1930s, which embraced a conception of the “dignity of the human person” as a value

18. As early as 1940, for example, H. G. Wells explained the willingness of young British men to volunteer for military duty as a response to “those outrages upon human dignity perpetrated by the Nazis.” Wells, The Rights of Man, p. 31. He did not, however, describe human rights as protections of human dignity.
opposed on the one hand to (what was seen as) an individualist secular liberalism and on the other to authoritarian corporatism and “atheistic communism.” Samuel Moyn argues that Pope Pius XII’s efforts during the war to propagate an idea of human dignity that could serve as a “check on democracy, and a commitment that would save it from leveling equality and secularizing materialism” were critical to the idea’s embrace by the human rights movement: “the prominence of this notion in wartime . . . was due to the Pope more than all others, even all others combined, including in its connection to rights.” But while this confluence of factors may explain why references to human dignity began to appear in discourse about human rights during the war, they supply no reason to believe that there was any substantial common idea.

What about the more immediate circumstances of the drafting of the founding documents of the postwar human rights regime? How important was the idea of human dignity for its framers? This is a difficult question, but some light may be shed by what can be observed about the drafting histories of the UN Charter and the Universal Declaration, whose references to human dignity have been seminal.

The most influential reference to human dignity in the postwar documents occurs in the preamble of the charter, in a passage holding the peoples of the United Nations determined “to reaffirm 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.” Nearly all of the postwar human rights instruments either quote or refer to this formula to invoke the authority of the charter for the international protection of human rights. The prominence of the reference to human dignity in the preamble and the frequency of subsequent references to the charter formula might suggest that ideas about human dignity played an important role in the thinking of the charter’s authors. So it is interesting to see how the reference found its way into the document.

Most of the text of the preamble derives from a draft written by Jan Smuts, at that time the South African prime minister, well before the San


Francisco conference (1945), where the bulk of the charter was drafted. The Smuts draft was recommended to the conference by the Commonwealth countries. Smuts himself was a delegate for South Africa at the conference. The conference’s drafting committee adopted his text as a starting point for a preface, evidently without substantial discussion. The Smuts preamble contains no explicit reference to human dignity. It begins with a list of the purposes of the organization, among them “to re-establish faith in fundamental human rights, in the sanctity and ultimate value of human personality, in the equal rights of men and women and of nations large and small.”21 Some members regarded the Smuts text as inelegant and excessively long. An American delegate, Virginia Gildersleeve (then the dean of Barnard College), proposed on her own authority a revision in which the first two clauses of the passage just quoted are replaced with the phrase “to reaffirm faith in the dignity and value of every human being.”22 The drafting committee accepted the proposal and the passage survives nearly verbatim in the final version of the preamble. There is no indication that there was any consideration of the substitution of “dignity” for “sanctity” or for that matter of the meaning or more general significance of the idea of dignity for human rights. The rapporteur described the major motives of the revisions of the Smuts text as avoidance of redundancy with the main body of the charter and achievement of a “harmony in ideas and words” that would “awaken the imagination of the common man.”23 The employment of the term “human dignity” is evidence that this term had a positive valence in the vernacular of the moment, but the offhandedness of the decision to place it early in the preamble and the absence of any consideration of its significance argue against inferring any shared, articulate purpose.

Turning to the declaration, there are several references to human dignity in both general and more specific contexts, each with its own drafting history. The most consequential of these occurs in the first article (“All human beings are born free and equal in dignity and rights”),


which evidently aims to set a foundation for the more detailed provisions to follow. As in the case of the charter formula, the inclusion of a reference to human dignity seems to have been a result of a contingency of the drafting process. The Human Rights Commission’s drafting subcommittee took as its main reference an outline prepared by its secretariat based on an accumulation of draft instruments produced by various governments and nongovernmental organizations before and during the war. The secretariat’s outline contained no such provision as we find in the final version of article 1. (Its outline preamble referred to dignity, but only to say that it could not be realized “unless war and the threat of war is abolished.”)\(^\text{24}\) The first article in the final version, including the phrase “free and equal in dignity and rights,” derives from text added by the French representative, René Cassin, who was delegated the task of revising the secretariat’s draft in order to simplify its language, reduce its length, and incorporate ideas from the drafting committee’s discussions. In the (evidently brief) discussion in the committee of the new first article, Cassin told the drafting committee: “The text was trying to convey the idea that the most humble men of the most different races have among them the particular spark that distinguishes them from animals, and at the same time obligates them to more grandeur and to more duties than any other beings on earth.”\(^\text{25}\) We will come back to the fact that, in one of its senses, the idea of human dignity serves to differentiate the human species from others. Cassin’s remark invokes this sense of the idea, but it is impossible to say whether it was shared or how its consequences were understood among other members of the group; the record reports no response to his comment and discussion moved on. A subsequent discussion of this passage in the General Assembly’s Third Committee is not more illuminating; in response to a proposal to

\(^{24}\) UN Commission on Human Rights, Drafting Committee [UNCHR, DC], *Draft Outline of International Bill of Rights* (E/CN.4/AC.1/3), 4 June 1947, p. 2. Charles Malik, the Lebanese representative, later complained that this was not enough: it “failed to bring out what is distinctive, fundamental and human about man” and should refer specifically to “the dignity of man.” UNCHR, DC, 1st Session, *Summary Record of the Second Meeting* (E/CN.4/AC.1/SR.2), 13 June 1947, pp. 4–5. The only other reference to dignity in the secretariat’s draft involved slavery and forced labor: *Draft Outline*, p. 4.

\(^{25}\) On Cassin’s role, see UNCHR, DC, 1st Session, *Summary Record of the Seventh Meeting* (E/CN.4/AC.1/SR.7), 19 June 1947, p. 2. For his comment, UNCHR, DC, 1st Session, *Summary Record of the Eighth Meeting* (E/CN.4/AC.1/SR.8), 20 June 1947, p. 2; this is the rapporteur’s paraphrase.
delete the reference to human dignity on the grounds that it did not specify a right, the record reports Eleanor Roosevelt as saying only that “the Commission had decided to include it in order to emphasize the inherent dignity of all mankind.”

To summarize: The idea of human dignity is absent from most of the prewar efforts to promote human rights. It occurs occasionally in human rights discourse during World War II but in contexts that do not shed light on the way it was understood. The references in the charter and the declaration show that the idea had achieved a certain currency by the end of the war, but we cannot say from the record that the framers of either document had any articulate or agreed conception of human dignity or that their views of the nature or substance of human rights were much influenced by it.

These observations may be too myopic to be interesting. One might think that a close analysis of the documentary context and drafting processes is too narrow a way to grasp the influence of the idea of human dignity in the production of these texts. A broader history of thought must have influenced the framers’ beliefs and predisposed their aspirations for international human rights and their more detailed reasoning about the contents of human rights doctrine. The more important task, then, might be to elaborate this broader history.


27. McCrudden concludes from a review of the drafting of the charter and the declaration that “[d]ignity was included in that part of any discussion or text where the absence of a theory of human rights would have been embarrassing. Its utility was to enable those participating in the debate to insert their own theory.” McCrudden, “Human Dignity and Judicial Interpretation of Human Rights,” p. 678. Compare John Tasioulas’s observation in an earlier paper: “[T]he notion of human dignity embedded in the tradition was always a vague one and, to a large extent, acted as a slogan that all could utter in unison while simultaneously glossing over deep disagreements concerning the underlying justification of human rights.” Tasioulas, “Human Rights, Universality and the Values of Personhood: Retracing Griffin’s Steps,” European Journal of Philosophy 10 (2002): 95.

28. The objection is suggested by a remark of Jeremy Waldron in a different connection: “[W]e should not assume that a legal analysis of dignity is just a list of texts and precedents, in national and international law, in which the word ‘dignity’ appears. There is such a thing as legal philosophy, there are such things as legal principles, and it is a jurisprudence of dignity, not a hornbook analysis that I will be pursuing.” Waldron, Dignity, Rank, and Rights, p. 15.
There is no reason to deny the historical observation, and we shall take up some themes in the history of thought about human dignity below. If, however, the question concerns the importance of an idea of human dignity in the thinking of the framers or, for that matter, in the emerging intellectual culture of human rights of the time, then it has to be said that we have little evidence that any such idea played a role beyond whatever of substance can be attributed to the intervention of Pius XII during the war. Moreover, the extent of philosophical disagreement among the framers suggests that we are unlikely to discover a broader consensus about the meaning of human dignity either in their own thinking or in their main sources—almost certainly not one that could be formulated with sufficient precision to make it plausible that the catalog of values presented in international human rights doctrine was or might be derived from it.29

But this, too, might be too simple. Perhaps we need a more complex conception of normative change. Consider, for example, a suggestive remark of Jürgen Habermas, who holds that an awareness of the meaning of human dignity emerged from historical experiences of humiliation and degradation in the post-Enlightenment years: “The appeal to human rights feeds off the outrage of the humiliated at the violation of their human dignity.... [C]hanging historical conditions have merely made us aware of something that was inscribed in human rights implicitly from the outset—the normative substance of the equal dignity of every human being that human rights only spell out.”30 Although this may not be precisely Habermas’s view, one thought is that an idea of human dignity has been imminent in the moral cultures of Western societies at least since the Enlightenment. The experiences of war and Nazism, among other things, catalyzed a social process through which the idea was recognized and brought in stages into public usage.

29. This is conjecture, but one bit of evidence might be found in the report of the UNESCO survey of eminent philosophers regarding the basis of human rights. It reproduces thirty-one responses solicited in 1947. Leaving aside Jacques Maritain’s introduction and the summary report of the UNESCO committee itself, I find the idea mentioned in only four of the responses, only one of which holds affirmatively that human dignity is in some way basic for human rights. UNESCO, Human Rights: Comments and Interpretations, ed. Jacques Maritain (New York: Columbia University Press, 1949).

It became embodied in democratic constitutions, with their guarantees of equal rights, which defined a public status of equal citizenship. Although perhaps there was no very precise public articulation of the idea of human dignity at a critical time in the development of international human rights doctrine, this would not show that it played no formative role. Instead, we should understand the framing of international human rights as part of a process of making explicit an idea whose wide implicit recognition was revealed in a variety of responses to some distinctive types of historical experience.

This is a large and appealing, though also a puzzling, thought. One wants to ask, for example: How can we know that the framing of international human rights is the working out of an idea of human dignity rather than of some other idea (e.g., that of a decent society)? More generally, how can we know that the framing of human rights is the working out of any implicit normative idea rather than a process of bargaining about norms on which a moral narrative has been retrospectively imposed? What would count as evidence for either type of claim? Then there is the question whether the idea of human dignity can be grasped in such a way that it can plausibly be seen as the basis of a response to historically distinctive forms of mistreatment (e.g., humiliation) while at the same time serving as a ground of the wide array of entitlements that compose international human rights doctrine.31

I shall return to the last question below but will have to leave aside the others, which would distract from our main interests. For now, I observe that it seems more realistic to regard the project of producing a conception of human dignity, understood as a ground or feature of human rights, as a matter of constructive interpretation rather than as an effort to give an account of an idea of human dignity implicit in the framing of postwar human rights. Leaving aside sectarian developments in Catholic moral theology in and before the 1940s, there is no evidence that the idea had a substantial bearing in the interwar human rights movement or in the thought of the framers or of those on whose thought they relied. The effort to give content to the idea of human dignity in the discourse of human rights will have to look elsewhere for guidance.

31. As Habermas himself seems to suggest: “Human dignity, which is one and the same everywhere and for everyone, grounds the indivisibility of all categories of human rights.” Ibid., p. 468 (emphasis in original).
II. PHILOSOPHICAL AND LEGAL USAGES

There is of course a longer history of philosophical and legal usage of the idea of human dignity. Whatever the philosophical beliefs of the framers, this history must surely have shaped more recent thought about human rights.

The idea of human dignity occurs in several senses. To illustrate, I begin with the helpful distinctions offered by Michael Rosen. He distinguishes four “strands” in the philosophical and legal history of the term “dignity.” Each lends itself to an idea of human dignity. Although Rosen presents the four strands as distinct, he observes that some usages combine more than one strand. I recapitulate his distinctions and then comment.

The first strand is dignity as rank or status. Historically, persons occupying high social rank were said to be “dignities,” as were (and sometimes still are) holders of public offices and other positions. So, for example, it is said that we should respect the dignity of a judge in the courtroom. Ordinarily a rank or a status is a form of social distinction—it sets one class of persons apart from others as entitled to some form of special treatment. How, then, can dignity-as-status yield an idea of human dignity, conceived as a status possessed equally by all persons? One reply is that we can think of individual persons as members of the class of human beings differentiated from other classes of beings. Cicero, for example, writes that humans are distinguished from cattle and other animals by having minds “developed by study and reflection.” Therefore, he says, “sensual pleasure is wholly unworthy of the dignity of the human race.” And Pico della Mirandola, in the famous oration On the Dignity of Man, distinguishes human beings from God’s other creations as beings with the capacity to shape their natures by their own choices.33


33. Rosen, Dignity, p. 15. Pico’s example shows that one can accept an idea of distinctive human status without being driven to substantively egalitarian conclusions. In his view, the destiny of an animal is fixed but that of a human being depends on choice. “If he cultivates vegetable seeds, he will become a plant. If the seeds of sensation, he will grow into a brute. If rational, he will come out a heavenly animal. If intellectual, he will be an angel, and a son of god.” Giovanni Pico della Mirandola, On the Dignity of Man, trans. Charles Glenn Wallis (Indianapolis: Hackett, 1998), p. 5.
A second strand is the idea of dignity as a value or a kind of value: to say that a thing has dignity is to attribute value to it. There are various ways this idea can be understood. Rosen traces the idea to Aquinas, who writes that dignity “signifies something’s goodness on account of itself” or, in one sense of the term, a thing’s intrinsic value. The dignity of a being is related to its place within a larger order. Human beings, having been created in the image of God and with a capacity for choice, occupy a high place in the order of creation, but other beings have their own value as well, and so their own dignity. Angels, for example, rank higher in the order of creation and have a higher dignity. The “value” strand can be found in Kant as well, although in a different form. As Rosen interprets him, Kant takes dignity to be a kind of value rather than any particular substantive value: value that is “intrinsic, unconditional, and incomparable.” He holds that only one thing possesses this kind of value (i.e., has dignity): it is the moral law. Human beings have dignity by a kind of inference, as beings that are (uniquely) capable of following the moral law. This is the foundation of the requirement that we treat humanity in ourselves and others with respect.

A third strand is the role of dignity in characterizing and commending conduct, as when we say that someone behaved in a dignified manner. In general, the features of conduct in virtue of which it might be said to be dignified depend on the context (e.g., whether the agent acts suitably within a role). But there might be a characteristic of conduct that could be said to be dignified for anyone, regardless of role or status. So understood, dignity would be a generic human virtue. Rosen mentions Schiller’s conception of dignified conduct as self-control in the overcoming of suffering and more generally as “the ability to act well despite the resistance of our natural inclinations.” According to a broader and more contemporary (but similar) view, the dignified consists in a combination

34. Thomas Aquinas, *Commentary on the Sentences*, bk. III, d. 35, q. 1d, a. 4, s. 1c, quoted in Rosen, *Dignity*, pp. 16–17.
37. On Kant’s view, see ibid., pp. 19–31. The interpretive issues are too complex to discuss here.
38. Ibid., p. 35.
of composure and calmness, invulnerability to corrupting influences and self-possession.39 Here it is worth noting the obvious—that while dignity may be a virtue in anyone, only some people may actually achieve it. (This is the source of what Kolnai describes as the “oddly ambiguous” aspect of respect for human dignity: it seems to call for respect even of the undignified.)40

The third strand suggests a fourth. Dignity can refer to deservingness of treatment respectful of one’s dignified character. If, for example, “to act with dignity” means to act in a way that demonstrates a capacity to subordinate inclination to duty, then “to treat with dignity” is to show respect for someone as a being with such a capacity. Rosen distinguishes between “respect-as-observance” (of another’s rights) and “respect-as-respectfulness” (for another agent, as when one “shows respect”). Whereas the first idea of respect presupposes some independent specification of rights, the second internalizes the standards by which a showing of respect would be judged appropriate. Human dignity, considered as deservingness of respect for one’s human status, seems to call for respect of the second kind. Rosen gives the example of the prohibition of humiliating or degrading conduct.41

I have been summarizing. But these distinctions raise some questions, so let me turn to them.

First, the idea of dignity-as-status is not transparent. The relevant sense of status is more like that of rank (e.g., my status as a member of the faculty) than of condition (my status after a medical procedure). But it would not be quite right to identify status with rank. Rank conveys an idea of hierarchy, and hierarchy is not intrinsic to the idea of dignity-as-status even though it is part of the history of this idea. A more precise way to think of a status is as a standing determined by membership in a class of persons having special entitlements and obligations recognized by others.42 (When I say “special,” I mean that a person who did not occupy the status would not, or not necessarily, have these entitlements and

40. Ibid., p. 258.
41. Rosen, Dignity, pp. 57–58.
obligations.) We recognize many statuses of this kind, like those of judge, professor, spouse, citizen, trustee, and so forth. Most of these are legal statuses, but in at least some cases there are analogs in morality. It seems that any system of social norms can establish statuses by attaching different packages of entitlements and obligations to different publicly recognized roles.

It is important that a status in this last sense is defined, or perhaps constituted, by the special entitlements and obligations attached to it. Without these we have only the bare, abstract idea of a socially recognized standing or position. Any particular status singles out its occupants for the forms of special treatment described by the package of entitlements and obligations that apply to it. We grasp the meaning of that status by asking which entitlements and obligations apply to its occupants. And we grasp its normative significance by asking what values are protected or advanced by singling out its occupants for the forms of special treatment described by these features of the status.

All of this matters when we come to the conception of human dignity as a status. As I mentioned, this idea can be puzzling because it is supposed to be a status held equally by all human beings. This means we cannot grasp the meaning of the status by asking what special entitlements and obligations apply to persons holding the status that would not, or not necessarily, belong to those who do not; by hypothesis, there is no person of whom that is the case. There is no clear baseline against which human status can be recognized. A fortiori, we cannot grasp the significance of human status by asking which values are protected or advanced by singling out its occupants for some sort of special treatment; there being no unambiguous baseline, it is not clear in what sense there could be “special” treatment to be explained.43

The point of this is that the idea of human dignity as a common status is incompletely described without an account of the kinds of special

43. Can we solve the problem by turning to a counterfactual idea? We can certainly imagine possible worlds in which persons are not accorded the special treatment required to respect human dignity. But since the motivating question is which forms of special treatment respect for human dignity calls for, this thought, without more, won’t help. Or we might turn to a historical comparison—perhaps the low-ranking status of serfs who are subservient to a privileged nobility. But, by itself, this won’t help either. As for any baseline that might be chosen, we need to know why this is the relevant comparison.
treatment appropriate to it, and for this the bare idea of a status shared by all human beings needs to be supplemented with some sort of moral content. Cicero had an idea of “the dignity of the human race” and drew some practical inferences from it (e.g., that we should not seek sensual pleasure), but he could also maintain without contradiction (in On the Commonwealth) that democracy is an inferior form of rule because “it recognizes no degrees of status” (dignitas). There is no contradiction because his understanding of the moral content of human status results from a comparison of human beings with animals. It yields what Kateb describes in another context as a conception of species dignity rather than of individual dignity. Kateb’s distinction is important and not always appreciated in reflection about human dignity. Nothing much follows from the type of species conception found in Cicero about the relative standing of some human beings considered in relation to others, or (without more) how human beings should treat one another. What this shows is that the practical force of views of human dignity in this tradition, which begin by distinguishing human beings as a class from other beings, is parasitic on a substantive conception of value. In this respect the status/value distinction may not run deep.

This brings me to a second observation about Rosen’s distinctions. The line of thought we have just traced suggests that the idea of dignity as value or worth might offer more leverage for human rights than that of dignity as status. Eventually we will want to know which protections should count as human rights and why, if at all, we should regard an international practice of human rights as a good thing. An understanding of human dignity as value or worth seems more likely to be a resource in answering these questions than the bare idea of human status. Indeed, if one were to take seriously the idea that human rights “derive” from human dignity, then some such notion might seem essential.

Rosen observes that dignity-as-value is open to several interpretations. He discusses those deriving from Aquinas and Kant. But there is also an interpretation that derives from Aristotle, represented in the recent literature by Martha Nussbaum’s idea of “a life worthy of human

dignity.” She holds that such a life is one that contains various desirable elements—“central human capabilities”—that together constitute a conception of human good (she lists ten of them). She does not argue that these can be inferred from a more abstract idea of human dignity or of a life worthy of it. Instead, the conception of a life worthy of human dignity is articulated by specifying the basic capabilities. To make possible a life worthy of human dignity for all of its members, a society should ensure that they all have effective opportunities to develop and exercise these capabilities. Nussbaum argues that the basic capabilities can be identified by asking which conditions should be satisfied at what level for a life to count as being worthy of human dignity. She believes that there is sufficient (“intuitive”) agreement about the nature of a life worthy of human dignity that the list of central human capabilities would attract an intercultural consensus.

I describe the capabilities view in order to illustrate a dilemma that would arise for any position that interprets human dignity as a value to be respected or promoted and seeks to ground human rights on this value. The proponent of such a view needs to give the value some


47. These include being able to live to the end of a life of normal length, being able to have good health, being able to move freely from place to place, being secure against violent assault, being able to form a conception of the good, having the bases of self-respect and nonhumiliation, and “being able to live as a dignified being whose worth is equal to that of others.” She identifies the last of these with protection against various kinds of discrimination. Nussbaum, *Frontiers of Justice*, pp. 76–78.

48. “The capabilities are not understood as instrumental to a life with human dignity; they are understood, instead, as ways of realizing a life with human dignity, in the different areas of life with which human beings typically engage.” Ibid., p. 161.

49. Nussbaum does not argue that such a society should ensure that its members actually develop and deploy these capabilities—or, in her terms, that they should actually achieve the functionings that the capabilities would enable. With one exception (the capability of “being able to live as a dignified being whose worth is equal to that of others”), it is the opportunity aspect of capabilities that matters, not the functioning aspect. Ibid., pp. 171–72; cf. pp. 186–87.

50. Ibid., pp. 74–84, 162, and passim. She writes that in the justification of each capability, “an intuitive argument must be made that a life without a sufficient level of each of these entitlements is a life so reduced that it is not compatible with human dignity” (pp. 278–79).
content. To be of use in a theory of human rights, this content should be sufficient to generate conclusions about the specific requirements that human rights should embody. At the same time, in order to avoid the “nothing but a phrase” problem, the content should not simply restate a value (or values) whose significance can be accounted for in terms independent of the idea of human dignity under some plausible interpretation. The dilemma is that these desiderata pull in opposite directions. The first tends toward an expansive conception of the value of human dignity so as to account for the relatively broad range of requirements found in human rights doctrine. But the more expansive the conception, the more likely its normative force will derive from substantive moral considerations that can be grasped without reference to the idea of human dignity itself.

To illustrate: according to the capabilities view, we should be able to agree that a life lacking the capability of having good health is not “compatible with human dignity.” Setting aside the hypothesis of agreement, the question is whether there is a conception of human dignity that is rich enough to support the normative conclusion and that is not simply a restatement of a distinct idea such as that of a normal human need or an urgent interest that arises across a range of typical human lives. Nussbaum does not try to formulate such a conception other than by describing the capabilities that are supposed to constitute it and holding that, when we reflect on those capabilities, we see that a life excessively deprived of any of them would be incompatible with human dignity. My own response to the thought experiment is different. It seems to me more natural to say not that we have a single idea that explains the significance of all of the capabilities, but that we have a plurality of less comprehensive values that we are prepared to recognize as important constituents of a good or decent life, or perhaps a range of normal lives, whose importance in each case requires a separate account.  

51. As Pablo Gilibert pointed out to me, the idea of a “good or decent life,” like the idea of a “life worthy of human dignity,” has normative content and needs explication and defense. This is certainly true. The question is whether one or the other idea is more easily explicated and defended. I would not claim that there is widespread agreement about the idea of a “good or decent life,” but it seems to me easier to describe the terrain on which disagreement about it takes place than to do the same for the idea of a “life worthy of human dignity.”
worth of persons cannot be given definite meaning without independently derived principles.  

III. RESPECT FOR HUMAN DIGNITY

Rosen’s fourth strand involves the idea of dignified treatment (or treating with dignity), which he glosses as treating with respect. As I noted, he distinguishes between “respect-as-observance” (of another’s rights) and “respect-as-respectfulness” (for another agent). The first gains its substance from some independently specified doctrine of rights, so when interpreted in that way the idea of dignified treatment itself seems not to do any moral work. The second, however, internalizes the standards of respectful treatment: we “show respect” for someone “by acting toward them in a way that gives expression to one’s respect, or . . . by refraining from behavior that would show disrespect.” Rosen mentions as an example of a demand for respectful treatment the provision of the Geneva Convention on the treatment of prisoners of war that forbids “outrages upon personal dignity, in particular, humiliating and degrading treatment.”

Is there really a distinction between these two senses of treating with respect? Rosen understands “respect-as-observance” as the more restricted of the two ideas—it is limited by its context to a specific set of entitlements. “Respect-as-respectfulness” is broader—it requires us to treat a person with respect. Yet, as in the more restricted case, it seems that to treat someone with respect is to treat them according to some standards of respectful conduct. So we must ask, what are those standards and where do they come from? For example, how would we know what to count as “humiliating and degrading treatment” of prisoners of war and on what basis is it objectionable?

Offhand, there are two approaches to answering these questions, which I shall call encompassing and specific. The encompassing response holds that we show respect for someone (“treat them with dignity”) when we recognize them, in Joel Feinberg’s phrase, “as a

54. Convention (III) relative to the Treatment of Prisoners of War (Geneva, 1949), art. 3(1)(c), quoted in ibid., p. 59.
potential maker of claims.” Rosen interprets Feinberg’s idea as a form of “respect-as-observance,” but this may be too narrow. To treat someone as a maker of claims in Feinberg’s sense is to do more than simply respect the valid claims the person actually makes. It is to recognize the person as having a certain parity of status with oneself as an agent with interests that ought to count for something both for herself and for others with whom she engages. One way to put the point is Stephen Darwall’s. He writes: “Our dignity includes the standing to hold one another to our moral obligations toward each other.” It is expressed in the assertion and acknowledgment of our authority to make demands of each other. Rainer Forst suggests a more ambitious formulation: “dignity means that a person is to be respected as someone who is worthy of being given adequate reasons for actions or norms that affect him or her in a relevant way.” Forst calls this a “right to justification” and holds that it is basic for human rights. I am not sure the latter claim is tenable, or anyway informative, but it seems clear that we have an idea of respect for persons that corresponds to his idea of a “right to justification.”

The trouble with the encompassing response, as Forst’s version best illustrates, is that there seems to be no way to prevent it from dissolving into a generic idea of moral standing. If that is true, then it will deliver an interpretation of “treating with dignity” that will be too broad and unspecific to capture the thought that there are certain particular ways of treating people that are incompatible with their dignity. I do not mean that the broad interpretation of “treating with dignity” is without content—in a way it has too much content. It seems to say that we show respect for people’s human dignity by treating them as we ought to treat them or in ways we can justify to them. This interpretation will

56. Rosen, Dignity, p. 57.
57. Stephen Darwall, The Second-Person Standpoint: Morality, Respect, and Accountability (Cambridge, Mass.: Harvard University Press, 2006), p. 119. In addition to the authority to hold others accountable, Darwall’s idea of dignity includes first-order norms of conduct corresponding to the idea that “persons are beings who may not be treated in certain ways” (p. 13).
not be much help in explicating the more specific idea that there are particular ways of treating people that are ruled out by respect for their human dignity.

Something like the latter thought seems to lie behind the Geneva Convention’s prohibition of “humiliating and degrading treatment” and the somewhat more general idea, as Kateb puts it, that “human beings . . . should not be treated as if they are not human beings but something other or lesser.” Kateb here describes what he calls the “existential loss” associated with certain human rights violations. It does not consist in the pain and suffering that often result from a violation: in his terms, suffering is a “moral” rather than an “existential” harm. “Existential loss” consists in the diminishment or effacement of the capacity for independent action (the “effacement of personhood”) brought about by forms of treatment like “torture, slavery, concentration camps, induced or neglected famine, or death camps.” What the idea of “existential loss” seeks to convey is that the undermining or truncation of agency—the capacity to act according to a plan, as we might say—is a special kind of harm, distinguishable from setbacks to various other interests. Although it may often be associated with other kinds of harm, this is not always the case; as Kateb observes in a discussion of Huxley’s *Brave New World*, it is possible for individual agency to be effaced by forms of treatment that inflict no pain or suffering at all.

If we were to accept this and contend that the infliction of “existential loss” is a distinctive failure to treat a person “with dignity,” then we will need to explicate the relevant notion of dignity in a more specific way than encompassing approaches allow. We need some basis for identifying the forms of treatment to which people may not be subjected compatibly with treating them “with dignity.” As Rosen observes, such an idea would have to be distinct from any interpretation of human dignity that could be foundational for human rights in general. The right to have one’s dignity respected, if there is such a right, would be, as he puts it, “one particular right.”

Of course, we might explain the importance of such a right by referring to generic considerations of the kind I described as “encompassing.”

60. Ibid., pp. 20–21, 36–39.
61. Ibid., pp. 41–43.
But these considerations would not explain why we should regard the right as distinctive—that is, why by respecting *this* right we treat someone “with dignity,” whereas by respecting various other rights we do not. By itself, an unanalyzed notion of “respect-as-respectfulness” is indeterminate about this.

One attractive possibility is Rosen’s thought that there may be a special class of “dignitary harms” consisting of forms of treatment that expressively (and perhaps actually) deny to their victims the capacity for dignified conduct. These harms might perhaps be said to be associated with treatment that deprives one of the capacity to exert intentional control over the inclinations or communicates a contemptuous disregard for one’s standing as a moral agent. This thought of course needs to be filled out, and I will say more (though not enough) about it below. However the thought is developed, it depends on a substantive moral value that is not part of the abstract idea of “treating with respect.”

I distinguished the encompassing and the specific as two approaches to explaining the source and nature of the standards to which “respect-as-respectfulness” responds. Might there be a third possibility? Here is one that derives from Thomas Nagel’s suggestion that we think of human rights as protections of “inviolability.” To be inviolable is to be protected against certain kinds of harms; Nagel is interested particularly in those that consist in interference with areas of our lives that are implicated in our personal independence (his examples are interference with freedom of thought and expression and with intimate sexual life). Such interferences are a kind of harm: it is a bad thing to suffer them. But the value of inviolability is not simply the value of not suffering these kinds of harms. It is the value of being protected against suffering them (and knowing that one is so protected). Nagel writes that we should be able to see ourselves and each other “as having a limited sovereignty over [our] personal and expressive life.” We want to be secure against certain kinds of interference even when we do not contemplate engaging in conduct likely to elicit it. Rights that protect against these kinds of

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63. Ibid., pp. 156–60.
interference “embody a form of recognition of each individual’s value” that differs in kind from the form of recognition reflected in concern about human happiness and misery themselves.66

The suggestion that (part of?) the value of human rights lies in the protection of inviolability arises in response to the paradoxical aspect of the fact that human rights, or anyway some of them, may prevent us from doing things that would result in fewer violations of those very rights.67 Inviolability is meant to dispel the appearance of paradox. As Frances Kamm remarks, when our inviolability is protected, “We may all lead harder lives, but our dignity is greater.”68

The idea we have before us is that we respect someone’s dignity when we treat them in ways that recognize the importance of being sovereign over some core region of their personal and expressive lives. Whether this notion of dignity-as-respectfulness can deliver anything like the modern catalog of international human rights seems to me unlikely; Nagel himself believes that it bears mainly on “the type of rights usually called negative—forms of freedom or discretion for each individual with which others, including the state, may not forcibly interfere.”69 It would be difficult, without straining ideas, to represent other types of rights—for example, economic and social rights or some institutional rights—as protections of inviolability, interpreted as a kind of individual-level sovereignty. (This is true, too, of Kateb’s conception of human dignity as an existential value, which bears a relationship to the idea of inviolability: he writes that the purest expression of human rights, considered as protections of human dignity, is to be found in the U.S. Constitution, which of course does not afford protections analogous to those embodied in

66. Ibid., p. 87.
67. A dubious illustration is the German Constitutional Court’s holding that it is a violation of human dignity to shoot down a hijacked aircraft bearing innocent passengers in order to save the lives of a greater number of innocent people on the ground at whom the aircraft is headed. Oliver Lepsius, “Human Dignity and the Downing of Aircraft: The German Federal Constitutional Court Strikes Down a Prominent Anti-Terrorism Provision in the New Air-Transport Security Act,” German Law Journal 7 (2006): 761–76. (The reasoning is dubious because the killing of the passengers would not be the means by which the lives of the people on the ground would be protected but rather an unavoidable consequence of acting on a distinct aim.)
economic and social rights.) In any case, what is important for the more general idea of dignity-as-respectfulness is that the interpretation we have been considering, like that considered just before, cannot be made determinate without adding in a substantive value of the kind that inviolability supplies. The force of the interpretation rests on the considerations adduced to explain its special significance.

One conclusion that emerges from our reflections so far is that any conception of human dignity of normative interest will have to include a “value” element. Without some moral content, conceptions framed in terms of status or respectfulness will be too thin to do useful work in a theory of human rights. Another is that ideas of human dignity seem to apply (differently) at two distinct levels of thought about human rights—as a feature of a public system of norms and as a more specific value that explains why certain ways of treating people are (almost?) always impermissible. If there could be a theory of human dignity, one of its desiderata would be to show what (if anything) these senses of human dignity have in common and how they hang together (if they do).

IV. HUMAN DIGNITY AS A HIGH STATUS

Jeremy Waldron has sketched a view that aspires to provide such a unifying account. Although he is also interested in human dignity as a moral idea, he approaches it through an analysis of dignity, and eventually of human dignity, as it is expressed in the law. He proposes a “status” conception of human dignity, but it is not a “bare status” view of the kind I described above. Waldron aims to connect contemporary notions of human dignity with the historical use of the term “dignity” to specify a “high-ranking legal, political, and social status”—for example, that of a noble or a holder of high office (“a dignity”). His hypothesis is that “the modern notion of human dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly accorded

71. Waldron, Dignity, Rank, and Rights, pp. 19, 22. He refers to the two levels of application distinguished above as “general” or “wholesale” and “particular” or “retail.”
72. Ibid., p. 47.
to nobility.”73 This suggestion is inspired by an observation of Gregory Vlastos in a paper about the meaning of egalitarianism. Vlastos writes that an egalitarian society treats all of its members as having “equal worth” by according everyone “identical status.” He observes that such a society is “like a caste society (with a unique caste)” that “has no place for a rank of dignity which descends on an individual by the purely existential circumstance . . . of birth and remains his unalterably for life.” Everyone in such a society is a “first-class” citizen—“a ‘rank of dignity’ in some ways comparable to that enjoyed by hereditary nobilities of the past.”74

The “equalization” aspect of this notion of human dignity as a status is essential and clearly has some normative force: it rules out caste systems, for example. But the idea of “identical status” should not mislead. As Waldron notes, there is a difference between a “dignitarian” society and (simply) an egalitarian one. In a “dignitarian” society, the law works in various ways to express and protect the “high rank” of all its members. For example, it might afford specific protections against degrading treatment, insult, and invidious discrimination; rely on citizens to make judgments about the application of law and legal standards to their own situations and transactions; and offer hearings and legal representation to litigants to ensure that their own perspectives are represented and heard in the legal process.75 In Waldron’s view, mechanisms like these generate an environment in which each person can see him- or herself as enjoying the same “high” status as everyone else: “We are all chiefs,” as he puts it. “We all stand proud, and . . . we look up to each other from a position of upright equality.”76

73. Ibid., p. 33 (emphasis in original).
75. Waldron, Dignity, Rank, and Rights, pp. 47–57. See also David Luban, Legal Ethics and Human Dignity (Cambridge: Cambridge University Press, 2007), chap. 2.
The view is more suggestive than I can convey briefly. Waldron advances it as an account that can explain a range of applications of the idea of human dignity. He believes we can understand such an account as imminent in the development of the law at least since the nineteenth century, primarily in continental Europe and the common-law countries. It is an important feature of this account that it treats the idea of high status as having been not superseded but rather generalized; according to Waldron, we need the generalized form of this idea to grasp the normative content of human dignity.

The question is whether human dignity, so understood, can play the hoped-for unifying role. There is a good deal of metaphor in the notion of human dignity as extending to everyone “something of the dignity, rank, and expectation of respect that was formerly accorded to nobility.” To unpack the metaphor we must face the feature of status views we encountered earlier: we must describe and motivate the package of entitlements and obligations that distinguish the status. How might we do so?

Vlastos suggests one possibility. He says that in an egalitarian society each person is treated as having “equal human worth,” an idea he interprets as combining two principles: that one person’s well-being is as valuable as any other’s and that one person’s freedom is as valuable as any other’s. He thinks these premises are robust enough to give us all of the rights in the declaration of 1948. But this can’t be right: from the fact that one person’s good is as valuable as another’s, nothing follows about the level of provision of the resources required to realize this good that one is justified in demanding from others. Although Vlastos’s principles are enough to rule out social arrangements that embed distinctions of status in laws and institutions (as in the case of a caste society), they are not enough to make sense of the notion of a “high rank” described in terms of an expansive package of entitlements and obligations. The extent of the package of entitlements that define the status—the “height” of the rank—is a further matter.

The metaphor of the respect formerly accorded to nobility suggests another possibility. Among other things, respect for nobility was shown in the social acceptance of a system of norms that enabled and protected the capacity to exert control over various aspects of an individual’s social

and economic life. Speaking loosely, the operative interest in such a system is something like that of developing and effectively exercising a capacity for self-direction in spite of various predictable obstacles. It is important to see that this interest has two dimensions, deriving from the exercise of the capacity itself and from being recognized by others as having this capacity. The first is related to one’s ability to accomplish one’s ends; the second, to one’s perception of one’s standing in the eyes of others. The second will turn out to be essential.

In the age of nobility, of course, social life was organized in such a way that only a small subclass of the population could aspire to develop and effectively exercise a capacity for self-direction. Most others lived in structures of dependency and subservience. If human dignity is an extension of the noble’s special status to all, then perhaps we should understand the package of entitlements that defines “human” status as those necessary to enable and protect the effective exercise of the capacity for self-direction by everyone. A social world whose public norms and institutions embody these entitlements, and are seen to do so, would afford a basis for each person to regard herself and to be regarded by others, in Feinberg’s phrase, as a “potential maker of claims”—as an agent with standing to demand that her good ought to count for others, taken both as individuals and as co-members of a polity.

The possibility that a view of this kind might play the unifying role mentioned earlier lies in two of its aspects. First, what I have called a “capacity for self-direction” is a relatively abstract capability whose exercise and recognition seem to require a variety of social background conditions to be secured, including the protection of some basic liberties and the provision of opportunities to satisfy some material and social needs. Therefore, it might seem to be the kind of value that could be foundational for a range of human rights. Second, an agent’s exercise of this capacity can only take place when others abstain from certain forms

78. See Waldron’s remarks on self-control in Dignity, Rank, and Rights, pp. 52–53. The similarity to Nagel’s idea of inviolability will be clear.

79. This is an idealization; in fact, of course, many of those born to noble status did not develop and exercise this capacity and their social role did not depend on their doing so, much less doing so productively. And they exercised the capacity, to the extent they did, within the prevailing structure of social norms. Thanks to Bas van der Vossen for stressing this.
of interference with the agent’s actions. Many forms of interference would primarily threaten to defeat the agent’s purposes in acting, but some (torture, perhaps) may threaten the capacity itself. This fact might create space for a class of “dignitarian harms” protection against which might be the subject of certain specific rights.

This is vague but will have to suffice. I believe that something like it is the best we can do to interpret the metaphor of “high rank” (though I don’t claim it as Waldron’s own intention). I doubt, however, that the interpretation can play the hoped-for unifying role. This is primarily because the first of the two aspects just mentioned seems to me unlikely to succeed. I said that the development and effective deployment of the capacity for self-direction evidently have a variety of institutional and social preconditions and therefore might be foundational for a range of human rights. The breadth and composition of this range, however, depend on how the abstract capacity is understood and distinguished from other capacities. More generous understandings will generate more generous catalogs of rights, but the more generous the understanding of self-direction, the more it is likely to engage a plurality of moral considerations. Take, for example, the human right to an adequate standard of living. The interests protected by this right do not seem to be limited to the interest in the effective exercise of the capacity for self-direction. It is true that the satisfaction of the right may be necessary for the exercise of the capacity, but it is also necessary for the exercise of other capacities that we might reasonably regard as equally important. It is not my aim here to evaluate the various forms a view of this kind might take, but I am doubtful that the value of self-direction can be given an interpretation that is sufficiently definite to be plausibly seen as a self-standing value and sufficiently wide-ranging in its requirements to justify a catalog of human rights with the normative breadth we find in contemporary international doctrine.

However, the value of self-direction might come into the justification of human rights in a less direct way than as a ground or source of their normative contents—it might, for example, help explain the value of a public practice of human rights rather than of the specific normative requirements such a practice should embody. And nothing I have just said casts doubt on the thought that an idea of human dignity might be required to make sense of a special class of “dignitarian” harms. I turn to these ideas in the next section.
V. CONSTRUCTIVE IDEAS

A conception of “the inherent dignity of the human person” sufficiently robust to deliver the full range of human rights recognized in contemporary international human rights doctrine seems to me to be still elusive. The attempt to produce such a conception tends toward an “encompassing” notion that is difficult to distinguish from more generic moral conceptions. In this respect, I am inclined to agree with the view that references to human dignity in contemporary human rights culture often serve mainly to call attention to moral considerations more naturally described in terms that do not invoke any distinctive and reasonably determinate idea. This of course is hardly to disparage the importance of those considerations.

However, a more limited idea of human dignity as the status of a self-directing agent—if this idea can be given content—might illuminate the contemporary practice in two different ways.

At the systemic level, such an idea might help explain why it matters that we have an international practice of human rights at all. Here we must distinguish between human dignity as a ground of human rights (i.e., as a value from which particular rights can be “derived”) and human dignity as a value advanced by a public practice of human rights. Suppose we agree that in the normal circumstances of modern life, some range of interests that we have reason to regard as important is vulnerable to a range of predictable threats. We think it would be desirable to establish some sort of institutional protection of these interests against the threats. Offhand, there might be various ways to provide this protection. Why do it by means of a practice with the functional form of international human rights?

Part of an answer, of course, would involve claims about the feasibility and cost of such a system. Another part would involve a claim about its likely effectiveness. I want to suggest that a third kind of claim might also be made. It derives from an aspect of the idea of human dignity as a high status. A practice that articulates a system of rights, conceived as public bases of claims, might be seen to have a particular kind of value. It can empower individual agents to demand respect for urgent interests under circumstances in which these interests are subject to predictable threats. This empowerment is in part a result of the change in self-conception that the practice of human rights can induce among those
who participate in it: they are encouraged to conceive of themselves, and
to act, as “makers of claims.” This is most obvious when legal enforce-
ment is possible, but there is also a reflection of it in the political practice
of human rights. We see this, for example, in the role of ideas of human
rights in legitimating and mobilizing efforts to resist gender violence.80

Someone might think that the idea of dignity as the status of a self-
directing agent is superfluous here—that the value of empowerment can
be fully accounted for instrumentally, as a means to ensure protection of
the underlying interests. But this seems to me to miss a step, for we might
regard empowerment, for those empowered, as significant indepen-
dently of the particular values their empowerment helps defend. To
paraphrase Feinberg, these individuals learn to act with the dignity of
persons who can stand on their own feet.

The other respect in which an idea of human dignity might play a role
in a theory of human rights is in explaining the importance of some
specific protections (Rosen’s “dignitarian harms”), such as the prohibi-
tions of torture and cruel or degrading treatment, slavery, and forced
labor. Here the suggestion is that these ways of treating people produce a
characteristic kind of harm. The suggestion rests on a distinction between
forms of treatment that obstruct persons in the pursuit of their aims (as
most interferences with personal liberty do) and those that subvert the
capacity for self-direction itself. On the face of it, there do seem to be
harms of this second, subversive, kind. A defense of the distinction would
have to recognize that subversion can come about in more than one way,
but perhaps a paradigmatic case is that of torture in which, typically if not
always, coercion is combined with the threat or infliction of pain so as to
render its victim sufficiently defenseless and fearful as to be willing to do
whatever is demanded. The victim’s capacity for self-direction is, so to
speak, enlisted by the torturer and turned against her.81

80. Consider, for example, the role of human rights in empowering local organizations
working against gender violence in India and in the “community empowerment” efforts of
Tostan, an NGO working to reduce threats to women’s health in eight African countries.
See Sally Engle Merry, Human Rights and Gender Violence (Chicago: University of Chicago
Press, 2006), chap. 7; Diana Gillespie and Molly Melching, “The Transformative Power of
Democracy and Human Rights in Nonformal Education: The Case of Tostan,” Adult Edu-

81. Here I gesture at one account of the evil of torture. See David Sussman, “What’s
Wrong with Torture?” Philosophy & Public Affairs 33 (2005): 1–33. Although this may be the
distinctive evil of torture, I don’t mean to suggest that it is the only (or the worst) one.
This phenomenon appears to be different from the more pervasive phenomenon of obstruction or blockage of a person’s attempts at self-direction, and the candidate “dignitarian” harms all seem to manifest it in one or another way. However, I cannot here supply an account of self-direction that makes good the distinction and the connection with these harms, so for now I will have to leave it as an open question whether the suggestion can be vindicated. If it can be, then we will have found a specific way in which an idea of human dignity might play a role in justifying one group of human rights.

None of this says very much about the reasons we should care about human dignity—if we should—or its relationship to other values that are involved in the justification of international human rights. But it suggests at least two constructive roles that an idea of human dignity might play in a theory aiming to offer such a justification. In those respects, at least, it would be more than a phrase.