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"Not Gods But Animals": Human Dignity and Vulnerable Subjecthood

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Abstract Drawing on earlier work on the conceptual structure of dignity, this paper will suggest a particular type of connectedness between vulnerability and human dignity; namely, that the "organizing idea" of human dignity is the idea of a particular sort of ethical response to universal human vulnerability. It is common ground among many, if not all, approaches to ethics that vulnerability requires us to respond ethically. Here, I argue that human dignity is distinctive among ethical values in that it values us because of, rather than in spite of, or regardless of, our universal vulnerability. The term "dignity" is used synonymously with "human dignity" here, since an investigation of the dignity of non-human entities forms no part of the present examination.

Keywords Dignity · Kant · Vulnerability · Autonomy · Balance/equilibrium

Introduction: The Messy Appeal of Dignity

The idea of dignity is acknowledged to have "widespread psychological and intellectual resonance"[1] as well as a "deep emotional appeal"[2]; as an idea, dignity seems important, not only in the positive sense of being "something that virtually all people want",[3] but also in the negative sense that many of us feel "horror at the violation of human dignity".[4] Of course, dignity also has considerable *legal* impact,

[1] Mattson and Clark (2011).

[2] Ibid.

[3] Ibid.

[4] Knoepffler and O'Malley (2010).

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given its presence either in or behind the texts of so many supranational documents on human rights. Nevertheless, the idea of human dignity is often a target for criticism, much of it immoderate and derisive, from those who deny that such a vague, contested concept deserves any place in our ethical, and particularly, our *legal* reasoning.[5]

Even its supporters acknowledge that the concept is mercurial, and it is not unusual to hear even proponents of human dignity describe it as "intrinsically ambiguous".[6] In the *Omega* case, Advocate-General Christine Stix-Hackl acknowledged that, notwithstanding that "respect for human dignity does…constitute an integral part of the general legal tenets of Community law and a criterion and requirement of the legality of acts under Community law",[7] nevertheless "there is hardly any legal principle more difficult to fathom in law than that of human dignity".[8] Similarly, Mattson and Clark write, in an article which argues strongly for a "commonwealth of human dignity", that "[h]uman dignity is in such disarray that it does not provide even a minimally stable frame for global discourse and action. Much about this idea remains implicit or even contradictory, in the service of diverse and sometimes contra-dignity ends".[9]

One way of trying to clarify what dignity means is to attempt to come up with a typology of uses of dignity. Several such typologies have been attempted in recent writings about dignity, and within these, although certain types appear only in one typology, at least three occur repeatedly. One recurring type, and perhaps the most widespread, is the use of dignity to denote the intrinsic worth of human beings. This is the sense in which dignity provides "a metaphysical justification for human rights and duties",[10] and Rendtorff makes the important point that this use of dignity refers to worth that is not only intrinsic, but fundamentally equal.[11] Nordenfeld calls this "the dignity of *Menschenwürde*",[12] which he says is "completely different" from other types of dignity in that it is possessed equally by all human beings for no other reason than that they *are* human beings.[13] He observes that most modern writers follow Kant, who "sought to derive man's dignity from autonomy and rationality,"[14] in sourcing this kind of dignity in "capacities crucial to humans" such as the ability to think, or reason, the ability to reflect, and the ability to self-determine.[15] Rendtorff identifies as separate "uses" of dignity things like: (a) respect for moral agency, (b) the idea of human beings as ends-in-themselves/as "beyond price" and

[5] See, e.g., Bagaric and Allen (2006); Macklin (2003); Pinker (May 2008) http://www.tnr.com/article/the-stupidity-dignity.

[6] Byk (2010) ('la dignité reste intrinsèquement une notion ambiguë').

[7] *Omega Spielhallen und Automatenaufstellung GmbH v Oberbürgermeisterin der Bundesstadt Bonn* [2004] ECR I-9609 paragraph 90.

[8] *Omega*: paragraph 74.

[9] Mattson and Clark (2011).

[10] Ibid.

[11] Rendtorff (2002).

[12] Nordenfeld (2004).

[13] Ibid.

[14] Riley (2010).

[15] Nordenfeld (2004).

not to be commercialized, and (c) respect for the ability of human beings to self-determine and "create their own destiny";[16] nevertheless, all of these are aspects which, according to the dominant Kantian analysis, are incorporated *within* the idea of "intrinsic worth". As will be shown later,[17] accounts that purport to ascribe intrinsic worth (whether it be described as dignity, or personhood, or something else) on the basis of features or capacities (usually *cognitive* capacities) that are supposedly "crucial to humans" fall into paradox when they insist on ascribing such worth to *all* human beings on this basis, notwithstanding that not all human beings possess the features or capacities that are taken to be relevant. At this stage, however, the prevalence of such accounts is merely noted.

Another recurring type is the use of "dignity" to signify "dignified character" or "dignified conduct"; in other words, to praise or recommend certain types of actions or personal qualities. Mattson and Clark, for example, note the use of dignity to denote "virtuous comportment or behaviour";[18] the same idea is expressed variously by other writers in terms of "grace, bearing and aristocracy"[19] or "dignified character…a personality disposed to respect the moral law".[20] This type of use also seems to be what Thiel means by "ethical dignity".[21] Mattson and Clark go into some detail in explaining precisely what they think the important elements in a "dignified character" are, all of which are reducible, essentially, to the idea of a "temperate orientation".[22] There is clear overlap between this second major use-type and the earliest uses of "dignitas" to connote rank or merit (though Nordenfeld distinguishes them).[23]

A third type of dignity which arises repeatedly in the literature is "subjective dignity". Mattson and Clark note that dignity can refer to "a subjective and felt experience",[24] and Nordenfeld's typology includes the subjective "dignity of identity",[25] the dignity we attach to ourselves. Rendtorff, too, acknowledges the use of dignity to refer to self-esteem, and the relatedness of the concept of dignity to subjective feelings like pride, shame, degradation and inferiority.[26]

This is dignity's messy appeal: the *idea* of dignity attracts us by seeming to chime with some of our ethical intuitions, but as we attempt to analyse it, we come up against an array of possible meanings. The lack of a single, precise meaning persuades some scholars to deny that dignity has any distinct normative function at all,[27] while others cite it tentatively, conscious that, without any satisfactory sense of a "core meaning" of dignity, there is no way of telling whether a particular use is

[16] Rendtorff (2002).

[17] See Nordenfeld (2004).

[18] Mattson and Clark (2011).

[19] Riley (2010).

[20] Nordenfeld (2004).

[21] Thiel (2010).

[22] Mattson and Clark (2011).

[23] Nordenfeld (2004).

[24] Mattson and Clark (2011).

[25] Nordenfeld (2004).

[26] Rendtorff (2002).

[27] See Bagaric and Allen (2006); Macklin (2003); Pinker (May 2008).

apt or not. This latter problem is summed up by Mattson and Clark when they write that "[l]ogically, people need some shared understanding of human dignity if the concept is to serve instrumentally and practically as common ground."[28]

This observation hints at another, non-typological approach to untangling the meaning of dignity. As I have argued elsewhere, what we need in relation to the concept of dignity is not a typology, but an "organizing idea",[29] particularly given the bewildering variety of uses made of the word "dignity" in philosophical and legal discourse, only some of which are enumerated above. Elsewhere, I have attempted to show that the fact that dignity is used in a variety of different ways in ethical and legal discourses, and is used to mean a range of different things, does not signify that anything is "amiss" with the concept in general, as some commentators have claimed; rather, we should *expect* there to be a range of different meanings of "dignity" corresponding to the range of different legal language-games in which the term is used.[30] Drawing on the distinction between concepts and conceptions (probably originated by Gallie in his seminal discussion of contested concepts,[31] and developed by Dworkin (1979), Rawls (1999), Waldron (1988) and others), and also on Waldron's use of "organizing ideas" to describe the family resemblances shared by the various particular instantiations of general concepts (Waldron was referring specifically to private property), I have proposed a three-tier structure for understanding the use—and therefore the meaning—of "dignity".

At the most local or particular level is the tier consisting of the various *particular uses* of the term "dignity": things that dignity is said to mean, or require, or prohibit, in particular circumstances and individual cases. This is the most contextual level, and would correspond to what Dworkin and others call "conceptions"—realizations or instantiations of the concept. Tier two is more abstract, and consists of *concepts* rather than conceptions. In other writing which makes the concept/conception distinction, the level of concepts is the most abstract and acontextual; there is no greater level of abstraction.[32] In the structure I propose, however, following Wittgenstein, concepts exist within the context of language-games, so that there is not one *single* concept of dignity, of which all uses are conceptions; rather, different *concepts* of dignity will exist too, which correspond to the different language-games within which they occur. Thus, healthcare law can have one concept of dignity; human rights law another; and so on. Insofar as the language-games themselves overlap, the concepts of dignity within them are likely also to overlap; the key point here, however, is that we should not insist on a single, unitary concept of dignity and problematize its absence. The existence of multiple concepts of dignity ought to be completely predictable and is appropriate given the variety of different language-games in which "dignity" is used. In tier three, finally, is what Waldron has termed an "organizing idea", in other words, a conceptual image or picture—close to what Wittgenstein (1976) calls a "family resemblance"—which is capable of embracing all of the various concepts, conceptions, meanings, and uses of "dignity".

[28] Mattson and Clark (2011).

[29] Neal (2012).

[30] Ibid.

[31] Gallie (1956).

[32] See, e.g., McCrudden (2008).

Riley contends that "dignity's commonality in legal discourse and its polymorphous nature…is not well served by the language of 'concepts versus conceptions'".[33] Disagreeing with McCrudden,[34] he argues that "[t]he identification of a core of commitments within the concept—cashed-out into different, even competing, conceptions—demands too much of its conceptual core" and, ultimately, that such an analysis "implies that conceptual stability and consensus could be won on the basis that parties and interlocutors can ultimately come to see the force of the values and judgments that are contested."[35] Riley's own view is that "contestation concerning dignity will continue, that unlimited conceptions are likely to be generated, but also that these conceptions—i.e. the uses made of dignity—should take priority over the identification of a stable concept."[36]

I have likewise argued against identifying any *one* concept of dignity to be fleshed out in "concrete conceptions". Rather, my argument has been that there are many concepts of dignity, corresponding to the various language-games in which "dignity" features, which are related through an "organizing idea" (my suggestion here will be that idea of a moral response to vulnerability can fulfil this role).[37] This avoids the need to overload a single conceptual core. If the aim here was to identify a stable, central concept of dignity, that would certainly be "demanding too much", as Riley puts it; aiming to identify an "organizing idea", however, need not be.

This is the basic structure against which I will consider the relationship between dignity and vulnerability. When proposing the structure in earlier work, I was concerned with the form, rather than the substance, of dignity, since so much discourse about dignity has seemed not to appreciate that different meanings of dignity in different contexts need not signify that the idea of dignity itself is essentially meaningless, or irredeemably vague. The priority, therefore, was to clarify this in order to remove what had become a familiar distraction. Now, however, I want to proceed to more substantive questions about the content, and meaning, of dignity, and in particular, to explore how the "organizing idea" of dignity is bound up with the phenomenon of human vulnerability.

Problematizing Autonomy-Based Accounts of Dignity

As noted above, a discernible Kantian influence is present in much contemporary discourse about dignity, and many writers who attempt to explain the source and nature of "human dignity" do so along largely Kantian lines, explicitly or at least perceptibly. (For ease of discussion I will refer here to accounts of dignity which define or justify dignity wholly or substantially in terms of ideas such as autonomy, rationality, self-determination, and/or non-instrumentalization, as "broadly Kantian".) Rütsche, for example, explains dignity as

[33] Riley (2010).

[34] McCrudden (2008).

[35] Riley (2010).

[36] Ibid.

[37] Neal (2012).

> the concept that each and every human being is, by virtue of its dignity, in itself valuable, regardless of its usefulness to anyone or for anything. The value of the human being lies in itself, not in his utility to achieve something. Human beings are not mere means to achieve ends but ends in themselves. This classical Kantian approach expresses precisely what is meant by intrinsic value and, therefore, by human dignity".[38] This, according to Rütsche, is "the concept of dignity that is generally recognised in Philosophy and Law."[39]

Equally explicit Kantian influences are evident elsewhere. Andorno writes, for example, that "[dignity] expresses the requirement not to instrumentalize human beings, by recalling that each person must be treated as an end in himself, and never simply as a means, in Kant's famous phrase".[40] In seeking to explain the continuing influence of Kantian ideas in shaping discourse about dignity, Knoepffler and O'Malley look to recent world history, and note that a Kantian model of dignity

> necessarily precludes treating human beings instrumentally—as merely means, as opposed to ends in themselves. This is a fundamental contrast to fascist systems, of course, to the socialist systems that existed in Eastern Europe, Asia and elsewhere, and to forms of utilitarian convictions that continue to inform political decisions today. Holding to a [Kantian] principle of human dignity precludes, therefore, the instrumentalization of human beings for economic, social, religious, or political ideals.[41]

According to Knoepffler and O'Malley, then, a reaction against totalitarianism, utilitarianism, and other ideologies within which the individual is "instrumentalized" may explain why dignity has come to be identified so closely with Kantian ethics and its ideals of *non*-instrumentalization, autonomous subjecthood, individual self-determination and so on. Nevertheless, they recognize that developing an understanding of dignity based on too specific an experience of its violation can be counter-productive, and caution that focusing too intently on one experience, however horrific that experience was (they cite the example of Nazi atrocities, the recent memory of which was such a powerful impetus for the creation of the Universal Declaration of Human Rights), might hamper our ability to recognize other cases of dignity-violation which do not fit the chosen template. As Knoepffler and O'Malley put it, an over-emphasis on the kind of dignity-violation perpetrated by the Nazis might "[screen] us from the dangers to human dignity that fall beyond the scope of what the Nazis did".[42] Similarly, we ought to be wary that any account that ties the idea of dignity too closely to individual self-determination and the capacities for autonomy or rationality runs the twin risks of obscuring types of dignity-violation which do *not* involve restrictions of individual freedom, or

[38] Rütsche (2010).

[39] Ibid.

[40] Andorno (2010) ("[La dignité] exprime une exigence de non-instrumentalisation de l'être humain, en rappelant que chaque homme doit être traité comme une fin en soi et jamais simplement comme un moyen, pour employer la célèbre expression kantienne").

[41] Knoepffler and O'Malley (2010).

[42] Ibid.

offences against human beings' autonomy or their rationality, and of being unable to frame and justify adequate responses to the latter.

It may be easy to understand why the idea of dignity has received a Kantian spin; however, there is nothing inevitable about the tendency to understand dignity as a "liberal" value. Indeed, there are good reasons to resist it. Feldman points to one when he warns against the assumption "that the idea of dignity is inextricably linked to a liberal-individualist view of human beings as people whose life-choices deserve respect" on the grounds that on this understanding, dignity as a *legal* value could become a "two-edged sword" in that it may invite judgments about which life-choices are not compatible with dignity, leading to state restriction of such choices.[43]

There are two other, related problems for broadly Kantian accounts of dignity. One is the body of work across a range of disciplines (but particularly, for present purposes, in ethical and legal literatures) devoted to critiquing and deconstructing the "liberal subject". The ideal of a stable, bounded, self-sovereign subject distinguished by his capacity for autonomy and rationality ("his" because the paradigm of the bounded, sovereign subject is the adult male with full capacity[44]) has been problematized repeatedly by critical theorists. The conceptualization of the human subject as an essentially abstract being consisting primarily in mental/intellectual capacities begins in earnest with Descartes' view of the essence of the self as a "thinking thing" that is "distinct from [the] body, and can exist without it",[45] and Locke's understanding of self as thinking mind *and* physical body,[46] but with mind (or soul) the clear site of personal identity (encapsulated in his famous description of the person as a "thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing in different times and places"[47]). Later, in placing a subject characterized by autonomous will and practical reason at the centre of his *ethical* theory, Kant made the autonomous subject the seat of *moral* responsibility and the proper object of moral regard. This image of man as moral self-governor chimed with emerging Enlightenment notions of individual freedom, egalitarianism and the Rights of Man, and, slightly later on, with positivist, scientific approaches to the natural world and to law, so that it flourished through the nineteenth century and persists in more recent liberal thought.[48]

Abstract, intellectual conceptions of subjecthood have been challenged, first, on the basis that they are descriptively flawed. For one thing, it is claimed that they presuppose a false dualism between mind and body, and tend to ignore or play down the fundamental and inescapable nature of humans as corporeal, organic beings. They have also been criticized by those who argue that often, our proper moral

[43] Feldman (1999).

[44] See, e.g., Naffine (2004).

[45] Descartes in ed. M. Moriarty (2008).

[46] Locke in ed. P. Phemister (2008). Grear observes that "the body does play a role, even in such an approach, through its perceptual mechanisms. But these bodily perceptual mechanisms merely serve rationality" Grear (2010).

[47] Locke (2008).

[48] See, e.g., Rawls (1999).

responses are provoked not by cognitive faculties (such as reason), but by our affective attachments and emotional reactions to circumstances.[49] In addition, autonomy-based conceptions of subjecthood can be problematic in the normative sense, if they posit the capacities for autonomy, rationality and self-direction as the site not only of human beings' moral agency, but their moral worth/status. There is, of course, a significant difference between observing that my abilities to reason and to act autonomously are critical to my moral agency, and making the more controversial claim that *unless* I possess the capacities for reason and autonomous action (unless I am a moral agent, in other words), I cannot matter morally, or cannot matter morally as much as someone else who does possess these capacities. This is broadly the kind of claim embodied in the ethical philosophies of contemporary personhood theorists, who deny full moral subjecthood and full moral status to beings who do not meet the criteria for "full personhood" (which almost invariably consist of psychological properties and intellectual capacities).[50]

This latter point, taken together with the prevalence of the tendency to use "human dignity" to mean "intrinsic worth", raises a dilemma. If we adopt an account of dignity in which, following Kant, dignity equals intrinsic worth ("no price"), *and* if we source that intrinsic worth in broadly Kantian notions of autonomy and rational self-determination, then we find ourselves drawn inexorably toward the conclusion that, far from being able to understand dignity as "an intrinsic element of being human"[51] or as signifying the "intrinsic value of each human life",[52] the kind of intrinsic worth denoted by "human dignity" must be confined only to those who possess the relevant capacities or properties. Such a conclusion, however, would threaten to undermine one of the key functions of dignity in contemporary legal and ethical discourse: its role as the animating value behind human rights systems. If the value expressed by dignity is not universal, how can dignity ground universal rights?

In practice, unlike personhood theorists, those writers who use "dignity" to refer to the intrinsic worth of human beings *do* tend also to emphasize the universality of dignity, and to claim that all human beings are equal in dignity (which is sometimes also described as inalienable).[53] When they combine these claims with a broadly Kantian account of the source of dignity and its justification, and thus with references to non-instrumentalization, autonomous wills, and self-determination, however, an uncomfortable contradiction is produced: if human dignity does indeed have its source in these values, then given that autonomy, rationality, and the capacity to self-determine are not universally present in all human beings, and given

[49] See, e.g., Williams (1985).

[50] For suggestions regarding the cognitive capacities relevant to personhood, see e.g., Dennett (1997); Perring (1997); and Locke (1990). For examples of ethical theories that ascribe full moral status ("personhood") on the basis of the possession of cognitive capacities, see e.g., Singer (1993) ("persons" as beings who possess the capacity to hold preferences) and Harris (1985) ("persons" as beings capable of valuing their own lives).

[51] Haugen (2010).

[52] Hale (2009), citing Dworkin, *Is democracy possible here?: principles for a new political debate* (Princeton University Press, 2006).

[53] Nordenfelt describes *Menschenwürde* in this way.

that those human beings who do possess these capacities do not possess them equally, why should (indeed, how *can*) we regard human beings as being equal in dignity, or regard dignity as being universal?[54]

A related, but separate problem for broadly Kantian accounts of dignity is that, if they align dignity *too* strongly with values like autonomy, rationality, or the ability to self-govern, they risk conflating dignity with these already-existing values, making it difficult to argue that there is anything distinctive about dignity, any unique normative space where dignity can do work not already done by other values. If dignity becomes a synonym for other values in this way, then it is no more than a "rallying cry",[55] an idea that has purely rhetorical force, so that critics such as Macklin[56] and Pinker[57] are correct when they argue that the idea of dignity expresses nothing which is not already (and more clearly) expressed in other ethical principles.

My contention here is that dignity *can* do distinctive normative work, and that we must move away from describing and justifying it in Kantian terms, and toward an account based upon the interconnectedness between dignity and vulnerability, in order to reveal the nature of the distinctive normative contribution that dignity can make. Such a shift would obviously neutralize those criticisms of dignity which attack its lack of distinctiveness, and specifically, its reducibility to the concepts of autonomy, personhood, and so on. It should be noted here, however, that the problem of conflation is not a danger only for Kantian approaches to dignity; clearly, any model, Kantian or otherwise, that seeks to establish dignity as a distinctive value must avoid describing or justifying dignity in such a way that dignity becomes indistinguishable from or interchangeable with other values or ideas. As alternative approaches to dignity are developed and defended, they will need to avoid conflating dignity, probably not with autonomy or rationality (since alternative approaches will, in order to be alternative, presumably focus their attention away from these), but with whatever values these emerging approaches prioritize besides dignity itself; this is a risk that the present analysis, as much as any other, must avoid.

Vulnerability

I have said that I will seek to understand dignity better by considering its relationship with the idea of vulnerability, and in order to begin this process, it is necessary first to clarify what I mean by "vulnerability". Vulnerability can refer either to a "universal expression of the human condition",[58] or to the condition of

[54] Nordenfelt's account of the dignity of "*Menschenwürde*", discussed briefly above, describes an attempt to posit a universal dignity, and to justify it by reference to non-universal properties: we are supposed to have this kind of dignity, Nordenfelt says, "just because we are humans", and we have it "to the same degree, i.e. we are equal with respect to this kind of dignity". Nevertheless, Nordenfelt observes that "the common modern answer" to the question of the source of *Menschenwürde* is to ground it in "capacities crucial to humans" such as self-consciousness; the ability to reason; and the freedom to decide on one's own way of life.

[55] Mattson and Clark (2011).

[56] Macklin (2003).

[57] Pinker (2008).

[58] Rendtorff (2002).

particular "vulnerable populations". "Vulnerable populations" approaches have been criticized on several grounds. Luna cautions against oversimplification, arguing that "[w]hen vulnerability is used as a fixed label on a particular subpopulation, it suggests a simplistic answer to a complex problem,"[59] and Levine et al. warn that "the concept of vulnerability stereotypes whole categories of individuals without distinguishing between individuals in the group".[60] Brown notes criticisms of vulnerability as "paternalistic and oppressive", as a "mechanism of widening social control", as "patronising" and as having a "stigmatising or exclusive effect".[61] Finally, Luna notes the concern of some commentators that "a growing overpopulation of 'new vulnerable groups'" might lead to the situation where everyone, or nearly everyone, falls into a vulnerable group, so that the concept of vulnerability itself becomes "too nebulous to be meaningful".[62]

These criticisms all relate to uses of vulnerability that label identifiable groups within society as "vulnerable" (the sense in which someone might speak of "the vulnerable" as opposed to the rest of us). In some legal and ethical contexts, it probably *is* necessary to focus specifically on the particular, or heightened, vulnerability of identifiable populations or groups.[63] The vulnerability I am concerned with here, however, is *universal* vulnerability, and the sense in which, as Martha Fineman has observed, vulnerability is the norm, rather than the exception, in human experience.[64] The concern that "if everyone is vulnerable, vulnerability cannot be meaningful" may be a reasonable one in the context of a population-based approach and a "vulnerability-reducing agenda"[65]; indeed, such a context may even provide incentives for individuals to perceive and represent themselves as vulnerable in order to qualify for and benefit from enhanced protections or allowances, which in turn could result in a "competitive vulnerability" wherein different groups and their advocates strive to secure the best "deals". In that context, it may even become difficult to ascertain when "vulnerability" begins to become a form of social capital—a source of power, or advantage. In that context, accordingly, fear about the concept losing its meaning through over-extension might be well-founded. The sense of vulnerability I wish to focus on, however, does not become less meaningful by virtue of its extensive—indeed, its universal—reach; on the contrary, I hope to show that its universality is precisely what makes it capable of grounding moral obligations, and specifically, those relating to the value of human dignity.

What, then, might be meant by vulnerability in the "universal sense"? In its negative aspect, vulnerability speaks to our universal capacity for suffering, in two ways. First, I am vulnerable because I depend upon the co-operation of others (including, importantly, the State) for the pursuit and achievement of various ends, including those ends which relate to the satisfaction of important needs. Second, I

[59] Luna (2009).

[60] Levine et al. (2004).

[61] Brown (2011).

[62] Luna (2009), quoting Levine et al. (2004).

[63] See, e.g., the essays collected in Mégret et al. (2009).

[64] See, e.g., Fineman (2011).

[65] Rendtorff (2002).

am vulnerable because I am penetrable; I am permanently open and exposed to hurts and harms of various kinds. These two sources of vulnerability—reliance on others for co-operation, and openness to positive harm—are simply two means by which I might come to experience suffering; thus, it is suffering, and the capacity for suffering, that is definitive of this negative aspect of vulnerability. The extent and intensity of my vulnerability at a particular moment, or with regard to a particular need or harm, may be affected by my age, my sex, my degree of capacity, my health, my social status, my wealth, and a variety of other factors. Nevertheless, even the *least* vulnerable human being is still fundamentally, and inescapably, vulnerable in the negative sense, since none of us can meet her basic needs and satisfy her core desires without the co-operation of others; and even the most capable adult is vulnerable to hurt and harm, both physical and emotional.

However, as Grear notes, "vulnerability can be taken further than this, and conceptualised as both a source and expression of radical interrelationaility."[66] Travelling beyond vulnerability's negative associations, "we can conceive of vulnerability as a quintessential embodied openness to each other and to the world".[67] Crucially, she writes, vulnerability is "a key incident of human embodiment",[68] and the openness of our bodies exists not only in the negative sense of dependence and penetrability—sources of pain and suffering—but also in a positive "affectability", an openness to all that is welcome and embraceable and dynamic about our interconnectedness with, and our ability to interface with, other beings and our wider environment. In Grear's words:

> The openness – the ethesiological nature – of the living body, once fully appreciated, might provide the foundation for a vulnerability thesis that allows us to *embrace* vulnerability as a dynamic interrelational concept highly suggestive of richer human bonds not only with human beings, but of humans with the world itself.[69]

This leads her to conclude that "While it is certain that vulnerability is the root of our capacity for suffering…vulnerability is also the source of multiple forms of wellbeing and joy, and the basis of empathy and intimacy".[70] The claim I will be making later—that vulnerability is fundamental to human dignity, and is positively valued whenever we value dignity—will apply to *both* the negative and the positive senses of vulnerability.

The Place of Vulnerability in Ethics

The idea that vulnerability is fundamental to ethics is not new, of course. In an important sense, vulnerability to harm and suffering is the starting point of every

[66] Grear (2010).

[67] Ibid.

[68] Ibid.

[69] Ibid.

[70] Ibid.

mainstream ethical theory. Such theories all seem to proceed upon some version of the idea that moral agents are required, ethically, to respond to the vulnerability of their fellow human beings (and often also to that of non-humans) by positively protecting/assisting them, and/or by refraining from exploiting them or otherwise causing them harm. We see a concern with harm/suffering, and therefore with vulnerability, in many of the duties prescribed by deontological ethics; in the concern to maximize happiness in classical utilitarianism, and in Mill's harm principle; in the relationality and interdependence presupposed by ethics of care and empathy; in the principles of beneficence and non-maleficence in applied ethics; and so on.

All of this simply notices, however, that many ethical theories *are* motivated by responding to vulnerability. Is an ethical theory possible, though, in which responding to vulnerability is not a concern? Some writers have claimed, or implied, a *necessary* connection between vulnerability and ethics. Solbakk, for example, regards "respect for vulnerability" as "the foundation of *all* ethics."[71] Shildrick, writes that "it is vulnerability itself, of the one and of the other, and the responsibility that it engenders in the one and for the other, that is the provocation of ethical subjectivity."[72] It is vulnerability, in other words—our own, and that of others—that "provokes" us to become ethical beings, capable of ethical responses. The clear inference here is that in the absence of vulnerability, there would (could) be no ethics.

Martha Nussbaum, reflecting on an argument by Claudia Card (Card 1998) about what Stoicism reveals of the relationship between vulnerability and morality, summarizes: "[imagine] a Stoic life in which one succeeds in rendering oneself invulnerable to the blows of fortune, secure in the dignity of one's inalienable rational nature. We soon discover, [Card] argues, that such lives lack dimensions that we usually put at the heart of a picture of morality."[73] Card's argument, which Nussbaum approves, appears to be that beings who have minimized their vulnerability to the vicissitudes of fortune to the extent that the Stoics have live diminished moral lives because of this. Nussbaum asks: "Will Stoics even refrain from cruelty themselves, once they understand that what they do is no burden to the virtuous [i.e. those who have similarly minimized their attachments, and accordingly their vulnerability]?"[74] All of this seems to treat the shared experience of vulnerability as an essential prerequisite for interpersonal ethics. Nussbaum makes this even more explicit when she says that "moral excellence is about taking risks to protect human vulnerability: if vulnerability is denied, then the traditional virtues lose their point."[75] Rendtorff and Kemp also treat vulnerability as a precondition of ethics when they write that vulnerability "expresses the finitude and fragility of life which…grounds the possibility and necessity for all morality."[76] Perhaps the most

[71] Solbakk (2011) (emphasis in original).

[72] Shildrick (2002).

[73] Nussbaum (1998).

[74] Ibid.

[75] Ibid.

[76] Rendtorff and Kemp (2000).

efficient summation, however, is that of Brownsword, who remarks that "one condition of moral community is that members are vulnerable, that they have interests that are capable of being harmed."[77]

There is clear support, then, for the idea of a fundamental connection between vulnerability and ethics *per se*, and thus for the view that *all* ethical values and principles can be characterized as responses to vulnerability. The importance of this for the present argument is that it will not be enough, if dignity is to be distinguished from other ethical values, to claim simply that dignity is a response to vulnerability. As has been seen, there are those who would claim that this is true of all ethical principles. It is not essential to my argument that this claim be vindicated or refuted. Certainly, if the idea of a *necessary* connection between vulnerability and ethics could successfully be undermined, it would mean that simply establishing a connection between dignity and vulnerability might suffice to render dignity distinctive, so that my job in this paper may be easier. As it is, given the possibility that all of ethics is about responding to vulnerability, it becomes necessary to defend the distinctiveness of dignity by claiming for it a *unique* type of connection with vulnerability.

Vulnerability and Dignity I: George Harris and "benign breakdown"

Notwithstanding what has just been said about the possibility that vulnerability is at the heart of all ethics, nevertheless the relationship between dignity and vulnerability has only begun to be theorized in the academic literature relatively recently. In researching this paper I could find only one monograph whose central concern was the relationship between dignity and vulnerability.[78] Beyleveld and Brownsword's *Human Dignity in Bioethics and Biolaw*[79] contains an illuminating discussion of the relationship, but although this forms a key part of the authors' argument, it does not occupy a large proportion of the volume. With the distinguished exception of Beyleveld and Brownsword, the emerging approach in bioethics (bioethical literature being by far the richest seam of commentary treating dignity and vulnerability together) seems to be a tendency to treat "vulnerability" or "respect for vulnerability" as a principle in its own right, alongside the "separate" principle of "respect for human dignity". This is the approach taken by the Northern European movement which attempts to re-draw the "four principles" approach to bioethics to include "vulnerability" and "dignity" as key ethical principles.[80] Thus, the role of vulnerability as *internal to* the idea of dignity remains largely unexplored, the two above exceptions apart.

The most extended philosophical treatment of the connection between the ideas of vulnerability and dignity is that undertaken by Harris.[81] His central argument closely resembles that of Card & Nussbaum, and Harris uses same example of the

[77] Brownsword (2010).

[78] Harris (1997).

[79] Beyleveld and Brownsword (2001).

[80] See, e.g., Rendtorff (2002).

[81] Harris (1997).

Stoics—whose influence he sees plainly in Christian and Kantian approaches to dignity—to demonstrate the crucial role of vulnerability in what it is that we are seeking to value when we invoke dignity. The chief difference is that, where Card and Nussbaum are concerned with the connection between vulnerability and the moral life generally, Harris claims to be concerned with how vulnerability is fundamental to, and *part of what we value about*, dignity in particular.

The "negative" aim of Harris's project is to "break the Kantian monopoly on the concept of dignity by demonstrating that dignity is not what Kantians would have us believe."[82] For Harris, "reason…is not the sole bearer of our dignity, as Kant would have it",[83] since "our dignity-conferring qualities—qualities that are the objects of our sense of respect—are not confined to our rational capacities".[84] Instead, he argues, "our concept of human dignity involves the notion of *vulnerability* in ways for which the Kantians cannot allow".[85] The Kantians and Stoics, according to Harris, envisage dignity in terms of *in*vulnerability, and "deny any connection between vulnerability and good character".[86] As Badhwar has put it:

> Kant makes us God-like in our invulnerability, but, Harris argues, there is nothing either admirable or dignified about *God"s* invulnerability; dignity and agency imply the ability to face difficult circumstances. In particular, dignity implies an agent who attempts to live a good life and is willing to face difficulties that threaten his categorical commitments, commitments that define his character and integrity.[87]

A central plank of Harris's thesis, then, is that there is "a kind of fragility that is good and admirable".[88] There are some kinds of fragility—physical and psychological/moral—that we seek, quite rightly, to avoid. Harris acknowledges that a lack of courage, for example, may be evidence either of a vice, or of the absence of virtue (unfortunately he offers no example here), and Card (borrowing from Nussbaum) illustrates how it often makes sense for us to render ourselves less vulnerable: immunization against communicable disease, installation of smoke alarms, and checking car brakes are the examples she provides.[89] Ultimately for Harris, however, vulnerability in general is an ethically-important phenomenon not just because it make us weak and needy, attracting the ethical obligations of others, their aid and care; but because, in an important sense, vulnerability makes us *good*, or at the very least, it raises the possibility of the good and the admirable.[90] According to Harris, "whatever a perfectly admirable human character would

[82] Cunningham (2000).

[83] Harris (1997).

[84] Ibid.

[85] Ibid., emphasis added.

[86] Cunningham (2000).

[87] Badhwar (2001).

[88] Harris (1997).

[89] Card (1998).

[90] Cf. Grear's discussion of vulnerability as a positive openness, *supra* 11–12.

involve, it would not involve unlimited integral strength"[91]; on the contrary, "we admire people and afford them dignity *for their vulnerability*".[92] Using the example of grief, he continues: "Vulnerability to grief is a function of having loving qualities, and we admire people for being so vulnerable. The Kantian view is that we admire people for coping with the vulnerability well, not for the vulnerability itself. But connectedness in the form of personal love…is dignity conferring in its own right".[93]

So far, so good, perhaps—but Harris's analysis becomes difficult insofar as it relies on the concept of what he calls "benign breakdown". Benign breakdown, which Harris contrasts with non-benign types of breakdown, occurs when "a person breaks down because he or she possesses admirable character, not for the lack of it".[94] Harris defines breakdown as an event that renders the person "dysfunctional as an agent" and might manifest as "a loss in the will to live, deep clinical depression, insanity, hysteria, debilitating shame [or] pervasive self-deception".[95] His point about benign breakdown consists of two claims: (i) "there are admirable character traits that can be the source of a person's self-destruction",[96] and (ii) "the prevention of such self-destruction by the removal of the character trait would be a greater damage to the person's character than the self-destruction".[97]

Harris may be correct when he says that dignity is not what Kantian accounts would have us believe, and he begins to get at something of vital importance when he hints that dignity can be understood, instead, as being concerned with a positive valuing of vulnerability. When he seems to claim that it is better, in terms of dignity, to suffer a complete breakdown than to lose an admirable characteristic, however, it feels like a claim too far. Even among ethicists who are happy to re-imagine dignity away from Kantian influence, and who may wish to maintain that dignity can persist even in the midst of extreme suffering, there must be few who could regard "insanity, hysteria, debilitating shame, [and] pervasive self-deception" as being, in any sense, *evidence* of dignity. Moreover, once a "benign breakdown" has occurred its effects are surely unpredictable, meaning that it is impossible to say what the possible impact on the *future* dignity of the person will be. Harris tells us that "we *need not* imagine the breakdown as permanent, but it must be severe and somewhat protracted".[98] Thus, breakdown involves a person becoming severely incapacitated and remaining so for (at the very least) some considerable time. In light of this, even if we accept that the breakdown is in itself evidence that the person affected by it had dignity in one sense, the same event, at the same time, must surely have significantly reduced or removed dignity in all of senses *not* associated with the particular character trait which made the person in question so vulnerable. Dignity

[91] Harris (1997).

[92] Ibid., emphasis added.

[93] Ibid.

[94] Ibid.

[95] Ibid.

[96] Ibid.

[97] Ibid.

[98] Ibid., emphasis added.

of conduct, for instance, may well be reduced or lost (even those of us who would not deny dignity in the sense of "intrinsic worth" to those who are insane or hysterical would be less inclined to regard the *behaviour* of the insane person or the hysteric as "dignified"). Harris himself *seems* to treat "dignity" as referring mainly to a virtue, or excellence of character.[99] Following breakdown, however, and its thorough disruption of the integrity of the character of the individual, her ability to pursue and develop a dignified character is also likely to suffer, so that any sense of dignity-as-virtue/the "dignity of character", too, is likely to be seriously undermined following breakdown.

Harris's insistence that "our vulnerability to integral breakdown is essential to what gives us our dignity" must count as a significant problem with his thesis, not only because of the likelihood that such breakdown must do more damage than good to dignity, but also because he never really explains clearly how the connection between dignity and benign breakdown is supposed to work. What is more, Harris never defines what he means by "dignity", and since dignity has so many possible uses, this lack of clarity undermines the whole thesis: unless we know to what Harris is referring when he mentions "dignity", how can we understand or evaluate the supposed connection between dignity and vulnerability, or dignity and "benign breakdown"? In fact, as noted already, Harris seems to treat dignity as a virtue, a particular type of excellence of character; but he also seems to mean "intrinsic worth", as evident, for example, in statements such as "we have a fairly vague concept of human worth and dignity",[100] and references to "the dignity and worth of persons".[101] In failing to be clear in this regard, in failing to show *how* it is that vulnerability is crucial to dignity (understood either as excellent/virtuous character *or* as intrinsic worth), and in relying upon the extreme circumstance of integral breakdown as his key evidence of the supposed relationship between the two, Harris ultimately fails to establish how dignity and vulnerability are connected. Nevertheless, I think glimpses of a more promising account can be discerned in Harris's thesis, which, taken alongside other, similar insights, might enable us to begin to sketch the connection in another way.

Vulnerability and Dignity II: A Balancing Act

At the beginning of his inquiry, Harris alludes briefly to what he calls "an alternative strategy", which is

> to argue that there are admirable character traits that can be the source of making persons less strong than they could be and that the prevention of this kind of weakness by the removal of such traits would be a greater damage to their character than the vulnerability itself.[102]

[99] Although he stops short of defining precisely what he means by "dignity" (see below).

[100] Harris (1997).

[101] Ibid.

[102] Ibid.

In other words, to argue, without the problematic dependence on the concept of "benign breakdown", simply that some of the characteristics that make us "admirable" (and, on Harris's account, "dignified") also make us vulnerable. Insofar as it does not make dignity depend on the idea of "breakdown", this alternative strategy seems preferable; however Harris does not pursue it, so that the remainder of his thesis does indeed seem to hinge on the dubious notion of breakdown as central to dignity. In the absence of any elaboration, it is impossible to judge how successful the "alternative strategy" might have been; certainly, as noted earlier, the general connection between vulnerability and morality has been explored extensively by other philosophers, notably Nussbaum,[103] however (a) these previous examinations have not attended specifically to the idea of dignity, and (b) Nussbaum for one has made clear that her purpose is to acknowledge vulnerability as "a necessary background condition of certain genuine human goods", but not to "endorse the romantic position that vulnerability and fragility are to be prized in their own right"[104]—meaning that an analysis which *does* seek positively to value these things could be distinctive.

My contention now will be that the "organizing idea" which animates and unites the various meanings of dignity across the range of contexts in which that term is used is the idea of *balance*, and in particular, the idea of an equilibrium between the "finite" and "transcendent" aspects of human existence. Further, I hope to show that, if the value of dignity is indeed all about valuing this kind of equilibrium, then it follows that dignity *positively values* our fragility, our finitude—our human vulnerability. Such a positive valuing of vulnerability would distinguish dignity from other ethical values and principles, which value entities, characters, and conduct *in spite of* or *regardless of* their vulnerability, rather than positively because of it.

It has been described as the "dichotomy of [man's] existence" that he is "part of nature, subject to her physical laws and unable to change them, yet he transcends nature…",[105] a duality that Nussbaum describes when she observes that "[h]uman beings are vulnerable animals, naked, needy, and weak. They are threatened both by an indifferent nature and by their own hostilities. They need food, drink, shelter, medicine, love, care, protection from violence. But they also aspire, speak, and create".[106]

Rendtorff connects this duality with the principle he calls "respect for vulnerability", saying that "[r]espect for vulnerability must find the right balance between this logic of the struggle for immortality and the finitude of the earthly presence of human suffering".[107] He regards his principle (which is close to what I want to claim as the organizing idea of dignity) as the "foundation of ethics in our time" insofar as it expresses "the destiny of finitude".[108] He does not, however, go

[103] See, e.g., Nussbaum (1986), (1994).

[104] Nussbaum (2001).

[105] Beyleveld and Brownsword (2001), quoting Fromm *The Anatomy of Human Destructiveness* (Jonathan Cape, 1974) at 225–256.

[106] Nussbaum (1998).

[107] Rendtorff (2002).

[108] Ibid.

so far as to connect it to what he regards, after all, as the "separate" ethical principle of dignity; nevertheless, he clearly treats the idea of balancing the finite and transcendent aspects of humanity as being of fundamental ethical importance.

It falls to Beyleveld and Brownsword finally to make the connection between this kind of balancing/equilibrium and the idea of dignity explicit. They express the aspects being balanced slightly differently (though the elements of the earthly and the sublime are still clearly present) when they write that "to have a dignified character is to possess a personality in which fear of personal extinction and hope of immortality are in equilibrium, and…dignified conduct is conduct that exhibits such a personality".[109]

On the one hand, then, human beings are essentially corporeal, mortal, fragile and finite, confined and restricted by the laws of nature and by our own bounded embodiment. "We value ourselves" as Harris remarks, "as natural organisms, as animals, rather than as gods that transcend nature".[110] Yet, *equally* essentially, we are beings who strive for—and achieve—the sublime, the awe-inspiring, and the transcendent. We aspire to be, not just animals, but moral beings: to pursue second-order preferences and desires; to hold ourselves and others to standards of behaviour that surpass those we tolerate from other animals and would settle for from ourselves if we were content to fulfil only the animal side of our nature; and we characteristically hope for immortality, either in the literal sense of "life after death", or in a secular sense through the legacies of our work (art, invention, discovery) and the personal marks we leave on those whose lives have intersected with our own (we wish not to be forgotten). "Our dignity", Harris says, "is in the kind of animals we are".[111]

This is not to posit a dualism of antipathy in which the material/animal is base or ignoble in relation to the transcendent/immortal/sublime. *This* idea of equilibrium—at least as I conceive of it in relation to dignity—regards the finite and transcendent elements of our being, not as oppositional, but as inseparable, and as being of equal importance to our humanity (and thus our "human dignity"). The point, as I see it, is not to minimize the finite and maximize the sublime; the important thing is to hold the two in an appropriate balance. We do not magnify our dignity by fetishizing the transcendent at the expense of the material, or vice versa. Beyleveld and Brownsword's insight that a dignified character requires "fear of personal extinction and hope of immortality…in equilibrium"[112] indicates that it would be just as inconsistent with dignity to have too *little* regard for one's mortality and the material side of oneself—say, to ignore immediate physical needs such as cleanliness or adequate nutrition, or deliberately to risk one's life without justification—as it would be willingly to allow oneself to become so utterly dominated by concern for these material needs that "transcendent" pursuits such as work, friendship, love and art became impossible.

[109] Beyleveld and Brownsword (2001).

[110] Harris (1997).

[111] Ibid.

[112] Beyleveld and Brownsword (2001).

On examination, the idea of "balance" turns out to be inherent in models of dignity as opposite as Kant's and Harris's; the difference is in their views regarding where the balance ought to be struck. According to Harris,

> The Kantian view…is that pathological influences on our character [by which he means influences that render us vulnerable, such as the emotions] must always be under the control of reason…for us to view them as morally tolerable.[113]

Harris, as we have seen, would strike the balance differently, to accommodate those "admirable character traits that can be the source of a person's self-destruction" and which he regards as fundamental to dignity.[114] But we can positively value vulnerability for its role in dignity-creation without going as far as Harris in linking dignity to the possibility of self-destruction: simply by understanding human existence in terms of an existential balancing, or equilibrium, we can appreciate the centrality of vulnerability to what we value when we value dignity. Here, it is helpful to consider some of the main "types" or uses of dignity and how the idea of balancing might apply to them.

First, take the use of dignity to signify the intrinsic worth of all human beings. How can the idea of balancing apply to this use? We might say that, since (as far as we know) humanity alone embodies the union of the finite and the transcendent, and the possibility of achieving balance between them, this dichotomy is apparently what distinguishes human from nonhuman existence and confers a unique kind of value/worth on human existence *per se*, independently of whether or not balance is actually achieved within any particular human life. The species as a whole, on this view, could attract the value of dignity because the finite and the transcendent coexist in humanity exclusively, and individual members of the species might be regarded as having intrinsic worth because their lives are lives in which the finite and the transcendent coincide, so that balance between them becomes a possibility.

There are problems for this explanation, of course: if it is the equilibrium we value, why should we ascribe value to an entire species when the admirable equilibrium is achievable only on an individual, rather than a whole-species level; and why should we ascribe intrinsic value to those individual lives in which the relevant balance is *not* achieved? If it is the equilibrium we admire and value, why should we not limit ourselves to ascribing the value of "dignity" only to those individual lives which *do* achieve it? This is a problem only for those who insist on using dignity in this first sense, to signify universal, intrinsic worth of the kind necessary, for example, to ground universal human rights. Although dignity *is* widely used in this way, including in some of the main human rights documents, in human rights jurisprudence, and in academic commentary, it might be argued that dignity is not the best tool to use for this purpose. The ascription of intrinsic worth to all human beings might perhaps be justified better by appealing to another ethical principle, for example the principle of sanctity-of-life. Sanctity can be understood in

[113] Harris (1997).

[114] Ibid.; notwithstanding that Harris does not explain adequately *why* these traits are fundamental to dignity.

secular terms, and can easily be interpreted as protecting not only life itself, but all of the things currently understood as protected by "human dignity". So it may be that we do not need to rely on dignity as a foundation for universal human rights at all.[115] Nevertheless, it may be that the rhetoric of dignity is by now so far embedded in human rights discourse that, practically speaking, any "organizing idea" we settle on *must* now accommodate the use of dignity to mean the kind of universal, intrinsic worth on which human rights may be based. If so, then we can defend the idea of "dignity as balance" by observing that, while it may be problematic in the ways just mentioned, it is no more so than existing Kantian models which seek to ground this "universal" sense of dignity in non-universal characteristics such as rationality, autonomy, and the capacity to self-determine.[116]

We have seen that the idea of dignity is also commonly invoked to describe types of praiseworthy conduct or behaviour. Here, the idea of balancing is clearly applicable: we conduct ourselves "with dignity" when we behave in a way that exemplifies an appropriate balance between our finitude/materiality and our transcendence/immortality. Take the example of a bereaved relative at a funeral, or in court during the trial of someone accused of her loved one's murder. She bears herself with restraint and self-control, and is moderate in her utterances. She may even express forgiveness, call on her community not to retaliate, or request mercy for the perpetrator. All of this impresses us because we assume her to be suffering great pain and distress, and to be conducting herself in this way *despite* the way she is feeling. In other words, her vulnerability is a necessary and integral part of what we value when we value her dignified conduct. If we knew her to have been unloving or indifferent to the deceased person, or to be a Stoic who had trained herself not to become attached/not to respond emotionally, her conduct would be less admirable (or perhaps not admirable at all).

In yet another type of use discussed above, "dignity" indicates a virtue or excellence of character. Harris seems to use it in this way, as do Beyleveld and Brownsword. Recalling their remark that "to have a dignified character is to possess a personality in which fear of personal extinction and hope of immortality are in equilibrium, and…dignified conduct is conduct that exhibits such a personality",[117] the connection between this type of the use and the one discussed in the previous paragraph is clear. Dignity as an excellence of *character*, it seems, implies a long-standing commitment to dignified *conduct*, a personality *disposed* to such conduct. Consider Nussbaum's description of the character of Hecuba in Euripides' *Trojan Women*:

> Bent with age and suffering, she walks slowly toward the Greek ships. Given as a slave to Odysseus, the Greek whom she most despises, she has endured the sack of Troy, the murder of Priam her husband, the rape and madness of

[115] I hope to assess the respective merits of dignity and sanctity in describing universal intrinsic worth in future work; here, it suffices simply to raise the possibility that, despite its status in human rights discourse, and the extent to which it has captured the imagination of human rights commentators, "dignity" may not in fact be best suited for this purpose.

[116] Discussed *supra*.

[117] Beyleveld and Brownsword (2001).

> Cassandra her daughter, the brutal killing of Astyanax her grandchild, hope for the future of the city. Finally she has seen her beloved city burn….Voice and speech have not abandoned her, nor has reason. Leader of her group of women, she remains a political being. With dignity in her humiliation, nobility in her greatest pain, she denounces Greek brutality and divine indifference…[118]

Nussbaum says that love "[opens] up a great hole of vulnerability in the self",[119] but as Harris tells us, "to survive by being unloving is to survive by lack of virtue".[120] The critical point about dignity of character/dignity as a virtue is not simply that one is disposed "to respect the moral law" as Nordenfeld puts it, but that one is disposed to do so even in the midst of great suffering ("nobility in her greatest pain"). As before, vulnerability is one side of the balance, or equilibrium, and integral to what is being valued/respected when we value "dignified character". Beyleveld and Brownsword emphasise the role of balance in (and the necessity of vulnerability to) this sense of dignity as follows:

> the context for the virtue of dignity is one in which humans, confronted with adversity (whether social or natural) and the limitations of human finitude, seek to balance the will to resist (to overcome) with the will to submit (to accept): in such a context, those whose character is attuned to the virtue of human dignity will find an appropriate balance.[121]

Elsewhere, they express it slightly differently when they say that "a dignified character [is] formed in equipoise between fear of death and hope of God and immortality".[122] The difference between this and the Kantian view of dignity is clear: whereas for Kant dignity involves minimising our vulnerability by attempting to keep that which makes us vulnerable (the "pathological/emotional") under the *governance* of reason, on this view dignity is not about *overcoming* vulnerability and adversity (either by overpowering it with reason or by any other means) but rather, it is about accepting it to a degree, and striking the best balance between the fragile, mortal, material aspects of ourselves and those aspects of us which are unbounded, unconfined and (in some sense) immortal.

Finally, the use of dignity as an ethical principle, or ethical imperative, must be considered. In this type of use, "dignity" is a claim or instruction about how we ought to treat other human beings. Just as dignity requires us to aim for an equilibrium between the material and transcendent aspects of our own nature, we are also required to have regard to these different aspects in our treatment of other people, and to treat them in ways which heed both their material and transcendent needs, without fetishizing or ignoring one or the other. Where the equilibrium lies will doubtless vary according to context and circumstance. Those responsible for attending to a victim in the immediate aftermath of a serious road traffic accident,

[118] Nussbaum (1998).

[119] Ibid.

[120] Harris (1997).

[121] Beyleveld and Brownsword (2001).

[122] Ibid.

for example, are right to be concerned primarily (even *only*) with her obvious material, physical needs. A different balancing will be appropriate in observing the dignity of an elderly patient with dementia, however; her dignified treatment will consist not only in taking care of her material needs—perhaps including washing, dressing, toileting, assisting her participation in activities designed to provide enjoyment and stimulation—but also in caring for more transcendent aspects of her being, for example by performing the aforementioned tasks of personal care with sensitivity, by facilitating visits by family and friends, by helping her reminisce, or by taking care to treat her as an individual and respect and support any residual capacity for choice. The parenting of young children will require a balancing of care for material needs, provision of moral guidance, and support for emerging independence among other things. In all of these cases, the *ethical imperative* of dignity—the principle that requires us to "observe the dignity of others", or to "treat others in a dignified manner"—requires us to strive to achieve the appropriate equilibrium in the circumstances.

When we use dignity in any of the above senses, or in any sense at all, we are valuing, respecting, or admiring something which is an achievement (in the case of conduct or virtue) or a property (in the case of dignity as intrinsic worth and dignity as an ethical imperative) *of vulnerable beings*. When I agree with Beyleveld and Brownsword that only vulnerable beings can have dignity, however, I do not mean simply that vulnerability is a mere "background condition" of the good of dignity (to paraphrase Nussbaum), but that it is a necessary and inescapable part of *what dignity values*.

Conclusion

Fineman reminds us that vulnerability is "universal and constant, inherent in the human condition".[123] As such, it is of the essence of human dignity that it is the dignity of vulnerable beings. As a moral value, what is distinctive about dignity and differentiates it from other "grand" principles of ethics, like autonomy, or sanctity, is not that it responds to the vulnerability of all of us—since all ethical principles and values do that—but that it gives vulnerability a place of honor. My claim here has been that what we value when we invoke "dignity" is a kind of balancing, or equilibrium, which is only valuable, or admirable, *because we are vulnerable*. Moreover, not only is vulnerability a necessary condition without which this kind of good would not be possible; it is *an essential part of the good* of dignity. Other ethical principles respond to vulnerability too, but they value entities and actions either in spite of vulnerability, regardless of it, or to the extent that it is overcome. Dignity, on the other hand, treats vulnerability as a *source* of value. This, I am claiming, is the "organizing idea" of human dignity: that all valid uses of "dignity" reflect a valuing of the sense in which human existence (perhaps uniquely) embodies a union between the fragile/material/finite and the transcendent/sublime/immortal. In valuing us because of, and not in spite of/regardless of our

[123] Fineman (2011).

vulnerability, dignity occupies a unique place in the ethical canon; and once we appreciate this, we can begin to ask what distinctive normative contribution "dignity" might bring to a range of ethical and legal contexts.

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