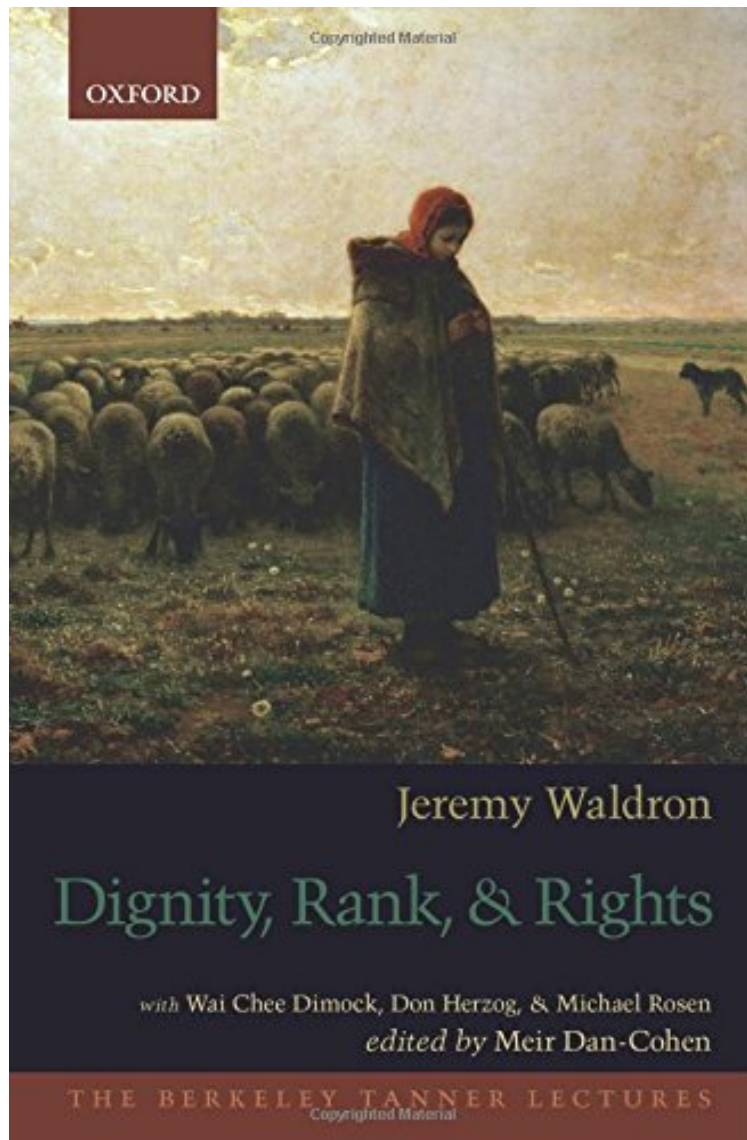


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Dignity, Rank, and Rights (The Berkeley Tanner Lectures)

Jeremy Waldron

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#1022799 in Books Waldron Jeremy 2015-02-01 2015-02-01Original language:EnglishPDF # 1 5.20 x .50 x 7.901, .42 #File Name: 0190235446166 pagesDignity Rank and Rights | File size: 45.Mb

Jeremy Waldron : Dignity, Rank, and Rights (The Berkeley Tanner Lectures) before purchasing it in order to gage whether or not it would be worth my time, and all praised Dignity, Rank, and Rights (The Berkeley Tanner Lectures):

2 of 2 people found the following review helpful. DignifiedBy HHWhat question is an appeal to dignity supposed to answer? In the mid-twentieth century, the question was perhaps: What is the fundamental moral feature of human beings the feature on which all other moral and political considerations depend? Thus, the UN Declaration of Human

Rights appeals to the inherent dignity of all members of the human family as the foundation of freedom, justice, and peace in the world. The first article of the German Grundgesetz (The Basic Law for the Federal Republic of Germany) says: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority." These documents treat human dignity as the moral bedrock on which contemporary legal-political structures are to be built. Dignity is what explains why people have human rights and explains the most basic limits of state authority. In "Dignity, Rank, and Rights", Waldron disagrees with all this. In a bold reversal, Waldron denies that dignity explains or conditions legal and political orders and instead argues that legal and political orders constitute dignity. On this view, the law constructs the dignity of the individual instead of the dignity of the individual existing independently of and prior to the law. Waldron begins his defense of this claim by recovering features of dignity through reflecting on the history of dignity. The period during which dignity is most familiarly represented as a part of daily life is the period of the ascendance of aristocracy as a political order. Reflecting on dignity in this era reveals that dignity is a matter of the "rank or status that a person may occupy in society, display in his bearing and self-presentation, and exhibit in his speech and actions" (p. 28). The members of nobility or royalty who occupied these ranks performed and protected their dignity by making claims against one another and the state, as well as by oppressing commoners. Their status was constituted by patterns of deference owed to them by those of lower ranks, privileges they had in relation to others of the same and higher ranks, claims they had against the state, and finally the public honors they enjoyed. Waldron takes this historical characterization of dignity to reveal not just in what the dignity of the aristocrat consisted but that this dignity was also creature of the law. For the aristocrat made his aristocratic claims on others and had honors bestowed upon him only in virtue of the law. Aristocracy and its concomitant dignity are creatures of a juridical order. So, to understand aristocratic dignity, we must appreciate the role of the law in establishing the aristocracy. If the law is crucial to understanding aristocratic dignity, then we should expect the same for today's dignity. And, indeed, Waldron finds dignity mobilized in moral discourse most prominently in those legal texts that suggest understanding dignity as something outside the law. This is where Waldron makes his most creative dialectical move. Although legal documents like the UN Declaration of Human Rights and the Grundgesetz, among the many other laws out there that use the language of dignity, suggest that dignity is something independent of the law, Waldron argues that we must resist this suggestion. For, just as the status and rank of aristocratic dignity is constituted by aristocratic law, contemporary egalitarian dignity is constituted by contemporary egalitarian law. In today's egalitarian legal orders, all subjects have the same legal rank, the same legal privileges, and the same status. This is also not a low status, but is instead the status of the aristocratic. For example, previously, not all persons could vote or participate in government. That required a status of a certain sort a status denied to people on the basis of race, gender, lack of property ownership and so on. But, today, all persons (of a certain age) have the status such that each has a claim to participation in their own government. There has been a flattening and leveling up of status: not only do all persons have the same status but that status is quite high. In particular, the central feature of egalitarian dignity is the equal standing to make legal claims on each other, the state, and the law itself. Such standing amounts to more than merely the standing to point out that it would be better were something or other to happen, and certainly is more than merely begging for charity or, worse, mercy (p. 51). Rather, the standing one has in virtue of one's dignity is the standing to exercise one's legal authority by issuing directives to others who are, in turn, legally required to answer. This occurs across the law, from tort law and contract law to the heights of constitutional law. In all cases, the plaintiff has the legal status at least to initiate a case and always has the legal responsibility (and the status that implies) to answer legal claims made against her. Waldron writes that a crucial feature of dignity is that "it is the status of someone who can demand to be heard and taken into account; it is the status of someone who issues commands [more] than the status of someone who merely obeys them" (p. 60). This legal capacity of all to engage each other as equals within the law and the legal requirement that all respond to this engagement is, Waldron believes, part of the essence of contemporary dignity. Waldron is at pains to argue that dignity is not a matter of mere formal equality. For, we could all be equally disempowered by the law. What is striking, Waldron argues, is that each of us has quite high legal status. He goes so far as to claim that contemporary egalitarian dignity invests each person with the status of a noble person with respect to the law. That is, each person has the legal status once reserved to nobility to use the law in her own interests and to defend herself (and, of course, it is now equally open to us all to try to abuse the law for gain). This may be hyperbole. It is hard to see how a status that depends upon the capacity to denigrate others, as the status of the nobility did, can be recapitulated in conditions of total formal equality. But, the spirit of Waldron's point remains: many of the legal prerogatives of nobility are now extended to all persons, and all in the name of dignity. One might object that this picture of dignity is ridiculous given the massive abuse states heap upon individuals. How can a legal order constitute dignity when the law is just as often used for demeaning, silencing, and even torturing people? Waldron must address this issue without moving dignity outside the law, i.e. without making it a condition on the content of law instead of a creation of the law. Following Lon Fuller and Ronald Dworkin, Waldron argues that the law is more than just a collection of rules. Rather it is an institutionalized normative order and the commitment to dignity within that normative order "is evinced in our legal practices and institutions [and] may be thought of as immanently present even though we sometimes fall short of it" (p. 66). The law, in constituting dignity, also

constitutes its own grounds for critique: We evaluate law morally using laws very own dignitarian resources" (p. 67). Collected in the book, one also finds three excellent comments on Waldron's lecture, one by a political theorist, one by a literature professor, and one by a law professor. Each comment is insightful and probing. Michael Rosens discussion, erudite and lively, challenges Waldron's secularization of dignity, finding the roots of the concept, especially as presently constituted in the global legal order, in the Catholic tradition. Wai-Chee Dimock offers a gripping interpretive challenge to Waldron's account of dignity through a reading of Herman Melville's *Moby Dick*. Finally, Don Herzog's comments primarily invite Waldron to be careful not to allow the worst elements of the old aristocracy into his account of egalitarian dignity. Waldron's response to Herzog is illuminating. Waldron argues that Herzog may be too quick to dismiss certain aristocratic features of dignity. We should hope, Waldron argues, that people would be quick to defend themselves in the face of affronts to their dignity. In fact, Waldron argues, "one has a responsibility to maintain one's dignity to be, as it were, a faithful steward of human dignity in one's person and many of the rights associated with dignity are tinged with this responsibility" (p. 140). Complimentary to this, "there will be some haughtiness horizontal haughtiness and formality and even ritual in the way dignified people bear themselves we will expect [dignity] to be associated with a furious sense of one's own rights and a willingness to stand up for them as part of what it means to stand up for what is best and most important to oneself" (p. 145). This picture of the dignified protester, perhaps claiming her right to free speech and challenging the legal authority of the state to stop her or even to crush her, is one of the most enduring contemporary images of egalitarian dignity. In particular, it calls to mind some of the best moments of the past century, such as when African-American sanitation workers, on strike in Memphis in 1968, peacefully and bravely marched through angry White streets carrying signs with the message, "I am a man".

Writers on human dignity roughly divide between those who stress the social origins of this concept and its role in marking rank and hierarchy, and those who follow Kant in grounding dignity in an abstract and idealized philosophical conception of human beings. In these lectures, Jeremy Waldron contrives to combine attractive features of both strands. In the first lecture, Waldron presents a conception of dignity that preserves its ancient association with rank and station, thus allowing him to tap rich historical resources while avoiding what many perceive as the excessive abstraction and dubious metaphysics of the Kantian strand. At the same time he argues for a conception of human dignity that amounts to a generalization of high status across all human beings, and so attains the appealing universality of the Kantian position. The second lecture focuses particularly on the importance of dignity - understood in this way - as a status defining persons' relation to law: their presentation as persons capable of self-applying the law, capable of presenting and arguing a point of view, and capable of responding to law's demands without brute coercion. Together the two lectures illuminate the relation between dignity conceived as the ground of rights and dignity conceived as the content of rights; they also illuminate important ideas about dignity as noble bearing and dignity as the subject of a right against degrading treatment; and they help us understand the sense in which dignity is better conceived as a status than as a kind of value.

"Dignity, Rank, and Rights is an unusual, and unusually refreshing, exercise in legal philosophy... his account of dignity as a legal status is meticulously researched, engages with a broad collection of thinkers and theories, and offers real insights into dignity's legal dimensions." -Michigan Law "Waldron's take on human dignity is novel. It contains a bold inversion of almost all philosophical treatments of dignity as something like a metaphysical ground for moral claims. Waldron eschews this approach by understanding dignity as a substantive and structural feature of the way that legal orders establish rank and status. This bold approach allows Waldron to move forward a much-needed philosophical conversation about this deeply interesting and important concept." -Analysis
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