A CONCEPT OF DIGNITY*

*Meir Dan-Cohen***

The concept of dignity I discuss has two main historical sources: the religious, biblical idea of humanity's resemblance to God, and the philosophical, Kantian view of human autonomy. I offer an interpretation of the two sources that highlights a common ground, and then point to some aberrations that may result from confounding theological or metaphysical issues with the concept of dignity and its normative implications.

I. WHAT DIGNITY IS

My assigned topic for this symposium is *the concept of dignity*, but I doubt that such a single concept exists. Instead, there appear to be a number of concepts of dignity in circulation, too dissimilar even to be thought of as different conceptions of one concept. Take, for example, a recent article, provocatively entitled *The Stupidity of Dignity*, in which Stephen Pinker, a well-known American writer, laments the ascendance of dignity in public discourse.[1] Pinker lists some unattractive features of this concept. First, he claims,

> ascriptions of dignity vary radically with the time, place, and beholder. In olden days, a glimpse of stocking was looked on as something shocking. We chuckle at ... the Brahmins and patriarchs of countless societies who consider it beneath their dignity to pick up a dish or play with a child....

Nor is dignity as important as it is made out to be by its proponents, since "every one of us voluntarily and repeatedly relinquishes dignity for other goods in life. Getting out of a small car is undignified. Having sex is undignified. ... Most pointedly, modern medicine is a gantlet of indignities." Finally, he argues, dignity can be harmful: "Every sashed and be-medaled despot reviewing his troops from a lofty

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** Milo Reese Robbins Chair in Legal Ethics, University of California at Berkeley School of Law.

[1] Stephen Pinker, *The Stupidity of Dignity: Conservative Bioethics' Latest, Most Dangerous Ploy*, THE NEW REPUBLIC (May 28, 2008, 12:00 AM), http://www.tnr.com/article/the-stupidity-dignity. The subsequent quotes are from this article.

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platform seeks to command respect through ostentatious displays of dignity. Political and religious repressions are often rationalized as a defense of the dignity of a state, leader, or creed."

The features that Pinker associates with dignity, and even more so the examples he gives, are indeed unappealing. Since I do not share Pinker's misgivings about dignity, it would seem that I must disagree with his characterization and reject his examples. But, as a matter of fact, no such disagreement need exist. As it turns out, Pinker is talking about what he describes as a *psychological* concept of dignity:

> Dignity is a phenomenon of human perception. ... [C]ertain features in another human being trigger ascriptions of worth. These features include signs of composure, cleanliness, maturity, attractiveness, and control of the body. The perception of dignity in turn elicits a response in the perceiver. Just as the smell of baking bread triggers a desire to eat it, and the sight of a baby's face triggers a desire to protect it, the appearance of dignity triggers a desire to esteem and respect the dignified person.

Pinker juxtaposes this psychological notion of dignity with the distinctly moral ideal of respect for persons. However, it is precisely the latter notion that many others identify with the concept of dignity. To assume that there is just one concept here, and then call it stupid or wise, is a trap we should be careful to avoid.[2] I will accordingly take the liberty of replacing the definite article in my assigned topic with the indefinite article and speak not about *the* concept of dignity but about *a* concept of dignity. It stands for an affirmation of the equal, or perhaps rather unique, and supreme moral worth of every human being, an affirmation designed to play a foundational role in morality and by extension in law as well.

II. TWO SOURCES

The concept of dignity on which I focus has two well-known sources, a theological one and a philosophical one: respectively, the uplifting biblical idea of *imago Dei* or, in the original Hebrew, *b'tzelem Elohim*, claiming that human beings were created in the image of God, and the writings of Immanuel Kant. However, tracing the concept of dignity to these two sources raises some serious difficulties. One concerns the

[2] *See* Remy Debes, *Dignity's Gauntlet*, 23 PHILOSOPHICAL PERSPECTIVES 45 (2009). Debes canvasses a range of different conceptions of dignity and concludes that "there is no single concept of 'dignity.'" *Id.* at 61. He nonetheless maintains that "a conscientious *metatheory* about what dignity is, might remedy the manifest ambiguity in how we talk about it." *Id.* at 47. I have no objection to such a project, but pending its successful completion one might prefer to reserve judgment.

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relationship between the sources. Kant himself does not couch his discussion of human dignity in the ancient *imago Dei* idiom. Though Kant professes religious beliefs, his moral theory is resolutely secular. His aim is to provide morality with a non-theistic foundation; basing humanity's special moral worth on resemblance to God would obviously defeat this aim. The two sources thus seem to be in tension rather than complementary or cooperative. Each source also raises problems of its own. As to *imago Dei*, many of those who pledge allegiance to human dignity do so within a secular liberal worldview; what possible interest can they take in Man's alleged resemblance to God? Kant's appeal to children of the Enlightenment is clearer, but here too we face a problem. Kant's own moral theory is grounded in a metaphysics that few contemporary normative Kantians espouse. It is the metaphysics of the thing-in-itself and, relatedly, of the noumenal self, whose freedom is a matter of wholesale exemption from laws of nature, which for this purpose comprise not just physics but what we ordinarily think of as psychology as well. The Kantianism absorbed into the liberal canon is a deracinated one, cut off from these metaphysical roots.

So it not only appears that the sources of dignity we inherited, the religious and the metaphysical, are at odds but that neither is particularly appealing to us today. I will argue to the contrary that, despite religious misgivings and metaphysical doubts, the two sources remain viable. Contemplating Kant's concept of dignity against the background of the *imago Dei* idea makes sense and reveals a common ground that is hospitable to any non-believing humanist, anxious to uphold humanity's moral worth without the support of a divine warrant, while also staying away from the more esoteric aspects of a Kantian metaphysics. In this section, I discuss this common ground, and in the next section point out some pitfalls.

A. IMAGO DEI

I start by considering the *imago Dei* idea. To see its relevance to a secular sensibility, we should distinguish within it two different claims or moments. One, call it the *creation thesis*, is the belief that the world in general, and human beings in particular, are God's creation. The second, the *resemblance thesis*, holds that humanity resembles God. The first thesis does not distinguish humanity from the rest of creation; rather, it is the latter claim that gives rise to human dignity. The resemblance can be interpreted in different ways, but one attractive theme sees it in terms of the knowledge of good and evil. It is in this respect in particular that humankind's resemblance to God is said to imply humanity's divine stature and so its special worth. Obviously, the creation thesis cannot be accepted by the secular mind. Even so, my suggestion is that the resemblance thesis can. But how? If man was not created by God, whence the resemblance? And what is the resemblance a resemblance to?

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The key here lies in a tradition of thought, most famously associated with the German philosopher Ludwig Feuerbach,[3] that reverses the creation thesis. The crucial claim here is that people created God, and indeed created Him in their own image, by projecting an idealized vision of themselves. We can appeal to this view to reinterpret the *imago Dei* idea. The cardinal difference between the religious standpoint and its secular reinterpretation is that humanity, which from the religious standpoint is the image, turns out to be the original, reflected in a mirror of its own creation. On this reinterpretation, the resemblance to God is there all right; only the direction of fit is different. To be sure, the attributes projected onto God are contested and not always attractive. He, not surprisingly being male (given who got to be the dominant projectors) is sometimes depicted as belligerent, irritable, jealous, vain, and even with long facial hair.[4] Though this is unfortunate, as far as the derivation of human dignity is concerned, it is not a fatal flaw. The important thing in the *imago Dei* idea is a formal point. Whatever God's alleged attributes, we know from the start that they represent the highest ideals. And so, the idea of God bespeaks a devotion to an ideal of perfection and a commitment to strive for the realization of its implications for one's life. To recognize that the source of the ideal lies in the believers and that they are the ultimate authority for the imperatives by which they live is to ascribe to them an uncontestable worth, commensurate with the value they themselves ascribe to the being they conceive.

This reversal of the *imago Dei* idea is supported by the realization that the atheist does not fault the believer for ascribing to God the value that she does. If He existed, he would be worthy of the reverence the believer displays. Nor need the atheist deny that resemblance to God, that is to say, the partial possession of His attributes, would entitle the possessor to a pro tanto measure of the same attitude. The difference of opinion concerns God's existence, not the counterfactual constituents of His sublimity. But in this dispute the atheist should, if anything, invest the *imago Dei* idea with greater, not lesser, significance, since, unlike the believer, she is better situated to trace the divine attributes to their origin in the human mind and heart. For the believer, reverence is the proper attitude toward God conceived as an absolute authority. But short of revelation, which is not, after all, an essential aspect of all religious faith, the way this authority is brought to bear requires that the believer form her own conception of the divine will. Her resemblance to God offers her a measure of hope. As seen by the atheist, the religious person's striving to decipher and follow God's will makes entirely good sense, with one crucial difference: God's role in this story is that of a placeholder or a regulative idea: potentially useful but dispensable. And this difference, far from denigrating the believer's striving to live

[3] LUDWIG FEUERBACH, THE ESSENCE OF CHRISTIANITY (George Eliot trans., Harper & Row 1957) (1841).

[4] With an apology to my bearded friends.

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up to God's demands, elevates this striving and its subject even further, since it credits the believer not just with the will to approximate perfection but also with the wherewithal to conceive of perfection and give it content and shape.

This suggests why, insofar as the value of humanity is concerned, there is not much gain in dressing up the idea of human dignity in a religious garb. If anything, the opposite is the case, since tracing the ideals that the believer associates with God to their human origins serves to elevate humanity and augment its importance. Even so, religious traces within the discourse of dignity need not be erased within a secular frame. Instead, they can be fruitfully transposed into a system of thought that explicitly casts human beings as the origin of all value.[5]

B. KANT

This takes us straight to the heart of the Kantian conception of human dignity.[6] What Kant says in this regard is brief and merits quoting:

> Now I say that man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will...
>
> In the kingdom of ends everything has either a price or a dignity. If it has a price, something else can be put in its place as an equivalent; if it is exalted above all price and so admits of no equivalent, then it has a dignity... Now morality is the only condition under which a rational being can be an end in himself; for only through this is it possible to be a law-making member in a kingdom of ends. Therefore morality, and humanity so far as it is capable of morality, is the only thing which has dignity...
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> For nothing can have a value other than that determined for it by the law. But the law-making which determines all value must for this reason have a dignity – that is, an unconditioned and incomparable worth – for the appreciation of which, as necessarily given by a rational being, the word "reverence" is the only becoming expression.[7]

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[5] Karl Barth summarizes Feuerbach's view as holding "that man is not only the measure of all things, but also the epitome, the origin and end of all *values*." *See* Karl Barth, *Introduction*, *in* FEUERBACH, *supra* note 3, at x, xxviii.

[6] The derivation or, to use Kant's term, deduction of human dignity that I sketch here is Kantian even if it is not quite Kant's. My aim is not to contribute to Kant scholarship (I leave this to the experts) but to elucidate the concept of dignity. Kantian themes are indispensable tools; no less, but no more. Also, like many others, I appeal exclusively to Kant's moral theory, which is where he develops the idea of human dignity. Consequently, I ignore the difficulties that arise in translating this moral notion into political and legal terms.

[7] IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS 90, 96-97 (Herbert James Paton ed. & trans., Hutchinson 1976) (1948/1785).

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These are undeniably powerful assertions carrying great rhetorical force. But what is the argument here? We can distinguish three points in these quotations: the equivalence between the notion of dignity and that of being an end; the view of people as ends and hence the ascription of dignity to them; and the claim that ascribing this value to people is the core of morality. To elucidate Kant's concept of dignity requires that we understand these three claims and their interrelationship. Different accounts have been proposed, in part because there may have been more than one strand in Kant's own mind. Here I want to sketch a variant of one of these strands that I find attractive.[8] I call it *the value of valuation*.

The first step is Kant's insistence on human intelligibility.[9] All human action makes sense, has a point; it is, to use another idiom, meaningful. What makes action intelligible, what gives it meaning, is that it is done for the sake of something or other. That for the sake of which an action is taken is its end. But the same idea can also be expressed in the vocabulary of value. To act intelligibly requires that that for the sake of which one acts, the end, be deemed worth pursuing, and so valuable. In this sense all action consists in the projection and attempted realization of purported values. One goal of a theory of the practical domain is accordingly to account for the values we pursue. What Kant can be seen as offering in this regard is a theory of value centered around a binary division between two types of value: *price* and *dignity*. Roughly, *price* expresses the value of things *for* us, that is *for* persons, whereas *dignity* expresses our own value: it is the value *of* persons.

But this is too rough. This classification, as well as the distinction between our own value and the value things have "for us," on which this classification depends, must be clarified and refined. Starting with the classification of values, *price* is not a unitary value: Kant further distinguishes between *market price* and *fancy price*. Though he does not elaborate much on this subdivision, commentators tend to associate the latter with esthetic value.[10] Kant accordingly distinguishes three kinds of value: pragmatic, esthetic, and moral. Building a house or a table is the realization of pragmatic value; listening to music, visiting a museum, taking a trip to the Grand Canyon, and playing basketball or soccer are realizations of esthetic value; keeping a promise, helping a blind person cross the street, and visiting with a sick friend are realizations of moral value.

It is also evident that all three kinds of value make a claim on us, have a certain force, though the nature of the claim or the force vary, forming a hierarchy. And this

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[8] For a particularly acute version of this strand, see CHRISTINE M. KORSGAARD, THE SOURCES OF NORMATIVITY (Onora O'Neill ed., 1996).

[9] For an illuminating discussion of Kant's uses of "intelligible" in this connection, see HENRY E. ALLISON, KANT'S THEORY OF FREEDOM 214-29 (1990).

[10] *See, e.g.*, HERBERT JAMES PATON, THE CATEGORICAL IMPERATIVE: A STUDY IN KANT'S MORAL PHILOSOPHY 189 (University of Pennsylvania Press 1971) (1947).

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requires a clarification of what it means for something to have value *for us*. The italicized expression is ambiguous between (1) serves our interests and satisfies our desires and (2) is deemed valuable by us. Now some of the things we value, those that possess what Kant labels *market price*, are valuable for us in the first sense. But others are not. We enjoy or admire the Mona Lisa or the Grand Canyon because of the value they possess; they are not valuable because of the satisfaction they provide. And this is true, even more emphatically, of moral values. We perceive them as having, in Kant's idiom, a *categorical* force, which is independent of our contingent needs, desires, and goals. Nevertheless, everything for the sake of which our actions are performed or toward which they are oriented, and so everything that is valuable, is valuable *for us* in the second sense: all the values we pursue, all the ends that make our actions, and more broadly our lives, meaningful, originate in us.

To view the values that guide our actions and our lives as originating in us, is also to view ourselves as self-governing, and thus as autonomous. And this interpretation of our autonomy as a matter of being the authors of our lives naturally leads to a further idea, of being our own authority.[11] To recapitulate: to be intelligible we must pursue ends, and this is the same as projecting and realizing values. Since we must deem these values worth pursuing, we must endorse them. This is the sense in which, in pursuing any value at all, we must recognize ourselves as the ultimate authority. The key to the authority relationship is the notion of *deference*: those subject to an authority are expected to defer to its wishes and demands. Since each person must recognize herself as a definitive authority, she ultimately defers to herself. Obeying her own commands, as it were, she expresses her self-respect as well.

But even if each person is the ultimate authority for the ends she pursues and so for the values she endorses, the resulting deference and the dignity it implies would seem to be distributive: I implicitly assert my own dignity; you, yours. But morality requires first and foremost respect for others' dignity rather than for one's own. To close this gap, and to see why my self-respect (in the appropriate sense) extends to humanity as a whole, we need attend more closely to the notion of intelligibility. The key observation, which I can here only state without defending, is that intelligibility is holistic and universal. To be intelligible to oneself, one must in principle be intelligible to everyone else. If to encounter a human being is to encounter an intelligible being, it is to encounter a being with whom communication and, hence, mutual interpretation and understanding are in principle possible. For this to be the case, I must be able to see another's values, no matter how different from mine, as *values*, that is as ends capable of making sense of her life in the same way that my values

[11] *Cf.* Colin Bird, *Status, Identity, and Respect*, 32 POLITICAL THEORY 207, 213 (2004) ("To recognize persons as self-legislators in a Kantian sense *just is* to recognize a kind of authority that they bear.").

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make of mine. And this involves a further aspect of intelligibility: its dependence upon abstraction.

When David puts on a suit and tie, he knows what he is up to: he is going to the opera, to see *Fidelio*. These are two possible projections of his immediate end at different levels of abstraction. But notice that some such abstraction is essential for the intelligibility of his dressing up. If instead of referring to the "opera" or *Fidelio*, David were to conceive of a highly detailed, step-by-step depiction of the route that leads from his home to the opera house, and of a brick-by-brick description of this end point, while omitting the designation of his destination as the "opera," then despite the abundant detail in which his project would now appear to him, he would be at a total loss to know what to wear. The situation is similar when making sense of another person's conduct. David observes Ruth wearing shorts and a t-shirt. Why? She explains that she is on her way to a soccer game. But suppose David has never heard of soccer. At this point, the more abstract idea of a ball game—or, failing that, just a game—may help him make sense of Ruth's attire. If this is not sufficient, however, the explanation of Ruth's behavior may have to appeal to even more abstract notions, such as entertainment or edification, which David associates with his own venture. Why does Ruth put on this casual dress? Because like David she is "dressing appropriately for the occasion." What is this occasion? Like in David's case, it is a form of entertainment or edification, or, like him, she is going to have a good time.

Why are these abstract answers possible and appropriate? The reason is that in order for David and Ruth to be intelligible to themselves and so potentially to each other, they must be able to see what each of them is up to. And so they must be able to ascribe to each other ends, and thus values, that they are both able to construe *as* ends and values, that is as pertaining to endeavors appropriate for and making sense of a *human life*. And so both protagonists must view themselves as respectively articulating, at a relatively high level of detail, a cluster of highly abstract meanings that they both associate with the very idea of a human being and thus have in common. Whereas the interpretation of "human being" implicit in David's life will differ in innumerable ways from the one implicit in Ruth's, each of them is capable of pursuing and enacting their disparate interpretations only when conceived as *interpretations*, designed to manifest at a higher level of resolution content that at a high level of abstraction belongs to the category of humanity as such.

To summarize, the particular ends that I espouse and the values that I therefore endorse define the distinctive content of my life and distinguish it from that of others. But, in fixing my own identity, I must view myself as enacting and articulating a more abstract identity: my identity as a human being, which I share with everyone else. In order for the ends I pursue and the values I endorse to endow my life with meaning and render me intelligible, they must be, at a high level of abstrac-

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tion, your ends and values as well. Our intelligibility, and so our *mutual* intelligibility, implies that the meanings constitutive of our separate identities must, at a high level of abstraction, all converge. But this also suggests that respecting myself (in the relevant sense) while disparaging others is not an option, since it would involve me in a contradiction: my attitude toward others would amount to disparaging the very same cluster of meanings that, when abstracted from my own pursuits, I must hold in high regard. Respect for humanity cannot be selective along individual lines. When the attitude one has toward any individual human being addresses that individual qua intelligible being, and so as a site of meaning, this attitude must extend to everyone else. And since leading my life requires that I defer to myself and so assert my own superior worth, this attitude of mine extends to humanity as a whole, and so to each of its individual manifestations.

As I said earlier, there are other ways, more or less faithful to Kant's text, of reaching this conclusion. Whatever the precise route leading to it, the conclusion is remarkable. One of Kant's great insights is the idea that moral content can be derived from purely formal considerations. The very fact that we pursue any ends at all, and so have any values at all, quite apart from their content, attests to our own value, and so provides a foothold for a system of moral values designed to acknowledge this value and give substance to this acknowledgement. This account gives morality a particularly secure position that other systems of value lack. All other values are in principle contestable. But as long as we contest them, we are committed to the validity of *some* value. And as long as we are committed to the existence of any value, we are committed to our own supreme value, as the origin, the authority, and the warrant of that value.

III. Some Pitfalls

The increasing prominence of dignity-talk is often identified with or seen as part of what has come to be called the *rights discourse*. Under the interpretation I have outlined, however, it is more accurate to see the rise of dignity as having a different focal point and so as ushering in another discourse—a discourse of values. As a centerpiece of such a discourse, the concept of dignity offers a platform on which both secular and religious humanism can meet and a potentially mutually advantageous dialogue conducted.

But although it is possible to embrace the ideal of human dignity without the support of a religious warrant or Kantian metaphysics, those sources may not be easy to escape. A central cluster of issues to which I would like to draw attention concerns the nature of the person whose dignity we assert. Dignity is the supreme worth of every human being, but what does that include? The scope of dignity must track the boundaries of the self, but where do these boundaries lie? When dignity

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mandates respect for persons, what is the precise target of this respect? The idea of human dignity inevitably raises such pressing questions of human ontology. Extricating the concept of dignity from its religious and metaphysical origins, however, excludes the answers to these questions proffered by religious doctrine and by Kantian metaphysics and so creates a gap. But unless we are careful, the very same religious and metaphysical ghosts we hope to exorcise may surreptitiously come to haunt us through this gap. Three specific pitfalls illustrate this wider theme. I label them, tendentiously, *religious cooptation*, *choice worship*, and *body fetishism*. I will briefly discuss each.

A. RELIGIOUS COOPTATION

By religious cooptation, I refer to the possibility that religious doctrines are inadvertently incorporated into what is supposed to be secular public discourse.

My main exhibit here is the Vatican's recent missive on the implications of human dignity, entitled *Instruction* Dignitas Personae *on Certain Bioethical Questions*.[12] Much of value can be garnered from this document, but not surprisingly the document is rife with distinctly Catholic doctrine unrelated to the idea of dignity. The danger is that this doctrine gets mixed up with the discussion of dignity, thus borrowing the latter concept's prestige and rhetorical force to support policies that from a secular standpoint turn out to be inimical to human dignity. Consider, in this regard, the document's opening statement to the effect that "[t]he dignity of a person must be recognized in every human being from conception to natural death,"[13] thus running together the affirmation of human dignity with a controversial ontological doctrine, namely that the human person who possesses that dignity begins at conception. In a similar vein, the document prohibits, again under the guise of a concern for human dignity, any fertility techniques seen as violating the distinctly religious doctrine that marital sex is the only permissible form of procreation.

This caveat is reinforced by another recent document: a report entitled *Human Dignity and Bioethics*, issued by the President's Council on Bioethics.[14] This document is the main target of Stephen Pinker's attack on dignity that I mentioned at the outset.[15] Though the report is hardly the last word on the concept of dignity and a

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[12] CONGREGATION FOR THE DOCTRINE OF THE FAITH, INSTRUCTION *DIGNITAS PERSONAE* ON CERTAIN BIOETHICAL QUESTIONS (2008) *available at* http://www.usccb.org/comm/Dignitas personae/Dignitas_Personae.pdf.

[13] *Id.* at 1.

[14] HUMAN DIGNITY AND BIOETHICS: ESSAYS COMMISSIONED BY THE PRESIDENT'S COUNCIL ON BIOETHICS (2008) *available at* http://bioethics.georgetown.edu/pcbe/reports/human_dignity/human_dignity_and_bioethics.pdf.

[15] *See supra* note 1.

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poor reason to berate the value of dignity as such, the similarity in tone as well as in substance of the Council's report to the Vatican's missive is indeed disconcerting.[16]

B. CHOICE WORSHIP

The second pitfall, choice worship, relates to a central theme in neo-Kantian liberal thinking. Kant is enlisted to the liberal cause mostly through the centrality to his moral theory of the idea of a free will. A liberal sensibility that celebrates individual choice can easily assimilate Kantian ideas by embracing autonomy as its fundamental value. The result is a tendency to identify autonomy with choice and to see choice as the seat of dignity as well. On this line of thought, to respect persons is to respect their choices. But whatever the attractions of this bit of liberal dogma, it cannot be sustained on Kantian grounds. The Kantian support for the valorization of autonomy crucially depends on Kant's metaphysics and is linked to a rather specialized conception of autonomy. A wide gulf separates this system of ideas from the liberal celebration of individual choice.

Doubts that choice as such, as the expression of the individual's will, is of moral value arise when we consider that to value choice is to give at least some positive valence and pay some respect to the will's determination to kill, rape, or steal. A choice-liberal need not of course condone such choices: these choices violate other people's rights, rights that themselves can be seen as expressing or protecting these people's autonomy. But invoking such countervailing considerations is an unsatisfactory response, in that it implies that the nefarious choices have *some* moral value, whereas they have none. The choice-liberal is committed to saying that qua a determination of a person's will *any* choice is pro tanto valuable. But our moral and legal judgments go the other way. The fact that an act of homicide, rape, or theft represents the agent's considered choice and reflects a genuine determination of his will serves to *aggravate* the moral and legal severity of the action rather than mitigate it.[17]

It will be said in response that the Kantian liberal I describe is a straw man. The more likely position held by liberals, Kantian or otherwise, is more qualified. They do not simply value any choice or, for that matter, all displays of autonomy; rather, they deem choice or autonomy valuable only subject to a limiting generalizing proviso, i.e. when it is consistent with equal choice or equal autonomy for all. Under this formulation, choices that strip others of their autonomy lack moral value from the start. But as an interpretation of the moral injunction to respect people, this restatement of the liberal position is unsatisfactory for two reasons. First, the valori-

[16] This is not surprising in light of the composition of the Council, which, as Pinker points out, consisted for the most part of religious scholars. *Id.*

[17] *See* JOSEPH RAZ, THE MORALITY OF FREEDOM 380 (1986).

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zation of the will must be *content independent*:[18] to defer to people's wills is to assign to them at least some prima facie value as they are, no matter what their content. And, as it turns out, the actual content of the will does not always abide by the strictures imposed by the generalizing proviso. To insist that only choices respectful of others' autonomy have any value at all is to subject the will to an external evaluative standard, one that is patently at odds with ascribing to the will intrinsic value of its own. Second, the generalizing proviso does not apply to self-regarding choices, which are left unfettered. But, at least within a Kantian framework, not all self-regarding choices are morally permissible. Kant maintains that one ought to respect not just others' humanity but one's own humanity as well. This gives rise to duties toward oneself, such as a prohibition against suicide. Since these self-regarding duties may impose constraints on the actual content of the will, they manifest a conflict between dignity and choice, a conflict which the generalizing proviso is unable to remove.[19]

It is easy to see how these difficulties are avoided within Kant's metaphysics of the noumenal self. First, the will associated with this self is an idealized will, determined by the categorical imperative and in accordance with sound moral principles derived from it. These principles, or maxims, are conceived of as already taking proper account of others' humanity as well as the agent's own, thus avoiding the problem presented by immoral choices, be they other- or self-regarding. Second, identifying respect for persons with respect for their will on Kantian grounds comports with the metaphysical identification of the noumenal self with a free, rational will. Outside of Kant's metaphysics, we must recognize that there is more to persons than their will and, correspondingly, more to the idea of respecting a person than respecting choice. We must be careful to distinguish here between two different ideas: respecting a person's autonomy and respecting a person *for* or *by virtue of* her autonomy.

C. BODY FETISHISM

One way in which we, as actual persons, differ from our noumenal selves is that we are embodied. So, one natural step toward a more comprehensive conception of the person that does not focus exclusively on the will involves recognizing the body as an aspect of persons pertinent to their dignity. But here too we are on slippery ontological grounds. A narrow but important line separates the idea of respect for embodied persons from mere body fetishism. Talk, both religious and secular, of the body's sanctity and inviolability often crosses this line.[20] There is a crucial differ-

[18] For a discussion of this notion in a different context, see RAZ, *supra* note 17, at 35-37.

[19] I discuss these issues in somewhat greater detail in MEIR DAN-COHEN, *Defending Dignity*, *in* HARMFUL THOUGHTS: ESSAYS ON LAW, SELF, AND MORALITY (2002).

[20] *See* CONGREGATION, *supra* note 12, at 3 ("The body of a human being, from the very first stages of its existence, can never be reduced merely to a group of cells.").

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ence between exploring the implications of people's embodiment for permissible and impermissible ways of treating *them* and investing the body itself with moral value as a site of dignity and as worthy of respect.

To be sure, we often do attach value to bodies and their parts. Since I am right-handed, my right hand is of greater value than my left. It also makes perfectly good sense to ascribe greater or lesser beauty, say, to Cleopatra's nose than to Caesar's. But notice that such pragmatic and esthetic valuations measure the body's value *for us*, in contrast to the kind of valuation the idea of dignity signifies, our own value. The suggestion that the body has dignity thus involves a category mistake. The grammar of dignity and of respect is concerned with what is done to the person rather than to the body. What is done to the body attains moral significance derivatively and can be fully revealed only in a language that pertains to persons rather than to bodies and their parts. Of course, the value that the body has for us does have a bearing on how our own value ought to be protected and expressed. But the two—the body's value and our own—remain separate ideas that should not be confused.

It would help to avoid the confusion if we attend to the difference between our ordinary body-talk and our person-talk: not everything done to the body is also done under the same description to the person whose body it is. This is masked by cases in which the same verb describes both: to kick John's leg is to kick John. The same applies to *touching* and *injuring*. However, to break John's leg is not to break John, and to pierce his ear is not to pierce him. These are trivial examples, and the disparity they reveal between talk of the body and of the person is easily overcome. We incline to say that what was done to John in these cases is simply that his leg was broken or his ear pierced. But in other cases this gap between bodily predicates and personal predicates is wider and not so readily bridged: touching the genitals may be molesting the person; pouring water on someone's head, baptizing him; tweaking someone's nose, insulting him. In these cases, we can attain to the normative significance of the respective actions only by replacing the bodily descriptions with such verbs as molesting, baptizing, or insulting, which pertain essentially and exclusively to persons, rather than to bodies.

Conflating body-talk with person-talk can have far-reaching and unwelcome implications. Here are two examples. First, consider Mary who cuts open John's chest and mutilates his body in countless other ways. Yet if Mary is a surgeon, and what she does is surgery, then all of this bodily devastation amounts to *curing* John.[21] By

[21] It may be objected that the example does not reveal the gap I claim, since it can be said that what Mary does, though in some ways injurious to the body, is designed to heal John's body, and so does not require a shift from body-talk to person-talk. I do not find this objection persuasive in this case; talk of healing the body is to use "body" as a metonym for the person. But if you are troubled by the example, think of electrical shocks, psychoactive drugs, and brain dissection, where the body is interfered with for the sake of healing the mind.

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failing to distinguish between the bodily and the personal, dominant legal doctrine leads to the absurdity that every medical operation is a prima facie case of battery, to which the surgeon need plead a lesser-evil defense. The second example concerns a cluster of practices, most prominently the sale of human organs, which allegedly exhibit offensive "commodification."[22] I do not mean to advocate a market in body parts, but only to warn against a facile and overly confident judgment that such markets violate human dignity. Only if, say, kidneys themselves had a value beyond price, would their sale be necessarily offensive. Since dignity resides in the person, to determine whether selling organs violates human dignity requires that we ascertain the meaning of such a practice and the message it conveys regarding the value of the persons whose organs are on sale.

IV. CONCLUSION

Being alert to these and other pitfalls in our way is important, but avoiding pitfalls does not yet give us a sense of direction and guidance in this difficult terrain. It would be nice to end on a more affirmative note, by at least gesturing in the direction of an ontology of persons that can serve as a firm foundation for the concept of dignity and determine the contours of respect. But instead I must conclude with the suggestion that no such ontological foundation exists. My reference for this dim view is the thought of another beacon of the idea of dignity, intermediate between the Bible and Kant: Giovanni Pico della Mirandola and his famous fifteenth-century *Oration on the Dignity of Man*.[23] Anticipating such modern strands of thought as existentialism, post-modernism, and communitarianism, Pico proclaims the theme of human self-creation, declaring that Man has no essence and must create his own. In his view, this is what distinguishes humanity from the rest of creation and indeed gives it its special, elevated worth.

In speaking of human self-creation, Pico is of course not suggesting that human beings create their own organism. The essence that, in Pico's view, humanity lacks but the rest of creation possesses is to be understood in teleological terms. We need not, however, subscribe to a teleological, Aristotelian worldview in order to be able to accept Pico's claim about humanity. *Our* essence or identity, the answer to the question what we are, is a matter of our pursuing projects, goals and, in the broadest sense, values. In other words, we are sites of meaning, and the meanings we create, create us.

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[22] For a general discussion of the issues involved, see, for example, MARGARET JANE RADIN, CONTESTED COMMODITIES (2001).

[23] GIOVANNI PICO DELLA MIRANDOLA, ORATION ON THE DIGNITY OF MAN (A. Robert Caponigri trans., Washington, DC, Regnery Gateway 1956).

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But this by now should have a familiar ring. I have already implicitly adverted to some such picture of humanity in discussing Kant's notion of human intelligibility. What I called the value of valuation and the notion of human self-creation are two sides of the same coin, the denomination of which is humanity's moral worth. To see ourselves as the authors or originators of our values is to see ourselves as self-creating as well. And so what we ultimately appeal to when we make a judgment about such questions as what a body-affecting action amounts to by way of affecting the person is the meaning of that action, which is the meaning we give it. And as Pico helped us see, to mark the ontological void in which we operate and that we must fill is not to lament a handicap that vitiates the idea of dignity but rather to identify the source of this idea and its habitat.

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