‘Wherever You See the Trace of Man, There I Stand Before You’: The Complexities of God and Human Dignity Within Judaism

Susannah Heschel

One of my favorite students, Dierre Upshaw, who graduated from Dartmouth College several years ago, returned to the College to be my research assistant for the summer term of 2013. To thank him for his efforts, I asked him to join me when I was invited to a formal reception at the White House, hosted by President Obama, for Civil Rights leaders and their families. The evening was spectacular: we had the opportunity to meet and speak with heroes of the Civil Rights movement, major political members of Congress, writers, artists, and, of course, the President. My student, who is African-American, was thrilled by the experience. Ten days later, back in a small town in rural Vermont, he was purchasing gasoline for his car when a group of white men drove up and started shouting racist epithets at him, both offending and frightening him. He immediately jumped in his car and drove off, but was shaken by the experience.

Notable is the juxtaposition: to be a guest at the White House, where he was treated with respect and dignity as part of a select and honored group, and shook hands with President Obama, and then ten days later subjected to ugly racial harassment and threat. How quickly dignity can be granted

1 TB: Talmud Bavli (Babylonian Talmud); TJ: Talmud Yerushalmi (Palestinian Talmud); M: Mishnah. The quotation comes from a classical Midrashic text, Mechiltah de'Rabbi Ishmael, Tractate Vayassa, chapter seven, ed. JZ Lauterbach and D Stern (Philadelphia: Jewish Publication Society, 2010) 253.
I would like to thank Alexandra Kemmerer for inviting me to participate in the colloquium on Human Dignity that she organized at the Wissenschaftskolleg zu Berlin in the fall of 2011, and for stimulating my interest in this important topic. I would also like to thank Professor Penina Lahav, Boston University Law School, for calling my attention to several important articles on the Israeli judicial system, and Professor Anat Biletzki, Quinnipiac University, for important conversations about human rights in Israel and the Occupied Territories.
to someone and then denied, and how fragile dignity can be when confronted with social constructs of race and threats of physical violence provoked by racism.

Human dignity is proclaimed with an implied understanding that it has universal validity: there cannot be human dignity for some, but not others. In reality, however, religious texts, political circumstances, and the biases created by race, money, and gender modify the universal claim of human dignity, often distorting the nature of the dignity, or establishing hierarchies in which the dignity of some people receives greater protection than that of others. Even more troubling, human dignity at times comes into conflict with other claims, including the rights of the individual, so that at times human dignity functions rhetorically in legal, political, and intellectual settings to protect traditional prerogatives or oppressive political regimes rather than the human rights that dignity purportedly upholds.

Studies of human dignity within the classical texts of Judaism generally derive the concept from the passage in Genesis 1:27 claiming that all human beings are created in the image (literally, ‘form’) of God (tselem Elohim). The verse functions to provide an alliance between the human and God, though the nature of that alliance has been debated: that all human beings are derived from that original creation, and hence elevated to the same status, and that God holds a correspondence to the human, suggesting that God, too, is corporeal. Despite ambiguity of the verse in Genesis, its link to human dignity is widely taken for granted.2

That all human beings are equal, possessed of an inviolable, immutable dignity, is a religious vision that almost immediately came into conflict within the Bible itself, with a variety of political claims, religious hierarchies, and tribal conflicts (e.g., Judges 19). Basing human dignity on a monogenesis of imago Dei has led Jewish thinkers to argue that God is the originating point and ultimate guarantor of ethical behavior. The term tselem and the Akkadian salmu (form), from which it is derived, are associated with physicality, both in the Bible and in rabbinic literature, linking human dignity with respect for the body as a physical manifestation of God, and thus assuming a corporeal or anthropomorphic God, an understanding reinforced in biblical texts, such as Ezekiel’s visions, and subse-

---

quent rabbinic and mystical literature. Thus, to harm the human body is to injure God, so that torture and execution are severely restricted, though not outlawed, in rabbinic literature, and treating the corpse with respect conveys dignity to the human being. While the emphasis on *tselem Elohim* as a physical manifestation of God implies that God is corporeal, the gendered nature of that divine body is not specified in biblical or rabbinic literature. The physical nature of the human image of God, and the corporeality ascribed to God, was not acceptable to many in the Jewish philosophical tradition, nor in the Christian and Islamic philosophical tradition, and their exegeses of the biblical and rabbinic passages required a very different outcome.

Concomitant is the theological claim that dignity is inherent in all human beings, rather than constructed by society and conveyed through human action. On the private, individual level, dignity is conveyed by virtue of being created in the image of God; on the social level, however, dignity requires a recognition that is enacted and not simply self-evident. Judaism recognizes that human dignity is not only an innate quality, but also an attribute that is constructed and acquired by social context and religious law, as well as constituted by individual behavior and actions that perform ‘dignity.’ Much of Jewish law is concerned with preserving dignity and protecting it against its inverse, shame. In either case, dignity (or shame) is not necessarily fixed and static, an innate aspect of being human, but rather is an economy that is remarkably slippery, modified by gender, class, race, and other variables. Human dignity does not transcend political and ideological powers, but is modified by them for its own purposes.

Classical Jewish religious texts speak frequently of the dignity of human beings, but the application of human dignity to particular circumstances is at times constrained within the texts by conflicting religious obligations and by the elevated status of Jewish law (*halakha*) over moral principles (*aggada*). Rabbinic Judaism affirms the concept of ‘human dignity’ in passages such as ‘Great is the [principle of] human dignity, for it overrides a negative precept of the Torah’ (Berakhot 19b). However, such statements are relegated to the category of *aggada* (legendary, mythic, or

---

3 Note that the Septuagint translates ‘tselem’ as eikon and the Vulgate as imago, both carrying the meaning of likeness or semblance.

4 See, for example, T Aquinas, *Summa Theologica* ST I, q.93, a.6, ‘Whether the image of God is in man as regards the mind only.’ Aquinas distinguishes ‘imago’ (image) from vestigium (trace): ‘the very shape of the human body represents the image of God in the soul by way of a trace (vestigium).’
hortatory comments) rather than halakha (law), and have not carried determinative authority in Jewish legal rulings.\(^5\) Aggada is not regarded as a ‘normative category’ within the rabbinic world, although some scholars of rabbinic literature have challenged the division between aggada and halakha, arguing that aggada functions as the non-legal body of norms and principles that inform halakha.\(^6\)

Jewish law, which functioned for two thousand years in circumstances in which Jews lacked autonomous political regimes, now informs decisions in the very different political context of Jewish sovereignty in the State of Israel. The result is a drastic difference: ancient religious Jewish legal concepts that developed in an era of Jewish minority status and limited communal autonomy are now informing a secular Jewish state that gives Jews political control and power over both Jews and Gentiles. Apart from matters of family law and personal status, such as marriage, divorce, and conversion, which are regulated by the Orthodox rabbinate, the State of Israel is governed by secular laws as interpreted by a secular judicial system. Still, Jewish religious tradition is often invoked in court decisions, especially when the law and the judiciary interpret difficult questions of human dignity in conflicts between Gentiles and Jews, women and men, Jews of wealth and Jews without money. Does the dignity of Jews take precedence over the dignity of Christians and Muslims, Arabs and Druze, within a Jewish state? Should the rights of Jewish women be limited to preserve the dignity of Jewish men? Does the right of the individual take precedence over the dignity of Jewish tradition in a Jewish state?

Human dignity is affirmed in the Bible, and subsequent rabbinic texts go further, mandating not only the recognition of human dignity, but also the obligation to protect and enhance the dignity of other people, thus recognizing that dignity is not simply an inherent quality, but one that is socially mediated, conveyed, and performed. For example, Jewish law recognizes that displays of wealth can enhance one’s dignity in the eyes of others, while leaving those without wealth feeling ashamed. In response, rabbinic law attempts to ameliorate some of the inequities by insisting that


\(^6\) The challenge extends from Leopold Zunz, Abraham Geiger, Zecharias Frankel, among others, in the nineteenth century, to Gershom Scholem, Abraham Joshua Heschel, and Moshe Halbertal in the twentieth. For the most recent discussion, see Y Lorberbaum, In God’s Image: Myth, Theology, and Law in Classical Judaism (Cambridge: Cambridge University Press, 2014) 76ff.
wealth not be displayed at crucial moments, such as burial; all Jews are buried in a pine coffin or shroud, and expensive coffins are forbidden. Through such religious laws and practices, dignity becomes not merely acknowledged, but actively enhanced. In such circumstances, dignity is dependent for its very existence by being conveyed and recognized by others, and not displayed through wealth or pomp. Yet even in circumstances in which dignity is denied, and public humiliation occurs through social standing or bias, a person may feel a strong sense of his or her own dignity, as described, for example, in slave narratives and holocaust memoirs, suggesting that dignity may be experienced as an inherent attribute that cannot be destroyed even in the most degrading circumstances.\(^7\)

The relationship between human dignity and human rights is not always clear-cut in legal systems, including Jewish law. The dignity we experience at one moment may be abruptly withdrawn; it is not static, but slippery, and it can be invoked both to protect human liberties and to deny them. Doron Shultziner and Guy Carmi, in their review of national constitutions, conclude that human dignity may be invoked to protect individual rights, but may also be used to suppress those rights. They note that the term ‘human dignity’ appears frequently in constitutions composed by emerging states in recent decades, and that the term has been invoked to end discriminatory and even bodily violation practices in many countries. For example, Uganda outlawed female genital mutilation on the grounds of human dignity, and courts in India have acted to protect women’s inheritance rights on similar grounds.\(^8\) However, Shultziner and Carmi warn that human dignity has also been invoked arbitrarily, limiting individual freedoms and rights to protect the ‘dignity’ of the collective. For example, the constitution of Laos states, ‘All cultural and mass media activities which are detrimental to national interests or to the traditional culture and dignity of Lao people are prohibited’, language that finds parallels in the 

---

7 Steven Pinker challenges the meaningfulness of ‘dignity’ on this very point: how can dignity be claimed as inherent when it is also treated with utter contempt: ‘we read that slavery and degradation are wrong because they take someone’s dignity away. But we also read that nothing you can do to a person, including enslaving or degrading him, can take his dignity away.’ S Pinker, ‘Dignity’ The New Republic (May 28, 2008). See also R Macklin, ‘Dignity Is a Useless Concept,’ British Medical Journal 327 (December 20, 2003) 1419-1420.

constitutions of Montenegro, Moldova, Gabon, Saudi Arabia, Romania, among many others. Invoking human dignity in such circumstances functions as a rhetorical device employed for purposes of persuasion in support of a pre-determined political position; it is not a term that guarantees individual liberties, but may severely limit a range of liberties, including free expression. Moreover, some commentators have noted that dignity can be invoked to justify totalitarian regimes; Nazi Germany claimed that the dignity of German Aryans was violated and required restoration.

Within Jewish texts, human dignity functions similarly, as a rhetorical device that does not necessarily guarantee individual rights or liberties within Jewish law, but may even function to limit them by pitting the dignity of one group against another. The Catholic philosopher Teresa Iglesias distinguishes between fixed and universal understandings of dignity, those that link dignity to status and those that claim a universal dignity of all human beings. Examples of both can be found in classical Jewish texts. As with state constitutions, human dignity functions in Jewish legal texts as a universal attribute of all human beings, linking them to God, yet that shared human dignity does not necessarily guarantee the rights of human beings in relation to one another. There is no single, uniform Jewish understanding of human dignity, nor of its applicability, and the multiplicity of meanings have been used both to guarantee liberties and to restrict them, as have state constitutions. For example, human dignity has been applied in some Jewish texts to all human beings, while in others it is applied to men. The dignity of women is mentioned explicitly in reference to the female corpse, which rabbinic law insists must be treated with the same dignity as the male corpse and given a proper burial (M Moed Katan 3:8, TB Niddah 9:16). While the dignity of women’s dead bodies is protected, living women do not always have the same rights as men. For example, the ‘dignity of the congregation’ (TB Megillah 23a) is invoked in the Talmud to prevent women from being called to the Torah in the syna-

9 ibid 484.
10 In some cases, human dignity is invoked to ‘to place positive obligations on the state’ in caring for its citizens, especially women, children, the elderly, and the disabled, but, as Shultziner and Carmi make clear, human dignity can also be ‘used as a limitation on fundamental rights’ (483). These limitations may include freedom of expression, on the grounds that it may offend the dignity of others or of the state.
gogue; in that case, the ‘dignity of the congregation’ is actually the dignity of men. The ruling is based on the assumption that women would violate men’s dignity by being called to the Torah, although no reason is given for that assumption. What we observe in that ruling is that dignity is a social construct: the dignity of men is created by excluding women from synagogue leadership. That women’s dignity might be violated through the exclusion is not a consideration in the Talmud, which was composed by men.

What is perhaps unique to Judaism’s religious teachings is that dignity applies not only to human beings, but also to abstract ideas, such as the Sabbath and Jewish holidays (BT Taanit 26b), and to religious objects, such as the Torah scroll (BT Yoma 70a; Gittin 60a). Moreover, dignity is not simply received, but conveyed; indeed, conveying dignity is a central aspect of Jewish ritual. Dignity is conveyed to other human beings not only because it is their due, but more importantly because the act of conveying dignity is a commandment. The recipients of dignity may or may not be cognizant of it; for example, dignity is conveyed to a corpse, to the synagogue, to the Sabbath, and to holidays, with the primary purpose being the act of conveying the dignity.

I. Biblical Creation of Human Dignity

Much of the affirmation of human dignity rests on the claim that all humans were created equal by God, or were created as the image of God. That claim comes as an inversion of race theory, which began its appearance by challenging monogenesis. The decline in the seventeenth century of the authority of Scripture, argues the historian Colin Kidd, ‘opened up an ideological space for the uninhibited articulation of racialist sentiments.’

Racism rejected monogenesis and claimed that humans form a hierarchy, with whites at the top. Racism was not an attack on theology, but the outcome of the decline of religious belief in divine creation. In an inverse sense, human dignity began to be asserted in the late 1930s and 40s, while Nazi racism was at its zenith, by reactionary Catholic theologi-
ans eager to reestablish church authority in the face of communism, Nazism, and secular capitalism. If the decline in Scriptural authority opened the door to race as a powerful legal, political, and cultural force in society, assertions of human dignity as resting in Scriptural claims to monogenetic divine creation could renew the power of Scripture, support the conservative social order that the church desired.

God’s creation of human beings in the ‘image of God (tselem Elohim)’ appears three times in the Bible (Genesis 1:26-28; 5:1-3; 9:6), although the term tselem appears even more often in a negative context, referring to idolatry. The biblical word ‘kavod,’ which can be translated as dignity, honor, or glory, stems from a common Semitic root meaning ‘heavy’, and is found in all the classical Semitic languages, including Babylonian, Old South Arabian, Ethiopic, Arabic, Phoenician, and Hebrew. The link between ‘heavy’ and ‘honor’ is likely an association similar to the Latin ‘gravitas’.

The concept of dignity is initially introduced in the Bible as an attribute of God. Moses asks God to see his ‘kavod’, and God responds by agreeing to show Moses his back (Exodus 16:7). In this context, the kavod of God is usually translated as ‘divine glory’ and is linked to the divine corporeality that is elsewhere denied, as the Bible forbids images of God, and Judaism’s rabbis insist it is an aniconic tradition. God’s corporeal existence is denied in the Jewish philosophical tradition and affirmed in the Jewish mystical tradition, and anthropomorphisms pervade Jewish texts, beginning with the Bible. While verbal descriptions of the divine appearance abound in Judaism, the aniconic tradition bans visual images of God, with the exception of human beings, who are said to have been created in God’s image, b’tselem Elohim. It is precisely anthropomorphism that creates the centrality of human dignity in rabbinic Judaism, according to Yair Lorberbaum, who argues that because the human body is a physical representation of God’s own corporeality, the rabbis of the Talmud severely restricted the conditions of execution, despite its prevalence in the Bible. Executing a human being who is an image of God would be tantamount to deicide, in their view, unless the human being had committed the supreme crime of murder, in which case he or she forfeited the status of imago Dei.

---

Execution is not simply a violation of the moral dignity of human beings, but an expression of the rabbinic understanding of theurgy, the impact of human action on God.\footnote{Yair Lorberbaum, op. cit. Lorberbaum’s argument stands in contrast to M Halbertal, \textit{Interpretative Revolutions in the Making} (Jerusalem: Hebrew University Magnes Press, 1977).}

While the term \textit{kavod} appears frequently in the Hebrew Bible, applied both to humans and to God, the Bible gives no precise definition over what constitutes the dignity of either. \textit{Kavod} as ‘dignity’ is not simply an attribute shared with God, but an attribute bestowed upon the human being by God, according to Psalm 8:6: ‘You have crowned him (man) with glory and honor (\textit{kavod v’hadar}).’ Although not always explicitly evoked, human dignity hovers over biblical thought, including the prophetic injunctions against injustice and economic exploitation, and also the Levitical proscriptions regarding incest. In all of these cases, it is the physical body that is viewed as most vulnerable to violations of dignity. If the body was understood in rabbinic literature as an icon of divinity, God’s presence within the human, sexual conduct involving the penetration of one human by another presumably would also carry theurgic connotations and require legal regulation, as in the case of execution: necessary, perhaps, but restricted. Precisely what constitutes human dignity and its violation is presumed, but its full parameters are never entirely defined. Even more important: to which human beings is ‘dignity’ bestowed in rabbinic Judaism; is it restricted to Jews? To men? To adults? To monotheists? While torture and execution seem obvious examples of violating dignity, sexual penetration and other forms of physical contact seem less obviously linked to dignity or its violation.

\textbf{II. Rabbinic Affirmations of Human Dignity}

Jewish theology and practice are shaped not only by the Hebrew Bible, believed by Jews to be the divine revelation given by God to the Jewish people at Mt. Sinai, but also by the vast corpus of rabbinic literature, composed by rabbis over the course of six centuries, in Palestine and Babylonia, that they claim represent an orally-transmitted revelation that was received at Mt. Sinai along with the Bible. Rabbinic Judaism codified and consolidated Jewish law, shifting from a post-70 CE Temple-based wor-
ship, based on sacrifice and administered by a hereditary priesthood, to a synagogue-based oral worship administered by rabbis versed in Jewish law. Rabbinic literature developed the Judaism that is practiced to this day, and expounded moral and theological teachings, rooted in biblical texts or allusions.

Rabbinic Judaism uses the expression, ‘kavod ha-adam’, dignity (or honor) of the person, when speaking of the dignity of individuals, usually Jews, and applies the broader term, ‘kavod ha-briot’, dignity of created beings, to all human beings in the collective, including Gentiles and sometimes animals as well.\(^\text{16}\) The latter term, however, plays a limited role in Jewish legal thought, and at times it is used to indicate ‘glory’ rather than honor or dignity, as in the glory of Aaron, the priest.\(^\text{17}\) The concept can be invoked both within the Talmud and within contemporary Jewish legal thought as a basic principle that can override proscriptions. Within the Talmud, for example, it is permissible to walk in a former graveyard (where graves have been disturbed and bones may be scattered) when accompanying a mourner because the imperative to accompany a mourner takes precedence over the prohibition against walking among human remains: ‘Great is human dignity since it overrides a negative precept of the Torah’ (TB Berachot 19b). Similarly, the rabinics scholar Tzvi Marx calls attention to Jewish legal authorities overriding religious prohibitions out of respect for the dignity of a disabled person who might otherwise be banned from certain rituals.\(^\text{18}\)

Within classical rabbinic texts, the inherent dignity of all human beings is occasionally affirmed, while at the same time recognizing that dignity requires affirmation, particularly in cases when dignity might not be automatically conveyed. That is, dignity is both an essential, intrinsic aspect of being human, while at the same time it is created through appropriate behavior and societal acknowledgment. Dignity may be inviolable, but it is also dependent upon recognition and action by others to be brought into existence. The intrinsic dignity of human beings is established by the fundamental conviction that humans were not only created by God, but were created to bring honor to God. The earliest stratum of rabbinic literature,


\(^{18}\) TC Marx, Disability in Jewish Law (New York, Routledge, 2002) 27.
the Mishnah, states: ‘All that God created in His world He created exclusively for His kavod (honor or glory)’ (M Avot 6:11). Indeed, God’s love of humanity is exemplified in the creation of human beings as images of God, according to a statement in the Mishnah (M Avot 3:14). Moreover, the dignity of others should be considered as important as one’s own: ‘Let the honor of your fellow human being be as precious to you as your own’ (M Avot 2:10).

Such general rabbinic statements concerning human beings as created by God and the consequent intrinsic nature of human dignity are applied above all to the deceased human body. Dignity is central to the compilation of rabbinic laws regulating the respect owed to a dead human body. A corpse, male or female, may not be disfigured, all of its body parts must be buried, and the corpse itself is washed, placed in a shroud, and not left alone prior to burial, but accompanied at all times by someone reciting psalms. Indeed, it is striking that desecration of a corpse is strongly forbidden, with clear rules about treating the dead body with dignity, whereas a human embryo can be discarded by a laboratory without arousing rabbinic condemnation.\(^\text{19}\) Also striking is that the dignity of the corpse is not linked to the subjective experience of the recipient, since the corpse is unaware of how it is treated.

How a corpse is treated carries its own performativ e implication: my dignity is demonstrated by the respect I show a corpse; in conveying dignity to a corpse, I am dignifying God and myself. In biblical law, for example, a person who is hanged as a punishment for crime must be lowered immediately: ‘For an impaled body is an affront to God: you shall not defile the land that the Lord your God is giving you to possess’ (Deuteronomy 21:23). In his extensive study of rabbinic views of human dignity, Yair Lorberbaum notes that rabbinic literature comments that the body of a person who is hanged is viewed as an identical twin of God. Precisely in order to refrain from damaging the image of God, the body must be lowered immediately after the hanging.\(^\text{20}\) Rabbinic law suggests that hanging is reserved for those who commit blasphemy and idolatry.\(^\text{21}\)

\(^{19}\) See the discussion of the embryo in M Barilan, ‘Judaism, Human Dignity, and the Most Vulnerable Women on Earth’ (2009) 1 The American Journal of Bioethics 35.


\(^{21}\) TB Sanhedrin 6:5; Tosefta Sanhedrin 9:7; Sanhedrin 46a.
the body, such as castration, is a serious offense; an immoral act can be repaired through repentance, but once the body is disfigured, it is permanent, according to Talmudic law (TB Baba Batra 154a). Underlying the concern with disfiguration is a religious doctrine: in the messianic era, God will resurrect the dead, but a disfigured or amputated body will not be restored.

Although God is understood to be the creator of the entire world, including all human beings, human dignity in Judaism is not understood as operative on an equal basis. Hierarchical distinctions exist in Jewish law among men, women, slaves, the pious and learned, children, and idolaters, and yet invocations of dignity at times override those hierarchies. The honor of the poor, kavod ha-aniyim, is invoked to assure that all funerals be conducted in identical fashion, without distinction between rich and poor, so as not to detract from the dignity of the poor. When hierarchies are invoked, they stem not from a denial that women and Gentiles (as well as male Jews), for example, were created by God, but from the rabbinic assumption that dignity is created or performed by piety and religious learning.22 That assumption, in turn, leads to distinctions between male and female dignity, and even the worth of male versus female life. Thus, a man who is a ‘mamzer’ (born of a forbidden union) but learned in Jewish law takes precedence over a high priest (a hereditary position) who is unlearned. And while Gentiles are distinguished from Jews, the Talmud obligates Jews to care even for idolaters:

We are obliged to maintain the poor of idolaters, attend to their sick and bury their dead, as we do with those of our own community, for the sake of peace, for the whole of Judaism is for the sake of peace, her ways are pleasant and her paths are peace (Proverbs 3), as it is written, ‘God is good to all and His mercy extends to all creatures’ (Psalms 145:9) (M Gittin 5:9; BT Gittin 59b).

Jewish law and tradition recognize that dignity is conveyed (or not) and is thus dependent upon human will and human actions. Actions that convey dignity are essential requirements of Jewish law, which recognizes that dignity is received from acts performed by other people, and also that the act of conveying dignity to another person also brings dignity to the one who is conveying it. In that sense, dignity is not fixed, but depends upon actions and recognition; it is created through performance. Piety and religious learning, for example, enhance dignity, although since religious

22 Within a strain of esoteric Jewish mystical literature the bodies of Jews and Gentiles are regarded as ontologically distinct.
learning was traditionally open only to men, women’s dignity was more narrowly circumscribed. Despite these variables, dignity is a central component of the cultic and ethical laws of Judaism, invoked, for example, in the regulations governing public worship, and also in the laws governing charity.

Rabbinic Judaism goes a step further than simply asserting that human beings are created in the image of God and are entitled to dignity. Rabbinic thought also asserts that God is in need of human beings (‘zoreh gavoha’) and that observance of Jewish religious commandments gives strength to God. That tradition was given centrality in medieval Kabbalah, which claimed that God is in need of redemption, and that human actions can serve to redeem God. The theurgic tradition was opposed by the medieval rationalist philosophical tradition; indeed, the most important rabbinic authority and philosopher of the Middle Ages, Moses Maimonides, asserted that only a person with a perfected intellect was an image of God. 23

III. Shame as the Central Challenge to Dignity

Human dignity is not simply ‘recognized’ in rabbinic texts, but is created by the laws of those texts. All Jewish texts, from the Bible onward, assert that human dignity is intrinsic to human beings, but derived from a transcendent divinity: human beings are the creation of God, and for that reason bear and deserve dignity. At the same time, dignity is presented as a performative act, one with wide ranging meanings that vary according to social status, gender, ethnicity, and so forth. In addition, as the incident with my student illustrates, dignity may be easily interrupted by societal prejudices such as racism and misogyny that render the recognition and performance of dignity irrelevant. That, too, is recognized in rabbinic law by the sharp prohibitions against public humiliation. Nakedness, for example, is considered a greater violation of women’s dignity than of men’s, so that clothing should first be provided to a woman, then to a man, since women are thought to be more easily shamed than men. Yet such regulations serve not simply to protect women’s dignity but to invent and enshrine the social construction of women’s bodily shame, hidden from view

by a claim to ‘protect’ women’s dignity. Shame, like dignity, is not an intrinsic experience shared equally by all people, but is the creation of laws that invent, impose, and regulate subjective emotion through their disciplinary regimes.

This is exemplified by the rabbinic rulings that extend hierarchies of dignity to Jews and Gentiles, and to life itself. Jewish law evaluates a situation in which the lives of men and women are simultaneously threatened. In that case, saving the life of the man takes precedence over saving the woman, and he must be rescued first (M Horayot 3:7). Later commentaries explain that the man has more commandments to fulfill, making his life more important. Learning also accords greater importance: the life of a learned mamzer (child of a forbidden union) takes precedence over the life of an uneducated priest (M Horayot 3:8). That particular teaching indicates that status for men does not come automatically with birth, but with study and piety; since traditional study is closed to women, elevating their status is not possible through learning.

Other hierarchies of life are delineated in rabbinic law. Sabbath prohibitions on work may be violated to save the life of a Jew, but rabbinical opinions differ whether it is permissible to violate the Sabbath to save the life of a Gentile. Indeed, Gentiles are frequently deprived of dignity by being compared to animals, such as donkeys, while Jews are presented as equal to angels. Non-Jews are permitted to engage in incest because they are like horses and donkeys, according to a relative obscure Midrash. In a Talmudic passage, Gentiles are said to eat and drink like bears, with flesh swollen like that of a bear, long hair like a bear, and restless like a bear.  

Such comments are intended to emphasize that the commandments of God, which are incumbent upon Jews, convey the dignity that raises Jews above the level of animals. The use of animals to convey the superiority of a group of people is not an uncommon construction in Western thought; although animals were created by God, they are not in the ‘image of God’, as are human beings. However, despite occupying a lower status than human beings, animals are granted a day of rest on the Sabbath, and must be fed before the humans that own them.

Violation of dignity requires reparation, according to rabbinic law, but that principle gave rise to conflicts among the rabbis regarding how to de-

24 TB Megillah 11a; TB Kiddushin 72a. For a discussion of these and many other relevant rabbinic sources, see S Stern, Jewish Identity in Early Rabbinic Writings (Leiden, Brill, 1994) 33–39.
termine both the extent of the violation and the proper compensation for it. For example, Rabbi Meir insists that all victims of a particular assault are entitled to the same redress; what determines the reparation is the nature of the assault. Other rabbis disagreed, arguing that the status of the individual who was targeted should determine the extent of the compensation, since the reparation is for the degree of suffering experienced, and that can vary with social status (TB Baba Kamma 86a). The latter argument came to be the accepted principle. At the same time, rabbinic law made it clear that no person was without dignity when determining compensation; Maimonides ruled, ‘One who embarrasses even a resident alien or a slave is liable for damages.’

Rabbinic texts view shame as the opposite of dignity, and shaming another person in public as a major sin, tantamount to murder. For instance, a bride must be told she is beautiful, even if she is not, to avoid shaming her (BT Ketubot 16b-17a). Preventing shame is considered sufficient cause to override certain rabbinic laws; some rabbis permit abortion when pregnancy would result in public shaming, such as cases of rape or adultery. At the same time, a woman’s claim to have experienced an incidence of public shame cannot be overridden by a man’s claim that she does not possess sufficient dignity to experience the incident as shaming.

By comparing public humiliation to murder, rabbinic law recognizes that just as a murdered person cannot be brought back to life, a person who has been shamed may be affected by the experience forever, regardless of preferred apologies. Dignity is so crucial that its destruction through public

27  Mishnah Baba Kama 8:6: Rabbi Akiva ruled that a man who exposed a woman’s hair should pay her a huge sum of money in damages for disgrace. The man protested: woman is of low social status, and has no dignity that could be offended. Rabbi Akiva replied: all Jews are children of the patriarchs and deserve respect as princes. The man then said that this woman had exposed her own hair once when trying to save oil from spilling, thus devaluing her own dignity below that of a bit of oil. Rabbi Akiva answered that only the person herself has the right to harm her own self (for her own private reasons), and this does not reduce the person’s dignity and her right to compensation in situations of nonconsensual disgrace. Cited by YM Barilan, ‘From Imago Dei in the Jewish-Christian Traditions to Human Dignity in Contemporary Jewish Law’ (2009) 19 *Kennedy Institute of Ethics Journal* 231.
humiliation is considered tantamount to murder; according to the Talmud (TB Baba Metzia 58b): ‘One who embarrasses another in public, it is as if that person shed blood.’ The strength of that claim is further justified in a later Midrash:

Rabbi Akiva states, ‘Love your fellow as yourself.’ This is the greatest principle in the Torah. You must not say, ‘Because I have been humiliated, let my fellow also be humiliated’… For, as Rabbi Tanhuma pointed out, if you act thus, realize who it is that you have actually humiliated: ‘He made him in the likeness of God’ (Midrash Genesis Rabbah 24:7).

The public humiliation of a human being is thus viewed as a humiliation of God, a denial, as it were, of God’s divinity. The theurgic element of human dignity implies the ability of human beings to affect God through their behavior; one Midrash says, I am God and you are my witnesses, and if you are not my witnesses, then I am not God. (Isaiah 43:10, Midrash Tehillim 123:2). This is based on the rabbinic understanding of zoreh ga-voha, divine need, a doctrine that becomes even stronger in classical Kabbalah and Hasidism.

In an extensive review of the uses of ‘kavod’ in rabbinic literature, the late rabbinics scholar Chana Safrai concluded that a hierarchy is established: kavod ha-makom, the dignity of God, takes priority over kavod ha-briot, the dignity of the community, which stands above kavod ha-adam, the dignity of the individual. Dignity is not assumed to be a universal given, but the command to convey dignity remains incumbent. Michael Rosen points out that even the dignity of a child deserves protection from the state—and yet, he writes, ‘what is less dignified than a two-year-old?’ Similarly, in rabbinic law, even when a person behaves without dignity, or is incapable of experiencing dignity, whether as a two year old or a corpse, the obligation to convey dignity remains.

IV. The Dignity of Women Versus Men

The hierarchy of male and female becomes significant in rabbinic law when a potential clash occurs between two of the categories, dignity and

shaming, or between two categories of people, men and women. For example, in a ritual described in the Bible and adumbrated in the Talmud, a husband who suspects his wife of adultery brings her to the priest, who makes the woman, a ‘Sotah’, undergo a humiliating ritual that is described in both the Bible and the Talmud. One rabbinic justification for the ritual is ‘God pays attention to the kavod (dignity) of Israel’ (Midrash Numbers Rabbah 9:33). That is, the dignity of the collective people of Israel, represented, presumably, by men whose wives do not commit adultery, takes precedence over the humiliating ritual inflicted on a female Jew, the wife suspected by her husband of adultery. Here it is women whose human dignity is sacrificed to the greater honor of the husbands.

At the same time, the biblically mandated ritual of the Sotah may ‘protect’ the wife by forcing adjudication by the priest, rather than allowing suspicions to fester and possibly lead to a so-called ‘honor killing’ by an enraged husband, father, or brother. Note, however, that the ritual of Sotah could only occur while the Jerusalem temple was standing, and administered by a priest. The Sotah ritual was ultimately canceled, not on the grounds that it violated a woman’s dignity, but because there was supposedly too much adultery (or, more likely, too many suspicious husbands) to regulate. Still, the rabbinic leaders did not cancel biblical rituals (Deuteronomy 22:21) that mandate stoning for a betrothed woman who engages in sexual activity. Indeed, the Talmud adds that the crowd observing the stoning also shames her parents by calling out, “Look at the offspring you have raised!” (Ketubot 45a). Similar shaming of parents accompanies the immolation of a priest’s daughter who commits adultery, another biblical mandate.

Yet while ‘honor killings’ are sanctioned under Jewish law, and receive approval in some medieval commentaries, there is no historical evidence that they were carried out, even when Jews lived in regions of the world in which honor killings were practiced by members of the surrounding non-Jewish culture.

---

30 I Rosen-Zvi points out that rabbinic law transfers the private Sotah ritual to the public domain; see ‘The Sotah Spectacle’ Ha-tekes she-lo haya: mikdash, midrash u-migdar be-masekhet Sotah [The Rite that Was Not: Temple, Midrash and Gender in Tractate Sotah] (Jerusalem: Magnes Press, 2008); Leviticus 21:9: ‘and the daughter of a priest becomes desecrated through adultery, she desecrates her father; she shall be burned in fire.’ Talmud Sanhedrin 52a: ‘If he had been treated as holy (before), he will now be treated as mundane; (if he had been treated with) honor, now he will be treated with disgrace, as they will say, cursed be the one who gave birth to this one, who raised this one.’

https://doi.org/10.5771/9783845264585-129
Generiert durch IP '54.70.40.11', am 29.05.2021, 01:07:14.
Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.
A contrasting position is present in rabbinic texts in Rabbi Akiva’s ruling that we should accept a violation of God’s dignity for the sake of sparing a person from serious suffering. The passage also reinforces a frequent rabbinic injunction that the violation of the human body is an offense to God’s dignity. The link between the human body and God’s dignity, according to Michael Barilan, is not found in patristic literature of the same era, which denies that the human body is an image of God; indeed, he notes, canon law accepts torture, viewing the body as subordinate to the spirit. The link between divine and human dignity leads Maimonides to state that punitive torture should be restricted so as not to violate ‘the dignity of persons’ since it is also ‘the dignity of God’ (Mishne Torah, Sanhedrin 24:10).

Since human beings were created as individuals in the divine image, rather than as a collective divine image, recent claims to a collective honor as a nation or religious group run counter to traditional Jewish views. Indeed, it is precisely the uniqueness of each individual that is emphasized in discussions of dignity. In its broad, sweeping statements, the Talmud generally includes all humanity in its assertions of human dignity, even if certain laws contradict that assertion. The Talmud asserts the uniqueness and importance of each person as evidence for the oneness of God; to destroy one person is to destroy the whole world, according to the Talmud (TB Sanhedrin 37a).

V. Medieval Texts

In varying medieval philosophical and mystical commentaries, God’s ‘kavod’ forms the basis for discussions of anthropomorphic images of God, or is explained as an emanation or creation of God, as a divine substance that provides spiritual sustenance to human beings, or as a divine entity that receives human prayers. That human beings are created in the image of God bears an association with the bodily, supporting the many injunctions not to mistreat the human body, whether alive or dead.

Given that Jews enjoyed only limited, internal self-governance, rather than political autonomy, residing within Christian or Muslim realms during the Middle Ages, questions of human dignity were generally limited to internal matters. Moreover, decisions regarding Jewish law were based on

principles of human dignity that were not always articulated as such. Maimonides, for example, expanded biblical regulations forbidding harsh treatment of Hebrew slaves to include all slaves. While he does not explicitly invoke the term ‘human dignity’, Maimonides bases his argument on its principles:

It is permissible to treat a Canaanite slave with harshness. This is the law. But piety and reason oblige a man to be merciful and just toward his slave, not to overburden him with work, not to cause him grief, but let him share all food and drink taken by himself, as was the custom of our sages of old… He should not humiliate him by infliction of corporal punishment nor by words. He should not shout at him angrily, but talk to him quietly and listen to his arguments.

Maimonides justifies his decision on two grounds: a passage from Job 31:13-15 asserting monogenesis, and on *tselem Elohim*, writing that ‘cruelty and brutality are characteristics of pagans and idolaters’, whereas Jews, like God, practice mercy.32

Yet elsewhere Maimonides seems to suggest that a husband may use a rod to beat his wife when she fails to perform her household duties or when she engages in physical lovemaking with another woman.33 Although sexual relations between two women are not considered homosexuality in Jewish law, Maimonides ruled that lovemaking between women might stimulate a wife to engage in adultery with a man, which is forbidden. Most English translations as well as medieval Hebrew commentaries understand Maimonides to be stating that a husband may compel his wife ‘by scourging her with a rod’. If that is his intended meaning (the passage is slightly unclear), then this, too, would be a break with prior Jewish law, which does not condone wife beating, as well as strikingly inconsistent with Maimonides’ distinct sensitivity to the dignity of a slave and his ruling against torture. The ambiguity of his position – no torture of slaves but beating of wives – will be reiterated, as we will see, in the Israeli Supreme Court’s ruling regarding torture.

32 Maimonides, *Code of Jewish Law*, Book 12, ‘Slaves’, ch 9, para 8. The quotation from the Book of Job states, ‘Have I ever disregarded the rights of my slave or those of my bondwoman, when they had an argument with me? … My Creator has made me and him in one womb and has formed us in one womb’ (Job 31: 13,15).

One of the most important limitations to the applicability of human dignity in Jewish thought concerns idolatry; those who are idolatrous are generally considered to stand outside the potential recipients of dignity. Idolatry is considered one of the great evils, and a Jew should die rather than engage in it; even business dealings with idolaters are forbidden. Within the medieval period, the question arose whether Christianity was a monotheistic religion and, hence, an ethical religion. Idolatry, argued the noted medieval rabbis in Ashkenaz, including Gershom Meor Hagolah and Menahem Ha-Meiri, necessarily leads to immorality. The two rabbis differed on how they exempted Christianity from the category of an idolatrous religion. Rabbi Gershom argued that Christians were simply following the customs of their forefathers, while Meiri argued that Christians adhered to ethical principles and hence could not be considered idolatrous. The ramifications were important, given both the prohibitions in rabbinic law on Jews doing business with idolaters and because the principle of kavod ha-adam, human dignity, could now, theoretically, be applied to Christians along with kavod ha-briot.

VI. Human Dignity in the Modern Era

A universal concept of human dignity, applicable to all, was rarely invoked in European society prior to the mid-twentieth century, yet attributes associated with it shifted from the exclusive realm of the aristocracy and nobility to widespread claims at all social ranks, including the enslaved and disenfranchised. For the German philosopher Immanuel Kant, dignity was the natural outcome of human free will and having the capacity to make rational moral decisions. That capacity is precisely what guarantees dignity to all, argues the philosopher Michael Rosen in his recent book, Dignity. Yet Rosen recognizes that Kant’s argument for an intrinsic, inviolable human dignity based on rational decision-making is insufficient, and he concludes his book with the (perhaps) apocryphal anecdote about the elderly, dying Kant rising from his bed to greet his physician. When admonished to rest and not rise, Kant is said to have replied, ‘The

34 See the discussion of medieval Jewish thought on the link between idolatry and immorality in M Halbertal and A Margalit, Idolatry (Cambridge, Harvard University Press, 1992) 211 f.
feeling of human dignity has not yet left me.'  

Denying his right to pay respect to his visitor—to perform a gesture of dignity—would deny Kant the dignity that constitutes his humanity. Here, too, dignity is performative, acquired by Kant through a gesture of respect for his physician. Yet denial of dignity is precisely what is accomplished through racist institutions and social attitudes, such as the treatment my African-American student, Dierre Upshaw, experienced from a group of white men who sought to harass, threaten, and perhaps harm him.

The attributes that constitute human dignity in rabbinic literature—and learning—continued in secularized Jewish rhetoric. Dignity was discussed in two general contexts by Jews in the modern era, one of accommodation to the European nation-states, the other of human dignity within Zionism and the State of Israel. In the European nation-states, as Jews struggled for emancipation and legal rights, dignity—though not named as such—became politicized: as in all movements of liberation, the dignity of Jews was supposed to be grounds for their social acceptance. For that reason, European Jews promoted the acquisition of ‘Bildung’, signifying not only learning but also the cultivation of European cultural tastes and intellectual discernment. Synagogues, starting in the nineteenth century, formulated rules of decorum to create a dignified liturgical service. Dignified behavior was assumed to express an inner, intrinsic and inviolable dignity that elevates the oppressed, the slave, the marginalized, the colonized, etc., to a status deserving of respect and equality even when they are excluded on legal or prejudicial grounds from those who dominate the power structures. At times, even elevated social status does not accord members of a despised group from the dignity normally associated with that status. For example, along with women and peasants, Jews in Europe were generally excluded from the ‘code of honor’ that led Gentiles to dueling. Even the dignity of the office of President of the United States, to take a contemporary example, did not impede members of Congress and the Supreme Court from loud, verbal expressions of mockery during President Barack Obama’s delivery of the State of the Union addresses, mockery that some observers have attributed to racism.

---

Societal norms regulating dignified behavior function to configure political expression, moderating political viewpoints and modes of expression. Just as the famous figure of ‘Uncle Tom’ in the eponymous novel by Harriet Beecher Stowe is an example of how the image of a dignified black slave inspired many nineteenth-century Americans to oppose slavery, the dignified image of Moses Mendelssohn, the late eighteenth-century Berlin Jewish philosopher, became a symbol that inspired similar attitudes of respect toward Jews among European Christians. The claim to dignity was important in winning political rights and social acceptance over ideologies of race and anti-Judaism, and also was an important component of the nonviolent movements against colonialism. Tropes of dignity invoked by Gandhi, for instance, appealed to the British sense of honor, and were also used in the context of apartheid in South Africa and segregation in the United States, employed in the context of the nonviolent civil disobedience practiced by the American Civil Rights Movement during the 1950s and 60s.

Liberal movements within modern Judaism invoke human dignity in making some of their most significant changes in religious practice, yet there is no consistency in the invocation of dignity. Dignity is applied selectively and does not always overrule underlying social prejudices when invoking Jewish law. For example, when considering homosexuality, members of the Conservative movement’s rabbinc law committee invoked human dignity both in support of, and in opposition to, the permissibility of homosexual relationships and membership in synagogues. In supporting the inclusion of gay and lesbian members of Conservative synagogues, the rabbis wrote,

The rabbinic prohibitions that have been associated with other gay and lesbian intimate acts are superseded based upon the Talmudic principle of kvod ha-briot (dignity of created beings), our obligation to preserve the human dignity of all people.

Yet the Conservative rabbis also wrote: ‘The explicit biblical ban on anal sex between men remains in effect. Gay men are instructed to refrain from anal sex.’ Since anal intercourse (which is permissible under Jewish law

37 A Altmann, ‘Moses Mendelssohn as the Archetypical German Jew’ in J Reinhartz and W Schatzberg (eds), The Jewish Response to German Culture (Hanover, University Press of New England, 1985) 17.
38 EN Dorff, DS Nevins, and AI Reisner, ‘Homosexuality, Human Dignity and Halakha: A Combined Responsum for the Committee on Jewish Law and Standards’ Law Committee of the Rabbinical Assembly of America, ratified on
in a heterosexual context) is one of the main forms of sexual pleasure enjoyed by homosexual men, it seems as though this resolution, in the name of preserving ‘human dignity’, is only recognizing and welcoming homosexuals who are celibate—that is, homosexuals who do not practice homosexuality.

The same principle of dignity, *kavod ha-briot*, was invoked in a very different way by the Sephardic chief rabbi of Israel, Ovadiah Yosef (1920-2013), in a liberal ruling of Jewish law concerning *pidyon ha-ben*, redemption of the first-born son. The case involved a woman who had undergone an abortion prior to her marriage, but had not told her husband. Since the son she bore was not the first male issue of her womb, the ritual of *pidyon ha-ben* would not apply and its blessings would constitute a *bracha l’vatala* (a blessing said inappropriately, which is forbidden). Yet to help her conceal the abortion from the husband, Rav Yosef ruled that the *pidyon ha-ben* should take place nonetheless, with all the requisite blessings, in order to preserve the woman’s dignity, writing that ‘*gadol kavod ha-briot shedochech lo ta’aseh b’Torah*’ (Great is human dignity since it overrides a negative precept of the Torah).

### VII. Universalization of Human Dignity in Jewish Thought

Perhaps the most radical shift in Jewish thought occurred when theologians of the modern period expanded the point of reference of human dignity to include all human beings, not only Jews. That Jews were the exclusive ‘chosen people’ of God clashes with the biblical assertion of mono-genesis and universal *imago Dei*. Rabbinic literature presents conflicting claims: ‘Precious is *adam* (man) for he was created in the image [of God]. Precious is Israel who are called children of the Omnipresent.’ (Mishnah *Avot* 3:14). Modern Jewish thinkers usually focus on the universal, seeking to define Judaism as a religion of ‘ethical monotheism’, and emphasizing an older Jewish tradition that only monotheism can guarantee ethical behavior. For the twentieth century German-Jewish philosopher Franz Rosenzweig, love rather than dignity becomes the central category.

---


39 RO Yosef, *Yabiat Omer*, vol 8, note 32.
of the neighbor stems from the love of and for God; God commands our love for God – “thou shalt love the Lord your God” – which Rosenzweig understands as evidence that God loves us because only someone who loves can demand love in return. Love of neighbor is thus derivative, not foundational, as Samuel Moyn has pointed out: ‘the neighbor is a substitutional category’. Judaism and Christianity are responses to God’s love, though other religions are not; Rosenzweig’s universalism applies to the future, not the present. The French Jewish philosopher Emanuel Levinas (1906-1995) emphasizes that it is the face of the other that makes ethics primary, and not the actions of the other nor rational moral reasoning nor God. Indeed, he argues that freedom and reason are not guarantees to prevent racism, totalitarianism, and genocide. For Levinas, dignity is achieved only by assuming a prior ethical responsibility for the other, and he questions whether the legal guarantees of liberalism are sufficient for achieving ‘authentic dignity’ because treating others with dignity would remain a choice that can easily be withdrawn.

The theologian Abraham Joshua Heschel spoke in a more traditional, religious Jewish idiom, emphasizing the uniquely Jewish teaching of divine pathos (zoreh gavoha), God’s empathic responsiveness to human beings, which he traced in prophetic, rabbinic, and medieval texts, and the centrality of tselem Elohim. Heschel links dignity to holiness (Leviticus 19:2). Human beings contain divinity because God “blew into his nostrils the breath of life” (Genesis 2:7). At the same time, he expanded the traditional theurgic understanding of divine pathos, arguing that God responds not only to observance of ritual commandments, but also to commandments governing human relationships, and he included all human beings in the ethical admonitions of Judaism. In many of his writings, he cites a Midrashic commentary to Isaiah 43:12: ‘I am God and you are my
witnesses; if you are not my witnesses, then I am, as it were, not God.’ (Pirke d’Ray Kahane 12:6, 102b).

The root of Nazi criminality, Heschel argued in an essay he wrote in September 1940, just months after arriving as a refugee in the United States, began with its commodification of human beings. This was aided, he claimed, by a long stream of social theorists and philosophers who defined not the uniqueness and greatness of the human spirit, but rather compared human beings to animals or machines, placing them within the order of nature. By contrast, he argued that Judaism insisted on human dignity as derived from the uniqueness of humans:

‘It was the classical achievement of antique Judaism to have worked out the differentiation between nature and spirit, and God’s standing over nature. The negation of the separate existence of the spirit by naturalism means a relapse into a time when nature and spirit could not be differentiated and the abolition of human dignity.’

For Heschel, human dignity does not collide with individual human rights; on the contrary, in a 1957 essay, “The Individual Jew and His Obligations,” he argued for the recognition of the human soul as both the guarantor of dignity and of the inviolable claim to the rights of the individual. Halakha, Jewish law, promotes religious practices incumbent on all Jews, while neglecting, he claimed, the individual and his or her personal anxieties, dilemmas, and spiritual problems.

Heschel’s engagement in political activism, including the Civil Rights movement, brought him to take public stances in issues involving Gentiles, not just Jews, making him both the most traditional of modern Jewish theologians and simultaneously the most universal. Divine need is served not only through performance of ritual commandments, but also through human behavior toward one another, and it also serves as a caution against placing humans in an abject position in relation to God. When Rabbi Akiva, one of the most important rabbinic authorities of the second century CE, ruled that one should even accept the violation of God’s dignity for the sake of sparing a person serious suffering (TJ Nedarim 9:4), he meant all persons, in Heschel’s interpretation. Perhaps most radical and

46  AJ Heschel, ‘Antwort an Einstein’ (September 1940) 20 Aufbau.
47  AJ Heschel, ‘The Individual Jew and His Obligations’ in id (ed), The Insecurity of Freedom 187-211.
distinctive is Heschel’s assertion that rabbinic laws regarding dignity apply to all human beings, not only to Jews.

Performance of dignity does not always conquer racism. The destruction of European Jews in the Holocaust is widely recognized as the event that catalyzed international attention to human dignity. The murder was accompanied by degradation and humiliation, an ‘excremental assault’, in the words of Terrence Des Pres.48 Numerous memoirs by inmates of death camps report that the preservation of a sense of human dignity was essential to their survival, while others report the absolute obliteration of their dignity. The French philosopher Jean Améry writes,

You do not observe dehumanized man committing his deeds and misdeeds without having all of your notions of inherent human dignity placed in doubt. We emerged from the camp stripped, robbed, emptied out, disoriented—and it was a long time before we were able even to learn the ordinary language of freedom. Still today, incidentally, we speak it with discomfort and without real trust in its validity.49

What may reconstitute the dignity of the perpetrators, if at all possible, has not been examined thus far.

VIII. Human Dignity and Honor in Zionist Thought

Zionism challenged the Jewish contract with European society. Not only was political integration rejected, dignity itself was questioned. A central tenet of most Zionist theorists was that the Jewish experience of exile had feminized Jewish men, depriving them of dignity. Establishing a Jewish state would overcome the degeneration caused by diaspora and its piety and learning, according to a major trend within Zionist thought. Spinoza, in his Tractatus Theologico-Politicus, published in 1670, had argued that Jewish religious piety emasculates Jewish men; the nineteenth century Hungarian Jewish physician and Zionist leader Max Nordau argued that Judaism had produced a ‘degeneration’ of Jewish men whereas Zionism would produce ‘muscular Jews’; Theodor Herzl, the leader of political Zionism, who bore a scar from a duel he had engaged in as member of a stu-

dent fraternity, depicted a State of Israel that would restore such manly practices of honor to Jewish men; Vladimir Jabotinsky wrote with contempt of the despised, sickly, ugly, frightened ‘Yid’ who will be replaced through Zionism by the proud, independent ‘Hebrew’ of masculine strength and beauty who will both charm and command with pride.50

The emphasis on human dignity that is found in Zionist thinkers continued in the State of Israel’s legal documents. Israel’s Declaration of Independence, proclaimed in May 1948, promises complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; [and]... freedom of religion, conscience, language, education and culture.

Israel has never written a constitution, but enacted several Basic Laws that are supposed to ultimately inform a constitution whenever it may come to be written. Those Basic Laws, passed in 1992, do not speak of equality, but of kavod ha’adam v’heruto, the dignity of man and his liberty; equality was omitted as a concession to the religious parties, which reject equality of women and men. Those political party conflicts within the Knesset left the Basic Law without certain provisions that were ultimately extended by the Supreme Court, which invoked dignity in decisions such as freedom of religion and the right to equality.51

Honor and dignity assumed particular importance in the Zionist movement’s effort to overcome the absence of political self-rule and the attendant persecutions and suffering of Diasporic existence. Zionists first asserted that Jewish life in diaspora had been humiliating to Jewish men, the result not only of not having political autonomy, but also the result of piety and study, rather than physical exertion and military prowess. Zionists then presented their movement as overcoming the shame and humiliation of Diaspora, with the State of Israel charged with protecting the Jewish collective. Israeli legal scholar Orit Kamir calls attention to the centrality of personal, masculine honor in Herzl’s political Zionism and the contrasting emphasis on the dignity of the Jewish collective by Ahad Ha-Am, who advocated cultural Zionism. David Ben Gurion, Israel’s first Prime

50 On Jabotinsky, see A Wolfe, At Home in Exile: Why Diaspora is Good for the Jews (Boston, Beacon Press, 2014) 17 f.
51 Kretzmer, in Kretzmer and Klein, 172.
Minister, united the two concepts of honor and dignity, Kamir argues, making human dignity and Jewish national honor ‘almost synonymous’.52

IX. Human Dignity in the State of Israel

While Jewish law is not the governing law of the State of Israel, Jewish religious practice, ethical norms, and historical experience continue to influence court decisions as well as decisions made by the Knesset, the Israeli parliament. Human dignity was invoked by the Supreme Court of Israel even before adoption by the Knesset of the 1992 Basic Law on human dignity.53 In accord with classical rabbinic texts, the Court has invoked dignity in decisions ranging from protecting animals from needless suffering and to protect the dignity of the human corpse. The Court has also limited freedom of expression on the grounds of human dignity, placing limits on pornography as potentially violating the dignity of women, and limiting speech promoting racial hatred.

Conflicting claims to dignity also mirror questions about the nature of the State itself: is it a state of individuals or a state representing the collective Jewish people or even Judaism? The distinctions are not embedded in law, but are rhetorically powerful as a measure of Israeli culture, which wavers between Israel as a Jewish state, a democratic state, a religious state, a secular state. The rhetoric functions within legal decisions in a manner analogous to the role of aggada in the Talmud. For example, a 1967 court ruling found that two Israeli citizens who had cut off the sidelocks of an Israeli Jew were guilty of attacking ‘Jewish national honor’.54

In a 1996 Supreme Court case regarding transportation on the Jewish Sabbath, Doron Shultziner reports that while Aharon Barak, a non-religious justice, ruled in favor of the rights of individuals to drive freely through Jewish religious neighborhoods on holidays that forbid automotive travel, religious justices ruled to the contrary. For Barak, human dignity upheld the autonomy granted by freedom of movement. However, the religious justice on that case, Tzvi Tal, asserted that freedom of movement on the

52 O Kamir, ‘Honor and Dignity Cultures: The Case of Kavod and Kvod Ha-Adam in Israeli Society and Law’ in Kretzmer and Klein The Concept of Human Dignity in Human Rights Discourse 231, 255.
54 ibid 257.
Sabbath was of lesser importance than preserving respect for Jewish religious sentiments that regard the Sabbath as central to Jewish tradition; the issue of human dignity was defined by him not in terms of individual autonomy, but as the collective historical spirit of the Jewish people represented by the State of Israel. Thus, while rabbinic law does not govern Israeli court rulings, a murky and weakly delineated understanding of Jewish tradition does influence decisions. The invocation of Judaism and Jewish experience elevates the collective, and tends to weaken arguments for individual human rights as a protection for the individual since rabbinic law, as Heschel pointed out, neglects the individual Jew.\(^5^5\)

The most difficult conflict has been the application of dignity to cases facing the High Court of Justice (HCJ) that adjudicates petitions against government actions and thus has a heavy caseload arising from the military administration of the Occupied Territories. Those appeals frequently invoke the Basic Law on human dignity and ask whether the human dignity of Palestinians can be invoked against claims to state security. The decisions of the HCJ underscore the ambiguity of the situation: it is unprecedented in international law to allow residents of an occupied territory access to the courts of the occupying nation, pointing to the reluctance of many leading political leaders in the State of Israel to speak of the West Bank as occupied.

The HCJ’s cases operate at the heart of the conflict between human rights and claims to ‘security,’ with the Court acting at times as a restraint on military authorities and, at other times, as a legitimating force. The legal scholar David Kretzmer argues that the legitimating function dominates because the HCJ has not perceived itself as a judicial body that should play an expansive role in trying to protect basic rights against violation by government, but as a body that must support the foundation of military legislation in the Occupied Territories.\(^5^6\)

The Israeli Supreme Court, too, has acted in concert with Israeli political policy, approving the establishment of civilian settlements in the West Bank on the grounds of military need, although the Geneva Convention


prohibits the transfer of citizens of the occupying power to the occupied territory. On the other hand, the Israeli Supreme Court ruled in 2005 against the use of targeted assassination of Palestinians suspected of terrorism in the Occupied Territories:

unlawful combatants are not beyond the law. They are not ‘outlaws’. God created them as well in his image; their human dignity as well is to be honored; they as well enjoy and are entitled to protection.

Both courts waver between adhering to international law and state policy; the decision to permit settlements, for instance, contravenes the Geneva Convention, yet government lawyers, Kretzmer points out, plea at times in the name of the international law of belligerent occupation. The very existence of the HCJ and the opportunity for civilian appeals against military actions opens the route to legal appeals and also acts as a mitigating influence, generating some degree of restraint by Israeli officials, creating what Kretzmer terms “in the shadow of the Court restraining influence.” Yet the decisions of the HCJ have also legitimated military actions against Palestinians, including house demolitions, confiscation of land, destruction of olive groves, and deportations, invariably in decisions that favor claims of state security over the human dignity of Palestinians. The very existence of the HCJ provides “the oxygen that enables the occupation to operate,” writes human rights lawyer Michael Sfard. The tension between restraint and legitimation mirrors the difficult adjudication between human dignity and claims to superseding commitments, whether political regimes or ideological formations concerned with race, gender, or wealth.

Had the HCJ not acted as a force of restraint on the West Bank, allowing military control to engage in blatant violations of human rights, would the ensuing human abuse, Kretzmer asks, have ‘made the occupation less

---

58 Public Committee against Torture in Israel v. Government of Israel, HCJ 769/02 (Supreme Court of Israel Sitting as the High Court of Justice) [December 11 2005]; cited by Christopher McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’ *EILJ Working Paper* 2008/8, 37.
60 Kretzmer, *Occupation of Justice*, passim.
palatable to Israeli elites,’ thus forcing a political settlement that would have ended the occupation?63

Torture has been banned in a variety of international laws and covenants ratified since 1948, to which the State of Israel has been a signatory. Even more powerful is the explicit ban in those international conventions on the use of torture during states of exception, such as war or political instability. In examining the September 1999, ban on torture issued by the Israeli Supreme Court, the Israeli philosopher Anat Biletzki notes that while Israel had signed all the various international conventions of human rights, torture had continued under the rubrics of ‘necessary for security’ and described as ‘pressure’.64 Aharon Barak, President of the Court, when commenting on the Basic Law of dignity and liberty, proposed that the Knesset (Israeli parliament) pass laws permitting torture, if it so wished, writing

It is there that the required legislation may be passed, provided, of course, that a law infringing upon a suspect’s liberty befitting the values of the State of Israel, is enacted for a proper purpose, and to an extent no greater than is required.

The ambiguity is reminiscent of Maimonides’ rejection of torture but approval of wife beating: the Court rejects torture unless it is for an undefined ‘proper purpose’ and no great than an undefined ‘required.’

Although the Supreme Court’s ruling on torture was ultimately equivocal, it nonetheless aroused outrages among right-wing Israeli Jews who supported torture of Palestinians and claimed that the Court was becoming imperial, undermining the State of Israel’s security, and needed to be reined in by the government. Ultimately, the Knesset refused to legislate permission for torture, and although ‘tentative and equivocal,’ the Court’s decision might be a harbinger, according to Biletzki, of the internal condemnation needed to secure human rights in Israel.65 Of course, in considering who would be tortured, the Israelis who opposed in the court’s ruling had in mind Palestinians suspected of terrorism. Reports of torture – ‘pressure’ – allegedly applied to Jews suspected of terrorism against Palestinians in December 2015, sparked a reversed outcry: right-wing Israeli Jews were now in opposition to torture. Like the society, Biletzki calls the court

63  Kretzmer, Occupation of Justice, 198.
a ‘schizophrenic court’ for differentiating in a host of cases between Jewish and Arab applicants,

between social-economic issues and political (i.e., Jewish-Arab conflict) ones: a liberal, rights-conscious court on the Jewish socio-economic side of things, a strict, security-minded one on the political conflict stage.\textsuperscript{66}

Ultimately, the State of Israel, as a state for Jews, appeals to security as the state of exception that exempts Israel from various international legal obligations, whether those pertaining to nuclear disarmament or the occupation of conquered territories. In that respect, the State of Israel is in alignment with the United States, which, as Michael Ignatieff has argued, invokes American exceptionalism to exempt itself from applying the provisions of the international human rights conventions that it has signed, and denying jurisdiction to human rights law within its own domestic legal framework.\textsuperscript{67} Nationalism influences the Israeli court’s understanding of human dignity, making the universal understandings of the Bible and much of rabbinic literature secondary to the honor of Judaism, the Jewish people, and the State of Israel. On the one hand, universal claims to the inviolability of human dignity may be understood as upholding claims of liberty and personal autonomy, while on the other hand, human dignity may be invoked to uphold the rights of Judaism and the collective Jewish people, paralleling the findings of Shultziner and Carmi in their survey of courts that interpret the ‘human dignity’ of their national constitutions to uphold the collective or the national culture, even when denying individual human rights.

\textbf{X. Conclusion}

The different meanings of ‘kavod’ that arose in biblical texts and became at times ambiguous in rabbinic literature continue to this day in the supposedly secular context of the Israeli courts. Human dignity, national honor, and divine glory each carry different political and cultural implications, as Orit Kamir wisely notes. Human dignity may be vested in human beings by God, but it does not exist without human action; dignity is granted to human society for cultivation. While dignity may be experienced sub-

\textsuperscript{67} M Ignatieff, \textit{American Exceptionalism and Human Rights} (Princeton, Princeton University Press, 2005).
jectively, it requires continual recognition and performance by others. De-
spite Rabbi Meir’s insistence in the Talmud that all victims deserve the
same compensation, some societal distinctions of wealth, gender, ethnici-
ty, and status became markers recognized in rabbinic law when determin-
ing both the nature of an offense against dignity and its recompense; the
rabbis clearly recognized that the supposed universality of ‘tselem Elohim’
did not function in all circumstances. Yet status markers conflict with the
biblical claim of monogenesis, an equality of all human beings by virtue
of divine creation, as well as the inviolability of human dignity as a reflec-
tion of God. Reconciling religious belief with human equality or demo-
cratic pluralism is thus not a new problem, but a tension already inherent
in the earliest strata of rabbinic thought. The claims of dignity are not the
same as the claims of rights, and the dignity of tradition, religion, or socie-
ty may at times be given precedence over the dignity of an individual, es-
pecially if kavod is translated not as dignity, but as honor. The application
of human dignity to Jews, rather than universally, could function when
Jews held no political sovereignty over non-Jews. Israeli court decisions
weighing human dignity against state security tend to retreat, especially
when the dignity applies to Palestinians in the Occupied Territories; that is
the inevitable outcome, perhaps, of an ethnically homogenous government
ruling over members of outlying groups.

Even a relatively ‘minor’ offense against human dignity, whether as a
racist threat against my African-American student, Dierre Upshaw, or a
contemptuous comment directed against a president who is black, demon-
strates the fragility of human dignity when confronted by systems of rac-
ism, structures of patriarchy, or other forms of societal hierarchies and
privilege. Ultimately, both the legal system of rabbinic Judaism and con-
temporary legal jurisdiction in the secular courts of the State of Israel that
are informed by Jewish historical experience agree that while human dig-
nity is vested by God and remains an inviolable principle on a private lev-
el, dignity also depends upon the performance and recognition by other
human beings to come into a social and legal existence that transcends re-
gimes of race and gender.