

I.

Philosophical Foundations

Human Dignity and Human Nature¹

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Dignity is no empirically given property. To see dignity as such is no human right. It is much more the transcendental basis that human beings have rights and duties. They have rights because they can have duties, that is, because the normal, mature members of the human family are neither animals, shoe-horned into their own body politic, nor mere subjects of desire, operating through pure instinct, whose desires, in the interest of the community, must be held in check by state institutions. Human beings can act rationally and morally from reason and have the duty to do so. So it is recorded in article 6 of the German Constitution: “The care and nature of their children is the natural right of parents and their first duty”. That the rights of parents is based on their ability to perform their duty as parents, it follows that this right expires when this duty is crudely neglected. The ability to undertake responsibility is that which we call freedom. Whoever is un-free cannot be made responsible for anything. But whoever can undertake responsibility has the right not to be treated as a mere object, nor to be physically coerced in the execution of his duties. The slave, who has no rights, also has no duties. The state is therefore a community of the free. Slaves can as little be citizens or subjects of the state as can domesticated animals.

If the freedom of the will is a fiction, then the state is based on a fiction, on an “as if” which it is important, that the citizen does not experience that it is a fiction, rather really believes in it. Human dignity has no biological basis, but whether one can belong to those who possess it is dependent upon one’s biological membership of a family of the free, for relations of kinship are also personal relations. Father, mother, sister, brother, grandparents et al. are (contrary to animals) life-long personal roles. Nevertheless, it is not a question of whether a member of this family already possesses those properties that occasion us to speak of persons; properties that phenomenally bring something like dignity into appearance.

Talk of a human dignity which is to be respected is based on a particular ambivalence in the thinking of the free subject. From this ambivalence follow two differing ideas concerning those things through which this dignity could be harmed. Human Dignity is inviolable, according to the German Constitution, and Horst Dreier writes, quite correctly, in his commentary on it that it is to be understood normatively, not descriptively. Inviolable: that can indeed mean something which cannot be infringed upon, or that it may not be infringed upon. Both meanings depend on the human being, on the one hand, a person, a free subject, and, as such, is not to be affected by any kind of outside agency. Christian tradition ostensibly has its central symbol in the image of an entirely wretched figure, a crucified naked, to whomever however as such the deep-

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est honor is rendered. It is of the same tradition as, in Shakespeare, old King Lear, chased away by his daughters and in storm and rain sitting down on the street, is addressed by the Earl of Kent who wishes to enter his service. When Lear protests that he is a nothing, Kent answers "You have that in your countenance which I would fain call master". It is in the deepest indignity that what we call dignity can be seen most clearly.

On the other hand there are evidently actions that infringe upon dignity. There can only be these actions because human beings are not free subjects, floating about in empty space, rather possess a physical and psychical nature in which they present themselves and by which they can be infringed upon, and indeed independent of their own willing. Allow me to make some observations here.

Freedom is a peculiarity of the species homo sapiens. But the nature of human beings is not only characterized through it, that is, in being an expression of freedom. We can imagine rational entities from other stars that come to this planet and encounter human beings whose ways of behaving they do not understand. Imagine if these beings could feel no pain; they possess other signals which cause them to become aware of when their health is in danger. This signal would merely have the character of the blinker of an automobile, which does not itself contain the capacity to eliminate itself. This being could not at all understand why the purposeful bringing-about of such signals, that is, the purposeful infliction of pain, should be something regarded as bad. And if a being cannot understand something such as sleep, it could not understand what systematic self-deprivation means. Almost all the content of our will is a natural content, which is pre-determined through our contingent human nature. And only in this contingent nature is human dignity inviolable. This nature is a nature of the species. Therefore human beings can understand the propensity of other human beings and only hence, so to speak, evaluate the conflicting interests and bring them into the right balance. Otherwise, only the intensity of a wish would count, however wayward and absurd this wish appears to us. And someone could feel harmed in his human dignity if the intensity of his wish is not taken into account. We can only evaluate wishes and interests because we have the same nature. Even the defenders of euthanasia cannot get along without such evaluations. If only suicidal desire as such counted, then the wish of a young, morbidly unhappy boy in love could not be rebuffed, and therefore actively assist him in suicide. The objection that one should in such cases assume, later on in time, that person will change his mind, this person can counter with the argument that: I do not wish that time diminishes my identification with this love; I wish to die as the person that I now at this moment am. If it corresponds at all to the providence of human beings to kill another when bidden by the same, and if human dignity consists only its freedom, entirely uncoupled from nature, then evaluating suicidal desire of this kind at all is an undue act of paternalism. Why should a person not have the right to die as the person that he presently is? I remember another, this time real, example: the Cannibal of Rotenberg, who had the desire to kill a human being and ultimately devour them, and who found someone on the internet who had the complementary wish to be killed and devoured. The thing occurred. The man was accused of murder. His defense was simple: *Volenti non fit iniuria*. Nothing here befell anyone who had not desired it. The

state does not have the right to assess the value of such desires and to penalize their execution. If he were punished all the same, then therefore because the court evaluated the desire and indeed for reason of yardsticks that support something like a nature of human beings, in which human dignity can, despite assent, can be infringed upon.

If we condemn the behavior of the Cannibal of Rotenberg as perverse, then we support a normative concept of the natural as that of “normal people”. Without a concept of normalcy we cannot come to terms with the living. In the realm of physics there is nothing like normalcy, there is only the strict natural law, which suffers no exceptions. If a planetary body deviates from its anticipated course, we do not speak of its bad behavior, rather we feel ourselves occasioned to correct the parameters of our calculation. There is in the realm of the unliving neither right nor wrong. If a hare is born with three legs, if a mother lion does not instruct her cubs in the hunt or if a primate does not possess the necessary ability to attract the opposite member of its sex on which the continued existence of its species is based, then we speak of deviation, anomaly, or defect. The assimilation of animal behavior to an environment is based on the animal counts on specific behavior of other animals, for example, normalcy. So too can we manage, say, in street traffic because we count on the normal behavior of other motorists. In the same way, we cannot, out of regard for human dignity, treat human beings the same without consideration of their sexual orientation. Who-so-ever employs a pedophile as a kindergarten teacher, acts negligently. The sexual desire of the pedophile cannot be placed on a level with someone who assesses things normally. To respect his human dignity does not mean to regard his special inclinations as an expression of this dignity. We must much more expect of him to roundly give up the satisfaction of these inclinations. The satisfaction of such inflicts mental harm on the child, so that it hinders the kind of later life we would call “normal”. Without this concept of the normal we could not answer the question why then the interest of a child should have priority over that of the pedophile. He too can claim that it would harm him if he must give up his inclinations. The answer cannot be, that principally the interests of a child have priority over those of an adult, rather that both interests do not stand on the same level. The one, the interest in a normal life, is a normal interest, the interest of the pedophile is not.

The until today canonical interpretation of the German Constitution sees the respecting of human dignity, with recourse to Kant, in that every human being, whether met by direct or indirect treatment, is treated never only as a means, but likewise as an end. It is important here to stress the “only”. Human beings can indeed only live in a society if they employ each other as a means to an end. Harm to human dignity occurs if someone is reduced to his function of being in the interest of another and thereby mutability of such instrumentalisation is excluded. This occurs, for example, through so-called immoral compacts. By virtue of his freedom, a person can be in control of themselves. He can give promises, such as those of marriage and those of the religious life, which command his entire life. But in our legal order such compacts must be legally revocable. Therefore, for example, a contract of submission, by which someone sells himself into slavery and definitively and with intention of legal effect renounces his right to have that other meaning.

The state protects here the freedom of those who are ready to surrender it. This renunciation is possible. It can be even the highest expression of freedom. And the Church can treat such promises as irreversible and hence insist on the freedom of who is in control of the entirety of his life. It is important, however, that the Church, through the enforcement of this right, cannot make use of the organ of the state. The personhood of a human being has a temporal dimension. It begins sometime and ends sometime. It belongs to the actuality of the human person, that it possesses a biography, that it can identify itself over a long stretch of time with each stage of its natural existence. In this way we say “I was conceived on such and such a date”, “my parents considered aborting me”, “I was then born”, “perhaps in advanced age I shall no longer be in dispose of a clear consciousness”, or “at such and such a time I was unconscious”. The person pronoun “I” does not refer to “an I”—an invention of philosophers—rather a natural organism that begins to exist as soon as DNA has formed, and which with respect to the mother is independent and from the moment of conception onward continues to develop autonomously. The human person is not the aggregate of states that cycle through it, rather is always the one identical person who cycles through these states. Kant encapsulates this when he wrote: “Because someone who is conceived is a person, and it is impossible to form an idea of the conception of a being endowed with freedom through a physical operation, so, in a practical sense, it is a entirely right and necessary idea to see the act of generation as such through which we bring a person into the world by our own hand and without their approval”. However, in what concerns the end of a life, the concept of human dignity in connection to euthanasia is often used and suicide is understood as a dignified death. I shall not discuss here the question of the moral and legal estimation of suicide. It is absurd to punish the suicide attempt, but it is likewise absurd to speak of a “right to suicide”. The truth is: Whoever kills themselves deprives themselves of that social framework within which there can be talk of justice and rights. The person who kills themselves removes themselves from the sphere of right. To be able to do this—not, to do it—belongs to that which signalizes the person. It is entirely different with assisted suicide. It is an action not without, but within the legal sphere and cannot be allowed. The making of suicide into a right has bad consequences. Then the holder of this right is responsible for all consequences, all burdens of a personal and financial kind that result from it, that he cannot truly avail of this right. Through logical necessity then emerges an undue pressure on the old and the infirm. The patient is free from the responsibility only when there is no legal possibility for him to achieve his death through others. No human being can be forced by another to say: “There should be no more of you”. An irrevocable contract of submission is an unethical and therefore ineffective contract. A death contract is in the moment, where it is carried out, completely irreversible. Hence it is in a yet greater measure an unethical contract than that with which someone betakes themselves into slavery. The word “liberation” is for this action unfitting. For the aim and end of every act of liberation is freedom. The aim and end of assisted suicide is, however, the destruction of the subject’s possible freedom, non-existence. Dying with dignity is a death in which one is cared for, accompanied and saved from great pain by fellow human beings. Likewise, it is undignified to prolong the life of a human being through medical practices, for example force-feeding,

beyond a reasonable measure, as it is to directly cause a death. In both cases the patient is no longer an end in himself. Here it comes down to human dignity. Human rights are not absolute. They can mutually limit themselves. In this way the right to freedom of research or the right to artistic expression find their limits at the right to property. The artist may not paint walls which do not belong to him. The scientist may not, in the pursuit of his research, take possession of property which does not belong to him nor sacrifice human life. The right to property has its own limits. Human dignity, however, knows no compromise. It demands that even with the limitation of rights the question must always be whether in the consideration of justice, which calls for or permits this limiting, the interest of which in what is legally limited is adopted in an impartial way, that is, whether the limiting of those concerned can be rationally justified—granted that the person concerned is right thinking. Human dignity can never stand against human dignity. When my own interests take a back seat there must be behind them those of another, which means that there is no harm to my dignity, so long as this harm can be justified. The dignity of a human being is harmed when it is openly or indeed tacitly said: it does not depend on him. The Kantian formula of the end in itself can also simply be so modified: it depends on everyone.