

The Universality of Human Dignity

Possibilities, Limits and Aporias of Justification

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When asking what is meant by the universality of human dignity and how best to establish it generally, the question of substance simultaneously leads both to a question of methodology as well as to a question concerning the fundamental principles of (practical) philosophy.

Providing philosophical foundations has always carried the special feature that those very convictions, including those remaining firmly unquestioned, will, for the most part, be put in doubt. Yet this also entails setting what is doubted into doubt. It is only in this twofold movement, rather than by way of a Euclidean demonstration in the Euclidean geometrical fashion, that philosophy has its inception. It does not achieve this perspective by means of a God's eye view but in that the thinker instead comes to reflect on him or herself. It is, as Plato observes in his Seventh Letter, *apaideusia* [bad manners] that is unable to distinguish between that for which one ought to require demonstrations and for which not. Inasmuch as the dynamic of this question remains within the horizon of a self-questioning, the *gnothi seauton*, the problem of human dignity is an exceptionally distinguished paradigm of such a dynamic.

Even where focused on the universality of human dignity, it will not primarily seek its own unconditionality but much more attempt instead to secure those conditions needed to engage one another together in conversation and—above all—in understanding. In the process, it will also encounter the limits of foundational thinking, which are differently articulated under different conditions. Philosophical thinking is expressed and differentiated by limits and contradictions, as detailed in Hegel's methodological outline, according to which the fear of contradiction is itself already a contradiction. And such thinking does not ultimately overcome aporia: it knows the sharply limited range of that which is still not knowing, which, in addition to astonishment, is a basic condition for Platonic philosophical knowledge.

When what is at stake is the universality of human dignity, this signifies that the situational invariant holds without exception or regard for person, indeed across all cultural differences as well. In this sense, as Robert Spaemann has observed, human dignity is the basic assumption that human beings have rights.¹ It is thus not a right alongside other rights. And given such universality there can be no judge or arbitrator

¹ R. Spaemann, „Menschenwürde und menschliche Natur,“ in: Spaemann, *Schritte über uns hinaus. Gesammelte Reden und Aufsätze II* (Stuttgart, 2007), pp. 93 ff. See too Spaemann, *Grenzen. Zur ethischen Dimension des Handelns* (Stuttgart, 2001).

who would be authorized to grant or deny human dignity. This would be a major claim. Can it be cashed out?

I. Conceptual Histories and Structures

1. Let us approach this problem indirectly, inasmuch as a basic structure of human dignity arises from the interweaving of individual moments of conceptual history. What is ultimately essential is that a *universal* notion of human dignity has been attempted in vain since Greek antiquity. The human being is perceived in Sophocles' *Antigone* as the most terrifying or uncanny [*deinotaton*].² Indeed, endangered by their own hubris, human beings even engage in conflict with the gods. This kind of dignity is thus and simultaneously an abyss. As the tragedy always plays out, the human being, even when physically destroyed, is superior to the gods. To the extent that they survive their sufferings, winning self-insight in their own regard, they frame a self-knowledge beyond themselves. If one reads Plato's dialogues on the explicit question of the human being, what is striking is a remarkable reticence in speaking of the human being at all. And one may not be going too far, if one assumes that there, yet again, is the reflection of the Sphinx's riddle, met by the great hubris of Oedipus: to have resolved the puzzle of the who of human being.

2. In Cicero, it is, following the Stoa, well known that there are two applications of human dignity. On the one hand, dignity is *dignitas*, accruing to great, distinguished, human beings and expressed in public interaction with them.³ When Aristotle describes the great-souled and magnanimous, *megalopsychia*, as calmness, serenity, representative characteristics of a human being who pursues only higher goals, who proceeds slowly and carefully, and whose speech is deliberate,⁴ these distinguishing features are thereby especially emphasized. Dignity, in this sense, is attributed to individuals in special and particular measure. And for this we esteem them and rightly so.

Yet beyond this, Cicero has a second terminological usage, to wit, dignity understood as the nature and essence of humanity: as dependent upon the human being. Hence the Roman liturgy likewise prays on a Christian foundation: "God, who didst wonderfully create, and yet more wonderfully restore, the dignity of human nature." Cicero himself speaks more negatively of specific forms of life that do not reach the level of human dignity. There is therefore duty in human dignity. Yielding to one's own satisfactions without limit or measure would oppose it. Wherever loss of dignity is at stake, the human being will institute a measure for himself. Thereby human dignity gains a fully ethical, normatively human, qualifying meaning. For Cicero, human dig-

² Sophokles, *Antigone*, V. 332 ff. S. H. Flashar, *Sophokles. Dichter im demokratischen Athen* (München 2000).

³ Dürig: Art. *Dignitas*, in: *Reallexion für Antike und Christentum*, 3 (1957): 1024–1035; V. Pöschl: *Der Begriff der Würde im antiken Rom und später* (Heidelberg 1989); P. Kondylis u. a.: Art. *Würde* in: O. Brunner / W. Conzer / R. Koselleck, eds., *Geschichtliche Grundbegriffe* 7 (1997): 637–677.

⁴ See Arist., NE IV.7.

nity is consequently common to all human beings through reason [*ratio*]. The dignity and nobility of human nature (*De off.*, 1, 105 f) is realized in the obligatory [*'kathekon'*] as the highest conception of ethics. A specific form of knowledge is endowed with this, that of *syneidesis* (conscience), the human being's own knowledge and awareness regarding his deeds. This qualifies him as *'honestum,'* the highest anchoring point of honor. On the basis of Cicero's conceptual architecture, here in bare outline, human dignity is one part of the assumption of *lex aeterna*, of an eternal law.

This is further continued in Christian thought in the High Middle Ages, as in the case of Thomas Aquinas. The concept of a person stands in the most intimate connection with human dignity. "And because subsistence in a rational nature is of high dignity, therefore every individual [*individuum*] of a rational nature is called a *person*."⁵ In this (which Kant will pursue further), it is revealed that the responsibility for one's actions is also constituted with dignity. Human dignity refers to morality. Otherwise humanity would fall behind the nature of all other forms of existence. This is a foundation accruing ipso facto to human beings, the grounding of which is to be located exactly in their being: one needs must therefore point out here that the caveat contra the naturalistic fallacy can in no way lay claim to validity.

3. That dignity belongs to the substance of humanity is stipulated in the hitherto discussed intersections of our reflections in the guise of natural law. Again, this too would not hold without further ado as a foundation for modern forms of thought, and certainly not less for the *universality* of human dignity; had natural law however not largely lost its significance as the pole star of Western ethics via the de-theologizing of the concept of nature (M. Weber). And even more John Locke's problematization here signifies a break. Locke's empirical verification of rights uses the concept of substance in order to talk of human dignity in the first place.⁶ The language of a substance is for him a reduction for the sake of assuring the unity of experience: nothing more, nothing less. David Hume as a result will describe the human being as "nothing but a bundle of different perceptions."⁷ How they are related is by no means self-explicative by this reduction.⁸ In consequence, dignity allows itself to be attributed solely to concrete acts of consciousness, and these would be one's self-persistence as a rational being read positively in some cases or sometimes thereby falsified, whereby self-identity itself is not merely a moral matter but also a problem for human self-understanding. Yet dignity is associated with acts of reflection, identification etc., or at least to the predisposition to such actions (and in texts from the empiricist tradition to this day, this is the central problem precluding the assumption/conviction of a universality of human dignity). Consequently such acts afford criteriological standards for denying or for ascribing personhood. And human dignity, for its part, depends solely upon actual, or at the very

⁵ Thomas Aquinas, *The Summa Theologica*, Q. 29, Art. 3, *Reply Obj. 2*).

⁶ Locke, *Essay Concerning Human Understanding*, Book II, Ch. 10, §§ 8 and 10.

⁷ Hume, *Treatise on the Understanding*, Part IV, sec. vi.

⁸ See J. Wilbanks, *Hume's Theory of Imagination* (The Hague, 1968); see too R. S. Woolhouse, *The Empiricists* (Oxford, 1988) and J.P. Wright, *The Sceptical Realism of David Hume* (Manchester, 1983).

least, latent personhood. To attribute to it universal validity would accordingly be proscribed.

This is a demystification by way of the clarification of language use that has deep roots in Anglo-Saxon philosophy.

Another important problem here comes into play: to wit, Locke understands the concern of the people to be able to preserve itself as a focal point of personhood. Yet is this the ultimate anchor? One can introduce the well-known puzzling case, given someone who took their nourishment via tube-feeding, whether being assured self-preservation through the infiltration of pleasant images of life would not be in some fashion a more desirable condition of humanity? Is not the Aristotelian definition of *eudaimonia* as rationally ordered action inescapable in fact and therefore an indication likewise of the irreducible demands of dignity? It would then be at the very least questionable to shift self-preservation to the center in this way, connected thereby to an ultimate end by means of an at best occasional, reductive interpretation of dignity. Parfit has pointed to the fact that there is another perspective to be thought beyond that of self-preservation as he reflects that the concern with identity is necessarily included in the concern with survival. It however includes a clarification not only that but also how and as whom I want to survive.⁹

In this sense, the concept of person also increases in concision in contemporary Anglo-Saxon philosophy, at least in those traditions illustrating the irreducibility of mental experiences to materialistic events and conditions. Actions, thoughts, intentions are not a result of their physicalistic representations, even if depicted in them. “*De se*” predications, as more recent concept-semantic research has been able to show in highly differentiated fashion,¹⁰ are not to be traced back to access from the third person singular. However, if human dignity is not to be explained from current actions, as acknowledged or denied by a third person, but as anticipated as one’s own, then empirical plausibility must be significantly restricted. At the very least, the conceivability of a universal and a priori human dignity will again be possible.

4. This brings us into contact with another horizon. Christian faith makes human dignity on the basis of central kerygma and dogma an indispensable consequence, that the human being is in the image of God and soteriologically this likeness unto God is again constituted as Jesus Christ as true God and true man. For a pluralistic and secular world, the objection naturally presents itself that this assumes recourse to a partial source which is by no means rightfully universalizable. These considerations remain in need of examination. Yet at the same time it is given for reflection that the presupposition of faith may prove reasonable if it represents an idea of dignity as an inevitability of corporal-spiritual, individuated, self-knowing humanity. One may recall the basic scholastic doctrine according to which the revelation of purely rational

⁹ D. Parfit, *Reasons and Persons* (Oxford, 1984).

¹⁰ See D. Lewis, “Psychophysical and Theoretical Identifications,” *Australasian Journal of Philosophy*, 50 (1972): 249 ff., B. Loat, *Mind and Meaning* (Cambridge, 1981); H. P. Falk, *Wahrheit und Subjektivität* (Freiburg/Br., München, 2011).

philosophy does not contradict the *lumen naturale* but much rather fulfills it. Kant assumes the Christian conception of human dignity on the one hand and opens his interpretation to the possibility of interpreting it in terms of rational and moral law, on the other hand.

This constellation is rendered more difficult as there are utterly divergent positions in the interpretation of the Christian concept of human dignity. Hence Thomas Aquinas claimed along with Cicero that “by sinning” the human being “withdraws from the order of reason, and thereby falls from human dignity, so far as that consists in man being naturally free and existent for his own sake.”¹¹ By contrast, Augustine observes that the possibility of free action guarantees dignity, however deployed in fact. This also bears on fallen humanity: “as a runaway horse is better than a stone which does not run away because it lacks self-movement and sense perception, so the creature is more excellent which sins by free will than that which does not sin only because it has no free will.”¹²

That an elementary form of dignity on the basis of the deformity accrues to all humanity is first seen in late Spanish scholasticism and was connected with the conception of the human family. The basis for this is the problem of international rights in the *Conquista*, and the classic, text, often quoted, today: *Brevissima Relacion Las Casas* (1542). To be sure this formulates basic human dignity somewhat negatively. The Indians are not more barbaric than we are. International law is a kind of bond [*vinculum*] between peoples. Las Casas continues with: “all delight in the good, all abhor and reject evil [...] Thus there is a single human race, and all human beings are, with respect to their creation and natural conditions, like one another.”¹³ This is one of the first major *demonstrations* in which the inner knowledge of human dignity also becomes externally visible.

4. To *think* deformity is already implied by the concept of an ‘active intellect’ in the theory of mind of the high Middle Ages that by no means only perceives but is itself original. It is not incarnate divinity. The philosophy of the Renaissance goes beyond this. Thus Pico della Mirandola has assigned a novel emphasis to the whole question of human dignity with his *Oratio de dign. hominis*. The human is manifest as another god [*alter Deus*]. In him are micro-and macrocosm together. Thus he can choose between the most various ways of living.

He is not fixed by anything. In this his non-restriction and his freedom (Pico thus conceived the human ‘almost’ as chameleon with respect to the fixity of creation), what

¹¹ Aquinas, *Summa Theologica*, Secunda Secundae, Question 64, Art. § 3.

¹² Augustine, *The Problem of Free Choice*, trans. Dom Mark Pontifex (Mahwah: The Paulist Press, 1955), p. 155.

¹³ B. de las Casas, *Apologética Históric, cap. 48, Obras Completas*, ed. P. Castaneda Delgado, 14 Vol. (Madrid 1988 ff.), Vol 9. cf. W. Grewe, *Epochen der Völkerrechtsgeschichte* (Baden-Baden, 1984); see too Grewe, (ed.), *Fontes Historiae Iuris Gentium* (Berlin/New York, 1988), Vol 2.

is demonstrated is precisely his dignity.¹⁴ He is ennobled by God, and the sovereignty of God the Creator is first shown in that it is precisely not compelled to limit his limitless power with respect to humanity. Hence the human being is called to be the “*pictor*” and “*fictor*” of himself: even his moral capacity for peace comes from the fact that it transcends all limitations. Here Pico already anticipates elements that will recur in later metaphysical anthropology. One could define this with Scheler’s insight into humanity as the open position of the universe or else with Plessner’s paradoxical images of “natural artificiality” and eccentric positionality.

In the composition of Pico’s speech God addresses the human in just this fashion:

You, by contrast, impeded by no such restrictions, may, by your own free will, to whose custody We have assigned you, trace for yourself the lineaments of your own nature. I have placed you at the very center of the world, so that from that vantage point you may with greater ease glance round about you on all that the world contains.¹⁵

The human being is the being of the in between, after Alexander Pope’s „middle state.“ For he is neither heavenly nor earthly, neither mortal nor immortal, but sculptor and poet of himself: “It will be in your power to descend to the lower, brutish forms of life; you will be able, through your own decision, to rise again to the superior orders whose life is divine.” Only with the perception of this nature, can he achieve the foundation of his freedom.¹⁶

Blaise Pascal saw the nether side of this uncanniness, compelled first by one side and then by the other. For him, human nature is a dual nature of or coincident with external weakness. Therefore the outer man is like a reed, vulnerable and finite. But it is also the case that “*L’Homme est visiblement fait pour penser*” [The human is manifestly made for thinking].

6. When what is sought is the justifiability of the universal dignity of man, Kant’s insights must come centrally into view. Kant conceived the dignity of man as *absolutum*, an absolute value for which there can be no price. Otherwise it is only valued in terms of the concept of relative value. This dignity adheres to the moral condition of humanity, the possibility of *homo phainomenon* to be determined in freedom from the moral law and to be *homo noumenon*.

Kant formulated this in this fashion: “Thus morality, and humanity as capable of it, is that which alone has dignity.”¹⁷

Kant had already sketched out this structure in its tectonics in a central passage of his *Fundamental Principles* or *Groundwork of the Metaphysics of Morals*. The moral

¹⁴ Michael V. Dougherty, ed., Pico della Mirandola: New Essays (Cambridge 2008); Walter Andreas Euler, “Pia philosophia” et “docta religio”. Theologie und Religion bei Marsilio Ficino und Giovanni Pico della Mirandola (München 1998).

¹⁵ Giovanni Pico della Mirandola, *Oration on the Dignity of Man*, trans. A. Robert Caponigri (Chicago: Henry Regnery Company, Gateway Edition, 1956), pp. 3-4.

¹⁶ *Ibid.*, p. 7-8.

¹⁷ Kant, *Fundamental Principles of the Metaphysics of Morals*, trans. Thomas Kingsmill Abbott, (Radford, PA: A&D Publishing, 2008), p. 52.

law, which each discovers in himself, gives the human being his dignity. This regard for himself and his dignity may dispose him to follow the ‘causality of freedom.’ This is the ‘definition of man,’ which Kant had explained as the fourth and crucial question in the general area of philosophy. It is not designed to be descriptive, not to be confused with the question, ‘What is man,’ it is normative.

Dignity is the sense of Kant’s phrase

nothing less than the privilege it secures to the rational being of participating in the giving of universal laws, by which it qualifies him to be a member of a possible kingdom of ends, a privilege to which he was already destined by his own nature as being an end in himself and, on that account, legislating in the kingdom of ends ... For nothing has any worth except what the law assigns it. Now the legislation itself which assigns the worth of everything must for that very reason possess dignity, that is an unconditional incomparable worth; and the word respect alone supplies a becoming expression for the esteem which a rational being must have for it.¹⁸

The concept of autonomy requires special attention. „Autonomy” means self-legislation, made of itself in total freedom and aware of the moral law as its own. From this human dignity is attributed on the basis of the capacity for morality, and it is documented in the human-end formula, a subsidiary formula of the categorical imperative.

Now I say: man and generally any rational being exists as an end in himself, not merely as a means to be arbitrarily used by this or that will, but in all his actions, whether they concern himself or other rational beings, must be always regarded at the same time as an end.¹⁹

With this, Kant’s grounding justification comes more clearly to light: human dignity is granted to humanity as prerogative; it is owed to no natural also to no property of but rather to the *a priori* nature of morality, precisely indicated in that it accrues to every human being. One could, in the face of current and extreme bioethical issues add: to even and especially to those who, such as embryos, young children or severely disabled persons do not currently possess the same.

Through this basic principle of autonomy, human dignity then is closely connected with the freedom achieved on the ties of morality and in this fashion it delineates the concept of the person:

that he must always take his maxims from the point of view which regards himself and, likewise, every other rational being as law-giving beings (on which account they are called persons).²⁰

Kant knew that we are led in this sense, above all through such a conception of freedom, to the “comprehension of the incomprehensible.” The height of this demand is plain. Kant took this in doctrine of ‘radical evil,’ that is to say, all the way to the radix

¹⁸ Kant, *Groundwork for the Metaphysics of Morals*, trans. Abbott (Broadview Press, 2005) p. 94.

¹⁹ Kant, *Fundamental Principles of the Metaphysics of Morals*, p. 46.

²⁰ *Ibid.*, p. 39.

[root] of perverse will. Dignity is not thereby renounced. In Kant, disposition to autonomy is the ground of dignity: “for the human and for every rational nature.” However this includes a circular argument/demonstration, because dignity is simultaneously the condition for the person to function as an end in himself: “Every human being is a person and thus an end in themselves, and that is what grounds dignity.” As I bind myself to the moral law, I have only one access to myself as *homo noumenon*. This dignity permits itself in relation to itself as to be redeemed as qualification, in some cases as sublimation and indeed even as the overcoming of certain inclinations. Kant thus stocks his Critique with ever more rigorously categorized maxims. The intensity of a wish can make us feel compelled, to the extent that we are driven to fulfill it at all costs. If the human being were to be forced by some external circumstances to cannibalism, he would still always have the freedom of an ad hoc resolve to opt for suicide. At the same time however one would say in such a case that his human dignity is grievously injured.²¹

In this regard, Kant speaks in his later *Metaphysics of Morals* of the rights and duties of man, which on the one hand he exercises against himself as a sensible being, and on the other hand, as an intelligible nature. And indubitably at this point resides a legitimate intention of the discourse ethics of Jürgen Habermas,²² in which the conception of dignity as counterfactual assumption functions as mutual acknowledgment of the other. With this recognition, the possibility of a balanced discourse stands or falls. Schiller reflects in his beautiful essay, “On Grace and Dignity,” on the concrete manifestation of dignity with reference to Kant. With this the concept of dignity shifts. It is liberated from the strict attachment to the unrestricted “should” and becomes empirically tangible. “Mastery of the drives through the moral force”²³ is the formula Schiller introduces. As Schiller also thinks as dramatist and regarding the design of exemplary characters, he combines beauty with grace.

Hegel had ultimately seen that its institutional realization belongs to the concept of morality. An immediate will to the moral good, he noted, does not yet have any dignity in itself. Only the human being attains to that dignity who knows itself in general, as the moral substance of its truth. Hegel articulated this more precisely: as spirit, “man ought to esteem himself and regard himself as worthy of the highest. Of the magnitude and power of the spirit he cannot think highly enough.”²⁴ This extends Schiller’s tendency; the concept of human dignity is to be understood in its a priori universality, but it should not be thought as a mere ought but rather in its materialization. With this,

²¹ See according to this Kantian point of view: H.E. Allison, *Kant's Theory of Freedom* (Cambridge, 1990); see also C. M. Korsgaard, *The Sources of Normativity* (Cambridge, 1996).

²² See according to Habermas: C. I. Calhoun, *Habermas and the Public Sphere* (Cambridge, Mass., 1992); and P. Dews (ed.), *Habermas. A Critical Reader* (Oxford, 1999).

²³ Friedrich Schiller, “On Grace and Dignity,” in: *The Complete Works of Friedrich Schiller, Volume 8: Aesthetical and Philosophical Essays*, (New York: Collier, 1902), pp. 178-229; here pp. 187-88.

²⁴ Hegel, “Inaugural Address, Delivered at the University of Berlin (22 October 1818)” in: Laurence Dickey, ed., *G.W.F.Hegel. Political Writings*, H.B. Nisbett, trans. (Cambridge: Cambridge University Press, 1999), p. 185.

the concept of human dignity is convincing just when it goes further than natural contingency. Hegel also speaks of “progress in the consciousness of freedom” in order to be able to name what universality means in one historical and philosophical formula. Regarded in terms of the institutionalization of human dignity, it is only an additional step to the realization that most basic requirements for the viability of life must be met in order that a human being can live in accord with this dignity, even when this is ultimately to be deprived by nothing and by no one. Ernst Bloch had given this a succinctly expression in the context of ‘natural law’ and ‘human dignity’: “There can be no human dignity without the end of misery and need, but also no human happiness without the end of old and new forms of servitude.”²⁵

With respect to sensibility to misery comes Brecht’s famous saying, which is not explicitly about human dignity, but which however seems to some materialistically minimal sense of this: “First comes the food, then the morality.” [*Erst kommt das Fressen, dann kommt die Moral*]. Perhaps to our astonishment, Schiller had already anticipated this “No more on this, I beg you. Give him food and shelter. When you have covered his nakedness, dignity will follow by itself.”²⁶ And in early socialism, Proudhon spoke less specifically of personal dignity [*dignité personnel*] as the basic principle of justice. This is a rather more negative term, whose significance must be clear, because factually just this dignity is again and again violated. To this is linked less moral duties as much as the claim that no human being ought to suffer hunger or thirst, so that he may be able to work under humane conditions. Human and civil rights are, therefore, especially including its economic offshoots, to be adequately substantiated. And yet the therewith accomplished implicit conversion and shift in emphasis from the universal structure of human dignity toward the realization of certain rights and legal claims depotentiates the concept of human dignity.

6. By contrast with this, Friedrich Nietzsche, completely in accord with his elitist divisions and distinctions, gave us to understand the “critique,” locating the protest in the name of human dignity in the logic of a vanity, especially that of the less well-off, the envy of the have-nots. As Nietzsche puts it directly contra Proudhon “One *protests* in the name of *human dignity*, but expressed more plainly, that is that good old vanity, which experiences Not-being-equal-to or Publicly-being-esteemed-lower as the harshest fate.”²⁷ This is uprightness with respect to one’s own higher ideals. Dignity would then be granted, in accord with the older Greek and Stoic conceptual terminus, to higher spirits alone. It is the medium of genius. In fact, Nietzsche had subjected human dignity to a rigorous demythologizing in the reduced understanding of its routinely simplistic and to be increasingly socialist coin. It is based, as he observed, on the error of the human being’s only incomplete knowledge of himself; on invented properties,

²⁵ E. Bloch, *Naturrecht und menschliche Würde* (Frankfurt/Main, 1975-).

²⁶ Schiller, “Würde des Menschen,” *Musenalmenach* (Tübingen: Cotta, 1800) [1796]. Epigram, pp. 32-33.

²⁷ Friedrich Nietzsche, *Human, All too Human*, trans. R.J. Hollingdale (Cambridge: Cambridge University Press, 1986), §457, p. 167.

comprehending the human being as “invention,” but not in its facticity and its finitude. One such fiction is the “ego cogito” another would be freedom. Yet the human being is a “sick animal” in its facticity. It can be no surprise that Nietzsche is henceforth claimed for various positions describing human dignity as an illusion, calling for an age of “post-humanism” and putting all transcendental, essential, and other attempts at grounding human dignity altogether in question.²⁸ A post-humanism of this variety is the foundation where the human person is at the disposal of experimental improvements, from “enhancements” of his physical abilities to brain doping. Sloterdijk speaks of the “vertical dynamic,” that is to be bred and sculpted, in order that the human being be worthy of dignity, which had in vain ultimately been attributed to him by every normativity and [ideal of] *paideia*.

Nietzsche, in fact, and particularly when understood apart from the context of the movement of his thought, might well serve as the leading witness for the denial of human dignity. Again and again, one can indeed read him as saying that at best the idea was a chimera. Thus the curtain was lifted and the stage was bare. But things are rather exactly not quite so linear for Nietzsche. He studied Darwinism and wonders what human beings are to do with the narcissistic injury of a theory of evolution which does not except humanity from an interconnected development of species and kinds.²⁹ For Nietzsche, what is fundamentally at stake is the reduction of the human being to an anthropomorphism, to his own “*partie honteuse*,” as he gave a Darwinistically intoxicated Paul Rée to understand. Exactly for Nietzsche, and apart from this great disillusionment, the human being is essentially transcendence, a going beyond oneself (“overhuman”), and a faithfulness to himself. The representation of dignity therefore includes not only intelligibility but extends to “the great reason of the body.”

It is on this that theorists of trans- and posthumanism will have to be measured. Influenced by Odo Marquard and Hans Blumenberg, Franz Josef Wetz invokes the incommensurability and diffuse nature of the concept of human dignity.³⁰

Here, leaving the Kantian axiom of dignity fundamentally untouched in its validity, recent philosophers following Karl Jaspers have endeavored to elevate it existentially-philosophically to a more encompassing profile. In existential limit situations, and therewith precisely in devastation, in the face of human vulnerability and finitude, dignity is also lit up in experience and fact.

The human is not only that singular being aware of his own death. He can also meet extreme situations, in the knowledge that they may bring about his own death, or, conversely, endure deep disgrace, without either one depriving him of his fundamental dignity. A sublimation of the basic clarification of Kantian and the reflection of

²⁸ Ibid.

²⁹ See B. E. Babich, *Nietzsche's Philosophy of Science. Reflecting Science on the Ground of Art and Life*. New York ¹1994; also: E. Düsing, *Nietzsches Denkweg. Theologie-Darwinismus-Nihilismus*. München ²2007.

³⁰ F. J. Wetz, *Illusion Menschenwürde. Aufstieg und Fall eines Grundwerts* (Stuttgart, 2005); esp. pp. 50ff.

deiformity is not to be seen here as much as their precis-ification and concretization. Good will and a [kind of] “School of Sensibility” is indispensable for this.

The post-humanists do not permit themselves to be persuaded. Instead, they emphasize that human dignity is not necessary but much rather dependent upon very contingent parameters. And they regard themselves, as if it were self-evident, as following in the wake of “weak thought.” However, one must then inquire whether this thinking can demonstrate itself in its greater plausibility beyond those metaphysical leftovers it means to abandon at any cost. Contingent human dignity ought yet to retain validity in any case as a private conviction. As Franz-Josef Wetz expresses this: “In both secular society with its increasingly scientific world view, as also in the multicultural society of nation states, human dignity continues to be conceivable as a sole result of the common undertaking for the sake of a life of physical and spiritual integrity and free self-determination, as an indispensable adjunct to personal self-esteem.”³¹ Such a metaphysical, religious reference to dignity (no distinction is to be made here between ‘metaphysics’ and ‘religion’) goes beyond what the “constitutional state” expects of its citizens and of the individual in the public discourse of others. This credo of a free-floating liberalism³² can apparently be founded on little more than a few basic trends of the current day. It seems highly problematic to assume a “secular scientific worldview” without question,³³ it is even more problematic to affirm an interreligious and intercultural understanding of human dignity as *eo ipso* impossible.³⁴

In addition, at least three disagreements with these and related reviews are striking:

(1) The metaphysical-moral religious grounding of human dignity is explored along the lines of empirical properties. That this is intended in this fashion neither by [the ideal of] deiformity nor yet by Kant, inasmuch as these ontologies depend upon body-soul self-perception and -obligation, namely that we recognize one another as human beings, precisely this remains overlooked.

(2) Ruling in the background is a utilitarianism recognizing the good as a sheer function of the useful. References to this minimalism is generally not philosophical but grounded with respect to democracy.

(3) With all the delight at unmasking, emphasizing that at bottom there is no human dignity, those writing on post-humanism always ultimately retreat in the face of the consequences, like Gorgias, whom Socrates shows the specter of a polis that would

³¹ *Ibid.*, pp. 190ff.

³² About the normativity within liberalism: J. Rawls, *Political Liberalism* (New York, 1993) and to complete as well as to go against modern liberalism, see M. Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard, 2011).

³³ See M. Bernstein, “Love, Particularity, and Selfhood,” *The Southern Journal of Philosophy*, XXIII (1985): 287ff.; A. E. Buchanan, “From Chance to Choice,” Cambridge 2000; M. Quante, “Precedent Autonomy and Personal Identity,” *Kennedy Institute of Ethics Journal*, 9 (1999), pp. 365ff.

³⁴ See against a relativistic perspective: M. A. Baaderin, *International Human Rights and Islamic Law* (Oxford, 2005; see also H. J. Sandkühler (ed.), *Recht und Kultur. Menschenrechte und Rechtskulturen in transkultureller Perspektive* (Frankfurt/Main, 2011).

have to do without reverence and shame.³⁵ What is thus supposed is a reduced or minimized human dignity, as part of designedly weak, pluralist thinking. In the face of a transcendental and metaphysical background, precisely dignity is by no means to be quantified by degree, just as little as it is permissible to promise or to deny dignity to another. The transcendental basis of human dignity is also disputed by Michael Quante in a very carefully argued construction.³⁶ He similarly seeks to maintain dignity, yet only to a certain degree. Although it does not tolerate its own justification, paradoxically, dignity ought, nonetheless, to operate as a kind of foundational instance in public discourse. In Quante's sense, human dignity is an irreducible element of ethical practice, outlining a cordon of irreducible self-disposition over one's life, important precisely in borderline cases in bioethics. Why this determination?

Likely owing to the intimation that there is a comprehensive slippery slope: to be breached by nothing and by no one and lacking in human dignity. Would there not then be a removal of an unacknowledged presupposition of pluralism and neutrality, leading to emptiness and the conflict of the jungle? In this, even as particularly subtly argued, Quante ultimately says "The central property (or capacity), on the basis of which people are bearers of human dignity,"³⁷ is to be perceived in that they are able to lead a personal life. With this, dignity is dynamically functional, to be sure, however yet conceived as a determining property which may or may not belong to a person.

II. Foundational Dimensions and Deadends

1. As we see: the position of utilitarianism must patently come to a different result than from a classically Kantian metaphysical argument. If utility (the greatest possible advantage for the greatest possible number, as well as individual advantage) is the norm for the good, the ultimately unimpeachable thought should not lack the ideal of humanity as a good in and of itself, of dignity as absolute and ultimate frontier.³⁸ The consequence is that the killing of a human being cannot in principle be brought under a more rigorous condemnation than the killing of any other living creature. Argumentatively, utilitarian conceptions usually entail that personality and dignity are a real set of characteristics and dispositions belonging to different people in different ways. Thus not all human beings are persons. Peter Singer refuses to include the severely handicapped under the rubric of the person, while this property would be entirely ascribed to higher primates.

³⁵ See S. Bernardete, *The Rhetoric of Morality and Philosophy. Plato's 'Gorgias' and 'Phaedrus'* (Chicago/London, 1991).

³⁶ Quante, *Personales Leben und menschlicher Tod. Personale Identität als Prinzip der biomedizinischen Ethik. Frankfurt/Main 2003.*

³⁷ M. Quante, *Menschenwürde und personale Autonomie. Demokratische Werte im Kontext der Lebenswissenschaften* (Hamburg, 2010), pp. 203, and 204 ff. and passim.

³⁸ It is yet something else again in preference utilitarianism. Robert Spaemann has thus rightly indicated out that preference utilitarianism closely approaches Kantian moral law, indeed that must make implicit use of the same.

If human dignity is regarded and conceived as essential for human existence as transcendental a priori or metaphysically, — in the sense of its standard [*norma*], then this means that it may be attributed to or refused anyone by any means and by no one. This is precisely the meaning of the Kantian ideal of humanity in one's own person and the person of every other never only as means but always also as an end. It is deepened in the *Critique of Judgment* with its invocation of human beings as the ultimate end of creation.³⁹ Just this is the unconditionality of human existence qua potentially-moral subjects, because the human being is the addressee and the origin of a moral universe. A demand for ultimate foundations need not be raised in consequence. I must, however, to the extent that I conduct myself as a human being, claim human dignity in my own and in every other person. And this again would be the position of Plato's Seventh Letter, whereby it is want of education to distinguish what does and what does not require justification.

Just at this point, one must ask oneself whether this dignity may be preserved in complete detachment from the image of God that same dignity. With an eye to bioethical issues of cloning, Jürgen Habermas has pointed out the difference that is made by whether a member of the same species is the origin or determiner of human nature or whether it springs from a transcendental origin not unavailable to him.⁴⁰ In consequence of this origin, human dignity yokes an original being spoken to with the possibility of being the addressed and to being the player in a moral universe.

In this discourse relation, human dignity also bears upon the metaphysical essence of the person. Philosophically, therefore, the anthropological distinction between 'someone,' to name the human being as a person, and 'something' (Spaemann) takes on a decisive, empirically irretrievable, significance. From empirically communicable properties, human dignity cannot in consequence be adequately justified, inasmuch as it lacks a view from outside.⁴¹ A rough, caricaturing contrast may show this: the crown of creation, the swine of a human being, wrote Gottfried Benn, and others evoke him as "snub-nosed mammal" or as a special evolutionary kind of primate.

Kant had already named such naturalistic reductions as "audacious assertions of *materialism, naturalism, and fatalism*, which narrow the field of the Reason."⁴² And Fichte spoke of the impotent assurances of this naturalism, which are at the same time a standing challenge to human self-understanding.

2. Similarly, in the face of dwindling support for legal doctrine of the concept of human dignity, the jurist Martin Kriele has rightly note that "Dignity does not admit a

³⁹ See P. Guyer, *Kant and the Claims of Taste* (Cambridge, Mass. / London, 1979); G. Lebrun, *Kant et la fin de la métaphysique. Essai sur la 'Critique de la faculté de juger'* (Paris, 1970) and Chr. Fricke, *Kants Theorie des reinen Geschmacksurteils* (Berlin/New York, 1990).

⁴⁰ J. Habermas, *Zwischen Naturalismus und Religion. Philosophische Aufsätze* (Frankfurt/Main 2005). In English as *Between Naturalism and Religion: Philosophical Essays* (London: Polity, 2008).

⁴¹ R. Spaemann, *Personen. Versuche über den Unterschied zwischen 'etwas' und 'jemand'* (Stuttgart 1996); In English as *Persons: The Difference between 'Someone' and 'Something'* (Oxford, 1996).

⁴² Kant, *Prolegomena to Any Future Metaphysics that will be able to come forth as a science*, §60.

justification via a naturalistic understanding of humanity. It is a metaphysical concept.⁴³ Certain features of the human, such as the surface area of the cortex, the upright stance, the complexity of the organism are insufficient here. The bodily manifestation and corporal-spiritual unity of the person is by contrast a trans-empirical term. We thus draw a preliminary conclusion in the sense of the categories applied.

(1) In a conceptualization focused on individual qualities and, practically, upon utility and functional consequences of behavior-referred thinking, the grounding of human dignity encounters basic limitations. It can only be claimed if certain actual properties are given. In this, the dimension of the universality of human dignity is scarcely attained, a universality that would have validity not only for the extremes of life (including death and the prenatal context) but across all cultural differences as well. One will not break through this fundamental deficiency by invoking dispositions toward dignity: a capacity for freedom and reflection and if one expands on this capability approach, such that it could be implemented in questions regarding developing or dying life in the field, as in a *in dubio pro reo* [the benefit of the doubt].⁴⁴ Even the confirmation of potentialities remains in an empirical vector. Kriele however is concerned to go beyond an ontology which indirectly tends towards human transcendence. This means furthermore that one does not get anywhere in this issue, if one seeks the unconditioned, but only if one acknowledges the conditions and seeks to include them for dignity's sake.

Such a thinking, which stands in the domain of indirect metaphysics, will not go astray by way of the anticipated reproach of a 'naturalistic fallacy' of is and ought. Much rather, human dignity refers to an inner normativity of human nature. It consists in having a nature, being that nature to a certain extent, but at the same time also able to comport oneself towards and to be obligated to it. The human being discovers himself in this nature, which is never merely given but is always at the same time given up or surrendered. But at the same time in intersubjective relations, he relies on this same nature, that it be recognized in him. A reflection in human dignity is here at stake and would furthermore not be understood as a counter-argument that it translates a moment of confirmed faith in the image of God, like unto a "glowing core," in the matrix of reason.

(2) The possibility of such a plausible justifiability is opened up only when human dignity is understood not as *actual* but transcendently, as the essence, the *what* of human being⁴⁵ that can neither be attributed to nor denied but which is emergent in human relationships. Dignity is the elementary form of recognizing one another as a

⁴³ M. Kriele, „Menschenrechte und Gewaltenteilung,“ in: U. Klug and M. Kriele (edd.), *Menschen- und Bürgerrechte* (Stuttgart, 1988), pp. 20 ff.

⁴⁴ See G. Damschen and D. Schönecker, „In dubio pro embryone. Neue Argumente zum moralischen Status menschlicher Embryonen,“ in: G. Damschen and D. Schönecker, eds., *Der moralische Status menschlicher Embryonen* (Berlin, 2003), p. 187 ff.

⁴⁵ Cf. on this and the problem of personal corporeality: W. Schweidler, *Über Menschenwürde. Der Ursprung der Person und die Kultur des Lebens* (Wiesbaden, 2012).

reciprocal recognition. Human dignity is thus the fundamental expression of the human, distinguishing trait such that the human being can be part of a moral universe. One should not be afraid to raise the question *ti estin* in this sense and to ask: what is the human and for what does he or she exist? Human dignity therefore referred to an insurpassable limit of self-possession, which configures self-relation and determination at the same time.

(3) This is to be completed by the dimension of vulnerability, the “Do not kill me!” which belongs to the human being as a being aware of his own mortality. All reflection on the human with respect to itself has to come back to this, and a philosophical reflection cannot be otherwise. This is the principle to be objected countering the speciesism-argument.⁴⁶ Even animals have their dignity. But they are in just this way to be distinguished from human ways of being alive. And: new forms of artificial intelligence, robotics, etc. also present the problem of characteristic personality, which however is not to be confused, however, with the personal space of resonance of dignity. That inviolability commandment, which hardly anyone has brought to bear more deeply and more vehemently than Emmanuel Levinas, requires institutionalization. Otherwise one runs the risk Hegel raised contra Kant regarding a gulf between moral maxims and the actual course of the world.

(4) The sting remains: whether human dignity is not, in the end particular, inseparable from its origins in Europe, in the Judeo-Christian context and engendered out of certain contingencies? The concept and the matter itself has indisputably undergone a genesis, which is largely localized in the Western European world. Critics of the claim to universality critics can easily advert to this. Yet exactly here genesis and validity are to be distinguished.⁴⁷ In social philosophy and sociological genealogy, Hans Joas has recently outlined the sacralization of the person, which is not directly drawn from Christian sources, but precisely from such a secularization. In this Joas accurately admixes the ambivalence—and does so in two respects: on the one hand, he endeavors, after Ernst Troeltsch, to demonstrate that even questions of natural law are eternal questions included in the river of history, coming to be and passing away. However, this evokes the follow-up question, whether historicism may not have the last word, that is, to be shown if and how situation-invariant, permanent truths precipitate. And human dignity would necessary be part of this. On the other hand—and Joas takes far too little account of this—a sacralization of the human person is only possible if the core of sacredness shifts to them, in the sense of a transformed image and likeness of God. A partial culture and way of thinking may well bring about trans-temporal, which can also be comprehended from different perspectives and corners of the world in Aristotelian fashion as a ‘possession for all time’ *κτῆμα εἰς ἄει*, and this self-grounding is then no longer to be repealed with reference to a genesis story.

⁴⁶ See Schweidler, *ibid.*, p. 115 with regard to Heidegger and Lévinas.

⁴⁷ See regarding the problem of historicism and human dignity, H. Joas, *Die Sakralität der Person. Eine neue Genealogie der Menschenrechte* (Berlin, 2011), of interest particularly where he underlines the importance of Ernst Troeltsch for this sociological genealogy.

Even *a posteriori*, this universality may be rendered plausible. It will require a dyad: on the one hand, the legally formal binding force and its acknowledgement as lingua franca of international reciprocal exchange. Without it, even international organizations might well encounter difficulties in their capacities for action. For the world, which unquestionably trades economically as one world, betrays profound differences beneath a surface coherence. On the other hand, there is also a need for a deep conversation between cultures, exploring their understanding and their approaches to human dignity. That a human and personal dignity primarily draws upon Christian-Jewish and Greek originary roots, and then uncovers a genealogy interior to Enlightenment reason, which at the same time disenchants those same stocks in reason, ought to lead to the search for analogies in other cultures: in Islam or in the foundation of human dignity in the far East transformations of the subject, that its sheer selfhood is to be sacrificed in a great All-one-I.⁴⁸ Whether, of course, a *Magnus Consensus* is to be won in this way, needs must remain an open question.

The distinction between a “utility-culture and a culture of norms” (Walter Schweidler) seems helpful in this regard in the sense of a more nuanced encounter between cultures.⁴⁹ It makes possible a deeper self-understanding dimension of Western culture, which is by no means merely ‘occidental rationalism.’ As should now have been shown, the absoluteness of human dignity presents the baseline of positive human rights. It ought and must at the same time open the space for their relative cultural realization. This is made possible only in the rational redemption of the claimed *Absolutum* and its transcription into another cultural different cultural reality, by way of the renunciation of the suspicion of conditions, even religious ones, as obsolete.

Even more from the cross-cultural context, is dignity to be verified as self-relation and relation to others rather than as a property. It is a status that is for good reason awarded to human beings *per se*. And it is against their transcendental metaphysical orientation to assume that one would have first to earn it. Thus it is an unmerited privilege and an obligation at the same time. It conflicts with anything that would deny or reduce to human integrity. Human dignity is thus, as Habermas has rightly pointed out, the proleptic statement of a species ethical self-understanding from which it depends, if we may continue to recognize each other reciprocally as autonomously acting persons, or not.⁵⁰

(6). What implications does this have for human rights? These follow mainly from the idea of dignity. If they are to correspond with the universality of human dignity, they must not be inflated and their negative qualification is more important than the positive. They derive from the original right as a right to have rights and latterly from the sanctity of life and limb, of property, which comprises, by contrast with possession, the vector of the entire human freedom to act; the absence of coercion and threat, and

⁴⁸ See Schweidler, *Das Uneinholbare. Beiträge zu einer indirekten Metaphysik* (Freiburg/Br., München 2008), esp. Pp. 84 ff., and pp. 238 ff.

⁴⁹ See also Schweidler, *Über Menschenwürde*, op. cit., p. 114 ff.

⁵⁰ Habermas, *Between Naturalism and Religion*, esp. pp. 20 ff.

then, positively, access to the resources necessary for life but access as well to the resources that make the articulation of human life possible. This shifts the question of the possibilities, limitations and aporias, previously discussed philosophically and in terms of the history of ideas, into the realm of law.

III. Human Dignity in the Law: A *nervus probandi* [crux of the argument]

1. There are obviously more serious difficulties in view, if one defines human dignity as fundamental law. “Human dignity is inviolable,” so it says in Article 1, paragraph 1 of the Basic Law. Human dignity is not exactly not a right among rights according to transcendental metaphysical understanding. Legal doctrine takes account of this when it remarks that it is the enabling fundament, that people have rights and obligations and that such rights are legally unassailable and, without exception, even valid invariant to the situation. One knows that the entire conception of human dignity, received its concision and clarity in the face of the mass murders and violent excesses of the totalitarian experience precisely in the 20th Century, It is subject to the perpetuity clause, and has the character of a basic standard. Maunz and Dürig refer to this with particular emphasis in their decades-long unquestioned in its authority, monumental commentary on fundamental law.⁵¹ The new commentary in 2001 by the constitutional lawyer, Matthias Herdegen signified a turning point here, joining the Kantian and Christian background equally with image and likeness of God. Human dignity works merely as a rule of law among others, which can then be weighed against other standards for rights. This may have unforeseeable consequences.

2. When one considers the Human Rights Charter of the United Nations, taking into account its origin, it becomes clear what the imposition and appearance of the formulation of human dignity signifies. The presumption was at the time that human dignity in the emphatic sense excludes distinctions between internal and external groups. Human dignity, therefore, raises a claim which brought Ian Smuts to the conception of the “sanctification of the human person,” which should however be limited in its scope to the British gentleman. The alternate formula of the “dignity and worth of every human being” failed to win the agreement of Smuts and others. Thus the phrase “worth of the human person” was found. This formula seemed to be universalizable in part because it is itself neutral.

If a constitution like the basic law is committed to human dignity in particular, this has the character of commitment in the sense of *praeambula fidei* [preambles of faith] and the Fathers of the Constitution knew very well that therewith a certain determination was made for the metaphysical, transcendental interpretation, especially as the

⁵¹ Th. Maunz and G. Dürig, *Grundgesetz-Kommentar* [Commentary to the Constitution of German Federal Republic] (München, 1958 and 1999); G. Dürig, “Die Menschauffassung des Grundgesetzes”, *Juristische Rundschau*, 7 (1952), pp. 259ff; Dürig, “Der Grundrechtssatz von der Menschewürde” in: Grewe, et al., eds., *Archiv des öffentlichen Rechts*, Vol. 81 (Tübingen, 1956), pp. 117 ff.; Dürig, “Dignitas”, *Reallexikon für Antike und Christentum*, Vol. 2. (Stuttgart, 1957), pp. 1024 ff.

basic law was itself for its own part committed in the Kantian sense to “morality.” That not all problems are solved thereby, can be read off the circumstance that even a country like the GDR included in its constitution the formula of human dignity, albeit not expressed in the universal sense, but rather as the ideological specification of a socialist image of humanity.

Sharpening the concept is accordingly indispensable. But the answer to its blurring can scarcely consist in abandoning the claims of human dignity. The liberal interpretation would enshrine human dignity to the untouchable status of the individual, resulting in a positive principle of civic action, in the sense of an “overlapping consensus” as well as in its omission of a “greatest equal liberty” and hence resulting in creating and maintaining the greatest possible opportunities for preservation.⁵²

In a slightly different direction, Niklas Luhmann has characterized human dignity as reclaiming “successful self-representation of a person as an individual personality.”⁵³

Questions with regard to a legal validation of the human dignity of an action can arise at the limits of institutionalizability: giving them legal protections, enforceability and expression in the legal domain faces obstacles. Among these to be distinguished is whether this question reflects fundamental features. Sometimes it is observed, with reference to the establishment structure of human dignity, that metaphysical foundations, and especially those of Christian religious kinds, are themselves merely particular. Or, as Horst Dreier had contended, an invocation of Kant remains problematic in articulation of Basic Law inasmuch as the Kantian foundation is entirely to be located in the *Mundus intelligibilis*.⁵⁴

Here it must be said that a sharp distinction is to be drawn between ethics and law. It is certainly a distinction in the sense of complementarity, and Kant’s own thinking can be taken into account for such tectonics. Right, even when constrained by morality, must not enforce morality. Kant’s conception of freedom refers however, in the sense of Böckenförde formula, to foundations that can be self-securing. Hence in the liberal constitutional state, the human is assumed in advance as giving himself his own law for his own actions. Dreier would therefore to be answered, that naturally the Kantian ‘*Mundus intelligibilis*’ is not to remain unquestioned as a basis for securing the foundation of human dignity as human rights.⁵⁵

The Kantian tectonic, however, details how structures such as transcendent conceptual relationships are to be brought to bear in a regulative and counterfactual fashion. By contrast, positivist conceptions of law often assume that human dignity is

⁵² See Rawls, *Political Liberalism*, op. cit., p. 320 ff. et passim.

⁵³ N. Luhmann, *Grundrechte als Institution* (Berlin, 1965); see also Luhmann, *Law as a Social System* (Oxford, 2004).

⁵⁴ H. Dreier (with Bishop W. Huber), *Lebensschutz und Menschenwürde in der bioethischen Diskussion* (Münster, 2002), p. 9 ff..

⁵⁵ See E.-W. Böckenförde, „Die Historische Rechtsschule und das Problem der Geschichtlichkeit des Rechts,“ in: *Collegium Philosophicum. Festschrift J. Ritter* (Basel, Stuttgart 1965), pp. 9ff. See also Böckenförde, *State, Society, and Liberty: Studies in Political Theory and Constitutional Law* (New York, 1991).

indefinable as their point of departure, and thus illusory, as legally unusable. A positivism that denies a conception of transcendence, exceeding what happens to be the case in a worldly sense, can speedily find land in the precipitous implication that right is limited to whatever system currently holds.⁵⁶

And then it becomes concrete: the rights of protection and participation are founded upon human dignity. The ban on torture, as on genital mutilation, on forced feeding, the agreement of a minimum subsistence level that one may not fall below, protection of intellectual integrity, freedom of communication, participation and access to a minimum level of education, religious freedom, based on separation of church and state, and thus the right to an utterly a-religious life are all based in their situational invariance upon considerations of interest extending beyond one dimension — leading at least indirectly towards — conception of human dignity. How it were to be replaced in this fundamentality is a difficult problem to solve, and towards which solution those who dispute would have to contribute.

As little as in a naturalistic reductionism, is human dignity to be redeemed for legal positivism.

Dignity has therefore the status of prerequisite for the legal dealings of humanity in and with itself. Human dignity is thus to be understood as a justification of arch-positive rights, that for their part are again to be conceived as the basic standards of rights for the sake of right. Law for the sake of law. Right to rights. These have by no means only a negative status. It also always involves positive rights to protection and to participation, such as the protection of the material and cultural subsistence level; psycho-physical bodily-spiritual integrity; the private and the public sphere that is essential for the formation of each in an ‘internal dialogue’ and in exchange with trusted neighbors; the field of self-esteem.

What is decisive is that these rights are for their part to be codified and summarized in accord with the Kantian formulation, whereby my freedom can exist in concord with the freedom of everyone else.⁵⁷ Human duties, on the other hand, belong in the field of morality. They are to be positively and directly implemented, more as moral than as legal obligations to be implemented and may be understood as concretions of human dignity. Here the pre-Kantian and Kantian conception — of the duties toward humanity in his own person and in the person of every other — is to be thought. Kant had referred to this in the sense of his tectonics, oriented towards one’s own perfection and the happiness of others and with respect to oneself, characterized as the driving and natural essence of moral being.

3. Now there can be conflicts. Human dignity is not a simple guideline in such factual issues and dilemmas. It is thus important to ask what is then to be done. To name only a few cases: self-defense or putative self-defense, tyrannicide (July 20

⁵⁶ Carl Schmitt’s contributions from 1933, in addition to multiple pathological and controlled reasons of expediency, is also a cautionary example of this.

⁵⁷ See R. J. Sullivan, *Immanuel Kant’s Moral Theory* (Cambridge, 1989) and P. Guyer, *Kant and the Experience of Freedom* (Cambridge, 1993).

1944), torture in order to get an offender to disclose hiding places, war in the case of self-defense, today especially with respect to humanitarian interventions. All strategies that depend upon utilitarian calculations are unsatisfying in the end. Although one can think of a preference rule for the benefit of the guilty (where guilt may be clearly assessed), the resolution tactics in the sense of postponing decisive inaction, at least if you make yourself fully aware that the human being is better able to see the advantages of action than of inaction and in consequence that he is to a still higher degree responsible for his actions. Particularly problematic is the rule of quantity, which is also mentioned again and again, as well as that the group that is smaller in number is to be 'sacrificed' in case of doubt. Even (moral) quality permits one to make such distinctions. And hardly with any better results.

4. In all of this human dignity would seem to be balanced against human dignity. And just this contradicts the *Absolutum* of the concept. If one were to go so far, one would then have, as Robert Spaemann has pointed out several times, just thereby sacrificed the claim to that universality which was inherent in human dignity.

Dieter Birnbacher cautions in the sense of criteriological possibilities for differentiation against the difference between basic and practical standards. The latter could always only inadequately depose the former while being determined by them. Ultimately, this is merely the old relationship between morality and law as decentered morality. However that may be: torture, shots putatively made in self-defense, are serious violations of human dignity. They may be understandable in certain circumstances, they may even be essential, yet they may not be justified. One is worth tens of thousands as Heraclitus says. And as the Greeks also knew, doing—and omitting—linked with guilt, hence the viability of non-action is thus no more than a seeming option. No calculus can remove the unsatisfactory in this relation. In action as in non-action as well, we cannot avoid being guilty.

One should therefore think differently about the problem. Therefore one should think the problematic in another way. To this end, Robert Spaemann has made a wide ranging proposal: Human dignity cannot be set against human dignity, in a conflict only those rights resulting from unconditional and inalienable rights of human dignity can come into conflict.⁵⁸ Human dignity permits no compromise. Only those resulting rights, consequently the juridical, not on the level of the morally fundamental, therefore allows limitations to be formulated from case to case. If an affected party plays a role, and even one that had become deeply guilty, must still and yet as a person in the field of moral reasons have his dignity preserved. As Spaemann argues: "human dignity is violated when it is openly or tacitly: to him is what matters."⁵⁹

4. Legally and legal-politically, human dignity is also obligated to found itself in the public discourse of a pluralistic society, even if by no means to be count in linear

⁵⁸ See Spaemann, "Is Every Human Being a Person?," trans. Richard Schenk, O.P., *The Thomist*, 60 (1996): 463-74 and: Spaemann, *Menschenwürde und menschliche Natur* (see at the beginning, remark 1).

⁵⁹ *Ibid.*, see also the collection edited by Böckenförde and Spaemann, *Menschenrechte und Menschenwürde* (Stuttgart, 1987).

fashion as secular.⁶⁰ The main problem dare not be that it is disputed by certain points of principle, but rather that one arrives at equivocal meanings.

In this sense, Hasso Hofmann has invoked the legal limitations requisite for human dignity, when they are not to become blunted weapons, an in every case community of recognition. Only within such can it be given empirically. However, a community of recognition would only first be brought into being via a shared ethos, as is pointed out by the much-vaunted Böckenförde formula In agreement with recent communitarian approaches, Peter Badura has demanded that human dignity be thought in terms of its vulnerabilities/injuries, pointedly articulated by the author Heiner Müller: “The dignity of the human being is (actually) graspable.” Thus the Federal Constitutional Court has argued, however, according to a specific occasion, whether life imprisonment is in accord with human dignity: conformity to dignity of nonconformity cannot be determined via concept or principle out, but only in regard to situational-variant individual cases. *In concreto*, then there is exactly no ultimate limit setting via human dignity. “As a community-based and community-bound citizen, everyone must accept governmental actions made in the overriding public interest, while fully respecting the principle of proportionality, as far as they do not touch the unimpeachable arena of private life.”

Werner Maihofer has, inasmuch as the justifiable line examination (?) is denied, drawn an extreme but nonremainderable limit in the tension between ethics and law: human dignity is that minimum degree of individual freedom, the loss of which for Maihofer would have to entail the loss of the self.

This is also important in international constellations. Human rights treaties are made, in order that the states involved submit to mutual criticism and recognizance, without sacrificing their autonomy. This will always take precedence over interference in national sovereignty.

IV. At the Boundaries of Life: Bioethical Lines

One specially obvious problem is introduced with the question of human dignity at the limits of life. Without being able here to make the subject the specific status of bioethics within philosophy,⁶¹ it is shows itself here that bioethical judgments have to be compound judgments.

With recourse to the Aristotelian principle that “A human begets a human,” has recently been formulated in terms of the potentiality argument, according to which with the emergence of independent DNA clearly genetically distinguished from the mother, human dignity is to be conceded to/recognized in the embryo.

⁶⁰ Ch. Taylor, *A Secular Age* (Harvard, 2007).

⁶¹ See A. Gewirth, *Community of Rights* (Chicago, 1996); M. Boylan ed., *Gewirth. Critical Essays on Action, Rationality, and Community* (Lanham, 1999); M. Quante and A. Vieth “In Defence of Principlism Well Understood,” *Journal of Medicine and Philosophy*, 27 (2002), p. 621 ff.

This dignity would remain, even if human life no longer disposed over the ability to reflect and the ability to relate itself to itself.

On the other hand, in these debates an identity argument has been brought upon the dignity according to which the numerical identity of the human body is cogiven. “Every living human body is the bearer the support of potential ϕ properties (freedom, autonomy, preferences, etc.), has dignity (1). Any viable human embryo is a living human body, that possesses ϕ -properties. (2). Any viable human body has dignity. Damschen and Schoenecker have in this rightly pursued an indirect strategy, comparing the moral status of embryos with that of vegetative state patients. To criticize it seems to me, that even in this subtle argument, although latent, as well as real, ϕ -features are assumed, on the basis of which dignity should adhere. But the basic approach of potentiality and identity arguments is valid, it would be transcendently Kantian and anchored. On this basis, even death on demand and active euthanasia reveal themselves as unworthy forms of contract factively imposing the statment: “You should not exist any longer.” A legal sanction is withheld in essence as A particularly intricate relationship manifest in the sphere of suicide. He who kills himself may do it in the confidence thereby to prove his dignity one last time before himself and others. His act is inherently unfathomable. But if he were to ask *phronesis* from this distance, would he be vindicated?

Michael Quante indeed argues that human dignity is on the one hand to meet the test of secular public life, “the categorical prohibition of any act of killing on the basis of the doctrine of the sanctity of human life in a secular and democratic society cannot be justified.”⁶² You will have to ask if an implicit consensus can and also ought to stand fast with this sanctity in public discourse and decidedly avoid exceeding this limit. Therewith we are in the range of questions that Wittgenstein in his “Lecture on Ethics” presents in the image of the fly that seeks to find the way out of the fly-bottle.

That in this area we exactly do not have certainty, but are however able to expand the vision of existence thereby is crucial. Thus Wittgenstein speaks of a way of thinking and acting, which he would never reduce.

As long as the human being understands himself in his foundation as absolute and without granting in advance the dominance and high sex appeal of today’s narrowest and therefore reductive forms of thought, he can maintain human dignity, totally and to be sure in that including the noncomprehensible thereby that he come to be led before the comprehension of the incomprehensible.

⁶² Quante, *Menschenwürde und personale Autonomie*, p. 163 ff.