Human Dignity, and the Transformation of Moral Rights into Legal Rights

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Abstract: "Human dignity is inviolable. It must be respected and protected." What is the status of this proposition? Is human dignity inviolable? Statements on human dignity are closely intertwined with philosophical, anthropological and legal issues – and with the obligations, possibilities and limits of philosophy. Why a plea for human dignity? There are two reasons at least: (i) human dignity is violated, (ii) there are heated debates on exactly what "human dignity" means. Accordingly, the elements of a normative theory of the state and legal rights are discussed in order to explain what rights and the state should be and can be. After an exposition of the plurality of competing definitions and a short archeology of the concept of human dignity, the author defends the following thesis: Only the conceptualization of human dignity as a principle, concept and norm of positive law allows an appropriate understanding of what should be protected by the guarantee of dignity: i.e. the freedom and equality of everyone who is a human being.

1. "Human Dignity is Inviolable. It must be Respected and Protected"

What is the status of this proposition? Is human dignity inviolable? Whose dignity are we talking about? Should it be understood as if it were impossible to debase human beings? Is it correct to assert that we cannot take away someone’s dignity, and that only the requirement of respecting their dignity may be violated?

The answers to these questions: “Who is an individual?” “What is sociality?” are embedded in the ideas and concepts of human dignity. If it is a matter of examining the justifications for our modern concepts of the individual, the person and subject in the perspective of communal living and in the light of new developments in sociality and transculturality, then statements on human dignity are closely intertwined with philosophical, anthropological and legal issues – and with the obligations, possibilities and limits of philosophy.

Why a plea for human dignity? There are two reasons at least: (i) human dignity is violated, (ii) there are heated debates on exactly what “human dignity” means.

Accordingly, I discuss the elements of a normative theory of the state and legal rights. I will try to explain what rights and the state should be and can be. This
gives rise to the critical function of theory, understood in two senses. Firstly, it
is a matter of analyzing the conditions for the possibility of human dignity
within the law and state, according to the Kantian philosophical concept of
critique; secondly, the practical criticism of the distortions of the state and its
normatively grounded functions.

To begin with, I will outline a few of these problems and briefly refer to
the archeology of the concept of human dignity, as well as to the plurality
of its competing definitions. I will defend a thesis in my lecture which may
surprise some people as the thesis of a philosopher:

Only the conceptualization of human dignity as a principle, concept and norm
of positive law allows an appropriate understanding of what should be protected
by the guarantee of dignity: i.e. the freedom and equality of everyone who is
a human being.

Why this particular thesis? First of all, what does this thesis not signify? It does
not signify that any principles of morality and justice in a state of right would
not be incorporated into positive right. My thesis contains two premises.

i) Firstly: men are men insofar as they are individuals. When statements on
existence operating with the verb to be are linked to the empirical world, then
there is neither the human being, nor the person, nor the subject, nor the society.
On the other hand, there is the individual. A human being has dignity, every
human being has dignity. “Dignity” is a relational concept in which the
mutual respect of everyone towards everyone else is inscribed. The presumption
that a violation of dignity transgresses the sphere of the individual is not
obvious. The regulative idea of “species” or “mankind” offers a perspective for
understanding “humanity” – for example, when speaking of “crimes against
humanity,” which has been the case since 1945 after the Nuremberg and Tokyo
trials. De facto, however, the “humanity” of which philosophers speak cannot
be deprived of its dignity. Dignity is taken away from this particular individual,
this particular person – in the past, present and future, as long as individuals
are not strong enough to defend their dignity, and as long as there do not exist
societies consisting of individuals with precisely this strength. In my opinion,
the assumption that only the requirement of respecting dignity may be violated,
but not dignity itself, is a sophism. This assumption domesticates men into
weak individuals, subjected to and suffering at the hands of violence.

ii) The second premise is closely connected with the first one: i.e. men
are men insofar as they are individuals. As human beings, we do not act as
individuals in accordance with moral values that we all share in common by
virtue of nature. We have different interests, and by carrying out our interests
we do not always act in accordance with the principles of the morally good.
This is why moral values have to be transformed into the norms of a legal
system. As moral rights, human dignity and human rights can indeed be
demanded, and it is also possible to morally judge their violation. However, morality is not at all a secure authority. No one would feel secure when confronted with the violence of one person towards another.

If a moral right to dignity and to life could be established for everyone, then there must also be a right that could be established for each person to create a common authority that would enforce this right. Otherwise the recognition of moral rights would not be a serious recognition. Positive law and the state are those authorities established in common in order to enforce human dignity and human rights. Therefore, there is a human right to a state. The moral rights that individuals possess with respect to one another are transformed by the state into the very same rights (with regard to their content) of positive law.¹

This is the normative perspective: The state is a state under the rule of law. In reality, however, the lack of respect for human dignity is exceedingly widespread. Growing poverty, exclusion, and other forms of inequality increase the vulnerability of people. They deprive them of their right to life, dignity and health. Intolerance, discrimination and the exclusion of “aliens” result in the marginalization of individuals and groups. This means: there is no guarantee that the state is a state under the rule of law. Distortions of the state under the rule of law are possible. We cannot talk about the state without talking about rights and we cannot talk about rights without talking about the state. It is a paradoxical situation. In modern times the realization of subjectivity and individual rights has caused conflicts of interest, and consequently a legalization of living human relationships that before were governed in conformity with morality and ethics. This paradox can be summed up in a simple formula:

The more freedom, the more rights; the more rights, the more laws and state; the more state, the less freedom; the less freedom, the more need of rights etc.

Fundamental rights and human rights are two forms of our right to have rights. Each individual is entitled to them “by virtue of nature.” If we want to avoid naturalistic and metaphysical misunderstandings, then “by virtue of nature” can only mean: before it is rendered positive by the state. “Before” does not signify the genesis of these rights in time, rather, it is a sign of the foundation of their validity: people are endowed with rights as human beings and these rights are not “guaranteed” by the state. Rather, the state has the function of guaranteeing individuals – as the subjects of rights – human dignity, equality, freedom

and justice as human and basic rights. Its function is also to protect these rights and to procure the conditions for their realization. If we expect freedom through right – against the oppression and violence of the state –, then it is a matter of creating the conditions for a life where individual freedom, recognition of otherness, as well as collective equality and justice, are no longer at odds.

In the preamble to the *Universal Declaration of Human Rights* (1948) two essential aspects are joined in order to understand what human dignity is: i) Human rights are declared, “whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.” ii) The assertion that “recognition of the inherent dignity,” could be misunderstood in the sense of an ontology of a “dignity always already given,” if it were not inscribed in the context of a “recognition” and of equal and inalienable rights. It is precisely because human dignity is not “given,” that it is “necessary [...], that human rights should be protected by the sovereignty of law.”

Today this sovereignty of law should no longer be understood as the sovereignty of a state that is above the law. Rather, all states are subject to an international system of law in which certain specific norms are unconditionally valid. These are above all the *peremptory norms* (also called *jus cogens*). They are a fundamental principle of international law, and considered to have acceptance among the international community of states as a whole. Unlike ordinary common law that traditionally requires consent and allows the alteration of its obligations between states through treaties, *peremptory norms cannot be violated by any state*. Under the *Vienna Convention on the Law of Treaties* (1969), any treaty in violation of a peremptory norm is null and void.

In a 2001 commentary, the UN International Law Commission mentions the following norms of right as examples: the ban on wars of aggression; the ban on slavery and slave trade; the ban on ethnic cleansing; the ban on racial discrimination and apartheid; the ban on torture; basic rules such as the humanitarian international law and the right of self-determination.

With regard to the treatment of civilians, the *jus cogens* encounters particular prohibitions that have a compulsory legal dimension: prohibited are premeditated killing; torture or inhumane treatment; premeditated cause of extreme suffering; kidnapping or unlawful expulsion; unlawful imprisonment; the right to a fair trial; the taking of hostages, as well as unjustified destruction and acquisition of property, which is either carried out in an unlawful or arbitrarily manner.
The decisive point is this: These norms are binding for all states, and do not depend on whether they adhere to specific treaties or not.

What does this signify for the respect and protection of human dignity? Statements concerning the inviolability of dignity are not descriptive statements. The statement “Human dignity is inviolable. It must be respected and protected” is formulated like a descriptive statement, because the form of ought as being is the strongest form of normativeness. In other words: the statement that human dignity must be respected and protected is due to its violation. If dignity were a substantial entity, that is to say, a self-realizing and self-explanatory being, then it would not need any protection. If God or Nature had created men in such a way that their needs, interests and actions were compatible and formed a universal unity and stable harmony, then it would not be a matter of protecting dignity. Dignity is at stake only insofar as there is discord, conflict and pluralism in the historical dynamics of human life. The concept of dignity intervenes in the uncertainty of life. “Dignity” is not a substantial concept, but a functional concept. It operates by trying to create compatibility and order by means of words, concepts, rules, principles and norms. It has the function of declaring when freedom is in danger, a sign of longing for the certainty that man cannot ultimately be destroyed, in spite of all historical experiences – a sign that dignity cannot protect itself but needs an institutional and legal protection.

In any case, the norm to protect human dignity is an interpretative pattern, like any norm. This implies that it is not spared from conflicting interpretations. The present debates concerning human dignity – above all among philosophers and jurists – do not contradict, but correspond to the “human condition.” When philosophers assert that the concept of dignity is substantially “empty,” it expresses the fact that philosophy as a theoretical science encounters a limit, beyond which it cannot reach practical life. Philosophers demand transparent concepts with clearly defined meanings. Many have difficulties with human dignity because it is a functional principle, and a rule of practical life that is prior to all philosophical or a priori concepts. And when behaviourists – like B. F. Skinner in Beyond Freedom and Dignity – consider the principle of dignity to be superfluous because it is not “autonomous man” who controls himself but his “environment,” then this indicates that natural science encounters a limit as to what it can express.

I argue for the freedom to philosophize about dignity, and therefore maintain that we cannot question the function of the principle of human dignity in the light of a final conceptual rationality that philosophy requires. This could cost us dearly. It is no accident that we – i.e. individuals on the way to becoming autonomous subjects in our social existence – have learned throughout the history of our emancipation to prefer other means for protecting our dignity than philosophy. The protection to which we have entrusted our dignity is one we have created ourselves: the protection by means of right, norm and sanction.
“dignity” was not a concept of right. “Dignity” was related to “rank,” “condition,” “function,” “honour,” and “authority”; dignity was subject to comparison, there were degrees of dignity, a higher and a lower. Thus, this meaning involved inequality. Since dignity was linked to a function, to a social role, it could be taken away at the same time as the function. The dignity of which we nowadays speak is freed from all these connotations, as well as from discriminating factors such as those of “race” or “sex.” In a non-metaphysical sense it is absolute, i.e. it absolutely refers to the sphere of positive law, and in this sense it is “relatively absolute.”

2. Human Dignity – in Question

For many years now, the concept of human dignity has provoked heated debates among philosophers and jurists. It is a paradoxical debate: Many say that the inflationary use of the word “dignity” is in a proportional relation to the fact that it has no fixed meaning and therefore no sense. To be sure, the expression “human dignity” is often used in a very vague sense, like an empty formula, and this promotes its inflationary use. It is also sometimes misused as a quick and easy “knock-out argument” in order to avoid problematic ethical discussions, and to exempt oneself from providing further explanations.

Due to the word’s different contexts – in religious discourses, as an ethical guiding category, as a legal concept, and as a tool in the political battle of opinions – would it not be more appropriate to conclude that there is a need for human beings to protect their rights? On the agenda we find existential issues such as embryonic stem cell research, pre-implantation genetic diagnosis (PGD), euthanasia, migrant rights, protection against poverty, and not least, the prohibition of state torture.

The debate concerning the problematic nature of human dignity is paradoxical insofar as it is de facto accompanied by an unavoidable international process of the legal transformation of cultural taboos into the rule of law. This process concerns the principle of the dignity of the human person in a particular way: Indeed within the horizon of the religious and ideological neutrality to which right and the state are bound. The critics of this thesis argue – consciously or not – for a “deregulation,” that is to say, for a delegalisation of the

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requirements of respect in democracy. From the public space of democratic legal order, human dignity becomes transferred into the sphere of personal opinion. The consequence is the following: within and beyond the legal order human dignity ceases to be absolute.

3. Human Dignity: A Dynamic Principle

The archaeology of “human dignity” reveals that it is a dynamic principle. An overview of the historical process since the Renaissance would show this. Indeed, through this process “human dignity” has become the expression of unconditional respect, with which each person is endowed by virtue of his very humanity, and hence, independently of his particular qualities or accomplishments.

The Christian understanding of the dignity of man as that of an “image of God,” was linked to a lack of appreciation for earthly life. Since the Renaissance a number of authors have departed from this view: They no longer interpreted the “dignity and superiority of man” as a reflection of the privileged relationship between man and God, but as the capacity and right to actively shape one’s life on earth. For example, this is Pico della Mirandola’s interpretation in his famous discourse On the Dignity of Man. Modern philosophy has continued this and especially emphasizes three major aspects of human dignity. a) The non-fixedness of man: Whereas nature or God prescribe the manner of existence for all other beings, man is free to choose his way of life; he is granted the possibility of creative self-determination. b) His rational nature: i.e. his ability to rationally think and act. c) His autonomy: man is the creator of his norms and values. As Kant says: “Autonomy is the basis for the dignity of man and of every other rational nature.”

At the beginning of modernity and during the age of Enlightenment, the conception of dignity as freedom was associated with the Stoic conception of dignity as a participation in reason. One of the leading conceptions still current today stems from Kant’s Metaphysics of Morals (1797). In section § 38 we read: “Humanity itself is a dignity; for a human being cannot be used merely as a means by any other human being (either by others or even by himself) but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not human, and yet can be used above all things. Just as he can-

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6 Kant, Akademieausgabe, vol. 7, p. 69.
not give himself away for a price (which would conflict with the duty of self-esteem), likewise, he cannot act contrary to the equally necessary self-esteem of others as human beings, i.e. he is bound to provide practical acknowledge-
ment of the dignity of humanity in every other human being.”

Around the middle of the 19th century, the Kantian conception of human dignity was faced with a “But” among communist and socialist movements, dictated by a genuine poverty among the masses: “But only worthy human conditions permit the realization of dignity.” In other words, “human dignity” is not something that is always and everywhere given. To understand the historical dynamic in which the word has gained its meaning, we must consider two presuppositions:

1) The anthropological premise: i.e. imperfection, diversity and openness to development, are all a part of human nature. Therefore, any attempt to define human nature, a human being, a human substance or an image of man and to make them normatively binding, runs counter to the philosophical core of the idea of human dignity.

2) The historical-social presupposition, which consists in the fact that human dignity is understood, debated and interpreted as a principle, a regulator and a norm in social-economical, political and cultural contexts.

4. The Plurality of Competing Definitions

There is a vast number of definitions, explanations and justifications of the principle of human dignity, whether it is postulated as a value or as a positive norm. They depend on epistemological and practical interests, on views of man and the world, and on the medium in which they are formulated; for example, in every day speech or in philosophy, theology and political science. It is all the same whether they are substantial metaphysical or pragmatic functional definitions. There arises from this plurality of definitions the necessity of establishing what exactly human dignity is, and determining when it is violated. These justifications do not result from any “self-explanatory” ontic status or self-evident practical needs.

In its weakest version, “human dignity” means a vision or something to which man aspires, and this allows one to ascertain a certain number of other principles. A somewhat stronger version asserts that “dignity” is a guiding principle, more fundamental than the value of “right,” since human rights are based on it, and it is more valuable than the word “freedom,” since we may retain our dignity even if we lose our freedom. In its strongest version dignity

7 See Kant, §§ 9, 12 and 29.
is not a “manufactured” norm, but an explanatory concept intrinsically linked to human nature and must be placed between natural law and positive law.

Roughly speaking, (1) metaphysical and anthropological substantial concepts of dignity, compete with (2) anthropological or pragmatic functional concepts of dignity.

1) From a substantial theoretical standpoint, the theory of a dowry tends toward an objective value: Human dignity is a pre-positive value, grounded in the existence of man ascribed by God or nature.

2) Function-theoretical theories argue that people possess dignity by virtue of their own autonomous accomplishments, and out of the need for respect and mutual recognition of dignity. This implies: dignity does not result from an attribution, but from a recognition of the duty of mutually granting one another the respect of dignity. Hence, the principle of dignity has the function of protecting the individual from any violation of what makes him an individual in his freedom and equality. The dignity of the human person demands that man should be recognized as a subject. This protective function makes the principle of dignity a legal principle, a subjective basic right: a right to defend and claim one’s rights. It characterizes the standard of what may be demanded from people, and not only the limits for inhumane treatment (for example, torture, slavery, and the death penalty), but also for inhumane carelessness (e.g. letting someone die of hunger or tolerating the persecution of minorities).

With regard to the competing and abstract theoretical character of metaphysical, anthropological and ethical theories, legal practice defines human dignity negatively. It starts from what “contravenes” human dignity, and defines in each case a violation of dignity. Constitutions avoid concretely (materially) defining the principle of human dignity. Rather, they remain within the framework of their understanding of the objective order of values, according to which subjective rights are interpreted and rendered concrete. Accordingly, they draw the limits for establishing a violation of human dignity, and decide whether a given action or measure implies a breach of it. Thus from a legal point of view there is no a priori response which could hold for any future situation.

The different theories are indeed unanimous in thinking that every man is endowed with dignity. But they provide completely different answers to the three following problems:

1) The thesis which maintains that people cannot be deprived of their dignity even if it is violated is not compatible with the loss of a feeling of dignity, for example, in the case of torture.

2) The thesis according to which the individual can neither renounce his personal dignity nor the rights associated with it, since he is endowed with them by virtue of his very quality as a human being. This raises the problem of the dignity of anyone violating another person’s dignity. In a state under
the rule of law, anyone violating his own dignity and the dignity of others must still be treated as a person with dignity.

3) The understanding of the principle of dignity has changed throughout history. Hence, what criteria must now be valid so as to interpret this principle in its ethical and constitutional law aspect, beyond a metaphysical essentialism and a relativism of “anything goes”?

Whoever wishes to answer these questions must provide an account of who should be considered as a bearer of dignity, and an addressee of its guarantee.

In a pragmatic perspective it does not make sense to elevate “humanity” to the level of a subject. “Humanity” as an end in itself and as a telos is not a real subject, but a virtual subject whose dignity can neither be violated nor protected. Therefore, I suggest a Copernican turn: Up until now philosophies have assumed that the dignity of humanity was the transcendental condition for the possibility of attributing dignity to individual people. Only an inversion of this relation allows an appropriate conception of the bearer of dignity. The principle of dignity becomes a practical and operational principle at the level of man as an end in himself, of the individual defined as a person.

The jurist knows that a legal person is nothing else than a living individual, an empirical fact, a historical and social reality. The right of the person appears at the conclusion of every individual and social struggle for dignity. This is exactly the normative form in which individuals as ends in themselves become persons through the process of a successful individuation. It does not correspond with the self-interest of individuals to change themselves into abstract persons in law. This is the reason why person, dignity and respect form an indivisible unity in the Universal Declaration of Human Rights. Dignity is the state of a person who keeps their right to control themselves and the possibility of their autonomy in society.

Of what right and of what society am I speaking? The social recognition of rights that are based on human dignity requires social conditions in which the protection of human rights\(^8\) is institutionally guaranteed by the state as a welfare state – social conditions without poverty and hunger in the world, without social exclusion, without war and without terror.\(^9\) It is not dignity that must be measured against these conditions, but these relationships against dignity.

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\(^9\) This is the aim of the project “Human Dignity and Social Exclusion” (HDSE), a pan-European initiative created by the European Council in 1994.
5. Constitution, State and Human Dignity

The proposition claiming the "inviolability of human dignity" is a binding legal statement. "Human dignity" is the normative basis for all basic rights. It is only in a legal statement that dignity (beyond the boundaries of disputes concerning moral justifications) becomes the ultimate foundation of the claims of right we are entitled to have as individuals, and whose protection must be unconditionally guaranteed in an interpersonal way, and in a collective, political, social and cultural way. The principle of dignity is indeed open to ethical reflection; however, the norm of dignity remains untouched in its core. Because human dignity is the condition of democracy, this norm is not at the disposal of politics.

The dignity of the human person has become an operational and legal concept to designate what is human in the human being and hence worthy of protection. Everything leading to the dehumanization of the human being is considered as damaging to this dignity. We can therefore summarize: Apart from the fact that "human dignity" is a dynamic concept of law, the principle of human dignity requires an unconditional guarantee.

Human dignity rendered positive as a moral and legal norm arises from the social formation of the will: We agree not to speak about whether human dignity is attributed or not. The place of agreement is the state – not any kind of state, but the law-based and welfare state. "Human dignity" not only means having a preventative right against the state, but also the rupture with the doctrine stemming from a libertarian optimism, that the state has nothing to do with the dignity of man. The adherence to a society and state order can only be demanded from citizens under a condition that preserves the minimum guarantee of their dignity determined by the legal and state order: (a) Security in life and freedom from the anxieties of existence; (b) security from discrimination resulting from sex, race, language and social origin; (c) development of the personality, freedom of opinion and of belief; (d) protection from arbitrary use of force; and (e) respect for basic rights in life and for both bodily and psychological disability.

Citizens have the right to resistance (within the limits of the law) in every state that violates their basic rights and also their dignity.

Only the democratic state, in whose constitution human dignity is of supreme value and the basic legal norm, has the power to guarantee in the most appropriate way for all individuals the unity of equality and freedom under the conditions of justice, and therefore with the totality of all fundamental and human rights to protect individual dignity as well. With this normative assertion I am not disputing that this state is not at all or only partly realized in many societies. However, the normativity of the transnational and transcultural right of human rights is the basis for criticizing the defects of democracy and the social struggle for democracy.
In the following I will outline some of the constitutive elements for a state of right, as they are rendered positive in constitutional law.

The idea of founding democratic constitutions on the principle of human dignity is quite new. The constitution of Ireland dating from 1937 is the first example as such. Its victory only occurs after 1945 with the introduction of the legal fact of “crimes against humanity.” The now legal idea that the human person has dignity and their own effective rights in defense against the state, is a result of the second world war and of the experiences of injustice linked to fascism, national socialism and Japanese Imperialism. Dignity is no longer merely a basic right, but is the foundation for all human rights.

This is also the context of the Basic Law of the Federal Republic of Germany:

“Art. 1. (1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. Art. 1. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. Art. 1. (3) The following basic rights shall bind the legislature, the executive, and the judiciary as directly applicable law.”

It must be emphasized:

1. By professing inviolable and inalienable human rights, human dignity – as the supreme value and norm of law – becomes related back to its basis by means of the word “therefore”; human dignity has a foundational relationship with regard to basic rights. It does not simply concern a programmatic proposition, an ethical profession, a festive announcement or a motivational explanation, but an immediate binding norm of objective constitutional law. And it is not simply isolated concrete instances, but entire basic rights that render concrete the principle of human dignity concrete.

2. Constitutional law shows how and why the principle of human dignity is not statically conceived; it develops in reciprocal interaction with the changing social conceptions of value;

3. The Constitution is not a neutral order of values. In Germany, the Federal Constitutional Court had already written in 1952 the terms of the history of constitutional right: “that the Basic Law will not be a neutral order of values [...] This system of values finds its centre in the free developing human personality and its dignity within the social community; and as a legal constitutional basic decision, it must be valid for all domains of rights. Legislation, administration of justice and legal practice, all receive guidance and impulses from it. Hence, it naturally influences civil rights; no lawful civil precept may contradict it, and every single one must be drawn up in accordance with its spirit.”

4. Although the German Federal Constitutional Court has not yet concretely (materially) defined human dignity, in isolated cases it has extended the range of implications of human dignity.

Correspondingly, the range of positions in constitutional law is very broad. Agreement is chiefly with regard to the essential content of the guarantee of
human dignity: This core content includes the recognition and respect of every human being as an independent subject, as the bearer of fundamental rights and of the freedom to his own development and responsible acting. As a person, the human being must be respected and may not become a mere object of state action.

It is contrary to human dignity if the human being is excluded from any treatment that in principle calls into question his quality as a subject. Human dignity is attacked by torture, slavery, extermination of certain groups, prohibiting of birth, subjection to inhumane or demeaning punishment or treatment, human experiments, and by the death penalty.

If we review all this, then the following becomes clear: with regard to the status and determinations of the principle of human dignity, there exist conflicts in the philosophy of right and in constitutional law, because this principle and its associated legal rules do not have an ontic (given from itself) guarantee of stability, but an understanding dependent on requirements, say, such as human and world views, on moral preferences and not least, on real social relationships. And with respect to human dignity as a norm, conflicts arise on account of the fact that norms are interpretative schemes, whose application depend on contextual prerequisites. This is ultimately demonstrated by an intercultural comparison.

6. Human Dignity and the Intercultural or Transcultural Perspective

It is often said that the “West” champions dignity, inalienable rights and the freedom of the individual, whereas the “South” and the “East” emphasize a communitarian orientation, with respect to duties in the community. De facto, the principle of human dignity assumes different meanings in different cultures. – In conclusion, a few fleeting indications will have to suffice. On the one hand, since the Universal Declaration of Human Rights of 1948, the two international pacts of 1966, and numerous other declarations and pacts, international law presents the general framework for the interpretation of the principle of human dignity. On the other hand, any understanding of human dignity is shaped by the implementation of human rights in national constitutional law and by specific cultural traditions.

11 On intercultural comparisons, see my Bremen UNESCO lectures: http://www.unesco-phil.uni-bremen.de.
An intercultural comparison reveals that national or regional declarations of human rights, for example, in the Islamic world, the Arabic Charter, the Cairo Declaration,\textsuperscript{13} or in the Banjul African Charter on Human and Peoples’ Rights, – as in the implementation of human dignity – are derived from religious, metaphysical or particular traditional and cultural principles. This not only leads to a relativisation of the universality of international law, but also to the internal problems of society and to difficulties in cultural communal life.

Hence, there \textit{intrinsically} belongs to the principle of human dignity the fact that we may never deprive someone of a certain opinion and justifactory strategy. Therefore, cultures, societies, and states cannot be deprived of an interpretative space. The human being has dignity; this is a general element of our present world culture. However, national constitutions may still draw up basic rights which guarantee lawful human minimum standards in such a way that they are acceptable for the citizens.

The decisive questions are whether (i) the factual pluralism of requirements, contexts and justifications, damages the universal norm of dignity in its absoluteness, and whether this (ii) diminishes the claims of individuals to respect their dignity. This is an obvious risk, as demonstrated, for example, by the practice of torture or by the death penalty and inhumane working conditions; international law is not blind to them. A \textit{cultural und juridical relativism} that allows everything in the name of cultural differences should therefore not be given a platform. In other words: specific cultural implementations of the principle of human dignity, due to reasons of universality and security of law that are valid for all people, must not contradict the principles agreed in international law. In order to achieve this, deliberative intercultural discourses are of the greatest significance, and indeed with the goal of strengthening transculturally recognized principles and norms.

In conclusion let me summarize: human dignity is the basis and the goal of rights. Positive human rights and constitutional laws are the means for its protection; states and international organizations must implement, respect and protect these rights.

\textit{(Translated from German by David W. Wood)}

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