

# HUMAN DIGNITY, HUMAN RIGHTS AND TORTURE<sup>1</sup>

Werner Wolbert  
University of Salzburg

---

## Abstract

*In its first, fundamental sense, human dignity means something that is given, that cannot be lost, something to be respected. The human person has dignity simply because she is capable of morality. In this sense dignity is an end in itself, something not to be acted against (e.g. the health of a healthy person). In another sense, dignity is something to be promoted, realised. In this sense it means a life (well-being) that befits a person as an end in itself. Recent interpretations often reduce human dignity to this second sense, to some commission or commitment, namely to care for a humane existence of one's fellow human beings. In this sense, one can only violate the dignity of others (by not caring for them or violating them), but not act against one's own dignity. In this interpretation the central (Kantian and Christian) idea of an end in itself is lost.*

**Key words:** Cognitivist interpretation, Human dignity, Human rights, Torture

Paragraph 63 of *Gaudium et Spes* (GS) states that the dignity of the human person has to be “respected and promoted” (*honoranda atque promovenda*). The meaning of the word “promotion” is evident from its context (economical life), namely the promotion of (material) well-being and economic justice. One might compare this formula with that of the first article of the German Basic Law that says regarding human dignity: “To respect and to protect it is the obligation of every public authority.” Human dignity therefore appears to be something that needs to be respected, protected and promoted. What the council fathers might have overlooked is that the term “dignity” has a slightly different meaning when it is used in combination with *honoranda* or *promovenda*.

Christian ethics understands human dignity primarily as something given, a property every human possesses independently of his/her status, gender, nationality or virtuous or vicious disposition. In an introductory lecture to a conference of Protestant theologians (Vienna 1999), German philosopher Annemarie Pieper outlined the idea of human dignity as follows:<sup>2</sup>

“The human person has a value of its own which constitutes his [sic] dignity.

[This value is]

- innate in the sense that it befits every being born as human as a quality inseparable from its humanity belonging to its very essence, not acquired by special faculties or performances;

---

<sup>1</sup> Paper presented at a consultation on “Human Dignity at the Edges of Life” of the Protestant Theological University, Kampen (The Netherlands) and Stellenbosch University’s Faculty of Theology, on 15 August 2006 at Stellenbosch University.

<sup>2</sup> Pieper, Annemarie 2001. “Menschenwürde. Ein abendländisches oder ein universelles Problem? Zum Verhältnis von Genesis und Geltung im normativen Diskurs.” In Herms, Eilert (ed.), *Menschenbild und Menschenwürde*, Gütersloh, 19-30.

- indivisible, since every human being owns this quality in its totality; inalienable, insofar it is a matter of interior value not transferable on something or someone other;
- unbalanceable,<sup>3</sup> different from material or economical values it is of “proper and inestimable worth” (Kant:<sup>4</sup> *über allen Preis erhaben*);
- cannot be lost, because as quintessence of humanity it is inseparably linked to human existence;
- underivable; for there cannot be thought of a higher value from which human dignity could be derived;
- inviolable; anybody questioning it is denying his (her) own humanity.”<sup>5</sup>

These words seem to describe perfectly what we normally associate with the idea of human dignity. However not all interpretations of human dignity offered today do in fact include all the elements of the above description. Therefore, we might be confronted with the alternative of subscribing to the idea of human dignity as explicated by Pieper or to committing ourselves to a reduced understanding implied by some recent interpretations.

### Price and Dignity

We owe the classic formulation of the idea of human dignity to Immanuel Kant, to whom most interpretations refer in some way, approving or disapproving. We read in the *Groundwork of the Metaphysics of Morals*:

“In the kingdom of ends everything has either a price or a dignity. Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits of no equivalent, has a dignity.”<sup>6</sup>

Whatever has no equivalent cannot be weighed against something else. Whatever has a price can be exchanged, has some value, corresponds to some human need or taste. Still, one is not obliged to care for these things if one has no need for or derives no pleasure from it. Whoever is not interested in football or opera, may find other pastimes as “equivalents”. Speaking of price reminds of the institution of money. Money offers equivalents, as already Aristotle has shown.<sup>7</sup> A shoemaker cannot offer an architect an equivalent in shoes for his house. Money is an easily manageable equivalent, facilitating choices. One with an interest in Salzburg Festival tickets may consider whether he/she is willing to pay their price or to keep the money for other purposes. We speak of the “cost” of an action, the price we have to pay for it, i.e. the evil we have to “buy” to obtain a certain good. Similarly one has to accept the side-effects of certain medicine, the (literal and metaphorical) price to be paid for one’s convalescence. However human dignity has no price, no equivalent, no quantitative dimension.

<sup>3</sup> This term may be my own creation as translation of the German word *unverrechenbar*.

<sup>4</sup> Kant, Immanuel, *Grundlegung zur Metaphysik der Sitten*, Akademie-Ausgabe IV 426. Translations of Kant are taken from: *Grounding for the Metaphysics of Morals with On a supposed Right to Lie Because of Philanthropic Concerns*, transl. by James W Ellington, Indianapolis/Cambridge, 1993 and *The Metaphysics of Morals*, translated and edited by Mary Gregor, Cambridge, 1996

<sup>5</sup> Pieper *ibid.* 19f. [my translation WW].

<sup>6</sup> *Ibid.* Ak. Ausgabe IV, 434 (“Im Reich der Zwecke hat alles entweder einen *Preis* oder eine *Würde*. Was einen Preis hat, an dessen Stelle kann auch etwa anderes, als *Äquivalent* gesetzt werden; was dagegen über allen Preis erhaben ist, mithin kein *Äquivalent* verstattet, das hat eine *Würde*.”) Cf. also Seneca, Letter 71, 32f.

<sup>7</sup> Aristoteles, *Nicomachean Ethics*, 1133a 19ff; 1163b 31ff.

## The Dignity of Morality

It is rarely mentioned in the present debate that for Kant the first bearer of dignity is not humanity. He first mentions faith and benevolence, that means virtues, attitudes, something humans have to strive for as ends in themselves and not for some other purpose. Striving for these attitudes, for moral growth, is a categorical demand. Secondly, a human person has this dignity insofar as he/she is capable of morality. As Kant puts it: "Hence morality and humanity, insofar as it is capable of morality, alone have dignity".<sup>8</sup> We also find a similar, corresponding idea in the reason traditional Catholic moral theology offers for the command to love of one's neighbour, for instance in Noldin's manual:<sup>9</sup>

"Those called neighbours are understood by us as all rational creatures that are capable of divine grace and eternal beatitude: Angels and the saints in heaven, souls detained in purgatory and people, whether good or bad, whether friends or foes, only demons and the damned excluded"<sup>10</sup> [my translation - WW].

Noldin speaks of the capacity to gain eternal life and GS 12 of a capability "*suum Creatorem cognoscendi et amandi*" ["knowing and loving his Creator"]. Neither speaks, as Kant does, of the capability for morality; but the former presupposes the latter. Nor does either of the two statements limit those capabilities to humans. This corresponds to the Kantian idea that the moral demand is addressed to every rational being. Thus far there is no speciesism to be found in this position, as P Singer would criticize. Human dignity does not rest purely on one's membership of the species *homo sapiens*, but on one's moral capability. It is true, at least from our human point of view, that this dignity cannot be lost, is inseparable from humanity, as Pieper said. It is true that the damned in hell have lost their dignity, because they cannot convert anymore and therefore have lost their moral capability, but this statement is not relevant for human agents, because we have no knowledge about the inhabitants of hell.

Perhaps the most fundamental and nevertheless sometimes overlooked consequence of this idea is that all humans are equal regarding their dignity. This dignity is not dependent on the degree of realisation of morality or on certain achievements; otherwise humans would be fundamentally unequal in dignity. This fundamental equality has serious consequences for theories of punishment. In the 1950s some German moral theologians supported the reintroduction of the death penalty in Germany by arguing that a murderer had lost his/her right to life. This argument is incompatible with the equal dignity of all human beings. The same goes for the metaphor of a sick limb that should be removed for the well-being of the whole body<sup>11</sup>; this analogy would deny that the human person is an end in itself.

It should be mentioned in this context that dignity in this sense has no negative counterpart. In other contexts the absence of some value constitutes an evil – the absence of morality means malice or wickedness. The absence of dignity in other beings for instance, does not imply any evil or lack; they are not "*würdelos*" in a devaluing sense.<sup>12</sup>

<sup>8</sup> Kant *ibid.* 435.

<sup>9</sup> Noldin, H 1913. *Summa Theologiae Moralis II*. Innsbruck.

<sup>10</sup> Noldin, *ibid.* 84: "Nomine proximi intellegitur omnis creatura rationalis, quae gratiae divinae et aeternae beatitudinis capax est: angeli et sancti in coelo, animae in purgatorio detentae et homines, sive boni sive mali sunt, sive amici sive inimici, solis daemonibus et damnatis exceptis."

<sup>11</sup> So Thomas Aquinas, *S.Th II-II* q 64 a 2.

<sup>12</sup> Contra Wetz 21.

## Dignity without Merit

The fundamental equality of humans has been stressed especially in modern times, for instance in the various declarations of human rights. However, it has to be stressed that in other respects it is something strange to modernity. The idea that somebody has rights by birth without any merit was denied in the fight against the privileges of aristocracies, as may be demonstrated by a quotation from “*La folle journée*” of Beaumarchais:

“What have you done to have so many good things? You have taken the trouble to be born, and nothing more. For the rest, a quite ordinary man! While I, by Jove!, lost in the anonymous mass of people, for me it was necessary to employ more science and calculation only to survive than what was spent in one hundred years of governing all the Spanish territories”<sup>13</sup> [my translation – WW].

G Vlastos has pointed out that our society is in some sense similar to a caste society with only a single caste and not to a society in which merit counts:<sup>14</sup> “The latter has no place for a rank of dignity which descends on an individual by the purely existential circumstance (the ‘accidence’) of birth and remains his unalterably for life.”<sup>15</sup>

Even a criminal is not regarded as a second class citizen. The only presupposition of human dignity is the “effort to be born”.<sup>16</sup> In this context, it has to be mentioned that “dignity” (*dignitas*) has two meanings:<sup>17</sup> 1. peculiar position, rank of a person in a society; 2. precedence of the human person over non-rational beings.<sup>18</sup>

Insofar as all humans enjoy this peculiar position, these two meanings of “dignity” coincide when applied to humanity. This peculiar position is underlined in GS 12: “*omnia in terra sunt ad hominem, tamquam ad centrum suum et culmen, ordinanda sunt.*” [“according to the almost unanimous opinion of believers and unbelievers alike all things on earth should be related to man as their center and crown.”] By the way, whether this is still a “*fere concors sententia credentium et non credentium*” [“according to the almost unanimous opinion of believers and unbelievers alike”] is not so certain; today people fighting for “animal liberation” tend to deny this human peculiarity.

## Human Dignity in a Non-cognitivist Perspective

The concept of human dignity, as presented above, presupposes a cognitivist interpretation of the ethical demand. According to this understanding morality is something perceptible, something to be discovered, not invented.<sup>19</sup> Only in this way morality can be understood as categorical. But this understanding is not universally shared today. A non-cognitivist (decisionist) position considers dignity not as something given, but as

<sup>13</sup> Act V, Scene 3 (“Qu’avez-vous fait pour tant de biens? Vous vous êtes donné la peine de naître; et rien de plus. Du reste, homme assez ordinaire! tandis que moi, morbleu! perdu dans la foule obscure, il m’a fallu déployer plus de science et de calculs pour subsister seulement, q’on n’en a mis depuis cent ans à gouverner toutes les Espagnes.”)

<sup>14</sup> Vlastos, Gregory 1982 (=1969). “Human Worth, Merit, and Equality.” In: Joel Feinberg (ed.), *Moral Concepts*. Oxford, 141-152.

<sup>15</sup> Vlastos *ibid.* 146.

<sup>16</sup> In this context the question of the status of the foetus or the embryo can be disregarded.

<sup>17</sup> Cf. Münk, Hans J 1997. “Die Würde des Menschen und die Würde der Natur.” *Stimmen der Zeit* 215 (1997), 17-29.

<sup>18</sup> Münk *ibid.* 18.

<sup>19</sup> Cf. on the one hand, the subtitle of the book by John L Mackie, *Ethics. Inventing Right and Wrong*, Harmondsworth 1977, and, on the other hand, Louis P Pojman’s *Ethics. Discovering Right and Wrong*, Belmont (CA) 2002.

something people award each other by acknowledging each other as equals. On this assumption the ethical demand can be understood as only hypothetical; it applies to people having made a sovereign decision for morality: *sic volo, sic iubeo*. Tugendhat concisely formulated the implications:<sup>20</sup>

“It makes no sense to say: It befits the human being as such to be an end in itself or to have an absolute value and that means dignity. Those are empty words, whose meaning cannot be identified. But we can say: By respecting a human being as a legal subject, as somebody to whom we have absolute obligations we *bestow* dignity and absolute value on him [sic]. Value and dignity are defined in this way and not presupposed as something existing. It is, of course possible, to define the term ‘end in itself’ in this way, but we should prefer to omit it; nothing of what Kant wants to say is lost in this way.”<sup>21</sup>

According to this conception, the fundamental equality of human beings results not from something already given, but from a presumption of equal treatment. In this sense the principle of equality is formulated by Stanley Benn:<sup>22</sup>

“The ideal of universal equality can often be reduced to the principle that all men ought to be equally considered. This does not mean that there is any respect in which they are all alike; it is rather a principle of procedure ... The onus of proof rests on whoever wants to make distinctions.”<sup>23</sup>

In this case, terms such as “human” or “person” have no normative meaning; they do not imply any idea of respect or obligation, as R.M. Hare illustrates. It does not follow that by calling one a person he/she “ought to be treated in a certain way”. Rather: “In order to be sure that he [sic] is a person, we shall first have to satisfy ourselves that he [sic] ought to be treated in a certain way.”<sup>24</sup>

The central concern of this non-cognitivist position is not to deny or to reduce human dignity. It originates rather from epistemological difficulties encountered regarding the value judgment of human dignity. Nevertheless, one has to reject Tugendhat’s assurance that in this interpretation nothing is lost of Kant’s idea of an end in itself. At least two of the characteristics of human dignity mentioned by Pieper seem to be lost here: This kind of dignity created by humans is neither innate nor inalienable. For a human being not accepting the ethical demand neither he/she himself/herself nor his/her fellow humans would have any dignity. Tugendhat simply expects as a matter of fact that all individuals have some reason to comply with some normative system and not to exclude themselves from the human society.<sup>25</sup>

### Human Dignity as an “Existing End”

For Mackie the “argument from queerness”<sup>26</sup> especially counts against the idea of objective values. However he concedes: “There can be no doubt that some features of modern European moral concepts are traceable to the theological ethics of Christianity.”<sup>27</sup> And, more precisely:

<sup>20</sup> Tugendhat, Ernst 1994. *Vorlesungen über Ethik* Frankfurt/Main.

<sup>21</sup> Tugendhat *ibid.* 144.

<sup>22</sup> Benn, Stanley 1967 “Equality, Moral and Social.” In: *Encyclopedia of Philosophy III*, 38-42.

<sup>23</sup> Benn, *ibid.* 40.

<sup>24</sup> Hare, Richard M 1963. *Freedom and Reason*. Oxford, 213.

<sup>25</sup> Cf. Tugendhat, Ernst 1984. *Probleme der Ethik*. Stuttgart, 158f.

<sup>26</sup> Mackie *ibid.* chapters 1, 9.

<sup>27</sup> Mackie *ibid.* 45.

“The apparent objectivity of moral value is a widespread phenomenon which has more than one source: The persistence of a belief in something like divine law when the belief in the divine legislator has faded out is only one factor among others.”<sup>28</sup>

The idea of human dignity is not exclusively theological, but it might be more plausible from a religious view than from an atheistic basis.

The idea of human dignity implies some aristocratic element. On the assumption that God himself has bestowed this dignity, that it has its roots in the person being image of God, this element may be more plausible. Nobody is, of course, obliged to have a religious conviction because of this increased plausibility. However, it might be desirable for those reasons to leave the religious question at least open and not simply deny the idea of humankind as an end in itself. This could be a decisive contribution by theology and by the church.

By the way, the idea of the human being as an image of God needs some clarification as to the property in which this similarity consists. It is the ability to moral goodness in which the person is similar to God who is moral goodness personified? It is a central message of the Old and New Testaments that God grants certain things to humans without or even contrary to their merit and independently of the actual conditions of their existence (health or disease, poverty or wealth etc.)?

There exist new interpretations that view human dignity not as something given but as something to be realised, especially in the case of need or oppression, when human beings lack “dignity”, when they have no humane existence. In this sense FJ Wetz wrote “*Human Dignity is Violable*”.<sup>29</sup> It does not mean human dignity *may* be violated, but that it *can* be violated. In this sense, people in need or oppressed have lost their dignity or never had it. The meaning of the term “end in itself” differs from Kant here. This kind of end is something to be realised; in Kant’s ethics it means something one should not act against, an “existing end”. That may sound somewhat odd for us today; however, it can easily be explained. The health of a sick person, for instance, is an end to be realised. The health of a healthy person is an end one should not act against. For Wetz “dignity” stands for some commission or commitment, namely to care for one’s fellow human beings’ humane existence. This is by no means unusual. “Dignity” can sum up the normative aspects of human flourishing.<sup>30</sup> This must, however, be regarded as a secondary, not the primary meaning of the term; otherwise the main point of the Christian or Kantian idea is lost. According to Wetz,<sup>31</sup> a human being can grow up without dignity; this dignity is neither innate nor lasting (it can be lost). Besides, it would be impossible for one to act against one’s own dignity, to treat humanity in one’s own person as a mere means, which is indeed possible for Kant. This happens whenever a person acts against his/her moral vocation, i.e. in every case of sin. A victim of torture under the military rule in Greece formulated this possibility in a surprising way: “I was humiliated. I did not humiliate others. I bore only a miserable humanity in my aching entrails, whereby the men who humiliate others, have first to humiliate humanity in themselves”<sup>32</sup> [my translation].

<sup>28</sup> Mackie *ibid.* 46.

<sup>29</sup> Wetz, Franz-Josef 1998. *Die Würde des Menschen ist antastbar*. Stuttgart.

<sup>30</sup> “Summe der normativ-inhaltlichen Aspekte eines gelungenen, menschenwürdigen Lebens” (Münk *ibid.* 19).

<sup>31</sup> Wetz stands here for a tendency which is formulated most consistently and strikingly in his book *Die Würde des Menschen ist antastbar*.

<sup>32</sup> G Mangakis quoted in Ginters, Rudolf 1982. *Werte und Normen*, Düsseldorf, 116. (“Ich wurde erniedrigt. Ich erniedrigte nicht andere. Ich trug nur eine zutiefst unglückliche Menschlichkeit in meinen schmerzenden



The torturer violates his own dignity at least as much as that of his victim. A special case of this kind of violation of one's own dignity is servility. Brian Keenan, held hostage in Lebanon for 5 years, is an impressive example of the preservation of one's dignity under trying circumstances.<sup>33</sup>

"As my anger diminished I felt a new and tremendous kind of strength flooding me. The more I was beaten the stronger I seemed to become. It was not strength of arm, nor of body but a huge determination never to give in to these men, never to show fear, never to cower in front of them. To take what violence they meted out to me and stand and resist and not allow myself to be humiliated. In that resistance I would humiliate them. There was a part of me they could never bind nor abuse nor take from me. There was a sense of self greater than me alone which came and filled me in the darkest hours."

Not all will have the self-discipline and inner strength manifested in this quotation. It does, however, illustrate what inviolability of human dignity means. But there is, of course, the temptation to servility even under less trying circumstances. Whoever gives in to those temptations, disrespects the rights resulting from his/her own dignity.<sup>34</sup> In this sense Martin Luther King Jr. contributed to the creation of a new awareness of dignity amongst African Americans.<sup>35</sup> They had to insist on their rights. True, in individual cases it might be morally recommended or even demanded to renounce one's rights, but one should remain aware of those rights. These considerations contradict the thesis of Wetz that the idea of an essential dignity, "...even for those who have lost their self-esteem and are living in miserable need and inhumane conditions, offers no real help, since a metaphysical determination cannot comfort anybody in his suffering."<sup>36</sup>

As was shown above, examples exist of people who do not lose their self-esteem in situations of need and distress because of their awareness of their dignity which can serve as strong motivation in their efforts to improve their conditions.

How can *other* people disrespect my dignity as an end in itself, as an existing end? They can do it, firstly and fundamentally, by disrespecting my freedom of conscience, i.e. by forcing me to do something against my conscience. In other words, they do it by forcing me to disrespect my moral vocation, to treat my humanity as a mere price<sup>37</sup>, as something having an equivalent. (It is strange that Kant never mentions this consequence.) However, in a strict sense, human beings cannot be forced to do so, as the above mentioned examples illustrate; but not acting against one's conscience can be made extremely difficult and painful.<sup>38</sup>

Eingeweiden, während die Männer, die andere erniedrigen, zuerst den Begriff der Menschlichkeit in sich selbst erniedrigen müssen.")

<sup>33</sup> Brian Keenan 1992. *An Evil Cradling*, London 1992, 204, quoted in Glover, Jonathan 2001. *Humanity. A moral history of the twentieth century*. London, 26f.

<sup>34</sup> Cf. Hill Jr., Thomas E 1995. *Autonomy and Self-Respect*. Cambridge, 12: "The objectionable feature of the servile person ... is his tendency to disavow his own moral rights either because he misunderstands them or because he cares little for them." Hill stresses: "... at least one sort of respect for persons is respect for the rights which the moral law accords to them. If one respects the moral law, then one must respect one's own moral rights; and this amounts to having a kind of self-respect incompatible with servility." (*ibid.* 13)

<sup>35</sup> Cf. King, Martin Luther, Jr. 1958. *Stride toward Freedom. The Montgomery Story*, San Francisco.

<sup>36</sup> Wetz *ibid.* 181f.

<sup>37</sup> Cf. Wolbert, Werner 1987. "Der Mensch als Mittel und Zweck. Die Idee der Menschenwürde in normativer Ethik und Metaethik." *Münsterische Beiträge zur Theologie* Bd 53, Münster, 29-37.

<sup>38</sup> For freedom of conscience and its limits cf. Witschen, Dieter 2002. *Christliche Ethik der Menschenrechte. Systematische Studien*, Münster 2002, 281-328.

The case of torture is relevant from another perspective as well. There is a new debate on the use of torture in emergency situations in Germany (and of course, in the US). A policeman in Frankfurt had threatened a kidnapper with torture if he did not disclose the abode of a kidnapped boy. The threat worked and the kidnapper gave the information, but the boy was already dead. Last year I participated in a conference in Trier on this subject.<sup>39</sup> One young lecturer of law argued that in this case the dignity of the kidnapper had to be weighed against the dignity of the victim. In this way he justified the use of torture in such cases even though international declarations (e.g. the European Convention Against Torture) forbid the use of torture even in emergency situations. This language use contradicts the original idea of human dignity. Dignity is something, as Pieper said, which cannot be balanced or weighed against something else (*unverrechenbar*). In this sense, the dignity of one person can never clash with that of another. Every right, every claim on well-being based on human dignity, is limited by the legitimate claims of the other.

### Human Dignity and the Justification of the Sinner

Although the non-cognitivist view of human dignity seems incompatible with the Christian message, a similar idea is found in the writings of some Protestant theologians. They want to understand human dignity as something relational and refer to the doctrine of justification.<sup>40</sup> According to this interpretation human dignity is not an essential property of humans as creatures; they receive it by virtue of the justification in Christ. Here one first has to ask why God turns his face in this way to humans only, and not to animals. There must at least be some openness, some potentiality in humans so that God can address thus. On the other hand, if dignity is bestowed on humans only by virtue of their justification, we are faced with a substantial problem: Sinners and the justified would be unequal with regard to their dignity and perhaps so too the baptised and non-baptised. We should remind ourselves in this context that Islam traditionally assumes a similar kind of inequality between Muslims and non-Muslims. An essential element of the idea of human dignity is at stake here, namely that human beings are supposed to be equal with regarding their dignity. W. Härle has noticed this problem and proposed a solution<sup>41</sup> by distinguishing between the (universal) validity of the divine promise of justification and its coming into effect by the justificatory faith.<sup>42</sup> This is, at least, a partial solution that still leaves open the question of non-Christian and nonreligious people. This debate may be left to Protestant colleagues, but the problems indicated should not be concealed. There is another problem if a parallel is drawn between the relation between God and humans and the relation between humans, if for instance R. Anselm regards the dignity of the embryo constituted by the relation started

<sup>39</sup> The papers were published in Gehl, Günter (ed.) 2005. *Folter – Zulässiges Instrument im Strafrecht? Ein internationaler Vergleich*. Weimar. I refer to the paper of F. Witteck, 37-57.

<sup>40</sup> Anselm, Rainer 1999. "Die Würde des gerechtfertigten Menschen. Zur Hermeneutik des Menschenwürdearguments aus der Perspektive der evangelischen Ethik" *ZEE* 43 (1999), 123-136, 133.

<sup>41</sup> Härle, Wilfried 2001. "Der Mensch Gottes. Die öffentliche Orientierungsleistung des christlichen Menschenverständnisses." In: Herms, Eilert (ed.), *Menschenbild und Menschenwürde*. Gütersloh, 529-543.

<sup>42</sup> Härle *ibid.* 541. "Da die Möglichkeit schlechterdings auszuschließen ist, nur die an Christus Glaubenden hätten (im Unterschied zu den Nicht-Glaubenden) Menschenwürde, scheint nur die Möglichkeit einer – wie ich es nennen möchte – Anthropologisierung des Glaubens zu bleiben. Diese muß freilich wohl überlegt werden, damit sie nicht de facto auf eine Eliminierung des Glaubens hinausläuft. Eine theologisch vertretbare Lösung dieses Problems kann m.E. nur so gefunden werden, dass zwischen der (universalen) Gültigkeit der göttlichen Rechtfertigungszusage und dem (immer nur partikularen) *Wirksamwerden* dieser Zusage durch den menschlichen Rechtfertigungsglauben unterschieden wird."



by the mother.<sup>43</sup> He stresses that “man [sic] lives on the fact that dignity is and has been offered to him [sic] by others.”<sup>44</sup> Does that not mean, in the end, conferring divine prerogatives, namely to constitute human dignity, to human beings? A non-cognitivist approach confers this kind of creativity (in a strict sense) on humans which is very plausible from an atheist’s point of view,<sup>45</sup> but from a Christian point of view only divine love can be creative in this sense.

### Human Dignity as Something to be Promoted

According to the German Basic Law (as quoted above) human dignity has to be respected and protected by every public authority. Respecting humans as moral beings firstly implies the demand for the omission of certain acts that violate my own humanity or that of every other. This concerns the acting individual and excludes every immorality and the respective seduction. But humans as moral beings have, in addition, a *prima facie* claim on freedom of action as formulated in so-called first generation human rights. This claim however is limited by the similar claims by their fellow humans. The claim on liberty as well as its limitations results equally from the idea of human dignity. These limitations do not mean any restriction on that dignity, but rather are a consequence of it. This is explained in a satisfactory way in Kant’s formulation of his categorical imperative for the area of law:

“Any action is right if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law.”<sup>46</sup>

If this is not practiced, human dignity has to be protected by law, i.e. by constraint which, in one way, contradicts freedom; but:

“... if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e. wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it.”<sup>47</sup>

The interior freedom of humans as moral beings excludes every constraint, but not the exterior freedom which, by the way, requires some kind of separation of law and morals in

<sup>43</sup> Anselm, Rainer, *Rechtfertigung und Menschenwürde*. In: Herms, Eilert (ed.), *Menschenbild und Menschenwürde*, Gütersloh 2001, 471-481.

<sup>44</sup> Anselm *ibid.* 480.

<sup>45</sup> The difficulties of such immanent-relational Theories are articulated by Härle *ibid.* 536: “Wie soll die Allgemeinheit und Unantastbarkeit von Menschenwürde festgehalten werden, wenn es in die Entscheidungsvollmacht, schärfer gesagt: ins Belieben von Mitmenschen gestellt ist, ob sie einem von Menschen abstammenden Wesen Menschenwürde zuerkennen oder nicht? Zwar ist es richtig, dass die faktische Respektierung von Menschenwürde immer nur so erfolgen kann, dass sie von Mitmenschen praktiziert wird, aber diese Respektierung sagt nur etwas aus über die Weise ihrer Anerkennung, nicht über den Grund ihrer Geltung, und das ist ein erheblicher Unterschied.”

<sup>46</sup> *Metaphysik der Sitten*, Akademie-Ausgabe VI 231 (“Eine jede Handlung ist recht, die oder nach deren Maxime die Freiheit der Willkür eines jeden mit jedermanns Freiheit nach einem allgemeinen Gesetze zusammen bestehen kann”).

<sup>47</sup> *Ibid.* VI 231 (“...wenn ein gewisser Gebrauch der Freiheit selbst ein Hindernis der Freiheit nach allgemeinen Gesetzen (d.i. unrecht) ist, so ist der Zwang, der diesem entgegengesetzt wird, als Verhinderung eines Hindernisses der Freiheit mit der Freiheit nach allgemeinen Gesetzen zusammenstimmend, d.i. recht; mithin ist mit dem Rechte zugleich eine Befugnis, den, der ihm Abbruch tut, zu zwingen, nach dem Satz des Widerspruchs verknüpft.”).

the way that morality as an attitude cannot be forced by law. Therefore, respect and protection of human dignity require respecting the equal freedom of humans.

Kant's second formula of the categorical imperative reads: "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means."<sup>48</sup> This formula is easily misunderstood since Kant uses the terms "end" and "means" in an unusual way (at least for us today). The human person is both means and end. Insofar one is capable of morality one is an end in oneself. Insofar one is useful because of certain faculties (as a craftsman for instance), one is a means. "End", as already mentioned, in this context primarily means an existing end that should not be acted against. Since it is an existing end, dignity in this sense cannot be lost; it does not depend on the behaviour of fellow human beings.

Dignity is nevertheless something to be promoted. If we speak of a "humane" life we think firstly of a life without material need. This implies the conviction that because of their dignity, humans have a *prima facie* claim not only on freedom of action, but also on well-being. In this latter context dignity is not something given, existing, but something to be realised, especially in the cases of material need, to which Wetz exclusively refers. Within the framework of that interpretation, the double obligation of the public authorities mentioned by the German Basic Law would be reduced to the second one of protection (and promotion), because there is nothing to be respected any strict sense. But on the other hand, does not the duty of promoting human dignity presupposes that people in need *deserve* something better, that they have a claim on well-being as so-called second generation human rights try to grant? This claim on well-being firstly implies the claim of not being harmed, but secondly also that of assistance in need. This claim is not limited to material things since human dignity in this sense comprises "all the normative aspects of human flourishing."<sup>49</sup> This language usage makes sense insofar as human dignity implies some claim on well-being. The goods owed to humans because of their dignity seem to participate in a certain sense in this dignity without being constitutive elements of it. Health and wealth do not increase dignity, neither do disease and poverty decrease it; otherwise people would not be equal with respect to their dignity. Dignity, in its original sense, has no quantitative dimension.

A fundamental difficulty faced when referring to human dignity may be easier understood when keeping in mind that the aspect of well-being means more than simply alleviating basic needs. The normative implications of human dignity with regard to alleviating basic needs are easily understood and not very controversial. However, our understanding of human flourishing depends on various factors: The economical status our country, societal consciousness, individual preferences. In this wider field, some kind of competition between the well-being of different people becomes more probable. Since human dignity implies only a *prima facie* claim on well-being which has to be stated more precisely according to the respective person and situation, the impression of arbitrariness sometimes experienced in references to human dignity becomes understandable. People sometimes tend to forget that human dignity is only a necessary and not a sufficient criterion for the morally right<sup>50</sup> as soon as we go beyond the immediate consequences of the

---

<sup>48</sup> Grundlegung zur Metaphysik der Sitten, Akademie-Ausgabe IV 429 ("Handle so, daß du die Menschheit, sowohl in deiner Person als in der Person eines jeden anderen, jederzeit zugleich als Zweck, niemals bloß als Mittel brauchst.")

<sup>49</sup> "Summe der normativ-inhaltlichen Aspekte eines gelungenen, menschenwürdigen Lebens" (Münk *ibid.* 19).

<sup>50</sup> Cf. Schüller, Bruno 1987. *Die Begründung sittlicher Urteile*. Münster, 321-336.

commandment of love, equality, freedom of conscience, precedence over other animals. Thus the term “human dignity” often serves as a place-holder, which has to be made more precise by ethical and legal considerations. These reservations have to be kept in mind when speaking of “promoting” human dignity.