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Dual Faces of Human Dignity: *Secured Worth and Required Recognition*

J. Charles Davis

Humboldt Research Fellow Albert Ludwig University of Freiburg, Germany

Abstract: History informs us the varying use of the term human dignity from a status of a rank, an inherent value to a dignified way of living. Human dignity has intrinsic, attributed and inflorescent variants, inheres in human individuals as well as collectively in human species, plays positive and negative roles of empowerment and constraint, functions as principle as well as a rule and is a self-respect, self-esteem and social recognition in acknowledgement of the secured, inviolable, intrinsic worth. It prohibits self-degradation and social degradation of individuals and humanity as a whole. It inheres not only in rational-moral capacities but includes all basic human needs. Humanity is dignity and every human individual is a concrete, experiential face of the existential dignity. Human dignity is neither vague nor useless, but the supreme moral-legal watchdog principle of complementarity for bioethics, biolaw and biopolitics to protect humans against misuses under the mask of freedom of research in

biosciences and biotechnologies.

Keywords: Human dignity, Worth, Recognition. Philosophical Basis, Socio-Political Expressions

Professor Kurien Kunnumpuram SJ is an appreciable, admirable and inspiring personality. He is a reputed, renowned professor of theology and an expert of the second Vatican documents. As a man of clarity in his interactions, he was most of the time chosen to be a moderator of dialogues, meetings and conferences. He is gentle and a man of friendships across all walks of life. He respects every man and woman with dignity and equality. His contributions to academia of ecclesiology, formation of religious leaders, development of Indian church and promotion of human rights are enormous and praiseworthy. The eminent Indian ecclesiologist, Professor Kunnumpuram used to quote frequently the opening statement of the *Gaudium et Spes*: “The joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ” (1965, no. 1). The Church is not an abstract concept but consists of people for the people. The term dignity is mentioned 51 times in this Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* by His Holiness Pope Paul VI. This document of the Second Vatican council talks all about human dignity, human community and human activity. Human dignity is the hallmark of his living and teaching. As his student, secretary and friend, I am privileged to write a *festschrift* in honour of Kurien on his 85th birthday on human dignity here.

1. What is Human Dignity?

Leszek Kolakowski says, “It is difficult to define what human dignity is. It is not an organ to be discovered in our body, it is an empirical notion, but without it we would be unable to answer

the simple question: what is wrong with slavery?”¹ History informs us the varying use of the term human dignity from a status of a rank, an inherent value to a dignified way of living. Today, however “there is a taken-for-granted assumption that dignity is good for the human condition and that it is part of our moral DNA. It has been acknowledged that violations of human dignity can be identified and recognized (torture and slavery are obvious examples) even if the abstract term cannot be defined with precision.”² The concept of human dignity, even without a clear definition, is increasingly used in the international and national declarations of human rights after the World War II and commonly accepted that human dignity is inviolable.

Mass killings with biotechnological weapons that have potentials to annihilate humanity prompted the framers of human rights constitutions, declarations and conventions to protect humans intuitively and more urgently and immediately than to look for philosophical, legal and socio-political justifications. They presumed however that the superstructure human rights have their foundation on human dignity, and violation of human rights meant the violation of human dignity which is sacrosanct or unfringeable. National constitutions and intergovernmental declarations explicitly or implicitly accept a hypothesis that humans have certain rights such as the right to life on account of inviolable dignity. Violations of human rights are vehemently opposed in these documents not only to preserve political peace in the society, but primarily because they are acts of indignity and desecrations of inviolable human dignity.

In this article, I aim to fathom the idea of dignity inherent in every human individual who (must) enjoy the value by virtue of being human prior to the state, society or social contract. I shall

- 1 Leszek Kolakowski, “What Is Left of Socialism,” *First Things* 126 (October 2002) 42-46, 46. Cited in Leon R. Kass, “Defending Human Dignity,” in: E. D. Pellegrino (ed.), *Human Dignity and Bioethics* (Washington, DC: The President’s Council on Bioethics, 2008) 297-331, 297.
- 2 Judy McGregor and Edward Sieh (eds.), *Human Dignity: Establishing Worth and Seeking Solutions* (London: Palgrave Macmillian – Springer Nature, 2017) “Preface” viii.

first analyze the meanings of human dignity and then discuss the relationship between human dignity and human rights. The article is an attempt to show intrinsic dignity to be a principle that protects humans and prevent them from adversary uses in biosciences and biotechnologies.

2.The Three Senses of Human Dignity

Daniel P. Sulmasy categorizes the one and the same human dignity into three senses, namely, intrinsic, attributed and inflorescent dignity.³ *Intrinsic* dignity means “worth, stature, or value that human beings have simply because they are human, not by virtue of any set of biological, psychological, social, economic, or political conditions, nor of the views of other persons, nor of any particular set of talents, skills, or powers.”⁴ Intrinsic dignity is present in each and every human being, thus in whole human species, simply by virtue of the fact that they are human. This sense of human dignity reveals and designates a pre-existing value which is not conferred or created by human choices. It is prior to any human attribution and all that humans must do is to recognize and respect the intrinsic dignity in others. Discriminations against humans are vehemently opposed not because they would violate or destroy or remove the intrinsic dignity but because the discriminated humans who have dignity get insulted. Insult is incompatible with human dignity. The affected entity is not the abstract concept of dignity, but individual humans who have dignity.

The second sense is an *attributed* human dignity, which is a value conferred upon others by acts of attribution. It is always a

3 See Daniel P. Sulmasy, “The Varieties of Human Dignity: A Logical and Conceptual Analysis,” *Medical Health Care and Philosophy* 16 (2013) 937-944, 938; Daniel P. Sulmasy, “Dignity and Bioethics: History, Theory, and Selected Applications,” in: E. D. Pellegrino (ed.), *Human Dignity and Bioethics* (Washington, DC: The President’s Council on Bioethics, 2008) 469-501; See Daniel P. Sulmasy, “Death, Dignity and the Theory of Value,” *Ethical Perspectives* 9 (2002) 103-118,

4 Sulmasy, “The Varieties of Human Dignity,” 938.

choice. It is attributed to dignitaries in acknowledgement of their talents and skills. The attributed human dignity is not intrinsic but a conventional social value that can be gained or lost depending on social rank or political power. Some speak of the need of attribution, since attribution is the duty of recognizing the dignity in others as one claims in oneself. There is a nuanced distinction between intrinsic and attributed human dignity. Attributed dignity need not be understood only as a social value conferred on humans on account of their public offices, but it could also be interpreted to be a mere recognition through attribution of the intrinsic dignity. In any case, attribution seems to be important, since humans cannot live alone but in society. Therefore, attribution can be thought to be a mere acknowledgement of the intrinsic worth of humans. This aspect demands the respect for intrinsic dignity.

The third sense is called *inflorescent* dignity, which describes the worth or value of a process that is conducive to human excellence. Inflorescence refers to flourishing or flowering or blossoming as human beings in consistent with and expressive of the intrinsic dignity. This sense of human dignity can be compared to the understanding of dignity as a virtue – “a state of affairs by which a human being habitually acts in ways that express the intrinsic value of the human.”⁵ It expresses an idea of dignified or undignified behaviour, which is different from that of intrinsic dignity of humans. Alan Gewirth elaborates:

The sense of ‘dignity’ in which all humans are said to have equal dignity is not the same as that in which it may be said of some person that he lacks dignity or that he behaves without dignity, where what is meant is that he is lacking in decorum, is too raucous or obsequious or is not ‘dignified’. This kind of dignity is one that humans may occurrently exhibit, lack, or lose, whereas the dignity in which all humans are said to be equal is a characteristic that belongs permanently and inherently to every human as such.⁶

5 Sulmasy, “The Varieties of Human Dignity,” 938.

6 Alan Gewirth, *Human Rights* (Chicago: University of Chicago Press, 1982)

While we may admire a dignified conduct, we know that this does not add anything to the intrinsic dignity of those whose conduct is admirable. The three senses of human dignity are not mutually exclusive. It is the same intrinsic dignity that is simultaneously at play and present in all human beings requiring an “attribution” creating blossoming conditions for “inflorescence.” Intrinsic dignity is essentially prior to the attributed and inflorescent dignity. Thus, Sulmasy concludes that “the attributed and inflorescent uses are logically and linguistically dependent upon the intrinsic sense of the word.”⁷ Sulmasy uses the debate about euthanasia to explain how proponents and opponents use the same notion of dignity differently conveniently in favour of their arguments.⁸ Realists like American Physician Leon Kass (1939- CE) who was also Chairman of the President’s Council of Bioethics (2001-2005) argue that euthanasia ought to be illegal because it is undignified for humans to flee from realities of life and avoid confrontation with human limits or finitude.⁹ Proponents want to legalize euthanasia arguing that human beings should not be forced to prolong life and accept the indignities caused by terminal illnesses. Proponents seem to equate dignity with autonomy to have control over the circumstances of their own situations including death.¹⁰

Harris, Macklin and Cochrane contested the usefulness of human dignity in bioethics because it is too general or vague,¹¹

27-8.

7 Sulmasy, “The Varieties of Human Dignity,” 941.

8 See Daniel P. Sulmasy, “Death, Dignity and the Theory of Value,” *Ethical Perspectives* 9 (2002) 103-118.

9 Leon Kass “A Commentary on Paul Ramsey: Averting One’s Eyes, or Facing the Music? One Dignity in Death,” *Hastings Center Studies* 2/2 (1974) 67-80.

10 Sulmasy, “The Varieties of Human Dignity,” 938; T. Quill, “Death and Dignity: A Case of Individualized Decision Making,” *New England Journal of Medicine* 324 (1991) 691-694.

11 Their argument, as summed by Sulmasy (937), is that “If dignity can mean one thing to one person and another thing to another person than (sic) [then] it cannot serve to resolve any ethical disputes.” Ruth Macklin, “Dignity is a Useless Concept,” *British Medical Journal* 327 (2003) 1419-1420; J. Harris, “Cloning and Human Dignity,” *Cambridge Quarterly of Healthcare*

while others find the generality or vagueness of the concept of human dignity to be a blessing to allow many interpretations in the interests of the human society in order to be used in a variety of ways in a variety of settings.¹² The problem does not really seem to be about existence, ambiguity of definition, moral content or normativeness of the concept of human dignity, but the application of the various senses of dignity differently in practical issues make the concept appear ambiguous. However, the concept itself is not unambiguous and it is not useless either. The loaded term dignity is rich with boundless but at least three meanings mentioned here that people interpret it the way they want, but that actually that need not compromise but complement the intrinsic value of humans.

3. Dual Philosophical Faces of Human Dignity

The legal and state philosopher Paolo Becchi speaks about the two faces of human dignity that continues to exist down the

Ethics 7 (1998) 163-167; A. Cochrane, "Undignified Bioethics," *Bioethics* 24 (2010) 234-241. Roberto Andorno, "The Dual Role of Human Dignity in Bioethics," *Medical Health Care and Philosophy* 16 (2013) 967-973, 968: "Lack of definition does not by itself prove that dignity is an empty concept or a purely rhetorical notion. As a matter of fact, defining dignity in clear-cut terms would be as difficult as defining 'freedom,' 'justice,' 'solidarity', or whatever other key social value (which by the way are never defined by law). It is not because the idea of human dignity is too poor, but because it is too rich that it cannot be encapsulated into a straightforward definition with which everybody agrees. In reality, its core meaning is quite clear and simple and embodies a very basic requirement of *justice* towards every individual."

- 12 P. R. Johnson, "An Analysis of Dignity," *Theoretical Medicine and Bioethics* 19 (1998) 337-352; A. Gewirth, *Self-fulfillment* (Princeton, NJ: Princeton University Press, 1998) 159-174; L. Nordenfelt, "The Varieties of Dignity," *Health Care Analysis* 12/2 (2004) 69-81; D. P. Sulmasy, "Human Dignity and Human Worth," in: N. Lickiss and J. Malpas (eds.), *Perspectives of Human Dignity: A Conversation* (Dordrecht, Netherlands: Springer, 2007); D. Schroeder, "Dignity: One, Two, Three, Four, Five, Still Counting," *Cambridge Quarterly of Healthcare Ethics* 19/1 (2010) 118-125; M. C. Jordan, "Bioethics and Human Dignity," *Journal of Medicine and Philosophy* 35 (2010) 180-196.

history from the Roman antiquity to the 21st century.¹³ It was used in twofold meaning and continued to develop in history without losing its core substantially: human dignity designates a special status of humans in the universe as well as a self-achieved social status. The former is ontological and the latter is relational and evaluative. The expression of dignity thus refers both to the reality that human differentiates himself from the rest of the nature because the human is the only animal rationale as well as to the active role of a human in the public life that distinguishes him/her from other individuals and confers a special value. In the sense of the first variant of the meaning, the human as such has dignity because the human stands at the top of the hierarchy of nature; in the sense of the second variant, dignity is graduated depending on the status in the social hierarchy. For Cicero, who was the first to emphasize these two meanings, a human who relinquished the enjoyment of the senses, violated the dignity of his/her rational nature; whereas a personal dignity grew out of the deeds which he had brought to the common good.¹⁴ The first refers to the very being and the second refers to the aspect of becoming human(e). The rational nature and behaving rationally is the key point for Cicero.

The first meaning of dignity is universal, which the human species possesses the universal dignity essentially as a natural gift or endowment. The second meaning is particularistic and dependent on performance or accomplishments that some individuals generate and others not.¹⁵ Dignity in the first meaning is absolute that a human can neither increase nor diminish it, but in the second is a social dignity that a human can acquire or lose it. Social dignity was first equated to public office as such and

13 Paolo Becchi, *Das Prinzip der Menschenwürde – Eine Einführung* (Berlin: Duncker & Humboldt GmbH, 2016) 11-19.

14 See Becchi, *Das Prinzip der Menschenwürde*, 11; M. Tullius Cicero, *De Officiis*, ed. and trans. W. Miller (Cambridge, MA: Harvard University Press, 1913) I.30: 105-6.

15 See Becchi, *Das Prinzip der Menschenwürde*, 11; For the twofold meaning, see H. Hofmann, “Die versprochenen Menschenwürde,” *Archiv des öffentlichen Rechts* 118 (1993) 353-377.

not to the human who held the appointment. Subsequently, social dignity was associated with the title that s/he had as member of a specific standing and not on account of own achievements. Finally, social dignity was also attached to any occupation or function with which a human contributes to the material and spiritual progress of the society.¹⁶ The two faces of the same intrinsic and social dignity continued to survive in history similar to the two side sides of the same coin.

During the Renaissance, the ontological understanding of dignity took a back seat behind the thought that dignity must be earned that it becomes a special value only when it is attained by humans gifted with reason. The Italian Renaissance philosopher Giovanni Pico della Mirandola (1463-1494 CE) expressed the idea of the human as the master of own destiny and for the English philosopher Francis Bacon (1561-1626 CE), scientists and researchers stood first in the grade of dignity for their contribution through new knowledge to the society.¹⁷ In this sense, there is a possibility for the *homo faber* to obtain more dignity. While the Dutch jurist Hugo Grotius (1583-1645 CE) considered that a respectful handling of the dead would confer dignity, for the English philosopher Thomas Hobbes (1588-1679 CE), humans, according to their (cap)abilities, had a market price, which could be fixed and changed by the needs of the judgement of the buyers.¹⁸

The German jurist and political philosopher Samuel Putendorf (1632-1694 CE) seems to be the first to speak of human dignity based on moral abilities of humans going beyond the rational ability and social status of humans to the fundamental freedom which is prerequisite for the existence of moral order. He makes

16 See Becchi, *Das Prinzip der Menschenwürde*, 12.

17 See G. Pico della Mirandola, *De hominis dignitate* (Bologna, 1496), German translation: A. Buck (ed.), *Über die Würde des Menschen*, trans. N. Baumgarten (Hamburg: 1990); F. Bacon, *Novum Organum* (London: 1620) 1: CXXIX; Francis Bacon, *De dignitate et augmentis scientiarum*, London: 1605.

18 See Becchi, *Das Prinzip der Menschenwürde*, 15, T. Hobbes, *Leviathan*, J. Schlösser (trans.) and H. Klenner (ed.) (Hamburg, 1996) 72.

a clear distinction between *entia physica* and *entia moralia* of the natural order. It is not simply the nature but the moral freedom of humans that alone confers them dignity.¹⁹ Putendorf believes that human species in the natural world is the only being that can set limits to own acts and subject to laws that are naturally given. Therefore, human dignity belongs to humans not because of any special place in the nature but because s/he is a morally acting subject. To appreciate the whole meaning and originality of this new approach, it could be contrasted with two other concepts for nuances: a contemporary thought of Blaise Pascal (1623-1662 CE)) from whom Putendorf sharply differs and later with the view of Kant (1724-1804 CE) whose view is already anticipated by Putendorf. For Pascal, the whole dignity of humans lies in thinking faculty.²⁰ Naturally Putendorf does not deny that the human stands out in the order of nature through thinking capacity. However, this capacity does not confer dignity but in that moral capability which alone reveals the true human nature. Without doubt Putendorf anticipated the unmatched, well-known, decisive, effective potential concept that we find at the culmination of the 18th century Enlightenment Age of Reason in the works of Kant.²¹

The distinction between *entia physica* and *entia moralia* by Putendorf is parallel with the kingdom of nature and the kingdom of ends (*Reich der Natur und Reich der Zwecke*): dignity belongs to humans not on account of their primacy in the nature, but because of their affiliation to the kingdom of ends. For both Kant and Putendorf dignity of humans meant that they are certain beings that morally act and follow the rules of the universally commanding reason. The real difference between Putendorf and Kant is: while Putendorf considered God as the guarantor for obtaining the highest good, Kant remained within

19 See Becchi, *Das Prinzip der Menschenwürde*, 15, S. Putendorf, *De jure naturae et gentium*, 2. Buch. 1. Kapitel, §5). See H. Welzel, *Die Naturrechtslehre Samuel Putendorfs* (Berlin: 1958).

20 See Becchi, *Das Prinzip der Menschenwürde*, 15. B. Pascal, *Pansées* (1670) in: *Œuvres complètes* (Paris: 1963).

21 See Becchi, *Das Prinzip der Menschenwürde*, 15-16.

the bounds of reason that can at best be a motivation for moral conversion.²² Kant signifies the clearest break with hierarchical notion of dignity that seems to be the best-known articulation of the idea of intrinsic human dignity that anchors for human rights and duties.²³ According to Putendorf and Kant, the foundation of human dignity does not lie in mere biological existence but in a moral practical reason that prescribes us to treat the humanity (dignity) in one's own person as well as in the person of the other always as an end and never as a means.²⁴ Human dignity is violated through the instrumental use of reducing a person to a thing, as the Italian legal philosopher Cesare Beccaria²⁵ seems to have incidentally remarked about 20 years before Kant. Unlike the Hobbesian a market value of Humans, the Kantian human has a priceless, non-exchangeable intrinsic value.²⁶ In critique of the

22 See Becchi, *Das Prinzip der Menschenwürde*, 16.

23 See Deryck Beyleveld and Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (New York: Oxford University Press, 2001) 52.

24 "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" (Immanuel Kant: *Grundlegung zur Metaphysik der Sitten* (1785) in: in: W. Weischedel (ed.), *Werke*, Vol. IV (Wiesbaden: 1956) No. 429. Only in the later work on *Metaphysics of Morals* (1797), Kant speaks of human dignity explicitly: "Die Menschheit selbst ist eine Würde; denn der Mensch kann von keinem Menschen (weder von anderen noch sogar von sich selbst) bloß als Mittel, sondern muß jederzeit zugleich als Zweck gebraucht werden, und darin besteht eben seine Würde (die Persönlichkeit)" Immanuel Kant, *Metaphysik der Sitten*, No. 462. For the English editions, see: Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1975) in: H. J. Paton (trans. with introd.) *The Moral Law* (London: Hutchinson, 1948); *The Metaphysics of Morals* (1797), trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1991).

25 Cited in Becchi, *Das Prinzip der Menschenwürde*, 17. See C. Beccaria, *Dei delitti e delle pene* (1764), ed. F. Venturi (Torino: 1965): "Non vi è libertà ogni qual volta le leggi permettono che in alcuni eventi l'uomo cessi di essere persona e diventi cosa" (50), in: T. Vormbaum (trans.), *Von den Verbrechen und von den Strafen* (Berlin: 2004): "Wo die Gesetze erlauben, dass der Mensch unter gewissen Voraussetzungen aufhört, Person zu sein, und zur Sache wird, dort gibt es keine Freiheit" (77).

26 See M. A. Cattaneo, "Menschenwürde bei Kant," in: K. Seelmann (ed.) *Menschenwürde als Rechtsbegriff*, SVRSP, Beiheft 101 (Stuttgart, 2004) 24-32.

Kantian source of dignity, we might say that humanity (dignity) should not be reduced to a single aspect of moral reason. Humans are more than mere rational autonomy and moral capability.

The Scottish moral philosopher and behavioural political economist Adam Smith (1723-1790 CE) emphasized the intrinsic principle of sympathy that helps us experience the passion of others. This accounted for dignity and equality of self-regarding and other-regarding.²⁷ The empiricist philosopher David Hume (1711-1776 CE), a friend of Smith, however, considered that human dignity occurs only through social action.²⁸ The dignity must be awarded to the human by others, when his/her conduct with others evokes impressions. With Kant, the recognition of others grounds on the moral value of the human as end (with) in himself, even if the behaviours of someone do not make any good impact on others. Indeed, the formulation and propagation of this idea of human dignity had a quite effective contribution to the abolition of torture and conquest of humiliating and cruel punishments. Despite excessive criminal rigorism, Kant entangled himself at times in self-contradictions, when he pleaded for castration and capital punishment.²⁹

Despite strong philosophical roots of human dignity in history and occasional references in early legal text, a full legal legitimacy, juridification or legalization of the moral principle of human dignity happened only after the World War II. Only

27 Adam Smith, *The Theory of Moral Sentiments* (1759), trans. Walther Eckstein (Hamburg: 2004). Remy Debes, "Adam Smith on dignity and equality," *British Journal for the History of Philosophy* 20/1 (2012) 109–40.

28 David Hume, *An Enquiry Concerning the Principles of Morals* 1751, Appendix IV: On Some Verbal Disputes (London: A. Miller, 1777) 314: 4.3.: "But on the whole, it seems to me that although everyone agrees that there are virtues of many different kinds, what we chiefly have in mind when we call a man 'virtuous' or 'a man of virtue' are his social qualities, which are indeed the most valuable. All the same, an honest good-natured man wouldn't get that honourable label if he were notably lacking in any of the non-social virtues such as courage, temperance, economy, industry, understanding, dignity of mind."

29 See Becchi, *Das Prinzip der Menschenwürde*, 18.

thereafter it became legally obligatory as an ethical imperative to treat humans as humans as such.³⁰ Following disasters after the world wars, the *UNO Charta* invoked the faith in fundamental human rights, in dignity and value of human person and the *Universal Declaration of Human Rights* began with the statement: “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.” While addressing the origins of Totalitarianism, Hannah Arendt wrote: “We became aware of the existence of a right to have rights [...] only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.”³¹ Arendt believed that dignity is the “right to have rights,” which “needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity.”³² Thus, the new international order witnesses the attempt to make a new beginning through recognition of human dignity as universal and absolute value.

To be treated as humans and to guarantee the right to treat every other human independent of gender, race, language, religion, political affiliation, economic and social position means to restore *humanitas*, that has fought against the national socialist (Nazi) ideology with the introduction of the category of *Untermenschen* (subhuman) and the myth of Aryan race.³³ A comparison of the German (Bonn) Grundgesetz 1949 and the Constitution of the Italian Republic (CIR) 1948 may be useful. According to the Grundgesetz, the constitution of fundamental

30 For example, many juridical documents, that refer to the concept of human dignity, were written down according to the *Charter of United Nations* (1945), the *Universal Declarations of Human Rights* (1948) and *Grundgesetz (Constitution or Basic Law) of Federal Republic of Germany* (1949) See P. Tiedemann, *Menschenwürde als Rechtsbegriff: Eine philosophische Klärung* (Berlin: 2007).

31 Quoted in: Becchi, *Das Prinzip der Menschenwürde*, 19. See Hannah Arendt, *The Origin of Totalitarianism* (Cleveland/New York: 1951) 296.

32 Arendt, *The Origin of Totalitarianism*, IX.

33 See Becchi, *Das Prinzip der Menschenwürde*, 22.

rights derives from the human dignity. Precisely because humans possess a dignity differentiating them from other living beings, the humans possess basic rights. Since the Grundgesetz grounds its foundation indissolubly on human dignity³⁴ and the inadmissibility of any change is explicitly prescribed in Article 79 (3),³⁵ universality, unavailability and unchangeability (so-called *Ewigkeitsgarantie* = eternal guarantee) of that principle is confirmed.

Naturally, due to the Nazi context that led to the World War II, philosophers, jurists, sociologists and theologians of the Land of Ideas, Germany, more than those of other countries, reflected upon human dignity extensively, since inhuman treatments representing a profound violation of human dignity took place at the concentration camps.³⁶ The psychologist Victor Frankl (1905-1997), who suffered in the KZ at Auschwitz himself, shares his experiences in *Man's Search for Meaning: An Introduction to Logotherapy* on inner freedom and will to meaning. Any amount of humiliation and suffering may not take away the intrinsic worth of humans, which is never lost though affected and disfigured. He says, "an incurably psychotic individual may lose his usefulness but yet retain the dignity of a human being."³⁷ This is a sort of Stoic understanding of dignity. All that one needed was to have a hope to live.³⁸

34 Art. 1 (1) GG: Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.

35 Art. 79 (3) GG: Eine Änderung dieses Grundgesetzes, durch welche die Gliederung des Bundes in Länder, die grundsätzliche Mitwirkung der Länder bei der Gesetzgebung oder die in den Artikeln 1 und 20 niedergelegten Grundsätze berührt werden, ist unzulässig.

36 See Deryck Beylveveld and Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (New York: Oxford University Press, 2001) 16-17.

37 Victor E. Frankl, *Man's Search for Meaning: An Introduction to Logotherapy*, trans. Ilse Lasch (Allahabad: St. Paul Press, 6th Print 2000) 119.

38 The original title of the book was "trotzdem Ja zum Leben sagen: Ein psychologe erlebt das Konzentrationslager" (1946), Victor Frankl, *Man's Search for Meaning* 1959 (USA: Beacon Press, 2006). He says that "even in the most absurd, painful, and dehumanized situation, life has potential meaning and that, therefore, even suffering is meaningful."

The Marxist philosopher Ernst Bloch (1885-1977 CE), the legal philosopher Werner Maihofer (1918-1978 CE) and the sociologist Niklas Luhmann (1927-1998 CE) dealt with the theme of human dignity intensively in the 20th century. The emphasis shifted from the maxim “to respect” to “to protect,” that should be achieved through a politics of *welfare*. The protection of human dignity contains the realization of basic needs of humans through the social state. The earlier understanding of protection is thus not abandoned but much more extended in order to include the basic needs of humans in the practical world.³⁹ Luhmann did the initial analysis of the breakthrough concept of the Tübingen state law professor Günter Dürig (1920-1996 CE) who considered that human dignity is the highest constitutional principle of all objective rights and human dignity cannot undergo subjective considerations or be limited through other basic rights,⁴⁰ but spoke in favour of a “dynamic” against a “static” understanding of human dignity. Against the understanding of natural gift of dignity by virtue of being human, Luhmann advocated the dignity as a socio-cultural variable that must be established in the first place. The human can attain or lose in his self-representation as partner of social interaction. Dignity is the result of hard performance of representations that are subjected to constant risk of loss of dignity.⁴¹ Luhmann thus revived the the social role of individuals signifying the dynamic character of human dignity. It is in social interaction that an individual realizes one’s being of human and self-awareness. However, his original and

39 See Becchi, *Das Prinzip der Menschenwürde*, 30; Ernst Bloch, *Naturrecht und menschliche Würde* (Frankfurt a. M.: 1961); Hans Wagner, *Die Würde des Menschen* (Würzburg: 1992); Werner Maihofer, *Rechtstaat und menschliche Würde* (Darmstadt, 1962) 40-41.

40 See Günter Dürig, “Der Grundgesetz von der Menschenwürde: Entwurf eines praktikablen Wertsystems der Grundrechte aus Art. 1. Abs. 1 in Verbindung mit Art. 19 Abs. 2 des Grundgesetzes,” *Archiv des öffentlichen Rechts* 81 (1956) 117-175 and “Kommentar zu Art. 1 Grundgesetz,” in: *Grundgesetz: Kommentar* (1958).

41 See Niklas Luhmann, *Grundrechte als Institution: Ein Beitrag zur politischen Soziologie* (Berlin: 1965) 53-83. See See Becchi, *Das Prinzip der Menschenwürde*, 31.

unconventional interpretation did not get due attention in his time.⁴²

Taking stock

The two faces of intrinsic as well as social human dignity continues to be unwithering in history while shining forth as ever and unfolding in every branch of science and resist to lose their relevance even today. We can infer from history that the two aspects of human dignity can inclusively play a complementary role rather than exclusively one against the other. It seems to be two sides of the same coin. It requires only an acknowledgement that social dignity is the external recognition of the intrinsic dignity.

4. The Socio-Political Expressions of Human Dignity

The approach of human dignity shifted in a new direction since the beginning of the 1970s. The philosophical, legal and political debate was dominated by the significant work of *A Theory of Justice* by the US-American political philosopher John Rawls (1921-2002 CE) who postulated the construction of a *fair* and in the sense of *well-ordered* society against the prevailing Utilitarianism that allowed harm against individuals in the interest of the greater common good of the society. The priority of the right over the good became the central and the basic principle of Rawls.⁴³ The new attention focused on more practical principles of liberty, equality, social contract and justice as fairness that a theoretical foundation of human rights was not of greater importance. However, the theme of human dignity

42 See Becchi, *Das Prinzip der Menschenwürde*, 31; R. Stoecker, "Die Würde des Embryos," in: D. Gross (ed.) *Ethik in der Medizin in Lehre, Klinik und Forschung* (Würzburg, 2002) 53-71; K. Seelmann, "Repräsentation als Element von Menschenwürde," *Studia Philosophica* 63 (2004) 141-158.

43 John Rawls, *A Theory of Justice* (1971), Revised Edition (New York: Belknap Press, 1999); Otfried Höffe, *John Rawls. Eine Theorie der Gerechtigkeit*, Klassiker Auslegen. 2. Auflage (Berlin: Akademie Verlag, 2006).

gained the centre of discussion increasingly since the early 90s especially in Germany, where two prominent legal philosophers Hasso Hofmann (b.1934) and Ulfrid Neumann (b.1947) brought the concept dignity back. Neumann warned against a tyranny of dignity that could become a burden and block the discussion on ethically sensible themes. On the contrary, Hofmann goes beyond the understanding of dignity as gift (*Mitgift*) and achievement (*Leistungstheorie*) to a social recognition (*soziale Anerkennung*).⁴⁴

The legal philosophical debate on human dignity found an interim endpoint in the new commentary of Mathias Herdegen (b. 1957) on Article 1 of the Basic Law, which introduces a classic of the constitutional commentaries.⁴⁵ Herdegen attempted to make a difference of core and marginal areas in human dignity and suggested that one the core area is not available for consideration (*Abwägung*). Ernst-Wolfgang Böckenförde accused him of having made an “Epochenbruch” over the previous interpretation of Günter Dürig known as object formula (*Objektformel*). According to Dürig, human dignity is moral value (*sittlicher Wert*), prepositive foundation (*vorpositives Fundament*) and natural law anchor (*naturrechtlicher Antiker*) of the Basic Law (*Grundgesetz*) and its human image. Herdegen degrades it to a constitutional norm on an equal level. Not only jurists, but also philosophers and moral theologians involve themselves in the extensive discussion about the normative content of human

44 H. Hofmann, “Die versprochenen Menschenwürde,” *Archiv des öffentlichen Rechts* 118 (1993) 353-377 and “Methodische Probleme der juristischen Menschenwürdeinterpretation,” in: I. Appel, G. Hermes (eds.), *Mensch-Staat-Umwelt* (Berlin: 2008) 47-79; Ulfrid Neumann, “Die Tyrannei der Würde: Argumentationstheoretische Erwägungen zum Menschenwürdeprinzip,” *Archiv für Rechts- und Sozialphilosophie* 84 (1988) 153-166 and “Menschenwürde als Menschenbürde – oder wie man ein Recht gegen den Berechtigten wendet,” in: U. Neumann (ed.) *Recht als Struktur und Argumentation*. Beiträge zur Theorie des Rechts und zur Wissenschaftstheorie der Rechtswissenschaft (Baden-Baden: 2008) 35-55.

45 Mathias Herdegen, “Kommentar zu Art. 1 Abs. GG,” in: T. Maunz and G. Dürig (eds.), *Grundgesetz: Kommentar* (München: Beck, 1996).

dignity.⁴⁶ Nevertheless, it should be noted that human dignity appears as the new key concept (“*neues Schlüsselkonzept*”) in a widely spread legal philosophical textbook.⁴⁷

The debate on human dignity, after the considerable decrease in the discussion on Rawl’s theory of justice, emerged with much more vigour in the ethical as well as legal philosophical areas in the Anglo-American contexts. The American philosophers Martha Nussbaum⁴⁸ (b.1947-) and Ronald Dworkin⁴⁹ (1931-2013 CE) are the two most prominent and important personalities in this discussion. Nussbaum seems to take up the idea of Bloch and Maihofer that dignity does not only belong to the abstract person as legal subject but to the concrete individual in his dependency on socio-economic conditions that at times do not even guarantee the minimum subsistence required for a dignified life. When a human is forced to live below the level of minimum subsistence and falls into an extreme poverty line, it indicates a violation of human dignity. Thus, the correlation between human dignity and material needs became decisive.⁵⁰

46 Ernst-Wolfgang Böckenförde, “Die Menschenwürde war unantastbar. Abschied von den Verfassungsvätern: Die Neukommentierung von Artikel 1 des Grundgesetzes markiert einen Epochenbruch,” *Frankfurter Allgemeine Zeitung FAZ* (3. September 2003) 33, 35, also in: *Recht, Staat, Freiheit*. erweiterte Ausgabe (Frankfurt a. M.: 2006) 379-388.

47 K. Seelmann, “Menschenwürde: ein neuer Schlüsselbegriff,” in: K. Seelmann, D. Demko (eds.), *Rechtphilosophie*, 6th ed. (München: 2014) 241-260, (2004) 3rd ed. 212-228; See Becchi, *Das Prinzip der Menschenwürde*, 32.

48 Martha Nussbaum, *Women and Human Development: The Capability Approach* (New York: 2000), *Hiding from Humanity: Disgust, Shame and the Law* (Princeton: 2004), “Human Dignity and Political Entitlements,” in: *Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics* (Washington, DC: 2008), and *Creating Capabilities: The Human Development Approach* (Cambridge, MA: 2011).

49 Ronald Dworkin, *Is Democracy Possible Here? Principles for A New Political Debate* (Princeton: 2008) and *Justice for Hedgehogs* (Cambridge, Mass.: 2011). In this book, Dworkin develops the principles of “self-respect” and “authenticity,” pp. 203-204.

50 See Becchi, *Das Prinzip der Menschenwürde*, 33.

For Nussbaum, the human, in the first place, is neither an *animal rationale* nor is s/he an *animal morale*, but basically, phenomenologically and existentially a “*being with needs.*” The dependency on Karl Marx by Bloch, Maihofer and Nussbaum is evident. The more a state and the society is able to fulfill these needs, the more is the dignity realized through them. Dignity is deprived not only when/where basic sustenance is lacking but also where the realization of *capabilities* is hindered by the exploitative social conditions. Dignity is due to all humans, but special efforts are required to create such conditions under which it can effectively unfold itself. The state must enable every citizen to make *capabilities* into flourishing. This is somewhat similar to Sulmasy’s third sense of inflorescent dignity. Nussbaum’s discussion on dignity is enhanced by a strong emancipation: The addressees of dignity are no longer only the rational, self-conscious and autonomous individuals, but children, women, old, persons living under degrading conditions and at the same time are not able to realise own capabilities. An abstract Stoic understanding of intrinsic dignity is insufficient and problematic in many ways and “respect for human dignity is not just lip service, it means creating conditions favourable for development and choice,”⁵¹ and thus her main emphasis is on social dimension

51 Martha Nussbaum, “Human Dignity and Political Entitlements,” in: *Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics* (Washington, D.C.: 2008) 351-359. Nussbaum preferred “an Aristotelian-Marxian account of dignity, which sees the dignity of the human being as squarely a part of the world of nature and does not posit a sharp split between rationality and other human capacities. I shall show how such an account might ground basic political entitlements (in a non-metaphysical way suited to a pluralistic society)” 352. She critiques that “Stoics not only split humans off from other animals more sharply than the evidence supports, refusing to grant animals any share in intelligence, they also denied without argument that there is any dignity or end-like worth inherent in those human capacities in which animals also partake, such as sentience, everyday (non-moral) practical reasoning, emotion, and the capacity for love and care. Thus, the split not only slights the other animals, it also slights elements in human life that would appear to have worth, urging us to respect only a small sliver of ourselves” (354-355). She says that Stoics would still hold that a woman would not lose her dignity despite rape, Nussbaum says that rapes violate the bodily, mental, and

of dignity that ensures the conditions for realization of basic needs and capabilities.

Granting equal rights would mean, in the sense of capability approach of Nussbaum, a single political goal but people “are actually able to do and to be” with their capabilities for basic needs to live a life with dignity. In other words, respecting equal rights would mean to enable a human to obtain the basic needs without deprivation. Nussbaum explains that “there is dignity not only in rationality but in human need itself and in the varied forms of striving that emerge from human need.”⁵² Political entitlements must therefore be equal and the same for all citizens including people with disabilities who must be respected as fully equal citizens. What happens if some individuals cannot attain the capabilities because of a disability? Nussbaum clarifies that “they still have these capabilities, for example, the right to vote and the right to own property, but that these capabilities in some cases will have to be exercised in a relationship with a guardian... Moreover, even with guardianship it is always better if the guardian can act as a facilitator rather than a substitute.”⁵³ A human with disabilities will have all the same political entitlements equal to a normal human. An individual who has an intrinsic dignity lives in and represents the self through the society, therefore, basic needs, social recognitions and political entitlements are significant. In this sense, Nussbaum has made a good contribution to take capabilities seriously. It could be interpreted that Nussbaum’s understanding is referring to inflorescent conditions for a dignified life and she does not see the human uniqueness, without which, I believe, the very aspect of morality within humans and the claims of animal rights become baseless. Despite similarities in basic needs, there is definitely a clear distinction between humans and non-human animals. Otherwise, the old norm of survival of the fittest will return to rule. It is precisely the uniqueness and moral sense

emotional life of woman, affecting all her opportunities for development and functioning (358).

52 Nussbaum, “Human Dignity and Political Entitlements,” 363.

53 Nussbaum, “Human Dignity and Political Entitlements,” 364.

of humans that pleads for respect for humans as well as non-human animals. While we should not exalt the gift of reason, it is precisely the same gift of reason that would be able to ensure the political entitlements. Her theory of political justice does not substantiate the source of human dignity, it only ensures what could contribute to respecting human dignity or making a life worthy of dignity.

Dworkin highlighted primarily the individual dimension of dignity, which contains two basic principles of self-respect and authenticity. The first suggests that “each human life has a special kind of objective value,” that belongs as “intrinsic value” to every human in the form of a “potentiality”. That is why, the society has to facilitate basic conditions for realization of dignity from the beginning of life. The second principle on the other hand supports that “each person has a special responsibility for realizing the success of its own life.” This means that it is rightly a predominant duty of every individual to actualise the “intrinsic value.” According to Dworkin, “these two principles together [...] the basis and conditions of human dignity.”⁵⁴

In the ongoing debate on human dignity, the publication of *The Decent Society* by the Israeli philosopher Avishai Margalit gained a great significance in the German speaking regions. Margalit aimed at a “decent society” that always remained in the background of Rawls’ “well-ordered society.” Decent is a society, whose institutions do not humiliate humans, rather protect the self-esteem of every individual. Humiliations violate a human in self-esteem, because dignity according to Margalit is nothing other than “a representation of self-respect.”⁵⁵ The connection

54 See Becchi, *Das Prinzip der Menschenwürde*, 34. Becchi also makes a comparison of Dworkin’s position with the European tradition: “Diese zwei Würde-Definitionen stehen den Bedeutungsvarianten nahe, die wir in der europäischen Tradition ausgemacht haben: Würde als Mitgift oder aber als Leistung.“ Dworkin, *Is Democracy Possible Here?* 9-10.

55 Avishai Margalit, *The Decent Society* (Cambridge, Mass.: 1996), trans. Politik der Würde (Frankfurt a. M.: 1999) 53; P. Schaber, “Menschenwürde und Selbstachtung: Ein Vorschlag zum Verständnis des Menschenwürde,” in: *Menschenwürde/La dignité de l’être humain*, in: *Studia Philosophica*

between human dignity and self-respect is far from self-evident.⁵⁶ To begin with, a human may not be in a position to determine whether dignity is humiliated or not; namely, someone can be seen from outside as humiliated through certain acts, without feeling the humiliation in oneself. A human may still uphold self-respect, when s/he is actually humiliated, and vice versa a human can forfeit self-respect without being subjected to degradations. The dignity of a raped woman is certainly violated but she has not lost her self-respect due to the rape. On the other hand, a man who becomes drunk every evening loses his self-respect, even though no one has violated his dignity. It is not however disputed that humiliation plays a role in violation of dignity. Humiliation violates dignity. Strictly speaking, the moral evaluation of the matter does not depend on self-respect but on violation of the due respect by mutual partners.⁵⁷

The dignity thus has to do with social interaction.⁵⁸ Whoever cannot bear the gaze of the others, loses the social face and loses social dignity. Understood this way, humiliation effects a disturbance in self-representation of the image that one wanted to give about oneself. Dignity is violated due to the infringement of private domain of self-representation. Every person has the right to positive protection of what s/he owes to the public as well as to the negative protection of what s/he reserves to oneself in privacy. Right to self-representation can be limited only in exceptional circumstances. The more we become transparent to the public,

63 (2004) 93-106, 101: "Jemanden zu erniedrigen heisst demanch, ihm die Möglichkeit zu nehmen, sich selbst zu achten." Cited in Becchi, *Das Prinzip der Menschenwürde*, 34.

56 Becchi, *Das Prinzip der Menschenwürde*, 34. See R. Stoeker, *Menschenwürde und das Paradox der Entwürdigung*, "in: *Menschenwürde: Annäherung an einen Begriff* (Wien: 2003) 133-151 and "Selbstachtung und Menschenwürde," in: *Studia Philosophica* 63 (2004) 107-119.

57 Becchi, *Das Prinzip der Menschenwürde*, 34-35.

58 Considered from a social point of view, see R. Sennet, *Respect in a World of Inequality* (New York/London: 2003). Paolo Becchi suggests a literature on social recognition: see H. Honneth, *Kampf um Anerkennung und Missachtung* (Frankfurt a. M.: 1994). Becchi, *Das Prinzip der Menschenwürde*, 35, f. 15.

the greater is the need for the protection of a core privacy. Here, the respect for private life finds the philosophical justification. Becchi enlists the following acts intrusion into privacy: tapping of telephonic conversations, unauthorized disclosure of protocols, personal documents or pictures, also through the procedural use of lie detector, are therefore problematic, since they come in conflict with the exclusive right of self-representation that is due to every human.⁵⁹

The application of human dignity is extended to a whole range of other offences as well. The dignity of a human can be not only violated through torture or degrading treatment, but also public insult, publication of sensitive private affairs in text or picture or through disclosure of statements that are inconsistent with a public position. In all these instances, the affected person is harmed in his image that s/he wants to present to the public. Humiliation is worse, when it has affected the self-image, self-respect and self-esteem. If s/he does not get an opportunity to present the actual image, then the reputation of the person is permanently damaged. This understanding of dignity, too, has to accept an objection: not every abatement is condemnable; sometimes it is justifiably revealed, what is really behind some facades since the right to respect for private and family life cannot be stretched indefinitely. Hence, the difficult task remains to define precisely, which contemptuous behaviours violate the human dignity. Legally seen, it is certainly easier to implement the protection of dignity against discrimination and misuse than condescension.⁶⁰

The journey through the new understandings of dignity makes it clear that the old idea of dignity is still valid. The ethnic cleansing in Ex-Yugoslavia, the genocide in Ruanda as well as in Sri Lanka, the tortures and humiliations of Iraqi prisoners through US soldiers in Abu Ghraib as well as the inhuman conditions of detentions of suspected terrorists in Guantanamo, the ongoing killings through infiltrations in Kashmir are a few examples to

59 Becchi, *Das Prinzip der Menschenwürde*, 35.

60 Becchi, *Das Prinzip der Menschenwürde*, 36.

mention in recent times that testify the importance of protection of human dignity against violation of human rights in armed conflicts. More concerned than a mere fact is the justification of using torture even today as a weapon against terrorism.⁶¹ Should torture belong to the catalogue of police investigation methods on grounds of internal state security, it would be a dangerous regression that must necessarily be avoided at all costs if we do not want to fall back to the barbarianism. However, if we invoke the principle of human dignity as protective shield of every person, including those who have committed the heinous crimes, then there would be a greater justice in the light of the basic and unconditional character of this principle.

Taking Stock

The concept of human dignity has assumed new meanings in the light of human rights traditions. Human rights are natural rights corresponding to inherent human dignity and they are not conferred by the society, rather they are to be recognized, asserted and protected, while interpretations and applications of human rights may vary especially when they are weighed against in conflict situations by the society and the state, namely, by the constitutions and jurists. Natural law may undergo changes in the sense that interpretations are subject to contexts. Among all philosophical and legal traditions, the modern Kantian understanding of human dignity has greatly gained a universal significance that prohibits to degrade a human to a thing.

61 See Linus Sonderegger, *Die Rückkehr der Folter? Anwendung von Zwang bei der Vernehmung im Deutschen und US-amerikanischen Recht*, Schriftreihe des Max-Planck-Instituts (Berlin: Duncker & Humboldt, 2012). Sonderegger says that there is a distinction between the use of coercion during interrogation for criminal procedural purposes and those that serve to avert an imminent danger or to combat terrorism.

5. Dual Roles of Dignity: Empowerment and Constraint

The historical-philological enquiries, philosophical-religious traditions or empirical-legal examinations discuss the question: *who has the dignity?* Many of them indicate that dignity does not only belong to individual humans but to the whole humanity as a whole.⁶² Some of them defend that it is the special value of humanity as a species that demand the same value to be shared among its members. It is obvious that every human being is (and grows as) a member of the species *homo sapiens* and nothing else. Particularly in the contexts of modern biotechnological threats through cloning and germline interventions to the identity and integrity of the human species, it is important “not only to promote respect for the intrinsic worthiness of every individual, but also of *humankind as a whole*.”⁶³ There is a challenging question: which takes precedence in conflicting situations: is it the individual human dignity or the dignity of the society, namely, the public order?⁶⁴ For example, can the state justify the death

62 For example, Micha Werner, “Individual and Collective Dignity,” in: M. Düwell, J. Braarvig, R. Brownsword, D. Mieth (eds.) *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014) 345-352; Deryck Beyleveld and Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (New York: Oxford University Press, 2001) 25-28; Marcus Düwell, “On the Border of Life and Death: Human Dignity and Bioethics,” and “Human Dignity and Future Generation,” in: M. Düwell, J. Braarvig, R. Brownsword, D. Mieth (eds.) *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014) 526-534 and 551-558;

63 Andorno, “The Dual Role of Human Dignity in Bioethics,” 970.

64 Brownsword says that, “there is a fault line in international jurisprudence of human dignity. Whereas, on the one side, we find a liberal ethic that treats human dignity as the underpinning of human rights, on the other, we have a conservative ethic holding that the fundamental duty is not to compromise human dignity.” Quoted from R. Brownsword, “Human Dignity from A Legal Perspective,” in: M. Düwell, J. Braarvig, R. Brownsword, D. Mieth (eds.) *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014) 1-22, 7. See also R. Brownsword, “Bioethics Today, Bioethics Tomorrow: Stem Cell Research and the Dignitarian Alliance,” *University of Notre Dame Journal of Law, Ethics and Public Policy* 17 (2003) 15-51.

penalty to a terrorist? Can we permit homosexuality which may be contrary to certain religious or cultural beliefs? A conservative communitarian approach may treat “human dignity as the ground not only for permitting individuals to make their own choices but also for setting limits to the sphere of free choice.”⁶⁵ Feldman explains that

We must not assume that the idea of dignity is inextricably linked to a liberal-individualist view of human beings as people whose life-choices deserve respect. If the state takes a particular view on what is required for people to live dignified lives, it may introduce regulations to restrict the freedom which people have to make choices which, in the state’s view, interfere with the dignity of the individual, a social group or the human race as a whole... The quest for human dignity may subvert rather than enhance choice... Once it becomes a tool in the hands of the lawmakers and judges, the concept of human dignity is a two-edged sword.⁶⁶

It may not be correct to put the whole weight of human dignity on the respect for autonomy and self-determination. Dignity, whether individual or collective, is larger than self-respect. Robert E. Goodin is right in saying that the “entitlements arising out of [respect for dignity] may vary somewhat with time and place... [For] what [others] mean by their actions is crucial, and performance intended to humiliate in one culture might be intended to honour in another.”⁶⁷ Therefore, there is always room for careful considerations to see what promotes human dignity at best and what violates human dignity at worst. There is no ready-made, clear-cut answer to problem of indignities either. One area where we can easily understand that dignity is at risk is when the right to life is violated, since (i) it is only in and through a body that a human life can exist at all, (ii) bodily-life is the most

65 Brownsword, “Human Dignity from a Legal Perspective,” 8.

66 David Feldmann, “Human Dignity as a Legal Value: Part I,” *Public Law* (1999) 682-702; 685. See also “Human Dignity as a Legal Value: Part I,” *Public Law* (2000) 61-76.

67 Robert E. Goodin, “The Political Theories of Choice and Dignity,” *American Philosophical Quarterly* 18 (1981) 91-100, 99.

fundamental good of human life and (iii) the right to life is the most fundamental right. In such cases, there is no weighing of human dignity against any principle. Dignity is neither available for compromise nor can it be subjected to autonomy.

A tension between human dignity as empowerment of autonomy and human dignity as constraint existed in the German legal decision on the well-known Peep-Show case:⁶⁸ The Federal Administrative Tribunal denied a licence for the peep-show on the ground that the performance would violate Article 1(1) of the Basic Law. Affirming that “respect for and protection of human dignity are constituent principles of the Basic Law,” and that in the peep-show, “the woman is placed in a degrading position” and “treated like an object,”⁶⁹ the Tribunal said:

The consent of the women concerned can only exclude a violation of human dignity if such a violation is based only on the lack of consent to the relevant actions or omissions of the women concerned. However, this is not the situation here because in the case at issue... the human dignity of the women concerned is violated by the exposition typical of these performances. Here, human dignity, because its significance reaches beyond the individual, must be protected even against the wishes of the woman concerned whose own subjective ideas deviate from the objective value of human dignity.⁷⁰

The objective value of human dignity is present in the whole species of humanity going beyond the individual. If an act violates the objective value in anyone, then human dignity is said to be violated irrespective of whether the concerned party freely agrees to perform such act or not. Free choice is irrelevant when human dignity is at stake. The individual as well as collective

68 BVerwGE 64 (1981) 274. Cited in Beylveled and Brownsword, *Human Dignity in Bioethics and Biolaw*, Ch. 2: “Human Dignity and the New Bioethics: Human Dignity as Constraint,” 29- 47, 34.

69 Beylveled and Brownsword, *Human Dignity in Bioethics and Biolaw*, 34.

70 BVerwGE 64 (1981) 277-279. Quoted in Beylveled/Brownsword, *Human Dignity in Bioethics and Biolaw*, 34.

recognition of human dignity as an objective value, namely, in particular human being and in humanity as a whole, can be used in two specific ways: human dignity as a moral principle or norm for the empowerment of human life and as a rule of constraint to restrict undignified individual and collective human acts. At the legal level, human dignity can be used as a constitutive norm to guide the public as well as the private human life. Brownsword says, “human dignity is deployed not only to give protection to human life from the point of conception (including human embryos) but also to constrain actions which, although *prima facie* merely self-regarding, are judged to compromise human dignity (whether located in the actor’s own person or humanity or, so to speak, in the community’s collective conscience).”⁷¹

Seen from a liberal-individualist and conservative-collective approaches, human dignity can pose a challenge that one can stand against each other. While the former stresses upon respect for individual choices, the latter will set limits to individual freedom. While the former focuses on rights of individuals, the latter speaks of duties of the state and the society. While the former speaks of empowerment of human choices, the latter constrains actions contrary to the individual and collective human dignity. Unlike many might see these two perspectives in a conflictual manner, there is a possibility of seeing them in complementarity. That is possible in a shared common understanding of human dignity that it is foundational and prior to human features and activities, the state and the society. Clearly, human dignity precedes human autonomy. It is not autonomy that renders human dignity, rather autonomy is only an indicative factor to authenticate human specialness for protection-worthiness. In this sense, neither the individual nor the society can impose something against each other. As Feldman cautions that, “once it becomes a tool in the hands of lawmakers and judges, the concept of human dignity is a two-edged sword.”⁷² This double-edged sword needs to be carefully used.

71 Brownsword, “Human Dignity from A Legal Perspective,” 6.

72 David Feldman, “Human Dignity as a Legal Virtue: Part I,” *Public Law* 14

Taking Stock

We have seen the two natures of human dignity: (i) as an inherent property of individual humans and (ii) as a collective conscience. Further, the inherent human dignity operates as an empowerment of individual human life and as a constraint on free choice. While the former plays a background role and the latter plays a foreground role. As a background justification for the recognition of human rights and as the source of the fundamental freedoms, the idea of intrinsic human dignity as empowerment comes with the right to respect for one's dignity as a human as well as the right to the conditions in which human dignity can flourish. Thus, human dignity as empowerment plays a double role: (a) as a negative right will oppose unwilled interventions by others and through the freedom of researches in biosciences and biotechnologies,⁷³ (b) and as a positive right will render support and assistance to secure circumstances and conditions essential to flourish as a human. Thus, any hurdle to the dignity as empowerment is thus a double offence: (i) a denial of rights and dignity as well as (ii) a denial of responsibility.⁷⁴ In the background court of human dignity as empowerment, autonomy is prioritized and the informed consent rules empowerment bioethics.

Human dignity as constraint does exactly the other way. Dignity in the foreground puts constraint on free choice. In its rule, either paternalism or social defence prevails and autonomous consent

(1999) 682-702, 685; Quoted in: Brownsword, "Human Dignity from A Legal Perspective," 8.

73 Leon Kass explains: "In [...] domains of clinical medicine and research involving human subjects, appeals to human dignity, while tacitly employing an ideal of proper treatment and respect, function explicitly as bulwarks against abuse: patients should not be reduced to "thing-hood" or treated as mere bodies; research subjects should not be utilized as mere means or treated only as experimental animals. This "negative" function of the concept of human dignity in these domains makes perfect sense, inasmuch as it is intended – and needed – to restrain the strong in their dealings against the weak." Kass, "Defending Human Dignity," 301.

74 Beylveeld and Brownsword, *Human Dignity in Bioethics and Biolaw*, 11-16.

(no matter how free or informed) is no more decisive. Human dignity as a rule of constraint can restrict autonomy in favour of collective good of society's vision and rules that it is wrong to compromise one's own dignity as it is to compromise the dignity of others.⁷⁵ Yet, it is the one and the same intrinsic human dignity that is at play with roles of empowerment and constraint. In the constraint mode, we refer to the dignity of human being to prevent indignities, and in the empowerment mode, we promote the dignity of being human. And we can be friends of both concepts. They are complementary and not opposites. The principle of respect for human dignity thus as a *negative* requirement forbids certain practices without any balance with other principles, and a *positive* requirement promotes improvement of quality of life.⁷⁶

6. Human Dignity: Foundation of Human Rights

Habermas says that morality is a unified code and dignity is the moral source from which all of the basic rights derive their meaning.⁷⁷ The equal human dignity of everybody demands the membership of everyone in a constitutional political community, which in turn must protect human dignity by granting equal rights and preventing violation of these rights.⁷⁸ Habermas states that human rights that arose against despotism and oppression have always been associated with dignity in its appeal for justice to remedy suffering and humiliation. In fact, the moral content of human rights lies in the normative character of human dignity. In the line of thinking of Habermas, Misztal says that “the centrality of human dignity in all historical struggles against various forms

75 Beyleveld and Brownsword, *Human Dignity in Bioethics and Biolaw*, 11, 29-47.

76 This can be also connected to the concepts of sanctity of life and quality of life. The former is the mirror of human image; the latter is facilities for human life for instance, better schools, hospitals, transport system, etc. see Roberto Andorno, “The Dual Role of Human Dignity in Bioethics,” *Medical Health Care and Philosophy* 16 (2013) 967-973, 969.

77 Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” *Metaphilosophy* 41/4 (2010) 464-480, 466.

78 Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” 464.

of domination and humiliation explains why, in order to prevent mass crimes and to construct just political order, there has always been the need to fulfil 'the moral promise to respect the human dignity of every human person equally'."⁷⁹

The first and the most fundamental right of humans is the right to life, whose moral credence springs forth from human dignity. Life is the most fundamental good of any living entity. Taking away a life is the violation of the right to life. Taking away any life does not pose the same weight of a moral problem, but in humans, the right to life becomes absolute in the sense of practical moral reason, and in the natural world, no life is absolute. Every physical entity dies one day. As Kant equates humanity with dignity, we could say that dignity is inseparably intertwined with the right to life. There is no more any possibility for the talk of human dignity, when the life is interrupted as in the case of abortion or suicide or euthanasia. We may still treat a dead body with certain respect, but death brings the end to life, all dignity-talks and moral considerations.

The concept of human dignity is nowhere clearer than in bioethics to defend humans against life-destroying choices or decisions. Human dignity makes no compromise, when the right to life is at risk. In this sense, it functions not only a principle but becomes a norm or rule. The exception to this rule or norm can happen only when two lives are in conflict with each other. Therefore, it is "the most useful and the primary and supreme concept" as against all criticisms of dignity as a "useless concept" by Ruth Macklin who equated dignity with "respect for autonomy." Andorno speaks of a minimal threshold of dignity of every human being in the legal systems:

The meaning of dignity can indeed be better grasped by considering what is contrary to it rather than what is in conformity with it. Evil is easier to identify than goodness. It is when we are confronted to the worst things that can

79 Barbara A. Misztal, "The Idea of Dignity: Its Modern Significance," *European Journal of Social Theory* 16/1 (2012) 101-121, 113-4.

be done to a human being that we better understand, by contrast, what “dignity” means. Even the Kantian categorical imperative according to which on one is to be treated as a mere means to another’s end can be regarded as example of this via negativa. Therefore, it can be claimed that the first and primary task of the principle of human dignity is to set a minimal threshold of respect for human being, i.e. to clearly indicate what practices are absolutely incompatible with a civilized society. Only after having established that minimum, the legal system can seek to promote people’s well-being in positive terms.⁸⁰

Human rights systems and declarations have an assumption that people have an inherent dignity and therefore are entitled to fundamental rights to protection and non-humiliation. Andorno says it succinctly that “legal norms do not create from nothing; [...] people’s rights are not the capricious invention of lawmakers, who could legitimately revoke them in a change of humour. Rather, individual states, as well as the international community, are morally *obliged* to recognize that all people have basic rights (i.e. that they have equally valid claims to basic goods) because these latter derive from the dignity which is inherent in every human being.”⁸¹ Article 6 of the Universal Declaration of Human Rights says that “everyone has the right to recognition everywhere as a person before the law.” Recognition denotes the formal acknowledgement of what is already existing.⁸² It is noteworthy that legal systems do not define human dignity as an arbitrary legal fiction or as a metaphysical hypothesis or as religious symbol. The reason behind this is also to avoid any affiliation to a particular culture or religion or school of thought.⁸³ It creates a sense of plurality and a universal validity.

80 Andorno, “The Dual Role of Human Dignity in Bioethics,” 969.

81 Andorno, “The Dual Role of Human Dignity in Bioethics,” 968.

82 J. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (Berkeley: University of California Press, 1987); Andorno, “The Dual Role of Human Dignity in Bioethics,” 968.

83 Andorno, “The Dual Role of Human Dignity in Bioethics,” 968.

Legal systems present human dignity as the “*indispensable basis for the fair functioning of human society*. All human beings qua humans are regarded as really deserving to be treated with unconditional respect and entitled with basic rights regardless of age, sex, physical or mental abilities, ethnic origin, religion, political ideas, socio-economic status, or any other particular condition or circumstance. This is the core idea behind the concept of human dignity.”⁸⁴ In this sense, humans have no rights apart from human dignity, rather human dignity is the only word that stands under carrying human rights on its head. Thus, human dignity is the overarching and shaping principle of international bioethics. Human rights require state recognition but the ultimate validity of human rights is the acknowledgement of dignity that already exists. In other words, “basic rights are grounded on the inherent worth of every human being and not on a merely contingent decision of lawmakers or of the international community, [and] they cannot be taken away by any authority.”⁸⁵ Andorno gives a fitting, precise explanation on the relation between human dignity and human rights:

why do we need the notion of dignity if we already have that (much more concrete) of human rights? Is dignity not a mere collective term to refer to rights? The fact is that international law clearly distinguishes between dignity and rights: rights *derive* from human dignity; human dignity is not a kind of super-right, but rather the ultimate source of all rights. The idea of human dignity intends to respond to the question “why do human beings have rights?” And the answer is that they are entitled to rights precisely because they possess intrinsic worth.⁸⁶

Far from being a ‘vacuous figure of speech’⁸⁷, human dignity, as the ‘primacy principle’ (Principle I.5 in Helsinki 1964), reveals

84 Andorno, “The Dual Role of Human Dignity in Bioethics,” 968.

85 Andorno, “The Dual Role of Human Dignity in Bioethics,” 968.

86 Andorno, “The Dual Role of Human Dignity in Bioethics,” 970.

87 G. Helgesson and S. Eriksson, “Against the Principle that the Individual Shall Have Priority over Science,” *Journal of Medical Ethics* 34/1 (2008) 54-56.

the fundamental idea that “the person does not have to reach any functional standard to be valuable as a person or to be treated with full respect.”⁸⁸ Human rights belong to existing individuals yet are insufficient to cope with the new biotechnological challenges that affect humanity as a whole. Hence, human dignity plays the role of an overarching objective principle to protect human image and humanity as a species against biotechnological threats as well as of a concrete subject standard for self-respect and self-esteem. Both human dignity and human rights recognize the inherent value of humans. They are complementary and inhere in human being(s). Human rights derive from human dignity and should never violate their source. There are no human rights without human dignity.

Conclusion

Human dignity has intrinsic, attributed and inflorescent variants, inheres in human individuals as well as collectively in human species, plays positive and negative roles of empowerment and constraint, functions as principle as well as a rule and is a self-respect, self-esteem and social recognition in acknowledgement of the secured, inviolable, intrinsic worth. It prohibits self-degradation and social degradation of individuals and humanity as a whole. It inheres not only in rational-moral capacities but includes all basic human needs. Humanity is dignity and every human individual is a concrete, experiential face of the existential dignity. Human dignity is neither vague nor useless, but the supreme moral-legal watchdog principle of complementarity for bioethics, biolaw and biopolitics to protect humans against misuses under the mask of freedom of research in biosciences and biotechnologies.

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88 Colin Parker, “The Moral Primacy of the Human Being,” *Journal of Medical Ethics* 36/9 (2010) 563-566. Quoted in Andorno, “The Dual Role of Human Dignity in Bioethics,” 969.