

HUMANITY, DIGNITY, EQUALITY



DIGNITY AND HUMAN DIGNITY

BY

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Sebastian Muders

## Introduction

### Dignity's many faces

**A**lthough the terms “dignity” and “human dignity” are quite often used interchangeably in the ethical literature, it is important to keep them and their underlying notions separate: For one thing, there is a broad debate about whether inherent dignity is also applicable to non-human animals, or even to plants.<sup>1</sup>

For another thing, there is an important tradition of dignity usage in the history of philosophy which refers to its notion as ‘aristocratic dignity.’<sup>2</sup> Although this tradition sees dignity as exclusively applicable to human beings, its usage of dignity shows

<sup>1</sup> Examples of authors who take seriously the notion of human dignity for animals are Frans W. A. Brom, “The good life of creatures with dignity,” *Journal of Agricultural and Environmental Ethics* 13 (2000): 53-63; and S. L. Cataldi, “Animals and the concept of dignity: Critical reflections on a circus performance,” *Ethics & the Environment* 7(2) (2002): 104–126. The claim that plants can have dignity is defended by Florianne Koechlin, “The dignity of plants,” *Plant Signaling & Behavior* 4(1) (2009): 78-79.

<sup>2</sup> This notion is used e.g. by Doris Schroeder, “Dignity: one, two, three, four, five, still counting,” *Cambridge Quarterly of Healthcare Ethics* 19(1) (2010): 118-125; other authors use the even broader notion of ‘contingent dignity.’

quite different characteristics compared to the standard features attributed to human dignity, namely that in general all human beings possess it to an equal degree.<sup>3</sup>

A failure to distinguish human dignity from other sorts of inherent dignity results in problematic claims regarding the normative equality of all living beings;<sup>4</sup> and a failure to distinguish human dignity from more contingent forms of dignity leads to confusion regarding the alleged normative weight of dignity norms which are often regarded as “absolute” in the sense that they cannot be overridden by conflicting norms.<sup>5</sup> Both failures obviously have huge implications on most moral and political views: Regarding the former failure, many theories of political and moral equality do not treat equality as intrinsically valuable, but as derived “from another, higher moral principle of equal dignity and respect.”<sup>6</sup> Depending on our understanding of “dignity” here, the number of creatures that have to be treated equally in important respects may be vastly higher than admitted by most moral as well as political normative theories. Regarding the latter failure, if one wishes to affirm that dignity is the source of “absolute” moral

<sup>3</sup> For a useful overview about the standard features attributed to human dignity, see Ariel Zylberman, “Human Dignity,” *Philosophy Compass* 11(4) (2016): 201-210.

<sup>4</sup> This strong claim is famously defended by Paul W. Taylor, *Respect for Nature* (Princeton: Princeton University Press, 1986).

<sup>5</sup> Cf. Michael Rosen’s example of alderman E.J. Wakeling in Michael Rosen, *Dignity. Its History and Meaning* (Cambridge (MA): Harvard University Press, 2012), 71-73.

<sup>6</sup> Stefan Gosepath, “Equality,” in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition) (Stanford, CA: Metaphysical Research Lab, 2011), <https://plato.stanford.edu/archives/spr2011/entries/equality/>, on sec. 5.1.

norms – norms that cannot be overridden in any circumstances,<sup>7</sup> – it would make an important difference which kind(s) of dignity may give rise to such norms, since they obviously restrict our moral freedom to act severely.

If, on the other hand, a distinction between human dignity and other forms of dignity is not possible, especially with regard to our fellow creatures, as influential critics of the notion of human dignity or its synonyms have maintained,<sup>8</sup> then it is at least important to see *why* the concept of dignity fails to deliver this distinction. In contrast to this, my paper seeks to argue, first, that one can meaningfully distinguish human dignity from other forms of dignity; and second, to show how such a distinction can be made.

I start by listing three possible types of criteria which one might appeal to in order to establish a distinction between human dignity and other kinds of dignity: first, the bearers of these properties; second, the norms that are linked to different types of dignity, for instance, by means of justification; and third, the properties that ground the relevant type of dignity.

Following these preliminary remarks, I will argue that none of these criteria are by themselves sufficient to demarcate human dignity from other forms of dignity discussed in the literature. Nevertheless, I also argue that these three types of criteria, when taken together, *are* sufficient to do this, since each of them offers a solution to problems which plague the others.

<sup>7</sup> Cf. Alan Gewirth, “Are There Any Absolute Rights?”, in Joram Graf Haber (ed.), *Absolutism and Its Consequentialist Critics* (Lanham (ML): Rowman and Littlefield, 1994), 129-146: 130.

<sup>8</sup> Cf. perhaps most notably Peter Singer, *Animal Liberation* (New York: HarperCollins, 1975), ch. 6.

As indicated in the first sentence of the opening paragraph, this paper is about the *notion* of human dignity insofar as this refers to its *concept*. Thus, it does not provide a theory of human dignity which unfolds a more specific conception of human dignity, aiming to convince the reader that human dignity *exists* (if it is not an *error theory* about human dignity) and can be used to justify a set of norms that provides its bearers with inalienable rights. As things stand at the end of this paper, it might be the case that we have no sufficient reason to believe that *any* conception of human dignity that operates within the boundaries of its concept is actually true, i.e. refers to a property instantiated in the actual world. All I am arguing for here is the claim that “human dignity” refers to a distinguished kind of dignity that *could* be exhibited by certain creatures.

This brings me, finally, to two remarks about methodology. To argue successfully for the possibility of at least one conception of human dignity that can be distinguished from other forms of dignity, an important evidential source comes from paradigmatic cases that constitute the concept’s core: each successful conception of human dignity has to be applicable to these cases on pain of being accused of not being a faithful specification of its concept. As convincingly argued by Ralf Stoecker,<sup>9</sup> these paradigmatic cases most often will consist in examples where dignity is not respected but violated, as such instances are the chief reasons that bring the idea of human dignity to life.

As a further methodological constraint, the paper attempts to include as many diverse conceptions of human dignity as possible, provided that they try to make their notion of human dignity fit

<sup>9</sup> Cf. Ralf Stoecker, “Three Crucial Turns on the Road to an Adequate Understanding of Human Dignity,” in Paulus Kaufmann, Hannes Kuch, Christian Neuhaeuser and Elaine Webster (eds.), *Humiliation, Degradation, Dehumanization: Human Dignity Violated* (Dordrecht: Springer, 2010), 7-17.

the paradigmatic cases just mentioned. “Try to make their notion of human dignity fit” is of course a vague phrase, so I do not expect that all conceptions mentioned in this article will be able to allow that human dignity can be rightfully applied to all the cases that qualify as paradigmatic instances of the usage of the term “human dignity”. Still, I expect that all theories of human dignity regard these cases as orientation marks for the development of their own conception: If they neglect that one can correctly employ the notion of human dignity in these cases, the burden of proof rests on them to offer an adequate justification for this claim.<sup>10</sup>

## I

### Three types of criteria

Let me begin, then, with the identification of possible criteria which one might use to distinguish dignity from human dignity. A general presumption in favour of this possibility stems from the observation that in English and other languages, the expressions used for dignity and human dignity suggest that the phenomena underlying these terms stand in a genus-species relationship: Just as a great golden eagle is a species of eagles and an e-book a species of books, human dignity appears to be a species of dignity. Thus, we can expect the concept of human dignity to be more specific compared to the concept of dignity, and that its specifics in turn will tell us how human dignity differs from other sorts of dignity that also stand in a genus-species relationship to the latter concept.

Given the nature of dignity as a normative property, I think there are basically three alternatives which we might enlist as

<sup>10</sup> Cf. Sebastian Muders, “Natural Good Theories and the Value of Human Dignity,” *Cambridge Quarterly of Healthcare Ethics* 25(2) (2016): 239-249, section 2.

possible criteria: As a property, dignity is something that can be possessed by certain bearers of properties, i.e. substances; and as a normative property, dignity is connected to norms. Moreover, as a normative property, dignity seems to be dependent on other properties that serve as its grounding properties: As a relevantly analogous case, take the form and material of a wooden table which is grounded in the kinds and the arrangement of the molecules that constitute it; similarly, one could assume, the ascription of dignity to an entity is dependent on the presence of certain other properties which we can label “dignity-conferring properties”.<sup>11</sup>

To elaborate on these alternatives: We speak of dignity as a certain property exhibited by life forms – we say, for example, that human beings have or possess dignity; moreover, many forms of dignity have to be acquired by their bearers via certain deeds or a certain behaviour, and they also can be lost under certain conditions, without bringing their bearer out of existence. All this strengthens our assumption that we can distinguish dignity from its bearer, and that thus different forms of dignity could be attributed to different sorts of substances.

Furthermore, as a normative property, dignity is linked to one or more norms that are justified by this property or even identified with it. These norms usually take the shape of certain duties owed towards the bearers of dignity, as well as bestowing certain rights onto these dignity bearers. This does not have to be the case, though. Maybe some forms of dignity merely give us *good reasons* to treat their bearers in a certain way, without making it obligatory; or

<sup>11</sup> In this article, I take no stance on how to analyse the (metaphysical) grounding relation further. For an overview on this, cf. Ricky Bliss and Kelly Trogdon, “Metaphysical Grounding,” in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition) (Stanford, CA: Metaphysical Research Lab, 2016), <https://plato.stanford.edu/archives/win2016/entries/grounding/>.



perhaps dignity protects its bearers with norms that partly put duties on others and partly only advise others to respect its holders. In any case, it would be strange if, as a normative property, dignity had *no normative consequences at all* for people recognizing it in themselves or other objects.

Moreover, as a normative property, dignity appears to be a property whose correct attribution depends on the presence of other properties.<sup>12</sup> Many normative properties show this kind of dependence, and they often depend, *inter alia*, on non-normative properties: The beauty of a painting, for instance, is both dependent on further normative properties (the brilliance of its colours, the creativity of its composition) and non-normative properties (colours and composition). Whether all normative properties ultimately depend on non-normative properties is a heavily disputed question;<sup>13</sup> I think that it is safe to say, though, that many forms of dignity are grounded in other properties, i.e. we can say something illuminating about *why* certain entities possess dignity of one or the other kind, and why others do not; and as soon as they lose these dignity-conferring properties, they immediately also lose their dignity.

To sum up, if one wishes to distinguish human dignity from other forms of dignity, a promising strategy is to look at different ways in which one species or kind of dignity might differ from the

<sup>12</sup> Cf. Robert Audi, "Intrinsic Value and Reasons for Action," *The Southern Journal of Philosophy* 41(S1) (2003): 30-56; cf. Nick Zangwill, "Moral Epistemology and the Because Constraint," in James Dreier (ed.), *Contemporary Debates in Moral Theory* (Malden (MA): Blackwell), 263-282: 270-273.

<sup>13</sup> Following Derek Parfit, *On What Matters, Volume 2* (Oxford: Oxford University Press, 2011), section 82, we can distinguish between naturalist realists (who assume that all normative properties are eventually grounded in non-normative properties) and non-naturalist realists (who think that at least some normative properties are irreducible normative and primitive, meaning that they are not grounded on anything).

other; and since all relevant forms of dignity are normative properties, we might either scrutinize whether they have different bearers, or whether they give rise to different norms, or whether they are grounded in different dignity-conferring properties. Let us examine each of these alternatives individually.

## II

### **The bearers of human dignity**

The most obvious choice when attempting to contrast human dignity with other kinds of dignity is to appeal to its bearers: After all, the term itself seems to suggest this; if there are other kinds of dignity, they will not belong to human beings, but to other sorts of entities – living beings or perhaps even non-living things.

Robert Spaemann is a defender of this position: For him, “[h]uman dignity has no biological ‘reason’, but having dignity does come with biological membership in the family of free beings”<sup>14</sup> – by which he refers to the family of human beings. We can read the first half of this passage as denying that the biological species serves as the dignity-conferring property or that indeed any biological capacity is relevant – as Spaemann also writes, he believes that the word “dignity” “denotes an indefinable, simple quality”;<sup>15</sup> thus, all that is needed to decide who has a specific kind of dignity is to look at the (biological) nature of its bearer.

<sup>14</sup> Robert Spaemann, “Human Dignity and Human Nature,” in Robert Spaemann, *Love and the Dignity of Human Life: On Nature and Natural Law*, with a foreword by David L. Schindler (Grand Rapids (MI): William B. Eerdmans, 2012), 27-44: 28.

<sup>15</sup> Robert Spaemann, “Human Dignity,” in Robert Spaemann, *Essays in Anthropology: Variations on a Theme*, translated by Guido de Graaff and James Mumford (Eugene (OR): Cascade Books, 2010), 49-72: 52.

Yet this most obvious choice is also the one most criticized: It seems to be too narrow and too broad at the same time. Regarding the former, as many well-known thought experiments like Jeff McMahan's Superchimp example have shown, to constrain the possession of human dignity to all, and only to, members of the human species has implausible results: Following McMahan, if a chimpanzee "through genetic therapy has developed psychological capacities comparable to those of a ten-year-old human child", then it surely "would be entitled to whatever forms of respect are due to normal ten-year-old human beings."<sup>16</sup> According to all relevant conceptions of human dignity, however, ten-year-old human beings definitely are among its bearers. Thus, it is possible that non-human entities could have human dignity among their properties.

Regarding the latter, as mentioned in the introduction, there are forms of dignity, often called "aristocratic dignity" or "contingent dignity", that have human beings as their exclusive bearers: the members of a soccer team that show courage and inner strength even in face of a certain loss express dignity, and the holder of an office such as the President of the United States is also "dignified" in some way, i.e. deserves a respect which reflects their elevated position. But the members of the soccer team and the President of the United States are both human beings during their dignified state, and are thus the bearer of this moral status. On the other hand, this type of dignity is obviously different from the type we call "human dignity". Hence, the attempt to demarcate human dignity from other kinds of dignity via the bearer of this property is both too broad (since other forms of dignity also have human beings as their bearer) and too narrow (since non-human life forms could also possess this moral status).

<sup>16</sup> Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York (NY): Oxford University Press, 2002), 211.

Against the argument that many types of dignity have human beings as their bearers, one might object that in the cases I mention, the real bearer of dignity is not a human being, but that it is the office itself or the kind of virtuous behaviour that we ought to pay respect to. I admit that this might be true in some circumstances: Imagine a socialist activist acting against the monarchy in a monarchically ruled country. In order to show his contempt for the current system, he refuses to bow before the Queen. Here, the object of his attack is not the person holding the office, but the office itself. Consider the following variation of this case, though: Now a monarchist is acting against the current ruler of the country, since he falsely believes that she has gained the throne via wrong assurances regarding her legitimacy. When meeting her, he again refuses to bow before the Queen. I submit that in this version, the activist's disrespectful behaviour is directed against the monarch, who is a human being, and the holder of the dignity that the activist refuses to acknowledge *in her*.

Against the argument that we cannot use dignity's bearers to differentiate between human dignity and the dignity of other species, since human dignity might also have non-human beings among its bearers, one could point out that even if this should be the case, there could be good reasons to distinguish human dignity from the dignity of other species, even if the norms it generates and the underlying dignity-conferring properties are the same. Imagine, for instance, that one of these norms forbids us to humiliate others. Now consider a species for whom a certain behaviour that human beings would regard as humiliating would not count as humiliating – for example, being forced to perform inferior activities that could be easily and more efficiently done by machines. Maybe the species has a long cultural tradition that forbids their use of (certain kinds of) machines, and takes great pride in pursuing even tedious and boring activities without their help. Here it seems true that we could humiliate human beings in

ways that do not affect the members of the other species, and this important difference could be marked by distinguishing human dignity from the dignity of the other species.

While I concede the argument, I deny that this difference is “deep” enough to speak of different kinds of dignity, insofar as this concerns different *normative* properties. The differences in question only modify the application of the duty not to humiliate others without changing it: The act of forcing others to perform inferior activities that could be easily and more efficiently done by machines is morally wrong only (let us assume<sup>17</sup>) insofar as it violates the dignity of its victims by humiliating them. If there is nothing else inherently or externally morally wrong about this activity, though, the differences between our treatment of human beings and that of other species (insofar as their dignity is concerned) are not of a normative kind, but simply reflect differences on how to ensure that both are not humiliated. I conclude that since dignity is taken to be a normative property, looking at the bearer alone is not a sufficient criterion to distinguish human dignity from other forms of dignity.

### III

#### **The norms of human dignity**

Let us turn next to the second alternative: Maybe as a normative property, human dignity can be fruitfully distinguished from other kinds of dignity by looking at its specific norms. This strategy is

<sup>17</sup> As we will see below, one might question that we have to appeal to human dignity in order to explain the practice’s wrongness; why not simply say that it is wrong because it humiliates human beings? Moreover, there might be ways in which the practice is *non-morally wrong*, e.g. because it disregards efficiency as an economic value.

prominent among philosophers who seek to identify human dignity with a norm. Such a right might be rather concrete (as in Peter Schaber's suggestion that human dignity is "the right not to be humiliated"<sup>18</sup>) or rather abstract (see, for instance, Rainer Forst's account of dignity as a "right to justification"<sup>19</sup>). Despite all differences in detail, the relevant norm usually both has a high generality – it doesn't protect human beings in special circumstances, but is applicable to them in all sorts of situations – and is considered to be weighty in the sense that it can hardly be overridden by norms resulting from conflicting considerations.

These two features make these norms attractive as a *differentia specifica* for human dignity with a view to the problem cases introduced above: Regarding other forms of dignity not to be found in human beings, these would be no variations of human dignity if their norms did not have the same normative weight: For example, let us assume that snails also possess some form of dignity. Yet, since all the norms that protect them individually are overridden when serious human interests are at stake, their dignity cannot be identified with human dignity. Regarding other forms of dignity also or even exclusively applicable to human beings, these would be no variations of human dignity if their norms did not possess the same generality as those that could be justified by or derived from human dignity. For instance, the respect someone

<sup>18</sup> Cf. Peter Schaber, "Menschenwürde als Recht, nicht erniedrigt zu werden," in Ralf Stoecker (ed.), *Menschenwürde – Annäherungen an einen Begriff* (Wien: ÖBV + HPT, 2003), 119-131.

<sup>19</sup> Cf. Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, translated by Jeffrey Flynn (New York (NY): Columbia University Press, 2011).

deserves because of the office they hold is usually<sup>20</sup> strictly confined to the period of their service, whereas the respect which human dignity demands for their bearers ranges – more or less<sup>21</sup> – through the entire period of their lives.

Despite these advantages, there are also grave difficulties if we want to use the norms connected to human dignity as the decisive criterion to establish human dignity's unique form against the other types of dignity. Either human dignity's norms remain too abstract to assist us in differentiating it from other kinds of dignity; or they are too concrete to help us seeing what is unique about it.

Let us take a look at the first class of dignity-norms. The most popular among these is Kant's famous Formula of Humanity of his Categorical Imperative: "Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end."<sup>22</sup> As many scholars have pointed out, this hardly covers all dignity violations: For instance, cases where people are killed because they are simply regarded as "unworthy life" are not examples of a murder for the sake of something else; and when I

<sup>20</sup> I write "usually" because there are cases where someone is respected due to a formerly held position long after she has resigned from office simply because of the virtue she has shown during her public service.

<sup>21</sup> I would like to leave open whether even early human embryos possess human dignity, as scholars such as Robert Spaemann maintain. Moreover, as e.g. Michael Rosen believes, human beings possess human dignity even after their death: "It is a violation of dignity to torture and degrade our enemies while they are alive. But what about when they are dead? Do we not also violate their dignity if, for example, we leave their bodies unburied to be eaten by animals? In my opinion, the answer to this question is definitely yes." (Michael Rosen, *Dignity. Its History and Meaning* [Cambridge (MA): Harvard University Press, 2012], 128).

<sup>22</sup> Immanuel Kant, *Grounding for the Metaphysics of Morals*. 3rd edition, translated by James W. Ellington (Indianapolis (IN): Hackett, 1993 [1785]), 36.

humiliate my colleague, I might not have in mind any further aim which I seek to promote by my wrongdoing.<sup>23</sup>

Putting these difficulties aside, we can ask what it means to treat someone (a “person”) “never merely as a means to an end”. Of course, presumably many people have an intuitive grasp of this idea: The basic thought could be that we may not treat people in ways that they couldn’t possibly consent to, e.g. killing them just for fun. But would that mean, for instance, that we may treat frogs as we please? That we are *allowed* to kill them merely for fun? Most certainly frogs don’t have human dignity. But also most certainly, it is morally forbidden (at least *prima facie* in W. D. Ross’ sense<sup>24</sup>) to kill them just for fun. This means that the norm in the Formula of Humanity can be justified by something else besides human dignity. One might object that the norm merely protects “persons”, and frogs are not persons. True. But then what makes the norm human-dignity specific is the kind of the entities it protects (and maybe its addressees as well). Here, “persons” might just mean “people”, and “people” could refer to “human beings”. Thus, the reason why the norm is a dignity norm is that it protects human beings – human dignity’s bearers. Alternatively, “person” could be understood in a more technical sense. As we shall see below, in this sense, “person” means “entity which has dignity”, and thus describes the dignity conferring property: members of different species could have human dignity because they are persons. In either case, it would be not the norm that marks the difference.

<sup>23</sup> Cf. Peter Schaber, “Die Bedeutung von Instrumentalisierung und Demütigung als Würdeverletzung,” in Daniela Demko, Kurt Seelmann, Paolo Becchi (eds.), *Würde und Autonomie*. (Stuttgart: Franz Steiner Verlag, 2015), 159-168: 156 f.

<sup>24</sup> Ross explains this sense in his *The Right and the Good*, edited by Philipp Stratton-Lake (Oxford: Oxford University Press, 2002 [1930]), 19 f.



Things do not change tremendously when we go on to examine other candidates for dignity norms. Take Forst's "right to justification". Again, we can ask: Don't we owe frogs a justification when killing them just for fun? And again, the following reply might be given: "*We* need a justification when killing frogs, yes, but *they* cannot have a right to demand one – frogs just aren't the right sorts of entities to have rights." And this presumably means that what is crucial for enjoying the protection of dignity norms is that you are capable of having rights – by being a person, an entity with dignity-conferring capacities.

Switching to more concrete dignity norms, the problem here is that it is not clear what human dignity has got to do with it. Why, for instance, do we need human dignity to protect us against all sorts of humiliation, as Schaber claims? Clearly, being humiliated aims at damaging or destroying a human being's self-respect. So why isn't it just morally wrong to damage or destroy a human being's self-respect, period? As Rüdiger Bittner has argued, similar questions can be asked with respect to other norms typically justified by appealing to human dignity, such as torture.<sup>25</sup> What's more, these norms are seemingly not only justifiable without ever mentioning human dignity, but also by appealing to *other* kinds of dignity. For example, we can interpret Cato's famous suicide as an attempt to save his reputation – his acquired aristocratic dignity – from Caesar's *clementia*: Fearing that he would suffer an irreparable loss of self-respect should he accept Caesar's offer to spare him, he chose death instead to keep his honour. Hence, at least some forms of aristocratic dignity will also include a norm that forbids being damaged in one's self-respect.

<sup>25</sup> Cf. Rüdiger Bittner, "Abschied von der Menschenwürde," in Mario Brandhorst and Eva Weber-Guskar (eds.), *Menschenwürde: Eine philosophische Debatte über Dimensionen ihrer Kontingenz* (Berlin: Suhrkamp, 2017), 91-112.

Without being able to go through all the suggestions that have been made to identify the norms characteristic of human dignity, let me close this section with one further observation: Many concrete human dignity norms that formulate moral requirements which can also be defended by other means might be justified by appealing to what I called an abstract human dignity norm. For example, torture and humiliation may also be violations of human dignity insofar as the victims of these practices are treated as a mere means – as opposed to other wrongs that might be done to them, e.g. that they are harmed in their self-respect. However, insofar as this move aims at demarcating human dignity from other kinds of dignity by citing norms which are characteristic of the former, it inherits the problems of the abstract human dignity norms that I presented above.

## IV

### **The dignity-conferring properties**

By far the most prominent way to distinguish human dignity from other forms of dignity is by offering an explanation of the properties that ground human dignity, but not other forms of dignity (or that do only do so with the help of additional properties). The two important strands in the more recent history of the idea of human dignity – the (Roman-Catholic) natural law tradition and the Kantian tradition – likewise focus on these properties when defining the non-contingent sort of dignity shared by all human beings.<sup>26</sup>

<sup>26</sup> Needless to say, these are not the only players in the field, nor do I consider the two strands just mentioned to be self-standing, in the sense of not being frequently combined with each other. There is, for example, a conception of human dignity that locates its origins in the thought of ancient Greek

As an example for the latter tradition, here is Stephen Darwall on human dignity: “The dignity of persons [...] is [...] the authority to make claims and demands of one another as equal free and rational agents.”<sup>27</sup> With some simplification involved, we may understand Darwall’s statement as saying that dignity is a right we have against other persons *because* we are all free and rational beings. As an example of the former tradition, Patrick Lee and Robert George explain what they call fundamental or personal dignity – the dignity of persons – with the following words:

The dignity of a person is that whereby a person excels other beings, especially other animals, and merits respect or consideration from other persons. [...] [W]hat makes human beings persons rather than things, is their rational nature. Human beings are rational creatures by virtue of possessing natural capacities for conceptual thought, deliberation, and free choice.<sup>28</sup>

Again, with some simplification involved, we may understand Lee and George here as saying that dignity is a value which

philosophers such as Aristotle and the Stoics: Eva Weber-Guskar’s theory of human dignity as an attitude is a case in point (cf. Eva Weber-Guskar, *Würde als Haltung* [Münster: mentis, 2016]). And indeed, many of the concepts involved in the natural law tradition of human dignity stem from Aristotelian ideas. Furthermore, philosophers such as Martha Nussbaum freely draw from Kantian and Aristotelian sources when developing their own theory of human dignity. Cf. Martha Nussbaum, “Human Dignity and Political Entitlements,” in Edmund D. Pellegrino, Adam Schulman, and Thomas W. Merrill (eds.), *Human Dignity and Bioethics* (Notre Dame (IN): University of Notre Dame Press), 351-380.

<sup>27</sup> Stephen Darwall, “Respect and the Second-Person Standpoint,” *Proceedings and Addresses of the American Philosophical Association* 78(2) (2004), 43-59: 43.

<sup>28</sup> Patrick Lee and Robert P. George, “The Nature and Basis of Human Dignity,” *Ratio Juris* 21 (2008), 173-193: 174.

commands the respect of our fellow persons, a value we have *because* we are free and rational beings.

It is of course no accident that neither Darwall nor Lee and George choose “human dignity” as their explicandum, but “the dignity of persons”. In order to avoid accusations of speciesism as well as to deal with Superchimp and similar cases, “being a member of the human species” all in itself cannot be the dignity-conferring property in question, at least if we understand the notion of the human species in purely biological terms.<sup>29</sup> Personhood, on the other hand, is clearly a normative term: As Charles Taylor puts it, “[w]here it is more than simply a synonym for ‘human being’, ‘person’ figures primarily in moral and legal discourse. A person is a being with a certain moral status, or a bearer of rights.”<sup>30</sup> Understood along these lines, however, “being a person” inherits the inverse problem of “being a human being”. As a purely normative property, “being with a certain moral status” and “being with human dignity” become dangerously close to one another. True, “having a certain moral status” does not imply “having dignity” – only the converse does hold true. As we have seen in the preceding sections, there is a lively possibility that frogs and even snails possess a moral status that protects them from being killed just for fun. But if the moral status under consideration goes by the label of personhood, the concurrence of both notions is

<sup>29</sup> For a dissenting voice, see David Oderberg, who argues that we should regard “being human” as “primarily a metaphysical category with biological content that gives us the ways in which humanity physically manifests itself” and allows that “any truly rational animal, if such were metaphysically possible, would still be human.” (David S. Oderberg, *Real Essentialism* [New York (NY) and Oxon (UK): Routledge, 2007], 104 f.) If we take “being rational” as the person and dignity-conferring property, it would follow that all persons are human beings.

<sup>30</sup> Charles Taylor, “The concept of a person,” in Id., *Human Agency and Language: Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985), 97-114: 92.

almost inevitable: Nobody in the debate denies that something which is a person is also a bearer of human dignity, and it would be an odd coincidence if the moral status that comes with personhood is not connected to the moral status described by human dignity at all.

One could argue that while “being a person” is a purely normative property and too intimately connected with human dignity, being a free and rational agent is much less so.<sup>31</sup> And that is what both Kantians and natural law theorists are after when speaking about the dignity-conferring properties. So could we not use these to demarcate human dignity from animal dignity on the one hand, and from the various forms of contingent dignity on the other? For snails and frogs do not possess these capacities, and when we speak of the dignity of a judge or of a virtuous person, our focus is not on what these persons are able to achieve, but what they actually *have* achieved. Hence, the identification of certain capacities that are typical of human beings, not typical of other species and, as capacities, work independently from the merits that are required for more aristocratic sorts of dignity, appears to be the most promising route to eventually make the distinction that we are after.

Alas, even this route, taken in isolation, cannot deliver the expected results. The main reason for this is the limited applicability of these and other suggested capacities which make them *prima facie* unsuitable as candidates for human dignity conferring properties: A significant part of the class of human beings is left out. As I made clear in the introduction, it would be

<sup>31</sup> I write “much less so” since both terms have their evaluative (and hence normative) components, as being rational as well as being free or autonomous are usually both valued for their own sake. Still, we can give a descriptive account what being autonomous or being rational amounts to, by describing what beings with these capacities can achieve.

too much to demand from any conception of human dignity that it will be able to do justice to *all* the clear cases where human dignity should be applicable, although it should certainly be able to explain our usage of the term in the majority of cases. However, rationality and personal autonomy are both capacities that appear to be not present in new-borns, small children, severely demented persons, and members of other vulnerable groups. Needless to say, similar problems plague the other candidates for dignity-conferring properties.<sup>32</sup>

In response, three alternatives seem to be feasible. First, one could admit that, in a somewhat exaggerated formulation, human dignity really is the dignity of adult and healthy human beings. This is what philosophers such as Peter Singer or Norbert Hoerster in effect suggest.<sup>33</sup> According to the former, while

we may continue to see normal members of our species as possessing greater qualities of rationality, self-consciousness, communication and so on than members of any other species, [...] we will not regard as sacrosanct the life of every member of our species, no matter how limited its capacity for intelligent or even conscious life may be.<sup>34</sup>

Thus, since “this view of universal and equal human dignity cannot be supported”, we should opt for “a graduated view of the

<sup>32</sup> For a compilation of the usual suspects, see e.g. Peter Baumann, “Persons, Beings and Respect,” *Polish Journal of Philosophy* 1(2) (2007), 5-17: 7-10.

<sup>33</sup> Only the latter explicitly suggests to abandon the notion of human dignity in favour of the notion of personal dignity, see his *Ethik des Embryonenschutzes: Ein rechtsphilosophischer Essay* (Stuttgart: Reclam, 2002).

<sup>34</sup> Peter Singer, “Sanctity of Life or Quality of Life?,” *Pediatrics* 72(1) (1983), 128-129: 129. Although Singer speaks of “the sanctity of life” in this essay, it is the dignity of human beings he has in mind, as shown by the next quotation, taken from a more recent paper by him.

moral status of humans and nonhuman animals.”<sup>35</sup> That way, the notion of human dignity would be abandoned in favour of personal dignity, at least if we grant the ability to reason and free choice a status-conferring effect which deserves the name “dignity”. Since this paper enquires into the notion of human dignity, we do not have to pursue this option further.

Second, one could argue, that, despite appearances, each human being indeed has dignity because of the same dignity-conferring capacities, i.e. rationality and free choice. Prominent defenders of this alternative include the aforementioned Patrick Lee and Robert George, John Finnis, and others. Building on an Aristotelian hylomorphism and utilizing the notion of “radical” or “root capacities,”<sup>36</sup> these scholars argue that even human beings in an embryonic state or those in an irreversible coma already or still possess their capacities for rationality and free choice. Within this account, a root capacity is characterized as an explanatory presupposition and ontological ground for an activated capacity. For example, a mature human being’s capacity to talk or to reason is not something that happens to her merely accidentally. We expect human beings to develop these capacities because these are part of their natural kind, encoded in their biological species. If this does not happen or if human beings cease to have these capacities due to disease or injury or other disablement, this condition is regarded as a deprivation of what they still *should* be able to do. While this move succeeds in granting all human beings human dignity, the metaphysical framework within which this

<sup>35</sup> Peter Singer, “Speciesism and Moral Status,” *Metaphilosophy* 40 (2009), 567-581: 568.

<sup>36</sup> Cf. e.g. John Finnis, “The Philosophical Case Against Euthanasia,” in John Keown (ed.), *Euthanasia Examined* (Cambridge: Cambridge University Press, 2002), 23-35: 30 f.; John Finnis, “Equality and Differences,” *Solidarity: The Journal of Catholic Social Thought and Secular Ethics* 2(1) (2012), 1-22: 1-3.

account is embedded strikes many as problematic. As Andrea Sangiovanni has recently put it, Aristotelianhylomorphism looks nowadays like “a sectarian conception”<sup>37</sup> that comes at a considerable theoretical cost, while its theoretical gain remains unclear – at least if one keeps one’s eye *solely* on the dignity-conferring capacities, as I will argue shortly.

Third, some participants in the debate suggest that there are different kinds of human dignity with differing dignity-conferring properties applicable to different human beings. This proposal comes in two variations: Either the different properties that ground dignity have no effect on the norms that are connected to human dignity, or they do. An example for the latter variation is Reinhard Merkel, who claims that only a being with a subjectivity – an own point of view on the world – can have moral status and thus dignity. Still, he believes that even human beings that lack subjectivity (such as people in a PVS) have the same “right to life and dignity” as healthy human beings. However, strictly speaking, this “right” is nothing we owe to *them*; Rather, it finds its normative source in the “principle of norm protection”: As he elaborates, the primal reason not to kill them is to uphold “the general prohibition of killing as one of the fundamental norms of ethics and law.”<sup>38</sup>

An example of a defender of the former variation is William FitzPatrick, who claims that, besides having a “rational nature” there is a second way of securing human dignity for a creature: “[W]hen thinking about the normative significance of a living being, it is entirely plausible that in addition to taking account of its individual mental properties, we should also be sensitive to the

<sup>37</sup> Andrea Sangiovanni, *Humanity without Dignity*, Cambridge (MA): Cambridge University Press 2018, 35.

<sup>38</sup> Reinhard Merkel, *Forschungsobjekt Embryo* (Stuttgart: Deutscher Taschenbuch-Verlag, 2002), 147, translated from German by the author of this paper.



fundamental kind of thing we are presented with.”<sup>39</sup> He thinks that being “a member of a person species” is “likewise sufficient for special moral status”<sup>40</sup> – “likewise sufficient”, because having the relevant capacities *also* is sufficient, regardless whether the individual belongs to a person-species or not. Thus, while Superchimp also has personal dignity, other chimpanzees do not, since Superchimp’s fellows do not belong to a person species.<sup>41</sup> While both variants of this account might be able to reconstruct the appropriate extension of human dignity, clearly what distinguishes human dignity from other forms of dignity can no longer be located in the dignity conferring properties, at least as long as we do not get a systematic reason why these and only these properties which are suggested by Merkel and FitzPatrick are granting dignity to their bearers. As long as this request is left unanswered, there is the strong suspicion that what really guides the selection of dignity-conferring capacities is something else – namely our intuition about the rightful *bearers* of human dignity, beings who *should* possess the moral status in question.

## V

### A second look at the criteria

Up to this point, this article might appear to be entirely negative in its directionality: None of the three candidates for demarcating

<sup>39</sup> William FitzPatrick, “The Value of Life and the Dignity of Persons,” in Sebastian Muders (ed.), *Human Dignity and Assisted Death* (New York: Oxford University Press, 2017), 175-196: 191.

<sup>40</sup> FitzPatrick, “The Value of Life,” 192. “Special moral status” is FitzPatrick’s term for personal dignity, cf. *ibid.*, 190 f.

<sup>41</sup> Of course, this presumes for the sake of the argument that chimpanzees do not belong to a person species. For arguments to the opposite conclusion, see e.g. Paola Cavalieri and Peter Singer, *The Great Ape Project: Equality beyond Humanity* (London: Fourth Estate publishing, 1993).

human dignity from other kinds of dignity have proven to be stable enough to do the job. Despite appearances, however, a close reading of the preceding sections strongly suggests that while each of the examined criteria alone fails to provide the desired distinction, all three, when taken together, *are* sufficient to do this, since each of them offers a solution to problems which plague the others. In this penultimate section, I would like to explore this solution by going once more through each of the discussed options, presenting their aforementioned strengths and difficulties, and connecting the strengths of each suggested criterion to the weaknesses of the others.

The proposal to contrast human dignity with other kinds of dignity by looking at its bearers was presented as by far the most obvious choice, since it is precisely the possibility of a dignity that is distinctive of human beings we are after when we examine the reality of this notion at first. However, this proposal was also subject to two decisive objections. First, many other kinds of dignity also appear to have human beings as their exclusive bearers: This goes for the dignity associated with the holders of a public office, but the same is true for people that show virtuous behaviour in difficult situations – e.g. when someone maintains their countenance in the face of a disastrous defeat. Hence, being a human being is not sufficient for distinguishing human dignity from other types of dignity. Neither is it necessary, though, as the second objection argues: All non-human animals showing similar capacities as human beings certainly deserve the same moral status captured in the notion of human dignity.

However, both problems appear to be solvable by appealing to the other two types of criteria: First, as seen at the beginning of section III, unlike norms that describe the kind of respect we owe to public-office holders or most non-human animals, norms linked to dignity show a high degree of stability as well as a special weight

when confronted with conflicting norms. Moreover, the grounding properties for the sorts of dignity applicable to non-human animals as well as for the different kinds of contingent dignity also applicable to human beings are certainly different from those responsible for human dignity: As indicated at the beginning of section IV, most non-human animals don't satisfy the criteria of personhood, no matter how they are (plausibly) characterized. Moreover, the moral (and legal) status of being a mayor or a judge, as well as the preferential treatment one deserves due to the dignity one acquires from one's virtuous behaviour require much more than just certain capacities to do this or that.

The idea of separating human dignity from other kinds of dignity via the norms that are linked to it also brought with it two further problems: First, it was questioned whether rather concrete norms such as the prohibition of torture, if it is claimed that these are human dignity-specific, cannot be equally justified by appealing to the psychological or physical well-being of the victims of this practice, or even by linking them to more contingent forms of dignity. Second, it remained unclear how more abstract norms which might even be identified with human dignity – such as the prohibition to use others as a mere means – can be employed to distinguish human dignity from other kinds of moral status without any reference to the dignity-conferring properties: In the example at hand, the prohibition to use others as a mere means is only dignity-specific if one adds that the norm protects “persons” – whereas the latter term is understood as “beings with dignity-conferring properties.”

Against both difficulties, the two other criteria are able to offer assistance: Regarding the charge that many of the abstract norms are also applicable to a variety of creatures that do not possess human dignity, the bearer-criterion points out that the norms that are justified in the name of human dignity should chiefly protect

human beings as their main bearers; in other words, a norm that is applicable not only to human beings, but in addition to a wide variety of non-human animals – say spiders, elephants, and frogs – cannot be linked to the kind of dignity which we refer to with the term “human dignity” and its linguistic equivalents. And regarding the objection raised against more concrete norms such as the prohibition to torture, a plausible response could argue that plausibly, all norms related to human dignity oblige their addressees to respect the capacities which serve as truth-makers of human dignity – be it that they promote these capacities, or be it that they protect their unhindered usage by all bearers of human dignity. To illustrate, one thing that makes torture wrong is that it is physically or psychologically painful. But this wrong making feature of torture does not need to be condemned by appealing to dignity, since the underlying capacity that makes this wrong possible – the capacity to feel pain – is clearly not what we are looking for when we attempt to identify the properties responsible for the attribution of human dignity, as this is not the capacity on which we rely to distinguish persons from non-persons. By contrast, another thing which makes torture wrong is its humiliating effect, and here we might more confidently argue that only persons are vulnerable to this sort of wrong-making feature, which provides a justification for the claim that this norm is distinctive of human dignity.

Finally, the proposal to distinguish human dignity from other types of dignity via the dignity-conferring properties initially raised the problem that the most appropriate candidate for such a property – being a person – is itself primarily a *normative* property, that aims, in Harry Frankfurt’s words, “to capture those attributes which are the subject of our most humane concern with ourselves and the source of what we regard as most important and most

problematical in our lives.”<sup>42</sup> As we have seen, personhood’s lack of descriptive content just pushes the question what non-normative qualities guide our ascription of human dignity one step further. Furthermore, the usual candidates that are called upon to fill that role – self-consciousness, personal autonomy, rationality – are standardly interpreted in a way that leaves out significant parts of the community of human beings and thus excludes them as bearers of human dignity: Neither the new-born nor the severely demented may possess self-consciousness, personal autonomy or rationality. But as I highlighted above, these vulnerable groups form a part of the *core* of human dignity’s protectional sphere. To get once more clear about this, consider the National Socialists’ so-called “extermination of worthless life” in the “Aktion T4”, the murdering of innocent people with mental illnesses or physical disabilities which took place in Germany from 1940 until 1945. Obviously, we do not have to enquire into the exact condition of the victims in order to decide whether their murder was a violation of human dignity or not; regarding human beings as “worthless” and killing them in accordance with this judgement clearly is a dignity violation – if not, what else can be?

Once more, by appealing to the other two candidates for demarcating human dignity from other kinds of dignity, we seem to be able to resolve the difficulty: Since “being a person” is a normative property, we can measure the importance of certain attributes by querying which norms (or even more specific: which *moral* norms) are set in force to protect or promote them as a way to respect the bearers of these attributes. The idea behind this is the following: If some attributes strike us as so important that they deserve special protection by moral norms, and if these norms also show a particularly strong weight when being in conflict with other

<sup>42</sup> Harry Frankfurt, *The Importance of What We Care About: Philosophical Essays* (New York: Cambridge University Press, 1988), 12.

moral norms, we can treat this as a good indicator that these belong to the family of person-conferring attributes in Frankfurt's sense. But as was argued in section III, these norms, especially when they show a certain generality and thus are applicable to all human beings, are promising candidates for human dignity norms.

This move alone will not do, however. For certain capacities which are protected by weighty and general moral norms – for instance, human life – are *not* good candidates for dignity-conferring capacities. At best, they are the ontological presuppositions for the dignity-conferring capacities: in order to be self-conscious, autonomous or rational, you have to be alive. At this point, the bearer criterion of human dignity may provide additional help: What we are looking for are not merely capacities that are most important for our lives – this would most certainly include the capacity for life – but capacities that are *distinctively important for human beings* as the primary bearers of human dignity. Here the capacity for being alive is excluded, for it is a property that is also of highest value for all living creatures – at least during a certain period of their lives. Thus, the most certain bearers of human dignity – human beings – also deliver a criterion for which interpretations of “being a person” are the most promising: An understanding of that property or set of properties that would result in completely excluding, say, small children from human dignity's protective sphere will have a hard time to be of good use within a convincing conception of human dignity.

## **Conclusion**

### **Dignity and human dignity**

Thus, while none of the three candidates for demarcating human dignity from other forms of dignity are able to do this on their own, they are able to carry out this task together. In addition, each

of these candidates brings in a distinctive perspective to this differentiation: As regards the norms linked to human dignity, these are identified not only as moral norms – i.e. norms that, rather than merely recommending their addressees to do something, command them to do it –, but those with a distinctive strong weight as well as a high generality. With respect to the bearers of human dignity, although this concept permits an extension which goes beyond the human species, it doesn't allow for conceptions that exclude many vulnerable groups of this species right from the start – after all, it is human dignity that we are after, not the dignity of all adult and healthy human beings. As regards the dignity conferring properties, finally, although there remains a real possibility that there are other ways of acquiring human dignity besides being a person, as authors such as FitzPatrick suggest, the latter property occupies centre stage when it comes to justifying claims about our practice of ascribing human dignity to some creatures but not to others. And while the property of being a person leaves open exactly which “thicker”, i.e. more descriptive, properties confer personhood, many potential features clearly are ruled out as inappropriate: For example, one does not become a person by being able to hop on one leg.

To conclude, my paper shows that, despite serious challenges, one can fruitfully distinguish the idea of human dignity from other forms of inherent dignity applicable to non-human life forms, as well as from other sorts of dignity relevant to our assessment of human beings. If I am right about this, a successful development of a convincing theory of human dignity cannot start from the perspective of only one of the elements discussed therein – by being exclusively focused on human dignity's bearers, or on its norms, or on its grounding properties –, but has to be constructed with a simultaneous view to all three.

As highlighted in the introduction, this result does not guarantee that human beings (and possibly some other living beings as well) have human dignity; the paper is about the concept of the notion, and all that I attempted to show is that there are ways to fruitfully distinguish human dignity from other forms of moral status, especially those that also bear the term “dignity” or its linguistic equivalents in its name. In order to establish the *reality* of the concept – i.e. its instantiation as a property of certain substances –, one would have to argue for a specific conception of it that illuminates which dignity-conferring properties are not only normatively relevant, but at the same time sufficiently widely allocated to guarantee that the vast majority of human beings – including the vast majority of human beings that are members of vulnerable groups – are indeed holders of this normative property. Moreover, as a normative property, human dignity has to give rise to norms that are so weighty that they can hardly be beaten by conflicting moral considerations. Of course, whether such a winning combination of dignity’s bearers, its grounding properties and the norms linked to it is actually available can legitimately be put into question.<sup>43</sup>

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