

Reiko Gotoh *Editor*

Dignity, Freedom and Justice

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Thinking of the deep-rooted snow that just happens to fall first and never melts in the spring.

Reiko Gotoh

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Chapter 1

Introduction to *Dignity, Freedom and Justice*



Reiko Gotoh and Henry Richardson

1 The Purpose of This Book

More than 50 years have passed since the publication of John Rawls's *A Theory of Justice* (1971) and Amartya Sen's *Collective Choice and Social Welfare* (1970).¹ Rawls's work is a book of "political philosophy" to seek fundamental principles of social institutions for assigning certain rights and obligations to individuals. It has actually served as a guide for the reform of the welfare state. In contrast, Sen's work is a book of "normative economics," which explores procedures for aggregating individual preferences and choices into social welfare. It examines the relationship between individual rationality, freedom, and the realization of social goals and individual values.

Both works have exerted profound influences far beyond the common understandings in their respective fields, philosophy and economics, making full use of their knowledge and tools. The important related literature has expanded and continues to have a significant impact on academic research and social practices. However, there are not so many studies that compare the two books, which differ greatly in their methods of analysis and argumentation.

The purpose of this book is, first, to capture the overlap and differences between Rawls's political philosophy and Sen's normative economics, through reexamining the relationship between the reality of the individual and the ideal of the institution.

¹ An expanded edition of this book was published in 2017.

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Based on this, this book also seeks to obtain clues for the critical development of the theory of justice and the welfare state.

The second purpose of this book is to examine *dignity*, which has not received much attention in liberalism. In the words of Yuichi Shionoya, an economic philosopher, what liberalism values is basically the value of flow, which can be instantly traded, transformed, and made to vanish (Shionoya, 1984). Needless to say, however, the value of flow is stocked and sustains within the actor, even if briefly, and regarded as a resource of creating new values of flow. The stocked and sustained value in an individual corresponds to what economists call human capital or capability. In philosophy, it corresponds to what has been called personality or virtue. In psychology, it corresponds to character or identity. In this book, it is captured by the concept of dignity. However, whether it is flow or stock, the value of the individual cannot escape being priced and ranked in comparison and being incorporated into the existing hierarchical order. Can the concept of dignity really be used as a concept to evaluate and respect the value of the individual in line with the individual, independent of, or even in opposition to, the existing logic of ranking and hierarchy?

It is clear that neither a free competitive market system nor an income redistribution system will be sufficient to protect and respect “dignity” as a value stocked within the individual. What kind of mechanism should be prepared? The concept of dignity critically highlights the conviction that we must ignore differences among individuals in exercising their rights to liberties such as liberty of movement or liberty of pursuing well-being and happiness. In order to protect and respect values stocked and sustained within an individual, it is necessary to pay attention to his/her capability for dignity, to utilize the rights to liberties.

The third purpose of the book is to cross-pollinate the methods of liberal social sciences and philosophy, working from existing connections between these two areas. For example, John Maynard Keynes, the subject of one of the papers included in this book, is a leading figure in shaping the theoretical foundations for the modern welfare state, which regulates and complements the free and competitive market mechanism with public policies. Yet the author explicates that Keynes actually takes moral and rational dilemmas seriously. He considers that values and desires cannot be ordered on a univocal scale. Throughout this book, the reader will find that theories of liberal social sciences and philosophy contain clues of ideas and methods that critically develop themselves.

The chapters in this collection are largely grouped into three parts according to the following themes: Part I: Conceptual Exploration of Dignity, Part II: Revisiting Dignity in the Classics, and Part III: Dignity and Economic Perspective. Readers will find, however, that this is a tentative division and that the chapters resonate abundantly across the boundaries of each part. In what follows, we will briefly summarize the contributions of the chapters in turn.

2 Summary of the Chapters

The four papers included in **Part I: Conceptual Exploration of Dignity** treat foundational questions about the concept of dignity, its role in human life, the justification of its moral or normative significance, and the role that it plays in the moral or normative regulation of our lives. All four of these papers agree that it makes sense to view dignity as a distinctive possession of human beings; however, their authors do not all agree on how to conceptualize this dignity, including whether or not it attaches to humans as a species or to humans as otherwise considered. One issue is whether human dignity is better conceived as a type of intrinsic value or as a social status. Yasushi Kato and Reiko Gotoh agree that attributing dignity to a being centrally entails attributing to it an absolute or incomparable intrinsic value—a type of value that calls for the beings that enjoy it to be respected or otherwise treated as exempted from a general consequentialist calculus. Conceiving human dignity in this way, then, they take it that human beings rightfully enjoy certain rights and freedoms. Arnd Pollmann, to the contrary, argues that in the 21st Century it is no longer plausible to attribute such intrinsic value to human beings as “an innate, inalienable value property” (15). Instead, he argues, the central implication of human dignity is being recognized as having basic human rights. On this alternative view, it is not that a being’s having human dignity *supports that being’s* claim to human rights—rather, it *simply is* what it means for a being to have human dignity.

In addition to characterizing the concept of human dignity and describing its role in human life, the four papers in this section offer sophisticated and varying justifications of their claims about the content and role of human dignity. Ko Hasegawa’s paper, for instance, is largely given over to laying out a multi-layered account of the circumstances that make human dignity normatively relevant. Each of these four authors offers a distinctive and interesting account of the importance that they take human dignity to have. I will go over these accounts in characterizing these papers in turn.

Professor Kato’s paper, “The Normative Role of the Concept of Dignity in the Public Sphere,” makes valuable contributions along all three of the dimensions I have distinguished. Defending the view that we must understand dignity as an “absolute intrinsic value” (22), Kato helps refine that conceptual understanding by sharpening the distinction between this understanding of it and the one elaborated in various places by Jeremy Waldron, who argues that human dignity is a matter of the dignity of citizens. This is to see dignity as being an implication of having a contingent socio-political status, not as an intrinsic feature. Concretely illustrating this point by reference to hate speech, Kato argues that although he and Waldron agree in opposing the view (defended, for example, by John Stuart Mill) that the right of free speech suffices to protect hate speech from regulation, they differ in explaining the reasons why. Kato’s nuanced exploration of this difficult concrete issue thus not only helps to highlight the practical issues involved but also provides a theoretical explanation of the importance of distinguishing status-based conceptualizations of dignity from ones that see it as a value intrinsically possessed.

Kato's explanation of why Waldron's status-based account of dignity fails to provide a sound basis for regulating free speech and why Kant's intrinsic-value-based account does better hinges on Kant's distinction between private reason and public reason.² To understand this distinction, we must set aside our contemporary distinction between the "public sector" (the government) and the "private sector" (businesses). In Kant's older terminology, "private reason" is the narrow and "passive" reasoning of government officials who are entrusted with writing bureaucratic memos aiming at efficiently pursuing public purposes.³ "Public reason," by contrast, is the free and active reasoning of citizens who address the public, correcting the sovereign's errors, proposing ends, and preserving the people's rights, including the freedom of speech and of the pen.⁴ Kato points out that only public reason is critical. Accordingly, he argues, only public reason—the free reason of citizens addressing one another—can be appropriately sensitive to the dignity of each person. Kant dramatically illustrated this by reference to laws on the books in his day that called for executing women for having a child outside wedlock.

The status of citizenship in a given nation is also a creature of the law. Although the law's conditions and limitations can be narrowly enforced by the private reason of bureaucrats, as is currently happening in many nations, proper regulation of the rights of citizens, Kato concludes, calls for taking the higher-order perspective of public reason, which is able critically to respond to the ways in which the legal system's workings can impinge on dignity. Kato graciously concedes that Waldron recognized that hate speech does damage to dignity, but argues that by focusing only on the state's reasoning and ignoring public reason, Waldron lacks an institutional basis for cognizing and responding to this dignitarian damage. The required institutional basis, Kato argues, is the higher-order institution of the public.

Kato's account rests firmly on Kant's a priori ethical view. At one point, he takes issue with Waldron's claim that "in Kant, political philosophy is superior to moral philosophy," arguing that Waldron there fails to take seriously enough the way in which Kant's conception of the a priori Moral Law shapes his understanding of dignity (typescript, 15). This suggests that Kato is defending an ideal conception of dignity and of the public sphere that is grounded in the Moral Law. Yet such a conception sits uneasily with a focus on hate speech, for hate speech often arises in deeply non-ideal settings marked by oppression, marginalization, and domination. Further, Kant's own anthropological writings lend some support to racialized systems of oppression, marginalization, and domination.⁵ A less idealized look at dignity might draw the lesson that reliance on the Moral Law is treacherous, and that we should seek an account of dignity robust in the face of the horrendous abuses of human rights that we have seen. Professor Pollmann's contribution is just such an effort.

² See, e.g., Kato, pp. 38–39

³ Immanuel Kant, WIE ["What Is Enlightenment"] Ak. 8: 37–38.

⁴ Immanuel Kant, T&P ["Theory and Practice"] Ak. 8: 304.

⁵ Huaping Lu-Adler, *Kant, Race, and Racism: Views from Somewhere* (N.Y.: Oxford University Press, 2023).

Before leaving Kantian approaches behind, however, we should consider Professor Gotoh's contribution.

Professor Pollmann's paper, "Learning from historical injustice? On the significance of war, violence and degradation for theorizing human rights" takes two decisive steps away from Kant's view that dignity is a form of inherent, incomparable worth that can be known a priori to be a possession of each person. The first is a step away from Kant's a priori philosophical method in framing moral philosophy. Pollmann turns, instead, to history—in particular, to the genocidal violence and terror that reached unprecedented levels in the 20th Century. The second step, which results in the rejection of the idea that human dignity should be understood as resting on the inherent, incomparable worth of each person, follows, he argues, from what the experience of these genocidal horrors has taught us.

The lessons of these totalitarian efforts to squash the human dignity of millions, Pollman argues, are two-fold. The negative lesson is that human dignity is not an inherent, and so indestructible, feature of each human individual. Someone's dignity can be destroyed without killing them. What human individuals enjoy is not a conceptually assured dignity, but a capability—not always assured of success—of fighting to preserve one's dignity. The positive lesson is that human dignity is inseparable from human rights. Minimally, it depends on a broad social recognition that each person has some fundamental human rights. A person who is not accorded such recognition of their rights, at some level, will lack the self-respect needed to fight attempts to dehumanize them.

To convey the negative lesson to those of us who are not survivors of massacres or genocides, Pollmann wisely chooses to draw mainly on reflective memoirs by people who are. Excerpts from Erich Maria Remarque's *All Quiet on the Western Front* put before us vivid characterizations of the impersonalized terrors of the First World War. While these descriptions set the stage, the social contingency of individual dignity is even more powerfully shown by Jean Améry's reflective memoirs of his time as a prisoner at Auschwitz, *At the Mind's Limits*. There he detailed the guards' ruthless efforts to degrade their humanity. Améry poignantly concludes that the prisoners who survived ended up losing their metaphysically naïve belief in an innate human dignity and that any dignity that remains possible must be supported by society.

The positive lesson drawn from these horrors—for compelling reasons, but contingently, and requiring dedicated and creative work—was that a global legal regime of human-rights protection must be established in order to protect human dignity, now seen as vulnerable in addition to being worthy of respect. With the Universal Declaration of Human Rights (UDHR) in 1948, such a global framework came into being. This document does not simply serve to protect human dignity: as Pollmann emphasizes, it reflects that human rights and human dignity had come to be seen as "two sides of the same coin" [typescript, p. 7]. While dignity, now understood as vulnerable, needs such a legal structure to help protect it, it also remains true that the importance of recognizing and respecting human dignity provides a deeper rationale for human rights. Pollmann credits Hannah Arendt with seeing and stating this point most clearly: what is most significant about the UDHR and its legal progeny is that they do not simply list specific human rights, but also stress the idea of human dignity

as a way of responding to the complete dehumanization of so many in the camps by affirming the “right to have rights” [typescript, p. 9, quoting Arendt, *The Origins of Totalitarianism*, Ch. 9].

Pollmann argues that it took the World War II era’s fundamentalist attack on all human-rights, with the aim of stripping its victims of their humanity and dignity, to shock the international community into bringing an international regime of human-rights law into being. Nonetheless, he closes the essay by arguing that incremental progress against “relativist” denials that all humans have equal human rights can proceed without leveraging trauma. Struggles for human rights continue to be required, but with the fundamental basis for human rights secured, they can be carried out by people reasonably secure in their self-respect. On that basis, they can seek better to achieve inclusion as equals. The resulting spread of recognition of people’s equal human rights, he suggests, can help delegitimize governments that fail in this regard.

Pollmann does not consider here the mode of critique that would cynically or superficially accept that everyone enjoys equal human rights but would then set about whittling away some of the supposed human rights on the now-canonical list. Perhaps, as Pollmann sees things, stability in this list is an advantage of human-rights not being established “merely” on a metaphysical or philosophical basis, but on the more concrete and dependable basis of global law.

Professor Gotoh’s paper, “Liberalism and Dignity: The Soul’s Humble Upbringing and Vulnerability” builds on Kant, but seeks also to relate Kant’s view to recent and contemporary liberal perspectives on dignity. In so doing, she conceptually maps out a way to save more of Kant’s original conception of dignity than Pollmann’s view allows. Like Pollmann, Gotoh turns away from Kant’s a priori method in moral philosophy; but unlike Pollmann, Gotoh does not conclude that this leaves the concept of dignity hostage to the vicissitudes of history. She holds that human dignity can be given a philosophical defense. This stance, as Gotoh develops it, has the important implication that an individual’s human dignity is indestructible. Drawing on John Rawls’s political liberalism, she suggests that the incomparable worth of each person can be affirmed, not as a metaphysical fact, but as an ethical demand. So to describe the ground of dignity avoids identifying an innate fact about each individual—some indestructible, inherent kernel—and instead rests dignity on the moral relationship among all persons. As she puts it, the claim that persons have “an ‘incomparable intrinsic value’ ... is not a factual statement but a normative requirement accepted by public reason” [typescript, p. 7]. Because public reason is a feature of human community, not a feature of individuals, dignity, as implied by this moral requirement, will remain indestructible as long as human community—or a public—persists.

How should we understand this moral requirement? Gotoh offers, as one interpretation of the incomparability of dignity, the claim that it is a value that cannot aptly be traded off against any other value. Seeing human dignity as a value, she argues, makes it difficult to avoid allowing that the level of an individual’s dignity will vary over time and that different individuals might be found to have different levels of dignity. Seeing dignity through the lens of a moral requirement, by contrast, makes it possible to avoid this implication. A broad and lasting legacy of the Kantian moral

tradition is its insistence, not that human dignity is a value to be promoted, but that all (human?) individuals should be respected as beings with dignity. Gotoh upholds this claim; but she does not shy from interpreting its practical demands by reference to the sort of “anthropological” considerations that led Kant to his explosive racist views.⁶ This latter effort arises as part Gotoh’s admirable effort to synthesize her account of human dignity with the “individual dignity” that comes with a given social status—the concept that Kato’s paper criticizes Waldron for eliding with human dignity. Rather than eliding the two, Gotoh offers a potential synthesis of these two ideas, taken as distinct. She argues that the cultural variability in “individual dignity” that arises in connection with an individual’s social statuses presents a kind of diversity of which the implementation of protections for human dignity should take account. In this process, however, the influence of values generated by hierarchical systems should be limited.

Gotoh reinforces this regulative aspect of human dignity by elaborating two kinds of thoughtful suggestions about how to implement equal respect for human dignity. The first set of suggestions pertains to individuals whose situations make the requirements of respecting their dignity especially demanding. Examples of such situations, which Gotoh gleans from the work of Ronald Dworkin and Martha Nussbaum, include being impaired by dementia, being deprived of the right to vote, and being humiliated. Since Gotoh holds that individuals’ dignity, as such, is indestructible as long as moral demands remain in force, it seems that we should interpret these situations as ones that undermine individuals’ confidence in their own dignity: she mentions in this connection the importance to dignity of self-respect. The second set of situations, are those in which we can well foster individuals’ “capability for dignity,” which depends on supporting a norm of equality. Knitting these two sets of situations together, Gotoh closes the essay by summing up the contribution of liberalism to human dignity: liberalism puts forward an ideal of fundamental equality that both expresses respect for the dignity of all individuals and, when adequately realized in society, well reinforces individuals’ confidence in their own equal dignity.

Unlike the foregoing three papers, Professor Hasegawa’s paper, “Human Dignity as a Global Common Good” is not focused on characterizing the concept of human dignity or on the ethical or pragmatic considerations in favor of bolstering social recognition of dignity. Rather, the core, original aim of his paper is to set out to describe the circumstances of human dignity. We might compare this effort to John Rawls’s effort (building on David Hume) to characterize the “circumstances of justice.” These he describes “as the normal conditions under which human cooperation is both possible and necessary.”⁷ In his contribution, Hasegawa seeks in effect to lay out the “circumstances of human dignity”: the circumstances that make human dignity both necessary and possible. These circumstances start with what he deems to be the cosmic good luck that we have the abilities to interact socially, to be sensitive to moral and ethical considerations, and to work to perfect ourselves. The remaining circumstances further describe the conditions under which these abilities can be

⁶ See Huaping Lu-Adler, *Kant, Race, and Racism*, cited above.

⁷ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Harvard University Press, 1999), 109.

successfully exercised. Human sociability is important to enabling and occasioning human dignity, as it gives rise to both cooperation and conflict. Arguably arising from these paired possibilities, our systems of ethics (or values) and morality (or norms) help support normative perspectives that are crucial to scaffolding the concept of human dignity. The final non-derivative element of human circumstances needed to support this concept, Hasegawa argues, is agential confidence. We do not simply go along, passively, with social expectations and norms, but also work to question and refine them.

Hasegawa suggests that from these five circumstantial elements—cosmic luck, sociability, the development of ethical and moral perspectives, and our agential confidence—an additional element crucial to human dignity can be derived: that of human perfectibility. This idea has historically been prominent in various forms in, for example, the European Renaissance and in the Confucian tradition. Hasegawa uses it, not to point to a modern ideal of a sage or saint, but to describe a more modest and incremental perfectionism. He carefully detaches his references to the normative perspectives embodied in ethics, morality, and perfectionism from any specific content. Of course, any set of values and moral norms and any pathway of perfection will have some specific content; but, again, the aim of his essay is neither to describe the content of human dignity nor to ground it normatively, but to describe the conditions that make human dignity possible and necessary. Accordingly, in elaborating the role in this effort of ethics and morality, Hasegawa writes more abstractly of our ability to operate in a collective “normative space.”

Building on this account of the general circumstances of human dignity, Hasegawa closes the paper by offering additional thoughts that link his account to ordinary understandings of what is required for an adequate social instantiation of the concept of human dignity. One such requirement is that the human dignity of all be recognized as equal. Hasegawa argues that human equality can be seen in the potential perfectibility of purposeful self-formation that arises from our agential confidence. Further, he suggests, any collective normative space will induce some conception of the human good. To be sure, these suggestions remain quite schematic. A second requirement for adequately instantiating human dignity in human societies, he argues, is that there be systems in place to restrain and counter the wicked—those who violate human dignity. Since Hasegawa proceeds without giving a normative grounding of the moral importance of human dignity and without giving an account of the substantive content of the concept of human dignity, these additional layers of his chapter are perhaps best seen as carrying his discussion of the circumstances of human dignity to a new level. They describe what makes human dignity possible and necessary within human societies with their expectable failings.

Part II: Revisiting the Classics in terms of Dignity sheds new light on four historically important and influential theories going beyond different academic disciplines. Ian Jarvie, renowned for his studies of Popper, points out that “a reason to revisit the classics is so that we can then connect them to our present condition and see

if they offer fruitful ways for us to think about current problems.⁸” The sources of light to illuminate theories include the subtle and controversial concepts of dignity, moral, ethics, happiness (eudaimonia) and freedom. Actually, the real appeal of Part II is the set of assembled insights and arguments of the authors, who have offered illuminating interpretations of literatures from multiple angles, to develop the perspective of each theory one step further. Let us start with a quick overview of Part II before turning to a more full summary of each chapter.

The first two chapters, Matthias Kettner and Li Yaming, discuss the concept of dignity as a status rather than as a value. Matthias Kettner focuses on the concept of dignity as a status in discursive ethics, whereas Li Yaming focuses on the concept of dignity as a status in Confucian ethics. The essential character of the shared approach of these two chapters can be summarized as follows. The individual commonly attains dignity or moral status as a member of the human species, and differently attains dignity by seeking moral perfection as an individual.

The reader will be surprised to find unexpected similarities between these two theories of very different origins. For example, Kettner and Yaming seem to offer deep and complementary insights related to human natures and moral sentiments in the following statements: “(T)he thought that I myself as a moral subject would not be important at all, is an unbearable thought, come to think of it (Kettner, p.14)”. “Being limited makes possible perseverance through adversity, aspirations of fulfilling a calling, and being part of (worthy) causes greater than oneself” (Li, 12; Jordan 2010).

In the next two chapters, Helga Varden and Anna Carabelli tackle serious issues that tend to elude science but matter in real life. Helga Varden revisits the concepts of evil and dignity in Kant’s moral philosophy from the viewpoint of intersectionality, a term that captures the intersections of disadvantages caused by multiple discriminations. What the author adopts here is a challenging approach, reflectively examining Kant’s universal ethics by reference to the thoughts and ethics formulated by those involved in discrimination based on their own experiences.

Anna Carabelli looks at the ethical points of view that precede and follow Keynesian economics, which, through books such as “The General Theory of Employment, Interest and Money” (Keynes, 1936) launched the “Keynesian revolution” and had a profound impact on the establishment of the welfare state. Actually, Keynes believed that economic problems were humanly solvable. Yet, Professor Carabelli suggests, this does not mean that he was ignorant of the difficulties arising from human nature and social tensions. Rather, Keynes recognized that the conundrums of real life that befall individuals are far more serious than economic problems. For Keynes, the solution to economic problems was an important prerequisite for all individuals to undertake the challenges of real life.

Let us try a bit more detailed introduction of each chapter in turn. The first paper, Professor Matthias Kettner’s, “Human Dignity in Discourse Ethics,” begins with the following fundamental question: “Whether the capacity to participate in practical discourse has anything to do with an egalitarian notion of dignity is a question that

⁸ Ian Jarvie, “Popper’s Sociology of Science and its Political Deficit,” paper presented in ANPOSS/ENPOSS/POSS-RT 2021 Joint Conference in Tokyo.

neither Apel nor Habermas explores. This is somewhat surprising because it is not self-evident why participants in discourse should treat each other as partners with *respect*, and why *all* should be *worthy* of this?"

Professor Kettner's paper aims to provide a theoretical justification of the concept of dignity by drawing on the arguments of discourse ethics, and to extend the scope of the concept of dignity to take into account the culture of human rights in reality. Specifically, this chapter offers responses to the following two objections to the moral notion of human dignity: that the notion of human dignity is the result of a naturalistic fallacy, and that it is the expression of speciesist arrogance. Concerning the first objection, Kettner finds, very interestingly, the following duality in the concept of dignity: the concept of dignity is both a natural and empirical property of the human species in general, and a normative presupposition required to maintain a moral community. Human dignity is, therefore, understood as a morality that underpins a culture of human rights that are both realistic and idealistic in nature. Concerning the second objection, Kettner first calls attention to the following points. We should distinguish between reasons that specify the normative content of human dignity and reasons that guide the practice of ascribing status to individuals of a certain kind. The abstract conceptual structure of what *for a specimen x belonging to kind X to have dignity* is compatible with the possibility that we come to recognize, e.g. bovine dignity B, or chimpanzee dignity C.

Kettner proposes then the following sophisticated argument. That is, human dignity is explained in the discourse ethics as the basal moral status that moral agents ascribe to themselves because they must understand themselves both as subjects of morality who can confer status and, at the same time, as moral objects of other moral agents who, in turn, can have the same understanding. Kettner concludes with the following impressive words. "Until then [until we know whether non-human species have such ability to confer moral status], the discourse theory of morality, human rights, and human dignity are methodologically anthropocentric. But never anthropochauvinistic".

The purpose of Professor Li Yaming's paper, "The Confucian Justification of Equal Human Dignity" is to analyze the differences and connections between the two concepts of human dignity encompassed by Confucianism, that is, universal dignity and acquired dignity. After clarifying the logical relationship between the two concepts thoroughly, Professor Li ambitiously applies the knowledge of these two concepts of human dignity to one of the most pressing issues in modern society, namely, the technology of life manipulation.

Professor Li explains the difference between universal dignity and acquired dignity as follows. In Confucian ethics, the basis of human dignity is the moral potential that every human being naturally has. Moral potential grants everyone universal dignity, while the development of moral potential grants people acquired dignity. Since all human beings have moral potential to the same extent, everyone owns universal dignity equally. Yet different people develop their moral potential to different extents and one's acquired dignity is positively associated with the development of her moral potential. Universal dignity is a moral status but acquired dignity is not.

The possible internal linkage between universal dignity and acquired dignity is explained clearly as follows. To pursue higher acquired dignity, one needs to be more respectful of others' universal dignity. The inequality of acquired dignity will never threaten but rather, protect the equality of universal dignity.

The contemporary significance of this chapter can be summarized as follows. The Confucian concept of human dignity constitutes a reliable theoretical basis for coping with ethical issues caused by technologies today. The application of human enhancement technology may damage the telos of human life by reducing the finiteness of human beings, for example, and artificial intervention in typical human features would seriously obstruct people's endeavor to pursue acquired dignity. The way to pursue acquired dignity lies in developing moral potential into mature virtue through one's own efforts. Professor Li concludes that we should set limits on the application of technologies, according to the principle of protecting the integrity of human species.

The purpose of Helga Varden's paper, "A Kantian Theory of Intersectionality" is to develop such a theory by drawing not only on Kant's freedom writings, which put human dignity at its moral center, but also putting his accounts of our embodied, social human nature and of evil in dialogue with traditionally excluded philosophical minds. Professor Varden points out that discrimination in the pre-modern era was carried out by subordinating the body under the spirit and by classifying some people as being only bodily. In contrast, modern discrimination often attacks on all levels, namely one's animality (physical, including sexual, attacks and attacks on one's loved ones), one's humanity (lowering of one's sense of self and limits or attacks on one's ability to set ends of one's own), and one's personality (undermining or denying of one's ability to be responsible for one's actions).

Kant thinks that the propensity to evil comes in three degrees: *frailty*, *impurity*, and *depravity*. Given how we develop our predisposition to the good through associative, abstract conceptual, teleological, and aesthetic thought, the author remarks, we can now also see how these different kinds of thought are used when we oppress others. Professor Varden sharply suggests that once our victims have more than one oppressed identity, the possible combinations exponentially multiply. Here is the essential problem of intersectionality.

In this way, fully understanding the reach and potential of Kant's philosophy, Varden points out its limitations as follows. "it [the language of individual rights, freedom, and human dignity] envisions a way of living together respectfully that is not dependent on specific cultures or ways of life but only on our shared capacities of freedom. However, it was in this modern—or "enlightened" or "free"—world that dehumanization found a new force of expression, and Kant's theories were used to enact it." We need to take Varden's following words seriously. "To put the point from a different direction, Kant and Kantians should have been listening, of course, to enslaved and dehumanized peoples all along."

Let us turn to Professor Anna Carabelli's paper, "On Keynes's Ethics as Eudaimonia." Carabelli sees Keynes in three perspectives. The first perspective is a deep concern for ethics as indicated by the following question: "why on earth should I sacrifice my peace and comfort in order to produce this quality in remote parts of the

globe or in future time, where and when I shall have no opportunity of perceiving or appreciating it? Where is the motive? Where is the obligation? (Keynes MSS, *Egoism* 24 February 1906)".

Professor Carabelli points out that Keynes distinguishes between speculative ethics and practical ethics (or morals). Speculative ethics deals with final ends, intrinsic values and happiness (*eudaimonia*), while practical ethics deals with conduct and means. Keynes also makes a distinction between the good as an instrument (practical ethics) and the good in itself (speculative ethics). Economics and politics belong to the good as an instrument, as a means.

The second perspective is plurality which takes moral and rational dilemmas seriously. Keynes argues that since values and desires cannot be ordered on a univocal scale, it is unacceptable to resolve conflicts between different kinds of goodness by reducing them to a uni-dimensional magnitude. He suggests that when we are forced into rational dilemmas or tragic situations, which characterize situations of indecision or irreducible conflict, the best we can do is to summarise them in some general statement based on common sense rather than on any scientific principle.

The third perspective is condensed into the following thesis: "the satisfaction of individuals' material needs could be solved if individuals themselves could be persuaded, through a new theory and economic policy, to modify their use of resources. Such resources are not scarce but potentially sufficient to guarantee everyone a decent level of consumption." His ideal image of the human being is "those people, who can keep alive, and cultivate into a fuller perfection the art of life itself and do not sell themselves for the means of life, who will be able to enjoy the abundance when it comes".

According to Carabelli, Keynes wants to create those conditions in which "the individual possesses substantial freedom, freedom from necessity, from the limits that restrict the possibility of individual choice of ends." This allows the individual to express authentic human qualities. Through Keynes's eyes, the author sees a world of dignified individuals who, though faced with tragedy, are capable of choosing to function in the ways characteristic of *eudaimonia*. The ideal economic system corresponding to this ideal conception of human beings is the system that can guarantee everyone a decent level of consumption.

Part III: Dignity and Economic Perspective brings together ambitious contributions to address theoretical and empirical issues that relate to both economics and philosophy in light of the concept of dignity. The typical textbook suggests that if private ownership is clearly established and there are no externalities, the market system provides an efficient solution in terms of individuals' utilities. If either condition is not satisfied, the market system should be supplemented by public policy. How about if we straightforwardly inquire that the market system can respect human dignity? The typical textbook's answer might be that: if a person prefers dignity to any other good, dignity will be protected, if not, dignity need not be protected, yet what's wrong? If an individual does not exit from a transaction that might degrade his dignity, we can interpret that he accepts the transaction in substitution with the benefits outweighing his dignity. Yet, we can further ask: if he continues to stay, and even if the stay does increase his benefits, is there still an unmissable problem?

In the first chapter, “Market Virtues and Respect for Human Dignity,” Professors Luís Calderón Gómez, Robert Talisse, and John Weymark deal with the issue of whether the market system can be defended by virtue ethics. They critically scrutinize two concepts, “mutual benefit” and “mutual assistance,” which are proposed by Luigino Bruni and Robert Sugden as a normative defense of markets from a virtue ethics perspective. The clues for scrutiny are Alasdair MacIntyre’s conception of virtue ethics and Kant’s definition of the concept of dignity. The authors lay out these clues as follows.

MacIntyre’s conception has three stages: the first concerns virtues as qualities necessary to achieve the goods internal to practices; the second concerns virtues as qualities contributing to the good of a whole life; and the third relates virtues to the pursuit of the good for human beings, the conception of which can only be elaborated and possessed within an ongoing social tradition. Concerning Kant’s concept of dignity, the authors focus on the following two sentences. One is that “(I)ndividuals are ends that have a dignity that is above all price.” Another is that “to treat individuals as ends in themselves, not merely as means to one’s own ends.”

In light of these two perspectives, the authors set up the research question: to what extent Bruni and Sugden’s account of market virtues is compatible with respecting the fundamental human good of dignity in Kant’s sense of this concept? To answer this question, Professors Calderón Gómez, Talisse, and Weymark utilize two tests, “the identification tests” and “the recognition tests,” where the former requires that “individuals with their actual interests endorse these principles,” while the latter requires that “these principles be regarded as being morally compelling.”

With these two tests and several examples, Professors Calderón Gómez, Talisse, and Weymark clearly conclude that the realization of the “mutual benefits” is not sufficient for respecting individuals’ dignity, since these may be realized without regarding the transactional counterparty as an equal partner with autonomous objectives. Neither “the identification tests” nor “the recognition tests” is passed. If it is “mutual assistance,” where an intention on the part of the person who assists is to benefit the person who is assisted, and neither of them thinks of their trading partner in instrumental terms, not only “the identification tests” but also “the recognition tests” is passed. However, Weymark, Gómez and Talisse carefully note that even in this case we cannot assert that individuals are treated as equals according to the Kantian conception of dignity.

Based on this consideration, Calderón Gómez, Talisse, and Weymark inquire further: can we satisfy MacIntyre’s concept of virtue by extending the concept of “mutual assistance” with the concept of dignity? Interestingly, the answer is no. The reason seems to lie in the following consideration mentioned in Sect. 6. “While dignity is more valuable than any quantity of material goods, it is simply the case that one is willing to accept some material benefits even though one’s dignity is compromised.... Henceforth, we take it for granted that one can benefit from partaking in an activity without one’s dignity necessarily being respected”.

This chapter concludes with the statement that, in response to the market critique by Sandel et al., it is necessary to bring in additional criteria that satisfies MacIntyre’s concept of virtue more extendedly.

The purpose of Dr. Toshiaki Hiromitsu's paper in the second chapter, "Implementing luck egalitarianism in a relational way: Selecting social contracts under resource constraints, resolving practical challenges, and ensuring dignity," is to compare the performance of several possible resource allocation rules from the perspective of practically implementing luck egalitarianism. The criterion for performance comparison is dignity, and the concept of dignity used by the author is summed up by Ronald Dworkin's phrase that "dignity requires self-respect and authenticity." In conclusion, the author recommends a rule called "equality of goods and leisure." This rule mandates an equal redistribution (called "equality of consumption") of total output (adding up each person's production) with respect to any two individuals in a society whose working hours are identical, independent of differences in productivity.

Equal redistribution of total output, however, actually implies a transfer of income from those with higher productivity to those with lower productivity. This rule, moreover, would realize equality of utility if individual utility were defined on consumption and leisure time. According to the definition by Hiromitsu, the problem of enslavement can be avoided as long as the utilities are the same. Therefore, the "equality of goods and leisure" rule avoids the problem of enslavement.

Dr. Hiromitsu anticipates two criticisms. The first is the suggestion that "equality of goods and leisure" is inferior to utilitarianism. In other words, there is a risk that the level of equal distribution may be lowered as a result of the reduction of working hours by those who are more productive. Second, there is the issue of the treatment of those who, due to disability or other reasons, are unable to work and have more leisure time, but who cannot enjoy equal utility given equal goods.

In response to the first criticism, it is worth pointing out that behind the equality of resources lies the idea that individuals with dignity should live in a free and equal society. One of the ideas presented by Dworkin to embody equality of resources is the idea of a "virtual insurance market." The "moral luck" thesis dismisses this idea as contrary to the principle of dignity and attempts to separate it from the equality of resources itself. The second criticism suggests a direction to extend resource equality. It points out that there is room to consider the allocation of additional resources to those whose ability to convert goods and leisure time into utility is itself small, even if they have more leisure time.

In addition, the following issues may also be considered. There is a risk that highly productive people may reduce their working hours or manipulate their productivity, resulting in a lower level of equal distribution. This was precisely the work incentive problem, a criticism directed at Rawls's difference principle. A reasonable response to this would be that those who are able to work have an ethical obligation to use their capability based on the logic of public reciprocity. The interested reader is referred to Reiko Gotoh's paper on Rawls, which is presented as the conclusion of this book.

The third chapter, Professors Yuko Mori and Norihito Sakamoto's paper, "Capabilities, Equivalent Incomes, and Well-Being Revisited: Comparative Analysis of Well-Being Measures Respecting Human Dignity" takes an insightful look at the possible conflicts among the multiple criteria contained in the concept of dignity by using the axiomatic approach of social choice theory. Professors Mori and Sakamoto

specifically focus on two criteria for dignity, i.e., self-determination and the fulfillment of basic capabilities, and point out that these two criteria correspond to the two principles, the *individual preference principle* and the *dominance principle* both of which are plausible in the context of well-being.

The self-determination criterion corresponds to the *individual preference principle*, which requires that each *intrapersonal* comparison of one's well-being reflects only one's preference. The fulfillment of basic capabilities criterion corresponds to the *dominance principle*, which requires an evaluation for all *interpersonal* comparisons of well-being, individual i 's well-being is at least as good as j 's well-being whenever i 's consumption bundle (or functioning vector) is weakly greater than that of j .

The contribution of this chapter is, first, to examine the performance of the existing four representative measurement rules for well-being (simple money-based index, happiness as life satisfaction approach, the Alkire-Foster multidimensional poverty index, and the equivalent income approach) and show that all of them at best satisfy only one of the two criteria. For example, the Alkire-Foster multidimensional poverty index (MPI) satisfies the dominance principle among the poor but violates the individual preference principle, while the equivalent income approach does the opposite. The implication of this analysis is important. Since in measuring dignity invasion, we are obliged to close our eyes to one of the two criteria of dignity, we cannot discern it unjust even if an offensive action happens related to that criterion.

The contribution of this chapter is, second, to compare the performance of the above four representative measurement rules, based on a field survey of Delhi's low- and middle-income respondents in India, which covers the following information: (1) demographics (gender, age, family configuration, caste, religion); (2) happiness as life satisfaction; (3) education; (4) occupation and employment status; (5) income and consumption level; (6) health status; (7) housing facilities and household assets; (8) social capital; and (9) security and environment.

With findings from the axiomatic analysis of the social choice theory, and in conjunction with the findings from the survey, Mori and Sakamoto draw the following conclusions. First, the equivalent income approach tends to ignore the economic value of education because of an adaptive preference problem caused by standard measures of life satisfaction, and second that MPI is more sensitive to several aspects of well-being than other measures because it can consider material and social information such as housing, health, job status, and education.

In the final chapter, as a conclusion of this book, the future of the welfare state is envisioned based on the reweaving of a theory of justice and normative economics. Reiko Gotoh finds that the essence of Sen's criticism of Rawls concerns methodological shortcomings (including completeness and separability) common to liberal social science and philosophy. For example, Rawls adopted the method of constructing a theory of justice for the normal case first, and then extending the theory to include the hard cases one after another to make the theory more realistic. However, there is no guarantee that a theory constructed separating other factors (the hard cases) as given can be consistently extended to a theory that can deal with

issues particularly relevant to the hard cases. It may leave patent injustices suffered by persons in adversity unalleviated, as Sen rightly criticized.

Yet the problem does not end there. Professor Gotoh points out that this methodological difficulty results in making Rawls's theory of justice self-defeating: it is impossible to conceive of social cooperation Rawls sought by setting aside the hard cases and focusing only on the normal case. The "work incentive problem," which economics clearly analyzes, is one typical manifestation of this conundrum.

Building on Rawls's philosophy of contingency and Sen's normative economics, Professor Gotoh seeks a theory of justice that incorporates the hard cases from the beginning. Furthermore, she tries to reconstruct the value assumptions of liberalism, taking the concept of dignity as a clue. The disparity in status between the right to work and the right to well-being, and the disregard of the utilization ability to use the rights to liberties are criticized. Furthermore, based on Rawls' philosophy of contingency and Sen's normative economics, the logic of "public reciprocity," which incorporates both hard and normal cases from the beginning, will be explored.

Finally, while standing on the inviolability and incomparability of the dignity inherent in the individual, Gotoh sought a logic in the capability approach to denounce actions that violate the obligation to respect dignity, and to measure the capability damage for requesting social compensations. The discussion here indicates the possibility of a contribution of economics to the theory of value in a new way completely different from the price theory.

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Part I
Conceptual Exploration of Dignity

Chapter 2

The Normative Role of the Concept of Dignity in the Public Sphere



Kato Yasushi

Abstract Democratization and pluralization are essential aspects of modern society, and one of the sources of such a social vision is Kant’s project of enlightenment. The first important aspect of this project is the concept of the “original contract.” Here, the state is not only a part of the social contract theory but also the construction of the logical space of justice. This is because “justice” is embodied in institutionalization. In Kant’s case, however, unlike Hobbes’s, two levels of institutionalization are structurally embedded in this space: institutionalization and the institutionalization of institutionalization, the latter being a higher order of institutionalization. Note that the first level of institutionalization is carried out by the “original contract” and the space of justice is actualized as the state, which is further institutionalized through the system of practical laws. However, not all practical laws are necessarily in accordance with justice. There are cases in which the actual laws are not “correct.” In some of these cases, there will be a conflict between legality and morality within the state over a particular positive law. The theoretical prototype of this conflict is, in the words of Kant’s *The metaphysics of morals*, the conflict between “the justice arising from the state” and “the justice arising from the people.” If this conflict is left unchecked, there will be no progress in terms of enlightenment, and the state, as a space of justice, will fall into chaos. Moreover, if the former “justice arising from the state” is enforced, the state will become an oppressive one, and justice will be only nominal. Therefore, Kant calls for the institutionalization of the second order by locating “justice arising from the people” in “human dignity.” The use of reason in this case is public, and one of the principles on which the public use of reason depends is precisely human dignity. This paper analyzes the problem of hate speech based on this Kantian framework. Hate speech is a serious social problem in which freedom of speech and human dignity are in conflict. According to the Kantian framework, it will be important, for the democratization and pluralism of modern society, to overcome hate speech by appropriately restricting freedom of speech based on the public use of reason and relying on human dignity.

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1 Introduction

Democratization and pluralization are pressing issues in modern society, but it is not always clear what role the public sphere (*Öffentlichkeit*) plays and what significance it has in this regard. Here, Rawls's description of one aspect of pluralism provides us with a small but important clue, perhaps contrary to his intention. That is, "given the plurality of conflicting comprehensive religious, philosophical, and moral doctrines always found in a democratic society—the kind of society that justice as fairness itself enjoins—free institutions may gain the allegiance needed to endure over time."¹ What Rawls suggests here is that the public sphere is exactly the site of this enduring conflict brought about by pluralism. At least within a democratic and pluralistic political system, this conflict involves the public sphere.

However, according to Waldron's diagnosis, "[...] Rawlsian liberals have done a worse job of acknowledging the inescapability of disagreement about the matters on which they think we do need to share a common view, even though such disagreement is—as I have argued—the most prominent feature of the politics of modern democracies" (Waldron, 1999, 155). Therefore, Waldron emphasizes the importance of conflict itself: "We may say, along similar lines, that disagreement among citizens as to what they should do, as a political body, is one of the *circumstances of politics*" (Waldron, 1999, 154). For Waldron, the public sphere is a place that embodies this circumstance of politics. Although, in *The Dignity of Legislation*, Waldron emphasizes the conflict of opinions, it is the conflict of principles that we should focus on because a more serious reaction occurs when principles are in conflict. This immediately raises the question of what principles can sustain the public sphere. Waldron, of course, is aware of this problem and more, in *The Harm in Hate Speech*, he thematizes it as a conflict between *free speech* and *dignity*.

According to Waldron, the conflict between the two principles of free speech and dignity has erupted everywhere in the world, specifically regarding the issue of hate speech. As for the former principle (free speech), regardless of how we understand the public sphere, we cannot talk about the public sphere without mentioning the issue of speech. This is because hate speech raises a fundamental but theoretically troubling question: do the enemies of freedom, who would destroy freedom, have such a freedom? Mill responded, in his essay *On Liberty*, that there is such a freedom. Although Mill does not discuss hate speech itself as a subject, he does take it into account.² From Mill's point of view, restrictions on hate speech can lead to thought control, so even if freedom of speech is abused and its content becomes violent, it must be overcome only by speech. In this sense, society must tolerate hate speech,

¹ Rawls, 1993, 246.

² Mill argues, for example, that "With regard to what is commonly meant by intemperate discussion, namely invective, sarcasm, personality, and the like, the denunciation of these weapons would deserve more sympathy if it were ever proposed to interdict them equally to both sides; but it is only desired to restrain the employment of them against the prevailing opinion: against the unprevailing they may not only be used without general disapproval, but will be likely to obtain for him who uses them the praise of honest zeal and righteous indignation." See Mill, 2015, 53.

even if only temporarily, because freedom of speech is the highest norm in terms of democratizing and pluralizing society. For Mill, tolerating and enduring hate speech is what society should do and it is a sign that the society is somewhat public.

Waldron, however, casts a fundamental doubt on this view. The enemies of freedom are not free to destroy freedom and hate speech cannot be socially accepted on the basis of free speech. Hate speech is not socially acceptable, even if it is based on freedom of speech. It destroys the social basis of freedom of speech itself; it makes the critical function of the public dysfunctional; and, at the same time, it is an act that goes beyond mere expression and causes real harm. For these reasons, hate speech must be socially regulated. The basis for this, according to Waldron, is the concept of dignity. Both freedom of speech and dignity are surely modern normative principles that can be placed at the foundation of a democratic and pluralistic society, but these two principles react violently against one another, resulting in a kind of antinomy. This is why hate speech is so serious and dangerous.

If I were to describe the positions of both Mill and Waldron as antinomies, they would be as follows.

Thesis: If freedom of speech is the highest norm for a democratic and pluralistic society, then it supersedes all other norms, and hate speech must be socially acceptable as one such exercise of freedom of speech or as just one form of speech. Therefore, legally regulating hate speech as dignity-damaging speech or behavior cannot be justified in principle, because it may lead to thought control.

Antithesis: Even if freedom of speech is an important norm for the democratization and pluralization of society or for a democratic and pluralistic society, it is not the supreme norm that unconditionally prevails over all. Hate speech is an abuse and misuse of freedom of speech and its unreasonable exercise, and therefore it cannot be justified in the name of freedom of speech. Because hate speech seriously damages dignity of human beings, it must be properly and legally regulated within society based on the principle of respect for dignity. In this respect, respect for dignity may take precedence over freedom of speech.

The antinomian position therefore places dignity as a higher norm than freedom of speech and, in some cases, as the highest norm, or at least one of the highest. In other words, the legal regulation of hate speech is based on the normative principle of respect for dignity and, as a result, a democratic and pluralistic society must be a “decent society”³ at the same time. A simple reformulation of the thesis would be “I hate what you say, but I will defend to the death your right to say it” (Waldron, 2014, 3).⁴ Needless to say, the thesis expresses Mill’s position, whereas the antithesis does Waldron’s. The antithesis also aligns with Kant’s position.

In this essay, using the issue of hate speech as an axis, I would like to examine the question of what the public sphere (*Öffentlichkeit*) means, by relating it to the conflict between freedom of speech and dignity, particularly by thematizing the concept of dignity. If I were to give an answer in advance, it would be as follows. While the

³ In this regard, the issues raised by Avishai Margalit are of great significance. See Margalit (1998).

⁴ Needless to say, this is not a statement of Waldron’s own position but, rather, a reference to the words of one of his liberal colleagues.

state is established through first-order institutionalization (i.e., the social contract), the public sphere is established and maintained through second-order institutionalization or, in other words, through the “institutionalization of institutionalization” (*Institutionalisierung der Institutionalisierung*).⁵ Hence, the public sphere is fundamentally on a different dimension from the state. The public sphere is a space that seeks to include hitherto excluded others through the institutionalization of institutionalization. In this sense, it functions critically against the state and encourages reforming the state’s legal system. Moreover, as a space that encompasses others, the public space is wider than the state space in terms of inclusion and extent. In terms of its critical function against the state, one of the principles that supports the public sphere is publicity (*Publizität*), and therefore, freedom of speech is positioned at the core of the public sphere. In this respect, publicness (publicity) and freedom of speech are also sometimes socially regulated when they damage dignity. One example of this is hate speech. It aims to exclude others and reduce pluralism and diversity. It is, therefore, inconsistent with the logic of the public sphere.

This paper will be structured as follows. In the next section, I will take up Waldron’s discussion of the criticism of hate speech, analyze the relationship between freedom of speech and dignity and the “chemical reaction” between them and then show what issues this reaction raises regarding public understanding. Then, in Sect. 3, I will critically analyze Waldron’s interpretation of Kant. In Sect. 4, I take up Waldron’s question and, relying on Kant’s original contract theory, clarify the relationship between the state and the public, as well as the inherent structure of the public sphere that encompasses all others. Finally, I will critically analyze Waldron’s understanding of dignity. Waldron understands dignity as “status,” but it is only a relative and extrinsic value and it cannot be sufficiently normative to regulate free speech.

2 Waldron’s Criticism of Hate Speech

In this section, I would like to take up Waldron’s criticism of hate speech and use it to consider public issues. What is hate speech? According to the “Act on the Prevention of Hate Speech,” enacted in 2006: “In Japan, in recent years, unjust discriminatory words and speech acts [言動, *gendō*] have been used to incite the exclusion of legally residing persons or their descendants from local communities on the grounds that they are from countries or regions outside Japan, causing great suffering to these persons and serious rifts in their communities.”⁶ As just shown, hate speech in Japan is unfair discriminatory speech that incites such marginalization. It is, however, based merely on alien origin and hence it is a relatively narrow definition of hate speech, since alien origin is just one type of otherness while there are other types that can become subject to hate speech: racial otherness, gender-oriented otherness, religious

⁵ See Schönrich (2002), 112. Maus (1994), 280 and following.

⁶ Available at: https://www.moj.go.jp/JINKEN/jinken04_00050.html (Accessed: 01. August 2023).

otherness, etc. Such narrowness of the Japanese Act would be clear, when compared with Article 130 of the German Penal Code, mentioned below, which has a broader list of types of otherness. Further, there are problems with this definition, such as whether or not the limitation of “lawful residents” is appropriate, but it also provides an important perspective on hate speech as a “speech act.” In other words, according to the *Kojien* Dictionary, *gendō* means “speech” and “action,”⁷ and therefore, according to this definition, hate speech is not “mere expression” but also “action.” This is an important point for Waldron. A broader definition of hate speech that implies this point can be found in Öykü Didem Aydin: “If there is a general definition [of hate speech], it is that it is an expressive attack on a human being or group of human beings based on prejudice because of a particular characteristic [such as race or nationality].”⁸ However, I believe that an offense caused by expression should not simply be regarded as an expression but it may also include an *action* of expression.

With this definition in mind, I would like to review the general situation of the debate that Waldron is facing regarding hate speech. To understand the situation in the US, it is important to look at the US Supreme Court’s discretionary denial of appeal in the Skokie case in 1977 and the US Supreme Court’s RAV decision in 1992.⁹ In both cases, the position that hate speech is a permissible form of free speech was clearly stated on the basis of the First Amendment of the US Constitution. To borrow a phrase from Waldron’s description of his liberal colleagues’ attitudes, in reference to the *motto* “I hate what you say but I will defend to the death your right to say it,” he states:

That is the most important thing, in their opinion. The signs that we have been talking about, the bigoted invective that defiles our public environment, should be no concern of the law, they say. People are perfectly within their rights, publishing stuff like this. There is nothing to be regulated here, nothing for the law to concern itself with, nothing that a good society should use its legislative apparatus to suppress or disown. The people who are targeted should just learn to live with it. That is, they should learn to live their lives, conduct their business, and raise their children in the atmosphere that this sort of speech gives rise to. (Waldron, 2014, 3/4).

Thus, in the US, general restrictions on hate speech are considered to violate the First Amendment and judged to be unconstitutional. The First Amendment’s freedom of speech is given priority, and hate speech is allowed within that framework.

Waldron expresses fundamental doubts about this trend, “I think there is something socially and legally significant at stake” (Waldron, 2014, 4). It is also a challenge to the US Constitution, which has always placed freedom of speech among the highest norms. The important thing at stake, Waldron argues, can be described in two ways, both of which simultaneously answer the question of what and who hate speech harms. On the one hand, there is the general requirement that “each person, each member of each group, should be able to go about his or her business, with the assurance that there will be no need to face hostility, violence, discrimination, or

⁷ Shinmura (2008), 910.

⁸ Aydin (2006), 31. See also Sakuraba (2014b), 129f.

⁹ For more on these, see Kotani (2014a), 82f. and Kotani (2014b), 93f. and Nagamine (1997), 187f.

exclusion by others” (Waldron, 2014, 4). We can call this public good a “sense of security.” Hate speech clearly damages this sense of security. The other important risk implied by hate speech relates to the concept of dignity. It is internally linked to the public good of security.

“But for the members of vulnerable minorities, minorities who in the recent past have been hated or despised by others within the society, the assurance offers a confirmation of their membership: they, too, are members of society in good standing; they have what it takes to interact on a straightforward basis with others around here, in public, on the streets, in the shops, in business, and to be treated—along with everyone else—as proper objects of society’s protection and concern. This basic social standing, I call their *dignity*” (see Waldron, 2014, 5/6).

Therefore, hate speech attacks the public good of security through damaging dignity.

Waldron compares this conceptual framework with the one expressed under Article 130 of the German Penal Code:

Section 130 Incitement of masses [*Volksverhetzung*]

- (1) Whoever, in a manner which is suitable for causing a disturbance of the public peace,
 1. incites hatred against a national, racial, religious group or a group defined by their ethnic origin, against sections of the population or individuals on account of their belonging to one of the aforementioned groups or sections of the population, or calls for violent or arbitrary measures against them or
 2. violates the human dignity of others by insulting, maliciously maligning or defaming one of the aforementioned groups, sections of the population or individuals on account of their belonging to one of the aforementioned groups or sections of the population
 incurs a penalty of imprisonment for a term of between three months and five years.¹⁰

This article seems to echo the considerations expressed by Waldron. The requirements for the crime of inciting the people are attacks that cause a “disturbance of the public peace” and “violate human dignity,” which roughly corresponds to the *public good of security* and *human dignity*, as pointed out by Waldron. In fact, Waldron makes a positive reference to this and other German criminal laws to emphasize that America’s First Amendment bias is exceptional.

Waldron’s theory of regulation is framed within the perspective of the victim of hate speech, which leads to an emphasis on dignity. According to Waldron, hate speech is “both a calculated affront to the dignity of vulnerable members of society and a calculated assault on the public good of inclusiveness” (Waldron, 2014, 5f). Waldron is not alone in emphasizing the importance of the victim’s perspective when considering the regulation of hate speech. For example, Hiromichi Endo also points

¹⁰ For more on this, see Sakuraba (2012), 128. For a complete English translation, see https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1333.

out, referring to the Japanese case, that “the real question that should have been asked [regarding hate speech regulation] is: How will the victims suffer from discriminatory expressions based on discriminatory feelings?”¹¹

- (1) According to Endo, regarding the importance of a concerned party’s point of view in regulating hate speech, “[...]the question of ‘who decides whether or not it is discriminatory expression based on what criteria’ should be answered by the victims themselves.”¹² In other words, the victims themselves know best what they suffer from hate speech, so they should be the ones to measure the degree of harm caused and determine the standards for regulation, not the bystanders who sit on the sidelines and watch from a safe zone. In response to this seemingly obvious argument, Waldron, however, adopts a cautious stance and takes pains to draw a proper distinction between “offending” and “degrading.” “Affirmatively, what hate speech legislation stands for is the dignity of equal citizenship (for all members of all groups)” (Waldron, 2014, 61). The focus of the question is how the damage to this “dignity of citizenship” can be objectively defined. What reappears here is dignity as a form of social status, as well as the structure of its establishment. In relation to the dignity of citizenship, Waldron stipulates that “being a ‘citizen’ means being a member of society in good standing” (Waldron, 2014, 108). According to him, the dignity of a secure position in terms of social status is established through mutual recognition and mutual respect. Hate speech, on the contrary, attacks the public good of security by damaging and destroying this mutually recognized structure of society. It is natural for the targeted victims of these attacks to feel uncomfortable. However, Waldron argues that this discomfort “may or may not be symptomatic of indignity, depending on the kind of social phenomenon that causes these feelings or that is associated with their causation” (Waldron, 2014, 108). To carefully distinguish between subjective discomfort and objective degradation of dignity, he attempts to persuade the reader by drawing an analogy with religious criticism. Through this analogy, Waldron argues that “offensiveness by itself is not a good reason for legal regulation” (Waldron, 2014, 126). It is not acceptable to regulate religious criticism in order to protect its adherents from discomfort with respect to attacks on a particular religion. Only when the offensive expression that causes this discomfort also causes harm by undermining “security” as a public good—by treating people as second-class citizens or calling them animals, by pushing them to the periphery of society or excluding them from society—is legal regulation justified. Hate speech can only be legally regulated if it causes such harm. Although hate speech is an expression that causes such harm, it is not a *mere expression* that causes harm. Rather, as I stated above, hate speech is already an *act*. This is the same position that can be found in Japan’s Anti-Hate Speech Law.

¹¹ Endo (2014), 69.

¹² Endo (2014), 69.

- (2) In other words, the focus on hate speech as an act and the harm it brings as a consequence does not mean that we should question the ideology that motivates hate speech. According to Waldron, although there is a weak relationship between hate speech and hate crimes, the nature of this relation is not purely causal: “The idea of hate crimes is an idea that definitely does focus on motivation: it treats the harboring of certain motivations in regard to unlawful acts like assault or murder as a distinct element of crime or as an aggravating factor. But in most hate speech legislation, hatred is relevant not as the motivation of certain actions, but as a possible effect of certain forms of speech” (Waldron, 2014, 35). Hence, even if people’s attitudes are relevant in hate speech, Waldron concludes that “what we should really be talking about restricting are the products of people’s attitudes, particularly the visible manifestation of the printed word. The restrictions on hate speech that I am interested in are not restrictions on thinking; they are restrictions on more tangible forms of message. The issue is publication and the harm done to individuals and groups through the disfiguring of our social environment by visible, public, and semipermanent announcements to the effect that in the opinion of one group in the community, perhaps the majority, members of another group are not worthy of equal citizenship” (Waldron, 2014, 38–39). In this way, Waldron adopts a consequentialist stance on hate speech and limits the object of regulation to the “publication” (printed word) of ideas rather than the content of ideas themselves so that hate speech regulation does not become thought control. In other words, Waldron suggests a focus on the *products* of attitudes toward others, not the attitudes themselves.¹³

Thus, Waldron places dignity above freedom of speech at times, acknowledging that freedom of speech may be limited when it damages the dignity of citizenship. At the same time, this argument allows viewing dignity as the highest public norm. However, the structural features of society and the composition of the public sphere will differ depending on which is given priority, freedom of speech or dignity.

Waldron does not explicitly discuss this issue. Nevertheless, because the discussion of the dignity of citizenship includes an attempt to reconstruct the normative model of legislative power in order to provide new legitimacy to the democratic process in society, it is permissible to take important cues from this discussion.

According to Waldron, citizenship is a high, equal, dignified social status within a particular political system (see Waldron, 2013, 334). Therefore, the dignity of citizenship is established in the *constitutive* relationship that citizens have to the state as members of the state. Here, the word “constitutive” means that this dignity of citizenship is a status that constitutes a human right. However, this does not necessarily mean that the dignity of citizenship is integrated into human dignity itself. Thus, the *dignity of citizenship* is not identical to *human dignity*, and the

¹³ As will be discussed below, because public logic also includes this attitude toward others as a component, it will be necessary to further examine whether hate speech regulation can be limited to “public” speech. For example, Chikako Mori stresses the need for a thorough review of attitudes toward others. See also Mori (2014), 15, for more on this.

dignity of citizenship likely represents one potential actualized form of human dignity (Waldron, 2013, 336). Here, we can read Waldron's basic stance on understanding dignity. That is, law creates and constitutes ideas such as dignity and rights and "does not just borrow them from morality," and therefore, "it is probably not a good idea to treat dignity as a moral conception in the first instance or assume that a philosophical explication of dignity must begin as moral philosophy" (Waldron, 2015, 15). Waldron's framework tries to eliminate the distinction between the moral and legal dimensions of the concept of dignity and reduce the former to the latter, and hence it emphasizes the *dignity of citizenship*, but this in turn prevents *human dignity* from being properly positioned. This is Waldron's weak point.

It could be also said that his understanding of dignity has an affinity with the concept of citizenship because they are both closely related to social status. Therefore, when dignity is discussed, it is not surprising that the dignity of citizenship is pushed to the foreground. Moreover, the fact that it is also *constitutive* in the relationship between citizen and state implies that it is also *constitutive* for the public sphere. At this point, Waldron uses Kant's political philosophy as a guiding thread, but what is important in relation to the public sphere is the issue of Kant's social contract theory. In the next section, I will examine Waldron's interpretation of Kant.

3 Kant's Political Philosophy as a Guiding Thread

Waldron analyzes Kant's theory of the social contract, or the "original contract", through a comparison with Hobbes. Here, I would like to analyze the issues related to the public. Waldron quotes at length from the discussion in *The Metaphysics of Morals* (see MS VI: 312) to emphasize the "structural similarities" between the arguments of Hobbes and Kant.¹⁴ However, he also mentions the differences between them, and here I examine some of his arguments regarding these differences because they provide important points of discussion.

- (1) Waldron points out that "Kant believes that a ruler has obligations to his subjects which may be articulated in terms of a (hypothetical) contract. Hobbes does not, for he rejects the idea that the sovereign is party to the social contract" (Waldron, 1999, 43). He then positions freedom of speech, in Kant's case, as inextricably linked to this duty as a right of the subjects. With this proper positioning, we can see that freedom of speech is indispensable as a right of citizens in a state of citizenship established through the original contract and therefore freedom of speech is essential to maintaining the state of citizenship as a legal state.

¹⁴ Waldron has hit the nail on the head when he emphasizes the influence of Hobbes on Kant, noting that Kant introduced Hobbes's logic in the transcendental methodology of the *Critique of Pure Reason*. See Waldron (1999), 43.

- (2) In the state of nature assumed by Kant, the “provisional acquisition” of external resources is established (Waldron, 1999, 50). In the state of nature, of course, the state has not yet been constituted, and hence, the state of nature is a non-legal state. However, the fact that “provisional acquisition” is established in the state of nature as a non-legal state implies that private law is a springboard to the state of citizenship and the moral perspective is significant in the Kantian state of nature. Therefore, Waldron examines the “omnilateral” will that is essential for the establishment of the state of citizenship from a moral perspective (Waldron, 1999, 54). In doing so, he refers to Arendt’s interpretation of Kant but ultimately concludes that the omnilateral mode of thinking cannot be secured by morality. Waldron does not emphasize the importance of private law but, rather, the point that morality works even in the state of nature is paradoxically an important one. However, Waldron emphasizes the *dignity of the citizen* after the establishment of the original contract, while he does not properly consider the dignity of the human beings before the establishment and rarely discuss its significance.
- (3) According to Waldron, the reason for entering into a social contract in the transition from the state of nature to the state of citizenship is, in Hobbes’s case, the survival of the individual, that is, self-preservation, whereas in Kant’s case, it is the rights of the self and others, a “univocal system of rights” (Waldron, 1999, 58), which is a system of positive law. In Kant’s case, it is the rights of the self and others. This is what guarantees security. Waldron notes, however, that “Kant’s position surely cannot be that whatever is positive law is substantively right on the merits” (Waldron, 1999, 59). Waldron does not develop this issue further, but it is important to be aware of it.

In the above interpretation of Kant, we can already see the germ of a conflict between freedom of speech and dignity. Using Waldron’s article “The Dignity of Citizenship,” I would like to clarify a point that is complementary to Kant’s interpretation. This approach will also explore issues related to who is responsible for maintaining the state of citizenship established through the original contract and where and how dignity functions.

In this paper too, Waldron emphasizes that Kant is a social contract theorist and takes seriously his contract theoretic framework. In other words, citizens are responsible for supporting the state as its founders and maintaining the legal state as drafters of legal and constitutional institutions, and the logic that grants dignity to such citizenship is social contract theory (see Waldron, 2013, 341). Therefore, *citizenship* means that citizens have a respected status as founders and drafters of these institutions and hence the dignity of citizenship is the dignity associated with the social status that makes citizens responsible for creating and maintaining the legal and political structures of the state.

From this *dignity of citizenship*, Waldron derives an important argument regarding the public sphere.

“But the general principle, underpinned by elemental respect for the dignity of citizenship, is that everything is to be open for scrutiny and discussion so that the

citizenry can form their own view of it, as though the polity and all political decisions being made in it were theirs” (Waldron, 2013, 342/12 (9)).

This means open discussion and publicness, including access to all knowledge and information for all citizens. Citizenship is the very foundation of republican governance and democracy. Publicness is a fundamental component of public life and it is closely tied to the right to free speech. Therefore, the argument that this publicness is based on the dignity of citizenship hits a wall when we deal with the issue of hate speech. The principle of publicness implies that everything should be open to scrutiny and debate and, if it is an unrestricted principle, then hate speech can be considered merely *speech* subject to scrutiny and debate. That is, the application of this principle to hate speech could, paradoxically, be seen as granting it the status of speech and allowing it into the public sphere. If this is the case, then the freedom of speech that permits hate speech damages and destroys the dignity of citizenship, which is the very foundation of freedom of speech. It is not difficult to see the complex dilemma between dignity and freedom of speech here. Thus, dignity and freedom of speech fall into the antinomy described in Sect. 1. However, placing dignity at the foundation of freedom of speech implies giving dignity a stronger normative force than freedom of speech, and carefully restricting freedom of speech to ensure dignity will involve regulating hate speech. In other words, freedom of speech is not unrestricted, and only when we accept this claim, can we adopt an antinomian position.

Even if we can summarize Waldron’s argument as above, some problems do remain. One of them lies in Waldron’s combination of citizenship and dignity. By linking the two, he suggests that dignity is deeply committed to the public sphere that is closely related to citizenship, but how it is committed is not always clear. The reason for this is that Waldron does not always draw a clear distinction between the state dimension and the public dimension. Kant, in contrast, distinguishes between the two dimensions in principle. Another problem concerns the understanding of dignity itself. Waldron understands dignity as a high social status and emphasizes the tension between human dignity and civil dignity, seeing the latter as the actualization of the former. However, according to Waldron’s understanding of the social contract, human dignity should already be established in the state of nature, where private law is valid, and Waldron borrows the basic definition from the *Groundwork of the Metaphysics of Morals*. In other words, human dignity “consists in just this capability, to be universally legislating, if with the proviso of also being itself subject to precisely this legislation” (GMS IV:440/ trans. Kant, 2011, 109). Kant refers to the “dignity of humanity” (*Würde der Menschheit*) in this quoted passage, but we will not analyze this term now. Waldron adopts this basic definition and expands on it by focusing on the universal legislative capacity, saying that “as humans we have capacities that are already civic or citizenly in form even before we make ourselves into citizens in an active polity.” He continues, “So our human dignity is in large part the dignity of (potential) citizenship” (Waldron, 2013, 331/119). At this point, Waldron states that, in Kant, political philosophy is superior to moral philosophy; however, the “capacity to give universal law” in *Groundwork of the Metaphysics of Morals* is nothing but the moral capacity to legislate moral laws. Despite the dominance of

political philosophy, Waldron's understanding of dignity is problematic because it fails to properly determine the moral dimension of the concept of dignity. Moreover, even if we understand dignity as a high social status, Waldron has to rely on the historical background of Cicero's usage, when asked what the normative basis for this *high status* is. The normativity of the concept of dignity cannot be reduced to such an accident of history. In the next section, I would like to reiterate my interpretation of Kant's original contract and analyze the scene in which the public and dignity are interconnected.

4 The Public Sphere as the “Institutionalization of Institutionalization”¹⁵

According to Kant, we need “an original contract on which alone a civil and thus consistently legal constitution among men can be based and a community established.” This original contract (*ursprünglicher Kontrakt*) is “a mere idea of reason, albeit one with indubitable practical reality, obligating every lawmaker to frame his laws so that they might have come from the united will of an entire people, and to regard any subject who would be a citizen as if he had joined in voting for such a will” (TP VIII:297).¹⁶ In other words, Kant's original contract expresses the idea of the so-called rule of law and also describes the normative model of the state as “the ideal of legislative, administrative, and public justice” (*Gesetzgebung, Regierung und öffentlichen Gerechtigkeit*) (Ref. 7734 XIX:503). Kant sums this up succinctly, “A state (*civitas*) is a union of a multitude of humans under laws of Right” (*Ein Staat (civitas) ist die Vereinigung einer Menge von Menschen unter Rechtsgesetzen*) (MS VI:313).¹⁷ These *Rechtsgesetzen* may correspond to what Waldron calls “the system of positive laws.”

According to Kant's conception of the state, the state is a self-organized form in which free and equal individuals introduce a system of public justice and the legitimate determination of rights in such a way that it is based on a universally integrated general will. Thus, while the Aristotelian state exists to attain a good life, and the Hobbesian state aims at the self-preservation of humans, “The proposition *salus publica suprema civitatis lex est*—the public welfare is the community's highest law—remains undiminished in validity and public esteem; but the common weal to be considered first of all is precisely that legal constitution which secures the freedom of everyone by means of laws, leaving him to pursue his happiness by whichever way seems best to him as long as he does not infringe upon that universal freedom under the law and thus upon the rights of other fellow subjects” (TP VIII:298).

¹⁵ This section is based, in part, on Kato (2007), 285ff.

¹⁶ I use the translation by E. B. Ashton, KANT, I. (1974). *On the old saw: it may be correct in theory, but it will not work in practice*. Philadelphia, University of Pennsylvania Press.

¹⁷ English edition, slightly modified: Kant, Immanuel. 1991. *The metaphysics of morals: introduction translation, and notes by Mary Gregor*. Cambridge: Cambridge University Press, 124.

It is clear from this statement that the Kantian state is a *Rechtsstaat* that aims at the coexistence of external freedoms based on the law derived from reason and, at the same time, contributes to opening the space of freedom of action by making this coexistence possible.¹⁸ Because the state in which this coexistence of external freedom is realized is “public justice,” the Kantian state is above all a state for justice. Such a legal state includes the three powers of legislation, execution (executive power), and justice as a “*trias politica*” (MS VI:313). This political trinity is not only a power-division of the process by which the state achieves public justice but also a functional institutionalization of the three independent elements of that process. Therefore, when these powers coalesce and their divisions become unclear or when subordinate relations arise between them, the state loses its autonomy and cannot function adequately (see MS VI:318). As a result, the realization of justice becomes difficult, and the free space of action is damaged. This is why Kant is skeptical about the right to resistance in every sense. In Kant’s words of *Theory and Practice*, “... the power within a state that gives effect to the law is also unopposable (*irresistible*), and there exists no rightful commonwealth that can hold its own without a force of this kind that puts down all internal resistance, since each resistance would take place in conformity with a maxim that, made universal, would annihilate any civil constitution and eradicate the condition in which alone people can be in possession of rights generally” (TP VIII:299). If the right to resistance is accepted, the state, which is a legal state, will fall into self-contradiction by continuously holding within itself the state of nature, which is a non-legal state, even if only locally, and the law itself will lose its validity and meaning. The original contract itself will be nullified, and the freedom of external action will be lost.¹⁹

In this way, it is easy to see how Kant emphasized the rule of law and legal institutionalization derived from reason. In this respect, Kant was much influenced by Hobbes. However, while Hobbes’s framework of social contract theory only considers this first-order institutionalization, Kant’s original contract structurally introduces the possibility of second-order institutionalization or, in other words, the “institutionalization of institutionalization.” The two are fundamentally different, because Kant does not describe the myth of infallibility of the sovereign in the same way as Hobbes, even though he denies the right to resistance and asserts the sacredness of the sovereign. In the Hobbesian system, as Waldron emphasizes, the sovereign, as the ruler who has acquired supreme control, does not owe any duty to the people²⁰ on the basis of contract, and furthermore, no infringement of rights can occur in the absence of contract. In other words, because the sovereign is above the law, the sovereign does not legally infringe upon any rule regarding the people, and

¹⁸ It is important to note that, although “public welfare” is originally a concept emphasized in utilitarianism in relation to the problem of happiness, in Kant’s case, it is reinterpreted in relation to the problem of law. It can be read as a kind of criticism of utilitarianism.

¹⁹ In respect to this issue, Maliks also analyzes as follows: “Like Hobbes, Kant concludes ... and that the right to resist would introduce lawlessness, a return to the state of nature.” (Maliks, 2014, 121).

²⁰ To be precise, in *Leviathan*, the “people” do not yet exist. Only “subjects” do.

in this sense, the sovereign is, in principle, sacred and infallible and not subject to criticism.

Kant, on the other hand, provides the principle of “freedom of speech” (*Freiheit der Feder*) and, therefore, that of “publicness” (*Publicität*). The former has already been discussed to some extent, so there is no need to explain it again. However, the latter is even more important in relation to the moral and legal foundations of the “original contract” and directly related to Waldron’s points (2) and (3) analyzed in the previous section.

Kant locates publicness as the principle that first institutionalizes reason in the “transcendental formula of public right” (*transscendentale Formel des öffentlichen Rechts*), which stipulates that “any action that concerns the rights of others is unjust if its maxim is not consistent with publicness” (*Alle auf das Recht anderer Menschen bezogene Handlungen, deren Maxime sich nicht mit der Publicität verträgt, sind Unrecht*) (Frieden VIII:381).²¹ The fact that this formulation is based on a multilayered structure of morality and legality is immediately supported by Kant, who adds, “This principle is to be understood as being not only ethical (as belonging to the doctrine of virtue), but also juridical (as concerning the rights of humans)” (Frieden VIII:381). Thus, insofar as Kant emphasizes that “a state (*civitas*) is a union of a multitude of men under laws of Right” (MS VI:313), the *inner* normativity of the state and the normativity of law are also derived from the normativity of *morality* and practically maintained because they penetrate the state and law as a *formula* (*Formel*). Therefore, it could be said that, “once a legal space is opened, it is concretely constituted into a certain legal system.”²² However, due to the fact that the ground of legal norms is located in a morality external to the law, this means that the “positiveness” of positive law cannot be made absolute, so legitimacy cannot be reduced to legality in the original contract, at least as long as the “formal principle” of practical reason is valid (see Frieden VIII: 377). Moreover, as Waldron aptly points out in (3), when such a practical law turns out to be unjust in reality, the criterion for evaluating it cannot be derived from the practical law itself.²³ This is just one of the most important characteristics of Kant’s original contract.²⁴ This is due to the fact that Kant’s original contract implies that, in the state of nature, private laws are valid and, as in Waldron’s analysis, morality is at work outside the practical law. Therefore, when the substantive content of the positive law is not correct, this morality is invoked to correct it.

²¹ I use the following English edition: Kant, Immanuel, Pauline Kleingeld, David L. Colclasure, Jeremy Waldron, Michael W. Doyle, and Allen W. Wood. 2006. *Toward perpetual peace and other writings on politics, peace, and history*. New Haven: Yale University Press.

²² Schönrich (1994), 80/91.

²³ See Schönrich (1994), 80/91.

²⁴ This is also why the transcendental formula refers to the maxim, even though, in law, it is only the external nature of action that is concerned, and this is where the problem of the legitimization of law comes into play, as well as the question of how the formal principle of practical reason can remain effective as a form. This is also the focus of the question of how the formal principle of practical reason can be effective as a formula.

According to Kant, in these situations, there is, in reality, a conflict between two justices, that is, a conflict between *the justice arising from the state* and *the justice arising from the people* (see MS VI: 337). This conflict also reflects the opposition of two uses of reason, that is, the opposition between the private use of reason and the public use of reason. Both problems are deeply related to the task of second-order institutionalization, that is, the further institutionalization of the institutionalization carried out by the original contract. Kant thematizes this second-order institutionalization, especially in relation to the latter (public) use of reason.

Because the private use of reason is only carried out in accordance with the self-evident framework to which it belongs and within the permissible limits of its regulations, questioning the actual law at issue is not allowed, nor is it reflected upon, and in this sense, no discussion is allowed (see WA VIII:37). Moreover, insofar as the system of positive law is a means of realizing the government's objectives, the private use of reason is merely an instrument under the control of the government to accept and fulfill its dictates, and in this respect, reason remains passive and instrumental, without radically questioning the existing system (see WA VIII:37). Such private use does not advance enlightenment or improve laws and institutions but, rather, it promotes their functioning as privileges of the powerful. As a result, the public justice that the original contract aimed at cannot be secured. The state, as a legal space and a free space of action, is embodied in various positive laws, but if the use of reason is restricted to private use, then reason cannot have its self-critical function and it can, instead, only justify positive laws, without criticizing the state and its government. Moreover, it would be impossible to go beyond the current institutional framework of the state and open up a vision of history and society. Such private use cannot lead to a critical citizenship. This is why Kant restricted the freedom of the private use of reason.

In fact, Kant urges a change in attitude toward reason, specifically the public use of reason, which is defined as "the use of reason that a person makes as a scholar in front of the whole public of the reading world" (see WA VIII:37). In this case, "as a scholar" (*Gelehrter*) means "as a member of civil society (or even world civil society) without distinction of rank or status," and "in front of the whole public of the reading world" means "by appealing to a community that is not limited by institutional affiliation."²⁵ Thus, the significance of the public use of reason is that it is subject to public criticism, with unlimited freedom regarding that criticism. I should add that this unlimited criticism is practically possible only because the state is self-limited to the space of legal debate and, thus, the means of regulating action or resolving conflicts is limited to speech. The fundamental tenet of critical philosophy can be confirmed here: Everything must be subjected to criticism (vgl. KrV, AXI, Anm.). Moreover, as a result, the current positive laws and legal systems themselves become concrete objects of criticism, and they are fundamentally reexamined from within. However, although everything must be subject to criticism, this does not necessarily mean that freedom of speech is unrestricted. When it "surely cannot

²⁵ See Chartier (1991), 25 and following.

be that whatever is positive law is substantively right on the merits,” (Waldron, 1999, 59), under what circumstances is a particular positive law deemed ‘incorrect’ and a new institutionalization carried out? This is nothing but the problem of the “other” of the system. In the case of the private use of reason, the space is merely a “family gathering” (nur eine häusliche, obzwar noch so große Versammlung ist) (WA VIII:38). In the family-like and homogeneous space in which private use is appropriate, there is no “other” in the first place, because others have already been eliminated and private use does not have a logic that criticizes the current system of practical laws and goes beyond the current institutional framework. Meanwhile, the “actual public, i.e., the world” (WA VIII:38) that the public use of reason seeks to confront is a space that encompasses the “others” who have been excluded from the “family gathering” of private use. Such others are precisely the others of the current legal system, who are excluded from the legal system and are neither legally nor institutionally recognized or protected. For example, the infanticidal mother discussed in *the Metaphysics of Morals* would be a concrete example of this (see MS VI: 336f.). Thus, such a public use is an attitude that reason takes toward such others, an attitude and practice that seeks to respond to the “others” whom it has not seen before or, rather, not even attempted to see. The public use is a radical *political* attitude and practice that makes state power the object of criticism by self-critically questioning the state of laws and institutions and exposing them to the unrestricted criticism of the *world*, the “actual public.” The *closed* space based on private use is thus self-critically transformed into a space *open* to others through public use. At the same time that the same space appears differently with a change in the reason’s attitude toward the others the public space emerges vividly as a political space through this very public use. At the same time, this means that the political sphere is required to respond to the gap between the idea and the reality inherent in the state as a legal space and a space of freedom of action. The public use of reason is a means of correcting and ameliorating the distortions of reality in order to realize the idea or purpose of the state as a legal one, which requires mutuality and fairness.

Why does the need to include the other require the public use of reason?. Here I consider the concrete case of “infanticide (Kindesmord)” in *the Metaphysics of Morals*. Kant explains as follows:

there are, however, two crimes deserving of death, with regard to which it still remains doubtful whether legislation is also authorized to impose the death penalty. The feeling of honor leads to both, in one case the honor of one’s sex, in the other military honor, and indeed true honor, which is incumbent as duty on each of these two classes of people. The one crime is a mother’s murder of her child (infanticidium maternale); the other is murdering of a fellow soldier (commilitonicidium) in a duel.—Legislation cannot remove the disgrace of an illegitimate birth any more So it seems that in these two cases people find themselves in the state of nature, and that these acts of killing (homicidium), which would then not have to be called murder (homicidium dolosum), are certainly punishable but cannot be punished with death by the supreme power. A child that comes into the world apart from marriage is born outside the law (for the law is marriage) and therefore outside the protection of the law. It has, as it were, stolen into the commonwealth (like contraband merchandise), so that the commonwealth can ignore its existence (since it was not right that it should have come to exist in this way), and can therefore also ignore its annihilation; and no decree can remove

the mother's shame when it becomes known that she gave birth without being married. ...— What, now, is to be laid down as right in both cases (coming under criminal justice)?—Here penal justice finds itself very much in a quandary. Either it must declare by law that the concept of honor (which is here no illusion) counts for nothing and so punish with death, or else it must remove from the crime the capital punishment appropriate to it, and so be either cruel or indulgent. The knot can be undone in the following way: the categorical imperative of penal justice remains (unlawful killing of another must be punished by death); but the legislation itself (and consequently also the civil constitution), as long as it remains barbarous and undeveloped, is responsible for the discrepancy between the incentives of honor in the people (subjectively) and the measures that are (objectively) suitable for its purposes. So the public justice arising from the state becomes an injustice from the perspective of the justice arising from the people. (MS VI:335f.)

These two cases are sometimes interpreted as Kant's commitment to the honor ethic, typically in Anderson's interpretation of Kantian Ethics. But, since Kant himself excised the concept of "military honor" in his *Anthropology*, it could be excluded in this context. However, cases of infanticide were so frequently found that they became one of serious social problems at the time, just as Goethe depicted as the tragedy of Gretchen in his *Faust*. The overwhelming majority of unmarried mothers who end up committing infanticide are young women who come from poor farming villages to serve wealthy people such as aristocrats in urban cities. These young women become the sexual objects of their employers, the aristocrats, the bourgeoisie, or their sons, then become pregnant after premarital sex, but they are eventually abandoned by those men. Even if these women could complain to the court against such men, the latter people would hire an excellent lawyer at a high price to legally protect their rights. Then these young mothers often end up killing their own children in despair. What lies ahead is nothing less than a unilateral sentence of death in court.

By analyzing these sentences in detail, Pestalozzi points out that this system of the positive law is inadequate and becomes "injustice", since these mothers who should be generally protected by the law are outside the protection of the law, in this sense they are the weak of the law or the otherness of the law, and that what is found behind these cases of infanticide is the serious social problems with social discrimination and economic poverty or disparity that are very similar to those of today.²⁶ Moreover, Pestalozzi sees this problem, from a paternalistic point of view, as a conflict between "the justice of the state (die Gerechtigkeit des Landes)" and "people's happiness (Volksglück)",²⁷ but Kant differs from him. For Kant, this conflict lies just between "the justice arising from the state" and "the justice arising from people", and the public use of reason relies on the latter justice, and the latter justice is grounded on "true honor" that should be interpreted as the concept of "human dignity" (Cf. MS VI:363, note). That is to say, that "injustice" caused by this conflict essentially means nothing less than a violation of human dignity, therefore we could find out in this case a deep relationship between the public sphere and the concept of human dignity. Only through the public use of reason we can discover such human beings

²⁶ See Pestalozzi (1930), *Kindesmord*, *Sämtliche Werke*, 9. Bd., Berlin/Leipzig, 29.

²⁷ See Pestalozzi (1930), 41.

as young mothers described above as others outside the present institutions. Then, through political reforms of the present institutions we can include them step by step in the civil society as “equal” human beings that have human dignity. Such a process is precisely that of forming the public sphere.

Here I summarize the meaning of the case of infanticide: Her human dignity is damaged by the fact that the private reason that generated this law excluded her point of view and ignored her interests and therefore failed to treat her as a human being. Hence, first of all, the public use of reason is called for in order to discover such others outside the system of the positive law and revise the positive law itself so that it can include such others. At this point, while the system of the positive laws relies on “the justice arising from the state”, the public use is based on “the justice arising from people”, which effectively means human dignity or dignity of human beings. The conflict between these two forms of justice creates the difference between the state and the civil society grounded on the public sphere, as well as the difference between law and morality. In the first place, “the justice arising from the state” is established through the first-order institutionalization of the original contract or the social contract in Kantian word, but it is human dignity, as “the justice arising from people”, that is called upon to discover the problems, identify them as damage to dignity, and remedy them in order to carry out the second-order institutionalization. Therefore, the public sphere opened up by the public use relying on human dignity is a political space in which citizens participate as equal human beings, to concretely carry out the institutionalization of institutionalization, in an attempt to realize true justice and a society with dignity. The reality of public justice established by the original contract will be colored and modified by dignity. Needless to say, human dignity is a moral concept that was already established in the state of nature, and it is a powerful moral norm that is always invoked to resolve serious damage to dignity in the civil state. It is only from the external moral point of view of the system that flaws in the system of practical laws can be pointed out. This is because, within the system, practical laws must be consistent with one another. In fact, morality outside the law is essential for finding and pointing out problems in the law, and such morality is just a starting point of the institutionalization of institutionalization.²⁸ The public use of reason is the engine that drives the institutionalization of institutionalization, and human dignity is the moral energy source that drives that engine.

This confrontation between the two forms of justice also creates a phase in which the public critically confronts the state. To borrow an expression from the *Politik der Würde*, the German translation of Avishai Margalit’s *The Decent Society*, the public sphere is a site of struggle over dignity, politics over dignity, struggle over justice, and politics over justice²⁹; however, even if the public sphere is the space for such political struggle, and this struggle should be carried out through real discussions among equal citizens, it should be recalled here that such spaces have been formed by the public use of reason based on the principle of human dignity. In other words, inside such public spheres, even citizens who disagree with different opinions of other

²⁸ In this case, “outside the law” does not mean “extrajudicial.”

²⁹ Margalit (2012).

citizens are required to respect human dignity of all other citizens and then care for their own vulnerability on occasion of discussions. That's why, through the public sphere, the previously invisible or disregarded others are discovered and included, which makes it possible to promote democratization and pluralization. Through this process, the public sphere aims to realize both justice and dignity. More precisely, if a just state is formed through first-order institutionalization, the public sphere aims to improve this national justice, which is Kant's public justice, into a true justice that is dignified through second-order institutionalization.

From the perspective of the public structure described above, hate speech attacks the core of the public sphere and causes genuine harm to it. This is why Waldron's statement that hate speech regulation should be based on "dignity damage" rather than "offensiveness" hits the nail on the head, though he fails to properly distinguish between the state and the public sphere and fully understand the double meaning of the public. These are rather problematic.

While justice is more closely related to publicness and free speech, and dignity is directly related to a dignified society, hate speech raises fundamental questions about the priorities of these two concepts in very different ways. Thus, if we decide that publicness and freedom of speech are means toward justice, not ends in themselves, and also that dignity, in contrast, is one of the very ends that the public sphere should seek to achieve, then hate speech is a means by which publicness and the freedom of speech are misused or abused to achieve justice. Considering that hate speech is a case in which publicness and freedom of speech are misused or abused and function inappropriately as a means to realize justice, dignity is the normative principle that can point out and correct such misuse or abuse.³⁰ Thus, dignity is given a stronger normative force to constrain freedom of speech. Hence, freedom of speech is never unconstrained.

However, a big problem remains. That is, when we understand dignity as a higher social status, as Waldron does, can such an understanding properly underlie a normative force strong enough to constrain free speech when necessary? I would like to discuss this problem briefly in the conclusion.

5 Conclusion: From Dignity as Social Status to Dignity as Absolute Intrinsic Value

Waldron identified dignity with social status, stipulating that "to dignify the status of citizen we tell ourselves stories about social contract" (Waldron, 2013, 341/21). It is an understanding of dignity based on the Stoic concept of *dignitas*. This Latin word is a translation of the Greek ἀξία/axia or ἀξιωμα/axioma, which means "inner

³⁰ Here, the issue of censorship is involved. It is, of course, not a question of censorship by state power, i.e., "censorship with power;" but of "censorship of censorship itself," which is based on reasoned criticism; on this possibility, see Miyazaki (2015), 111.

worth” and was originally applied only to the Roman nobility.³¹ Therefore, *dignitas* originally implied a social status, and Waldron brought it into the modern age and universalized it to all citizens so that all citizens would have such a high social status as dignity. At this point, however, there is a serious crack in the foundation of dignity.

- (1) Emphasizing the history of the concept of *dignitas* implies that dignity is theoretically subjected to historical coincidence. This coincidence possibly includes the political disqualification of the nobility and their loss of *dignitas*. Such coincidences cannot form the basis of a normative dignity strong enough to constrain free speech in some cases.
- (2) Waldron also relates dignity to the logic of mutual recognition. To be more specific, a lack of recognition for a person means that dignity is not conferred on him or her. However, considering that dignity is the weapon that makes it possible to engage in the struggle for recognition in its absence, I would argue that a person should be considered to have dignity even if recognition is lacking or ignored. Therefore, it is completely futile to base dignity within the framework of mutual recognition theory.
- (3) Waldron tells the “story of the social contract” in relation to dignity and appreciates Kant’s original contract. However, Waldron discusses dignity as a legal concept, and hence it is in the civil state that the “dignity of citizenship” is established, not in the state of nature. Therefore, human dignity is, in a sense, neglected. If this is the case, then we cannot talk about the dignity of citizenship in a meaningful way for groups that do not form a state or for organizations that are not recognized as a state. However, not only groups and individuals within the state but also those existing before its formation would need respect for their dignity. In fact, for the latter, this need may be all the more urgent because they are often oppressed. Therefore, focusing on the “dignity of citizenship”, as Waldron does, may shorten and weaken the normative scope of dignity, which is not necessarily a good idea. Moreover, in Waldron’s understanding, dignity can be gained and lost, and move up and down the pecking order. Furthermore, maintaining a high social status would require an appropriate capacity of responsibility, which would make it rather difficult to universalize dignity for all citizens, let alone for all people.³² The required capacities, if any, should be minimal and need not be realistic.

For these reasons, it is difficult to say that a Waldronian understanding of dignity is sufficiently normative to ensure that freedom of speech is sometimes socially

³¹ For more on this, see Kato (2017), 10f.

³² Tsunemasa Arikawa writes, “(...) When ‘individuals who do not have high status’ are incorporated into a legal system that was originally appropriate only for ‘individuals of high status,’ it is necessary to verify whether ‘individuals who do not have high status’ have the ability to participate fully in the legal system. When ‘individuals who do not have a high status’ are incorporated into the ‘legal system,’ it must be forbidden to identify the universalization of high status therein without going through the procedure of verifying whether ‘individuals who do not have a high status’ are ‘capable of fully participating in the legal system’ and reassessing whether they are ‘capable of fully participating in the legal system.’ This is what Waldron’s teaching should have led us to in order to fully grasp law as law, and then, he raises two important questions”.

constrained. Therefore, it is necessary to move from dignity as *social status* to Kant's *absolute intrinsic value* of dignity.³³ Of course, re-defining dignity as an absolute intrinsic value does not mean that we retreat from the public sphere to the inner world. Rather, the opposite is true. In re-defining dignity, we have turned it into a more powerful political weapon, one capable of identifying and politicizing serious social problems. Only then can dignity be sufficiently normative to correct the misuse and distortions of free speech. The public sphere is the place where such dignity can function effectively.

*This paper is grounded on my paper "The Public and the Dignity" and then added a lot to it.

Quotations from Kant's writings are based on the Academy's edition of Kant's Complete Works, with Roman numerals for volume numbers and Arabic numerals for page numbers in the text. I have abbreviated *Groundwork of the metaphysics of morals* as *GMS*, *The metaphysics of morals* as *MS*, "Theory and Practice" as *TP*, "What is Enlightenment" as *WA*, and "Reflexion" as *Refl.* *Critique of Pure Reason* is abbreviated as *KrV*, and the first edition is abbreviated as *A*.

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³³ For more on this, see Kato (2017).

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Chapter 3

Learning from Historical Injustice?



On the Significance of War, Violence and Degradation for Theorizing Human Rights

Arnd Pollmann

Abstract The history of human rights and human dignity is to be told as a legal history of the collective “processing” of experiences of historical injustice. The supposed “triumph” of these two ideas has been bought at the price of monstrous violence, countless victims of war and barbaric dehumanizing. However, a methodological difficulty arises if philosophical legal theory wants to claim such a “learning process”: the original historical experiences of war, violence and degradation are hardly accessible to analysis from today’s perspective. Instead, academic discourse is always dependent on historical documentation, eyewitness accounts and, above all, literary-autobiographical memories in which these forms of injustice have already been interpreted. This is exemplified by recourse to the famous memoirs of Jean Améry, which reveal a philosophically revealing experiential connection between human rights on the one hand and human dignity on the other.

Laws are not written on parchment, but on sensitive human skin.

Fritz Brauer

From the perspective of the early twenty-first century, it may sometimes seem as if the history of human rights should be told as a success story constantly progressing; as a historical “victory” of combining philosophical ideas, revolutionary political declarations as well as historically groundbreaking legal conventions.¹ However, these very ideas, proclamations and declarations mostly emerged from experiences

¹ On the state of research concerning interdisciplinary discussions: Arnd Pollmann/Georg Lohmann (2012).

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of blatant injustice or even massive violence, from arbitrary political rule, state terror or even devastating wars. This historically unpleasant insight very often recedes into the background. A famous example of the importance of those experiences is arguably the most symbolic document of all human rights developments, namely the *Universal Declaration of Human Rights* of 1948. It reminds us in its preamble that the “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind”. And from today’s point of view, it is very unlikely that this “mankind”—which had just been “united” within the new framework of the United Nations—would have made such a concerted decision to protect human rights under international law, if the global catastrophe of the two world wars and the fascist barbarities in Nazi Germany and elsewhere had not sent out the message, which could now be heard worldwide, that such disasters must not be repeated.²

From the perspective of the history of philosophical ideas, these in part monstrous experiences of historical injustice in the twentieth century—interpreted as a *worst case scenario* that erupted and caused some kind of global rethinking—brought to fruition a famous prognosis from the late eighteenth century, according to which the progressive globalization of political relations would lead—step by step—to a worldwide awareness of historical injustice and thus also to progress in positive international law. It was Immanuel Kant who wrote in 1795 in his treatise *Toward Perpetual Peace*:

Since the (narrower or wider) community of the nations of the earth has now gone so far that a violation of right on one place of the earth is felt in all, the idea of a cosmopolitan right is no fantastic and exaggerated way of representing right; it is, instead, a supplement to the unwritten code of the right of a state and the right of nations necessary for the sake of any public rights of human beings and so for perpetual peace; only under this condition can we flatter ourselves that we are constantly approaching perpetual peace.³

Kant was already hoping or even of the conviction that, in reaction to local but globally witnessed violations of human rights, serious *global* legal progress would come about, with which the international community of peoples would agree on a world order providing for peace in favor of the rights of individual “citizens of the world”. In the following essay I want to tie in with this visionary, but after 1945 no longer *utopian* hope of Kant: The history of human rights, as it will be shown, is—last but not least—to be told as a legal history of the collective “processing” of experiences of historical injustice. The supposed “victory” of human rights in the twentieth century has been the tragic result of monstrous violence, countless victims and dehumanizing suffering. Therefore, if human rights theory wants to make sense of the historical “meaning” of human rights after 1945, one will have to follow these traces of war, violence and degradation that have etched themselves (and continue to etch) into modern human rights thinking.⁴

² For a historical survey from a legal perspective: Jan Eckel (2014).

³ Immanuel Kant (1997).

⁴ To avoid a possible misunderstanding right from the start: The “learning processes” envisaged here in this essay do not imply a historical “continuity” in the form of linear or even necessary

However, a central *methodological* difficulty must be mentioned: “Original” or authentic experiences of war, violence and degradation are hardly accessible from today’s perspective. The academic discourse on human rights violation is rather dependent on historical documents and documentation, reports of eyewitnesses as well as on literary, autobiographical works in which historical injustice has already undergone a certain process of reflexive interpretation. The extremely difficult methodological question is, how exactly the personal or biographical experiences documented in these exemplary testimonies do relate to any *collective* learning processes that are reflected in corresponding and ongoing developments of human rights thinking. But this difficult question will be answered here only to some extent.⁵ The following considerations are rather to be understood as basic initial or propaedeutic hints as to how the historical “legacy” of inhuman or even barbaric experiences of injustice could be tapped by a philosophy of human rights well informed by contemporary history.⁶

The first main section of this essay will deal with the conceptual linking of the ideas of “human rights” and “human dignity”, which can be understood as a legal-philosophical as well as international answer to the civilizational ruptures of the twentieth century. In the second step, the “totalitarian content” of the experience of violations to human rights and human dignity will be discussed; mainly by referring to the impressive memoirs of Jean Améry. In the third section, this will lead to the central conceptual insight that human rights theory should distinguish between “fundamentalist” and “relativist” violations of human rights and that by no means *every* violation of a human right is at the same time a fundamentalist violation of human dignity. Thus, two very different forms of experience of discrimination and human rights violations are labeled. These two different experiences unfold in correspondingly different political dynamics as soon as public disputes, and thus political struggles against concrete human rights violations, arise. At the end, the main upshot of these reflections will be the following: the dynamics of experience-saturated struggles against human rights violations and corresponding discrimination as analyzed here do result in a historical learning progress of national and international law, which draws *ex negativo* a diametrically opposed lesson from grave experiences of inhuman unequal treatment.

progress. The important insights of modern human rights thinking brought about by wars and totalitarian violence could, viewed historically, also have failed to conceptually materialize if those very catastrophes, some of which were monstrous, had not occurred.

⁵ For an historical as well as literary attempt to reflect on the “invention” of human rights set in the age of the bourgeois revolutions of late eighteenth century see Lynn Hunt (2007).

⁶ In the following, I must limit this account to only a few literary and famous autobiographical works. I am aware of the methodological difficulties of this approach; especially, of the selectivity and literary subjectivity of any selection of authoritative works. In the propaedeutic context of this conceptual proposal, it may suffice to point out that the famous testimonies drawn upon—because of their “success” with contemporary audiences—may be interpreted as sensitive condensations of experiences and reflections “typical” of the time.

1 Human Rights as a Response to the Civilizational Ruptures of the Twentieth Century

1.1 *The Original Catastrophe of the First World War*

Some years ago, in July 2014, marking the 100th anniversary of the outbreak of the First World War, the shelves of major bookstores were filled with voluminous bestsellers,⁷ conveying to their readers in rich detail the geopolitical causes and consequences of that “great seminal catastrophe of the twentieth century”.⁸ Far more than 17 million people met a violent death. But in those rather academic studies of history or political science, the reader usually learns little about the victims themselves and the very often horrifying violence they have experienced and suffered on the battlefields as well as in the trenches of gas warfare. How could such terrible experiences of violence be put into a “sober” scientific analysis? How to convey these experiences to an audience today that has only heard from stories about the First World War and thus the physical and psychological annihilation of an entire European generation of young men only from stories? In the context of this phenomenologically difficult undertaking, literary narratives and biographical memoirs may be far more effective; such as the famous novel *All Quiet on the Western Front* by Erich Maria Remarque, which was originally published in 1929 and may have shaped the public image of the personal or subjective horror of the devastating war like hardly any other work of world literature.⁹

During a frontline mission, the main character of the novel, Paul Bäumer, a young war volunteer, is wounded, and during his stay in a field hospital and in view of the human suffering that manifests itself there, the following thoughts come to his mind:

It is impossible to grasp the fact that there are human faces above these torn bodies, faces in which life goes on from day to day. And on top of it all, this is just one single military hospital, just one—there are hundreds of thousands of them in Germany, hundreds of thousands of them in France, hundreds of thousands of them in Russia. How pointless all human thoughts, words and deeds must be, if things like this are possible! Everything must have been fraudulent and pointless if thousands of years of civilization weren't even able to prevent this river of blood, couldn't stop these torture chambers existing in their hundreds of thousands. Only a military hospital can really show you what war is.

And the protagonist continues in a reflection on the fate of his whole generation of fellow sufferers that is both biographical and gloomily diagnostic of the times:

I am young, I am twenty years of age; but I know nothing of life except despair, death, fear, and the combination of completely mindless superficiality with an abyss of suffering. I see people being driven against on another, and silently, incomprehendingly, foolishly,

⁷ For example: Christopher Clark (2013); Herfried Münkler (2013).

⁸ This formula, popular in the historical sciences, goes back to the U.S. historian and diplomat George F. Kennan.

⁹ The estimated sales figures are over 20 million copies in more than 50 languages. I quote below from this edition: Erich Maria Remarque (1996).

obediently and innocently killing one another. (...) What do they expect from us when a time comes in which there is no more war? For years our occupation has been killing—that was the first experience we had. Our knowledge of life is limited to death. What will happen afterwards? And what can possibly become of us?¹⁰

Only some years before Remarque and equally under the impression of the historical catastrophe of the First World War, German theologian and philosopher Ernst Troeltsch was confronted with very similar horrors challenging also *intellectual thinking* of his time. According to Troeltsch, the massive catastrophe just experienced made it inevitably questionable whether and how philosophy would be able to react to this comprehensive “decomposition” of humanity in Europe and elsewhere as well as to the “nihilism” rampant in the following post-war period by acquiring any “new” moral values. In an academic lecture already written in the early 1920s and obviously under the acute shock of the war events¹¹ Troeltsch states: All “natural norms”—and all “supernatural” ones also—had proved to be completely illusory and incapable of stopping the catastrophe of war. Instead, the European value system had been carried to its grave on the blood-soaked and gas-fogged battlefields, and millions of human beings had been sacrificed to the nationalist interests of belligerent governments. Perplexed and desperate, the post-war world looks at a heap of ruins—architectural and also moral ones—and now asks itself how—under these circumstances—any kind of resurgence of enlightened humanity might ever come about again:

History demands a confrontation with the idea of an enduring and authoritative system of values, which, after all, seemed to be washed under and torn to shreds by this very current.¹²

The historical and philosophical answer, which Troeltsch himself sketched in his lecture, will prove to be truly visionary for the twentieth century: In view of the desolate fragmentation of Europe, indeed of the world as a whole, brought about by this terrible war, a global reflection on the very “ideal of humanity” must follow; and thus a reflection not on what distinguishes the German as a German, the Frenchman as a Frenchman, the Russian as a Russian, but rather on what makes a human being *a human being* and thus has to be regarded as the decisive equal aspect of everyone’s moral respectability. This, according to Troeltsch, is a twofold creative task: On the one hand, mankind, torn as it is, needs to reflect on what human beings are able to make out of themselves and their moral capacities in free and productive “self-creation”. Troeltsch calls this human capacity the creative potential of “human dignity”. On the other hand, every single human being should respect exactly this creative capacity of human dignity also on the part of every other human being. And it is precisely this universal claim to equal respect, which is to protect the human dignity of each individual human being, that is meant by the idea of inalienable “human rights”. In other words, and according to Troeltsch’s far-sighted view of both the philosophy of history and international law, the world after 1918 should seek a new normative framework of orientation first and foremost in a truly global

¹⁰ Ibid, p. 180.

¹¹ I cite and translate from Ernst Troeltsch (1995).

¹² Ibid., p. 29–30.

reflection on the mutually justifying *connection* between human dignity on the one hand and human rights on the other.¹³

1.2 *The Revolution of Human Rights Under International Law After 1945*

What neither Troeltsch nor Remarque nor any other sensitive contemporary may have suspected: another two decades will pass, and 60 million more people will die under often barbaric circumstances, before this historical and philosophical “message in a bottle” seems to arrive. It will only be the horrors of the Second World War and the monstrous experiences of totalitarian barbarities inside and outside Nazi-Germany through which the world community seems to come to its senses by establishing international laws reflecting on the violent connection between human dignity on the one hand and human rights on the other. It was not until 1945 that this “new” understanding of humanitarian values began to emerge on a *global scale*, according to which the threatened but converging world community, integrated both politically and by means of international law, had to declare rights of “the” human being—grounding them on the very idea of an equal, but empirically contested claim to human dignity.¹⁴

Thus, for example, the *Charter of the United Nations* from 1945 speaks of the “scourge of war, which twice in our lifetime has brought untold sorrow to mankind”. These sorrowful experiences should bring the international community of states closer together within in a whole new peace cooperation of international law “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”. And the *Universal Declaration of Human Rights* of 1948, as already quoted in part at the beginning of this essay also recalls that the “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind”, prompting the world to recognize the “inherent dignity and of the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice and peace in the world”. Therefore, even at the level of the United Nations, which had just been founded shortly after the Second World War, a conceivably close and implicitly violent connection between human rights on the one hand and human dignity on the other hand is asserted, which Troeltsch had already envisaged at the beginning of the 1920s: It is because every human being should live a decent life free from war, violence and barbarism and thus in *dignity*, that humanity as a whole—and now also all nation states and governments in this world—must see to it that human dignity is effectively protected by individual human rights.

Consequently, the philosophical conviction that the ideas of human dignity and human rights are “two sides of the same coin” seems to have seeped into international law after 1945 as a result of the historical experience of massive and inhuman

¹³ Ibid, p. 35–41.

¹⁴ Arnd Pollmann (2010).

injustice: From now on, whoever might claim for human rights will always do so also in the name of a fundamentally threatened human dignity. And the other way around: whoever believes in human dignity must at the same time stand up for its protection by universal human rights. And so, in the following period of stabilizing and expanding the United Nations, there is hardly any document relevant to human rights in which there is no explicit mention—usually right at the beginning—of the dignity of “the” human being, from whose worthiness of protection corresponding human rights are to be derived.¹⁵

This conceptual link between human dignity and human rights, which—from the perspective of the history of philosophical ideas—had not at all been familiar before, should be seen as the result of a mass experience of a historically unprecedented catastrophe. It was only after the Second World War that human dignity became a leading “legal concept”¹⁶; a legal good to be protected under both constitutional and international law and thus at the same time an “obligation of all state authority”, as it says, for example, in famous Article 1 (1) of the German constitution from 1949. Conversely, it was not until after the Second World War that it became legal practice to explicitly commit the idea of human rights to the protection of human dignity. This specific conceptual linkage, which has somehow “emerged” in legal history, can be interpreted in such a way that the horror of the two world wars and the totalitarian crimes within and outside Nazi-Germany—by being perceived worldwide—must have been *more* than just a global shock at mass violations of *specific* fundamental rights of the individual. Rather, there has been a worldwide shock about systematic “crimes against humanity” and thus about experiences of violent crimes that, in a sense, went *deeper* than legally codified experiences of violence and injustice before.¹⁷

What is meant by “deeper” here: these historically unprecedented forms of injustices not merely negated any specific legal claims of the individual victim; e.g., a right to life, to physical integrity, to freedom of movement, political participation, etc. Rather, these monstrous crimes negated—to a certain extent “through” these concrete individual claims—the basic value of mere humanity, indeed, *humanity as such*. The victims concerned—not only on the battlefield or as parts of the civilian population that has been bombed, but especially as victims of the barbaric concentration and extermination camps—were treated in such an “inhumane” way that they were implicitly denied to be members of the human community at all—as to be respected morally or legally as of equal worth. And at the same time, it had become more than questionable whether the emphatic use of the category of “humanity” would still have any normative unifying power at all.¹⁸

¹⁵ For the current status of UN human rights treaties (and their ratification) see <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> (March 12th, 2023).

¹⁶ Thomas Gutmann (2014).

¹⁷ I owe this reference to Georg Lohmann. On the history and systematics of the international law category “crimes against humanity”, which often seems a bit too vague, see Gisela Manske (2003).

¹⁸ Accordingly, the expression “crimes against humanity” is translated into German either as “Verbrechen gegen die Menschlichkeit (humaneness)” or as “Verbrechen gegen die Menschheit

It was Hannah Arendt¹⁹ who pointed out this problem immediately after the Second World War: The atrocities of the war and the fascist barbarities have led not only to a mass violation of *individual* human rights, but to a complete *disenfranchisement* of the victims, by way of their successive degradation and complete dehumanization. Those victims were deprived of *all* rights by being denied their very humanity and thus all moral and legal relevance. Human life had been sacrificed millions of times on the battlefields or even deported as “unworthy” to the concentration camps in order to be “gassed” there with bureaucratic and industrial meticulousness. This prompted Arendt, as is well known, to the critical question of what use the so-called human rights were to all the innumerable victims, but also to refugees and stateless persons, who had not even been in possession of a much more fundamental right, namely the “right to have rights” at all.²⁰

It is precisely this fundamental loss of human respect that took the form of a comprehensive brutalization and totalitarian dehumanization in the various arenas of violence, whether in the trenches, in the urban hail of bombs, in fascist “night and fog actions”, in the prisons of the Gestapo and above all in the extermination camps.

This dehumanization not only manifested itself in the way those victims were treated by their tormentors, but even seemed to take hold of the victims themselves in a perfidious and fatal way, slowly turning them into a kind of perpetrators of their own. In Primo Levi’s memoirs *If this is a man* one can read with respect to the extermination camp:

No one must leave here and to carry to the world, together with the sign impressed on his skin, the evil tidings of what man’s presumption made of man in Auschwitz. (...) One has to fight against the current; to battle every day and every hour against exhaustion, hunger, cold and the resulting inertia; to resist enemies and have no pity for rivals (...). Or else, to throttle all dignity and kill all conscience, to climb down into the arena as a beast against beasts (...). Survival without renunciation of any part of one’s own moral world (...) was conceded only to very few superior individuals.²¹

And Remarque had already pointed out something very similar with regard to the young soldiers of the First World War:

In the same way that we turn into animals when we go up the line [the front, A.P.], because it is the only way we can survive, when we are back behind the lines we become superficial jokers and idlers. We can’t do anything about it—it’s compulsive. We want to go on living at any price, and therefore we can’t burden ourselves with emotions that might be all very nice to have in peacetime, but are out of place here.²²

As incomparable as the fates of soldiers and concentration camp victims may be, the message emanating from both accounts is that there is obviously something even worse than one’s own violent death. And that is a *survival of* inhumane violence on

(mankind)”. In this context cf. the infamous statement of Carl Schmitt on the eve of the catastrophe: “whoever invokes humanity wants to cheat”, in: Carl Schmitt (2007).

¹⁹ Hannah Arendt (1973), ch. 9.

²⁰ Ibid, p. 296.

²¹ Primo Levi (1987).

²² Remarque (1996), p. 97.

an equally inhumane or even “animalistic” level, which in the end turns formerly proud people with hopes and moral self-respect into barbarians themselves. It is the desperate and ruthless desire for life *at any cost* that ends up playing into the hands even of one’s own degradation,²³ and accordingly the historical lesson of these brutal experiences could be the following: If human beings are systematically put into a situation in which they have to fear incessantly for their “naked” life, they will permanently experience this as a *double* dehumanization and degradation, because in the end they may even see their own personal activity or even “responsibility” of being entangled in it. Perhaps it is precisely this forced “complicity” that constitutes the sadistically most cruel aspect of such crimes against humanity, which the discourse on human rights *and* human dignity has been opposing since 1945. What is at stake here, it seems, is not only the already inconceivable amount of physical extermination that accompanies the two world wars and totalitarian crimes. Rather, it is about the “evil tidings”, as Levi puts it, of “what man’s presumption made of man in Auschwitz”, and that is: *doubly degraded and thus undignified creatures, desperately begging for naked living*, who no longer seem to be entitled to respect or self-respect, and in view of whom Levi’s book title arises as a question: Is this a man?

2 On the Significance of Human Dignity According to Jean Améry

2.1 Reflections from the Inhumane Life

It must be difficult for all those born later, indeed it is almost downright presumptuous, to talk or write about the very barbaric dialectic of a loss of respect and self-respect which, according to Levi, has occurred in the concentration camp—and not only there. This fatal connection between the struggle for naked survival on the one hand and the experience of fundamental inhuman degradation on the other is elaborated with particular clarity in the memoirs of Jean Améry. If one reads his deeply disturbing reports and philosophical interpretations of his own experiences as a victim of Nazi terror, it also becomes clear that this terrifying connection between naked survival and dehumanization forces a “new” understanding of the philosophical term “human dignity”. The original subtitle of Améry’s collection of autobiographical essays named *At the Mind’s Limits*²⁴ spoke of “Bewältigungsversuche eines Überwältigten” (coping strategies of an overwhelmed). What has been largely overlooked by the philosophical debate on the concept of human dignity, for which contemporary witnesses such as Améry or Levi are known to have played a significant role, is the fact that Améry explicitly wanted his memoirs, noted down at different times and on different occasions, to be understood retrospectively and

²³ Levi (1987). especially ch. 9.

²⁴ Jean Améry (1980). German original: Jean Améry (1977).

explicitly as a learning process—both personal and philosophical—concerning the concept of dignity. The preface to the first edition of the volume from 1966 states:

(T)he reader (...) will come upon contradictions in which I myself got caught up. In the essay on torture, for example, it was still completely unclear to me what significance should be given to the concept of dignity, and I brushed it off with a sweep of the hand, as it were, whereas later, in the essay on my Jewishness, I believed to recognize that dignity is the right to life granted by society.²⁵

In fact, in those two essays of the volume, which were written first in biographical terms (“At the Mind’s Limits” and “Torture”), one initially finds exceedingly mocking remarks, which from a distance might remind the philosophical reader of Arthur Schopenhauer’s famous criticism²⁶ of Immanuel Kant’s concept of dignity:

We did not become wiser in Auschwitz (...). We perceived nothing there that would not already have been able to perceive on the outside; not a bit of it brought us practical guidance. In the camp, too, we did not become “deeper,” if that calamitous depth is at all a definable intellectual property. It goes without saying, I believe, that in Auschwitz we did not become better, more human, more humane, and more mature ethically. You do not observe dehumanized man committing his deeds and misdeeds without having all of your notions of inherent dignity placed in doubt. We emerged from the camp stripped, robbed, emptied out, disoriented (...). With that we lost a good deal of arrogance, of metaphysical conceit (...). Jean-Paul Sartre said at one point that it took him thirty years to rid himself of traditional philosophical idealism. I can guarantee that it did not take us as long.²⁷

And elsewhere he states:

Not much is said when someone who has never been beaten makes the ethical and pathetic statement that upon the first blow the prisoner loses his human dignity. I must confess that I don’t know exactly what that is: human dignity. One person thinks he loses it when he finds himself in circumstances that make it impossible for him to take a daily bath.²⁸

At first glance, it seems as if Améry, who was tortured by the Gestapo and later deported to Auschwitz, did *not* have a proper concept of dignity—as a philosophical category of interpretation—at his disposal. Rather, this concept seems to have been lost in Auschwitz altogether—which would even speak directly against today’s common interpretations of the human rights concept of dignity as a historical *reaction* to the Holocaust. But with the last essay of the cited book (“On the Necessity and Impossibility of Being a Jew”) this impression changes dramatically:

To be a Jew, that meant for me, from this moment on, to be a dead man on leave (...) The death threat, which I felt for the first time with complete clarity while reading the Nuremberg

²⁵ Ibid, p. XIV.

²⁶ Schopenhauer said: “The expression»dignity of man«, once pronounced by Kant, became afterwards the shibboleth of all baffled and thoughtless moralists, who hid their lack of a real, or at least something telling foundation of morality behind that imposing expression»dignity of man«, cleverly counting on the fact that also their reader would like to be touched with such a dignity and therefore would be satisfied with it”. I cite and translate from: Arthur Schopenhauer (2007) § 8, p. 64–5.

²⁷ Améry (1980) *At the Mind’s Limits*, p. 19–20.

²⁸ Ibid, 27.

Laws, included what is commonly referred to as the methodic “degradation” of the Jews by the Nazis. Formulated differently: the denial of human dignity sounded the death threat.²⁹

And a little later, this idea is further elaborated:

What is dignity, really? (...) Degradation, that is: living under the threat of death, would be an inescapable fate. But luckily, things are not entirely the way this logic claims. It is certainly true that dignity can be bestowed only by society, whether it be the dignity of some office, a professional or, very generally speaking, civil dignity; and the merely individual, subjective claim (“I am a human being as such I have my dignity, no matter what you mean, do or say!”) is an empty academic game, or madness. Still, the degraded person, threatened with death, is able—and here we break through the logic of the final sentencing—to convince society of his dignity by taking his fate upon himself and at the same time rising in revolt against it.³⁰

And Améry gives the following example of this revolt, as a kind of reminiscent of Albert Camus’ *L’Homme révolté*:

Before me I see the prisoner foreman Juszek, a Polish professional criminal of horrifying vigor. In Auschwitz he once hit me in the face because of a trifle; that is how he was used to dealing with all the Jews under his command. (...) In open revolt, I struck Juszek in the face in turn. My human dignity lay in this punch to his jaw.³¹

2.2 *Life Under the Threat of Death*

As already indicated, Améry himself retrospectively claimed to have learned something important from these own experiences of inhumane degradation, and he did so with a decidedly philosophical view of the traditional concept of human dignity. But exactly what philosophical insight of Améry’s is at stake here? If something important was lost to him during Gestapo detention and later on in the concentration camp, then this can only be a very *specific* concept of human dignity, namely the metaphysical or religious, but in any case “idealist” concept of dignity as an inalienable value property or innate “dowry”. It is precisely this concept of dignity which, according to Améry, has become historically *obsolete* and which has now to be replaced by a new interpretation of dignity generated *ex negativo* from one’s own experiences of brutal violence. And that is the idea of dignity whose essence is the solid and defensible capacity to respond to any attempts at humiliation with a counter-defense that is able to preserve one’s own self-respect. Human life, according to Améry, is always at stake when a person is treated in such an inhumane way that she is not killed but confronted with the cruel message that she will never again be able to be sure of her life. This human being is rather left alive *because* someone wants to inscribe on this person the message that she is, as Améry says, “not worthy of life”.³² And

²⁹ Ibid., 86.

³⁰ Ibid., 88–89.

³¹ Ibid., 90. See also Levi (1986): “We are slaves, deprived of every all right, exposed to every insult, condemned to certain death, but we still possess one power, and we must defend it with all our strength for it is the last—the power to refuse our consent”.

³² Améry (1980), p. 86.

precisely this inhumane assertion of fundamental unworthiness requires a reaction from the person concerned, which she may not always have the strength or courage to perform.

So it seems that there is indeed something much worse than one's own death, namely a life in permanent danger of arbitrarily imposed death; a life that "dehumanizes" human beings—step by step—by reducing them in a degrading and humiliating way to their "bare" existence.³³ Henceforth, it is others who are masters of *my* life—no longer myself. The person becomes "vogelfrei" (outlawed), and the degrading point about it is not the permanently possible death as such, but a life beyond any control. And sometimes it may even seem better to actually die than to continue living in such an inhumane way. At the same time, in view of this total dehumanization, there remains only one way to *remain human in a humane* way; in a way that seems unquestionably heroic and is "conceded only to very few superior individuals" (Levi), which is highly dangerous and therefore hardly recommendable. And that is the rebellion, if necessary violent, against the completely degrading and dehumanizing "logic of the final sentencing", as Améry puts it.³⁴

Just to avoid a possible misunderstanding: It is not to be claimed here that today's use of the concept of dignity, e.g. in bioethical contexts, always resonates with the depth of the totalitarian dimension pointed out here.³⁵ Apart from that, many interpreters still adhere to an ultimately metaphysical concept of dignity as an innate "dowry", which would vehemently deny a conceptual dependence of dignity on concrete social respect or one's own self-respect. For the time being, we shall only reflect on the historical experiences from which the *post-totalitarian* concept of human dignity and its conjuncture with human rights is motivated. And if one wants to refer to Améry at this point, as suggested here, it is his interpretation of his own experiences of inhumane injustice that establishes a philosophically revealing connection between the concepts of "dignity" and "life": On the one hand, there is a qualitative difference between mere survival and a specifically humane or decent life in dignity. In other words, one can live a life without living decently "in self-respect." On the other hand, naked survival is not simply a necessary "vital" condition for that life in dignity. Rather, a life in dignity might already become impossible if it is a matter of living in the face of constant threats to life.

According to Améry and also Levi,³⁶ a life in involuntary³⁷ danger, being subjected to arbitrarily acting perpetrators, is degrading, humiliating or even dehumanizing, because the person concerned, by worrying incessantly about her own survival, is reduced to an "animal" that wants *nothing* but to survive—and is therefore capable of doing just anything. Life, on the other hand, has dignity only when it

³³ This seems to be the rational core of the otherwise somewhat idiosyncratic analysis by Giorgio Agamben (1998).

³⁴ A quiet similar explication of the concept of dignity can be found in: Tzvetan Todorov (1996).

³⁵ For this and the following cf. Arnd Pollmann (2005).

³⁶ Levi (1986), p. 61.

³⁷ Obviously, this does not apply to adventurers, athletes doing extreme sports, members of the fire department, etc.

has a certain value *for* the person concerned; a value that goes beyond mere survival. And in contrast to metaphysical, religious or “idealistic” conceptions of dignity, as Améry says, life does not have this value *per se* and therefore innately and inalienably. Rather, what many ancient interpreters of dignity once took for granted also applies here: The dignity of the individual human being depends on social recognition and thus on an intersubjectively mediated, incorporated “attitude” towards one’s own life; an attitude of self-respect that the person concerned must sometimes even defend directly against social attacks and attempts at degradation.³⁸ From there it follows: It must already be a matter of a *qualified* human life if we want to speak of dignity, and the quality meant here is attained only if those persons concerned are allowed to lead a life that transcends the naked struggle for survival and is borne by self-respect. Human life has dignity only when the people concerned *ascribe* to it a value that generates their self-respect.

3 Violations of Human Dignity and Rights

3.1 Two Types of Human Rights Violations

In view of the historically and violently “grown” connection between human rights and human dignity, the question is obvious whether human rights violations *always* also represent violations of human dignity—and vice versa. In Améry’s writings, the concept of human rights—in contrast to that of human dignity—is not explicitly mentioned. But his memoirs well support the view that human rights violations of lesser “severity” are possible, violations whose message does not directly amount to a totalitarian and permanent death threat. One can think of the much-discussed example of state or intelligence agency intrusions into the private sphere, of cases of arbitrary bans on demonstrations, of state manipulation of elections or governmental censorship of the press. All these practices may be human rights-relevant or even direct human rights violations, but it would obviously be going too far if these incidents were to be understood as first moments of a “chronicle of a death foretold”.

Thus, there seem to be two fundamentally different forms of human rights violations committed by the state, and these two forms will be distinguished in the following by declaring one as “relativist” and the other as “fundamentalist”³⁹; whereby it will be shown that only in the second case is the human dignity of the affected victims *also* affected. The distinction in question takes account of the fact that human rights theories are generally confronted with two types of criticism when it comes to the claim of “universal” validity: One camp in this discussion represents a *fundamentalist* critique of human rights insofar as it fundamentally or a priori denies that all humans are bearers of human rights at all. Rather, a normative relevance

³⁸ Pollmann (2005).

³⁹ I follow Christoph Menke/Arnd Pollmann (2007).

of simply belonging to the human species is already denied on a principled level. The assumption here is that simply being a part of human mankind does not entitle people to anything at all; for the granting of basic rights is always based on more demanding criteria, which some people may satisfy and others do not. Or, as the “totalitarian” variant of this fundamentalist view puts it, some human beings have no morally or legally relevant value at all. They can be regarded as completely “worthless”, consequently lacking any basic rights at all, and they can therefore be treated like “things”, “animals” or even as “pests”⁴⁰ and “vermin”—and “exterminated” accordingly.⁴¹

The *relativist* critique of human rights does not necessarily go that far. It does not claim that some people have no human rights at all. It merely denies that all people strictly have the *same* rights a priori and unconditionally. Even today, for example, in some monotheistic religious communities, there is this widespread view that men, women and children might all belong to the circle of bearers of human rights. But at the same time the “divine plan” provides *more* rights for male members of the species than for women or children. This would mean: Men, women and children have human rights, but men have *more* human rights than women and children. The latter are denied the status of being a “full-fledged” and therefore equal status of a human being *as* a human being. They thus become “second-class” human beings, even though *some* human rights may very well be granted to them. Consequently, the idea of human rights is recognized here *in principle*, but at the same time the idea is also *relativized*. That means: limited in its normative scope or provided only with reservations.⁴²

These two forms of critique of human rights universalism start at different “depths” and find their active counterparts in forms of concrete *human rights violations* penetrating corresponding depths. Or, to put it differently: all particular violations of human rights can be understood as different forms of an “executed” critique of human rights—not in the sense that human rights violators would need a certain “theory” for their action, but in the sense that in this action anti-human rights attitudes are expressed, which are *also* familiar at the level of public or even academic discussions. Accordingly, empirical human rights violations can also have a different depth of intervention or different degrees of severity, depending on whether the equality of all human beings is only partially or fundamentally disputed.

Every concrete violation of a human right constitutes an act of legal “discrimination” because it calls into question the equal status of all human beings. But as already indicated, this human rights discrimination can occur in two fundamentally different ways: In the course of fundamentalist or even totalitarian discrimination, it is denied in principle that the people concerned have normative or legal significance

⁴⁰ For this inhuman ductus see, for example, the “Volksschädlingsverordnung” (ordinance against folk pests) in Nazi-Germany of 1939.

⁴¹ For a historical and systematic critique of this totalitarian view: Rolf Zimmermann (2008), esp. pp. 17–46 and 161–175.

⁴² I have elaborated on this in the handbook article “Der menschenrechtliche Universalismus und seine relativistischen Gegner”, in: Pollmann/Lohmann (2012), pp. 331–338.

and therefore also human rights. Consequently, these people are deprived of all their rights; they are “disenfranchised” as human beings and “dehumanized” precisely by being told that they do not count morally or legally at all. Exactly these are the experiences that Améry speaks about, that Levi is concerned with, and that Arendt also had in mind; humiliating experiences that result from an extreme or fundamental exclusion from the circle of those human beings who count. And from the middle of the twentieth century onward, these experiences can and will increasingly be reconstructed within human rights discourse with respect to the very notion of human dignity.

The situation is different, however, in the case of merely relativist forms of human rights discrimination. These forms of discrimination are far more frequent *today*. In relativist cases, what is just denied is being confronted with a human being that exactly has the *same* rights. Those people concerned may have normative relevance as well as human rights significance just by being human, but in an *unequal* way. In most of these cases, only a single right or subgroup of rights, e.g. political rights to participation, is denied, but not the very basic human rights status of being a human individual that counts. At the same time, this means that basically *every* violation of human rights is relativist in this sense. For—apart from the denial of an individual claim—the violation of a human right means nothing other than the refusal, executed on the victim, to recognize his strictly egalitarian status of full legal membership. But for a merely relativist violation of a human right to *become* a fundamentalist violation of the same human right, a decisive and more serious aspect must be added: In the fundamentalist case, not just a singular legal claim is denied and thus the status of egalitarian membership is disputed, but a complete disenfranchisement of the victim is targeted and thus her exclusion from the circle of those who count legally as human beings at all.

3.2 *The Historical Struggle for Equal Human Rights*

With the considerations just outlined, different depths and dimensions of experiencing human rights violations emerge. These differences generate a bifurcation among *historical struggles* against human rights discrimination. For this struggle can either mean the demand for political and legal inclusion of formerly fully excluded groups; an inclusion which is in a certain sense a priority because it is anti-fundamentalist and therefore extremely relevant for the equal recognition of human dignity as well. One may think here of historical struggles for the legal inclusion of slaves, black people, workers, women, migrants, homosexuals, the disabled, etc. In the past, individuals with the corresponding characteristics enjoyed no rights at all. Or this struggle is about “full” membership and the “continued” and strictly egalitarian inclusion of all those people who might already count in principle, but

who have so far still been deprived of at least some specific human rights.⁴³ So, in all political disputes about human rights, either fundamentalist and therefore inhumane exclusions or merely relativist forms of unequal treatment are criticized and articulated. In both cases, however, a profound experience of *political powerlessness* is at stake, that goes beyond the concrete violation of an individual claim: a loss of power that results from the fact of either being completely disregarded by the representatives of public order or of not equally being taken “for granted”. And as we will see in a moment: When this powerlessness turns into public indignation and begins to organize politically, governments and institutional frameworks may come under pressure and begin to transform themselves in accordance with those human rights claims.⁴⁴

On a conceptual level, it should be noted first that any *legal progress* resulting from this two-stage struggle against human rights violations can be understood as steps in a “learning process”⁴⁵ of progressive non-discrimination; namely in the direction of fundamental inclusion in the first step and of equality in the second. The idea that this is a *historical learning progress in law* based on concrete experiences of injustice and dependent on social struggle.

How shall we describe the conceptual assumptions of the legal philosophy of such struggles? The struggle for human rights might be a struggle in favor of particular individual *interests* at a historically particular moment in time; e.g., a concrete fight for freedom of speech, political or social participation, and so on. At first glance, theory could therefore conclude that human rights disputes are *solely* about violated individual interests and concrete claims, according to the following scheme: The people affected subjectively experience the violation of a concrete legal claim—to freedom of expression, political participation, social share, etc.—and, together with others who are similarly affected, they decide to fight against these grievances and to struggle for the right in question.

But this quite schematic view falls short conceptually if it is understood in purely *materialistic* terms, i.e. as a struggle for the satisfaction of interests or needs. The struggle against human rights discrimination has a much wider scope: The respective individual rights holder may indeed be motivated to this struggle by the fact that she sees important personal interests violated. But this experience of discriminatory arbitrariness is not only an experience of denied claims, but at the same time an experience of political powerlessness in the face of refuted recognition as a full-fledged legal subject. As Franz von Jhering once noted in 1872, the disregarded person not only fights for the respective right that is denied to her, but always also for

⁴³ A fairly recent example is a ruling by the German Federal Constitutional Court of July 18, 2012 (BVerfGE 132, 134–179) on the question, whether asylum seekers in Germany have strictly the same entitlement to basic social security as “full” German citizens who receive social welfare. The fact that asylum seekers did already enjoy some other basic constitutional rights before (e.g., rights to life, liberty and security) was not in question. So, the cited court decision did not ensure “inclusion” in the above sense, but rather a further push towards strict equalization.

⁴⁴ Insightful empirical studies on this in: Thomas Risse/Stephen C. Ropp/Kathryn Sikkink (1999).

⁴⁵ Very instructive: Thomas Gutmann (2012).

her own “self-respect”, which is offended by this discriminatory unequal treatment.⁴⁶ But, according to Jhering, that is not enough. Aware of it or not, when she fights for *her* right, she is fighting not only for her own claims and her self-respect, but at the same time for the claims and self-respect of all other persons who are denied this right. And, in the end, the person concerned, struggling for her recognition as a full-fledged legal subject, even fights for “the” right as such, because “in *my* right *the* right is offended and denied, it is defended, asserted and restored”.⁴⁷

That would mean: Whoever fights for *a* right at the same time fights not only for his own right, but also for that of all others as well as for the legal order as such. And whoever fights for a particular human right fights at the same time for the human right of all other human beings as well as for a non-discriminatory transformation of the legal order as a whole. In historical retrospect, all these originally individually motivated struggles successively lead to a *collective* struggle against any kind of unequal political treatment as well as against any attempts to still justify such unequal treatment. By successfully fighting down this or that unequal treatment, those who are still *in favor* of this inequality will run out of argumentative “ammunition”. They may still be convinced of the justifiability of a certain kind of discrimination, but if they lack the political power to execute this inequality—as it were, because the legal system has now made appropriate provisions—this will be of no further consequence. And what in the end historically “remains” or at least could remain is the idea of a strict equal treatment with respect to human rights, because this is the only idea against which *nothing* speaks—in the long run.⁴⁸ It is precisely this idea of a historically “residual” equality, which is fundamental for a proper conception of human rights; an equality not yet realized, but politically anticipated by all those who fight against concrete violations of human rights, even if they personally sue for quite concrete and first and foremost their own claims.

4 Human Rights Progress

4.1 *Collective Learning?*

The previous section proposed a conceptual mediation of material interests, individual and collective claims to respect and self-respect, and legal or political concerns of inclusion and equality. Only these three aspects together explain the “explosiveness” of struggles against human rights violations and thus the political or rhetorical “pathos” of human rights. The human rights struggle for successive non-discrimination, it had been claimed, leads to a progressive *learning process* in law. “Learning” here, in turn, means only that a legal collective comes to the historically

⁴⁶ I quote and translate from: Franz von Jhering (2003).

⁴⁷ Ibid, p. 29.

⁴⁸ Cf. Gutmann (2012).

grown insight that a relativist or even fundamentalist unequal treatment of different human beings can no longer be generally justified. From a methodological point of view, the intended learning outcome is therefore primarily a *negative* one: it merely states that a massive unequal treatment of certain people or groups no longer appears to be defensible. A *positive* justification for equality does not result from this. Nor do these learning processes show any compelling logic. Whether a particular person or collective is convinced of the ideas of human rights and equal respect always depends on whether one is already “used” to a corresponding “attitude” or “practice” of mutual respect.⁴⁹ Political opponents of human rights equality will hardly be persuaded to change sides by philosophical justification only. It seems to be true that a person cannot simultaneously advocate a contemporary conception of egalitarian human rights *and* deny the equal value of all human beings. But one can very well deny the equality of all human beings—but then this person has not accepted or no longer holds the position of a contemporary theory of universalist human rights.

However, in order to be able to speak of a political “struggle” for human rights equality, just a “single” individual learning progress, a particular personal experience of injustice or a lonely outraged voice will obviously not be enough. For individual human rights violations to develop a *social* dynamic, a significant number of people must suffer or at least witness relativist disregard and experience it as a kind of political powerlessness. And they have to transform this powerlessness into active indignation, they have to unite with others and to revolt against these rights violations they have suffered or witnessed. The political protagonists of these public disputes and confrontations can be quite different: the concrete victims themselves, their relatives or friends, so-called “victims’ advocates”, civil society initiatives, political parties or associations, transnational NGOs. In addition, human rights are also interpreted by parliaments, governments, ministries and at the level of international intergovernmental cooperation.

Following an analytical model much discussed within the political theory of international relations,⁵⁰ struggles for human rights—despite their sometimes very different political, social, cultural, religious or economic specifications—show significant commonalities: Political progress in countries with massive human rights deficits can be achieved if the victims of human rights violations succeed in networking not only with domestic civil society and forces of political opposition, but also with *international* human rights organizations and influential political players outside the respective states—whether by way of direct political cooperation or by drawing the attention of mass media to the human rights abuses in question. This dual networking at the national as well as international level creates simultaneous pressures “from above and from below”; pressures to which the governments of those countries in which human rights are violated will have to respond over time. To be sure, these governments will initially try to evade this pressure simply by denying the

⁴⁹ Elaborating conceptual insights of Richard Rorty: Menke/Pollmann (2007), ch. 2.

⁵⁰ For this and the following: Thomas Risse/Anja Jetschke/Hans Peter Schmitz (2002), esp. pp. 31–45 and 179–186. But see also the contributions to: Risse/Ropp/Sikkink (1999).

human rights deficits in question. But if a critical world public and thus the community of states continue to be informed about these deficits by mass media or NGOs, whose campaigns can serve as a kind of “transmission belt”, the former denial of human rights deficits often cannot be sustained, for the simple denial of problems is often counterproductive in the sense that it triggers additional indignation in the public sphere, only to strike back like a “boomerang” on the respective governments that have come under pressure—also in the form of international *naming and shaming*.

The governments concerned may then feel obliged to counteract the threat of a loss of reputation, also at the international level, by making—initially still tactically—first concessions. However, if the political struggle is then continued and if national and international pressure is noticeably sustained, the single boomerang effects might add up to a kind of “spiral movement”⁵¹ and thus increasingly to real progress in human rights development, in that the originally tactical concessions—step by step—become a real “commitment” to those norms: Denial is ended, rhetorical self-restraints in the name of human rights are announced, corresponding norms are incorporated into laws or even the constitution, and international human rights treaties are signed. Yet, from there, it might still be a long way to a de facto “complicity” with these norms, a complicity that would mean more than a merely symbolic or rhetorical commitment. For a state to sustainably comply with human rights norms, public pressure must sometimes be maintained for a longer time, to ensure that mere rhetorical commitments gradually turn into governmental action that is actually motivated by human rights norms.⁵²

4.2 *On the Political Dynamics of Lacking Legitimation*

The considerations of the last section outline a historical and political process of human rights development, which can always lead anew from the individual experience of injustice to the collective struggle against human rights violations and finally to a systemic institutional “learning” of legal systems transformed by human rights. But this analysis only *describes* the dynamics in question. What *explains* this strange and almost coercive pressure on political regimes that urges them to transform themselves accordingly? It has been argued here that in political and historical struggles against human rights violations collective indignation over various forms of discriminatory disregard and political powerlessness is voiced. This political outrage, in turn, strikes at the public order and powers a form of demonstrative withdrawal of legitimacy: Those who protest or fight against violations of human rights expressively give those who have violated human rights “barriers” to understand that because they have exercised arbitrary state rule, they may no longer see themselves as *legitimate*

⁵¹ Risse/Jetschke/Schmitz (2002), esp. pp. 31–45 and 179–186.

⁵² See also Andrea Liese (2006).

representatives of the public order and or as agents of the democratic “sovereignty of the people”.⁵³

No kind of state action can any longer be understood as an expression of *internal* consent if the representation of the people no longer embodies the people’s “will” that legitimizes it in the first place.⁵⁴ This idea of a democratic social contract by means of a constitution that conforms to human rights⁵⁵ is the normative benchmark or “touchstone”, as Immanuel Kant once stated,⁵⁶ with which not only genuine democracies but also all other forms of state rule must be checked and examined. Hence, the conceptual provocation of this contractualist tradition is: Even authoritarian states or dictatorships in which human rights are massively violated will depend in their very existence on a residual amount of consent on the part of their citizens and thus on the imaginary act of a joint delegation of rule—even if it is only in the form of tolerating arrogated rule or the mere absence of resistance and rebellion. Human rights protests, on the other hand, make it clear that these conditions of states legitimacy are eroding and that these governments and powers are now to be regarded as opponents or even enemies of the popular sovereign. It follows from this that massive human rights violations are obviously not only harmful to the individual victims, but always pose a serious threat to the legitimating framework of the public order as a whole.

At least under conditions of *modern* constitutional law, it is true that enacting arbitrary state rule by disregarding human rights undermines the proper conditions of state legitimacy as such. A state’s legitimacy will evaporate more and more as long as the state powers in question are met with public human rights indignation; that is, as long as the state and its representatives deviate all too strongly from the specifically modern ideal of a common legitimization of state powers through the consent of those who are subjected to these powers. Political struggles for human rights thus always remind us of the possibility of a truly democratic popular sovereignty, which is all too often “buried” under individual experiences of powerlessness as well as collective and structural ones. In other words, legal systems that come under pressure in the face of human rights protest “learn” the modern message of democratic popular sovereignty by now and then “releasing” the accumulated pressure by making human rights concessions.

As shown in the last section, this accumulated pressure for legitimation must come not only from “below” or inside, but also from “above” or outside. A critical world public, mediated by mass-media, is needed so that the political *discourse* on human rights can sensitize the public sphere to violations of human rights and build up public pressure accordingly. In the longer run a global “human rights culture”⁵⁷ might emerge, which will be stirred up by public reports and historical testimonies. And what is politically and historically thematized as human rights discrimination will at the same time develop global dynamics. The central aspect of this human

⁵³ Ingeborg Maus (2011).

⁵⁴ On this see also Ludwig Siep (2012).

⁵⁵ Georg Lohmann (2013).

⁵⁶ Immanuel Kant (1900).

⁵⁷ Richard Rorty (1998).

rights culture would be the idea outlined above of an egalitarian political entitlement of all human beings just by being human. Those whose political power turns into discriminatory arbitrary rule will not learn this basic human rights lesson just by reading historical legal documents or philosophical treatises. Rather, this lesson will be the result of worldwide pressure generated by political indignation about living conditions that are untenable from the point of view of human rights. Only then, mankind might one day come to the point “that a violation of right on one place of the earth is felt in all” (Kant) and political consequences will follow accordingly. Global deliberation about outrageous human rights violations will more and more widely spread the basic human rights attitude of equal respect. This globalization would not just be a learning process, but real progress.

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Chapter 4

Liberalism and Dignity: The Soul's Humble Upbringing and Vulnerability



Reiko Gotoh

Abstract The first purpose of this chapter is to examine dignity from a perspective of economic philosophy and theories of justice. Specifically, I will analyze the following three conceptual distinctions that have been controversial related to dignity (Sects. 3–5). They are (1) “price” versus “dignity;” (2) “individual dignity” versus “human dignity;” and (3) “equality of human rights” versus “respect for dignity.” The second and more important purpose of this chapter is to use the concept of dignity to illuminate certain conundrums that liberalism has left behind and to reexamine the reach and limits of liberalism. Thus, this paper explores theoretical possibilities of the concept of dignity based on relevant literature. Section 2 introduces the concept of dignity in John Rawls’ theory of justice. Section 6 reviews relevant literature on the attempts to critically develop the concept of dignity in Rawls’ theory of justice.

“From my perspective, it is just that soul and spirit, with all their dignity and human scale, are now so complex and unique states of an organism.... And this is of course the difficult job, is it not: to move the spirit from its nowhere pedestal to a somewhere place, while preserving its dignity and importance, to recognize its humble origins and vulnerability, and yet still call upon its guidance (Damasio, 2005).”

1 Introduction

Dignity is considered a highly ambiguous concept. On the one hand, it can be extremely spiritual, with the aroma of discipline and preaching, e.g. honoring those who “died with dignity” in a duel. On the other hand, it can be extremely physical and animates bare life and sexuality, e.g. resenting the victims of war for their “lives without dignity.” Once we start discussing dignity seriously, our personal voices and appearances may be brought into the foreground, and scientific discussion may recede into the background. It was wise for social sciences based on liberalism, which are concerned with the construction of basic institutions in society and the universality of theory, to avoid talking about dignity.

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In reality, however, throughout human history, in wartime and peacetime, there have been screams from people whose capabilities to respect their dignity are about to be damaged on the one hand. On the other hand, discourses such as “treat yourself to a dignified death so as not to burden the public finances” or “defending one’s country and hometown with pride and dignity” may once again undermine the principle of respect for the individual. It is one of the most urgent tasks of liberalism to restore the dignity of the individual to the fullest extent possible.

The first purpose of this chapter is to examine dignity from a perspective of economic philosophy and theories of justice. Specifically, I will analyze the following three conceptual distinctions that have been controversial related to dignity. They are,

- (1) “price” versus “dignity;”
- (2) “individual dignity” versus “human dignity;” and
- (3) “equality of human rights” versus “respect for dignity.”

The conceptual distinction between “price” and “dignity” in (1) may lead us to question the assumptions of the capitalist market system in terms of exchange value or intrinsic value, namely, the market price or the natural price. The conceptual distinction between “individual dignity” and “human dignity” in (2) can be a useful line of demarcation for designing public policies, along with the distinction between the guarantee of the right to decent life and the right to the pursuit of happiness. The conceptual distinction between “equality of human rights” and “respect for dignity” in (3) can go deep within liberalism, as it relates to dualisms of (social) justice and morality, institutionalization and de-institutionalization, legal rights and moral rights, or public sphere and private sphere.

The second and more important purpose of this chapter is to use the concept of dignity to illuminate certain conundrums that liberalism has left behind and to reexamine the reach and limits of liberalism. Admittedly, the concept of dignity has the risk to entangle people in dominant value or status hierarchies, and it has the possibility to drive people toward perfectionism. However, the concept of dignity has a great power to highlight matters that have been neglected by existing social and economic institutions and stipulate universal and human conditions which can respect each individual’s personal history. For example, if someone is observed to have a severe loss of self-respect stemming from years of violence, abuse, neglect, and others, this may provide a sufficient ground for receiving public assistance, or employment support.

The concept of dignity also rejects a complete interpersonal comparison based on one-dimensional scale of equivalence. It thoroughly recognizes individuality and particularity of the individual while preserving equal concern and respect for all as a normative requirement. It also has a logic that identifies dignity-undermining actions and conditions as moral evil or injustice, independent of any consequential basis. These characteristics of the concept of dignity can pose a methodological challenge to liberalism. It prevents liberalism from contributing to utilitarian calculations and the hierarchization of human values.

With the above concerns in mind, I will examine the three conceptual distinctions in Sect. 3. Subsequently, I will explore theoretical possibilities of the concept of

dignity based on relevant literature. Before that, Sect. 2 introduces the concept of dignity in John Rawls' theory of justice, which regards political liberalism as its methodological framework. Section 6 reviews relevant literature on the attempts to critically develop the concept of dignity in Rawls' theory of justice. In the final section, I confirm the range of liberalism diffused by the concept of dignity and explore the possibility of restructuring it.

2 Rawls and Dignity

One characteristic of political liberalism pioneered by John Rawls is that it minimizes the discussion of values. He implies that in reaching a consensus on justice principles, judgements of values are not required (Rawls, 1971, 448–449).

Actually, there are only a few references to “dignity” in Rawls' writings. Let us introduce two examples. The first appeared in an interview conducted in 1999, where Rawls was asked about “dignity”. It was after Rawls made the following remarks about underlying ideas of “public reason” for “overlapping consensus” among comprehensive doctrines (Rawls, 1999b, 621–622).

Rawls: (As an underlying idea of “public reason”) I already mentioned the good of the political life: the good of free and equal citizens recognizing the duty of civility to one another and supporting the institutions of a constitutional regime.

In response to this, the questioner said, “It sounds like really you’re arguing for the dignity of the individual. ... it almost sounds like, in another way, a religious argument.” Rawls immediately responded as follows.

Rawls: All right. Why should I deny that? If you want to say that comes down from the sacredness of the individual in the Bible, fine, I don’t have to deny it.

However, the questioner continued, “your argument for respecting the dignity of the individual follows from the functioning of liberal constitutional democracy.”

Rawls flatly replied: Liberal constitutional democracy is supposed to ensure that each citizen is free and equal and protected by basic rights and liberties. You see, I don’t use other arguments since for my purposes, I don’t really need them and it would cause division from the start.

Clearly the “other arguments” here include the “respecting the dignity of the individual” posed by the questioner. As the passages cited in this section indicate, the idea of “political liberalism” has appeared consistently in the writings by Rawls since “A Theory of Justice” (1971).

In one of his early articles (“The Sense of Justice,” 1958/1999b), however, he mentions the term “dignity of personality.” I now introduce this concept.

“[T]he sense of justice is a necessary part of the dignity of the person, and that it is this dignity which puts a value upon the person distinct from and logically prior to his capacity for enjoyment and his ability to contribute to the enjoyment of others through the development of his talents. It is because of this dignity that the conception of justice as fairness is correct in viewing each person as an individual sovereign, as it were, none of whose interests are to be sacrificed for the sake of a greater net

balance of happiness but rather only in accordance with principles which all could acknowledge in an initial position of equal liberty (Rawls, 1958/1999b, 115)".

Rawls' notion of the "sense of justice" includes resentment and indignation over the violation of rights and the harm to the dignity of personality. Although Rawls acknowledges that the "sense of justice" is quite close to moral shame and guilt, he makes a clear distinction between them as follows. Moral shame and guilt stem from "the loss to our self-esteem and our inability to carry out our aims" (Rawls, 1971, 446). In contrast, a sense of justice encompasses a public perspective, whether it concerns oneself or strangers. The invocation of the latter is supported by self-respect that the individual fundamentally possesses, not by self-esteem shaped by comparisons with others.

What is interesting about the above sentences is that it suggests the breadth of the extension of Rawls' early concept of personality. He defines personality as "capacity for enjoyment" and "ability to contribute to the enjoyment of others through development of his talents" along with "capacity for sense of justice." After *A Theory of Justice*, however, the former is absorbed in the concept of "the Rational (a capacity to form, to pursue and to revise a conception of the good)," while the latter "sense of justice" is absorbed in the word of "the Reason (a capacity to act from a sense of justice)." These two together constitute a "moral person." (Rawls, 1980/1999b, 316) In the original position under the veil of ignorance, the scope of those who participate in the formulation of principles of justice is limited to "normal individuals," who understand the formal conditions that the principle of justice must meet.

However, such a limitation is not the theory's core. A distinctive feature of his methodological framework, which he later called "political constructivism," is that it makes the conception of moral personality consistent with the conception of the first principles of justice. For example, the principle consistent with the the idea of "rational economic man" is the "principle of the free competitive market," while the principles consistent with the the idea of "moral personality" are the "two principles of justice" proposed by Rawls himself in 1971.¹

According to this framework, an extension of the concept of personality can lead to the extension of the principles of justice. If we were to consider the broader concept of personality including capacity for enjoyment, the ability to contribute to the enjoyment of others, and the dignity of personality that appeared in Rawls' early works, the corresponding principles can go beyond the scope of "the two principles of justice" so as to request equal respect for the dignity of all individuals as an incomparable value.

Another clue that Rawls' theory of justice can go beyond the framework of "the two principles of justice" can be found in his understanding of Kant's "dignity of person."

"[According to Kant], it is in virtue of the capacity for a good will that each person has dignity. This is not to say that all persons have equal value, and therefore that they are in this sense equal, for there is no measure of dignity at all. Rather, they all

¹ That is, the primacy of "equal guarantee of basic freedoms" and the principle of "fair equality of opportunity" and the "difference principle".

have dignity, and this has the force of including all persons as members in a possible realm of ends. It also removes the worth of persons from any comparison with the relative and subordinate values of things. ... The absolute value of a good will is not to be taken, as in a teleological conception, as the supreme value to be maximized (Rawls, 2000, p. 311)".

Interestingly, Rawls rejected the view that all personalities have the same value, and therefore all personalities are equal. The reason for this is as follows. The "same" assessment presupposes a comparability between individuals on a unitary scale. If we were to accept a unitary scale, it would open a way for ranking of personalities in hierarchical order and for comparisons between personality with other things. Ultimately, it connects the concept of dignity to the utilitarian principle of maximization, for example, by taking it a goal of public policies to maximize the sum of dignities in society or balancing it with the sum of monetary incomes in society.

In contrast, Kant's concept of dignity, as understood and endorsed by Rawls, calls for equal respect for all individuals as incomparable values.

3 Price and Dignity

In the realm of ends, everything has either a price or dignity. That which has a price, something else can be made its equivalent. However, that which is beyond all price, and therefore, that does not allow any equivalent has dignity (Kant 1785 = 1964).

As Kant rightly sees it, the essence of "price" lies in relativity, which compares things of different qualities (Kant 1785 = 1964). In contrast, the sentence, "it is beyond all price and therefore does not allow for any equivalent," suggests two economic interpretations.

One interpretation is "excellence". Suppose there is an object that everyone appreciates and craves, but the person who acquires it is not willing to trade it for anything else. In this case, there is no price because there is no market for the object.

Another interpretation is "free." If there is a good that never runs out, regardless of how much people consume it, then there would be no market for it, and it would be priceless. These two interpretations are clearly different but it should be noted that in the end they can be compared on a one-dimensional value scale. The fact that the former (excellence) is at the uppermost pole and the latter (free) at the gratuitous pole does not change the fact that they can be placed on a one-dimensional scale.

If this claim is unacceptable, we may be fundamentally failing to grasp Kant's intent. Dignity may not, in fact, be the absence of market transactions or market priceless, but may be a value that rejects any comparison with one-dimensional scale. However, this raises a further question. Can dignity be really exempted from any kind of comparison? Can we empirically discern the place of dignity in an individual without comparing it with other individuals or other goods? To clarify this issue, I try the following analytical reasoning.

First, let us suppose that the only question is whether dignity exists or not. If we denote "yes" by 1 and "no" by 0 (for simplicity, the latter includes the case where

“it is not certain that there is dignity”), the proposition “all n individuals have equal dignity” can be expressed as a sequence of n $\{1,1,1,\dots,1\}$. Then it is possible to compare those who have dignity to one another as “indiscriminate (equal).” It is also possible to make an assessment that “yes” is more than “no.”

Next, suppose that changes in dignity are captured on a single scale (e.g., as a continuous real number in the range of 0 and 1). For example, a significant loss of dignity in one individual would be expressed as a decrease of 0.999, whereas a slight recovery in the dignity of another would be expressed as an increase of 0.001. In this case, comparisons can be made on how many times the former change is larger than the latter change. Whether this is limited to intra-individual comparisons (between different points in time or between hypothetical states) or extended to inter-individual comparisons depends on how the scale is constructed.

Its implication is that even if we do not allow for exchange or substitution of dignity with other goods, comparability still exists among dignities. Moreover, even if comparisons between different individuals are not allowed, comparison within individuals remains possible. Furthermore, even if cardinal comparisons, such as differences and ratios, are not possible, there is still a possibility of ordinal comparisons, such as “more”, “less” or “almost the same.” Logically, as long as the concept of dignity is introduced as value, there is no escape from comparison.

Empirically, one may compare dignity now and then, or between oneself and others. One may substitute dignity for other values, such as liberty or security. To define the concept of dignity as an “incomparable intrinsic value,” it is necessary to clarify that it is not a factual statement but a normative requirement accepted by public reason. This is exactly Rawls’s interpretation of what Kant meant by “incomparability” on dignity, which I introduced in Sect. 2.²

4 Combining Human Dignity and Individual Dignity: Respect for Dignity Rules

“Individual dignity” often evokes the voice of the person who says, “Give me the respect I deserve for my status and personal history.” “Human dignity” often evokes the voice of the advocacy, who struggles to protect someone’s dignity: “restore her/his minimal dignity.” However, in practice, it is difficult to separate these two, as the “human” actually appears with her personal name and face, while the “individual” cannot escape common humanity.

In this section, we begin by reviewing representative examples of each concept to identify the differences in meaning. Subsequently, we examine the concepts of “human dignity” and “individual dignity”. Finally, we develop a “rule of respect for dignity” that combines the two concepts.

Examples of what “human dignity” implies:

² In his interpretation of Kant’s dignity, Rawls rejected the one-dimensional (value) scale as a norm.

- (1) "Torture and any other form of cruel, inhuman or degrading treatment or punishment are prohibited." (Article 10(3) of the Swiss Constitution);
- (2) "Everyone who works shall receive just and decent remuneration which guarantees to himself and to his family a life worthy of human dignity, supplemented, if necessary, by other means of social protection" (Article 23 of the Universal Declaration of Human Rights); and
- (3) "Persons in need and unable to provide for themselves have the right to assistance and care, and to the financial means required for a decent standard of living" (Article 12 of the Swiss Constitution).

Meanwhile, an example of "individual dignity" is:

"With regard to other matters relating to marriage and the family, such as the choice of spouse, property rights, inheritance, choice of residence, divorce, etc., the law shall be enacted on the basis of the dignity of the individual and the essential equality of the sexes" (Constitution of Japan, Article 24, Sect. 2).

"Human dignity" is a universal and abstract concept that transcends differences among individuals and groups. Examples (1) and (3) above show how to embody its superordinate provision, "Human dignity shall be respected and protected" (Article 7 of the Swiss Constitution). First, (1) is a provision of negative freedom: anyone is free to escape "cruel, inhuman, or degrading treatment or punishment." Example (3) is a provision of positive freedom, which states that anyone in need has the right to demand the assistance and support necessary to earn a living and the "indispensable means" to realize a "life worthy of human dignity."

Example (2) is also a provision of positive freedom, which stipulates that anyone should receive remuneration for work that guarantees "a life worthy of human dignity." Inserting it between (1) and (3), we have the approximate framework of the modern welfare state.

In contrast, "individual dignity" respects differences and diversities of individuals, reflecting their personal histories (biographies), identities, conceptions of the good, and life plans. In the example of the Japanese Constitution mentioned above, "respect for dignity" does not preclude differences among individuals in "other matters relating to marriage and the family, such as choice of spouse, property rights, inheritance, choice of residence, and divorce." Along with dignity, equality norms are also called for, but only to the extent of equality within couples, not between couples.

The relationship between "individual dignity" and "human dignity" is similar to the relationship between the negative freedom such as "non-interference in the pursuit of happiness" and the positive freedom such as "freedom to enjoy decent lives". In the former, public policy aims to guarantee formal equality in exercising rights but does not secure the equal realization of the resultant values. Given natural and social contingencies, rather, formal equality inevitably contributes to resultant inequalities. In the latter, public policy aims to secure the equal realization of the resultant values.

It would be unwise, however, to discuss the relationship between "individual dignity" and "human dignity" in parallel with the relationship between the negative

freedom and the positive freedom. First, because the causes of shame and humiliation are deeply related to cultural practices, “personal dignity” and “human dignity” can result in proximate demands. For example, if cultural practices related to defecation, eating, dressing, and undressing were to be completely ignored, not only could it harm “individual dignity” but also “human dignity.” Second, because the causes of shame and humiliation are also deeply related to social status and meritorious actions, “individual dignity” and “human dignity” can lead to demands that are far apart. The insatiable desire for honor and admiration demanded by one individual may also harm the human dignity of the other individual.

In summary, the “rule of respect for dignity” can be defined as follows:

- (1) Respect for “human dignity” should be equally secured to all individuals, with common contents and thresholds, independent of individual status and personal history; and
- (2) Apt respect for individuals’ “individual dignity” calls for each of them to be equally enabled to seek recognition to the extent that it is compatible with recognition of the dignity of other individuals.

However, the “rule of respect for dignity” is subject to the following two constraints:

- (1) In respecting “human dignity,” consideration should be given to the diversity of cultural practices and identities held by different individuals; and
- (2) In respecting the “individual dignity,” value judgements that are deeply influenced by existing social hierarchy and meritocracy should be discounted.

In addition, it is desirable to reduce actual social and economic disparities themselves to prevent the gap from becoming too large between the factual value judgements that reflect those disparities and the normative value judgements based on the recognition of incomparability among individuals.

5 Equality of Human Rights and Respect for Dignity

In this section, we discuss the third issue, that is, the relationship between dignity and human rights. Lukes (1993) suggested that a list of human rights should be “reasonably concise and abstract” and should include the following five matters: “fundamental civil and political rights,” “the rule of law [such as access to legal advice without discrimination],” “freedom of expression and association,” equality of opportunity [such as the elimination of discrimination],” and “the right to some basic level of material well-being.” Lukes fairly recognized that this list of human rights contains several conflicts and controversies and “does not help us get any closer to an equal realm of ends.” Yet, he rightly stressed that this list does indicate “a point from which withdrawal is unacceptable,” that is, “a state of plateau of egalitarianism.”

Lukes’ word of “a state of plateau of egalitarianism” reminds us of Amartya Sen’s concept of “maximal value set.” A “maximal value set” is a set of alternatives that

are clearly better than alternatives outside the set, but the alternatives within the set are not mutually comparable. The point of Sen's argument is as follows. Clearly recognize that we cannot choose the best solution based solely on the criteria we currently have in hand. We must first identify the maximum value set, and then reestablish consensus on the criteria themselves for selecting the best solution from among them.

With this basic framework, Sen points out that the significance of a given human rights regulation depends on how it characterizes a risky event that cannot be completely avoided. For example, many warn that institutionalizing human rights such as "freedom from fear" is an "important but genuinely elusive social goal" (Goodin & Jackson, 2007). Sen acknowledges that this point is correct in general, while he notes that it would make sense to institutionalize "freedom from fear" as a human right if it allows for public measures to reduce people's fear of dangers that cannot be dealt with by individual action alone, whether the individual is rational or not (Sen, 2009, 368–369).

This is related to Sen's view that the task of a theory of justice is to correct specific and obvious injustices that tend to be exceptionalized as hard cases. Within the sphere that Rawls left out of the scope of his theory of justice, there are problems that need to be addressed publicly. They include hatred and humiliation, malice and bullying, shame and resentment, and guilt, which show up in ways that are contrary to love and intimacy.

Similar to Lukes, Sen does not explicitly mention dignity. However, their common view is that human rights are a non-deterministic and open concept. There is room for introducing new criteria of judgment through practices that seek to redress patent injustices. With this in mind, we can speculate as follows. Sen would not deny that dignity can play an important role in discussing and formalizing these concerns as institutions. It should be noted that Sen (2004) highly appreciates the importance of the importance of freedom from having one's honor attacked in social communication that has been recognized by the feminist movement. Let us now turn to the actual human rights treaties, which includes the idea of dignity as an important subject.

The Convention on the Elimination of All Forms of Discrimination against Women (adopted in 1979, ratified by Japan in 1985) clearly states in its Preamble that "discrimination against women is contrary to the principle of equality of rights and respect for human dignity." The meaning of "human dignity" has been clarified in relation to specific issues raised in the "General Recommendations" which have been made almost every year since then. In particular, "Violence Against Women" (General Recommendation No. 19, 11th session, 1992) was taken up from various angles as a serious problem that can occur anywhere, whether in wartime or peacetime, in the workplace or at home.

In addition to the direct protection and preservation of victims, the report describes in detail the importance of creating an environment in which victims can respect for their dignity. For example, General Recommendation No. 19, Revised (Gender-based Violence Against Women, 2017) proposes an "administrative reparation formula that does not undermine the right to seek judicial redress" and prioritizes "the victim's agency, hope, determination, safety, dignity, and preservation."

Michael Rosen (2012, 80) clearly states that the concept of dignity constitutes “one particular right” in addition to and distinct from existing rights to liberty, rather than serving as a fundamental basis for human rights in general. A good example is the Geneva Conventions and Additional Protocols (1949/1977), where “violence against life and limb” and “violation of personal dignity” constitute different provisions. The latter includes “insulting and degrading treatments.” Rosen calls this “right not to be humiliated, degraded or treated with a lack of respect” the “right to have one’s dignity respected.”

6 Impact of the Concept of “Dignity”

We have now briefly examined three issues that emerge when attempting to illuminate liberalism through the concept of dignity. Before concluding this paper, I would like to explore some ideas related to the concept of dignity for critically developing Rawls’s theory of justice. For example, Ronald Dworkin, a legal philosopher who regarded rights as a “trump” that an individual can exercise, caused much controversy when he referred to “living will” and “death with dignity” in his *Life’s Dominion*. We will not go into the details here but focus on his ideas about the “right to dignity.” Regarding the “dignity” of prisoners and dementia patients, he says:

“Dignity” means that one’s personal hygiene is maintained even when it is difficult for one to do so, that one is not forced to live in a crowd that prevents one from enjoying genuine privacy, that one is given a reasonable amount of individual attention and concern, and that one’s words and actions are not ignored by others or sedated into submission. The right to dignity is a fundamental and urgent right that is not dependent on available resources, as is the right to beneficence (Dworkin, 1993, 233).

None of the examples given by Dworkin can be realized without external help or intervention. In this sense, his “right to dignity” cannot be reduced to the right to negative freedom, that is, the right to freedom from domination over the body, mind, and conscience of the individual. That is, because the problems illustrated by these examples cannot be alleviated without respecting and supporting the independence of individuals who use goods and services. In this sense, they cannot be reduced to the right to positive freedom, which requires the social transfer of goods and services.

Furthermore, his definition of the “right to dignity” draws on his discussion of the distinction between “empirical interest” and “critical interest.” The former is the individual’s interest in seeking more benefits, while the latter is the individual’s interest in the nature and value of his or her life. According to Dworkin, the “right to dignity” is related to the fulfillment of the “critical interest” rather than the fulfillment of the “empirical interest” of the individual. In other words, the realization of the “right to dignity” depends on the resources of interpersonal relations between individuals rather than on material resources.

Unfortunately, Dworkin’s discussion that follows this turns toward inter-personal comparisons regarding dignity. He argues, for example, that the only thing worse

than losing one's dignity is not realizing that one has lost it, taking dementia patients as an example. Such an argument is different from Kant's concept of dignity, which rejects all inter-personal comparisons, as in the interpretation by Rawls introduced in Sect. 2. Dworkin's argument for inter-personal comparison of dignity with clarity of perception of one's own dignity is also different from Sen's broad understanding of an individual's freedom and capability, as described in the following passage: "[A] person's preferences can be effective—whether through direct control or through the help of others. . . . Direct control is not necessary for effectiveness (Sen, 2009)." Sen's capability approach allows one to view the dignity of the individual not only in terms of the rational evaluation of the individual, but also with the responsibility of others who make decisions on behalf of the individual and for the individual.

There is room, however, for overlap with the capability approach in Dworkin's argument, which calls for support that compensates for the difficulties of individuals to behave as agents and expands what they can do. In this context we should recall the work of Martha Nussbaum, who focuses on "equal human dignity" as a central concept of her capability approach. For example:

The reason why these capabilities [regarding equal voting rights, equal religious liberty, equal access to education, etc.] are intrinsically connected to equal dignity pertains to ideas of non-humiliation and reciprocity that seem peculiarly human (Nussbaum, 2006, 382).

Nussbaum mentions the idea of reciprocity here, probably because feasibility of equal (human) dignity, such as "not being humiliated," depends heavily on relationships with others. However, it is extremely difficult to regulate all relationships with others directly via institutions, for example by creating laws or rules. Aware of this difficulty, she seeks to realize "equal (human) dignity" through the guarantee of individual capabilities. Among the "list of basic human capacities" she proposes, "to be treated as a being with dignity, of equal value to others" occupies a major place (Nussbaum, 2000).

Len Doyal and Ian Gough envisioned a universal principle of equality that assigns to all individuals the right to satisfy "needs" and the obligation to support them, with "survival" and "critical autonomy" as the pillars. For example, the following statement explains the possibility of improving the ability of people with mental illness to participate in "their own form of life" (i.e., critical and autonomous engagement) through appropriate care:

Successful treatment brings to individuals an increased ability to participate in their own mode of living or to question the mode of living. The fact that such participation may lead to unhappiness does not negate the potential of participation in solutions. Indeed, if there is anything that can minimize such unhappiness, it is the sense of self-worth that comes with successful social participation (Doyal & Gough, 1991, 66–67).

Interestingly, Doyal and Gough do not deny that critical and autonomous involvement in "one's own life" can lead to unhappiness. However, they point out that when such an involvement is combined with the relational resource of "successful social participation," a sense of "self-respect" can arise and reduce unhappiness.

Likewise, Ruth Anna Putnam extends the idea of Rawls' principle of justice to one that can be modified to reflect various particularities, so that victims of various

injustices can “express their demands with dignity.” According to her this is an attempt to reformulate the principle of justice into a more comprehensive theory (Putnam, 1995, 327).

These ideas are closely related to the background theory of Sen and Nussbaum’s capability approach. It can also be linked to Rawls’ loose concept of “personality” introduced in Sect. 2 hereof. I would like to conclude this section by referring to the description of “dignity” by Paul Ricoeur, who bridges the Anglo-American theory of justice by Rawls and others with the postmodern thought of Levinas and others. Like Nussbaum, he also focuses on “humiliation” and “mutuality.”

The victim is publicly *recognized* as having been offended and humiliated, that is, she is excluded from the regime of reciprocity owing to the fact that a crime sets up an unjust distance. This public recognition does not count for nothing. ... Yet recognition can also follow a more intimate route, one that touches self-esteem. Here, we can say that something is restored, under names as diverse as honor, reputation, or self-respect and I like to emphasize the term, *self-esteem*—that is, the dignity attached to the moral status of the human person. (Ricoeur, 2000, 138).³

7 Conclusion: “Capability for Dignity” and “Duty to Respect Humanity”

Michael Rosen straightforwardly argued that “(w)e can reasonably believe that we have a basic duty to respect the dignity of humanity.” He also points out that “(i)n failing to respect the humanity of others we actually undermine humanity in ourselves” (Rosen, 2012, 157). He further warns that “the cold joke is a powerfully effective way of undermining dignity symbolically. And such denials of dignity may clear the psychological pathway to evil” (ibid. 158).

Rosen’s intention is easier to understand if we compare it with the quote from John Mallard: “Dignity is inviolable in the sense that it cannot be taken away from us. A person who does not respect someone else’s dignity does not deprive that person of dignity but loses his own dignity.” (Maraldo, 2020) A consequentialist would call an act bad when one can prove that the action’s sole effect is that the victim’s consequential condition has worsened. For example, if an act of defamation of dignity is committed in a closed room with only the perpetrator and victim, but there is no confession or circumstantial evidence, it will be extremely difficult to prove the causal relationship between the result and the act.

Furthermore, if the act of damaging the victim’s dignity leads not only to the deterioration of the victim’s condition but also to the deterioration of the victim’s social reputation, the victim may have a psychological tendency to deny the fact of damage. In such a case, identifying dignity-impairing acts as evil would be almost impossible.

³ What Ricoeur means by “fair distance” is as follows. “The fair distance between opposing parties, too close in conflict and too far from each other in ignorance, hatred, and contempt, adequately summarizes the two phases of the act of judging” (Ricoeur, 2003, 183).

However, Rosen's logic is that a dignity-impairing act can be judged as evil or unjust in itself without the consequential fact that the victim's condition has worsened. If "[dignity] is inviolable in the sense that it cannot be taken away from the outside," then the purpose of the perpetrator's act of damaging dignity can never be fulfilled. However, the perpetrator "loses his own dignity" or "destroys the humanity in himself" when he acts in a way that "does not respect someone's dignity." This kind of reasoning reminds us of the following Socrates' question. "If a person could continue to prosper without being blamed for it, even though he had committed an injustice, wouldn't you think such an act is ugly?" If we cannot cite evidence, then it will be difficult to legally punish wrongdoing. Even so, ethics can declare an act to be ugly and condemn it as a dignity-impairing act.

Rosen also argues that the whole point of a demeaning treatment is the attempt to drag the individual down not only from the social position to which he or she belongs, but also from his or her position as a human being, by intervening in seemingly trivial matters, such as "upright gait, wearing of clothes, eating subject to a code of table manners, and defecating and copulating in private" (Rosen, 2012, 160). This was an interesting finding. More interestingly, Rosen points out that the ultimate goal is to undermine the victim's "capacity for dignity" (ibid. 159). This point is also interesting because it suggests the validity of a "personal capability" perspective that encompasses individual dignity and the capacity for human dignity.

The findings of this chapter can be summarized as follows. Respecting the dignity of all individuals equally as an incomparable value and status is nothing less than seeking equality as a norm. Respect for dignity calls for restoring and guaranteeing universal human dignity for all individuals while paying due respect to individual dignity related to their diverse statuses and personal histories. This calls for a departure not only from the unitary hierarchy of values assigned to individuals by the existing social institutions, but also from the unitary nondiscriminatory equivalence scale of human homogeneity.

The concept of dignity also enables us to identify dignity-impairing acts as evil in themselves, without necessarily proving their consequential damages. The purpose of undermining the dignity of others is often to undermine their capabilities for dignity, which can only undermine the actor's capability for dignity.

It is clear that these findings from the dignity concept will not merely extend the range of liberalism so far, but will extend the liberal framework itself. To contribute even a little to the unfulfilled dream of the concept of human rights, which is both the reach and the limit of liberalism, the concept of dignity should be recaptured into the camp of equality as a norm. This is the tentative conclusion of this chapter

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Chapter 5

Human Dignity as a Global Common Good



Ko Hasegawa

1 Introduction—The Problem Framework

Human dignity is a significant value for us human beings. This significance looks evident in that we believe we are the unique being in the whole universe. How could we not think ourselves significant as we persist in seeking the meanings of our own lives, whatever their particular contents may be (Magee, 2016)? In this respect, the idea of human dignity has something deep for us: it is concerned with the core of our own existence and thereby with everything we do for our own needs and interests.¹

The broad significance of the idea of human dignity is conspicuous especially in the field of international human rights law (IHRL). The idea became more visible when important legal documents after WWII were established, such as the Basic Law in Germany, the Constitution of Japan, and the Universal Declaration of Human Rights (UDHR). Many camps of legal thought such as Christian, Natural Law, and Humanistic ones joined this development to appreciate the importance of the ultimate worth of human beings in political and legal arenas all over the world (Nickel, 2007; Shelton, 2013; Donnelly, 2013, Part III; May, 2020).

In this regard, we should note the importance of the role of UDHR in the development of international law and politics particularly after the 1960's till today. It is not impossible today to hold that the idea of human dignity set out in at the very first article of UDHR as a globally shared value. Every activity of law and politics, or

¹ This never means that only we human beings are invaluable beings on this globe and in this universe. My considerations focus solely on the dignity of human beings and not on the dignity of any other beings in the universe, especially of animals and plants on this globe.

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even of economy and culture, in the international context of IHRL, can be considered as an extension and permeation of the idea of human rights and thus of the idea of human dignity.

In international context of law and politics after UDHR, we find the establishments of invaluable declarations and treaties concerning human rights, globally and locally, and hard and soft, such as International Conventions of Human Rights, European Convention on Human Rights, or UN Declaration of the Rights of Indigenous Peoples. Also, we can find similar situations in the development of global private law and other established rules for international organizations such as World Trade Organization, World Intellectual Property Organization, International Olympic Committee, or World Anti-Doping Agency, which can govern various professional or private activities of the people in the world. Further, certain parts of national legal systems in the world are now becoming globally connected by the adoption and incorporation of those international legal rules and standards. All these documents and standards are now integrated, even if not totally, by centering around UDHR as the historical and theoretical axis of all relevant standards to form international or even global human rights law. And UDHR has been giving much impact to international activities in the name of the politics of human rights by stating minimal principles for the plausibility of policies and practices in each society. In this sense, the idea of human dignity at the very starting point of UDHR article 1 has been climbing up to the global value for all the human beings. The idea of human dignity has now attained, through the accumulation and expansion of the web of human rights law, the status of the universal significance as the deepest value for all the human beings.

All this situation in IHRL might seem only one aspect of the history and development of international politics after WWII (Ishay, 2004; Moyn, 2012). Although there surely appears the practice of IHRL, the significance and scope of the practice might be much limited in some aspects of political ideology and of political geography. Accordingly, the development of the idea of human dignity might be partial and local in the arena of politics on this globe. There might be fewer people in the world who truly understand and realize the substance of human dignity, and there may be fewer countries or societies that effectively establish and maintain the legal practice based on the idea of human dignity. The effective legal expansion of IHRL and human dignity is difficult in the face of the tough and fluid reality of international relations. Fewer people and countries or societies in the world can appreciate the importance of IHRL and the idea of human dignity. We should not be optimistic about the historical progress of IHRL and human dignity. They might be a legal institution found only among decent governments and an abstract idea shared only among knowledgeable peoples.

However, many parochial thoughts on the place of human beings have tended to refer to the idea of human dignity as the core of those thoughts, even if the references may be ideologically or politically constrained. For example, not only Western theorists and practitioners but also such religious views in the world as Muslim, African traditional beliefs, or East Asian philosophies can refer to the idea of human dignity in emphasizing that each of those beliefs can include an analogous idea that can be

fittingly embed into the idea of human dignity (Sullivan & Kymlicka, 2007). Furthermore, there appear today many conscientious people who are connected through the global networks of social media and such active global NGOs as Amnesty International, Oxfam and Human Rights Watch. In those developments, the gravitational field of IHRL and human dignity has been getting thicker and weightier in the discursive struggle in international relations, even if gradually. In this sense, it is easy for us today to find various traces or seeds of the thought of human dignity, whether thick or thin, in diverse thoughts and activities of human beings. Everyone in the world can appreciate human dignity in some, even if often culturally relativistic, ways. I believe all this indicates that the idea of human dignity is becoming so deeply entrenched that people in the world today cannot ignore it as a mere political or moral rhetoric.

Still, I can understand the suspicion of many people that we might tend to overemphasize the importance of the concept of human dignity. On the one hand, it is said that the meaning of human dignity is vague; IHRL is simply an instrument of international politics of the great powers; local politics or customs can precede the idea of human rights and the like; and thus the significance of the idea of human dignity may be less than generally maintained or much minimal in its real force. On the other hand, IHRL activists tend to exaggerate the force of the idea in criticizing problematic activities of national governments or private powers, as the vital needs and interests in question concern the essential lives of all the peoples in the world: IHRL is expected here as almost omnipotent for the correction of many injustices in the world by expanding the idea of human rights based on the ideal of human dignity. Further to add, we need to look at the problem of cultural relativity in understanding the significance of the idea of human rights and human dignity. We need to understand various cultural twists of the meaning of human dignity. For, it is already commonsense that there are various cultural backgrounds, religious and customary in particular, for placing the idea of human dignity in worldwide cultural contexts,

As is usual for human endeavors, the truth is probably in the middle of the tension. And yet, how to capture this middle point in this problem situation and hold a reasonable stance on the point of the protection of human dignity is such a fundamental question for the philosophical explorations on human dignity. Nevertheless, what I wish to investigate in this brief essay is neither an explication of IHRL that originated in the legalization of human dignity, nor a practical normative justification of human dignity from a morally comprehensive viewpoint, nor a detailed analysis of various views and conceptions of human dignity from a sober descriptive viewpoint. As is often in the case of the fundamental idea for us human beings, to analyze, define, and grasp the essence of human dignity is very difficult and there might be diverse and often conflicting views, beliefs and opinions about the form and substance of human dignity. Also, the idea of human dignity can have intricate relationships to other important values such as freedom, equality, or solidarity.² The idea of human dignity can be complex (Debes, 2023; Riley & Bos, 2023). Yet, a detailed analysis

² As a matter of human morality, I believe in a substantive evaluation for the universal importance of egalitarian liberalism, as well as its close idea of communitarian liberalism (Dworkin, 2011, Part 4 & 5; Selznick, 2002, Part 1 & 3).

or a practical justification of human dignity from a substantive standpoint is not the theme in this essay. Rather, my objective here is to clarify the deep universality of the idea of human dignity in new terms which can get beyond the simple observation or the parochialism of local understanding of that idea and, thus, to show that idea's pervasiveness for all the peoples on this globe.

This objective can be much novel and different from ordinary perspectives on the idea of human dignity. It might seem that the most important point of the philosophical considerations on the idea is to give some firm justification from some moral standpoint for the practical necessity and broadness of the idea in international reality. I would not deny this importance. However, what is most important in my view is the recognition that the idea of human dignity is deeply conditioned by the very existence of human beings in this universe and on this globe much more than usually anticipated. In this sense, the idea of human dignity is radically fundamental and essentially un-contested in basing itself on that very existence. If so, the discussion should go basically in the way that the idea of human dignity should be considered as invariably respected and also that, to that degree, it should be incorporated to the very axis of human normative concern of any kind. To the extent that the idea of human dignity may be universal and fundamental for all the human beings, that idea must have certain grounds in the very core of human existence and hold certain grip toward other possible values.³ I wish to explore an understanding of this possibility in the following.

Incidentally, I should add some words about the methodology of my inquiry. What I am going to do for the exploration of the universal circumstance of the idea of human dignity is interpretation in the sense of philosophical hermeneutics. Michael Walzer once made a distinction of methodology in terms of the difference between discovery, construction, and interpretation (Walzer, 1993, Chap. 1). I follow this distinction to place my methodology in possible approaches in social science. In particular, interpretation is different here from the other two methods in that it tries to understand the very presuppositions of the idea in question and to articulate not the premise or axiom that can logically produce some substantive conclusion but rather the latent constitution of thinkings about the idea in question. This is also different from positivistic descriptions and analyses of the object in question in terms of discovery. Interpretation is from within, while discovery is external description and construction is arbitrary modeling of the matter in question.

³ All these points need not imply that the idea of human dignity is omnipotent in the protection of human thinkings and doings. Various moral values different from human dignity can work for this protection.

2 Human Dignity as Universal in the Existence of Human Beings

2.1 *Preliminary Remarks on the Secular Understanding of Human Dignity*

Various pursuits of understanding human dignity have been appeared, especially immediately after the end of WWII, though explicating the importance of human dignity has been much colored by certain religious worldviews in the West. Of course, these religious understandings do not exhaust possible understandings; there are a certain number of secular, moral understandings of human dignity (McCrudden, 2013, Part III). Moral understandings of this sort generally postulate that there exists certain personhood as the focus of human dignity that is based on human nature as the value basis of moral and ethical considerations. This understanding is to be seen typically in the liberal moral thought (Rosen, 2012, Part 2). This dignity is to be expressed in the Kantian idea of ends-in-themselves, in the Millian idea of the development of individuality, or in the Rawlsian idea of moral person who can plan and perform an authentic idea of good life. And the common thread of these views seems to lie in the neutral basicness of human rational thinkings and doings. Although particular contents of human dignity can vary widely, its central features are common in that human dignity is significant in itself and to be respected as forming the substances of particular good lives of human beings. Human dignity is the base on which human identities, societal statuses, capabilities, and achievements are to be adequately realized. Here a particular religious or moral significance is irrelevant, as this significance is itself the expression of the deep sense of human existence.

Also, human dignity is a sort of deep moral intuition, which is especially appreciated in “the limiting situation” coined by Karl Jaspers. Human dignity normally means some basic aspect of human existence. The point lies here in why that existence itself is to be appreciated, and this is because we think that the significance of the existence itself must not be lost without any perceptible reasons. This possibility of loss will not appear in the normal situation of life, which is forward-looking; yet the point of human dignity indicates that the preservation and security of human existence itself is normatively invaluable as the ground of the entire protections of human life.

I believe the insight behind this secular moral understanding is right. Although human dignity can be not only a contested but also a wide-ranging, yet not indeterminate, value, the core of human dignity has a certain gravitational force in a wide-range of applications, in such cases as disrespect, humiliation, degradation, subjugation, or violence. And, in this regard, human dignity can be a concept that has normativity that can yield certain societal norms (Etninson, 2020).

Now, the question is what the secular core of human dignity is, and I wish to briefly propose the following view of my own, which will lead us later to a deeper consideration on the root of the idea.

On human reason in general, Plato thought that a human soul has tripartite elements. Human soul, for Plato, is led by two motivations, one desire and the other will, and is regulated by reason. In this tripartite picture of human soul, reason is the integrative capacity that can recognize, prescribe, and steer human thinkings and doings. This picture has survived the history of moral philosophy until recently: to name some, Thomas Aquinas, John Locke, Immanuel Kant, John Stuart Mill, and John Rawls thought that the basic characteristics of human mind hold reason's deliberative capacity as shaping the right course of human thinkings and doings against the pressure of their own desires and emotions.⁴

There are other views that cannot be ignored for qualifying the working of reason for human beings. Even if the role of reason is decisive in our thinkings and doings, those views see the role of human reason as complex. For example, Stuart Hampshire criticized the Platonic master-mind view by emphasizing that reason, emotion and will may be mutually interactive. Hampshire perceptively maintained this process is controlled by the process of reflection and prescription with the result of the realization of the decency in the self. Also, Michael Walzer thinks one's self as divided, and situates the working of reason as something like a chairperson among different voices in oneself. Also, Charles Taylor sees our self as dialogical, and understands the working of reason as a process of dialogue among various factors in human mind. They maintained that reason plays some limited role among divergent human capacities (Hampshire, 1989, Part 1; Taylor, 1992; Walzer, 1994, Chap. 5). Indeed, human reason is not powerful enough to totally control our thinkings and doings. But we can say that the power of reason is still decisive in that it can finally accommodate conflicting elements in human mind.

On the basis of this view of human reason, I briefly indicate the central features of human ethics, which constitute the very site of human dignity. In the course of life one often feels divided within oneself, as the modes of one's experiences are divergent.⁵ However, although human existence and life is full of complexity and conflicts, this does not necessarily mean that human beings cannot think and act in some integrated way. I believe rather that most people try to live for certain objectives, in whatever form and mode, with making their lives meaningfully consistent. When one tries to pursue a certain meaning of life under the condition of complexity and conflicts, there should appear a certain ethics in oneself. In holding this sort of ethics, one tries to guide one's life in the best possible way for overcoming the pressure of reality and fate. Of course, a particular ethics is divergent as employed by various individuals with their particular lives. Still, upon reflection, we find a deeper fact that living in a certain decent way itself has an intrinsic value for human beings. This is itself the

⁴ Of course, human desire and emotion are not always the counterforce against reason. David Hume, for example, famously emphasized the power of passion for human thinking in saying that reason is the slave of passion, and yet he also noted that we have not only violent but also calm passion that can support the working of reason. Also, when reason is denounced as biased or sheer rationalization of self-interest, it is itself the genuine form of reason that we utilize to criticize that sort of misuse of reason.

⁵ Such as joy, misery, hope, despair, luck, hardship, sympathy, hate, madness, humility, vanity, sincerity, selfishness, charity, friendship, insult, frivolity, beauty, or death and the like.

ultimate ethics of human beings, and that is what I call *self-formation* (Hasegawa, 2004, Sect. 2).

The core constitution of our pursuit for a better life is, I believe, a sort of integral process in life. And, in this regard, we should pay attention to the dimension of ethical ordering in the self. The dimension of ethical ordering, itself common to all human beings, classifies the importance of basic or derivative values in human self and shape human thinkings and doings along with it. Further, we seek the consistency between the future and the past by constructing the present: one pursues certain ethical integrity of life at and over time. This entire process can be understood as the interpretive spiral of receptivity, sagacity, and practicality: it is the developmental spiral among the intelligent sensibility in understanding, the imaginative ability of progressive response, and the practical power for the attainment of various life objectives.⁶ Also, this spiral develops successively toward a new dimension over time. One then faces and perceives the new problem situation at another stage in life. To the extent that the idea of human dignity may be fundamental for all the human beings, that idea must have certain grounds in this secular substance, what I call self-formation.

Thus, the essential question for us about the idea of human dignity now is: why and how the radical ethics of self-formation as the very site of human dignity can have such universal significance in being accepted by our diverse belief systems? And the orientation of the answer I wish to give is: because the idea of human dignity encounters some radical constitution of human existence and life as self-formation that is the generic basis of all belief systems of us human beings in the world. This is what I am going to investigate further.

2.2 *The Conjoining of the Radical Dimensions for Human Dignity*

For the generic perspective in question here, we can distinguish at least four radical dimensions for the idea of human dignity: cosmic, societal, ethical, and moral. This is because any human beings must face with these dimensions in their lives, in whatever modes, as their fundamental elements in their existence. These four dimensions make the *conjoining* for the idea of human dignity, without entering into contested particular understandings of the substance of human dignity (Capra & Luisi, 2014, Part IV; Capra & Mattei, 2015). Among those dimensions, the cosmic and societal dimensions concern the external presuppositions for the idea of human dignity, while the ethical and moral dimensions concern the internal shape of the idea of human dignity. The former two dimensions concern the world of facts that is relevant to the

⁶ The intelligent sensibility in understanding indicates that one can interpret other's thinkings and doings in the best possible way, with a sense that these persons basically share certain problem-interests, even if they have different opinions. The imaginative ability of progressive response indicates that one can devote oneself to reach a better explanation and justification of the problems discussed. And the practical power to attain life objectives is that one has enough will to step forward to the realization of the reasonable solution of the problem at hand.

generativity of the idea of human dignity, while the latter two concern the world of norms that is connected to the normativity of that idea. The idea of human dignity emerges with the core of the latter dimensions against the background of the former dimensions.

Related to this conjoining, we should recognize that there must be another element in the idea of human dignity that can give some integrity of this idea to guide the conjoining toward the meaningfulness of the idea of human dignity. This might be captured as some internal drive within us all: we human beings have certain confidence about our own agency to form meaningful and consistent lives. This element is itself the crucial site for human dignity, which should be discussed after we explore how the conjoining is significant for the idea of human dignity.

Firstly, the cosmic dimension concerns the natural luck of human dignity. From natural scientific standpoint, the existence of human beings is such a miracle in such a huge space of the universe. The fact that human beings come into existence in such a long process of the evolution of the universe and the life gives us the sense of non-replaceability of our presence in this universe; which pushes us to recognize the origin of the birth and development of human beings.

Let me note yet that, as I do not have enough knowledge and expertise on the natural laws of the universe, the distinctive features of human brain, and other sorts of biological capabilities of human beings, I cannot discuss in scientific detail for my argument that human beings are distinctive in the great nature. However, I can focus on some works that strongly draw my attention and give basic insights about my problem. Namely, as for the natural laws of the universe and its relationship to the status of human beings, I can learn many things from the following works: as for the evolutionary process of the universe and the distinctive place of human beings in that great process from Brian Greene's fascinating story in *Until the End of Time*; as for the biological basis of the astonishing working of human brain from Michael Gazzaniga's *Human*; and as for the fascinating features of human communication with languages and symbols from Derek Bickerton's *More Than Nature Needs*. Although the choice of these works might look fragmentary, it will suffice to abstract the important points for my consideration from them (Bickerton, 2014; Gazzaniga, 2008; Greene, 2020).

The fact that the probability of the emergence of life and also of *Homo sapiens* is so low in the gigantic scale of the birth and expansion of the entire universe makes us aware that our existence is such a rare opportunity in the entire universe. Human beings are so tiny sands in this entire universe that is still expanding after all these 138 billion years; the birth and development of *Homo sapiens* is also such a small part of the evolution of life on this globe for these 35 billion years; and the history of human civilization is simply a final result of those long process in these 200 thousand years; and furthermore our lives in these modern societies have been continuing for only 5 hundred years or so until today. One must be astonished by this rarity: human beings are born and live in this universe, can think with reason, as well as having emotions and wills, and can have specific language and symbolic systems to articulate their thoughts that result in the dense accumulation of diverse human civilizations.

Considering this evolutionary and historical diachronicity, we can understand that it is apparent that the existence of human beings is itself so special in the universe.

Our existence has happened once and for all without any substitutes; there is no one other than human beings on this globe and perhaps in the entire universe who can have precedence over other creatures. Of course, we have reached this stage through various evolutionary branches, and yet we are the only beings that could get through various evolutionary processes. This sense of non-replaceability makes us aware that only we can have a significant status for concern and respect. Needless to say, this does not mean that other creatures on this globe and in the universe do not deserve our concern and respect; it means only that at least we can sense we are special and can demand special concern and respect more than other creatures. I call this situation the *rarity* of human beings.

The sense of rarity, sustained by the conviction that we have a certain specialness in our own being that has to be concerned and respected, might be strengthened by the wish that we are closer to the God or some heavenly existence than other creatures. In some sense, this is natural, since human beings tend to be proud of themselves. This might be a leap of arrogance that is spurred by the appreciation of our special faculty of human reason, by our egoistic self-respect or by mysterious instinct, whether we like it or not, anyway embedded in human nature. And yet possible reasons or wishes do not really matter here; there are conflicting opinions about those reasons and wishes. The important thing for the moment is simply that each of us has that sort of firm sense for our own existence that can give strong grounds and drive for our own life.

This sort of sense might seem to straightforwardly imply a certain value. However, the mere rarity, or non-replaceability of something cannot be directly connected to the value of it. They are simply by-products of many accidents in the expansion of the universe and the life. It is a natural tendency of human beings to positively appreciate very rare and distinctive things as of value, because it is so precious for the confirmation of our own being. Those things are what actually happened and are happening, which cannot but be sensed at the start of our existence. Nevertheless, we need to be aware that nature itself does not always have some valuable features for human beings, simply because there are many natural incidents and features that disturb or even destroy human lives. In other words, generally speaking, the generative characteristics of some object that looks valuable is still different from the moral commitment of human beings to the appreciation of the importance of the object in question. Also, as a matter of normative logic, it is evident from the logical distinction between fact and value that we need a certain principle to appreciate the importance of nature for human beings (Cohen, 2008, Chap. 6). So, if we should affirm something valuable in nature, we need to employ a value principle of our own that determines some adequate features of natural object. These features are to be mediated by some valuational plus in order to get connected to relevant values such as human dignity; in our problem context it has to be mediated by the evaluative judgments based on human self-valuation.

Here I should reconfirm the importance of valuation in human agency. This is not sheer individual autonomy in a narrow, often Western, sense. Rather, what I wish to emphasize here is that the recognition of such an objective fact of great nature and the

response to it is itself moral countenance of our own.⁷ This might sound the problem of “fiat”, and yet I think it is an expression of the power of our reason, though it is a part of human mortality in contrast with the eternity of the universe and nature itself. This is not the problem of religious belief either, because we need to presuppose some moral evaluation to believe in it. There might be someone who evaluates this situation negatively or pessimistically. But this only shows that the matter is the one of human moral valuation.⁸

Secondly, let us turn our eyes to the living aspect in human collectivity. While human beings are a miracle in the great universe, we live together, in whichever scale, small or large, by shaping a certain community or society, local, regional or global. In this regard, it is evolutionarily confirmed at present that there operate various clusters of individual beings in collectivity. In whichever form, family, group, association, community or organization, the very fundamental point of our societal existence includes the fact that an individual being has to face other individual beings in communication, intimate relationship, quarrel, subjection, or ruling. The fact that we have to hold some intercourse with other people in some scale is the inevitable societal fact for human beings.⁹

I am not talking here about methodological individualism in sociology or individualism in moral or political philosophy. My point is not concerned with a realistic individualist method of social sciences nor the priority of individual rights and interests in morality, politics, or law. These are the problems of analytical modelling to understand social and economic process or the problem of normative principles to regulate moral, political or legal order. Additionally, my point is much different from the so-called fact of reasonable pluralism that John Rawls developed in his notable discussion about political liberalism (Rawls, 2005, Lecture II & IV). This fact is concerned with the diversity of ethical and religious beliefs of diverse people in society. But what I am indicating here is rather a deeper societal fact of human collectivity that bases itself on the fundamental relationship among people, which is concerned with the possibility of the existence, of whatever kind, of human beings in collectivity. While the fact of reasonable pluralism is concerned with the conflict of normative beliefs between diverse people in society that yet tends to aim at some consensus at a fundamental level of those beliefs, the fact I am talking about is concerned simply with the rivalry itself between people in a societal setting, no matter how they can agree with something relevant at some fundamental level or not.

It is here that human beings must have some sense of I and you, or we and they. A human being must sense something disturbing either psychologically or physically against others, when a clash of beliefs, needs, or interests occurs between them. One

⁷ This position is to be called *critical naturalism*. Here I never forget the tragic disparity between subjectivity and objectivity that human beings tend to be trapped in?. I sense this an eternal predicament of humanity.

⁸ This is also concerned, in my discursive context, with the cosmological place of human beings, though it is always the problem and task for human beings and their virtue that should be balanced with the ontological objectivity of natural facts beyond human beings.

⁹ This is the very starting point of sociology, anthropology, and cultural theory that emphasize the importance of the meaning of human living (Spillman, 2020).

now has to hold some sense of oneself vis-a-vis others in mind and body. Some might say that in primitive situations a human being has only some collective background of oneself, not really oneself starkly distinguished from other fellows, thus that there are few possibilities to realize the fundamental distinction among people in society. Indeed, it is possible to some extent and sometimes be so distinguished, especially in anthropological conditions in primitive or tribal collectivities, and yet a human being can sense loneliness or alienation from others when one senses a large divergence of beliefs, needs, or interests between oneself and others. Here a human being can have a sense of one's own status vis-à-vis others, even if in a weak form of the awareness of one's location among others. This indicates the distinctive status of a human being among others, that is, the *immunity* of human beings.

This situation of immunity becomes clearer, especially when human beings confront one another regarding their living needs and interests in cooperative or competitive settings. Here one can find one's antagonists directly in front of one. This becomes such a pressure, both psychologically and physically against other human beings. Fear, anxiety, and harm occupy one's mind, and this critical situation arouses his sense of fighting against others. It will break some instinctive tie with others and make clear one's own status inevitably. Also, this will happen in political settings for the pursuit of power over others, in economic settings for the pursuit of interest and money over others, or in cultural settings for the maintenance of family or social relations with others. This sort of relationship between a being and others can be characterized as the existential tension among human beings that pushes one to be aware one's distinct status in collectivity. This will lead one to recognize the significance of oneself among others and the importance of the protections of oneself against others who might intervene or harm oneself. Particularly when one's existence is at stake, the urge to preserve one's own status comes to the fore.

We can find here a primordial condition of dignity in a human being in a societal setting. Of course, a certain sense of loneliness, alienation, fear or despair of people cannot be elevated to the sense of dignity straightforwardly. Perhaps, if human beings can find the immunity in a reflective manner, we might find ourselves to be dignified, and we will need further steps of reflection to reach to the thought that others also have the same sort of sense against their others. Needless to say, this is also another problem of normative evaluation of our own, as in the case of the recognition of the cosmic rarity of human beings discussed before. There can be positive or negative responses of our own to the societal setting in which human beings cannot but be involved; in particular, negative response would have destructive effects on our own existence in the form of suicide. However, the point in this situation is just that anyone face the immunity, even if it might finally be somewhat egoistic, as there inevitably is the rivalry between people in collectivity.

Now, thirdly, observing the importance of human beings in the dimensions of the natural and the societal, we need to add a further consideration in terms of the adequacy of human living in the complex of the former two dimensions. Although human beings exist in the natural and societal environments, they also think and act, that is, live, in some meaningful ways in that complex. We should be aware that in our living there are two more factors such as the ethical and the moral. The former,

the third factor of the conjoining, is concerned with the attitudinal value for a good life of an individual and the latter, the fourth factor, is the value for the respect for others as the framework of the right among people.

It is obvious here that we face the infamous philosophical problem of the meaning of life for human beings (Cottingham, 2003; Frankl, 2004, Part Two). Yet, the problem here is not that philosophically deep problem but rather the circumstance of the problem of the meaning of life. This is concerned not with what the radical meaning of human life is but rather with in what sort of human condition in nature and society the deep problem of the meaning of life may appear. Although we need to consider generally the problem of how adequately human beings may live in nature and society, the form of that circumstance is to be divided to two aspects of human living, namely the individual or private aspect and the collective or public aspect. In this regard, we need to explore two aspects of how well and how right a human being may live.

The first point is concerned with the ethical. This is the aspect of an individual life for the realization of her own good life. At this dimension, an individual tries to realize what she herself wishes to pursue in her life, which is the significant good for her. The point is that this life is individualistic and thus distinctively her own. It is clear and easy here for her to understand that the life in question, whatever form and substance it may have, is invaluable for herself. This life itself can never be the one of others'. Thus an individual can hold the sense of his own existence through the understanding of the ethical aspect of his own life. Of course, this does not imply that the existence of others are unimportant for an individual. He may have close relationships with others in the form of familial tie, love, friendship, cooperation, collaboration, or solidarity; he may depend on the help of others through those relationships. What matters here is simply that she can hold the sense of difference from others, even in those significant relationships. And this is enough here for the establishment of the sense of *individuality* for a human being.

Indeed, we need to consider the possibility of alienation. Even if an individual may have the sense of something different, he might fail to embody it in himself. In alienation, an individual may not have the sense of individuality positively; rather she might feel degraded herself in the midst of alienation from others. However, psychologically speaking, this would not make her feel that she totally loses the sense of her own presence. The case is the opposite in that she tries to save her sense of individuality as she feels to lose it in some way. Even in alienation, the sense of individuality is the basis of human living.

All this indicates that the ethical is the core feature of human living in the individual context. An individual has something ethical in herself in whatever form. While it is natural for a good-doer to have something genuinely ethical, such as being honest or generous, even a wrongdoer may have something ethical, though in this case it might be evaluated as intrinsically or extrinsically wicked. In this case, the question would be whether a strong wrongdoer such as murderer could hold the sense of human individuality. It would be supposed here that, say, a murderer can never have such a sense as he loses the individuality when he did something wicked. Well, it is natural to suppose so; the person who deprives the existence and living of others cannot be eligible to enjoy the individuality which he has denied to others. If he enjoys the

individuality while he denies it to others, he supposes himself privileged over others by that individuality. My point here is, as has been discussed already, not whether it is substantively good or bad for an individual to hold the sense of individuality; rather the point is somewhat formal in that even a wrongdoer can be motivated to seek something valuable for himself (Midgley, 1984, Chap. 9). This is enough at least for us to simply observe the importance of individuality and its valuational features are to be reflected in the moral countenance of our own values.

Then, fourthly, as has been implied in the discussion above, human beings live not alone but rather in the interactions with others in a collectivity. The picture is that any human beings in collectivity hold distinctiveness with each other because of their interrelationships at the fundamental level of human existence. Here the individuality of human beings is itself perfectly equal among them in a society; thus they tend to see themselves as co-subsisting in society. This is the fundamental fact of life, the *mutuality* of human beings; which indicates the importance of what I call the moral among human beings, as well as the importance of the ethical for an individual life. In this situation, an individual faces others, close or foreign. This occurs for every being in that setting; and he finds not only the difference but also the commonality with others.

This fact leads further to the case that every being recognizes his own existence possibly with the recognition that others have the same sort of individuality. Of course, some might tend to be egoistic in pursuing his own self-interest or in sticking to his own particularity, while others tend to be confrontational or aggressive against others, while some might tend to be kind or to tolerate others. Struggles and conflicts between human beings are unavoidable, particularly when their very lives are at stake due to scarcity or poverty. However, this situation also can contribute, even if paradoxically, to the recognition that every human being can be different and one can be distinctive and unique. The question here is not whether they should be equal or not in positive way but rather whether they can sense their own existence in facing with others, friend or foe.

A task for securing human interrelationships in the moral dimension is to set up some public framework for any beings in society. Here appears the cluster of norms that can be some sort of religion, convention, morality, or law, though their normative characteristics be not the same. These societal norms, different from personal ethics or beliefs, are for the framework of the right in collectivity (Bicchieri, 2005, Chaps. 1 & 6). Here I do not question whether it is really right or wrong; as a matter of fact, there are many kinds of societal norms on this globe and in the history of human civilization. The problem of the just for those societal norms is of course significant, especially for the valuational orientation of human collectivity. And yet I wish to put that question aside for the moment in order to watch the presence and the fate of the framework of the right, though I believe myself the importance of a global kind of egalitarian liberalism in this context (Dworkin, 2011; Sullivan & Kymlicka, 2007). Still, these societal norms reflect the necessity of that framework that includes the working of the complex interrelationships among human beings in a society, which also implies the contrast between one and others in a society. From the viewpoint of the person whose, say, religious conviction is not the same with the ones of others,

whatever the content of those can be, he can sense that he himself is distinctively different from others in the respect that he himself holds that particular religion. The point here is not whether his conviction is good or not but rather whether he can recognize his difference against others in terms of his religious belief with the understanding of something common in the co-existence of people around him. The core of the moral lies in this shaping of the mutuality between people.

A further point of the moral dimension lies in the situation that some people question why each of them should be moral in relation to others. From this possibility, we might think that the working of the moral is unstable in a society; which makes us suspicious about the significant place of the moral in our discussion. Also, there are many possibilities of authoritarian norms or wicked norms, as the history of human civilization have been showing sadly. In this situation, we cannot optimistically hope the framework for the right can be really right or just. Indeed, there is certain instability and fragility of the moral in a society: for example, even a stable public morality might collapse or get rotten in accordance with the degree of its actual strength for the officials or the entire people in question. Still, this fact does not imply that there works no dimension of the moral in a society. Rather, the point is in the very case that morality can be questioned. People can be aware of the operationability of the moral even when they suspect its real working, which means simply that there is the space of the moral in a collectivity to the extent that people can problematize it. Even when one has moral suspicions, the moral can be a significant dimension for him in relation to others around him.

Still, another deeper point of the moral dimension might be concerned with the fact that everyone actually senses that he has distinctive status in collectivity. In contrast to the situation of the ethical discussed earlier where one can sense intrinsically and thus directly the distinctive importance of oneself, he might sense in the moral dimension only superficial relevance of himself because he senses only the difference and distance from others. And yet, the point here is that human beings can be aware of the individuality behind the mutuality in a relational way (Wallace, 2019, Chaps. 2, 3 & 4).

This leads ultimately to the deepest point on the conjoining of the four dimensions for human dignity: we should not forget to add something significant from the perspective within the very human being himself. As those dimensions discussed so far are the ones from without for us, we need a further element that is from within ourselves to finally characterize the root of human dignity. This is the dimension that, as indicated at the outset, many religious or ethical views of ourselves in the history of human thought have been providing: we need a certain axis for the very site of our own existence. Yet, the point is not that we deal with the meanings of those particular views but rather that we try to capture the essential drive common to those particular views that can reflect the radical basis of human status I have been indicating. It is this drive from within that can transform those external dimensions to our sense of dignity. This internal drive opens within our own thinkings and does the horizon of that conjoining by intaking those circumstantial conditions to yield our reflections for the establishment of the normative importance of our existence

and activities (Nagel, 2010, Part 1). I wish to call this feature, as an integrating aspect of the conjoining, the *nobility* of human being.

This is related to what I have discussed about the importance of valuational agency of human beings. This is not mere individual autonomy or something like it; rather this is concerned with the rarity, the immunity, and the individuality in the distinctiveness of human beings. What I wish to emphasize here is, as suggested before, the valuational response to the recognition of such objective features is a reflective and moral countenance of our own. We respond to the inevitable objectivity by some normative subjectivity, in which reflection and judgement are crucial elements. Although this could be the problem of “fiat”, I think this case is an instance of human mortality in contrast with the eternity of the universe and nature, whether good or bad, or right or wrong.¹⁰ In this regard, the ideal of the perfection of values is to be understood not in the world of ideas in Platonic sense nor in the world of the objective nature and life. It is always the problem and task for human beings and their normative virtue that is expressed in the nobility (Nagel, 1986, Chaps. VIII, IX & X).

Having now confirmed the conjoining of the four dimensions and the inputs from within, in what sense may this conjoining be the root for human dignity?

First, what is shown in this conjoining are universal truths of any human beings. We can say that all this shows the limiting conditions of human existence and activities on this globe, wherever, whenever, and in whatever way they live. Of course, the universality of this claim is still to be explicated more. For example, we might take some view of the so-called onto-axiological perspective to ground this claim on the factual necessity in this universe and on this globe (Jonas, 1984, Chaps. 3 & 4). However, I do not think even the deep fact can have such intrinsically valuable features: we know the nature is sometimes accidental and cruel for human beings. Rather, probably, the conjoining could indicate the origin of human predicament that induces human efforts to overcome hardship.

Second, the conjoining yields the source of our awareness about the unique place of human beings in nature and society. This awareness is not accidental but rather inevitable, as human beings must subsist and live in nature and society for themselves. In other words, this conjoining itself shows that our status in a combinatorial way is itself such a fundamental mode of our living that gives the radical importance of the status of human beings as the valuational point not to be lost, harmed nor endangered. If this point be infringed, we urgently need to recover it to secure the radical basis on which any human possibilities depend. This circumstance is the trigger of our own moral countenance for ourselves.

Third, it is ultimately we ourselves that can assure the value of dignity cognitively and expressively significant in moral valuation. This is apparent as we need to reflect upon ourselves, keeping some distance toward the object we try to understand and

¹⁰ This is not the problem of religious belief, either. Because, we need to presuppose some moral evaluation to believe in it. Needless to say, there might be certain number of people who evaluate this situation negatively, or pessimistic like Arthur Schopenhauer. But this only shows that the matter is the one of moral evaluation of our own.

appreciate the proper significance of our own status. At this point, what I have discussed about the core of human agency becomes relevant in a recursive way. The idea of self-formation has been articulated as the common core of human agency that can be interpreted spirally by various substantive views for the excellence of human dignity. When this self-formation works as the fundamental route toward any sort of human living, we will reach the stage that any human being is sustained by the conjoining of nature and society, which is also to be morally affirmed to be secured. Then, while the conjoining yields the source of the sense of dignity, our moral reflection in self-formation determines the value of human dignity. This is the valuational appreciation of dignity in terms of our own moral countenance.

Human nobility shows the axis of human morality: it is the starting point of the development of human morality. Perhaps, we need here certain agential openness to the world, symbolization by human language, interpretive meaning-giving, and idealization of the salient features of what we see, which is via the deep moral principle that what is fundamentally to be secured must be the prior focus of our mutual concern and respect among human beings.¹¹ It is here that some normative framework in society comes in to realize something right and good for that very basic status of ourselves, whether it be in the form of religion, convention, morality, or law. My discussion now moves to the nature of this normative framework and its relevance for the protection of human dignity.

3 Normative Space and the Global Common Good for Human Society

3.1 *The Significance of Normative Space for Human Society*

Rooted in the conjoining I have discussed, in particular in the circumstances of the ethical and the moral, namely in the circumstances of individuality and mutuality, human beings make the *normative space* for their activities in a societal

¹¹ This sort of view is made possible by the finding of individuality in Western philosophy especially after sixteenth century and its expansion and development in the context of globalization especially after nineteenth century. In this sense, the individualist understanding of human dignity is historically parochial. Yet, we can grasp this situation in the sense that it is the West that could find the significance of individuality in the most distinctive way among various civilizations on this globe. Although there are many critical understandings on this development from the viewpoints of postmodern philosophies, it will suffice here to refer to the basic point that individuality is an invaluable aspect of human existence, and that, if this be denied particularly from a simple standpoint of the total communality of human beings, it is not only descriptively false but also normatively inadequate. The protection of individuality must be the nerve of normative concern for each human being, even if the extent of it might have to be discussed further in terms of interest-balancing and weighing. This does not mean that we must imitate the Western development of individuality for human dignity, rather this means that the West made a heuristic contribution to the entire mankind and that all human beings on this globe can try shaping this idea together for a better future.

context, in various forms such as ethics, custom, morality, religion, or law. This space is constitutive of various rules and standards from the viewpoint of normative concern. As human beings think and do many things regulated and supported, whether consciously or unconsciously, or positively or passively, by those societal norms in the normative space, we should grasp some basic features of this space.¹²

To start our exploration, the most visible example of the development of normative space is the development of IHRL that I have referred to at the outset. Generally speaking, law is the accumulation of societally affirmed norms, mainly statutes, regarding the power and interest relations between people and their government, and as such, it has a public nature that everyone must observe and it regulates people's activities often with coercion. There are various possible purposes of law, such as the maintenance of peace, conflict resolution, the realization of justice, social control, and social reform, but the ultimately important thing for law is the realization of justice for all human beings in society.

Incidentally, in this outlook, law is a distinctive configuration of norms that are both moral and specifically legal. Moral norms here are norms that sustain the inter-relationship among people in society; exemplars of which are "respect others", "no harm to others", or "help others", while specifically legal norms are norms that are legislated with certain sanction such as punishment or compensation on the basis of the importance of morality in a society. In this sense, law is a specific part of morality to reinforce the content and scope of the latter, and that to this extent law should be captured with its moral potential (Dworkin, 2011, Part 4 & 5), though it must hold a relative autonomy from those societal norms to that extent. This situation of law indicates the working of the normative space for human beings. Thanks to this space, we can think normatively about the significance and possibilities under that order and we act normatively in following our understandings under the societal order.

A general origin of this normative space can be traced back to some evolutionary process of morality for human beings, as the theory developed by Michael Tomasello has been showing. Based on human evolution especially in terms of the development of linguistic communication and cooperation in some collectivity, human beings have been developing and sophisticating the system of norms in the form of various moralities and religions. Some even think that this evolution is the most humane process that cannot be found in other animals on this globe. But, it is evident in a diachronic context at least that only human beings could reach the most sophisticated stage of normative communication and cooperation (Tomasello, 2019, Chap. III). The working of normative space is also to be explicated by certain type of theories of morality from the viewpoint that human beings have certain societal relationship among themselves. For example, although in terms of different characterizations, some moral philosophers have been trying to capture the essential features of morality in terms of human interrelationships in society. From the viewpoints of the

¹² The idea of normative space is based on an institutional view of societal order (Peters, 2019). This world of norms is different from the world of facts human beings face with. While the latter is such inevitable facts for human beings such as natural phenomena, societal events or patterns, the former is the space of normative standards in various forms of societal norms.

establishment of second-person perspective, of what we owe each other in contractual conditions, or of the moral nexus that expands relationally in society, each of these theorists has been trying to confirm the independent nature of the domain of morality among people in a societal setting. I take all this the indication that, here at the synchronic dimension, human morality shows the working of normative space among human beings (Darwall, 2009; Scanlon, 1998; Wallace, 2019).

A further problem as for the significance of normative space is concerned with the focus of concern. Normative space works with the normative concern and its focus to effectively work for the fulfillment of its fundamental purpose (Dworkin, 2011, Part 4 & 5; Nagel, 1991). Of course, this normative focus can vary itself. For example, in a despotic setting, the focus might be simply the enhancement of the despot's interest; in a monarchistic setting, the focus can be on the place of subjects; and in a democratic setting, the focus is on the place of individuals and other relevant members in society. Although I am inclined to think the most important focus is the last possibility, the point here is simply that normative space has the working normative concern with a certain focus for it, and that how to set and fill this focus has been, is, and will be the important task for human civilization.

Now, a deeper point to be made here is that that normative concern itself is a universal of human beings. For, human beings establish the normative space and concern in various scales of their own gatherings in the course of the evolutionary developments and history. Also, normative concern with its focus is itself, in this fundamental and universal sense, a common good for the entire human beings and their existence and activities. Because this can itself be shared by all the human beings as the prior frame for their living on this globe. Normative space itself is the very fundamental common good for any human beings and societies, and thus normative attention and focus themselves, as they are set within this common normative framework, are also an invaluable part of that common good; which is also a common good, even if at some sub-level this is different from the universal frame in question, namely a *global common good*.

The idea of common good has, in its origin, some Christian, especially Catholic flavor. Based on Aristotle's classical understanding of the importance of common good in the context of democratic polis in ancient Greek, Thomas Aquinas emphasized the importance of common good in the sense that everyone under God participates together in the realization of the hope of God. This is also the flourishing of human being and the fulfillment of human well-being for the wish of God, which is the purpose of the congregation of human society. However, we also know that the recent idea of common good can be a democratic value for modern citizens to sustain the integration of community and society in those aspects such as filial and familial relationships, loyalty or solidarity among various peoples in society. But I am not evaluating which standpoint for common good is right or not. What I wish to confirm here is that common good in a particular philosophical setting can be a distinctive instance of some universal point of reference to understand the importance of the normative space for human beings. The good is the global condition that constitutes the basic field of human activity in collectivity. This point is considered to be the

good equally available to people in a sufficient manner for equal footing to engage in diverse activities.¹³

3.2 Human Dignity as the Fundamental Focus of Normative Concern and a Global Common Good

Human normative space, embracing normative concern as its part, ultimately tries to achieve to regulate various societal conditions for the protection of vital needs and interests of human beings. In this regard, the focus of normative concern tends to reach to the basic status of human beings. In so doing, normative space orients the direction of fit to perform its own working by identifying what is important for that status. And, here, determining the focus of normative space also becomes a significant part of the common good of normative space in trying to pick up the most relevant object of its concern for the respect, support, and compensation for human living. Thus, as suggested already, it is natural for us to think that the core focus of normative concern is to accord to the total well-being of human beings in society, whatever the substantive content of it can be.

Of course, the target of normative concern as a common good for human beings varies contextually. In general, there can be various particular substance of this focusing, and they can be determined in the historical context of particular civilization, culture or society. Those might be the interests and needs of the kings and emperors, tyrants, the powerful, community itself or individuals. We have to see that these particular possibilities not only in history but also in theory. Normative concern itself gives the objective and impartial bounds for human existence and activities, whose subjective and partial directions and contents can be determined by other human and societal factors. Also to note, we might say that, even in current situations in our democratic world, liberty, equality, health, education, social welfare,

¹³ The common good contains a certain totality, but this does not mean that the individual or local good is immediately subordinated to the common good, or that the common good is superior to other good. The individual good, the local good, and the common good can be harmonious in the way that each good relies on each other. It should be noted in this regard that the common good is considered to have some decentralized character and not the organic whole. Selznick, *supra* note 5. Also, cf. Robert Reich, *The Common Good* (Vintage, 2019), Part 1. Incidentally, related to the issue of the common good, the concept of global common goods has recently been proposed (Buchholz & Sandler, 2021). Preserving public goods that are non-competitive and non-excludable on a global scale is important here. They are a wide range of goods, from natural environment to culture, knowledge, and social institutions that need the maintenance at the level transcending national frameworks. It is clear that global public goods are, regardless of their nature, universal resources common to all humankind, thus that they look the same as the common good. Yet, the real point to consider is that the natural environment can be exhausted and damaged, in which case its inherent capacity is qualitatively degraded to make risky human survival itself. Considering this point seriously, global public goods differ from the common good in a crucial way. The concept of global common good cannot be characterized solely by non-competition and non-exclusion; it is established only when it combines those properties with some moral value.

and self-identities can also be the common good, to the extent that these constitute certain parts of the totality of human well-being.

Then, the question becomes which conception of normative space and its focus is the best one for the speciality of the common good for all the human beings. Here we can think of the breadth and depth of normative concern, and this can be the most extensive and significant when its breadth and depth reach the highest point. For, the meaning of the breadth and depth is the normative capacity and force of that concern for realizing the maximal interests and needs of the maximal peoples. If not, the capacity and force of normative concern is poorer according to the degree of that breadth and depth. If the focus is, say, for the protection of the king's power, the capacity can reach only to the one person in a society. In contrast to this, if the focus is for equal status of the people in society, the capacity can reach to the highest maximal range. Thus, normative concern is necessarily to be extended to aim at the highest maximal range of the people in society.

It is here that the idea of human nobility as a universal of human beings enters into the working of normative space and its concern. As we have discussed already, the place of human beings themselves is sustained by such radical and universal situations in natural and societal environments and also in ethical and moral conditions, namely the conjoining of the rarity, immunity, individuality, and mutuality of human beings. Both the point of the conjoining as a universal for human beings and the nobility of human beings that emerges from the angle of the agential uptake of the conjoining as self-formation become the most relevant target for the focus of the concern of the normative space. The case that self-formation is significant for every individual implies societally that certain public concern has to care about any possibilities of self-formation among all people who shape particular meanings of life for each of them; the recognition of this self-formation sets the starting point for the respect and concern for each person from a public viewpoint. At the same time, as the principle of the totality of human well-being works to lead the normative concern, the recursion of human nobility and self-formation becomes the valuational factor that protects the nobility, while the derivative features that are implied by this core factor are appreciated as rights to liberty, to equal status, to social welfare and the like (Fletcher, 2016). This process is to be understood as the capture of human nobility in the world of the factual human dignity in the world of the normative.¹⁴ In this way, as a critical juncture of fact and value, the idea of human dignity becomes the most important value to capture the importance of universal human status in that we must pay attention to human dignity as the focal point common to different people.

In this setting, the idea of human dignity tries to secure the basic status of human beings in a societal order. What I wish to make sure further in this regard is the importance of liberal understanding of the place of human beings in society (Dworkin, 2011). We can say today in the field of politics and law that human values can be

¹⁴ Here the leading thread is what I call critical naturalism that, as the worlds of fact and value are mutually independent, we need to find the joint point in the form of some nexus that is to be presented by human moral countenance against natural and societal circumstances. This view also indicates the logical orientation for the normative justification of the idea of human dignity.

distinguished between private and public. The former concerns the good life of a particular human being such as some personal ideal, while the latter concerns the morality among human beings such as justice. The point here is that the latter public values are also a common good in human interrelationships. Although it is often conceived today that common good is religious and against excessive individualism in modern societies, my point is not concerned with such a simplistically ideological contrast but rather that the idea of common good can be broader than the one some religions or communal views try to specify. This is not the problem of the adequacy of some particular idea of the common good but the problem of the normative potential of the common good in public setting. What diverse people can and must share in society can be the common good for them, even when that may be secular and specific, or practical. Broadening the idea of common good is legitimate if the matter in question is societally shareable and intrinsically valuable for all the beings in society, which is beyond the restrictive scope of religious prescriptivity or communal unity. Human dignity is in this sense a global common good as the most fundamental element of human normative concern that is itself such a fundamental common good for human beings,

I should also mention in this regard about the meaning of the so-called liberal goods, such as the protection of individual rights and diversity (Galston, 1976; Selznick, 2002). This is also a case of the common good in terms of political morality, though those goods are derivative in contrast with the fundamental common good such as human dignity. Of course, the substance of the common good can be thick or thin. While religious common good can be relatively thick, political common good can be relatively thin. Especially in modern liberal societies, the common good might be thinner as recent discussions on liberal good suggest. Still the point here is not about the degree of thickness or thinness but rather about the very significance of the common good in public order.

3.3 Aspects of the Global Expansion of Human Dignity

Although very important, human dignity is in fact easily harmed by human wickedness. Violence and war, murder and destruction, humiliation and degradation, often occur and many victims appear not only in diverse epochs of the world history but also in today's world. Even if many people believe, demand, and support the importance of human dignity and try to advance it in various, often severe life situations, a dictator or a wicked authority can erode and reject its necessity, making many people miserable, just as the recent international situation of serious power conflict shows.¹⁵ I do believe that the violation and negation of human dignity is the gravest moral wrong and crime against humanity in its deepest sense, as this dignity is universal and fundamental as I have discussed so far in this essay. There is no more wickedness

¹⁵ BBC News on February 24, 2022 at <https://www.bbc.co.uk/programmes/w172xyxz79f7cv2> (accessed on January 6, 2023).

than this sort of wrong. In fact, in human history, there have occurred such atrocities, and human beings, specifically who pursue their own power interest and money, have been stupid in trying to correct this sort of vain glory. egoism. This is to be denounced strongly, as one wishes to be humanely moral and ethical.

Meanwhile, there are also many people who conscientiously try to respect and protect the human dignity of others, even if vainly striving to do so in the face of the ugliest deeds of the powerful. These efforts are to be highly appreciated for their contributions to the flourishing of humanity. Of course, there remain questions about what sort of deeds can count as violating or denying human dignity, how far the criticism of the violation of human dignity may go, and how human dignity is to be practically protected, especially in the civil life of the people in the world. Still, it is also evident that massacre, oppression, subjugation, slavery, and cruelty and the like are the grave violations of human dignity not only to be denounced but also to be prevented as far as possible.

In this regard, especially in the context of world politics, people's voices are the important walls against the wicked deeds of dictator or the politically powerful. Of course, these latter tend to be cunningly evade those criticisms by way of deterrent policies and strategies of societal control or, say, by utilizing online maneuvers or physical sanctions. In response to these sorts of tacit pressure or violent suppression, people's voices, and only them, can produce and maintain a strong moral push against wickedness. This is, in reality, not so strong in comparison with the large resources and smart tools of the powerful. Very often the societal network of the powerful is stubborn enough to maintain their order against the legitimate voices of people for the protection of human dignity. This contrast and asymmetry between the powerful and the people's voices is the political reality we have to somehow overcome. Only when people keep demanding the respect and protection of human dignity, they will be able, even in the long run, to resist and exclude the wicked in society. Here we need serious efforts over time.

Yet, the philosophical problem significant here is how precisely it is possible. I think people need certain moral conditions countering the strategies of the powerful to advance the demands of human dignity. In reality, this is very difficult, when facing with the overwhelming fact of wickedness. Still, I believe there is no case that we can do nothing on the basis of the idea of human dignity as a global common good: we have the common normative space with the good confidence in the significance of our own existence and our future possibilities. Although this might be regarded as optimistic in global reality, I would like to talk a bit about the normative possibility of the idea of human dignity in the midst of such a reality.

In this regard, there are at least two aspects to consider for the global expansion of the idea of human dignity. One is the logical force of the idea to expand it to practicalities such as institutionalization or organization; the other is its global expansion to get beyond the national borders that typically determine its scope and range.

As for the first aspect, the basic factor is how we should connect the idea of human dignity as a global common good to those practicalities. We have to assume first some ideational space of the common good and its relevant concept like human dignity. As discussed already, it is itself the common space in which human beings can think

and act ultimately based on a radical valuation of us human beings by human moral countenance toward reality. This logical integrity of the idea of common good can imply the universalization of fundamental principles for the effective practicalities. In this sense, the idea of human dignity as a global common good implies the practical principles under itself to be logically inclusive in its scope. Here I believe the existing idea of the rule of law, the protection of rights, and democratic participation have to be universally conceived to broaden our perspective for the attainment of human dignity.¹⁶

In so doing, we can shape various practical standards for institutional or organizational decisions that have to fit the commonality set by the idea of human dignity as a global common good and the fundamental principles of practicalities for its realization just mentioned above. Also, I can suggest some usable practical standards for the realization of the idea of human dignity, that is, such standards as non-domination, no-harm, deliberation and supervision. Non-domination for expressing the idea of concern for all the human beings; no-harm for expressing the idea of respect for all; deliberation expressing the idea of participation of all; and supervision expressing the idea of growth of the total well-being of human beings. All these points are possible by and infused with the idea of human dignity, resting on the normative space conceived as a fundamental common good.

As for the second aspect of the expansion, I think that human beings can rely on what I wish to call the *symbolic network*. The symbolic network is the normative tie created through a chain of the sharing of normative concepts between diverse human beings. A normative concept in the symbolic network is itself simply common across the world in the sense that anyone in the world can refer to that concept. A normative concept in the symbolic network is abstract and inclusive: the concrete content of the concept is interpreted variously by those who refer to it. We can find human rights as a typical example of that concept, as well as the concept of justice, freedom, equality, and the like. Human dignity is also an important example, too; the understanding of human dignity can differ depending on various interpretations by beliefs and world-views of peoples, though the concept is itself common to all the peoples on this globe.

The symbolic network has the linguistic potential of coordinating, expanding and deepening itself in the process of the interpretations by many peoples (Dryzek, 2011, Part III); by which the network reinforces its societal force.¹⁷ The symbolic network can be plural and sometimes superior or inferior with each other according to its interpretations. Yet it will suffice here to recognize that this ranking is to be determined by progressive and gradual agreements among people. Also, the symbolic network can expand itself by creation, diversion, expansion, and structuring to become secure

¹⁶ My view is not strongly communal to be able to include and accommodate various partial perspectives of anyone involved with respect and hope for co-existence. Needless to say, to add, this leads to sound pluralism of the governing structure and process among institutions and organizations in society.

¹⁷ Obviously, there would come in some political or moral perspective such as liberal, egalitarian, communal, processual, or postmodern etc.

eventually.¹⁸ While reprising such process, various interpretations in that network get connected and the concept in question can shape wider ties between peoples. Here will appear the nexus of normative concepts (Hasegawa, 2015), permeating on a global scale with certain force and implications, even if interpreted locally.

Then, how can the symbolic network which embodies the idea of human dignity be expanded and secured universally, once established even if locally? There is a certain reality in that that idea may expand and get secured through various communicative channels such as the activities of global NGOs, the publication of influential works or opinions from academia and mass media, the meetings and fora on the internet or in-person, friendships among officials and citizens, and informal communications between peoples by SNS in ordinary life. Here, it is obvious that the development of IHRL is a prime example: publication of many reports by UN and national governments or other relevant organizations, related works by well-known theorists, mass media coverage, diverse NGO activities represented by Amnesty International, Oxfam, Human Rights Watch and the like, have been showing the significance of human rights across the world. In such a way, the idea of human dignity as well becomes to get the permeating force to many parts of the world toward the attainment of its perfect universality (Donnelly, 2013; Dryzek, 2011).

We can thus think that the idea of human dignity can expand globally, particularly as this idea is concerned with the very ground of the existence and activities of all human beings on this globe. As already discussed, with the bedrock that all human beings on this globe must assume, its permeation can be the most powerful among various human values. In this regard, there might be some detour which yet leads to the understanding of the normative concept in question in a relevantly way. Although societies and cultures differ, a normative concept like the idea of human dignity can intervene, due to the working of the symbolic network, diverse contexts in a mediated way by some actors in between (Zwart, 2012). Whether this mediated understanding of human dignity is really meaningful or not, the possibility of this detour understanding can strengthen the permeating force of the concept in question and the possibility of accordance between culturally different situations at least in the form of the so-called overlapping consensus (Rawls, 2005, Lecture IV).

This outlook indicates, even if over a longer time, the significance of the symbolic network that makes possible the universal working of normative concepts like human dignity, and its development can provide a logical motive for connecting and mixing of various views in ethics, morality, law and other relevant universal objectives on a global scale. The idea of human dignity has survived in the course of world history and is now becoming increasingly significant on a global scale. This has been possible because, as I have explored in this essay, there is a firm ground for the universal significance of human dignity in the conjoining of human universal conditions.

¹⁸ Creation is the activity to produce a new conceptual network, which begins with the advocacy of a new normative concept by individuals or groups. Diversion means that people who are different from a certain individual or a group develop normative discourse by using the concept in question, thereby making a new tie. Expansion is to read the meaning of the discourse in the conceptual network and yield various interpretations, while structuring is to integrate and reorganize them.

4 Concluding Remarks

The significance of the idea of human dignity has been widely recognized since WWII, and its significance has been recognized in many domains of societal orders on this globe until today. In fighting against the injustice in various fields of human activity, many values have been deployed and the basis of their integration has become clear at the axis of human dignity. This being so, it is necessary for the significance of the idea of human dignity to be more clearly articulated and explored toward finding out the radical meaning of many human values. It is in some sense natural for us to reach the very foundation of human existence and activities through the exploration of human circumstances, even if there are other kinds of values with diverse perceptions of their importance in the world. So far, I have been talking that human dignity as a human universal has a certain philosophical basis. Although I myself wish to endorse a specifically liberal understanding of the idea, the point of emphasis in this essay is not to claim that this sort of specific understanding is adequate and effective but rather to reconfirm the importance of the invaluable idea of human dignity and its great significance for the totality of human well-being from an interpretive perspective.

One point my discussion emphasize is that the radical condition that makes human beings recognize the importance of their own existence and makes the working of normative concern focus on this radical situation is fundamental for the idea of human dignity. Another important point to emphasize is that human dignity is such a crucial value because of its normative operation in the normative space for human order. In this operation, the idea of human dignity can be very extensive, whereas the ideas of freedom, equality, efficiency or public health can be considered as relatively intensive in each problem context such as politics, economy or social security. That is, when we consider the importance of some values in some particular contexts, the idea of human dignity can always be at the background for those values through any contexts. Thus, it is natural that the justificatory necessity of adequate societal order finally should aim at basing itself on this universal value as the ultimate ground of human valuational thinkings and doings.¹⁹

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¹⁹ How we can clarify this relationship in the justification of values is another matter to explore.

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Part II
Revisiting Dignity in the Classics

Chapter 6

Human Dignity in Discourse Ethics



Matthias Kettner

Abstract In discourse theories of morality, the semantics of human dignity has received little theoretical attention from Apel and Habermas, although Apel considers human dignity to be a moral foundation of human rights and Habermas grants it a function in the discourse of bioethics. This essay aims to remedy this deficiency. I propose to explain human dignity in the discourse-ethics framework as the basal moral status that moral agents ascribe to themselves because they must understand themselves both as subjects of morality who can confer status and, at the same time, as moral objects of other moral agents who, in turn, can confer status. By distinguishing between reasons that specify the normative content of human dignity status and reasons that guide the practice of ascribing status to individuals of a certain kind, two objections to the moral notion of human dignity can be dismissed: The objection that this notion is the result of a naturalistic fallacy, and the objection that it is the expression of speciesist arrogance. The conceptual structure of being an individual of a particular species, and thus having dignity that belongs to individuals of that species, is compatible with various normative contents of dignity. But as long as we do not get to know moral agents of non-human kind, we are justified in marking out human dignity as the basal status.

Keywords Discourse ethics · Human dignity · Apel · Habermas · Moral status · Specieism

1 Adequacy Conditions for a Politically Useful Notion of Human Dignity

Philosophical discourse about human dignity and human rights (cf. Düwell, 2014; Freedman, 2023; Hartogh, 2014) may appear somewhat quaint from a political point of view. Yet at second sight it has a bearing on a massively important political project,

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namely the justifiable globalization of human rights culture. The complex web of normative institutions we summarily call human rights culture would probably not hold together for long if its integrative normative ties were found to be untenable under rational scrutiny. An idea of human dignity pervades these integrative normative ties of human rights culture, as already the famous Article 1 of the Universal Declaration of Human Rights indicates. And its preamble asserts that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” is declared to bear a foundational role for “freedom, justice and peace in the world”. If it is true that a defensible notion of human dignity is necessary for, or at least relevant to, the defensibility of declarations of human rights, then we advocates of human rights culture are well advised politically to clutch at every straw in critical philosophical discourse about alleged articulations of notions of human dignity.¹ In brief: “The problem of justification is central. The plausibility of any determination of the content of dignity is dependent on its theoretical justification. No conception of dignity will survive in morality and the law if no convincing reasons are at hand why dignity should be understood in this way and not another” (Mahlmann, 2013: 606). It seems advisable in this situation to postulate some conditions of adequacy for results of philosophical explanations of human dignity. The following four strike me as plausible responses to the challenges.

First, a viable explication should be *refined*, i.e. its explicans should not be presented as a brute fact nor as an unanalyzable intuition, as a reflection-repelling conviction, or as a sacred value that defies questioning in argumentative discourse.

Second, the explication should be *realistic*, i.e. it should not present human dignity as depending on ideals that most people with a decent amount of knowledge about the diversity of living conditions in our contemporary world would reject as unrealistic, lofty, or naïve.

Third, the explication should be *relevant*, i.e. its determinate normative content should make a difference in the ways we think about the validity-basis of human rights culture. Human rights culture is a powerful reality both in (morally and legally) normative terms as well as in terms of organized political power. Undoubtedly, how human rights culture fares has massive consequences for good or ill concerning the living conditions of countless people at present and in the future.

Finally, a viable explication should be *reasonable*, i.e. grounded in beliefs that are confidently available to everyone whom we would count as possessing sufficient common sense, sound critical self-reflection, and good will for dialogue on an equal

¹ Concerning the Universal Declaration of Human Rights, Klaus Dicke rightly underscores that “not reason pure and simple, but ‘reason and conscience’ is regarded as the substance of human nature and thus of dignity”. He then argues that this notion of the dignity of human beings “is a formal, transcendental notion to legitimize human rights claims. This means first of all that dignity is not a substantive norm which can be defined in substance and from which individual human rights claims can be derived immediately by deduction. Rather, the legitimizing function of human dignity is critical in nature. It depends on its relation to single human rights as listed by the Declaration and by instruments of human rights protection as agreed upon later” (Dicke, 2016: 118). To this general view Apel and Habermas would not object since the view is compatible with their respective frameworks of discourse ethics.

footing, i.e. discourse. Formulating the latter condition of adequacy in discourse ethical parlance: discursive peers should be able to consent to the claim that the proposed explication of human dignity is reasonable.

Assuming that we need a refined, realistic, relevant, and reasonable account of human dignity—in short, an R4 account—does not Kant’s moral philosophy already provide such an account? A balanced answer will be in the negative. One reason for this is that, in Kant’s ethical framework, dignity (of the humanity in each person) follows from the categorical imperative of the moral law (self-imposed by each person), not the other way around.²

2 Dignity Semantics in Apel and Habermas

An R4-account of human dignity is a desideratum that sets the bar very high, perhaps too high. Apel and Habermas have elaborated two variants of discourse ethics which, notwithstanding their complex theoretical architectonics, have only weakly developed dignity semantics. It is not my aim in this chapter to expound and compare these two classic elaborations of discourse ethics.³ My modest aim in the present section is to illuminate the central ambitions of both approaches in such a way as to make visible where approaches to a theory of human dignity are hinted at but remain undeveloped.

In the Apelian framework, the desideratum of a full-fledged discourse ethics would amount to a “macro-ethics of co-responsibility” (Apel, 1996b, 2000) spanning all communicatively connected moral agents. Consequently, Apel adumbrates as “the main problem of a discourse-ethics today” the “problem of organizing somehow the collective co-responsibility of all members of the human community of communications” (Apel, 1996b: 289) in order to cope with global problems that are such that how we fare in trying to handle them more or less successfully has a tremendously significant moral dimension. A case in point is the global problem of achieving a sustainable way of living under the pressure of environmental degradation and global warming. This challenge for humankind poses the risk of catastrophic failure with detrimental consequences for countless lives, human and non-human. To the extent that such failure or success would depend on failure or success in mobilizing and adequately organizing collective co-responsibility it has a moral dimension.

² Elsewhere I argue (Kettner, 2020) that we cannot rely on Kant’s philosophy of morality when our aim is to bolster by reference to human dignity the validity claims that provide the normative ties of human rights culture. For Kant, human dignity (in the triple sense of elevation-dignity, pricelessness-dignity, and end-in-itself dignity) has not much justificatory momentum. Kantian dignity of humanity is a product of the moral law, neither its foundation nor its source.

³ For very illuminating summaries of the Habermasian “formal pragmatic” version of discourse ethics cf. Rehg (2003, 2011). Habermas (1998) provides a concise exposition of his approach. Cf. Apel (1998b) for his intellectual autobiography. Apel’s best exposition of his “transcendental pragmatic” discourse ethics is a series of lectures (Apel, 2001). For new directions within the general framework of discourse ethics cf. Gottschalk-Mazouz (2004) and Kettner (2006).

Apel is convinced that for handling global problems we need “a universally valid ethics for the whole of humankind; but this does not mean that we need an ethics that would prescribe a uniform style of the good life for all individuals or for all the different sociocultural forms of life. To the contrary: we can accept and even oblige ourselves to protect the pluralism of individual forms of life so long as it is guaranteed (warranted) that a universally valid ethics of equal rights and of equal co-responsibility for the solving of the common problems of humankind is respected in each single form of life” (Apel, 1996a, b, c: 284). Discourse ethics should be relevant in particular for two problems: For the macro-ethical problem of concern for global justice under conditions of living together in a de facto multicultural world society (Apel, 1997, 1998a) and for the macro-ethical problem of organizing co-responsibility in effective and at the same time morally integral forms in view of existential risks for the species and the continued existence of the terrestrial community of communication (Apel, 2000, 2001). Apel considers three functionally interconnected institutional achievements to be particularly valuable for coping with macro problems: Human rights, democratic forms of government, and the rule of law (Apel, 2007). Tangentially, but never systematically, he affirms the position that human dignity provides a moral foundation for human rights. Apel and Habermas think of the foundational relationship itself as a process of discursive consensus-building that leads to the “declaration” and further development of human rights. Apel does not consider in detail what the notion of human dignity might mean outside of its (presumed) foundational function for human rights (Hartogh, 2014), nor whether human rights might as well have been declared without reference to human dignity.

In Apel’s opinion, the specifically foundational problem of a macroethics “refers to the question whether a postconventional, that is, a rational and universally valid, foundation of co-responsibility, that is of everybody’s personal obligation to solidarity with humankind, can be given. For the conventional forms of co responsibility and solidarity which are restricted to small groups or, at best, to nations, will not suffice” (Apel, 1996b: 289). Apel’s grand project in ethical theory is to develop a reasonable, refined, and relevant foundation for a small set of morally relevant requirements that *all* moral agents are bound to recognize as binding for moral agents in virtue of their capacity for participating in argumentative discourse.

Being communicatively connected (Sikka, 2012) by argumentative discourse is being communicatively connected in a very special way, since argumentative discourse consists in dialogical practices with a very peculiar normatively constitutive aim. The normatively constitutive aim of argumentative discourse proper is the settling of clashes of discrepant validity-judgments in ways that no one concerned can sensibly fault for arbitrariness, unjust partiality, and ignorance (Kettner, 2017). In Apel’s and Habermas’ parlance, the constitutive aim of discourse is a “rational consensus”. Rational consensus is consensus *rationalized*, that is a consensus that eventually fixes claims of validity and is eventually grounded in reasons which no one who is co-responsible for the discursive construction of that consensus could not reasonably judge to be, and accept as being, sufficiently good reasons.

Strict reflection on normative presuppositions that are demonstrably (i.e. on pain of performative self-contradictions) necessary for the pursuit of the constitutive aim of argumentative discourse discloses to arguers that arguers ought to acknowledge all claims of all members of the communication community if their claims can be justified by rational arguments. This in conjunction with a substantial normative assumption about the nature of morality—that one should not unnecessarily sacrifice any finite, individual human interest—led Apel to formulate as the basic normative principle of (Apelian) discourse ethics that “all human *needs*—as potential *claims*—i.e. which can be reconciled with the needs of all the others by argumentation, must be made the concern of the communication community” (Apel, 1980: 277).

In the same vein Habermas later proclaimed as “the distinctive idea of an ethics of discourse” his “discourse principle” (D) that “only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse” (Habermas, 1990: 66). In its most general reading, D suggests that the validity of norms for regulating ways of acting depends on consensus building among those who stand to be affected by those norms, provided their consensus building springs from exercising “their capacity as participants in a practical discourse” alone. Whether the capacity to participate in practical discourse has anything to do with an egalitarian notion of dignity is a question that neither Apel nor Habermas explores. This is somewhat surprising, because it is not self-evident why participants in discourse should treat each other as partners with *respect*, and why *all* should be *worthy* of this.

Apel makes no further theoretical use of dignity semantics except in his discussion of Hans Jonas, whose use of dignity-semantics draws on a theological subtext and arouses Apel’s suspicion of value-conservatism (Apel, 1996c: 236). In contrast, Habermas makes ample use of the notion of human dignity in a series of essays that deal critically with rapid technological progress in the field of human genetics and assisted reproduction. The most elaborate of these essays is “The future of Human Nature” (2003). In this important essay, Habermas argues that the foreseeable massive dissemination and normalization of new repro-genetic interventions might have detrimental consequences for how we understand, and should continue to understand, our moral agency: “Whether or not we may see ourselves as the responsible authors of our own life history and recognize one another as persons of “equal birth”, that is of equal dignity, is also dependent on how we see ourselves anthropologically as members of the species. May we consider the genetic self-transformation and self-optimization of the species as a way of increasing the autonomy of the individual? Or will it undermine our normative self-understanding as persons leading their own lives and showing one another equal respect?” (Habermas, 2003: 29).

More illuminating perhaps than the metaphorical allusion to birth (“equal birth”) is the following passage where Habermas (2003: 37) explains the meaning of the modern notion of human dignity genealogically as a process of abstraction: “The nature of the inhibitions we feel in dealing with human life before birth and after death, being hard to define, explains our choice of semantically broad terms. Even in its anonymous forms, human life possesses “dignity” and commands “respect.” The term of “dignity” comes to mind because it covers a broad semantic range only

suggestive of the more specific term of “human dignity.” The semantics of “dignity” also include the traces of connotations which are much more obvious, due to the history of its premodern use, in the concept of “honor”—connotations, that is, of an ethos determined by social status. The dignity of the king was embodied in styles of thought and behavior belonging to a form of life entirely different from that of the wife or the bachelor, the workman or the executioner. Abstraction from these concrete manifestations of so many specific dignities became possible only with the advent of “human dignity” as something attached to the person as such.” Habermas reads human dignity as dignity of the human person. So much is clear. What it is about human persons that warrants ascriptions of dignity remains obscure.

Theoretically most explicit is section II, “Human dignity versus the dignity of human life”. Here, Habermas interprets human dignity in terms of his *Theory of Communicative Action*. Human dignity, he maintains, indicates a universal obligation to respect any person’s inviolability as a person: “The community of moral beings creating their own laws refers, in the language of rights and duties, to all matters in need of normative regulation; but only the members of this community can place *one another* under moral obligations and expect one another to conform to norms in their behavior. Animals benefit for their own sake from the moral duties which we are held to respect in our dealings with sentient creatures. Nevertheless, they do not belong to the universe of members who address intersubjectively accepted rules and orders to one another. “Human dignity,” as I would like to show, is in a strict moral and legal sense connected with this relational symmetry. It is not a property like intelligence or blue eyes, that one might “possess” by nature; it rather indicates the kind of “inviolability” which comes to have a significance only in interpersonal relations of mutual respect, in the egalitarian dealings among persons. I am not using “inviolability” [*Unantastbarkeit*] as a synonym for “not to be disposed over” [*Unverfügbarkeit*]” (Habermas, 2003: 33).

I will return later to what Habermas implies here. In the following, I try to make a strong case for a new reading of the idea of human dignity.

3 A Discourse-Ethical Explanation of Our Moral Notion of Human Dignity

It is safe to presuppose wide consensus about the conceptual fact that four negative characteristics (non-arbitrariness, non-particularizability, non-quantifiability, non-naturalizability) belong to the set of normative intuitions that support the modern moral notion of human dignity. Jointly they suffice to distinguish the modern understanding of human dignity from all pre-modern non-egalitarian and non-universal notions of dignity. I now want to construct an argument that explains the moral notion of human dignity ethically, more specifically, within the framework of discourse ethics. Within this framework it is possible to understand the modern notion of human dignity in a moral perspective as the paramount moral status. The sense in

which this moral status is paramount includes that it is a presupposition for alternative construals of human dignity in other normative formats such as duties (moral or legal), norms (moral or legal), and principles (moral or legal).

3.1 *The Discourse-Ethical Status Thesis*

According to the discourse-ethical status thesis, the peculiarity of the moral status of human dignity lies in the fact that we understand this status as the comparatively highest-ranking moral status and cannot reasonably do otherwise. The status thesis maintains: Whatever aureole of meaning surrounds human dignity in political and theological rhetoric, the part that can be rationally explained is that it expresses a paramount moral status.

The thesis can be briefly stated thus: Having human dignity is the moral status that anyone acting as a “moral subject” by adopting a particular moral stance vis-à-vis others must give to oneself in particular and to generic moral subjects in general, as soon as moral agents understand that they are always already the “moral object” of other moral agents who enact moral responsibility according to their moral views.

The pivotal point in this understanding is realizing that one cannot escape being treated as a moral *object* owing to the fact that one’s own position as moral *subject* is a position within a community of moral agents. As a matter of existential necessity (or, as Apel says, as a “factual apriori”) one is communicatively connected within the community of one’s cultural peers generally for all practical purposes, and specifically for matters involving universal validity claims (e.g., the pursuit of truth and universalistic normative claims, e.g. doing justice to human rights) one is connected even beyond anyone’s particular cultural we-group to a “virtually unlimited community of communication” consisting of virtually all arguers.

This pithy formulation of the status thesis was only possible by relying on some technical terms. In order to fix their meaning, consider: When we speak of a *moral agent*, we speak of an individual fit to occupy both positions, that of a *moral subject* and that of a *moral object*. One is a *moral subject* as far as one actively enacts one’s perceived moral responsibility. One is a *moral object* as far as one is passively involved in, and concerned by, how moral subjects actively enact their perceived moral responsibility. Moral objects cannot exist if there are no moral subjects. For in order to be treated morally, there must be those who hold one another morally responsible in their interactions. A human child can be a moral object, e.g., for parents, and will usually also become a moral subject sooner or later in life.

For a reasonably wide concept of morality, we can summarily designate as a *morality* all rules and ideals of good and right ways of behavior recognized as right and as important amongst cultural peers. To a morality in this sense also belong the all convictions (“moral convictions”) that bring to the rules and ideals of a morality a reasonably respectable meaning, to justify them or if need be to revise and improve them. What is common to all moralities can be characterized as the capacity, typical for encultured human beings, to be able to take seriously, in a representative way (i.e.

in lieu of others and on behalf of others), how their interactions, in whatever areas we hold human beings responsible for their behavior, affect themselves for good or ill and all others who count (i.e. who are recognized as having moral status). Note that there can be as many moralities as there are livable interpretations of the structure of this capacity, the capacity to be co-concerned.

The concept of a *moral status* makes sense in the following way: The moral status we attach to someone or something (an individual x , y , z) within a conception we share of what it means to enact our moral responsibility, determines the general sense in which individuals of this kind (kind X , Y , Z) normatively appear to us. With the moral status we give to x we determine a certain scope of moral significance that this object as this kind of object should have for us. The moral status of x is a property that is typical of x by virtue of which each of the objects having the property become objects worthy of moral consideration for us. By having moral status they become moral objects. In other words, a moral status can be thought of as a typical property such that if an individual x of kind X has it, gives us a *prima facie* good reason to take x appropriately into account in enactments of our moral responsibility.

Evidently we are familiar not only with one moral status but with many. To illustrate: Some people give the moral status of sanctity to a grandiose natural entity (e.g. to Ayers Rock) and consequently will declare it morally wrong to damage it. Some people give moral status to sentient animals and will consequently find it unjust to torture them for no good reason. Some people (Kantians) give moral status to beings endowed with a rationally autonomous will and consequently find it immoral to force them to the detriment of their rationally autonomous will. Since our understanding of moral status is inherently diverse, different statuses can overlap, thereby modifying or even trumping each other. (Is it morally impermissible to torture people because of the pain they must suffer, or because of the crunching of their rationally autonomous will, or both? If both, in what proportion?) This naturally raises the question whether there is a fundamental moral status without which all the others would amount to nothing, and which therefore should trump other statuses in case of conflict, whenever one particular status and its normative significance conflicted with it.

3.2 The Problem Human Dignity Solves

After these preparatory considerations, we can now go on to explain the notion of human dignity ethically. Suppose there is a reference problem that the status concept of human dignity solves. A reasonable candidate is the following structural problem concerning all moralities: How are we to mark out the anchor points of the highly elastic net of our moral considerations that support the net, no matter how in particular this net has been stretched out within the space of all conceivable moral subjects and moral objects? How does the fact that any and every morality must be upheld by moral agents find expression in our capacity for being co-concerned? The status concept of human dignity solves this problem in the most general, simplest, non-arbitrary and, in this sense, most reasonable way. The status human dignity plays a *constitutive* role

in our moral thinking: It constitutes the moral realm in such a way that within it the moral actors occur in their turn, and as such, i.e. in their double role of active moral subjects and passive moral objects. *The dignity in human dignity reserves a special status, a special position for moral agents as such in the moral realm.*

Human dignity in the sense of the paramount moral status springs from our moral considerations becoming self-reflexive, disclosing its absolute origin, namely beings of a kind that can take morally into account anything at all. In other words: The dignity thus arising is the dignity of beings who are naturally or normally or typically moral status givers. The paramount moral status they take themselves to have is that of being able to give moral status. Still more briefly: In line with a discourse-ethical explanation of human dignity, the property that gives human moral actors the paramount moral status we call human dignity is the property of being able to give moral status.

3.3 Naturalistic and Normative Elements in the Notion of Human Dignity

Let us now take the explanation of the status thesis one step further. A status can, as said, be thought of as a typical property which singles out all so-and-so beings from all possible ones. Such singling out properties are called “sortals” because with their help we can sort out a subset among the elements of a total set. Can we determine a sortal which picks out of all possible beings exactly those which we have to think of as bearers of human dignity and to whom we should pay corresponding respect?

We already have important clues. The sortal term we are looking for must obviously contain a descriptive or naturalistic (for short: empirical) element and a normative one. A normative component, because we are dealing with a moral status. Every moral status has some normative content, which we can articulate in the form of permission sentences (and their negations). For example, the status of being sentient beings has for us the normative content that it is not permissible to torture such beings unless for good excusable reasons. The interrogative form that reveals normative content goes like this: What is to follow normatively from the fact that an individual *x* “has” human dignity status? Second, the human dignity sortal must have an empirical component, for whatever the justifiable normative content of the status is, we must be able to attribute it to all beings who, to our knowledge, are empirically identifiable as human beings. How we recognize those (the human beings) to whom we are to ascribe the normative status (human dignity), to this empirical question we also need an empirical answer. Today, natural sciences like biology and human genetics have the comparatively greatest epistemic authority for fixing the extension of *homo sapiens* as a natural kind term. It would be odd, however, to want to let biology fully dictate how we must and must not attribute the normative status human dignity since then our ongoing interpretation of its normative content would be enslaved by the empirical *homo-sapiens characteristic* provided by biology and other empirical

sciences. After all, we do not want to use the concept of human dignity to do a service to biology. Rather, we appreciate whatever help biology can provide if difficult cases arise that call for readjusting our practices of attributing human dignity in order to keep them properly aligned with the normative content we take the notion of human dignity to have. Difficult cases may arise because our conventional repertoire of well-established reasons for attribution human dignity could lead to certain attributions of human dignity that some reasonable people would fault for being too narrow and exclusive, or conversely for being too wide and overly inclusive.

Fierce controversies about abortion and protection of life evince how dramatic such difficult cases can become. Many abortion opponents argue that human dignity necessarily implies protection of life and must be attributed to the fertilized ovum “from conception on”. Other difficult cases arise in connection with partly human chimeras created through genetic engineering (Ravelingien et al., 2011). There is also an incipient debate about ascribing dignity and consequently basic rights to artificial systems, e.g. advanced intelligent robots (Goecke et al., 2020). A spectacular charge of narrowness surrounds the question whether we should attribute human dignity, or quasi-human dignity, to certain animals, in particular to certain kinds of apes. Some animal rights activists and philosophers supporting their cause argue that we should attribute human dignity or a normative twin of human dignity at least to the Great Apes.⁴ Opponents object that we should not since this would strain our well established practice of attributing human dignity beyond the bounds of sense provided by the normative content of a reasonable conception of human dignity.

If we want to keep our criteria for the attribution of human dignity appropriately aligned with our understanding of the rationally ascertainable normative content of human dignity we need to complement the non-normative homo sapience characteristic with a normative *humanum characteristic*. The latter should provide the grounds of justification for constituting an ascribable normative status having the normative content of human dignity whereas the homo sapiens characteristic provides reasons for attributing that status to particular individuals. If the fit between both types of reasons becomes problematic we must readjust them to one another, but sensibly under priority of the reasons provided by the *humanum characteristic*. Their predominance has the following rationale: How we evaluate reasons for attribution must ultimately be guided by the reasons that constitute for us the normative content of the status called human dignity, but how we evaluate constitutive reasons of that status cannot derive merely from consensus about the good reasons that justify for us how we attribute that status.

⁴ <https://www.greatapeproject.de/>. The Great Ape Project has developed since 1993 from Peter Singer’s campaign for animal liberation. Its major aim is the inclusion of chimpanzees, gorillas and orang-utans in community of basic rights like human rights. The Declaration on Great Apes, a moral-legal document modelled on the declaration of human rights, demands “the extension of the community of equals to include all great apes: human beings, chimpanzees, gorillas and orang-utans. ‘The community of equals’ is the moral community within which we accept certain basic moral principles or rights as governing our relations with each other and enforceable at law” (Cavlieri and Singer, 1993:4). Among these, according to the Declaration, are the right to life, the protection of individual liberty and the prohibition of torture.

Let us get back now to the question of how our certainty that we ourselves have human dignity originates.

3.4 The Origin of Our Awareness of Having Human Dignity Ourselves

According to the status thesis, human dignity is an expression of the fact that we—human moral agents—grasp ourselves as the supporting elements in our morality. Having human dignity is a relation among moral agents of the species *homo sapiens*—the relation that arises when human moral agents realize in their thinking that they are all in the following respect: As human beings they all belong to a species whose members normally are or have been or will be moral agents. Once we take this generally ascertainable fact into account as an insight of self-reflexion, we finally get a plausible answer to the perplexing question about the reason for our certainty that we ourselves have human dignity here and now:

The thought that others were permitted to be wholly unconcerned about whether and what kind of moral object I am for them and how they treat me in consequence; the thought that I myself as a moral subject would not be important at all, is an unbearable thought, come to think of it.

Imagining ourselves participating in an argumentative discourse about whether others should be so permitted makes it clear that nobody could possibly give me a reason for accepting this unbearable thought, a reason that I myself would reasonably have to endorse as a good enough reason. By grasping the full significance of the unbearable thought, I already know enough to know that there can be no such reason. The source of my reason to find the unbearable thought unbearable is my confidence in the validity of the claim that the moral subjectivity that is indispensable for myself as a moral agent requires respect, thus must not count for nothing. Likewise for all moral agents like me since it would not make sense for me to understand myself as a solitary moral agent. It does make sense to understand myself as one among an indefinite number of others who are equal to me in that each one understands oneself as being a moral agent and per se also a moral subject. Hence, what I take to be the good enough reason (1) for which *other* moral agents should owe *me* recognition as a moral subject, I take at the same time as the good enough reason (2) for which I should owe *other* moral actors recognition as moral subjects, and as the good enough reason (3) for which we should owe each other reciprocal recognition as moral subjects.

Both my confidence in the validity of the claim that the moral subjectivity of moral agents requires appropriate recognition, and my consequent generalization of this confidence across an indefinitely open “we”, both these thoughts can be *made explicit* by way of suitable arguments within the context of discourse. However, neither thought can be *generated* merely within the context of discourse. Rather, such confidence is generated and rooted in more or less reliably and widely cultivated attitudes of appreciation of expressions of moral agency, in short, in a *culture of*

human dignity. This culture is in today's world part of the emerging culture of human rights.

3.5 *The Normative Content of the Paramount Moral Status*

Keeping in mind that status content constituting reasons and reasons for status attribution play different roles helps to delineate more clearly what normative content we should acknowledge the paramount moral status to have.

- (1) The reason for which human dignity is a normative status for us is, in the final analysis, that *beings for whom it is normal that they develop some moral commitments (i.e. "a morality") and respect themselves as such beings*. This is the humanum characteristic even though de facto not every single human being develops moral commitments and even though de facto not every single human being acquires the respective self-respect.
- (2) The reason for attributing human dignity to suitable bearers of this normative status is the fact of having the property of *belonging to a kind of living beings for which it is normal to develop some moral commitments (i.e. "a morality") and to respect themselves as such beings*. Any and every human being is, was, or will be a living being of this kind, even those human beings of whom it is untypically and unfortunately true that they are no moral agents, not even potentially (e.g. anencephalic newborns). All beings have human dignity for which it is true that they are individuals of a species whose members naturally or normally or typically create moral communities and who value affirmatively the morally normative power of their species.

What normative content does the status human dignity have? What does having the status exclude as impermissibly inconsistent with it? Since we are dealing here with the most general form of moral consideration (i.e. the giving of moral status, the making of something or someone into a moral object of a certain kind); and since every typical member of a community of moral agents is equal to any other typical member of that community in being able to give status, the status human dignity cannot contain more or less than this: that every moral agent, and no one more than any other, shall be included in the most general form of moral consideration. With this in mind, we can articulate the normative content of the status human dignity. Its normative content is a perfectly inclusive and perfectly egalitarian claim (n): *What having human dignity normatively requires is that people (and other moral agents perhaps of a different kind) should treat people (and ...) in such a way that some value is to be placed on their own judgment of how they want to be treated and how they do not want to be treated, across all actual or possible situations in which it is or could be our concern how people (and ...) should be allowed to treat people (and ...)*.

Disregard of this most general form of moral consideration is implicit in all violations of the more specific moral rules contained in full-fledged moralities, e.g. the

moral rules “do not kill”, “keep your promises” etc. of common morality (Gert, 2004). It should be evident that the notion of human dignity alone is not the philosopher’s stone with the power to resolve all deep moral disagreements in a consensual way. Burdening human dignity with such unrealistic hopes runs the risk of switching from overestimation to rejection out of disappointments. We can and should avoid both extremes.

Two explicatory remarks: In (n), the formulation “*that some value is to be placed on their own judgment*” initially leaves open the extent to which the normative judgments of everyone concerned are to be taken into account. Within the discourse ethics framework, Habermas would be mute whereas Apel would refer to the premise that “that the members of the communication community (and this implies all thinking beings) are committed to considering all the potential claims of all the potential members - and this means all human “needs” inasmuch as they could be affected by norms and consequently make claims on their fellow human beings. As potential claims that can be communicated interpersonally, all human needs are ethically relevant” (Apel, 1996a [1973]). Human needs must be acknowledged to the extent that they can be justified interpersonally through arguments. We would be unable, however, to find out via discourse to what extent they can be so justified unless we would not presuppose that we initially accord *prima facie equal* importance to any discourse participant’s need-claims.

In (n), the formulation “*and other moral agents perhaps of a different kind*” expresses the possibility that we might come to recognize beings of non-human kinds as full moral agents. The fact that so far we are acquainted with moral agents only of our kind is not a metaphysically necessary fact. The fact that the normative content in the notion of human dignity refers to us makes this notion anthropocentric, but contingently so. Note that things are different with human rights. *Human* rights would not make sense unless their normative contents were tailor-made to respond to basic needs-claims of individuals within the general form of life of *humans*.

4 Is the Notion of Human Dignity Speciecistic?

The preceding section pointed out that the moral notion of human dignity has the precise sense of emphasizing within the variable range of possible moral considerations their original precondition: the moral agents themselves. Our rich network of moral considerations, as elastic as it is, cannot vary on pain of absurdity in such a way that it does not always include *and privilege* moral responsibility for moral agents’ good or ill. Suppose someone advocates a morality according to which the moral agents should always consider only moral objects of other kinds, e.g. animals or plants or environmental conditions, but never themselves as the moral agents they are, so that in case of conflict they themselves as moral actors would not count. Such a morality is hypothetically conceivable but would not stand the test of argumentative discourse since it would be impossible to justify with good reasons. It would be a morality beyond human dignity. Such a morality would not be discursively robust.

Returning to the morality advocated by the Great Ape Project: Do we have really compelling reasons for thinking that the great apes *are* our moral equals? Admittedly, there are many good reasons for protecting the great apes because there are many aspects under which we can appreciate them as highly valuable creatures. For instance, we might admire orang-utans for their strength; we might attribute personality and individual temperament to chimpanzees when we come to know them well, as for instance in field research; and we might develop protective attitudes towards apes once we recognize the plight of those who are used as laboratory animals under conditions that we find abhorrent. What I want to question, however, is whether there are reasons available to anyone who is prepared to consider the matter seriously such that these reasons would make it morally unavoidable to include all great apes in the scope of our most important universalistic moral claims just like it is indeed undeniable that we have to include all human beings in the scope of our most important universalistic moral claims. Among us humans as moral peers, the most important universalistic moral claims pertain to basic rights, and correspondingly, to human dignity as underwriting human rights morally.

Let the following schema (D) represent the abstract conceptual structure of what for a specimen x belonging to kind X to have dignity consists in:

(D) For an individual x to have dignity is.

1. to be recognized by moral agents
2. as normatively requiring their respect
3. in ways that are appropriate to the dignity they know X (= x 's kind of being) to have.

Note that (D) is compatible with the possibility that we come to recognize, e.g. bovine dignity B, or chimpanzee dignity C. Such dignity (dignities?) would prescribe and proscribe certain ways of treating cows and chimpanzees as giving proper expression to respect for the bovine dignity and the chimpanzee dignity that we have come to recognize for these kinds of beings. And the corresponding normative contents of statuses B and C and their consequent normative implications (e.g., rights-claims, that would codify proper ways of treating cows and chimpanzees) might differ drastically from the norms that qualify the ways of treating human beings as giving proper expression of the respect that is normatively required specifically by human dignity H. Yet to accept that the relation of *individuals of some kind having dignity* is amenable to a pluralistic interpretation is not the same as to accept that any one sort of kind-specific dignity can be extended so that its normative content and ascription constraints can coherently *include* the normative content and ascription constraints of another, or of any other, kind-specific dignity X. Assuming for the sake of discourse that we can rationally make sense not only of human dignity H (as we certainly can) but also of B and C. It still does not follow that we can rationally make sense of running together H and C, or B, nor that the normative content of H can be broadened so as to subsume C, or B, or both.

But can we indeed rationally make sense of C? Assuming the role of an advocate of the Declaration on Great Apes for a moment, we might want to argue that once we articulate our reasons for justifying the familiar normative implications of human

dignity (e.g. basic rights to life, protection of individual liberty, and prohibition of torture) we must admit that the same reasons commit us to extending the familiar normative implications of human dignity to other great apes as well.

I doubt that we are so committed. In order to see that we are not, let me rehearse the central argument of the preceding section. In virtue of being human, we all belong to a kind of which it is characteristic that its members consider it natural or normal or typical for all members of their kind to develop some moral stance or other in the course of their life. (There are many other things, of course, that are species-typically human. We consider it natural or normal or typical that human beings develop some personal identity, learn to speak some language, become competent in the ways of their culture, develop some sexual preferences, etc.) No matter what particular moral stance people develop and no matter that different moral stances can partially clash, by developing *any* moral stance people will already manifest themselves as both a source of moral concern for others (at least for their cultural peers) and find themselves exposed as an object of others' moral concerns (at least of those of their cultural peers). As a matter of fact, people's moral concerns may differ wildly. The object range of our moral concerns is extremely flexible. Without paradox, some people are able to recognize some sort of moral status in wild orchids, and without paradox some people are able to give different moral status to sentient beings, to higher animals, and to people as our fellow human beings. However, in doing so we all manifest ourselves as givers of moral status *to* someone or something of a certain kind. Our own moral status is the status of being able to confer (all sorts of) moral status, including our own. This normative capacity sets us apart from anything of a kind *on* which we can confer moral status but which cannot give moral status *to* us in return.

Until then, the discourse theory of morality, human rights, and human dignity is methodologically anthropocentric. But never anthropochauvinistic.

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Chapter 7

The Confucian Argument for Equal Human Dignity



Yaming Li

Abstract Human dignity is a crucial concept in contemporary ethical, political and legal studies. Protecting human dignity is a core value in modern human life. However, people have different, even opposite understandings of human dignity, which has caused lots of confusion in related discourses. The Confucian notion of human dignity provides an important perspective for reflecting various theories of human dignity. In Confucian ethics, the basis of human dignity is the moral potential that every human being naturally has. Moral potential grants everyone universal dignity, while the development of moral potential grants people acquired dignity. Since all human beings have moral potential to the same extent, everyone owns universal dignity equally. Different people develop their moral potential to different extents. One's acquired dignity is positively associated with the development of her moral potential. Universal dignity is a moral status but acquired dignity is not. To pursue acquired dignity is the moral demand of universal dignity and protects people's universal dignity. Confucian discussions on human dignity provide a promising way to justify the equality of human moral status, also, it reveals why the equality of humanity relies on the integrity of the human species. The Confucian concept of human dignity constitute a reliable theoretical basis for coping with ethical issues caused by technologies today.

Keywords Confucian ethics · Human dignity · Universal dignity · Acquired dignity · Equality

Although there are always different views on dignity in different historical periods and different ethical traditions, it is generally agreed that owning dignity means a human being “has supreme inherent value” and therefore “deserves moral consideration”. The term “human dignity” never appeared in the Confucian literature, but there are lots of discourses on “the supreme inherent value of human beings”, and that “human beings deserve moral consideration because of their inherent value”.

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Therefore, we can reconstruct the Confucian concept of human dignity by Confucian texts. Equality is the most important feature of the modern concept of human dignity. Confucian ethics seems to run counter to this modern understanding of human dignity in that it accepts hierarchy in society. Analysis of the relationship between the two kinds of dignity in Confucianism—universal dignity and acquired dignity—shows that, compared to hierarchy, equality is a more fundamental value. There is “human dignity” in the modern sense in Confucian texts. To elucidate the idea of equality embodied in Confucianism is the major task for the reconstruction of Confucian concept of human dignity today.

Diverse economic and ecological challenges, together with new technological possibilities, promote an urgent need to clarify the multiple meaning of autonomy and to reconstruct the basis and demands of social justice. A sufficient explanation for human dignity can play a dominant role in this process and therefore determines how we evaluate technologies and policies from the perspective of morality. Confucian ethics systematically demonstrates the meaning, basis, and moral demands of human dignity. The Confucian concept of human dignity offers a crucial approach to reflecting on modern theories of human dignity and can contribute to the conceiving of a universally recognized concept of human dignity.

1 The Basis of Human Dignity in Confucianism

Confucian ethics holds that the essential feature distinguishing human beings from all other creatures is that only human beings can live a moral life. Therefore, human beings are the most precious in the world. XunZi said, “Water and fire have essences, but not life; herbs and trees have life, but not perception; birds and beasts have perception, but no sense of righteousness. The human being has essence, life, perception and, in addition, a sense of righteousness, and thus can be the noblest on earth” (*Xunzi· Wangzhi*).¹ In *The Book of Rites*, Confucius said, “the human being is the heart/mind of heaven and earth” (*The Book of Rites· Liyun*).² It means that humanity is the only agent that can comprehend good and evil, and the only agent to practice beneficence, hence the most precious being.

Like most of other philosophical traditions, Confucian ethics bases human dignity on morally relevant features, while the basis of human dignity in Confucian ethics is mainly moral potential rather than displayed moral ability. For Mencius, what make one qualified for being human are the “four hearts” (四心). “Without a heart that sympathizes, one is not human; without a heart that knows shame, one is not human; without a heart that reveres and respects, one is not human; without a heart that approves and condemns, one is not human” (*Mencius· Gongsunchou I*).³ The “four hearts” are not virtues but “sprouts” of four cardinal virtues. “A heart that

¹ XunZi (2015).

² Dai (2013).

³ Mencius (2015).

sympathizes is the sprout of beneficence; a heart that knows shame is the sprout of righteousness; a heart that reveres and respects is the sprout of ritual propriety; a heart that approves and condemns is the sprout of wisdom....” (*Mencius: Gongsunchou I*).⁴ XunZi regards moral potential as the basis of human dignity too. “Human nature is natural Material; education is artificial carving and polishing by moral principles. If there is no moral potential, moral education has nothing to work on; if there is no education, moral potential cannot develop into virtue by itself” (*Xunzi- Lilun*).⁵ Moral education can work on human beings, because there is a possibility to be beneficent in human nature. This possibility grants human being a supreme moral status.

There are different views on whether owning certain potential can be a sufficient condition for owning dignity. Alan Gewirth argues that dignity is a status owned by agents and that agency is the basis of moral status. Both Klaus Steigleder and Deryck Beyleveled accept this position, but they offered different arguments on how potential for agency per se can grant moral status. For Klaus Steigleder, “it is not possible that agency can in one case possess unsurpassing significance for the agent and in the other case (potentiality for agency) no significance at all. For the agent to judge otherwise would be inconsistent”.⁶ But Beyleveled insists that, “it cannot possibly be true that it is dialectically necessary for agents to grant that being a mere potential agent...is sufficient for the possession of at least some intrinsic moral status.”⁷ Some people hold self-consciousness and intelligence as the basis of human dignity. Among them, some believe the potential for these capacities cannot grant dignity. John Harris’ argument about “potentiality” is that “the bare fact that something will become X... is not a good reason for treating it now as if it were in fact X.”⁸ But John Finnis objected to Harris’ position in “*Euthanasia Examined, Ethical Clinical and Legal Perspectives*”. He argued that “potential is an existing reality, a thoroughly unitary ensemble of dynamically inter-related primordia, of bases and structures for, development...A philosophical anthropology attentive to all the relevant data, including biological and zoological realities, can make a well-grounded affirmation of the personal nature of the human organism.”⁹

Confucianism sides with the position that value potential. It holds owning moral potential to be the sufficient condition for owning human dignity. Every human being can be granted human dignity even without developing these inherent potential into virtues. There is a classic thought experiment in *Mencius*: suppose we witness a toddler (who is yet to fully develop her human potentials) approaching a water well, we would be prompted by our natural compassion to save her from the danger. According to Zhang Qianfan, although Mencius intended to use this example to illustrate that everyone has a heart that sympathizes, “it can be plausibly extended

⁴ Ibid: 69.

⁵ XunZi, op. cit. note 1, pp. 180–181.

⁶ Steigleder (1998).

⁷ Beyleveled (2000).

⁸ Harris (2001).

⁹ Keown (1995).

to show the general Confucian concern and respect for innate human potentials. Whether a person has actually developed these potentials (as he ought to), they are regarded as having value by themselves and deserve respect from others”.¹⁰ Therefore, we should respect not only those with comparable moral achievements, but also every ordinary person, “whose innate capacities make human improvements an ever-present possibility”.¹¹ If we are unaware of the innate potentialities in every human being or unaware of the value of these potentialities, the development of these potentialities will be hindered. Famous Confucian Dong Zhong-shu said, “After humans understand their nature, they know that they are nobler than all other beings. After knowing that they are nobler than all other beings, they know propriety and righteousness. After knowing propriety and righteousness, they feel satisfied in good manners. After being satisfied in good manners, they are willing to follow the moral rules” (*History of Han Dynasty*).¹² Inherent potential grants every human being human dignity. Awareness of the dignity one owns is the necessary condition for everyone to develop these potentialities into virtues. Human dignity does not depend on manifested capacity; on the contrary, nurturing of typical human capacity depends on the awareness of one’s own dignity.

2 Two Kinds of Human Dignity in Confucianism

2.1 Universal Dignity

In Confucian ethics, moral potential is the basis of human dignity. Every human being is born with moral potential and thus owns human dignity. This dignity is called universal dignity, because it is owned universally by humans.

Firstly, every human being owns moral potential. Mencius believes that everyone is endowed by heaven with “four hearts”, “everyone has a heart that sympathizes, a heart that knows shame, a heart that reveres and respects, and a heart that approves and condemns” (*Mencius· Gaozi I*).¹³

These four initiators are moral potential. “Human beings have these four initiators just as they have four limbs” (*Mencius· Gongsunchou I*).¹⁴ Just like physical features, the potential to understand and practice moral rules is an inherent natural attribute of the human species.

Secondly, every human being owns moral potential equally. Yao and Shun were acclaimed models of virtuous men. But Mencius believes that “Yao and Shun were

¹⁰ Zhang (2000).

¹¹ Ibid.

¹² Ban (2000).

¹³ Mencius, op. cit. note 3, p. 245.

¹⁴ Ibid: 69–70.

just the same as other men” (*Mencius·Lilou II*).¹⁵ “The sages and others all belong to a single kind” (*Mencius·Gaozi I*).¹⁶ The moral potential in them is no different from that in ordinary people. Their inherent natural attribute is essentially the same as others. The so-called sages are just those who “have developed their moral potential to the fullest extent” (*Xunzi·Jiebi*).¹⁷ Mencius states, “it’s possible for everyone to become Yao and Shun” (*Mencius·Gaozi II*).¹⁸ Xunzi agrees that “every ordinary person on the road may become Yu (a morally perfect man)” (*Xunzi·Xing e*).¹⁹ Through hard practice, it is possible for everyone to develop her natural moral potential to the fullest extent and reach the highest realm of human life. Since everyone owns moral potential equally, every human being owns universal dignity equally.

The modern concept of human dignity mainly comes from the Universal Declaration of Human Rights proclaimed in 1948. Its fundamental difference from a pre-modern concept lies in its emphasis on the moral protection of each individual. The Declaration proposed that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience.” The Declaration grants human dignity to “all members of the human family” regardless of their other features, like race, gender, intelligence, faith, age, etc. In Confucianism, moral potential equally owned by all human beings grants universal dignity equally to everyone. The universal dignity is the equivalent of human dignity stated in the Declaration.

In most Western theories of human dignity, the moral demand of human dignity is unidirectional. It requires the owner of human dignity to be treated respectfully. Different from these theories, Confucian ethics deems the moral demands of human dignity as bidirectional. Universal dignity from a Confucian perspective not only requires others to treat the owner of dignity respectfully but also demands the owner of dignity to develop their moral potential. If a potential endows us with supreme inherent value, like dignity, then we have a moral obligation to develop it. This theory explains why dignity protects both negative rights and positive rights, and why dignity not only invests rights but also sets limits to human rights.

2.2 *Acquired Dignity*

In many ethical traditions, it is believed that, if an attribute can grant dignity, we have a moral obligation to conserve and develop this attribute. For instance, “Classical Greek philosophy views man as a living being with a rational soul united to a body who finds dignity in perfecting his reason”.²⁰ This view on human dignity not only tells us what human nature is, but also shows how the human species should ideally

¹⁵ Ibid:191.

¹⁶ Ibid: 247–248.

¹⁷ XunZi, op. cit. note 1, pp. 235–237.

¹⁸ Mencius, op. cit. note 3, p. 265.

¹⁹ XunZi, op. cit. note 1, p. 279.

²⁰ Kraynak (2008).

develop. “Another powerful source of a broader, shared notion of human dignity is the Biblical account of man as ‘made in the image of God’.”²¹ “Being made in God’s image” is the source of the special moral status of human beings, and “could even be taken to imply a special responsibility on our part to perfect nature in order to finish God’s creation”.²² A similar attitude was expressed in Confucianism explicitly. For example, Mencius said, “Since all men have these four initiators in themselves, they should develop the initiators as a fire begins to burn, or a spring begins to flow” (*Mencius· Gongsunchou I*).²³ “Anyone who has these four initiators but claims she cannot develop them is harming herself. Those who assert their monarch cannot develop the four initiators are harming their monarch” (*Mencius· Gongsunchou I*).²⁴ In Confucianism, the obligation to develop moral potential is of great moral meaning. If one does not try one’s best to develop one’s moral potential, one does not treat herself respectfully. Those who have developed their potential well are worthy of another kind of dignity, namely “acquired dignity”.

However, acquired dignity is unequal. Different people develop moral potential to different degrees. In some people, the potential falls into oblivion, while in others it grows full-fledged into virtues. The extent to which one earns her acquired dignity depends on how much her moral potential has been developed into virtues. The Confucian tradition divides people into different hierarchical orders according to their moral development. In dichotomization, people are divided into the gentleman and the petty man. Gentleman is a respectful title for those with virtue; Petty man refers to those who are morally bad. In five-level division, there are saints, scholar-officials, gentlemen, plebeians and petty men. Saint is the title for those who have completely developed their moral potential into virtues. Saints are people with perfect morality who own the highest acquired dignity. Becoming a saint is everyone’s ultimate goal and lifelong pursuit. Scholar-officials, gentlemen, plebeians and petty men rank one by one lower on the hierarchy of morality and acquired dignity. Some people failed to develop their moral potential or even completely discarded these potential, and thus have no acquired dignity.

Ideally, a person’s social status should be consistent with her acquired dignity. People with high social status are all people who have better developed human nature. According to Mencius, “nobility of Heaven” (Tian Jue) is acquired dignity and “nobility of men” (Ren Jue) is social status. Mencius proposed that the possession of “nobility of men” should be the consequence of the possession of “nobility of Heaven”. Mencius said, “There is a nobility of Heaven, and a nobility of men. The nobility of Heaven includes practicing benevolence, righteousness, self-consecration, and fidelity, and enjoying doing good to others. While the nobility of men includes having official positions. The men of antiquity cultivated their nobility of Heaven, and the nobility of men came to them consequently” (*Mencius· Gaozi I*).²⁵ In

²¹ Schulman (2008).

²² Ibid.

²³ Mencius, op. cit. note 3, pp.69–70.

²⁴ Ibid: 69–70.

²⁵ Ibid: 258–259.

Daxuezhangju variorum, the reason why the famous monarchs in history became monarchs is precisely that they developed their natural moral potential to the fullest extent. “From the beginning of the creation of human beings, heaven has endowed them with the nature of benevolence, righteousness, propriety and wisdom. However, not everyone is born to understand her own nature and preserve it. Once there is a wise person among the people who can fully display her nature, God will let her be the leader and mentor of all the people, govern and educate them, so as to restore people’s nature. This is the reason why Fuxi, Shennong, Huangdi, Yao and Shun inherited the mandate of heaven to establish a system of government. It is also the reason for the establishment of other official positions” (*Daxuezhangju variorum*).²⁶

Under inequitable social circumstances, a person’s social status may not conform to her acquired dignity. However, even in these cases, the acquired dignity gained by people through moral accomplishments will not be diminished by wrong treatment from society. “A gentleman is noble without rank, rich without fortune, trusted without talk, dignified without fury, glorious despite poverty, and content despite living alone” (*XunZi· RuXiao*).²⁷ One’s acquired dignity does not depend on one’s social status; on the contrary, one’s social status should match one’s acquired dignity. Correspondingly, one’s virtue should match her social status. In *Zhouyi*, it is proposed that, “If one’s virtue does not match one’s official position, one will encounter disasters” (*Zhouyi Xici II*).²⁸ “Virtue” maintained a dominant position to “official position”. The fact that those with “virtue” may not have corresponding “official position” and those with “official position” may not have corresponding “virtue” warrants the former’s observation, examination, criticism and disapproval of the latter. What serves as the fundamental basis for one’s social status should be her moral accomplishments.

2.3 *Difference and Relationship Between Universal Dignity and Acquired Dignity*

In Western moral theories, universal dignity and acquired dignity are also the two most important understandings of dignity. Before the 1990s, most theories of human dignity understood dignity as a term with a single meaning, either universal dignity or acquired dignity. Like Kant’s use of the term dignity or Stoic discourse on dignity. After the 1990s, more theories hold universal dignity and acquired dignity as two equally crucial meanings of the term human dignity.

Intrinsic dignity and inflorescent dignity in Daniel Sulmasy’s theory are corresponding to universal dignity and acquired dignity in Confucianism. Sulmasy wrote, “by intrinsic dignity, I mean that worth or value that people have simply because they are human, not by virtue of any social standing, ability to evoke admiration, or

²⁶ Zhu (1983).

²⁷ XunZi, op. cit. note 1, p. 99.

²⁸ Gi (2017).

any particular set of talents, skills, or powers... Thus we say that racism is an offense against human dignity.”²⁹ “Inflorescent dignity is used to refer to individuals who are flourishing as human beings—living lives that are consistent with and expressive of the intrinsic dignity of the human.”³⁰ Roberto Andorno differentiates two meanings of human dignity for a similar reason. He proposes that it be necessary to distinguish different meanings of human dignity if we want to form a proper understanding of how the term human dignity works in bioethics.³¹ “On the one hand, the inherent dignity, as it is inseparable from the human condition, is the same for all, cannot be gained or lost and does not allow for any degree. Even the worst criminal cannot be stripped of his or her human dignity and should consequently not be subjected to inhuman treatments or punishments. On the other hand, moral dignity does not relate to the existence itself of persons, but to their behavior and stems from their ability to freely choose good and to contribute beneficially to their own lives and the lives of others. It can be said that we give to ourselves this second kind of dignity by making good moral choices. This is why, unlike inherent dignity, which is the same for all, moral dignity is not possessed by all individuals to the same degree.”³²

Many traditional and current ethical theories emphasize that dignity cannot be lost because it does not depend on one’s virtues, behaviors, or achievements, and that it is equal among all human beings. But in reality, we often feel that people in some cases lose their dignity or different people have different degrees of dignity. Thus, such theories seem to contradict with common sense. But this apparent contradiction is overcome by the bipartite structure of human dignity as elaborated above.

Confucian ethics explained more explicitly the relationship between the two kinds of dignity. Universal dignity and acquired dignity are connected by moral potential. Universal dignity derives from moral potential while acquired dignity derives from the development of moral potential. Universal dignity reminds us that since the moral potential that people are born with grants intrinsic value to every human being, there should be a bottom line in one’s attitude towards others. In contrast, acquired dignity depicts us an ideal personality, demonstrates the greatest kindness we could show to our fellow human beings by having our moral potential fully developed. The ultimate meaning of life lies in pursuing this ideal personality. Confucius said, “If a person knows the right way to live a moral life in the morning, she may die in the evening without regret” (*Analects· Liren*).³³

Universal dignity is a moral status but acquired dignity is not. Acquired dignity cannot invest rights or constitute moral obligation. Moral status decides how certain beings should be treated. In case of conflict of interest between different beings, our moral judgement as to which side should get more protection should be based on the moral status of each party. It is not morally wrong or even morally praiseworthy to sacrifice the fundamental interests of the party with lower moral status to meet the

²⁹ Sulmasy (2008).

³⁰ Ibid.

³¹ Cf. Andorno (2009).

³² Ibid: 223–240.

³³ Confucius (2015).

needs of the party with higher moral status. This explains why acquired dignity is not a moral status. Having acquired dignity means one treats others as one's moral equivalent. One can get acquired dignity only by becoming virtuous. The most crucial virtue in Confucianism is described as "do not do to others what you do not want to be done to yourself" (*Analect· Yanyuan*).³⁴ "The person of perfect virtue, help others to achieve their goal if she has the goal herself. To be able to get to know others' needs by one's own needs may be called the art of virtue" (*Analect· Yongye*).³⁵ Therefore, if one regards her own interest as more important than other people's, she can hardly get acquired dignity. People having acquired dignity must be those who acknowledged all other people's moral status as equal to their own. Inequality of acquired dignity is not inequality of moral status. Acquired dignity is not a moral status. It just makes one more respectable.

The inequality of acquired dignity will never threaten the equality of universal dignity, but will instead protect the equality of universal dignity. One's acquired dignity is associated with whether one shows respect to others' universal dignity and if yes, to what extent. To pursue higher acquired dignity, one needs to be more respectful to others' universal dignity. Thus recognition of different degrees of acquired dignity does not produce inequality but strengthens the idea of equality.

3 Two Ways to Achieve Equality in Confucianism

The Universal Declaration grants equal moral status to "all members of the human family" regardless of their other features, like race, gender, intelligence, faith, age, etc. The simple fact of "belonging to the human species" is a sufficient condition for equal moral status. Since the Universal Declaration of Human Rights was issued, the claim that all human beings have equal moral status has been universally recognized and has had a significant social impact. This idea helped to ground countless legal and moral decisions. It has inspired and paved the way for the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).³⁶ Although the claim has been widely recognized, it has not yet been adequately justified. To demonstrate the equality of human moral status is exceptionally difficult. Every ethical tradition fails to provide sufficient proof, and each demonstration attempt contains contradictions.

Nearly all philosophical positions base human moral status on typical human attributes one has, especially morally relevant attributes. No matter what attribute we hold as the basis for human moral status, there must be some individuals who cannot show this attribute, thus leading to the failure of the justification for the moral status of these individuals. Philosophers tend to find themselves either agreeing that

³⁴ Confucius, op. cit. note 32, pp. 171–172.

³⁵ Ibid: 83–84.

³⁶ Trinidad (2008).

not all human beings are rightsholders or adopting what Peter Singer and others have called a “Speciesist” position. Without further justification, we have reason to refuse to include people who seriously lack or completely lack the typical human attributes in the protective range of moral status. Obviously, “Speciesism” is not a convincing way to argue for the moral status of human being.

Contemporary biomedical technologies have constantly been challenging the moral demands of equality among human beings. With the development of technologies such as gene editing, it’s unprecedentedly easy for us to influence people who have no contact with us at all, people who we have no chance to discourse with, and even to control and influence future generations that do not yet exist. The development and application of technologies like human enhancement incline us to equate the inherent value of human beings with human capacity, which may lead to the resurgence of eugenics. All the above problems have posed serious challenges to the notion that all human beings have equal moral status. To cope with these challenges, we need in-depth reflection on the philosophical basis of the equality of human moral status. The basis of equal moral status of human beings is the most precious value for us to cherish and protect. Only after recognizing this fundamental value can people distinguish between the benefits and harms brought about by the application of new technologies.

3.1 Equality Ensured by the Dignity of the Human Species

A very promising approach to the justification of equal moral status of all human beings in contemporary ethical research should be to claim that all human beings have moral status in virtue of belonging to the kind of beings that typically have the relevant attributes that grant moral status. The human species is a natural kind having an essential feature that can grant moral status, so the human species have moral status. Therefore, membership in the human species is a sufficient condition for sharing this moral status equally. This view is seconded by many. Bernard Williams, for example, has said that “there are certain respects in which creatures are treated in one way rather than another simply because they belong to a certain category, the human species.”³⁷ Thomas Scanlon said, “the class of beings whom it is possible to wrong will include at least all those beings who are of a kind that is normally capable of judgment-sensitive attitudes.”³⁸ Daniel Sulmasy has provided the best demonstration for this approach as he emphasized the moral implication of natural kind. He maintained that “the logic of natural kinds suggests that one picks out individuals as members of the kind not because they express all the necessary and sufficient predicates to be classified as a member of the species, but by virtue of their inclusion under the extension of the natural kind that, as a kind, has those

³⁷ Williams (2008).

³⁸ Scanlon (1998).

capacities.”³⁹ Therefore, dignity is based on the simple fact of membership in a natural category. For all people, there is no difference in their membership in the human species, so there is no difference in the status granted by this membership.

This position is also held by Confucian ethics. Moral potential is the typical attribute of the human species as a natural kind. It grants special status to the human species as a whole. Then, membership of humankind is a sufficient condition for everyone to share this status equally.

In Confucianism, moral potential is essentially the typical feature of the human species as a natural kind. Mencius argued that, “as all humans like similar tastes, sounds and sceneries, their minds are fond of similar things too, which are moral rules and righteousness. Moral rules and righteousness are common in the minds of all human beings. It pleases our mind as meat pleases our mouth” (*Mencius · Gaozi I*).⁴⁰ Mencius believes those who do not cherish moral potential are not conscious of human nature. Mencius said, “Here is a man whose fourth finger is bent and cannot be stretched out straight. It is not painful, nor does it incommode him at all. If there were anyone who can make it straight, he would go to him no matter how far, because his finger is not like the finger of other people. When a man’s finger is not like those of other people, he feels dissatisfied, but when his mind is not like those of other people, namely he does not understand moral rules and righteousness as well as others, he does not feel dissatisfaction. This is called ignorance of his nature category” (*Mencius · Gaozi I*).⁴¹ Those who do not cherish moral potential erred on ignorance of human nature. In Mencius’ analysis of features of the human species as a natural kind, moral potential is an essential part of human nature.

Moral potential, as a typical feature of the human species, grants the entire species moral status. In the statements like “Among all the creatures in the world, the human being is the most precious” (*The Book of Filial Piety · ShengZhi*),⁴² “The human being is the heart of heaven and earth” (*The Book of Rites · Liyun*),⁴³ “The human being” refers to the human species in the primary sense. Confucius said, “The one who first made puppets to bury with the dead should die without descendants”, because these puppets are made in the image of human beings, but to be buried with the dead (*Mencius · Lianghuiwang I*).⁴⁴ The use of puppets for burial did not directly violate the dignity of any individual human being. However, those who initially used puppets for burial were considered to deserve severe punishment in Confucian culture, such as childlessness, because this practice did not pay due respect to the dignity of the human species as a whole.

The theory that holds the moral status of human individuals comes from the typical human features displayed by individuals cannot justify the moral status of human members who have not yet shown such features. This difficulty can be resolved if

³⁹ Sulmasy (2010).

⁴⁰ Mencius, op. cit. note 3, pp. 247–248.

⁴¹ Ibid: 255.

⁴² Confucius (2016).

⁴³ Dai Sheng, op. cit. note 2, p. 147.

⁴⁴ Mencius, op. cit. note 3, p. 8.

the moral status of individuals comes from the moral status of the human species as a whole. This argument provides us with a reason to extend the scope of moral protection to all members of the human species, and also demonstrates that every human member has equal moral status. However, a crucial link in this argument is that we need to defend the existence of the nature of the human species that gives moral status to human beings as a whole. There have always been diametrically opposed views on whether there is anything called human nature. Many theories have questioned the existence of the so-called human nature. If the nature of the human species has great moral significance, then this fact gives the human species as a whole a special moral status. However, if the so-called human nature does not exist at all, then this argument will not stand.

Firstly, one of the doubts about “human nature” is that human beings are always shaping their own nature and human nature is constantly changing. Therefore, if “we assume a clearly defined set of natural human characteristics and qualities”, then we “cannot do justice to the manifold forms of human existence and their historic capacity for alteration”.⁴⁵ Secondly, human nature should be the innate attribute of human beings. However, in reality, it is difficult to distinguish what is innate, naturally possessed and what is acquired. Fukuyama, for example, pointed out that most of the debates on human nature “have revolved around the age-old question of where to draw the boundary line between nature and nurture”.⁴⁶

Confucian ethics can better responds to the above doubts about human nature. Firstly, by regarding human nature as a range of potentialities, we can not only obtain a definite human nature, but also take into account the diversity of human existence and historical development. Potential per se implies development. Depending on different environments and conditions, potential can be developed to different degrees. Different degrees of development lead to the diversity of human existence in different historical periods and different social environments. However, under diversity, there is still something that every member of humankind always shares, namely the potential for development. Secondly, the distinction between “nature” and “nurture” can also be interpreted as human potential and its development. Human abilities and qualities are acquired, but the possibility of developing such abilities and qualities exists in the “nature”. For example, the potential of language is natural, but it can only be converted into the capacity of language in the environment of human society. The same is true of moral ability. Evolutionary biologist Francisco J. Ayala once argued that “humans are ethical beings by their biological nature: that humans evaluate their behavior as either right or wrong, moral or immoral, as a consequence of their eminent intellectual capacities, which include self-awareness and abstract thinking. These intellectual capacities are products of the evolutionary process, but they are distinctively human.”⁴⁷ The concrete moral content is shaped by culture. The development of the potential can be viewed as “nurture”. However, the potential

⁴⁵ Bayertz (1995).

⁴⁶ Fukuyama (2002).

⁴⁷ Ayala and Arp (2009).

to develop is “nature”. By regarding human nature as potential, Confucian ethics makes a better argument for the existence of a definite human nature.

On the one hand, holding potential as the basis of moral status enables the establishment of moral status for humankind as a whole. On the other hand, holding potential as the basis of moral status, Confucianism can justify the moral status of an individual only by the moral status of the human species, but not directly by the potential owned by an individual. Potential is a characteristic that cannot be fully confirmed by experience. If a person’s moral status is judged by whether she shows her potential, then just as other theories that justify the individual’s status by the displayed capacity, the equality of human moral status cannot be fully proved.

Moral potential is owned by human beings exclusively. No other species owns moral potential as the nature of their kind. Therefore, Confucian ethics not only argue for the equal moral status of human beings, but also demonstrate that the moral status of human beings is higher than any other species. This is not speciesism, because if we find another species who has moral potential as the nature of their kind, Confucian ethics would agree to grant equal moral status as the human beings to all members of this species.

3.2 Equality Revealed by the Obligation of Moral Subjects

No matter moral status is based on individual attributes or on the essential attributes of the humankind, we are essentially discussing what in a moral patient can grant her moral status. Besides the above-mentioned approaches, the Confucian concept of human dignity can provide a different perspective to explain the origin of equal moral status. According to the moral demand of human dignity that imposing on a moral subject, a moral subject should acknowledge and respect the equal moral status of every human being, whether they have showed any attribute that can grant moral status.

Since everyone has a duty to develop their moral potential, everyone should give moral consideration to others. The perfect virtue manifested as “do not do to others what you do not want to be done to yourself” and “To be able to get to know others’ needs by one’s own needs”. To nourish the “four hearts” in oneself, one must treat others as their moral equivalence. As Zhang Qianfan had proposed, respect for others is the natural extension of one’s self-respect and the necessary condition for one to preserve her value.⁴⁸ Ni Peimin also holds that “we cannot treat others inhumanely without reducing our own humanity, nor can we disgrace ourselves without hurting others”.⁴⁹ Confucian selves are associated with their obligations to the various groupings to which they belong.⁵⁰ Therefore, “whether we exclude these people from our humanitarian consideration is therefore more a test of our own

⁴⁸ Cf. Zhang, *op. cit.* note 10, pp. 299–330.

⁴⁹ Ni (2014).

⁵⁰ Cf. Hall and Ames (2003).

humanity than a judgment about whether these people are still human beings. We respect their dignity not so much on the basis of their qualification as human, as it is on the basis of being human ourselves”.⁵¹ Even to those who seem to lack virtue, “we will make efforts to include them rather than trying to find if they are one of us... An exemplary person would first demand self-perfection and doing one’s best to others”.⁵² Therefore, Confucian ethics could transform the issue from why we should grant moral status equally to every human being to what we should do to develop moral potential in ourselves. It can be an explanation for equal moral status despite individuals have attributes that grant moral status to different extents.

To recognize people who lack capacities as having equal moral status as we do imposes on us one-way obligations and forces us to give up certain self-interest under some circumstances. In an age when human enhancement is broadly applied, the difference in ability among all human beings will be greater; correspondingly, the conflict of interests will be greater. As Allen Buchanan proposed, “If a large majority of biomedically enhanced cooperators come to shape the mainstream economy and the most important political processes in their own image,... the functioning of the dominant cooperative framework will make it increasingly hard for unenhanced cooperation to thrive.”⁵³ Furthermore, if the enhanced “had interests that were as much more complex than ours as our interests are compared to the interests of rats, then it would be permissible for them to sacrifice us for their sake, in cases where tragic choices must be made.”⁵⁴ Facing such a circumstance, “rights talk” which sees the self as essentially separate from others can hardly provide an argument for equality between individuals who own capacities to totally different extents, while the Confucian concept of human dignity that based on moral consideration for other human beings can defend the equal moral status of the unenhanced in such situations. If the dignity of the enhanced imposes on her the obligation to develop her moral potential in herself, then the duty to respect other human beings is also a duty to herself. That is a reason for the enhanced to respect the unenhanced, also a reason for anyone to respect all those less abled. Furthermore, “a legitimate public institution must fulfill the duty to provide favorable social conditions and a compatible legal framework so that everyone has the basic opportunity to develop the inner worth and become a dignified member of the community”.⁵⁵ A theory that holds moral potential as the origin of the inner value of human beings can help to dissolve conflicts of interests between individuals in a social circumstance in which the difference of capacities, value and life style among individuals are ever increasing, and promote the formation of a society with mutual respect.

⁵¹ Ni, *op. cit.* note 49, pp. 173–198.

⁵² *Ibid.*: 173–198.

⁵³ Buchanan (2009).

⁵⁴ *Ibid.*: 364.

⁵⁵ Zhang, *op. cit.* note 10, pp. 299–330.

4 The Confucian Argument for Equal Human Dignity and the Moral Meaning of the Integrity of the Human Species

The main obstacle in arguing for the equality of human moral status stems from the fact that not all human individuals exhibit typical human characteristics. To justify the equality of human moral status, one has to demonstrate why we should grant equal moral status to those individuals who do not exhibit typical human characteristics. Holding the dignity of individuals comes from the value of the species offers a promising solution to this problem. If the fact that we are from a single species plays a prominent role in the justification for equality, then the integrity of this species is of great moral significance. When *homo sapiens* is no longer a well-defined natural kind, it will be very hard to find a basis for equality and most of other fundamental values that cherished by people today.

The term integrity of species has entered the context of ethical research with the development of gene technology since the 1990s. The infringement on the integrity of species refers to a kind of infringement on animals that unrelated to animal welfare. For example, turning hens into senseless laying machines is a classic example where people make ethical judgment by resorting to integrity.⁵⁶ Such genetic modification reduces rather than increases the pain of animals, but most people agree that this is morally wrong. Obviously, the existing theories on animal rights are not sufficient to explain people's moral intuition that genetic modification does harm to animals. The concept of integrity can fill the gap between moral theory and moral intuition. Integrity of species provides a perspective of moral evaluation beyond the theory of rights.

The normative contents of the integrity of species are mainly to protect the telos and typical capacities of a species from infringement. Telos here is a word borrowed from Aristotle that denotes an end that biological creatures work to achieve. In pursuing this telos or end, plant and animals display a specific way of living a complete life typical of their own kind, which is the distinctive purpose that defines their fundamental nature. Protecting the integrity of the species also requires protecting the typical capacities of the species. Only these capabilities can ensure the realization of the telos.

The term integrity of species plays an important role in the ethical discussion on how to protect human beings from the harm done by new technologies. Many scholars argue against human cloning, stem cell research, heritable gene intervention and other technologies by appealing to the principle of protecting the integrity of the human species. For example, people appeal to integrity to oppose research that could possibly make human-nonhuman chimera: "Certain human bodily components that are closely connected to the capacities associated with human dignity might be transferred to human-nonhuman chimeric beings and in that setting would be severely restricted in

⁵⁶ Cf. Comstock (1992); Nelson (1997).

their exercise or even destroyed.”⁵⁷ People believe human enhancement may threaten human dignity because “There are human goods that stem from our awareness of ourselves as finite, limited beings.” “Being limited makes possible perseverance through adversity, aspirations of fulfilling a calling, and being part of (worthy) causes greater than oneself.”⁵⁸ The application of human enhancement technology may damage the telos of human life by continuously reducing the finiteness of human beings.

At the turn of the century, protecting the integrity of the human species has even become the moral demand of human dignity. UNESCO Declaration on the Human Genome and Human Rights of 1997 proclaimed in the first Article that the human genome is “the heritage of humanity”. This expression means that the international community has a duty to preserve the integrity of the human species from improper manipulations that may endanger it.⁵⁹ Protecting the integrity of the human species became a position that received extensive recognition. Resolution on Ethical, Scientific and Social Implications of Cloning in Human Health (WHA 51.10) reaffirms that cloning for the replication of human individuals is ethically unacceptable and contrary to human dignity and integrity.

If we want to restrict or prohibit the application of certain technologies by appealing to the integrity of the human species, we must explain why we have an obligation to respect the integrity of the human species. Some scholars explained this from the perspective of the rights framework. For example, Lantz Miller maintained that we have a moral obligation to respect individual’s right to live as a member of a group. The United Nations Declaration of the Rights of Indigenous People clearly states this right of any individual. If the group that an individual wants to belong to and therefore hopes to preserve is exactly the original human species, then the protection for the essential characteristics of the human species can be justified by the rights framework.⁶⁰

Nevertheless, the concept of human rights is not self-evident. Before one takes “rights” as standards to judge other moral notions, one needs at least to describe why they are qualified as criteria for assessing other things.⁶¹ Confucian ethics agrees on the principle of protecting the integrity of the human species, but justify this principle in a different way than the above theory. Confucian ethics justifies it through the moral obligation of protecting human dignity rather than human rights. In several crucial documents we find the view that human dignity is the basis of human rights, as in Articles 22 and 23 of the Universal Declaration of Human Rights where it is stated that “everyone...is entitled to realization...of the economic, social and cultural rights indispensable for his dignity”, and that these are rights “ensuring...an existence worthy of human dignity”. If dignity is the foundation of human rights, then saying

⁵⁷ Cohen (2007).

⁵⁸ Jordan (2010).

⁵⁹ Kutukdjian (1998).

⁶⁰ Miller (2014).

⁶¹ Cf. Fan (2010).

that an act violates human dignity provides a stronger and more authoritative reason for avoiding the act than saying that it violates human rights.

The most important argument for artificial interventions on typical human features is that such interventions can increase the intrinsic value of human beings. We can indeed draw such a conclusion according to certain theories of human dignity. Some theories hold human features such as rationality and agency as the basis of dignity; as no one has these features to a full extent, it is reasonable to believe that the intrinsic value of human beings can be increased by enhancing these features, like the ability to reason. In contrast, according to the Confucian view on dignity, it is the potential as typical feature of human species but not certain competence that displayed by individuals endows people with human dignity. Every individual as a member of human species is born with moral potential to a full extent, and therefore has been endowed with supreme intrinsic value. The supreme intrinsic value cannot be further increased even by enhancing typical human features or by any other means.

Mencius believed that “everything is complete in me” (*Mencius · Jinxin I*),⁶² from which we can infer that people can achieve the perfection of life without external things and that natural talent has provided us with sufficient conditions to realize an ideal personality and a perfect life. Therefore, “there is no other way to learn, but to get back to the inherent kindness” (*Mencius · Gaozi I*).⁶³ All kinds of learning are for a single purpose: to realize and develop the inherent moral potential. This purpose decides the right way to learn. Mencius puts forward that “If what you are searching for is outside of yourself, you will not benefit from searching. One can only get good results by developing something inherent in herself” (*Mencius · Jinxin I*).⁶⁴ That is to say, no one benefits from artificial infringement on human nature. In Confucian ethics, all people have already possessed the feature that can grant dignity to a full extent; the artificial enhancement of important human capabilities therefore cannot increase the intrinsic value of people.

On the contrary, artificial intervention in typical human features will seriously obstruct people’s endeavor to pursue acquired dignity. The way to pursue acquire dignity lies in developing moral potential into mature virtue through one’s own efforts. Interventions in typical human features will hinder this development in various ways.

Firstly, the intervention in typical human features may result in people’s denial of their inherent tendency. “Benevolence”, the core virtue in Confucianism, comes from the development of the moral potential of “sympathy”. However, the widespread usage of enhancement technologies will definitely damage the necessary conditions for the development of “sympathy”. On one hand, not every individual will receive artificial enhancement. On another, people enhanced by technologies are enhanced in different aspects and to different degrees. The widespread usage of enhancement technologies will cause significant differences in people’s body structure and function

⁶² Mencius, op. cit. note 3, p. 289.

⁶³ Ibid: 254–255.

⁶⁴ Ibid: 289.

in various aspects. Therefore, it will become more and more difficult, even impossible at all, to feel the same way as others. Under such circumstances, “sympathy for others” will become an arbitrary imagination without empirical basis. The most important moral potential in Confucianism thus can be denied by reason. Sympathy bring others’ well-being to bear on our moral evaluation. It is a crucial moral motivation. “Confucians stress the moral motivation of people, because for them what is morally significant is the cultivation of moral lives and virtues as a whole, and not merely the performance of right acts.”⁶⁵ Those who lack of the capacity of sympathy are not living a moral life even they never fail to comply with moral commands.

Secondly, intervention in the typical features of human beings might veil the ultimate goal of developing moral potential and cloud people’s pursuit of acquired dignity. In Confucian ethics, the ultimate goal of the development of moral potential is mature virtue. This is the telos of the human species and the highest realm of human life constructed by Confucian ethics. Life is worth living, precisely because it is believed to be a process of continuous actualization of the unique potential worth present in every human life.⁶⁶ Artificial intervention in typical human features will significantly change our views on virtue and other important human spirits, and even lead to the disappearance of virtue. Take abstinence as an example. Abstinence is generally held as a virtue, and at the experience level, this belief can be proved by the fact that abstinence makes people healthier. However, if some people become immune to nicotine and alcohol due to genetic enhancement, or if gene technology makes it difficult to convert excessive calories into fat and cholesterol in some people, they will lose sufficient reasons to regard abstinence as a virtue. The living condition of human beings and the relationship between human beings and the environment, which are determined by all the typical features of human beings, are the basis for the forming of virtues. As Aristotle argues, if we were gods, we would lead a nonfinite life. This would mean that virtues such as justice and moderation have no application to us. The fact that they do is part of what makes us human. Virtue is shaped by human existence. A coherent set of virtues must be a complete series of human traits or qualities that enable humans to do the right thing at the right time in the right way in pursuing the good life suitable for human nature.⁶⁷ Fundamental changes in physical and psychological features will eliminate virtues from human life or make it difficult to realize virtues.

In Confucian ethics, to develop moral potential into virtue is not only the moral demand of universal dignity, but also the origin of acquired dignity. Infringement on the integrity of the human species will hamper the development of moral potential, run counter to the moral demands of human dignity, and thus hinder our pursuit of acquired dignity. Acquired dignity provides the necessary protection for universal dignity. Failure to get acquired dignity will inevitably endanger universal dignity.

⁶⁵ Chan (2002).

⁶⁶ Zhang, *op. cit.* note 10, pp. 299–330.

⁶⁷ Fan, *op. cit.* note 60, pp. 14–15.

5 Conclusion

The Confucian concept of dignity is twofold: it includes universal dignity and acquired dignity. Universal dignity means the moral status that human beings generally possess due to their inherent moral potential. Acquired dignity refers to the value one gets by the development of natural moral potential. Acquired dignity is not a moral status, but a realm of life worth pursuing, which sets a lofty goal for people's moral accomplishments. Through the discussion of universal dignity and acquired dignity, Confucian ethics not only answers why human beings should be treated with respect, but also provides a crucial impetus for respecting human dignity.

Confucian theory of human dignity contributes to the study of two important issues in contemporary ethical research. Firstly, the Confucian theory of human dignity presents strong arguments for the equality of human moral status. In Confucian ethics, moral potential, as the essential feature of humanity, grants special moral status to human beings as a whole, and then every human individual equally shares the moral status of their kind because of their membership of the human species. Furthermore, Confucian ethics requires everyone to give moral consideration to all other human beings unconditionally. This obligation implies that all human beings should be treated equally. Secondly, Confucian theory of human dignity justifies the moral obligation to protect the integrity of human species. We have the moral obligation to protect our moral potential and promote its development. Infringement on the integrity of the human species will inevitably hinder the development of our moral potential and ruin the basis of equality. Therefore, we should set limits for the application of technologies according to the principle of protecting the integrity of the human species.

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Chapter 8

A Kantian Theory of Intersectionality



Helga Varden

1 Introduction

Crenshaw (1989) arrived at her famous concept “intersectionality” by carefully thinking through speeches and writings by such early Black feminists as Sojourner Truth and Anna J. Cooper. This paper expands on this groundbreaking historical work in two new ways.¹ First, I bring the ideas of these early Black feminists together with those found in the works of other historical, philosophical minds who also knew oppression first-personally, namely Queen Kristina, Ottobah Cugoano, Chief Techumseh, Chief Seattle, Frederick Douglass, W. E. B. Du Bois, Mary Anne Evans, Hannah Arendt, and Simone de Beauvoir.² Second, I relate their ideas and theories to the central ones found in Kant’s practical philosophy in an effort to develop a Kantian theory of intersectionality. In so doing, I want to explore what (the history of) Kantian philosophy could have looked like if Kant and Kantians had engaged insights given to us by philosophical minds who historically have been or still are excluded from (serious consideration in) academia, including philosophy. A central aim is to draw not only on Kant’s freedom writings but also on his accounts of our embodied, social human nature and of evil. Working with and on both Kant’s freedom writings and his complex account of human nature—good and bad—in dialogue with traditionally excluded philosophical minds is useful as we strive to understand our historical heritage better and it is productive in the context of contemporary discussions of

¹ I regard this work as complementary to, yet distinct from, important work in Black feminism, such as the work by the Combahee River Collective. For more on the latter, see <https://www.blackpast.org/african-american-history/combahee-river-collective-statement-1977/>.

² I have chosen these thinkers since they are not only very important in general but also very important to me. There are many others too, of course; my intention here is simply to explore one way to do this—not *the only* way.

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intersectionality. This endeavor enables us to arrive at the outlines of a (reconsidered) Kantian theory of intersectionality, one that neither merely reproduces Kant's own isms nor fails to provide readers with philosophical tools to correct our own mistakes. It also helps us understand better some new, violently destructive elements found in European modernity. For reasons of space, this latter analysis is limited to sketching a select few, albeit central, features of European colonialization, modern oppression of Indigenous peoples in Europe as well as North America, and the Holocaust.³

The first section delineates some of the ideas and theories left to us by philosophers who went before us and the ideas they considered important in order to both understand the challenges of oppression that we have inherited and to figure out how to survive and live meaningfully when subjected to them. I start by drawing attention to argumentative strategies often used by the oppressed when challenging their oppressors before outlining specific theories they left behind for us, including those of "double-consciousness;" "the other/second sex;" "being a problem," "pariah" versus "parvenue;" and "double-binds"/"offers you cannot refuse." The second section expands on some of these ideas by connecting them to common prejudices experienced by various oppressed groups, such as women, racialized groups, disabled people, and various sections of the LGBTQIA + community. The third section explores how Kant's theory of human nature—the predisposition to good and the propensity to evil—together with his freedom theories (of virtue and of right) are useful as we strive to capture these ideas as part of *one* philosophical theory of intersectionality. The final section turns to distinctive features of modern oppression by bringing together and further developing some core Arendtian and Kantian ideas to speak to the distinctively life-numbing, totalitarian aspects of modernity, or oppressive conditions of "living death."

2 Letting Those Who Went Before Us Assist and Strengthen Us

As we seek to philosophically understand better the oppressive forces (the "isms") we have inherited, a great source of bottom-up information, in my view, is thinkers with distinctly philosophical minds who went before us, who knew life under oppression first-personally, who were (partially or fully) denied entrance into academia generally or philosophy specifically, and who strived to capture their experiences theoretically. In addition, these thinkers often shared any wisdom they might have had about how to learn to live with oppression while theorizing (whether they had been permitted entrance into academia or not). Both efforts—to understand oppressive phenomena better *and* to share proposals for how to learn to live meaningfully when subjected to them—are important. I start by exploring some of the general ideas they left us by relating them to our project of understanding intersectional oppression before turning to their suggestions regarding how to manage these difficult lives.

³ I explore central features of the oppression of women and LGBTQIA + people in Varden (2020).

In the famous speech she delivered at the 1851 Women's Rights Convention in Akron, Ohio, which Crenshaw draws on in her theorizing of intersectionality, Sojourner Truth addressed a roomful of activists—predominantly men and white women—by challenging the coherence and soundness of their arguments. In her speech—famously known by the title “Aren't I a Woman”⁴—Truth draws everyone's attention to the plain inconsistencies in the other speakers' claims and appeals to their duty to be truthful in their descriptions. For example, she argues that the other speakers' descriptions of women and men certainly do not describe her, a Black woman; she is physically stronger than most of the men in the room and she is never accommodated in the ways privileged white women are. In this way, as well as through further positive arguments from assumptions the other speakers share with her, she brilliantly demonstrates, to any minimally rational and perceptive mind, that the claim that (Black) women cannot argue rationally was and is false. By doing what her oppressors say she cannot do—make a rational, logical, and indeed better argument than they do (and she does it while she is being fiercely attacked and undermined by them, which is harder)—she proves them wrong. These strategies of Truth's are shared among many philosophical minds who take on their oppressors through argument.⁵ Their shared strategies often include pointing out the inconsistencies in oppressors' line of reasoning; appealing to thinkers' duty to be truthful in their descriptions; showing what actually follows from premises oppressors and their oppressed agree upon; and, finally, directly confronting their oppressors by drawing attention to how their oppressors know that what they are doing is wrong (and yet continue do it anyway) *or* making explicit what they should have known (as it follows from their own premises when combined with undeniable facts) so that they can no longer claim that they didn't know, didn't realize, etc.

In the generation of Black women with exceptional intellectual minds who came after Truth, we find Anna J. Cooper. She further theorizes the complexity of Black women's lives by pointing out that, in contrast to Black men, Black women have to fight two types of oppressive force at the same time: racism and sexism. In her 1886 address to an assembly of Episcopal clergy composed of Black men, the young, recently graduated Cooper emphasizes the lack of truthfulness, including the hypocrisy and inconsistency of institutionalized Christianity's practices. Cooper challenges this roomful of ministers to act differently, better, with regard to respecting and empowering Black women—and not simply respond to her that the Christian institution of religion commands them to follow tradition. In addition, Cooper draws the ministers' attention to the fact that only when “the BLACK WOMAN can say ‘when and where I enter, in the quiet undisputed dignity of my womanhood, without

⁴ Sojourner Truth was illiterate, so we only have others' versions of this speech. The historically most accurate version is the 1851 Marius Robinson version, <https://youtu.be/IDH4RKX428Y>; for Alice Walker's stunning rendition of the 1862 Frances Gage version, see <https://www.youtube.com/watch?v=EsjdLL3MrKk>. For more on both versions, see The Sojourner Truth Project, <https://www.thesojournertruthproject.com>.

⁵ For two other powerful illustrations of this way of arguing, see Cugoano (1787/1999) and Chief Standing Bear, “We Would Rather Have Died,” available at History is a Weapon (website), accessed March 7, 2023, <https://www.historyisaweapon.com/defcon1/standingbearratherhavedied.html>.

violence and without suing or special patronage, then and there the whole *Negro race enters with me*” (Cooper [1886] 1998, 63). Cooper is pointing out that the tendency of Black men to think of themselves as bringing the entire racial group with them as they enter new spaces of influence is clearly mistaken. The problem is not only that Black men will not necessarily be loyal to and fight for the rights of Black women, as history had already shown, for example, in Frederick Douglass’s betrayal of Sojourner Truth and other Black women; rather, her point is that Black men do not also have to fight against sexism, and so, even if they were obtaining rights, this would not thereby mean that all people racialized as Black would get them. Only once Black women can enter spaces of influence, Cooper argues, can all Black people enter. Now, this is not true either, as Crenshaw points out, because there are other oppressive forces that do not track simply race or being gendered man or woman, which means that Black women do not, as such, find themselves in the worst condition. Oppressions that target other identities—such as non-heterosexual or non-cis gender identities or identities related to disability, class, and so forth—mean that there are positions worse than that of Black women. To be a disabled Black woman, for example, is worse in terms of intersectional oppression than being a Black woman who does not have to fight against ablism.⁶

The ideas found in Crenshaw’s extremely useful analysis of intersectionality can be complemented by other ideas left us by other distinctly philosophical yet oppressed minds. To start, W. E. B. Du Bois proposed the concept of “double-consciousness” to capture how living with an oppressed identity involves the problem of living in

a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation this double-consciousness, this sense of always look at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness, an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder. (Du Bois [1903] 1988, 364-65)

When you look in the mirror or walk out the front door, there is the constant awareness of how your oppressors view you—an awareness that the world will not permit you to forget about or live as if it is not there.⁷ The problem of being “the other”—not the subject, but the one that subjects relate to as objects, or living as one who is not the most important, but always in the inferior, second place, designated to caring for or serving the ones in the main, first place—is also captured powerfully by Simone de Beauvoir’s concept of “the second/other sex” ([1949] 2011). This theory is, in my view, philosophically deeply compatible with Du Bois’s related proposal that living with an oppressed identity is, ineradicably, to learn to live with how the

⁶ For a deeply interesting engagement with this question, see Davis (1981).

⁷ An aspect of this experience is captured well by Paul Laurence Dunbar’s poem about how living as oppressed involves learning to live wearing a mask: <https://www.poetryfoundation.org/poems/44203/we-wear-the-mask>. Dunbar’s poem, in turn, inspired Maya Angelou’s incredible “The Mask,” which speaks explicitly to Black women’s experiences of wearing a mask to be able to fare safely in the world. For a beautiful rendition by Angelou of her poem, see <https://www.youtube.com/watch?v=UT9y9HFHqU0>.

oppressive forces will make you feel as if you—by virtue of simply existing as yourself—are a “problem” (Du Bois [1903] 1988, 363).

I also want to draw attention to Hannah Arendt’s twin concepts of “pariah” and “parvenu,” as these are extremely useful as we seek to understand intersectional oppression.⁸ Arendt proposes that a so-called “trailblazer” will face the temptation to live as a parvenu (as someone who fits in with the powerful, who lives as a token allegedly demonstrating the absence of prejudice against one’s group) or take on the challenge of living as a pariah (as an outcast). In other words, if you can manage to break the glass ceiling and enter the spaces that historically have been closed off to people with your identity—which is less likely the more oppressed identities you have; relatively privileged Jewish men could enter these spaces, including academia, before relatively privileged Jewish women, for example—it is tempting to live as if the reason you could do this is that you are so very brilliant. The logic here is as follows: if everybody were as brilliant as you, they could also break the glass ceiling; unfortunately, however, they are not. Hence, absent in this mindset is any awareness that you were permitted as the exception that confirms the rule, that you are merely clear proof that, for example, academia is accessible to anyone sufficiently brilliant. After all, that’s the “real” reason all representatives of dominant social groupings in those spaces were admitted; they were just more brilliant than all the rest. Hence, on this logic, the reason why so-called Western academia has been dominated by white, cis, straight (-presenting) men is because white, cis, straight men are more intellectual, wiser, and better suited to academic tasks. In addition, choosing to be a parvenu rather than a pariah is internally linked to great benefits of self-interest. In the context of academia, it can give you access to a very good salary as well as to the fame and social power that comes with being employed at the socially most powerful universities.

Importantly, this parvenu temptation is, it seems fair to say, also expressed in the temptation of “passing”—that is, proceeding in the world, insofar as possible, without making publicly visible your oppressed identity. Sometimes, therefore, you may participate in your own destruction and oppression as well as the destruction and oppression of others who are like you (betrayal). (Other times, of course, you do what you can to pass so that you are able to survive or avoid being harmed.) Finally, I want to draw attention to the many women thinkers—at least from Mary Wollstonecraft (1995) onward—who emphasize the fact that living as a woman involves extraordinary difficulties with regard to securing material, including economic independence.⁹ This idea echoes in Marilyn Frye’s (1983) concept of “double binds”—understood as finding oneself in situations where all the options available track some kind of penalty, censure, or deficit in life—as well as O’Neill’s (2000) suggestion that living subject to oppression typically means finding yourself in situations where you are only given offers “you cannot reject.” For the oppressed, there are no genuinely good options, no truly good ways forward or out. One benefit of the #MeToo movement

⁸ We find this idea many places in Arendt’s work. See, for example, Arendt ([1943] 1997, [1944] 1997, [1951] 1985, and [1958] 1998).

⁹ See Cudd (2006) for a particularly trenchant contemporary analysis of this problem.

is that it has made it publicly known how many women must choose either to accept being subjected to sexually harassing or violating behavior *or* lose the job they need to support themselves or that provides them with great career opportunities.¹⁰

The above theories—about double-consciousness; the other/second sex; being a problem, pariah versus parvenue; and double-binds/offers you cannot refuse—are, in my view, extremely useful as we seek to theorize some of the challenges involved in living subject to oppression generally. However, as we try to bring them to bear on the problems of intersectional oppression specifically, we additionally face the challenge of explaining how the intersectional effect of oppressive forces is greater than the sum of the individual forces. The problem is, therefore, not only that intersectional oppression comes from more than one socially more powerful group and that it can come from within several subsections of one's own intersectional oppressed identity or indeed from oneself; nor that political, social, professional, and personal betrayal and self-betrayal are ineradicable problems; nor that economic independence is extremely difficult to obtain through one's own efforts alone; nor that one is often confronted with only bad options. As emphasized above, these are all real problems that make life under oppressive conditions extremely difficult. In addition, however, somehow, intersectional oppression works such that the intersectional effect of oppressive forces is greater than the sum of the individual forces. Somehow, given how isms track and sustain pathologies, once they intersect, they issue new, additional pathologies that are distinct from the ones tracking the original isms. In my view, we advance our philosophical understanding if our intersectional theory of evil—of our tendency to do bad things—is also able to capture this complexity. I return to this question in Sect. 3.

Besides the above, it is important that we not only let those who went before us teach us ways to theorize oppression but also listen to their life lessons regarding how to live meaningfully under conditions of oppression. Making these resources available to those of us who are, today, trying to figure out how to live well by means of philosophy is important, in my view, because such knowledge empowers us. To put this in Cooper's words, she saw herself as having had good enough fortune to be able to navigate all these complexities and do all she did—as an intellectual, as a teacher, as a school administrator—with her head “unbowed though bloody” (Cooper [1930] 1998, 237). A general principle, I suggest, is that these people correctly judge the limits of what the world will permit them to do and then they create their own lives cleverly and wisely with an astute awareness of this fact. In a sense, each of them does the impossible by wisely judging what not to do if they want to do the impossible, including identifying when to act or not and what to let go of.

To give a few more examples of this, consider Queen Kristina of Sweden. Queen Kristina is mostly known in philosophy circles as the one who had invited Descartes to come and teach her philosophy—and then he died during his stay with her. What is less well known is that her father ensured that she became his heir (against the

¹⁰ Feminist philosophy has grappled with these complexities for decades. For an outstanding introduction and overview of this literature, see Hay (2020). So has, of course, the philosophy of sex and love. For a terrific introduction and overview of much of this literature, see Marino (2019).

custom, as only boys could inherit the crown), that she was given an education typically restricted to male heirs, that she was extremely intellectually gifted, and that her identity in all likelihood belongs somewhere in the LGBTQIA + realm. Moreover, importantly for our purposes here, Queen Kristina clearly seems to have realized and acted in response to the fact that she could not be successful as a queen—given who she was and the (related) lack of support around her—and she abdicated after ten years of ruling and moved to Rome, where she lived most of her life and created a remarkable intellectual and artistic space, including by founding the Arcadia Academy.¹¹ In the same vein, the incredibly intellectually gifted Cooper went to France to obtain her PhD, at the age of sixty-five. Cooper likely did so when she did because she finally had the financial means to do it *and* because the destructive political forces around her were particularly active at that point; it was a good time to quietly leave for a while. And, indeed, as soon as the destructive political forces at home learned of her new endeavors, they tried to stop her but failed, and eventually she was able to earn her PhD from the Sorbonne. In addition, when Cooper published *A Voice from the South*, she wisely did so anonymously. Similarly, Mary Anne Evans decided to publish her (deeply philosophical) novels under the male pseudonym George Eliot, and when she realized it was beyond her control to get her English translation of Spinoza's *Ethics* published, she let go of it.¹² These women's abilities to judge what was and what was not possible was, in other words, incredible—and an important lesson for the many who are striving to figure out how to live subject to the conditions of their oppression. It strikes me as important too that these incredibly strong individuals learned to deal with friends who yielded to the strong temptation not to be loyal if this is what their self-interest dictated. Rather than listing examples, let me simply note that I do not know of any exceptions to this rule.

A second general principle that appears to inform these groundbreaking philosophical minds, I suggest, is that they seem to have a deep appreciation of solitude and to have clarified for themselves their deep existential, religious, or spiritual grounding in the world.¹³ This element strikes me as central to explaining how, although they were very aware of the social forces surrounding them, they did not bow to those forces just because they were shamed or threatened with violence, even death. Important too to explaining this surefootedness, in my view, is that, like Socrates—who was, as we know, killed by the socially more powerful—they seem to agree that doing wrong is worse than suffering wrong.¹⁴ For example, when Douglass meets with his dying former slave Thomas Auld, he says that we do not know where in the river of

¹¹ Queen Kristina is one of three women who were buried in the Vatican with full honors. In my view, there is not yet an excellent text that captures the complexities of her life. Still, for an imperfect introduction and overview over some of her life, see <https://www.britannica.com/biography/Christina-queen-of-Sweden>.

¹² <https://www.theguardian.com/books/2019/nov/22/george-eliot-translation-of-spinoza-sheds-new-light-on-her-fiction>.

¹³ For a terrific reflection upon this, see Elizabeth Cady Stanton's (1892) "Solitude of Self" here: <https://www.nps.gov/wori/learn/historyculture/solitude-of-self.htm>.

¹⁴ See Plato (1987) for more on doing versus suffering wrong.

history we get placed and that each of them received horrific places. Douglass says about Auld and himself that

Our courses had been determined for us, not by us. We had both been flung, by powers that did not ask our consent, upon a mighty current of life, which we could neither resist nor control. By this current he was a master, and I a slave; but now our lives were verging towards a point where differences disappear, where even the constancy of hate breaks down, where the clouds of pride, passion, and selfishness vanish before the brightness of infinite light. At such a time, and in such a place, when a man is about closing his eyes on this world and ready to step into the eternal unknown, no word of reproach or bitterness should reach him or fall from his lips; and on this occasion there was to this rule no transgression on either side. (Douglass, 1882, p. 535)

Importantly, none of this is to deny that as long as those who wrong you keep wronging you, the main task is to try to escape those wrongs or minimize your exposure to them—indeed, Douglass escaped his enslavement to get away from Auld’s horrific treatment of him. But it is also the case that if one fails as horribly as Auld did (at the basic challenge in life of treating other human beings with dignity), not only is undoing those wrongs impossible, but one must die, as Auld did, having failed so fundamentally and radically at life. Using one of Arendt’s theories, according to which humans “are unable to forgive what they cannot punish” (Arendt [1958] 1998, 241), Auld failed in a way that is unforgivable.¹⁵ This, in turn, is not to say that Arendt was able to see Black racism for what it was; she absolutely wasn’t.¹⁶ Indeed, in my view, a major challenge for us as we theorize oppression and dehumanization is that, without exception, even thinkers who write excellently on some kinds of it—typically those kinds they know first-personally—are quite oblivious to, and even participate in, others. To give the obvious example, as Kantians, we should struggle with the question of how Kant, who revolutionized philosophy by proposing incredible freedom theories, also actively engaged in oppression and dehumanization of women, non-white peoples, LGBTQIA+ people, etc. If we cannot understand this, I doubt that we will be able to improve our understanding of evil, including how we are tempted to do bad things as academics.

3 Some Patterns of Prejudices

This section first sketches some general patterns of prejudice against all oppressed people before delineating some more distinctive directions of those oppressive forces. The aim here is not to give an exhaustive list but to notice the importance of patterns of various destructive forces and to show how some of the above theories and ideas are reflected in more common experiences of dehumanization. The idea is that showing

¹⁵ I believe this issue of forgiveness is more complicated than Arendt’s theory allows, but that’s irrelevant for the discussion here in this paper.

¹⁶ For an illustration of Arendt’s inability to see Black racism clearly, see Arendt (1970). For a discussion of this aspect of Arendt, see Belle (2014).

these connections is one way to make sure that we listen to the people whose lives our philosophical theories are trying to capture.

Members of oppressed groups experience themselves as facing forces that strive for their perpetual denial of equal public standing with non-oppressed groups. Women and minorities who try to break the glass ceilings or to continue the efforts of their predecessors experience themselves as facing much oppression; indeed, the more successful they are, the more blatantly brutal the oppressive forces often become. Seen in this light, it is not surprising that if we look at the histories of the identities of those who have been able to hold the highest elective political office in any given land—say a president or a prime minister—they affirm these patterns. Most of the people who have held these positions have been men whose identities put them squarely within the more socially powerful groups in their respective societies. The same patterns can be found if we look at the social identities of those who are able to hold other public legal and political power, such as judges, politicians, positions of executive authority (police and military officials, for example), licensed professionals (lawyers, engineers, physicians, etc.), and academics.

In addition, members of oppressed groups experience themselves as facing forces that strive to deny them a sense of home in the world, safety in their own bodies, beauty in their social presentation to the world, and economic independence. To give some examples, whether we look at the histories of the thinkers mentioned above or we look to our own lives or those of people we know personally who live subject to oppressive forces, they all face ongoing challenges involved in being able to protect themselves against attacks (whether physical, social, or institutional), to build a protective network of reliable people around them, and to obtain a safe economic foundation. The #MeToo and the Black Lives Matter movements have been quite successful at bringing these facts out into the open.

Turning to patterns aimed at specific groups, for reasons of space, I limit myself to a few examples of claims that I believe those whose oppressed lives are described would affirm: Disabled persons and LGBTQIA + persons face forces that strive to make them feel naturally perverted. Women face forces that aim to make them submissive, sexually attractive, and endlessly caring for straight men. Gay men and trans people face forces that strive to annihilate them through physical, sexualized torture. Lesbian women face forces that strive to destroy their sexually loving ways and make them submissive to straight men. Bisexual persons face forces that strive to make them live in accordance with straight or one type of sexually loving desire. Polyamorous and polysexual people face forces that strive to make them live as monogamous. Queer and asexual people face forces that strive to make them feel immature. Intersex people face forces that strive to make them feel personally deformed and to make their physical embodiment conform with heteronormative bodies. Disabled persons face forces that strive to make them into scientific research objects and testing grounds for medical theories. Sex workers face forces that strive to make them feel deserving of being treated as mere means for others' sexual desires. In addition, they are made to feel either that they must have been pressured (via coercion or desperation) into pursuing sex work as a form of employment that they, *ceteris paribus*, would not otherwise have chosen *or*, if they did choose this form of employment because they

find it meaningful or enjoyable, this is debased and immoral and reflects poorly on their character, that they should view themselves as perverted.¹⁷

Religious minorities, in turn, face forces that strive to destroy their existential openness to the world as good by making life unbearably difficult, by denying the goodness of their religion, or by denying that they have a claim on a specific religion. Poor people face forces that try to make them feel like they deserve to be poor, to be grateful to the rich(er), and to view themselves as mere means for others. Racialized minorities face forces that deny them equal intellectual standing with majorities and, so, push them into becoming mere economic (or also, for women, sexual) means for the racialized majorities. Indigenous peoples face forces that aim to destroy their relationship to their land and their superior direct perceptive attunement to and understanding of the planet's natural forces, including by denying them "true" knowledge of the world and as having "real" religions. Black men face forces that strive for a tortured, sexualized public death. Black women face forces that strive to push them into purely private, sexualized means for White men as well as permissible outlets for anger and existential frustration from traumatized Black men. If we now combine oppressed identities, we can see how the complexities of the forces multiply and, as mentioned above, ideally, we want a theory that can not only explain that it is not accidental that we human beings are violated and violate in the above kinds of ways but also why the intersectional effect of oppressive forces is greater than the sum of the individual forces.

4 Rethinking Kant

There are many ways to develop the above theories further so that they can speak to the complexities of oppressive violences, including intersectional violences. This section sketches one way to do this for those who find systematic philosophy a useful resource for thinking about these complexities¹⁸ and who are interested in doing this as part of developing a freedom theory that puts human dignity at its moral center. More specifically, the aim is to show how we can develop Kant's account of human nature—especially his account of the predisposition to good and the propensity to evil—together with his freedom theories (of virtue and of right) as part of developing one philosophical theory of intersectionality. Along the way, I pay special attention to how this theory is useful in explaining why, given the kinds of beings we are, the above patterns of oppression are not accidental and also why, once we combine these pathologies, we can be tempted to imaginatively combine their oppressive principles in exponentially new and changing ways.

¹⁷ Given the level of prejudice and violence against sex workers, let me just also point out that obviously none of this is to deny that some people are forced into sex work.

¹⁸ In this regard, I view myself as following in the footsteps of great women who theorize oppression in a way that is integrated with their developing a philosophical system. For example, see Hannah Arendt's *The Human Condition*, Simone de Beauvoir's *The Second Sex*, and Martha C. Nussbaum's many writings on oppression.

Kant's account of human nature has some features that I find particularly useful as we seek to understand how we humans strive to live well and how we can be tempted to use violence and oppression to push one another down. To start, notice above that the threat of violence—the kind of force oppressed social groups face in the world—has certain patterns: from debilitating physical, including sexual, physical, and intimate, violence to social shaming and exclusion from powerful spaces of authority. Kant's philosophy can be developed so that we can capture this systematically, and although it historically has received very little attention, his account of human nature is very useful if we do. To see this, first notice that his account of the predisposition to good in human nature is comprised of three sub-predispositions: animality, humanity, and personality.¹⁹

Animality comprises three reflexively self-conscious strivings—to self-preservation, to sex, and to community—and they can be developed by many cognitive means, including abstract conceptual thought, associative thought, teleological thought, and aesthetic thought. Importantly, as a matter of human development, we first develop this aspect of ourselves through associative thought—for instance, learning to associate smells and sounds with the pleasures of food—and this type of conscious striving is not, as such, enabled by the kinds of abstract conceptual thought that our reflective self-consciousness and reasoning powers ultimately enable, the ones that are constitutive of being able to be morally responsible for our actions. Moreover, when we develop this predisposition well, we do so as informed also by our natural “vital force,” (Kant [1788] 1996, 269/CPrR 5: 162) or in such a way that we feel strong and harmonious. This is important as a matter of theory because it explains why violent oppression typically will aim at our animality through physical, including sexualized, violence by one or more toward another—with the threat of death in the background. When we are pushed into these modes of being—into the three spheres of animality—then we are likely to activate associative thought intensely. This is both why the violence is so debilitating and can involve both losing our ability to feel safe in the world or in our bodies—the world is experienced as fundamentally unsafe and we easily get very anxious when these associations are triggered—and significant difficulties of healing (since reflecting on and correctly describing that we have been wronged is insufficient to heal; animality is importantly reflexive and in these situations developed associatively).²⁰

The second sub-predisposition to good for Kant is “humanity,” which yields the most powerful conception, I think, if we understand it as consisting of both our capacity to set ends of our own (freedom) as well as our social sense of self. Hence, it captures the idea that to be a human being involves a striving to become a self—an I—as well as developing an awareness of how others regard us. In the Kantian system, the capacity to set ends of our own is explored though Kant's (meta-)ethical writings both on virtue (on acting on universalizing maxims in accordance with

¹⁹ See Kant ([1793b] 1996) for his accounts of the predisposition to good and the propensity to evil in human nature. For more on my take on this as well as the vital forces, see Varden (2020).

²⁰ For two incredible philosophical narrations of sexual violence and healing, see Brison (2002) and Alcoff (2018). I've written on some of the complexities of trauma in Varden (2022b).

the Categorical Imperative) and on right (on interacting with others in accordance with the Universal Principle of Right), while his (Rousseau-inspired) account of our sociality finds expression in many of his analyses of honor and other social emotions like envy and jealousy. Importantly, the starting point for us, on this account, is a brute sense of freedom expressed in the fact that human beings scream when they are born—they scream because they are frustrated. Newborn babies cannot act; brute freedom is consequently expressed negatively, as a frustration. In contrast, social emotions are enabled by our awareness of how others see us, and a brute version of this is expressed as soon as babies can smile interactively. These social emotions are also not entirely under our control as others can dishonor or shame us; there is an ineradicable interactive power involved. In our context, these philosophical theories are important if we strive to capture how oppression often involves forces that deny us the right to set our own ends or that seek to dishonor or shame us by virtue of who we are. We have double-consciousness, we are related to as the lower, second or other type of humans, and we are “a problem,” as we saw Beauvoir and Du Bois emphasize. We are always aware of how socially dominant forces are judging us—and if we interact as if we are not, there will be bad consequences for us.

Third, on this account, there is the sub-predisposition to personality, which is enabled by our practical reason—our ability not only to set ends of our own but to do so in morally responsible ways—and it is revealed in what Kant calls “moral feeling,” understood as our ability to sense the “ought” or to do something just because it is the right thing to do. Because it is this capacity that enables us to set ends of our own in the universe in morally responsible ways, it is by virtue of having this capacity that we have dignity, understood as a kind of pricelessness and as commanding all other human beings to treat us with respect. All oppression involves denying the oppressed this respect, corresponding to, of course, how living subjected to oppressive forces involves constantly having to deal with majorities treating one without respect. Insofar as we are able to develop a strong, fundamental moral character, we have a strong “moral vital force” (Kant [1797] 1996, 529/MM 6: 400).

It is important to emphasize that each human being has a constant, ongoing project of developing, integrating, and transforming all three sub-predispositions into one harmonious whole that is also morally justifiable. In so doing, each of us is pursuing the highest good, understood as “...the union and harmony of ... human morality ... and human happiness” (Kant [1793a] 1996, 282/TP 8: 279, cf. Kant [1788] 1996, 229/CPrR 5: 110f). This means, on the one hand, that we must develop, transform, and integrate our ability to, for example, eat and drink into a social and morally respectful activity, such as developing an ability to enjoy a meal together with others—an activity that requires our ability to develop, integrate, and transform our animality, humanity, and personality by means of associative, abstract conceptual, teleological, and aesthetic thought. A wonderful meal is, in other words, quite an accomplishment. On the other hand, this also means, of course, that disrespecting, offending, hurting, or harming one aspect of ourselves often has repercussions for the rest of us too. In a good and just society, then, everyone is able to pursue their own conception of the good—their happiness—within the parameters set by our practical reason, namely

our ability to act within the boundaries set by the Categorical Imperative and the Universal Principle of Right.

Those familiar with Kant's practical philosophy already know that on this approach, living in accordance with the Categorical Imperative means that people fulfill their perfect and imperfect duties; they do not destroy themselves or each other (doing so conflicts with their perfect duties); and they strive to develop their own abilities and assist others in their pursuit of happiness (fulfill their imperfect duties).²¹ Living in accordance with the Universal Principle of Right, in contrast, means establishing a public legal and political authority that secures innate, private, and public right for each and all citizens. A rightful condition, on this approach, means that each citizen's exercise of freedom is not subject to other citizen's private choices but instead is subjected only to the public rule of laws of freedom. This entails that insofar as some citizens find themselves wronged and violated in oppressive ways, they are treated badly not only from the point of view of virtue (first-personal ethics) but also from the point of view of right (justice). In addition to this position's strength with regard to analyzing core rights—such as bodily rights, freedom of thought and speech, rights to private property, contract right, family law—for the purposes of analyzing life under oppressive conditions, this position is particularly interesting in its philosophical tools for analyzing systemic issues. Its first move is to argue that once a public authority establishes its monopoly on coercion as regulated by public laws of freedom—as it must—it must reconcile this monopoly on coercion with the rights of each individual. To do so, it must ensure that no one citizen is left without legal access to means (such that only by committing crimes can they access means because all legal access is made impossible by the system of property). Poverty is, in other words, a systemic problem of injustice on this approach.

In addition, the public authority must regulate the systems upon which citizens' exercise of freedom is made dependent. Hence, on this account, there are resources with which to capture why and how the state must be involved in system building. For example, as is common in our modern world, citizens' basic exercise of freedom is often made dependent upon the economy either by access to goods or services being facilitated through stores or by access to income being dependent on employment. Once such system-dependence exists, then the state must also regulate these systems to ensure that citizens can access private businesses as free and equal, such as by

²¹ In my view, there is a related and particularly interesting Kantian discussion here concerning how to accurately describe a situation in which (oppressing) violence comes at you. The starting point for these discussions is Kant's (in)famous analysis of lying to the murderer at the door. To deal with this problem, some Kant scholars have revised Kant's position so as to justify either an exception to the rule in situations such as these—we should generally not lie, but in this situation, we can—or that lying in such situations is the morally right thing to do. For example, Barbara Herman, Onora O'Neill, Thomas E. Hill Jr. and Seana Shiffrin argue for a version of an exception to the rule here, while Jochen Bojanowski argues that one has a duty to lie. My proposal is instead that there is a perfect formal, but not material, duty not to lie operating here. I believe this is more consistent with Kant's own text and that a philosophical advantage of the position is that the resulting philosophical position enables us to explain why facing such situations or living subjected to oppression is so exhausting. Reasons of space make it impossible to go into this in any detail here, but it has been an important topic for me since my first (2010) paper on this topic.

everyone being charged the same price for the same goods and services. In addition, in such conditions, the state must ensure that the economy (partially or as a whole) is not under the control of one or a few powerful private actors, such as by their forming monopolies or oligarchies. And to give one more example, insofar as we are system-dependent for income, it is crucial that no one is forced into a situation where there are no good minimally good choices available. No one, in other words, should find themselves in double-binds or in a situation where they are given offers they, in O'Neill's (2000) analysis, cannot reject—for instance, offers of employment that involve terrible, dehumanizing working conditions or work that they find morally unjustifiable. The state must secure not only good working conditions but also good employment opportunities—and as our modern world is becoming increasingly system-dependent, the importance of this point only increases.²² The state must ensure, to put this point in Kantianese, that everyone can exercise their freedom of choice in such a way that they are subjected to coercive public laws of freedom only and not to another private person's coercive, arbitrary choices.

Notice too that if we work with Kant's distinctions between "anarchy," "barbarism," "despotism," and "republic," we can capture ways in which particular citizens who live subject to oppression can find themselves in a republic—conditions of freedom—generally and yet find some aspect of their life subject to conditions of (anarchic, despotic, or barbaric) injustice.²³ For example, we may find ourselves in a condition where everyone has private property rights, but, to use two historical examples from the US context, interracial couples cannot marry or gay sex is criminalized (sodomy law). Alternatively, we can capture differences between states passively permitting some groups of citizens wronging others without legal consequence (such as states that do not recognize marital rape as a legal wrong) and states actively engaging in wrongdoing either by not holding those entrusted with public authority (such as prison guards, police officers, foster institutions) accountable to the laws and policies governing their actions or by using state offices to violate citizens' basic rights (such as the historical phenomena of internment camps for Japanese Americans during WW2 or US Indian Boarding schools for Indigenous children).

Before moving on to the question of why we are tempted both as persons and as social groups to violate and wrong one another, notice that the above account can also explain why it may not be a coincidence that oppressed philosophical minds who were able to do the impossible (break the boundaries) tended to have both a deep appreciation of solitude and clarified religious or spiritual foundations. If the above account is right, then, because we are free, we have an unsocial aspect. Our creative freedom—whether in action or in thought—is importantly unsocial. We have, to use Kant's formulation, an "*unsociable sociability*" (Kant [1784] 2007, 111/IUH 8: 20); our humanity captures both our end-setting and our social sense of self. Hence, insofar as it is difficult for us to set ends in the world freely, one alternative is to avoid the

²² For an introduction and overview over the Kant literature on the "Doctrine of Right" in the previous two paragraphs, see "Introduction to Part II" in Varden (2020).

²³ For reasons of space, I must be brief here, but for more on these distinctions in Kant, see Varden (2021, 2022a).

social sphere more often. In addition, insofar as our favorite activity is philosophical reflection, we can do a lot of this without anyone knowing. To what extent we leave breadcrumbs behind for others, let alone publish them in an effort to contribute to a better world, is something we can be, as the thinkers above were, careful about, including by publishing anonymously or, to use a contemporary example, after we have obtained a more secure employment situation (tenure).

Finally, notice that the predisposition to good in human nature is a predisposition; it is not a result of choice, and it is not, on this theory, something we can destroy. That we can fundamentally trust our predisposition to good is revealed in much work around healing as well as, of course, in people's trust that the world is good despite all the evidence to the contrary. Indeed, this could be one explanation for why people oppress others with regard to their religion in the ways they do, namely as informed by the drive to destroy their presumption of the world—their God, their idea of spirit, their gods and goddesses—being good. Not being moved by these attacks is, then, something that strong, yet reflective, minds are able to withstand even when facing brutality and even likely destruction. In my view, all the above thinkers have moments when they express a steadfastness and existential clarity of the kind—a way of being—we find in Chief Seattle's 1854 oration when he says:

Every part of this soil is sacred in the estimation of my people. Every hillside, every valley, every plain and grove, has been hallowed by some sad or happy event in days long vanished. Even the rocks, which seem to be dumb and dead as the swelter in the sun along the silent shore, thrill with memories of stirring events connected with the lives of my people, and the very dust upon which you now stand responds more lovingly to their footsteps than yours, because it is rich with the blood of our ancestors, and our bare feet are conscious of the sympathetic touch. Our departed braves, fond mothers, glad, happy hearted maidens, and even the little children who lived here and rejoiced here for a brief season, will love these somber solitudes and at eventide they greet shadowy returning spirits.²⁴

Of course, most of us do not know and find it unlikely we will be able to do as these incredible, oppressed philosophical minds have done before us. But we admire them and are grateful for their showing us that it is possible.

Before drawing together the above considerations to speak to complexities of intersectionality, let me also briefly note how Kant's theory of human nature—more specifically, his account of the propensity to evil—is useful to understand oppression. To start, Kant's account of the propensity to evil is not an account of a predisposition but a propensity; it is an account of how we do bad things because we can choose. Moreover, Kant thinks that the propensity to evil comes in three degrees: *frailty*, *impurity*, and *depravity*. In my view, the strongest Kantian account views frailty as *an instance* of wrongdoing that can be either self-deceived or not; impurity as *a pattern* of wrongdoing that can also be self-deceived or not; and, finally, depravity is viewed as *a way of living* that is inherently destructive and always involves wrongdoing.

To illustrate these distinctions, I might say *a sexist* thing about a colleague to my male colleagues once because doing so is in my self-interest (my sexist colleagues will like me more if I do)—and I can do this in self-deceived ways (“she deserved

²⁴ For the full speech, see: <https://suquamish.nsn.us/home/about-us/chief-seattle-speech/>.

it”) or not self-deceived ways (I know I did wrong and I feel bad about it). This is frailty—and being self-deceived about it is morally and emotionally worse than not being self-deceived, including because it makes it easier to own wrongdoing if I do not also lie to myself about it. Alternatively, I might say sexist things about my women colleagues *quite often*—there is a pattern involved—and I might do so with self-deception (“they are so annoying”) or without (“I have a problem with women”). This is morally and emotionally worse than frailty (because there is a pattern involved) and, again, being self-deceived is worse than not; if I know I have a problem, it is easier to work on it. Finally, I might be depraved with regard to women, in which case I *orient my life* so as to make life worse for women—and when I do, I am always self-deceived about it. For example, I might be an INCEL (it’s women’s fault as well as their fathers’ fault since they didn’t raise their daughters properly) or I might use religious language to describe what I am doing (“God meant for women to obey men,” etc.). Depravity is morally and emotionally worse than the others because it has become a way of living that is inherently destructive and it involves deep self-deception.

The above Kantian account of human nature and of freedom gives us philosophical resources with which to see why it is likely not an accident that the theories of double-consciousness, the other/second sex, being a problem, pariah and parvenue, and of double binds/being given offers you cannot resist are so powerful to us. They track aspects of our predisposition to good with an emphasis on our social world and freedom—which is unsurprising because of how oppression typically plays out in our shared social world—and they also draw attention to how when we do bad things to others, we are tempted to be self-deceived. Hence, as oppression typically has lasted for a long time, it is also not surprising that these self-deceptions can become part of the culture, and since they are so prevalent, they evolve into pressure to consider oneself “the other” or “the second” or a “problem.” Furthermore, given this theory of human nature and of freedom, it is also no longer surprising that oppressed groups generally are deprived of access to the public sphere as equals, nor is it surprising that oppression often attacks on all levels, namely one’s animality (physical, including sexual, attacks and attacks on one’s loved ones), one’s humanity (lowering of one’s sense of self and limits or attacks on one’s ability to set ends of one’s own), and one’s personality (undermining or denying of one’s ability to be responsible for one’s actions). And it is not surprising that the worse these attacks are, the more they involve attacking all aspects of oneself, and the attacks are described in language that actively appeals to our embodied, social “human nature” (by appealing to how it is depraved, unnatural, or shameful, for example) or morality (that one’s way is immoral or undignified) in self-deceptive ways.

Given how we develop our predisposition to good by means of associative, abstract conceptual, teleological, and aesthetic thought, we can now also see how these different kinds of thought are used when we oppress others. In addition, because our cognitive capacities also are creative in that we can imagine new ways of combining thoughts, it is no longer surprising that intersectional violence becomes larger than the sum of the distinct violences. If our victims have one oppressive identity, we can imagine many and new ways of wronging them—by combing associative, abstract

conceptual, teleological, and aesthetic thought in many ways—but once our victims have more than one oppressed identity, the possible combinations exponentially multiply. Finally, given how freedom comes both in first-personal ethical forms (virtue) and state-delivered justice forms (right), it is not surprising that insofar as we have privilege, we use our legal-political institutions—and the theories thereof—as (active or passive) means of oppression and create double-binds and offers the oppressed cannot refuse. And as the oppressed choose—in an effort to survive—those with privileged can obtain their narrow self-interests at their cost, *or* they can feel very powerful and important (especially if they use self-deceived, moralized language as they do), or both.

“There are two kinds of peace in the world,” Cooper writes, “The one produced by suppression, which is the passivity of death; the other brought about by a proper adjustment of living, acting forces” (Cooper [1892] 1998, 121). I hope the above shows some reasons why Kant’s theory of human nature—good and bad—together with his freedom writings is very fruitful as we develop our philosophical theories further, beyond Kant’s own limitations, and thereby contribute in constructive ways to philosophical discussions of intersectionality; to understand both kinds of peace. Importantly too, of course, notice that if the only philosophical tools we have at hand are (Kant’s) freedom theories—and not theories that can capture our earthly nature—then we do not have all that we need. For reasons of space, I cannot expand any further on how we can combine Kantian philosophy with the ideas of the other important freedom thinkers. However, because I believe Hannah Arendt is correct in proposing that modernity brought human evil to a new level, and in the next and final section, I want to suggest how we can use the above to speak to modernity’s distinctively life-numbing, totalitarian aspects of European colonialization, oppression of Indigenous peoples, and the Holocaust.

5 Modern Evil

In *The Origins of Totalitarianism*, Arendt suggests that modernity’s antisemitism is different in kind from that found in earlier historical periods. Arendt, however, is also unable to see clearly²⁵ that antisemitism was not the only oppressive force altered by modernity; so too were the oppressive forces involved in European colonialization, the treatment of Indigenous peoples not only in the Americas but also in Europe, as well as the Holocaust more generally (and, so, as including for example the Roma people, disabled people, members of the LGBTQIA + community). My Arendt-inspired suggestion below is that while oppressive forces in pre-modern

²⁵ Sometimes I think she sees some of the other isms more clearly; other times she does not see them at all or participates in dehumanization of social groups. For reasons of space, it is impossible for me to go into all these complexities here, but in addition to Belle’s work on this, see, for example, the (generally wonderful) “Zur Person” interview with Arendt which illustrates quite well her inability to see women in all their diversity and complexity: <https://www.youtube.com/watch?v=dsoImQfVsO4&t=4s>.

periods tended to both lower oppressed people to the level of animality and not value animality—as this concept is used above—modern oppressive forces have gone to war against animality while subjecting oppressed people not only to the threat of death (to make them conform) but also to the general conditions of a living death that targets their animality, humanity, and personality.

If we look at the above account of human nature, to live fully—to transform, integrate, and transform one’s animality, humanity, and personality through associative, abstract conceptual, teleological, and aesthetic thought such that one’s natural and vital forces are strong and harmonious—one needs to learn not only to think, imagine, and reason well, but also to richly feel the earthly aspects of one’s being. This also involves learning to be around one’s vulnerability and inhabiting that vulnerability without fear. Moreover, somewhat paradoxically, if we do this together with (an)other(s), as we do this more deeply, our strength increases with the depth of our vulnerability. One of Arendt’s interesting suggestions in *The Human Condition* is that in modernity, human existence became much more dependent on science, technology, and economies, which furthers our alienation from earthly life. For instance, when the first humanmade object, Sputnik, was sent into space, this dependence reinforced the alienating ways in which so-called Western philosophy has always devalued our animality—what Arendt calls ‘labor’—resulting in people commonly expressing the hope that perhaps we can soon leave the planet altogether. Although there are many extremely interesting ideas and proposals that can be drawn from this analysis, here I want to draw attention to her idea that modernity’s alienation was important to enable totalitarianism, which directed science and technology toward the production of dehumanizing suffering in WWII concentration camps. Arendt argues that totalitarian violence can be understood as “total domination,” which, in turn, aims at “abolishing freedom, even at eliminating human spontaneity in general...” (Arendt [1951] 1985, 405). Moreover, in its “final solution,” this type of political violence non-accidentally (given the destructive, self-deceived pathologies constitutive of it) establishing concentration camps. These camps, Arendt furthermore argues, were

“... meant not only to exterminate people and degrade human beings, but also serve the ghastly experiment of eliminating, under scientifically controlled conditions, spontaneity itself as an expression of human behavior and of transforming the human personality into a mere thing, into something that even animals are not.” (Arendt [1951] 1985, 438).

The aim of the concentration camp was not, in other words, just to kill and degrade disabled people, Roma people, LGBTQIA-people, and the Jewish people; it was also to subject these groups to terrorizing conditions, to create conditions of living death under which any kind of spontaneity—that characteristic of any animalistic living being—would, through associative thought, become associated with possible violence. And there was no historical end in sight with regard to the concentration camps; new groups would be subjected to them—it was a type of institution that was constitutive of Nazi-Germany rule.

I believe that important aspects of the terror of European colonialization—including the horrendous transatlantic slave trade and treatment of Indigenous peoples in the Americas—as well as the horrific treatment of Indigenous peoples

in Europe come better into view if we use the same “living death” analysis. The violences involved in colonization, forced labor, and (cultural) genocide were aimed not only at oppressing or denying rights but at a continuous dehumanization through systemic, often state-facilitated or organized, terrorizing attacks on these groups and their animality, humanity, and personality. Rape, internment schools, and forced starvation were common tools in addition to public shaming and radical deprivation of freedom. In addition, these groups were denied their personality; they were denied recognition of their ability to be morally responsible, which, in turn, was used, for example, to deny Black slaves all rights and to deny Indigenous parents the right to care for and educate their children. The extraordinary brutality involved in denying these groups their own religion must also be seen in this light: it involved a fundamental challenge to their assumption of the world as good. Indeed, denying them their own religions and physically displacing them from their lands were means of depriving them access to existentially grounding practices. In addition, any exercise of religion was in itself seen as an offense. To give another example, Black churches were burned not only because the enslaved were not permitted to practice the religions of Africa but because they not permitted to worship full stop.

Of course, there are many possible examples we could add here. For reasons of space, let me simply conclude by pointing out that if we work within (Kantian) freedom theories—where, indeed, the concept of dignity is intimately tied to the morally responsible exercise of freedom—it is especially important that we own our difficult histories by understanding evil (in general and in our traditions) better. After all, evil, in the form of depravity, as we learn above, is often expressed through powerful moral language to justify brutal oppression, and on this position, the public authority—the state—must have a constitutive role in realizing justice (as rightful, human freedom). Moreover, in our modern world, the language of individual rights, freedom, and human dignity is the most powerful one—and for good reasons; it envisions a way of living together respectfully that is not dependent on specific cultures or ways of life but only on our shared capacities of freedom. However, it was in this modern—or “enlightened” or “free”—world that dehumanization found a new force of expression, and Kant’s theories were used to enact it; indeed, Kant himself developed theories of race, sex, and gender that were inherently racist, heterosexist, and sexist, and we inherit institutions and philosophical traditions that participated in this, including in the name of freedom, individual rights, and human dignity. Working for a better world does not, in other words, allow us to set aside these features of the modern world, or our philosophies, as “simple mistakes.” To put the point from a different direction, Kant and Kantians should have been listening, of course, to enslaved and dehumanized peoples all along. They did not, and according to Kant’s own theory of the predisposition to good and the propensity to evil, that they did not is not an accident given the kinds of beings we are. To state the obvious: that many who have read a lot of Kant or Kantian theories may never, to this point in time, have heard of any or many of the historical thinkers referenced in this paper is a source of shame for us Kantians. A better future requires, if the theory presented in this paper is on the track that leads toward truth, that we Kantians need to own our failings

here—including feeling appropriately humbled, sad, and shameful about this—and then strive to do better.

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Chapter 9

On Keynes's Ethics as *Eudaimonia*



Anna Carabelli

In ethics, John Maynard Keynes distinguishes between speculative ethics and practical ethics (or morals). Speculative ethics concerns ultimate ends and values that are intrinsically good: what in his 1938 paper *My Early Beliefs* he called his religion, a religion that he got from Moore (Keynes MSS, *Miscellanea Ethica*, 31 July 1905). Practical ethics concerns itself with conduct:

[Practical ethics] would concern itself with conduct; it would investigate the difficult questions of the probable grounds of actions, and the curious connection between probable and ought; and it would endeavour to formulate or rather to investigate existing general maxims, bearing in mind their strict relativity to particular circumstances (Keynes MSS, *Miscellanea Ethica*).¹

In ethics, Keynes believes in the existence of a plurality of heterogeneous ends and values. This is also true for his view on aesthetics. He sees many different kinds of beauty as of virtue (Keynes MSS, *On Beauty and Art*, undated). On pluralism Keynes follows Aristotle rather than Plato. Aristotle stresses the plurality and variety of goodness and the fact that good is not reducible to a univocal scale. On the contrary, Platonic tradition—as does utilitarianism—accepts the idea of a uniqueness of ends and values: it reduces goodness to one dimension alone.

¹ I thank the Keynes Trustees, King's College, Cambridge for permission to quote from Keynes's manuscripts held in King's College Library, Cambridge. Parts of this writing have already been published in Carabelli A. 1998, Keynes on Probability, Uncertainty and Tragic Choices, *Cahiers d'économie politique*, 30–31, pp. 187–226; Carabelli A. 2021, *Keynes on Uncertainty and Tragic Happiness. Complexity and Expectations*, London, Palgrave Macmillan; Carabelli A. and M. Cedrini 2011, The Economic Problem of Happiness. Keynes on Happiness and Economics, *Forum for Social Economics*, 40(3), pp. 335–339. Abbreviations used: CW followed by the number of the volume, *The Collected Writings of J. M. Keynes*; TP, *A Treatise on Probability*; PP, *Principles of Probability*; GT, *The General Theory*; MSS, Keynes's manuscripts, King's College, Cambridge.

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Three are the ultimate ends of life. In his 1905 paper on *Virtue and Happiness*, Keynes identifies three ultimate ends of life: pleasure, goodness and happiness. Pleasure is.

the gratification of bodily desires, both legitimate and illegitimate; the excitement of expectation, such as gambling or daydreaming; the excitement of novelty; the pleasures of gratification - of pride, or vanity, or ambition, or enmity; all kinds of pleasures of success (Keynes MSS, *Virtue and Happiness*).

For Keynes pleasure is different from goodness. His position on this point is in line with Moore's, while there are great differences between Keynes and Moore on the notion of probability and right conduct. For Keynes, it is difficult to distinguish between pleasure and goodness in human actual experience; but the two ends are quite different:

Good and pleasure are not always readily distinguished; this other confusion, if confusion it be, is even easier (Keynes MSS, *Virtue and Happiness*, 10)

To clarify his conception of goodness, Keynes refers to Plato's *Dialogues*, especially the *Symposium*. The then current interpretation of it appears to him unsatisfactory, or better, cause of complete delusion. Keynes criticises the praise of Platonic love and abstinence. For him, happiness is also not reducible to pleasure:

The happy state which I am thinking of is specifically different from the pleasurable state; and I must try and make clearer what it is precisely that I mean (MSS, *Virtue and Happiness*).

In fact, in his view, happiness may be associated with pain. While pleasure.

implies the absence of pain, happiness does not. Happiness can exist together with pain and also with depression. Sometimes it may be difficult to distinguish pleasure and happiness; but, while happiness may be associated with pain and even with depression, pleasure is not.

Keynes's notion of happiness is to be connected with tragedy. In his 1905 *Virtue and Happiness* Keynes considers Hecuba in the Euripides' *Troads* as *happy*. For him, heroic states of mind are happy. For him, happiness is also contentment: a satisfaction with one's environment. A state beyond disappointment:

An almost perpetual temperamental satisfaction with one's environment – the cat-on-the-matting attitude - is known as happiness (MSS, *Virtue and Happiness*)

Keynes's concept of happiness is associated with virtue: a virtuous man is a happy man. His desires are balanced with his possibilities:

When we are told that the virtuous and consequently happy man is he who is in harmony with his environment, who modifies his desires to match his opportunities, who puts himself beyond the reach of disappointment, something of this kind seems to be suggested (p.12)

Therefore, Keynes's ethics is an ethics of virtues. It emphasises the importance of friendship, moral emotions and pays precise attention to the contextual particularity of right action. A good life is a life worth being lived, that is a moral life: in *Egoism* Keynes maintains that to be good is more important than to do good (MSS, *Egoism* 24 February 1906). Keynes accepted the Aristotelian notion of the good and happy

life. The Aristotelian influence on his ethics is clearly recognised by him in a letter to Strachey of 23 January 1906 and in a letter on 7 February 1906. Keynes's notion of happiness recalls Aristotle's happiness (*eudaimonia*). Keynes himself points out its connection with Aristotle's notion in his *Virtue and Happiness* (p. 11).

Keynes not only accepted Aristotle's view of happiness but also accepted his view of the importance of education in forming good states of mind. Aristotle conceived tragic art as a positive moment in the education of men to knowledge and virtue. In human education, the role assigned to tragedy is to teach how to behave in life in the face of difficult situations by conveying the complexity of human life and experience. Tragedy educates men to form their decisions in situations of dilemma, that is in situations of conflict and, as will see, radical uncertainty.²

Martha Nussbaum's notion of the fragility of happiness is relevant to understand Keynes's notion of happiness. As seen, Keynes's notion of happiness is associated with pain. It means that human goodness is *fragile* and happiness is *tragic*. In the ancient Greek view of ethics, noble and heroic states of mind were constantly associated with tragedy, disasters and dilemmas. Martha Nussbaum (1986) calls these situations, the fragility of goodness. This means that the good and happy human life may contain difficult choices and dilemmas; for the circumstances of life do not always promote the harmonious realisation of all our distinct ends.

The good and happy human life is characterised by moral and rational dilemmas. In moral dilemmas, the conflict is between moral claims, while in rational dilemmas, the conflict is between reasons, grounds, arguments or evidence.

Moral Conflicts and Dilemmas

Keynes refers to the conflicts of duties, moral claims, values, interests and desires—that is moral conflicts and dilemmas—in many places in his early writings. In particular, he refers to:

- (a) the conflict between rational egoism and rational benevolence (MSS *Modern Civilisation*, 28 October 1905 and *Egoism* 24 February 1906)
- (b) the conflict between being good and doing good. In his paper *Egoism*:

But is the obligation to do good? Is it not rather to be good? ... Suppose they conflict: which is then paramount? The long train of English ethical philosophers have either accepted the paramount authority of Egoism or have expressly reconciled the conflict and harmonised the moral consciousness by invoking the Justice of God or the essentially just order of the Universe. For my goodness and the goodness of the Universe both seem to have a claim upon me and claims which I cannot easily reduce to common terms and weigh against one another upon a common balance

But why on earth should I sacrifice my peace and comfort in order to produce this quality in remote parts of the globe or in future time, where and when I shall have no opportunity of perceiving or appreciating it? Where is the motive? Where is the obligation? (Keynes MSS, *Egoism* 24 February 1906)

² Situations of radical uncertainty different from those of rational dilemmas here analysed are the followings: probability with low weight of argument or total lack of reasons or of evidence (no reasons as in situations of ignorance).

And in his paper *Obligation*:

I think I know now - at any rate in some cases - what states of mind are good, but I still waver as to what ought to exist. And my attempt to identify the two has constantly led to difficulties (MSS, *Obligation*)

- (c) the conflict between public and private life. In his 1905 *Modern Civilisation* Keynes already considers public life as equally important as private life and a possible source for conflict (MSS, *Modern Civilisation*).
- (d) the conflict between moral duties: between particular and general good; between the interest of the individual and the interest of the community. In his essay on Burke, Keynes comments on Burke's remarks on duties admitting the possibility of a clash between them:

Duties will sometimes cross one another. Then questions will arise, which of them is to be placed in subordination? (...) the possibility of a clash between the achievement of the greatest amount of good experienced by an individual and that of the greatest amount experienced by the community (Keynes MSS, *Burke*, 10-11)

- (e) the conflicts of desires: in particular, the conflict between the desire for pleasure and for goodness.

Keynes devotes special attention to this last type of conflict in his paper *Virtue and Happiness*. Desires being multiple and heterogeneous, they may clash. In Keynes's case the specific conflict is between the desire for pleasure and the desire for goodness. Both of these desires are ultimate, so they cannot be ordered on a univocal scale. Pleasure and goodness are both worthy in themselves, not only as a means for something else: he writes that both are alike in this respect. He considers the desire for pleasure and the desire for goodness as irreconcilable. Why are they irreconcilable? Because the two units of measure are incommensurable: «In the attempt to reconcile these two incommensurable units (...)». In *Egoism* the same point is re-stressed: claims which I cannot easily reduce to common terms and weigh against one another upon a common balance (Keynes MSS, *Egoism* 24 February 1906). It means that there is no common unit of measure, no common balance on which to weigh the two heterogeneous desires. The two units of measure are heterogeneous; pleasure and goodness are qualitatively and dimensionally different:

We seem to have these two conflicting kinds of judgement, a hedonistic judgement and an ethical judgement - both ultimate and both alike in this respect (...) We desire pleasure, and we desire the good; it is as little worthwhile to ask why in the one case as in the other; and the first is as much or as little of a purely psychological statement as is the second. It is - obviously enough - in the attempt to reconcile these two incommensurable units that a score or so of religions and philosophies have begun. (Keynes MSS, *Virtue and Happiness*, written after the Easter Vacation 1905, 4)

According to Keynes, values and desires cannot be ordered on a univocal scale and no common unit exists. In *Virtue and Happiness* (Easter 1905), he writes: «values and desires being multiple and heterogeneous, they may clash. Both of them are ultimate, so they cannot be ordered on a univocal scale». Keynes considers the desire for

pleasure and the desire for goodness as irreconcilable. Why are they irreconcilable? Because the two units of measure are incommensurable: «In the attempt to reconcile these two incommensurable units (...)».

In *Egoism* (February 1906), he writes:

claims which I cannot easily reduce to common terms and weigh against one another upon a common balance. It means that there is no common unit of measure, no common balance on which to weigh the two heterogeneous desires. The two units of measure are heterogeneous; pleasure and goodness are qualitatively and dimensionally different.

In *Virtue and Happiness*, Keynes criticises all the methods of reconciling this conflict adopted in history both by religion and philosophy. Four main methods are identified by him:

- (1) the good is only the pleasurable; this solution has been adopted by Utilitarians;
- (2) the good is always associated with the pleasurable
- (3) to deny the authenticity either of the goodness or of the pleasure (the second is Moore's method);
- (4) it is a mystery.

Keynes holds that all these four attempts to solve the conflict between these opposite claims can actually be reduced to two: either by reducing the two terms to one or by denying the existence of one of the two terms. The latter method is particularly interesting as it is Moore's method of solving conflict, a method which Keynes opposes. On this point Keynes's criticism of Moore is again typically Aristotelian. Let us recall that Aristotle, unlike Plato, stresses the plurality and the variety of goodness and the fact that good is not reducible to a univocal scale. In Keynes's view, Moore abolishes conflict by denying the existence of pleasure. In this way Moore avoids the problems of the incommensurability and non-comparability of magnitudes. In this way he reduces his notion of goodness to a univocal scale and to a common unit in a way similar to that of both Plato with his concept of good and the Utilitarians with their concept of pleasure or utility. Thus, in Keynes's view, Plato, the Utilitarians and Moore too, although in different ways, abolish conflict between the different kinds of goodness, by reducing goodness, pleasure or utility to a uni-dimensional magnitude. Keynes considers this unacceptable.

Rational Conflicts and Dilemmas: Radical Uncertainty

The theme of rational conflict is connected with that of moral conflict. As seen, in moral dilemma, the conflict is between moral claims, while in rational dilemmas, the conflict is between reasons, grounds, arguments or evidence. The good and virtuous life is often associated with tragedy, disasters and also rational dilemmas. In these situations, whatever we do will cause pain to somebody else. It will cause something we will regret. This brings to indecision and vacillation in human judgement and action. The notion of rational dilemma is at the basis of Keynes's notion of radical uncertainty, as different from calculable risk:

I cannot decide between the conflicting arguments; probably no general decision is possible. Sometimes the one and sometimes the other is true (Keynes MSS, *Beauty*, 3 October 1905, 25)

In logic, rational dilemmas have been carefully considered by theorists. One of them is the dilemma of Buridan's ass which represents a typical situation of indecision. Keynes refers to this dilemma both in his early 1907–8 versions of the *Principles of Probability* and in his 1938 letter to Townshend (Keynes, CW XXIX, 289, 294):

when there is no reason for preferring any one to any others, when there is nothing, as with Buridan's ass, to determine the mind in any one of the several possible directions (Keynes MSS, The 1907 version of *The Principles of Probability*, 75)

The dilemma is well-known: the ass faces two equal heaps, one of straw and one of hay, but, being unable to choose between the two alternatives, dies of hunger. Truly, this dilemma is not a real situation of tragic conflict and dilemma as in this case the alternatives are equally *right* and there is a general rule of decision to overcome it: just eat one of the heaps. In real tragic conflicts and dilemmas, on the contrary, the alternatives are truly conflicting. In Agamemnon's moral conflict, for example, the two alternatives are equally ethically unacceptable and regretful: the death of his daughter Iphigenia and the death of his soldiers. In true rational conflict, both alternatives should be compelling reasons. Neither is more reasonable but the decision has to be taken anyway and with regret. In true rational conflict, further, the compelling reasons which back our judgement may not only conflict one with the other but move in opposite multi-dimensional directions and we have to reach an overall judgement anyway.

Similar to the case of moral dilemmas, to give rise to irresolvable rational conflict, the reasons have first to be plural. Secondly, they are to be dimensionally non-homogeneous. Thus, there should not be a common unit of measure, a common balance to weigh or order reasons. This raises the general problem of the incommensurability and non-comparability of magnitudes.

In the beginning Keynes was interested in rational dilemmas mainly as concern probability: the conflict is between *some* reasons within probable judgement. But the theme of incommensurability and non-comparability of magnitudes spread out from his theory of probability almost immediately to enter the heart of his economics: in his 1909 *Essay on Index Numbers*; at the beginning of *A Treatise on Money*; in chapter 4 of the *General Theory*. As to probability, Keynes dealt with the incommensurability and non-comparability of reasons in probable judgements in his early 1907 and 1908 versions of *The Principles of Probability* and in the final 1921 version *A Treatise on Probability*. As to probability, Keynes maintains that probability relations are of different kinds and are characterized by a multiplicity of units of measure: "The magnitudes of probability relations must be measured in various units according to the particular case in question, these units being incommensurable among themselves" (MSS, The 1907 version of *The Principles of probability*, 67). And in the 1921 final version: « A degree of probability is not composed of some homogeneous material, and is not apparently divisible into parts of like character with one another" (CW VIII, 32).

Situations of rational dilemmas arise when there is conflict between incommensurable or opposite heterogeneous reasons (evidence or grounds) within a single judgement of probability so that these reasons cannot be weighed one against the others. As a result, the probabilities of the different alternatives cannot be ordered in terms of equal, more or less. In *A Treatise on Probability* the well-known example is the so-called dilemma of the umbrella. High barometer and black clouds represent opposite and conflicting reasons:

Is our expectation of rain, when we start out for a walk, always more likely than not, or less likely than not, or as likely as not? I am prepared to argue that on some occasions none of these alternatives hold, and that it will be arbitrary matter to decide for or against the umbrella. If the barometer is high, but the clouds are black, it is not always rational that one should prevail over the other in our minds, or even that we should balance them, - though it would be rational to allow caprice to determine us and to waste no time on the debate (Keynes, TP, CW VIII, 32).

In probability, situations of rational dilemmas can also arise when there is conflict between the different orders of probability—that is, note, even when probabilities are rankable. In this case, orders of probability are heterogeneous and move in different incommensurable directions and dimensions. Other situations can also arise when there is conflict between orders of probability and orders of goodness, or between orders of probability and orders of the weight of argument respectively:

It has been argued that in these cases the probabilities are, in fact, not comparable. As in the example of similarities, where there are different orders of increasing and diminishing similarity, but where it is not possible to say of every pair of objects which of them is on the whole the more like a third object, so there are different orders of probability, and probabilities, which are not of the same order, cannot be compared (TP, CW VIII, 122).

In Keynes's economics, this difficulty emerges in the economic papers he wrote for Marshall in 1905. In his 9th November essay on the comparison between the railway services of different nations, he stressed the difficulties of using incommensurable reasons of different kinds which move in different directions to reach a judgement as a whole. It is difficult to compare the railway services of Prussia and USA if the passenger and the freight services in the two countries move in opposite incommensurable directions:

the matter will be argued under several different heads, and there is no method of making these different considerations altogether *commensurable*. There is no practical rule for adding and subtracting advantages and disadvantages of different kinds. When we have as many considerations before us as is possible, the best we can do is to summarise them in some general statement based rather on common sense than on any scientific principle.

[the passenger service and the freight service of Prussia and USA] Any weighing of the two against one another is almost impossible (...) if, as it is probable, the passenger of Prussia is superior to that of USA and the freight service inferior, it is difficult to see on what principles we are to decide as to which country has the superior service on the whole (Keynes MSS, 9 November 1905, *Economic Essays* marked by Marshall).

In Keynes's economics, incommensurability and non-comparability are connected with his notion of complex magnitudes, such as real income, real capital and the

general price level. In the *General Theory* Keynes likens the difficulties of the comparison of complex economic magnitudes with that of the two Queens, Queen Elisabeth and Queen Victoria, when orders of happiness and goodness move in opposite directions. The 1936 comparison recalls the 1905 comparison of the different kinds of railway services in Prussia and USA. The passage ends, in an Aristotelian way, with a reference to mock precision:

To say that net output to-day is greater, but the price level lower, than ten years ago or one year ago, is a proposition of a similar character to the statement that Queen Victoria was a better queen but not a happier woman than Queen Elizabeth - a proposition not without meaning and not without interest, but unsuitable as material for differential calculus. Our precision will be a mock precision if we try to use such partly vague and non-quantitative concepts as the basis of a quantitative analysis (GT, CW VII, 40).

The dilemmas of the umbrella in *A Treatise on Probability*, of the two Queens Victoria and Elizabeth in *The General Theory*, of Buridan's ass in Keynes's letter to Townshend in 1939 (Keynes CW XXIX) are some of the examples to which Keynes refers in his later writings. Certainly in comparison to the great moral dilemmas of Agamemnon in Greek tragedy (the dilemma of whether to save his daughter or to save his kingdom), the rational dilemma of the umbrella described by Keynes in particular is not very heroic. It is typically bourgeois, and slightly English as well. Keynes's solution to it is just to take the umbrella and waste no time (TP, 32). However, it does represent a situation of non-comparability of reasons in human decision and it can be applied to economic decision too. Rational dilemmas characterise situations of indecision, of irreducible conflict where reasons (*some* reasons to be precise) cannot be weighed down. These situations are similar to tragic situations. They are the domain of radical uncertainty.

1 The Scope for Economics and Economic Policy

As seen, for Keynes, speculative ethics deals with final ends, intrinsic values and happiness (*eudaimonia*). While practical ethics deals with conduct and means. Thus, in his ethics, Keynes makes a distinction between good as instrument (practical ethics) and good in itself (speculative ethics). Economics and politics belong to good as instrument, as a means.

Happiness and Economics: Good as a Means

What is the economic problem for Keynes? A transient problem, solvable. Economics supplies the material preconditions for a happy and good life. The solution of economic problems is only a precondition to facing the real problems of man (that is the speculative ethics). Economics is a means, a material precondition to secure speculative ethics, so to supply material means to spiritual ends, an Aristotelian precondition for speculative ethics. Economists are, as we will see, no more than dentists. The domain of economics is that of practical ethics, where, rationality, probability (better, reasonableness) and uncertainty play a role. Keynes's *A Treatise*

on *Probability* (1921) is here the relevant connection between his practical ethics and his economics and economic policy.

Economics and speculative ethics deal with different problems. The market is not sufficient for safeguarding ultimate ethical values. Economics is merely a means, a technique (like that of dentists) to satisfy material needs:

But, chiefly do not let us overestimate the importance of the economic problem, or sacrifice to its supposed necessities other matters of greater and more permanent significance. It should be matter for specialists – like dentists. If economists could manage to get themselves thought of as humble, competent people, on a level with dentists, that would be splendid! (CW IX, 332).

Economics solves the economic problem,

But this is only a temporary phase ... All this means in the long run that mankind is solving its economic problem. I would predict that the standard of life in progressive countries one hundred years hence will be between four and eight times as high as it is today. ... The economic problem may be solved ... within a hundred years. This means that the economic problem is not – if we look into the future – the permanent problem of the human race (Keynes, CW IX, 325-6)

For Keynes, there is difference between ends and means, between the good and the useful and between speculative ethics and the market: «We shall once more value ends above means and prefer the good to the useful» (CW IX, 331). The reform of the market is only a transitory phase: it is merely a precondition—a means—for facing the ‘real’ ethical problems, which, for Keynes, concern with the achievement of a good and happy life. Keynes shows again an Aristotelian attitude. Solving the economic problem (the satisfaction of the individuals’ material needs) is a material precondition for happiness. Keynes is in line with Aristotle’s view on the material requirements for happiness: a starving or unemployed person cannot be happy.

The Economics of Scarcity and that of Abundance

Keynes contrasts the economics of scarcity with that of abundance. His thesis is that the satisfaction of the individuals’ material needs could be solved if individuals themselves could be persuaded, through a new theory and economic policy, to modify their use of resources. Such resources are not scarce but potentially sufficient to guarantee everyone a decent level of consumption. Hayek defined this as wishful belief and irresponsible talk. For Keynes, there is a gap between the material results of production and the potential of available natural and human resources. An inversion of the relationship between saving and investment is the theoretical premise that supports his contention that one has to try to influence investment decisions and to increase the propensity to consume. This raises the use of hitherto unused resources, eliminates waste and creates abundance.

(...) economic abundance. But it will those people, who can keep alive, and cultivate into a fuller perfection the art of life itself and do not sell themselves for the means of life, who will be able to enjoy the abundance when it comes (CW IX, 328)

The economics of abundance implies that the individual possesses substantial freedom, freedom from necessity, from the limits that restrict the possibility of individual choice of ends. Being free means having the power to use the means to satisfy such material needs as a given society holds to be primary, and to pursue ultimate ethical (spiritual) ends, which were previously unknown.

With the economics of abundance, Keynes is not only asking for a willingness to ensure a minimum standard of living. He wants to create conditions, which liberate the individual from the worry of obtaining his material means, in order to allow him to pursue real spiritual ends. This allows the individual to express authentic human qualities.

In line with Aristotle, Keynes believes that the good life has necessary material and institutional necessary conditions. Unlike most forms of Kantian ethics, ancient ethics insists on the necessity of material resources for the exercise of virtue. The good life requires material prerequisites for human flourishing. For Keynes, the task of political economy as *a moral science* is precisely to supply these material conditions for the good and happy life: they are necessary preconditions for it. Aristotelian political thought focuses on the job of making citizens capable of choosing to function in the ways characteristic of *eudaimonia*. This is in contrast with the moral philosophy both of utilitarianism and Kantianism but not with Keynes's own view on economic intervention.

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Part III
Dignity and Economic Perspective

Chapter 10

Market Virtues and Respect for Human Dignity



Luís C. Calderón Gómez, Robert Talisse, and John A. Weymark

Abstract Luigino Bruni and Robert Sugden have provided a normative defense of markets from a virtue ethics perspective. They interpret market exchange as being a practice in the sense of Alasdair MacIntyre. For Bruni and Sugden, the *telos* of a market is mutual benefit and a market virtue is a character trait or disposition that contributes to the realization of this benefit. They regard market virtues as embodying a moral attitude towards market interactions that is characterized by reciprocity. For MacIntyre, this is a partial account of a virtue. To qualify as a virtue, it is also necessary that it contributes to the good of an individual's life taken as a whole and to the social tradition in which both practices and individuals are embedded. We adopt MacIntyre's understanding of a virtue and consider the extent to which Bruni and Sugden's account of market virtues is compatible with respecting the fundamental human good of dignity in Kant's sense of this term.

Keywords Kantian dignity · MacIntyrean practices · Market virtues · Virtue ethics · Voluntary exchange

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1 Introduction

Markets are often defended in terms of the instrumental role that they play in advancing individuals' well-being and freedom. Most famously, Adam Smith proposed his metaphor of the invisible hand—the operation of markets acts like an invisible hand promoting the public interest even though each individual intends his own gain (Smith, [1776] 1976, Bk. IV, Chap. II, par. 9). Relatedly, Friedrich Hayek argues that a spontaneous order emerges from individuals engaging in market transactions even though the relevant information (e.g., about their preferences) is held by the individuals themselves and never could be known by any one entity (Hayek, 1937, p. 49). Hayek and Milton Friedman (among many others) contend that competitive markets also promote both economic and political freedom. See, for example, Hayek (1944, Chap. VII) and Friedman (1962).

Luigino Bruni and Robert Sugden (Bruni and Sugden, 2013) offer a different kind of defense of markets. Rather than focusing on the instrumental role that markets play in providing benefits to market participants, they adopt the position of a virtue ethicist and present their normative case for markets in terms of the kinds of considerations that are endorsed from this perspective. In the foundational treatise on virtue ethics, Aristotle's *Nicomachen Ethics* (Aristotle, [c. 330 BCE] 2000), every practice (an individual or social activity) is regarded as having its own purpose—its *telos*—with its own virtues. Virtues are freely endorsed and deeply held character traits or dispositions to act in the furtherance of a practice's *telos*. In *After Virtue*, Alasdair MacIntyre considers a practice to be a cooperative social activity for which there are goods internal to that practice (MacIntyre, 2007, p. 187). Bruni and Sugden offer a view of market interactions as a MacIntyrian practice with its own market virtues.

For Bruni and Sugden, the *telos* of a market is mutual benefit and a market virtue is a character trait or disposition that contributes to the realization of this benefit. Market virtues embody a moral attitude towards market interactions characterized by reciprocity. Bruni and Sugden identify eight market virtues but make no claim that their list is comprehensive. As they note, their view of markets as institutions for the voluntary exchange of goods and services for mutual benefit is a view that has been expressed with varying degrees of explicitness by scholars writing in the classical liberal tradition. What is distinctive about Bruni and Sugden's contribution to this tradition is that they integrate this understanding of markets with the virtue ethics approach to morality and they make explicit some of the virtues that make market participants admirable in terms of this understanding.

Bruni and Sugden define a virtue relative to a practice. MacIntyre (2007, p. 197), however, views this as a “partial and tentative definition of a virtue.” In his full account of the virtues, a virtue relative to a practice need not be a virtue all things considered. To qualify as a virtue, it is also necessary that it contributes to the good of an individual's life taken as a whole and to the social tradition in which both practices and individuals are embedded. Hence, for a character trait or disposition to be a virtue, it is necessary for it to be a virtue relative to a practice, but this is not sufficient.

From a MacIntyrian perspective, Bruni and Sugden's description of market virtues is incomplete; it needs to be supplemented by an analysis of the extent to which any candidate virtue does in fact contribute to the good of an individual's life and to sustaining the social tradition in which market institutions are instantiated. Furthermore, it needs to be determined whether, when viewed from this wider perspective, reciprocity by itself provides an adequate moral justification for regarding individuals who engage in market transactions with the intention of benefiting all of the transacting parties as being virtuous.

Here, we adopt MacIntyre's understanding of virtues and consider the extent to which Bruni and Sugden's account of market virtues is compatible with that of MacIntyre. We do not claim that Bruni and Sugden have endorsed MacIntyre's views on what constitutes a virtue. Indeed, as we have noted, they only consider virtues relative to the practice of market exchange.

For Aristotle, humans by nature have a *telos*, namely, *eudaimonia*, which can be roughly translated as "flourishing" or "well-being." An individual is virtuous to the extent that he or she develops and exhibits those character traits that serve this purpose. On the Aristotelian view, one can consistently cultivate certain virtues while treating other individuals as mere occasions for their exercise. With this view, other individuals provide opportunities for exercising one's virtues (e.g., of beneficence), but this is done without necessarily intending to contribute to the flourishing of anybody except oneself. To the extent that one adopts a self-centered view of one's relations with other individuals, the latter are being treated as means to facilitate one's own flourishing and not as ends in themselves.

Bruni and Sugden do not attribute a *telos* to individuals; for them, it is practices that have *teloi*, not individuals. One can promote the good of individuals without committing to the Aristotelean view that individual lives have a *telos*. This can be done by engaging in market exchange with the intention of benefiting all of the market participants, not just oneself. By intending mutual benefit, one is not treating the other market participants merely as means to one's ends. Nevertheless, this does not entail that one is treating them with the respect that they deserve, and so such behavior need not be fully virtuous.

We contend that virtuous market exchange requires respecting the *intrinsic dignity* that each individual possesses simply in virtue of being a human being. Specifically, we consider a Kantian concept of intrinsic dignity. For Kant, an individual who is autonomous and rational is an end in himself who has a value that exceeds all price; this value is his intrinsic worth—his dignity (Kant, [1785] 2018, AK4:436). Respect for this dignity is accomplished by conforming to Kant's Principle of Humanity (Kant, [1785] 2018, AK4:429), which requires one to treat individuals as ends in themselves, not merely as means to one's own ends. We argue that to endorse market transactions from a MacIntyrian perspective, it is not sufficient that mutual benefits are realized, that all parties to these transactions intend that this be the case, and that these intentions are grounded in attitudes of reciprocity; it is also necessary that nobody's intrinsic dignity is compromised.

Respect for human dignity is not one of the Aristotelian virtues. However, respect for human dignity as a virtue is considered in another classical treatise on virtue

ethics, Saint Thomas Aquinas' *Summa Theologica*. In the *Summa*, Aquinas has an extensive discussion of a different conception of dignity that refers to the dignity one possesses in virtue of the position one holds in society (Aquinas, [1265–1274] 1947, II–II, QQ. 102–104), what Sulmasy (2013) calls *attributed dignity*. This is not the sense that is of interest here. There is some controversy about whether Aquinas also has a well-developed account of intrinsic duty. Gormally (2002, pp. 32–3) argues that he does and Jones (2015, p. 89) maintains that “this is wholly in conformity with the spirit and character of Thomas’s thought on the origin, nature, and destiny of human beings.” Jones considers the virtue ethics implications of respecting this Thomist conception of intrinsic dignity for healthcare. Complementarily, we consider the virtue ethics implications of respecting a Kantian conception of intrinsic dignity for market exchange.¹

In developing our arguments, we draw on the work of Gerald Gaus and John Thrasher and of Efthymios Athanasiou, Alex London, and Kevin Zollman. Gaus and Thrasher (2015) propose two tests—the *identification* and *recognition* tests—that principles of justice derived using an original position must pass. The former requires that individuals with their actual interests endorse these principles. The latter requires that these principles be regarded as being morally compelling. These two tests can also be applied to the normative evaluation of markets. Athanasiou et al. (2015) examine how two decision-makers, one with a Kantian conception of dignity and one whose conception of dignity is Hobbesian (Hobbes, [1615] 1968), differ in their behavior in variants of the ultimatum game.²

The main objective of Bruni and Sugden (2013) is to show that the virtue ethics tradition can be enlisted to provide normative support for market institutions. But that is not their only goal. They also want to respond to the criticisms of markets by virtue ethicists such as Elizabeth Anderson and Michael Sandel, who are sharply critical of the extent to which markets pervade modern societies.³ Bruni and Sugden (2013, p. 141) summarize the central core of the views of Anderson and Sandel as follows:

The market depends on instrumental rationality and extrinsic motivation; market interactions therefore fail to respect the internal value of human practices and the intrinsic motivations of human actors; by using market exchange as its central model, economics normalizes extrinsic motivation, not only in markets but also (in its ventures into the territories of other social sciences) in social life more generally; therefore economics is complicit in an assault on virtue and on human flourishing.

¹ Whereas market exchange is concerned with mutual benefit, healthcare involves relations of dependency. For example, infants and many old people are largely dependent on the care of others, as are those who have serious health issues. Virtues in such situations are based on attitudes of giving and receiving and of compassion, not reciprocity. See MacIntyre (1999) for an extended discussion of how virtue ethics applies to dependent rational beings, both human and non-human.

² Roemer (2019) considers the behavior of individuals who adopt the Kantian maxim “choose actions that could be endorsed by all of the participants in a social activity.” These individuals regard themselves as being members of a community who are solving a resource allocation problem together. Roemer does not explicitly consider a Kantian conception of dignity.

³ See, for example, Anderson (1993) and Sandel (2009, 2012).

What is called for, or so it is claimed, are moral limits to markets. In response, Bruni and Sugden contend that the fact that markets enhance the ability of individuals to voluntarily make mutually beneficial transactions is something that should be celebrated, not vilified.⁴ There is a burgeoning literature that debates the appropriateness of placing moral limits on the extent to which markets are employed in the exchange and production of goods.⁵ We put this issue aside here to instead focus on the compatibility of Bruni and Sugden's understanding of markets and market virtues with MacIntyre's understanding of a practice and its virtues, and the implications of this understanding for respecting intrinsic human dignity.

Our paper is organized as follows. In Sects. 2 and 3, we provide a brief summary of some of the main features of Aristotelian and MacIntyrian virtue ethics. Then, in Sect. 4, we discuss Bruni and Sugden's account of markets as a practice and its associated market virtues. In Sects. 5 and 6, respectively, we introduce the identification and recognition tests and the Hobbesian and Kantian conceptions of dignity. Next, in Sect. 7, we reconsider Bruni and Sugden's account of market virtues in terms of the need to respect Kantian dignity, not just in terms of intending exchanges to be mutually beneficial. Finally, in Sect. 8, we provide some concluding remarks.

2 Aristotelean Virtue Ethics

Virtue ethics regards character as the fundamental object of moral evaluation. Acts play this role in consequentialism and deontology. This difference in what is fundamental to moral assessment distinguishes virtue ethics on the one hand from consequentialism and deontology on the other. More concretely, virtues are character traits or dispositions to act and a virtuous person is someone who acts on these virtues. For a consequentialist, acts are appraised in terms of the consequences that result, whereas for a deontologist, acts are appraised in terms of their conformity with moral rules and their associated duties. Consequentialism and deontology define a "good person" as someone who performs morally proper acts. In contrast, virtue ethics defines the "good act" as one that a virtuous person would perform.

Baumann and Brennan (2016, p. 120) identify three features that they believe are essential to any account of virtue ethics. First, what is morally praiseworthy is a disposition to act in a certain way, not the act itself. Second, virtuous individuals must be intrinsically motivated to act virtuously. Third, such individuals justify their behavior with reference to how it is virtuous. It is not sufficient that they exhibit virtuous behavior; rather, the virtues must be an essential part of their characters, freely acknowledged, and deliberately cultivated. This is not to say that virtuous individuals must be saints, only that they generally intend to behave virtuously and to justify their actions accordingly.

⁴ See also Sugden's book, *The Community of Advantage* (Sugden, 2018), which provides an extensive analysis of this view of markets from a contractarian perspective.

⁵ See Fumagalli (2020) for extensive references to this literature.

As noted earlier, Aristotle regards human beings as having *eudaimonia* as their *telos*. A virtuous person is one who cultivates and exhibits those character traits that contribute to or are partly constitutive of *eudaimonia*. The goodness of a disposition to act is relative to this objective. Analogously, a good house is one that is well-constructed so as to further the purpose of housing—to provide shelter.

Central to Aristotle's account of the virtues is his metaphysical view of humans beings. Tiberius (2015, p. 110) summarizes this metaphysics as follows:

The special nature of a human being, according to Aristotle, is that we are beings who can guide our actions by using our capacity to reason. We are also physical beings for whom social interaction with other human beings is important.

To flourish, an individual should endeavor to develop and exercise those dispositions that best exemplify humanity's rational social nature.

Human virtues are, then, character traits that when acted upon in all facets of an individual's life contribute to his or her flourishing. Prototypical examples include honesty, generosity, prudence, and courage. According to Aristotle, human flourishing depends on the unity of these virtues; major conflicts between the virtues are inconsistent with human flourishing.

Virtues typically come in degrees and, for Aristotle, it is a matter of striking the right balance—the mean—between the extremes. For example, prudence requires a balance between being foolhardy and being excessively cautious. More generally, according to Aristotle ([c. 330 BCE] 2000, 1106b), intending to act “at the right time, about the right things, towards the right people, and in the right way, is the mean and best; and this is the business of virtue.” To achieve this balance requires practical wisdom, what Aristotle calls *phronesis*. It is by the exercise of practical wisdom, which only comes with experience and an ability to recognize what is morally salient, that the unity of the virtues is achieved. On this account, by wisely weighing the reasons for acting one way or another, the virtues are brought into a harmonious whole.

3 MacIntyrean Virtue Ethics

Like Aristotle, Alasdair MacIntyre is a virtue ethicist. However, he eschews Aristotle's metaphysical biology that humans have a purpose dictated by nature, with the virtues being character traits and dispositions that serve to promote this purpose. He shares Aristotle's understanding of man's rational social nature, but regards virtues as contributing to the pursuit of a commendable life and as being directed at promoting admirable social relationships, not as dispositions that best exemplify some understanding of man's nature.

Central to MacIntyre's social understanding of the virtues is his particular conception of a practice. For MacIntyre (2007, p. 187), a *practice* is

any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in trying to achieve those standards

of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.

For MacIntyre, the ends, goods, and standards of excellence of a practice are identified by examining how a community of practitioners understand this social activity. Morality is thus relative to a particular community at a particular point in time. A practice is not free standing; it has a history—a social tradition, whose purposes and standards of excellence are provided by this history (p. 190).

Unlike Aristotle, MacIntyre does not presuppose that social activities necessarily have a *telos*. He does not make a sharp distinction between the purpose of a practice and the goods internal to it. Indeed, these goods could themselves be ends, and there need not be a single end. MacIntyre distinguishes between the internal and external goods of a practice, and it is only the former that have normative significance. He illustrates this difference with the game of chess. An external good of the game of chess is the honor or prize that comes with winning. In contrast, its internal goods—its excellences—include “the achievement of a certain highly particular kind of analytical skill, strategic imagination and competitive intensity . . .” (p. 188). Thus, the internal goods of chess are obtained by playing the game well, not necessarily by winning. According to MacIntyre, the internal goods of a practice can only be obtained and recognized as such by participating in it.

MacIntyre develops his theory of the virtues by using a three stage procedure. In the second and third stages, the tentative understanding of the virtues obtained in the preceding stage is refined until the definitive statement is reached in the final stage. In his words (MacIntyre, 2007, p. 273):

My account of the virtues proceeds through three stages: a first which concerns virtues as qualities necessary to achieve the goods internal to practices; a second which considers them as qualities contributing to the good which relates them as qualities contributing to the good of a whole life; and a third which relates them to the pursuit of a good for human beings the conception of which can only be elaborated and possessed within an ongoing social tradition.

It is only in the first stage that a practice is considered in isolation. Viewed from this perspective, MacIntyre (2007, p. 191) says that “a virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such good.” To distinguish this partial conception of a virtue from the definitive conception that takes account of all three stages, we call the former a *virtue relative to a practice*.

As an illustration of a virtue relative to a practice consider, as does MacIntyre (pp. 191–192), friendship. Friendship is a MacIntyrean practice in which a group of individuals who share an intimate connection—the friends—pursue some common interests. Among the goods internal to this practice is truthfulness. Lying to one member of the group, no matter how good a reason there is for doing so, undermines one of the goods of friendship, namely, being honest with one another.

But, as we have seen, for MacIntyre, a virtue relative to a practice is not necessarily a virtue; it must also contribute to the good of an individual’s life taken as a whole.

How does MacIntyre conceive of an individual's good? He regards an individual as adopting a narrative view of his or her own life, a unified story of this life in which he or she is accountable for its goals and actions. Individual good is relative to that narrative. MacIntyre (2007, pp. 218–219) elaborates what he means by this when he says:

In what does the unity of an individual life consist? The answer is that its unity is the unity of a narrative embodied in a single life. To ask 'What is the good for me?' is to ask how best I might live out that unity and bring it to completion. To ask 'What is the good for man?' is to ask what all answers to the former question must have in common. . . . The unity of a human life is the unity of a human quest.

With this understanding of an individual's good, MacIntyre (2007, pp. 218–219) offers a revised statement of his conception of the virtues:

The virtues therefore are to be understood as those dispositions which will not only sustain practices and enable us to achieve the goods internal to practices, but which will also sustain us in the relevant kind of quest for the good, by enabling us to overcome the harms, dangers, temptations and distractions which we encounter, and which will furnish us with increasing self-knowledge and increasing knowledge of the good.

So, MacIntyre's approach to virtue ethics shares with Aristotle the idea that a human life has a purpose or *telos*. For MacIntyre, an individual's *telos* consists of striving for whatever is required to render his life as a whole that of an admirable and authentic human being, rather than being merely an exemplary participant in practices. However, in contrast to Aristotle, what is good for man is not completely determined by biology; it is also historically contingent—contingent on what good the community one is part of is seeking, individually and collectively, in its quest for leading lives that the members of this community regard as being commendable.

Communities have a history, and it is this history as embodied in its traditions that is used in the third stage to complete MacIntyre's account of the virtues. For MacIntyre (2007, pp. 222),

the individual's search for his or her good is generally and characteristically conducted within a context defined by those traditions of which the individual's life is a part, and this is true both of those goods which are internal to practices and of the goods of a single life.

It is not just the case that these traditions help shape what is good for an individual member of a community; these traditions themselves must be sustained and strengthened in order to facilitate an understanding of what are the goods one should strive for in a particular community at a particular point of time and for facilitating the achievement of these goods. To be a virtue, a disposition should also promote this communal good.

In summary, according to MacIntyre (2007, pp. 223):

The virtues find their point and purpose not only in sustaining those relationships necessary if the variety of goods internal to practices are to be achieved and not only in sustaining the form of an individual life in which that individual may seek out his or her good as the good of his or her whole life, but also in sustaining those traditions which provide both practices and individual lives with their necessary historical context.

4 Market Virtues

Market transactions play a major role in the day-to-day life of anyone living in a modern society. Workers employ their time and expertise in exchange for a salary from their employers. A customer buys groceries from a supermarket, who in turn buys what is offered for sale from suppliers, who may in turn buy these goods from the primary producers. Markets vary in their complexity and in the extent to which they overlap but, in essence, they are all based on monetary or barter transactions between buyers and sellers.

Bruni and Sugden (2013) argue that, although they had not previously been thought of in this way, markets are a practice in MacIntyre's sense. They are clearly a "coherent and complex form of socially established cooperative human activity," and so satisfy one of the defining characteristics of a MacIntyrean practice. What are the "goods internal to that form of activity"? To answer this question, Bruni and Sugden follow Aristotle in regarding activities as having a *telos*. For markets, this *telos* is mutual benefit. More specifically, "markets facilitate mutually beneficial voluntary transactions" (p. 153). It is this *telos* that Bruni and Sugden contend is the common feature that underlies the understandings of what markets are for that has been articulated by scholars in the classical liberal tradition since the time of Adam Smith.

MacIntyre does not claim that a practice must have a *telos* or, at least, not a single purpose. In that regard, he differs from Aristotle. Nevertheless, he does not preclude it from being the case that a practice has a single purpose. Bruni and Sugden argue that markets do; they are a practice that has a *telos*.

With this understanding of the *telos* of markets, Bruni and Sugden (2013, p. 153) propose that

a market virtue . . . is an acquired character trait with two properties: possession of the trait makes an individual better able to play a part in the creation of mutual benefit through market transactions; and the trait expresses an intentional orientation towards and a respect for mutual benefit.

According to this definition, market virtues are, in our sense, virtues relative to the practice of markets. That leaves open the question that we explore in Sect. 7 of whether they are virtues in MacIntyre's sense.

Markets, then, are concerned with a particular kind of social relationship with its own moral standards. They are not unique in being a voluntary socially activity whose aim is mutual benefit. A team sport has this feature as well. What distinguishes markets from other mutually beneficial voluntary activities is that they are concerned with the exchange of goods and services. What they share in common is that virtuous behavior expresses an intention on the part of the participants to work together for mutual advantage.

Bruni and Sugden (2013) say very little about what they mean by "mutual benefit" or by having "a disposition to realize mutual benefits." In an earlier paper, Bruni and Sugden (2008, p. 46) distinguish between *mutual benefit* and *mutual assistance*:

[E]xchange is *mutually beneficial* or *mutually advantageous*: each acts in a way that is to the benefit or advantage of the other. Still, neither party need have any concern for the other's interests. Mutual assistance implies more than this. The concept of assistance implies an *intention* on the part of the person who assists to benefit the person who is assisted. Assistance is intentionally directed towards helping another person in her needs, towards being useful to others. If assistance is mutual, these intentions are reciprocal: each stands ready to help others in the expectation that they stand ready to help her. (emphasis in the original)

Hence, an exchange is “mutual beneficial” if the parties to it all benefit, whereas “mutual assistance” also speaks to the parties’ intentions by requiring that each of them intend that all of them benefit.⁶ The latter concept thus takes account of their dispositions, whereas the former does not.⁷

When applied to markets, two features of this understanding warrant particular notice. First, by participating in a market transaction with the intention of mutual benefit, the participants *intend to be useful to one another*.⁸ By itself, this statement does not say what motivates someone to have this intention. Second, the willingness to help others is not based on altruism but, rather, is *conditional* on the expectation that their trading partners will reciprocate. As Bruni and Sugden (2013, p. 153) put it, a market virtue “is a description of a distinctive moral attitude to market relationships—an attitude characterized not by altruism but by reciprocity.” We thus are provided with a reason why the intention is held. Nevertheless, ambiguity remains. Because of the conditional nature of the reciprocity being appealed to, is a participant in market transactions treating his or her trading parties as a means to her own ends, thereby insulting their dignities? Or, is the concern for others non-instrumental in a way that dignity is respected?

Bruni and Sugden (2008, p. 51) further elaborate what they mean by “mutual assistance”:

Our suggestion is that a market contract can be understood as *constituting* the contracting parties as a collective agent with respect to whatever joint enterprise is the subject of the contract. On this view, the contract commits each party to play her part in bringing about a collective goal. That goal is the joint benefit of the parties, within the specific confines of the relevant transaction. Each party, in fulfilling her own side of the bargain, acts with the intention of participating in a combination of actions directed at the benefit of them all. . . . Thus, each has the conscious intention of being useful to the other; mutual benefit is *what the transaction is about*, not just a precondition for agreement to be possible. (emphasis in the original)

Thus, if market transactions are to count as instances of mutual assistance, the transacting parties must regard themselves as being involved in a collective activity,

⁶ When individuals are not ideally informed, it may not be clear what constitutes mutual benefit. As a consequence, someone may be mistaken in believing that he or she is promoting mutual benefit. We bracket this issue here.

⁷ As Bruni and Sugden (2008) note, their analysis of social cooperation in terms of mutual assistance is in part inspired by the work of Antonio Genovesi (see Genovesi, [1765–67] 2013). For Sugden (2018), when individuals engage in mutual beneficial transactions, it is not supposed that they do so with any concern for each others’ interests. Indeed, he contends (p. 270) that “if one thinks in contractarian terms, asking about individuals’ true motivations is a question too far.”

⁸ The same thought is expressed by Sugden (2018, Sect. 11.7).

with each participant playing his or her part in achieving the collective goal—mutual benefit. In MacIntyrean terms, they are participating in a practice with the intention of furthering the goods internal to this practice. Bruni and Sugden (2008) describe such a relationship as being *fraternal*.

It is unclear to what extent “an intention to realize mutual benefits” has the same meaning for Bruni and Sugden (2013) as it does for Bruni and Sugden (2008). The degree to which their meanings agree or disagree matters for a normative evaluation of market virtues. Accordingly, when we turn to our analysis of whether their account of market virtues is compatible with respecting human dignity, we consider alternative possible meanings of this intention.

Of course, it is often the case that some market participants have no intention to seek mutual benefit; they only care about their own benefit. From the perspective of virtue ethics, their behavior is not praiseworthy. This is not to say that acting in one’s own interest may not have good social consequences; as Adam Smith’s invisible hand metaphor suggests, mutual benefit may well result from such behavior. What matters for Bruni and Sugden is whether this behavior was motivated by self-interest or by a disposition to realize mutual benefit; the latter is laudatory, the former is not.

From a MacIntyrean perspective, when mutual benefit results from market exchange even though a participant acts from selfish intentions, he or she is not participating in the social *practice* of market exchange but, rather, is engaged in some other activity. In this view, a constitutive feature of the practice is that by engaging in trade, a market participant intends to realize mutual benefits. Thus, those who trade from selfish motives are not only blameworthy because of their selfishness, they are also blameworthy because they do not exhibit the dispositions required by the practice of market exchange. Similarly, someone who cheats at chess (say by moving a piece in violation of the rules when the other player’s attention is distracted) can be said to be not engaged in the practice that we call chess and is therefore blameworthy for the same reason.

Bruni and Sugden (2013) present a non-exhaustive list of eight market virtues. Two of them, *respect for the tastes of one’s trading partners* and *trust and trustworthiness* are self-explanatory. *Universality* is “the disposition to make mutually beneficial transactions with others on terms of equality, whoever those others may be” (p. 154). *Enterprise and alertness* is a disposition to seek out opportunities for mutual benefit both as a buyer and seller. *Acceptance of competition* is the disposition to “not obstruct other parties from mutual benefit in transactions with *one another*” (p. 156, emphasis in the original). *Self-help* is the disposition “to accept without complaint that others will be motivated to satisfy your wants, or to provide you with opportunities for self-realization, only if you offer them something they are willing to accept in return” (p. 157). *Non-rivalry* is the disposition “to see others as potential partners in mutually beneficial transactions rather than as rivals in a competition for a fixed stock of wealth or status” (p. 158). Finally, *stoicism about reward* is the disposition to “expect to benefit from market transactions only to the extent that [one] provides benefits that trading partners value at the time they choose to pay for them” (p. 160). Bruni and Sugden justify their eight market virtues in terms of the two dispositions described above that they regard as characterizing a market virtue (i.e., a disposition

to intend mutual benefit and a disposition to form this intention on the basis of an attitude characterized by reciprocity). There is no need to consider the details of their justifications here.

Notably absent from this list of market virtues is a disposition to reward people according to their deserts. This disposition is at odds with “stoicism about reward.” Using desert as a basis for determining economic benefits focuses on what individuals have done in the past, not on what is mutually beneficial at the time that a market transaction takes place. Nor does it recognize that past beliefs may be wrong, with the consequence that one’s actions may not be rewarded in the marketplace as one expected. Bruni and Sugden (2013, p. 160) conclude that “stoicism about reward” requires that “market virtue is associated with *not* expecting to be rewarded according to one’s deserts, *not* resenting other people’s underserved rewards, and (if one has been fortunate) recognizing that one’s own rewards may *not* have been deserved” (p. 160, emphasis in the original).

5 The Identification and Recognition Tests

In their analysis of the justificatory role that original positions play in social contract theory, Gaus and Thrasher (2015) consider two tests that principles of justice derived using this thought experiment must pass. First, they must pass the *identification test*: individuals with their actual interests can endorse them. Second, they must pass the *recognition test*: the principles can be acknowledged as being compelling moral principles. These tests can also be applied to market virtues in order to assess their moral desirability.

Consider, first, the identification test. Bruni and Sugden’s account of market virtues is based on the presupposition that market participants intend to engage in voluntary exchanges of goods and services that are mutually beneficial. To pass the identification test, these dispositions must be self-sustaining. When considering mutually beneficial social activities in general (i.e., not just markets), Sugden (2018, Sect. 11.4) offers a number of reasons for why such an intention might tend to produce a willingness to behave in accordance with this intention, thereby rendering the intention self-sustaining. For example, in the case of markets, by having this intention and behaving in conformity with it, an individual may generate a reputation of trustworthiness that makes it more likely that potential trading parties will want to trade with him or her to their mutual advantage. To the extent that an intention for mutual benefit is self-sustaining, the ability to promote human excellences in a cooperative social activity is “systematically extended,” which, as we have noted, is one of the defining features of a MacIntyrean practice. The question, then, that we need to address is whether a disposition to intend mutual benefit is something that is self-sustaining and, therefore, endorsable by the participants themselves.

Turning now to the recognition test, the question is whether market virtues can be provided with a compelling moral justification that is acknowledged as such by the

participants. Recall that Bruni and Sugden (2013) ground these virtues in reciprocity viewed as an attitude towards market relations that is distinct from altruism.

In Sect. 7, we investigate whether Bruni and Sugden's account of market virtues satisfies both the identification and recognition tests when viewed from the perspective of what is good for an individual's life taken as a whole, focusing on respect for human dignity as one of the goods that needs to be valued.

6 Hobbesian and Kantian Conceptions of Dignity

Athanasiou et al. (2015) contrast Hobbesian and Kantian conceptions of human dignity. With the Hobbesian conception of dignity, “[t]he value or worth of an agent is similar to the value of a complex tool; it is a function of the degree to which that agent is needed by, relied on, or is capable of advancing or frustrating the goals, ends, or interests of others” (p. 417). For a Hobbesian, individuals are treated instrumentally; they are not ends in themselves. In contrast, for a Kantian, as autonomous rational beings, humans have an intrinsic worth; they are ends in themselves, and should be treated accordingly. This respect is instantiated by conforming to Kant's Principle of Humanity (Kant, [1785] 2018, AK4:429): “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.” Moreover, individuals are ends that have a dignity that is above all price. Kant ([1785] 2018, AK4:436) elucidates the contrast between having a dignity and having a price as follows:

In the realm of ends everything has either a price or a dignity. What has a price is such that something else can be put in its place as its equivalent; by contrast, that which is elevated above all price, and admits no equivalent, has a dignity.⁹

Athanasiou, London, and Zollman investigate how individuals committed to either a Hobbesian or Kantian conception of human dignity reason and behave in static and dynamic versions of the ultimatum game. In the simplest static version of this game, there are two parties, one of whom makes a take-it-or-leave-it offer for sharing a unit of a divisible good. If the proposal is accepted, the resource is shared in the manner proposed; otherwise, neither party gets any of it. A Hobbesian proposer would offer a Hobbesian respondent none, or no more than a minuscule portion, of the resource, and in doing so would not offend the latter's dignity as he or she understands it. If, instead, the respondent has a Kantian conception of dignity, this offer would be regarded as being insulting. Athanasiou, London, and Zollman suppose that in such

⁹ There is a rich literature that analyzes Kant's Principle of Humanity and his concept of dignity. A variety of perspectives about how best to interpret what Kant wrote have been proposed. See, for example, the essays in Kato and Schönrich (2020). It is contentious whether the object of respect must be rational. In his analysis of what Kant means when he speaks of respecting someone's dignity, Sensen (2020) says: “Respect is attributing others an equal standing in my actions” (p. 170) and that “the duty to be a respectful person is a demand of one's own reason” (p. 173) and not that of the object of one's respect.

a situation, the offer would be rejected. As a consequence, the proposer must offer a share that is sufficient to respect the respondent's dignity in order to have the offer accepted. A Kantian proposer would make an offer that respects the other's dignity in Kant's sense regardless of whether that individual so regards him- or herself.

It is also plausible that a Kantian responder would accept an insulting offer even though it does not respect his or her dignity. Individuals sometimes voluntarily engage in activities that are repugnant to them because of the benefits obtained. In the ultimatum game, being offered minimal material benefits may be acceptable to a Kantian even though his or her dignity is being compromised. This is not to say that the loss of dignity can be compensated for by providing goods that have a price; that is inconsistent with the Kantian concept of dignity. Rather, material goods and dignity are incommensurable. While dignity is more valuable than any quantity of material goods, it is simply the case that one is willing to accept some material benefits even though one's dignity is compromised. Henceforth, we take it for granted that one can benefit from partaking in an activity without one's dignity necessarily being respected.

7 Respecting Dignity in Market Exchange

A market exchange can be evaluated in terms of the extent to which the dignity of the participants in the exchange is respected in addition to the determination of whether mutual benefits have been achieved and intended. For simplicity, consider just two individuals who contemplate trading with each other. Baker has bread that he can exchange for wine from Vintner. Baker is only willing to provide Vintner a loaf of bread if she offers at least one bottle of wine for it. Vintner is willing to offer no more than two bottles of wine for a loaf of bread. A mutually beneficial exchange is realized if Vintner exchanges anywhere between one and two bottles of wine for a loaf of bread.

Suppose that both Baker and Vintner agree to an exchange with the intention of mutual benefit. Are they being virtuous? That depends on how we understand what is meant by "mutual benefit" and by "reciprocity" as the motivation for having the intention to trade for mutual benefit, and on whether one thinks of "virtue" as being relative to a practice or in the more comprehensive MacIntyrean sense.

Consider, first, a narrow reading of what Bruni and Sugden (2013) say in this regard. The intention is to be useful to one another. The motivation for this intention is an attitude of reciprocity—a willingness to be useful to one's trading partner on the expectation that he or she has the same intention. One reason why Baker may want to benefit Vintner by trading some of his bread for her wine is that this is the only way that he can obtain the wine that he wants. Reciprocity may motivate this intention, but only in a conditional sense. The willingness of Baker to trade with Vintner is conditional on Vintner being willing to trade with him. Similarly, Vintner only wants to benefit Baker in order to get the bread that she wants and only wants to do this conditional on Baker being willing to trade with her. Each party is treating the other

party as a mere tool in the Hobbesian sense. Baker and Vintner are not treating each other as ends in themselves; they are not respecting each other's Kantian dignity. So, with this interpretation of "mutual benefit" and reciprocity," they are not virtuous in MacIntyre's sense because this kind of behavior hinders their ability to live out their lives with dignity.

Nor with this reading are the identification and recognition tests passed. Both parties voluntarily trade with one another. Furthermore, their willingness to trade may well be reinforced by repeated interaction. Based on past trades, Vintner knows that if she gives Baker three bottles of wine with the expectation of receiving two loafs of bread in exchange once they are baked, Baker will not renege on their agreement by keeping both the wine and the bread. Yet, although both parties willingly engage in trade with each other, it is hard to see why they would endorse this activity given (as we have seen) that it offends their dignities. So, it seems, there is a failure of the identification test. Turning now to the recognition test, Baker and Vintner's reciprocal intentions to be useful to each other are both self-serving. Neither of them genuinely wants to help the other for his or her own sake. Their motives are selfish, and so do not provide moral grounds for their dispositions to trade with the intention of mutual benefit. Thus, the recognition test fails as well. And for that reason, Baker and Vintner are not even virtuous in their dispositions relative to the practice of market exchange.

Suppose, now, that "mutual benefit" and "reciprocity" are to be interpreted in terms of what Bruni and Sugden (2008) say about "mutual assistance." Baker and Vintner regard themselves as each doing their part in bringing about the collective good of mutual benefit. Neither of them thinks of their trading partner in instrumental terms; they approach their market exchanges as partners in a cooperative enterprise that they would regard as being a failure if they don't both benefit from trades that they consummate.

Baker and Vintner plan their trades a month at a time. They agree that Vintner will provide 59 bottles of wine in exchange for 30 loafs of bread from Baker. The exchange is mutually beneficial because Baker receives more than one bottle of wine for each loaf of bread, and Vintner provides less than two bottles of wine for each loaf of bread. They each intend the other party to benefit, not just themselves, and their intentions are realized. Yet, Baker has obtained virtually all of the gains from trade. We are in a situation similar to that of a Hobbesian proposer in the ultimatum game. Vintner has acquiesced in the trade because she is getting more than her reservation price. Nevertheless, her dignity has been offended. If the situation had been reversed with Vintner realizing most of the gains from trade, it would be Baker whose dignity has not been respected. The willingness of both Baker and Vintner to propose a grossly unequal distribution of the gains from trade suggests that neither of them regards his or her trading partner as an equal, one whose worth as a human is valued as much as his or her own. In other words, Baker and Vintner treat their trading partners merely as means to their own ends. As a consequence, neither of them is virtuous in MacIntyre's sense once Kantian dignity is taken account of in addition to the mutual gains from trade. We again have a failure of the identification test. Neither party

can endorse trading based on dispositions that could result in market exchanges that insult their dignity. Now, however, Baker and Vintner have genuine moral reasons for their intentions. They are concerned about each other's interests for their own sakes, not just instrumentally. Each of them are motivated by a desire to promote both of their interests, not just his or her own. While both Baker and Vintner hope and expect that the other party will approach their trading relationship with the same attitude, and in that sense their intentions are reciprocal, these intentions are not conditional on these beliefs being correct. Relative to the practice of market exchange based on an intention for mutual benefit, their moral attitudes provide an adequate justification for endorsing their dispositions, which is sufficient for passing the recognition test. Hence, relative to the practice of market exchange, their dispositions are virtuous. But having an intention to play one's part in promoting each party's interests for his or her own sake when engaging in a voluntary mutually beneficial market exchange is not sufficient to ensure that the intrinsic worth of each of one's trading partners—his or her dignity—is necessarily respected, even when this intention is grounded in a conception of reciprocity that is not based solely on self-interest because mutually beneficial exchange can result in a distribution of benefits that offends the dignity of one of the parties to the transaction. Thus, as we have seen, these individuals need not be virtuous once the overall good of individual lives taken as a whole is considered; they need not be virtuous in MacIntyre's sense.

This line of reasoning suggests that the intentions that Bruni and Sugden attribute to virtuous market participants and the foundation for these intentions in attitudes of reciprocity are insufficient to ensure that market exchange is conducted virtuously. It is wrong for someone to propose keeping most of the gains from trade for him- or herself as that offends the dignity of the other parties to the exchange; these others are not being treated as equals who are worthy of the respect they are due as autonomous rational human beings. Reciprocity, by itself, does not ensure that individuals are treated as equals according to the Kantian conception of dignity.¹⁰ In other words, having the intention of advancing one's trading partners' interests provided that they do the same is not same as treating them as equals. For this reason, if an instantiation of a disposition of mutual assistance in market exchange is to be commended, it is also necessary that the intrinsic dignity of human life be respected. In many contemporary societies, there is vast inequality in wealth. Market exchanges tend to preserve these inequalities. Yet, as Smith ([1776] 1976, Bk. V, Chap. II, Part II, Art. 4, par. 12) so eloquently observed, there are goods that according to the customs of one's society one must possess in order to appear in public without feeling shame. More generally, the lives of the poor are often regarded, either by themselves or by others, as being of little worth; their dignity as humans is not fully respected. A normative evaluation of markets as a practice whose *telos* is mutual benefit implicitly accepts the pre-trade situation, the *baseline*, as being of no moral consequence for

¹⁰ Nevertheless, reciprocity does place limits on how much one can take advantage of those one trades with. For example, if a seller mistakenly gives too much change to a buyer, it would be wrong to keep more than was owed as that was not the intention of the seller.

this evaluation.¹¹ But, if markets leave part of society behind and thereby hinder their pursuit of lives with dignity, then considering virtues relative to the practice of market exchange cannot be sufficient by itself to determine whether the market virtues identified by Bruni and Sugden promote the overall good of individual lives and serve to strengthen those traditions that enable individuals to flourish.

Consider, for example, “stoicism about reward.” An individual is to acquiesce if he or she receives little reward in the market for what he or she has to offer. But if this individual has led a deprived life that has afforded little opportunity to develop skills to produce goods or services that the market values, why should this outcome be regarded as being morally acceptable? If “stoicism about reward” is to be regarded as being a virtue, this cannot be determined by considering this disposition solely from the perspective of market exchange. At a minimum, it must be evaluated from a wider perspective, one that combines market exchange with a redistributive tax system. As we have noted, MacIntyre (2007, p. 197) emphasizes that considering a virtue relative to a practice provides only a “partial and tentative definition of a virtue.”

All that Bruni and Sugden (2013, p. 162) say about this issue is that “[s]toicism about market reward can conflict with the pursuit of social justice.” Bruni and Sugden (2008, pp. 52–53) respond to those who “have doubted whether market relations can be fraternal unless they take place against a background of equality” by saying that

it is important to remember again that our concern is with the moral and affective attributes of market relationships, not with the normative appraisal of the market as a whole. What is at issue is whether individuals with very different levels of wealth can perceive their interactions as mutual assistance, intentionally pursuing joint benefit on terms of friendliness and goodwill. We suggest that this *is* possible.¹² (emphasis in the original)

It is not clear exactly what is meant by the distinction made in the first sentence of this quotation. Our reading is that Bruni and Sugden are concerned with markets viewed as a MacIntyrean practice for mutual benefit and are contrasting this concern with an all-things-considered normative evaluation of markets, an evaluation that would take account of other features of markets, such as the extent to which the dignity of individuals is respected or whether the outcomes are regarded as being fair. Regardless of exactly what Bruni and Sugden mean, their conclusion strikes us as being implausible. We find it hard to imagine that individuals who are destitute and have little in the way of market skills would exhibit such goodwill towards market arrangements that do not promote their flourishing. Their dignity is compromised too much by knowing that what they have to offer has little market value for it to be plausible to suppose that they exhibit the fraternal dispositions that Bruni and Sugden’s account requires.

¹¹ Barry (1993) provides an extended discussion of the moral significance of baselines for theories of justice that apply to a society that views itself as seeking mutual benefits for its members through cooperative activities.

¹² We interpret Bruni and Sugden’s position as requiring that not only is this possible, but also that this is required if market exchange is to be regarded as a practice whose *telos* is mutual benefit.

We do not believe that it is possible to provide a satisfactory normative assessment of a practice in isolation. As a general rule, to determine the worth of a practice, one must employ criteria that are not intrinsic to the practice. For example, the practice of torturing one another is condemned for many reasons (e.g., it is degrading) that are not intrinsic to it. Nevertheless, this practice has intrinsic goods, such as achieving a high degree of success in inflicting pain on a victim. It is not possible to condemn this practice or the dispositions that would enable participants to excel at this practice without viewing this practice from a wider perspective. That is what the second and third stages of MacIntyre's analysis provide.

In the case of market exchange, its *telos*—mutual benefit—is also one of the goods intrinsic to this practice. Unlike the torture example, the gains from trade that constitute this benefit do take account of goods that are not *solely* intrinsic to market exchange, namely, the well-beings of the market participants. However, well-beings are only being accounted for in a rather attenuated sense—consumption benefits. Whether these benefits contribute to the excellences of a whole life or to the sustaining of the culture that is partly determinative of an individual's conception of what constitutes a good life cannot be assessed by evaluating this practice on its own terms. As the torture example illustrates, a wider perspective is needed, such as that provided by MacIntyre's approach to virtue ethics.

8 Concluding Remarks

Bruni and Sugden could respond that it is not necessary to treat dignity as a separate good. Rather, they might say, market transactions would not be regarded as being mutually beneficial if anybody's dignity is insulted. In Bruni and Sugden (2008, p. 57), they express such a view with regard to being treated fairly: "if a market relationship is to be perceived as mutual assistance, the distribution of gains from trade must not deviate too far from whatever standards of fairness are recognized by the parties concerned." We, however, believe that it is better not to modify how we conceive of mutual benefit (in the sense of mutual assistance), and instead to think of mutual benefit, being treated fairly, and dignity as distinct goods.

Of course, one can, as Bruni and Sugden (2013) do, adopt MacIntyre's understanding of a practice and define virtues relative to a practice without subscribing to the rest of his requirements for character traits and dispositions to qualify as a virtue. If one does that, then virtues associated with different practices may conflict; this is simply a contingent fact about social interactions. Bruni and Sugden (2013, p. 161) acknowledge that this is the case. However, they do not offer any guidance as to how such conflicts are to be resolved, which is something that MacIntyre's approach has the resources to address.

Mutual benefit and dignity do not exhaust the human goods that would need to be considered if one were to provide a comprehensive analysis of market virtues from a MacIntyrian perspective. Consequently, someone who is fully committed to the MacIntyre program would regard our discussion of market virtues, not just that of

Bruni and Sugden, as being incomplete. What we intend here is merely to provide a prolegomenon to a complete account of market virtues from this perspective, not the complete account itself.

There are other respects in which Bruni and Sugden's virtue-theoretic defense of markets deserves scrutiny in addition to its conformity with MacIntyre's understanding of practices and virtues and the extent to which their understanding of markets is compatible with respect for intrinsic human dignity. An important contribution to this undertaking is provided by Fumagalli (2020). Fumagalli identifies what he considers to be three shortcomings of the defenses of markets that have been advanced from a virtue ethics perspective: (1) markets sometimes do not reflect individual intentions for mutual benefit, (2) market virtues have little overlap with what are generally regarded as being virtues, and (3) behavior in markets may be consistent with virtue but may not reflect virtuous intentions, and are therefore not virtuous.¹³ A further issue that is worth exploring is whether Bruni and Sugden have satisfactorily dealt with the concerns raised by Anderson (1993) and Sandel (2012), among others, who call for moral limits to markets.

Bruni and Sugden's use of virtue ethics in the normative evaluation of markets has much to recommend. We regard our contribution as supplementing theirs rather than being an alternative to it. Nevertheless, we have argued that their analysis requires further development if it is to provide a satisfactory account of market virtues, at least when virtues are understood in MacIntyre's sense.

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Chapter 11

Implementing Luck Egalitarianism in a Relational Way: Selecting Social Contracts Under Resource Constraints, Resolving Practical Challenges, and Ensuring Dignity



Toshiaki Hiromitsu

Abstract There is a disparity between luck egalitarianism and social reality, as illustrated by widening inequality. This paper argues for the implementation of luck egalitarianism to resolve this disparity, showing that its implementation should incorporate critiques from relational egalitarianism. First, by examining luck egalitarianism under resource constraints, the promising nature of the equality of resources (an equality of goods and leisure) is demonstrated. Equality of resources is a promising choice for those who want to live in a free and equal society in which the relational aspects between people are considered with full regard for human dignity. The idea of a hypothetical insurance market, separate from luck egalitarianism, should be abandoned. Furthermore, three practical challenges in social implementation—the distinction between option and brute luck, the harshness objection, and tensions with the private sphere—are discussed. To resolve these challenges, luck egalitarianism should be implemented relationally, guided by the idea of dignity and embodied in reasonable standards within social institutions.

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1 Introduction

Luck egalitarianism begins with the distinction between *option luck* and *brute luck*, proposed by Dworkin (2000). Option luck concerns a deliberate and calculated gamble, while brute luck deals with how risks that are not considered deliberate gambles fall out. In the case of option luck, you take a risk with conviction; therefore, even if the result is bad, you will not be relieved. Conversely, if the result of brute luck is bad, it is considered unjust and should be remedied. The inconvenience of brute luck must be neutralized by the transfer of resources from those who are fortunate, which represents equality of resources. Cohen (1989: 931), also known as a luck egalitarian, argues that a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution, and that brute luck is an enemy of just equality. Since its inception, luck egalitarianism has attracted the attention of several philosophers.

However, as Samuel Scheffler points out, luck egalitarianism is far from being linked to its evolving political and economic backgrounds.

(T) here was a sharp disparity between the luck egalitarianism that was becoming increasingly influential in philosophical discussions of distributive justice, and the actual distributive practices of the societies in which those discussions took place. (Scheffler, 2003: 14)

Behind the development of luck egalitarianism, income and wealth inequality has widened in advanced economies (see Deaton, 2013, Atkinson, 2015, and Temin, 2017), and the dysfunction of social safety nets has become a serious concern. In *Bismarckian* countries on the European continent, such as Germany and France, social safety nets have been based on social insurance, in which entitlement is associated with employment status. The right and range of benefits are linked to the contribution previously paid (Palier, 2010: 24). Children, youth, and women who are unable to pay (sufficient) insurance premiums in advance are supposed to receive protection from their families. However, their situation is worsening as families are weakened by the destabilization of employment in recent decades. Esping-Andersen (2010: 16–17) points out that in these economies, there is a high correlation between the social origin of children and their destiny. The families into which these children are born are considered consequences of brute luck, for which they are not responsible. However, there is no social insurance to save them, no matter how unfavorable the family environment may be, because they cannot contribute before their birth. Although inequality is more extensive in the United States than in Europe, it is difficult to gain support for the enhancement of social safety nets in the United States. Temin (2017) draws on a survey by Page et al. (2013) that wealthy people, who should fund social safety nets more, are certainly not ready in the United States. The rich raise the budget deficit as the most important problem facing the United States, and support spending cuts rather than tax increases as a means of eliminating deficit.

This paper aims to address the disparity between luck egalitarianism and distributive practices in economies. Luck egalitarianism makes it possible to apply the idea of social insurance to broader social spheres by returning to a position before risks are realized. It forms the basis for providing social safety nets through the idea of

insurance against the risks faced by prenatal individuals. Furthermore, luck egalitarianism offers us a reason to reach out to misfortune beyond responsibility while holding those responsible for the consequences of option luck. The rich and needy should be treated equally, as long as their fortune and misfortune are attributed to brute luck. Luck egalitarianism creates solidarity between fortunate people and those who are miserable.

To resolve this disparity, it is imperative to consider the social implementation of luck egalitarianism. It is necessary to present a concrete scheme of social safety nets based on luck egalitarianism. For this purpose, two major issues must be addressed. The first is to elucidate the functions of luck egalitarianism in the economy. Even if we intend to eliminate the influence of brute luck, we must be subject to the constraints of socially-available resources. A series of studies on economic models by Roemer (1985, 1996, 2001), Roemer & Trannoy (2015) are known to address this issue; however, his studies mainly derive negative implications of luck egalitarianism. By setting a unique model, this study considers how luck egalitarianism can be implemented while identifying problems in Roemer's argument. It is demonstrated that the equality of resources (equality of goods and leisure here) is worthy of support for those who want to live in free and equal societies.

The second issue concerns the feasibility of social implementation. Correspondingly, three challenges that must be resolved in its implementation are discussed. The first challenge is how to draw a line between options and brute luck. The second is whether it is appropriate to leave victims of bad option luck in miserable states. The third states that recognizing individuals' states and behaviors leading to those states, by the government, is a technical premise for the social implementation of luck egalitarianism. Recent progress in information technology has reduced the cost of knowing states and behaviors; at the same time, it poses a threat to personal lives. These three are practical challenges, as well as those raised by philosophers such as Anderson (1999) and Scheffler, who are critical of luck egalitarianism and are called relational egalitarianists.

Relational egalitarianists highlight the importance of not narrowing our concern to the distribution of resources, but to a broader concern with whether the relationships among people are just (e.g., Anderson, 1999: 313–314). The nature of a relationship between people is defined by the basic structures and institutions of society rather than by individual distribution. The implementation of luck egalitarianism is an urgent task. However, it is precisely for its social implementation that luck egalitarianism must incorporate critiques from relational theorists. First, this study suggests that relational considerations should be included in the choice of social contracts, and that Dworkin's theory of a hypothetical insurance market, which is a part of luck egalitarianism of Dworkin, should be abandoned. Second, this study argues that to solve practical challenges in social implementation, it is necessary to institutionalize standards that are socially accepted as reasonable. Considering these two issues, the concept of dignity, the importance of which was raised by Dworkin (2011), plays a crucial role. Dworkin empathizes with the idea of living well rather than being thankful for having a good life and places dignity at the foundation of his luck egalitarianism, which supports living well.

Section 2 shows the urgency of examining luck egalitarianism toward its social implementation. In Sects. 3 and 4, the question of how luck egalitarianism can be socially implemented is addressed. Section 3 elucidates the function of luck egalitarianism under resource constraints. In Sect. 4, practical challenges are discussed. Section 5 presents the conclusions.

2 The Urgency of Examining Luck Egalitarianism and Its Social Implementation

2.1 *Insurance*

As already mentioned, luck egalitarianism begins by distinguishing between option and brute luck. Dworkin emphasizes the role of insurance as a mechanism to convert brute luck into option luck. If we have an opportunity to be insured but choose not to, our ex-post damage due to a disaster is no longer regarded as a consequence of brute luck. However, an important part of luck comes from the difference in natural endowments and social circumstances as a matter of pure brute luck. We may or may not be born to affluent parents. Some are blessed with natural talent, whereas others are born with disabilities. This difference cannot be the outcome of option luck, but it is also not possible to get insured before birth. The approach proposed by Dworkin to address this problem of innate difference is the idea of a hypothetical insurance market. In this market, an individual before birth is assumed, she ponders what her situations after birth are likely to be, and buys/sells insurance for each situation.

Trading insurance before birth is a hypothetical story. In the real world, Dworkin (2000: 100) proposes imposing taxes after birth and reallocating resources to those who are not fortunate to be born. This tax is close to income taxation, based on the ability-to-pay principle. In the context of addressing inequality in inherited property from previous generations, Dworkin proposes capital transfer taxes on gifts and bequests.

2.2 *The Urgency*

In the debate over distributive justice, luck egalitarianism has been considered one of the leading positions, and has been intensively discussed (see Roemer, 1996; Hirose, 2015 for comprehensive pictures of distributive justice). As Scheffler points out, there is a disparity between luck egalitarianism and the actual economic situation. However, as shown in the left column of Table 1, in light of recent economic developments, there is a growing necessity to seriously examine how luck egalitarianism can be socially implemented in the following three points.

Table 1 Social implementation of luck egalitarianism

	Urgency of social implementation	Practical challenges	Resolving the challenges
Design of social safety nets	<ul style="list-style-type: none"> *Resolving dysfunction of social insurance *Expanding the coverage of social insurance to border spheres of society 	<ul style="list-style-type: none"> *Difficulty in distinguishing between option and brute luck *It is doubtful that people’s choices have been made freely *Unlimited rescues deprive the economy of the vitality 	<ul style="list-style-type: none"> *There are reasonable standards in society regarding cases in which it makes sense to hold responsibility *The standards are derived from the idea of human dignity and are embodied in social institutions
Solidarity	<ul style="list-style-type: none"> *Creating solidarity between the rich and the needy *Providing a reason to reach out to misfortunate beyond responsibility 	<ul style="list-style-type: none"> *Harshness objection *Harsh pursuit of responsibility is against social solidarity 	<ul style="list-style-type: none"> *Minimum guarantee is derived from dignity, which is also the source of luck egalitarianism *Repentance reconciles forgiveness and dignity. Forgiveness needs to be made on reasonable standards, supported by dignity and institutionalized in social safety nets
Technological progress	<ul style="list-style-type: none"> *Progress of information technology makes gasping individuals’ states and behaviors easier 	<ul style="list-style-type: none"> *Tension with private sphere *Conflicts between privacy and grasping individuals’ states and behaviors are increasingly serious with technological progress 	<ul style="list-style-type: none"> *Privacy is derived from dignity, which is also the source of luck egalitarianism *Reasonable and institutionalized standards decide whether step into the private spheres is allowed

The first concerns the design of social safety nets. With changes in economies, problems that are difficult to handle using conventional social safety nets have materialized. Many advanced economies, including continental European economies, have built social safety nets centered on social insurance. Such social safety nets are known as Bismarckian after the German Chancellor who first introduced the system. Barr (2001) argues that the advantage of social insurance is not limited to solving problems such as adverse selection that are difficult to overcome with private insurance through compulsory enrollment. He points out that leaving pure actuarial insurance enables us to address cases in which the probability of accidents is not independent between individuals (e.g., the pandemic and unemployment due to recession). Changes in economic structure and medical technology cannot be captured with probability, but with uncertainty, and such changes also fit within non-actuarial insurance. However, entitlement to social insurance is associated with the payment of premiums. Youth

and women with poor payment records cannot reach out even when they face difficulties. Children are not protected by social insurance. They cannot choose the families in which they are born; however, they cannot contribute before their birth. As Corak (2016) reveals from international cross-section analysis, however, inequality is passed from one generation to another. Luck egalitarianism makes it possible to expand the coverage of social insurance to broader spheres of society by returning to the time before the realization of risks. For example, the imaging of prenatal individuals provides the foundation of social safety nets to children through social insurance. The social insurance introduced here is different from pure actuarial insurance, so it is no longer voluntarily enrolled or not enrolled but gains legitimacy through the necessity of social protection.

The second point relates to solidarity. It is becoming increasingly difficult to obtain support for social safety nets. It has already been pointed out that inequality in income and wealth has long widened in advanced economies. Increasing inequality has triggered political and social polarization in the United States, which may undermine the foundations of democracy (see Levitsky & Ziblatt, 2018). The strengthening of social safety nets in response to widening inequity has been proposed. For instance, in 2021, the Biden administration in the United States proposed a package that combined tax increases for high-income earners with social welfare expansion. Proposals for basic income, defined as “a periodic cash payment unconditionally delivered to all on an individual basis, without means-test or work requirement” (Basic Income Earth Network, 2016), have been active (e.g., Van Parijs, 1995). However, little progress has been made in these proposals. Why should the rich cooperate in transferring resources to the poor? It is difficult to obtain support for the enhancement of social safety nets, particularly in the United States. As mentioned earlier, Temin (2017) draws on a survey by Page et al. (2013) that wealthy people who should be funding social safety nets are not willing to do so in the United States. The survey is based on a sample of the rich (average income USD 1 million and average wealth USD 14 million), collected from customer lists of high-end businesses. According to the survey, the rich perceive that the most important problem facing the country is budget deficit (rather than unemployment and education), and they support spending cuts, not tax increases, to eliminate the deficit. It is difficult to garner sufficient political support for legislation to increase taxes. Consensus building for universal benefits seems even more difficult. As governments suffer from accumulated public debt, the room for universal benefits become narrower. In this regard, luck egalitarianism provides a reason to reach out to misfortune beyond responsibility while holding accountability for the consequences of free choice. The rich and needy should be treated equally, as long as the misfortune of the needy is attributed to brute luck. As Inoue et al. (2019) point out based on their experiment, real people want to give priority to those who have been distressed by brute luck. Luck egalitarianism creates solidarity between those who are fortunate and those who are in misery.

The third concerns technological progress. To implement luck egalitarianism, it is necessary for the government to grasp individuals' income and wealth states and behaviors leading to such states. Recognizing an individual's suffering from misfortune is a prerequisite for redistribution. Through technological progress, it

has become possible to know the state of individuals at a low cost. It is necessary to recognize behavioral history to clarify the reason for being in that state; however, it is technically possible to know history with the help of information technology. However, as discussed later, grasping individuals' states and behaviors raises concerns of privacy.

3 Luck Egalitarianism Under Resource Constraints

3.1 A Model with the Handicapped in Production

The previous section discussed the urgency of examining how luck egalitarianism can be implemented socially. This section and Sect. 4 discuss how luck egalitarianism can be implemented.

This section elucidates the role of luck egalitarianism in the overall economy. Even luck egalitarianism must be subject to the constraints of socially-available resources that are affected by labor incentives. For this issue, analysis using an economic model that considers all economic resources is useful. Previous studies include a series of studies by Roemer (1985, 1996, 2001), Roemer & Trannoy (2015), in which he applied a general equilibrium model to luck egalitarianism, especially to its hypothetical insurance market. Based on a pure exchange economy model, he discusses a story in which prenatal souls, endowed with equal resources, buy and sell insurance under uncertain postnatal circumstances. He analyzes the equilibrium, of which the existence is guaranteed by the Arrow-Debreu theorem (Arrow & Debreu, 1954), and points out a paradox that the hypothetical insurance market induces the transfer of resources from the handicapped in transforming resources into utility to healthy people, as we see later. Roemer's research focuses on deriving the negative implications of luck egalitarianism; however, in this paper, the positive implications for its social implementation are discussed.

Methodologically, this section differs from Roemer's analysis in two respects. The first is to incorporate production into the model. The disparity in people's production capacity (rather than their ability to transform resources into utility) is discussed here. The major cause of inequality in welfare in the real world is production differences. Second, this study shifts from the framework of the hypothetical insurance market, returns to the origin of social contract theory, and asks prenatal individuals what kind of social contract (i.e., political and economic regime) they should live under. In the model in this section, the transfer of resources is carried out by the government and not insurance contracts. Dworkin starts the discussion with insurance and switches to tax redistribution when considering real-world applications. However, the model here incorporates redistribution into social contracts from the beginning and seamlessly connects prenatal choice and real-world regimes. Furthermore, the hypothetical insurance market assumes individuals who maximize their utilities. However, as we discuss later, the contractual approach has an advantage

of allowing other concerns than individual maximization. Varian (1985) works on the introduction of production into the model; however, the setting to question the choice of social contract is not seen in Varian.

In the model, an economy has one Type 1 and Type 2 persons each. Both obtain utility (U) from the consumption of goods (C) and leisure (L). They have the same utility function. In production activities, they produce goods (P) through labor (1-L). Compared to Type 1, Type 2 is inferior in production capacity (efficiency).

$$U_1 = C_1^\alpha L_1^{1-\alpha}, 0 < \alpha < 1. \tag{1}$$

$$P_1 = (2 - L_1)^{\frac{1}{2}} - 1, 0 \leq L_1 \leq 1. \tag{2}$$

$$U_2 = C_2^\alpha L_2^{1-\alpha}, 0 < \alpha < 1. \tag{3}$$

$$P_2 = (2 - L_2)^{\frac{1}{\beta}} - 1, \beta > 2, 0 \leq L_2 \leq 1. \tag{4}$$

The subscripts (1, 2) at the bottom of each symbol represent Types 1 and 2, respectively.

In Fig. 1, the production functions of Types 1 and 2 are drawn with the horizontal axis as labor (1-L) and the vertical axis as the produced goods (P) (Type 2 is drawn as $\beta = 3$). For both types, production declines marginally with additional labor input. The production capacity (efficiency) of Type 2 is inferior to that of Type 1. Subordination of production capacity is attributed to innate barriers. Luck egalitarianism regards leaving Type 2 alone as unjust and considers relieving the unfortunate Type 2.

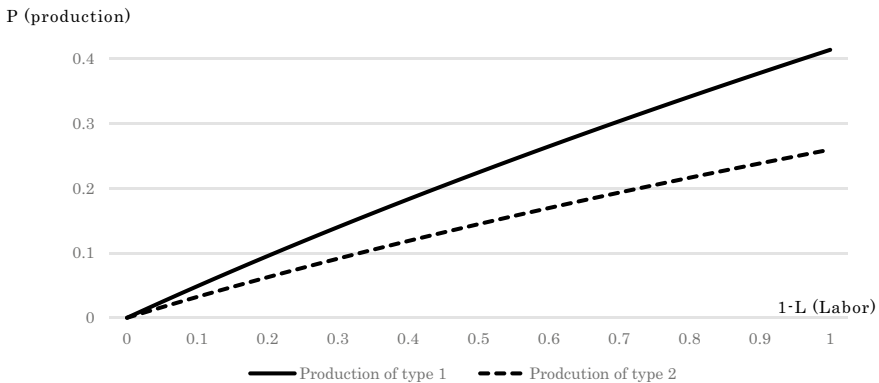


Fig. 1 Type 1 and Type 2 production (horizontal axis: labor, vertical axis: production, $\beta = 3$)
Note The production capacity (efficiency) of Type 2 is inferior to that of Type 1. Subordination of production capacity is attributed to innate handicaps. Luck egalitarianism regards leaving Type 2 alone as unjust and considers relieving the unfortunate Type 2

3.2 *Four Social Contracts: State of Nature, Equality of Goods, Equality of Goods and Leisure, and Utilitarianism*

The model can be solved by adding constraints to it. Constraints represent social contracts. The social contracts to be considered are (1) state of nature, (2) equality of goods, (3) equality of goods and leisure, and (4) utilitarianism. Here, in the sense of choosing to live under the state of nature, the state of nature is also considered a social contract.

In the state of nature, each type produces based on its own production function and then consumes its own product. Essentially, the utility function Eqs. (1) and (3) are solved to maximize each, with the constraint condition, $C_1 = P_1$, $C_2 = P_2$, and each type of consumption (C_i) and leisure (L_i) is obtained. In the state of nature, what luck egalitarianism considers unjust has been overlooked.

In the social contract of equality of goods, the government intends to realize equality of goods despite the difference in production capacity (efficiency). The constraint is to equalize consumption between types within the production of the economy. That is $C_1 = C_2$, $C_1 + C_2 = P_1 + P_2$. Since Type 1 consumption is half the product of the entire economy, it is

$$C_1 = \frac{1}{2} \left[(2 - L_1)^{\frac{1}{2}} - 1 + (2 - L_2)^{\frac{1}{\beta}} - 1 \right]. \quad (5)$$

Substituting Eq. (5) for Eq. (1), by maximizing the utility of Type 1 with respect to L_1 given L_2 , the optimal reaction function of Type 1 is obtained. The optimal reaction function of Type 2 is derived in a similar manner, and solving the simultaneous equations of the two optimal reaction functions gives the consumption (C_i) and leisure (L_i) of each type. Under equality of goods, each type changes its leisure time and maximizes its utility, assuming that the government redistributes both types of consumption equally.

In equality of goods and leisure, the distributions of both goods and leisure are equalized. The constraint is $C_1 = C_2 = C$, $L_1 = L_2 = L$, $C_1 + C_2 = P_1 + P_2$ (as the consumption and leisure of both types are equal, they are marked with C , L). Both types maximize the utility function of Eq. (6) with respect to L , and then C and L are obtained.

$$U_i = \left\{ \frac{1}{2} \left[(2 - L)^{\frac{1}{2}} - 1 + (2 - L)^{\frac{1}{\beta}} - 1 \right] \right\}^{\alpha} L^{1-\alpha}. \quad (6)$$

Under equality of goods and leisure, each type changes its leisure and maximizes its utility, assuming that the government allocates the consumption and leisure of the other type to be equal to its own.

In the utilitarian social contract, assuming additivity of utility, the government decides on consumption (C_i) and leisure (L_i) of both types, so that total utility is

maximized.

$$U_1 + U_2 = C_1^\alpha L_1^{1-\alpha} + C_2^\alpha L_2^{1-\alpha}. \quad (7)$$

The objective function is Eq. (7), which is maximized under the constraint of $C_1 + C_2 = P_1 + P_2 = (2 - L_1)^{\frac{1}{2}} - 1 + (2 - L_2)^{\frac{1}{\beta}} - 1$. Utilitarianism does not aim to correct the inconvenience of Type 2 in itself. Even when the treatment of Type 2 is improved, this is only a result. Furthermore, under utilitarianism, both types no longer have the autonomy to maximize their utility. They passively receive government-directed consumption (C_i) and leisure (L_i). A utilitarian regime is a command economy.

Table 2 summarizes the solutions under the four social contracts. For brevity, the solutions at $\alpha = 0.5$, $\beta = 3$ are shown in the table. The numerical values are traced horizontally (row direction), and those with the smallest values are in standard font. The highest numerical values are in ***bold/italic***, and values in the middle are in **bold** and in *italic* in descending order. In equality of goods, C_1 , C_2 , and in equality of goods and leisure, C_1 , C_2 and L_1 , L_2 are variables that are agreed to be equalized by the contract.

Under the state of nature, the more capable Type 1 works more, consumes more, and enjoys higher utility than Type 2. The three social contracts of the state of nature, equality of goods, and equality of goods and leisure derive solutions without level comparability of utility between types; however, in evaluating their solutions, the utility levels between types are compared. From the perspective of luck egalitarianism, it is unjust to leave the disadvantaged Type 2 misfortune.

Under equality of goods, both types have more leisure (less labor) than in the state of nature. From the viewpoint of Type 1, the motivation to work is reduced by transferring the product of its labor to Type 2. From the perspective of Type 2, motivation also declines because the way for consumption relying on Type 1 labor is now open. As labor decreases throughout the economy, production is cut and total utility of the economy declines.¹ Compared with the state of nature, what is interesting is that the utility of Type 2 increases, while that of Type 1 decreases, and is even lower than the utility of Type 2. Type 1 is not directly forced to work; however, it can be regarded that talented Type 1 is *substantively enslaved*.²

Instead of the problematic equality of goods, the social contract proposed by luck egalitarianism is equality of goods and leisure. Dworkin believes that it is desirable to equalize resources among people regardless of their brute luck; the equality of goods and leisure, not the equality of goods, is the proper expression of resource equality. Under equality of goods and leisure, both types work and consume equally;

¹ Even if there is no difference in production capacity (i.e., when there are no persons with disabilities), the equality of goods results in a decrease in labor and utility. Once they learn that they can count on the labor of others, they try to ride on the labor of others for free.

² There is another shortcoming regarding equality of goods. The model assumes that there are only two people, one for each type. However, if the members of society are increased (e.g., two per type, total four people), they increasingly rely on the labor of others and work less. Labor has a similar character to the provision of public goods.

Table 2 Four social contracts

	State of nature	Equality of goods	Equality of goods and leisure	Utilitarianism (command economy)
C_1	<i>0.215</i>	0.123	<i>0.176</i>	0.189
C_2	0.114	<i>0.123</i>	0.176	0.159
$C_1 + C_2$	<i>0.329</i>	0.246	0.353	0.348
L_1	<i>0.523</i>	0.585	0.526	0.439
L_2	<i>0.618</i>	0.822	0.526	0.673
$L_1 + L_2$	1.142	1.407	1.052	<i>1.112</i>
P_1	0.215	0.190	<i>0.214</i>	0.249
P_2	0.114	0.056	0.139	<i>0.099</i>
U_1	0.336	0.268	0.305	<i>0.288</i>
U_2	0.265	0.318	<i>0.305</i>	0.328
$U_1 + U_2$	<i>0.601</i>	0.586	0.609	0.616
Features	*Each type maximizes independently *Type 1 works more, consumes more, and enjoys higher utility than Type 2 *From the perspective of luck egalitarianism, it is unjust to leave the disadvantaged Type 2 misfortune	*Each type maximizes, assuming the government equalizes consumption between types within the production of the economy *Both types have the lowest level of labor (i.e., the lowest production level) among four social contracts *Type 1 utility is less than Type 2. Type 1 is in substantive enslavement	*Each type maximizes, assuming that government allocates the consumption and leisure of the other type to be equal to its own *Both types work and consume equally, and enjoy equal utility *The total utility is higher than that in the state of nature and equality of goods *No substantive enslavement	*The government decides consumption and leisure of both types so that total utility is maximized *Type 1 is directed to work harder than under the other social contracts and to transfer its products to Type 2 *Type 1 is subject to forced labor and is truly enslaved

Note The numerical values are traced horizontally (row direction), and the ones with the smallest values are in standard font. The highest numerical values are in ***bold/italic***, and values in the middle are in **bold** and *italic* in descending order. In equality of goods, C_1 , C_2 , and in equality of goods and leisure, C_1 , C_2 and L_1 , L_2 are variables that are agreed to be equalized by the contact

consequently, both types enjoy equal utility. The total utility of the economy is higher than that in the state of nature and equality of goods, where utility is unequal between types. One way of using words is to understand that even under the equality of goods and leisure, Type 1 remains under substantive enslavement, as long as the products of Type 1 have been transferred to Type 2. However, in this study, substantive enslavement is defined as the circumstances in which not only (1) the goods are transferred but also (2) the utility of the origin of transfer is less than that of

the recipient. Under equality of goods and leisure, therefore, there is no substantive enslavement.³

Finally, under the utilitarian social contract, Type 1 is directed to work harder than under the other social contracts and to transfer its products to Type 2. The total utility of society is maximum, but the utility of Type 1 is lower than that of Type 2, resulting in the *enslavement* of Type 1 talent. In utilitarianism, Type 1 is subject to forced labor because she is commanded to work and consume according to government directives. The talented type is truly enslaved.

The lower part of Table 2 summarizes the contract features. Equality of goods and leisure have better features than nature and equality of goods, as far as luck egalitarianism is concerned. Needless to say, utilitarianism is the best social contract in terms of maximizing total utility. However, the command economy implied by utilitarianism is contrary to individual freedom.

3.3 *Choice of Social Contract: Dignity as the Idea of Living Well*

The question is which social contract should be chosen and under what procedure. One procedure is to use the idea of expected utility, as in the case of Harsanyi's study (Harsanyi, 1976). Assuming there is a prenatal individual, choose a social contract that maximizes the total expected utility calculated according to the probability of each postnatal situation being realized. When applied to the setting in this section, the probability of being born as Type 1 or Type 2 is 50% each, and the utility obtained for each type is multiplied by 1/2. The expected utility is consistent with $U_1 + U_2$, in Table 2 multiplied by 1/2.

The superiority of utilitarianism is difficult to refute from the standpoint of maximizing expected utility. It is legitimate as long as we remain in a utilitarian position. However, luck egalitarianism is, of course, based on a different view of justice from utilitarianism. It is possible to defend a more desirable contract from the standpoint of luck egalitarianism, even if it is inferior in terms of total utility. The lack of freedom manifested in the slavery of the talented under utilitarianism is not acceptable to luck egalitarianism, which respects freedom of choice. If prenatal people want to live in a free and equal society, and the degree of freedom and equality realized in society is the criterion of choice, then the best of the four social contracts is equality of goods and leisure. The state of nature neglects the differences in natural endowments and is unjust. Equality of goods creates substantive enslavement of the talented. In addition, it makes the economy poor. Utilitarianism enslaves talent. It should also be noted that social contracts, including both true and substantive enslavement, are unlikely

³ Equality of goods and leisure is spared by the weakness of the equality of goods, raised in footnote 3, as the decrease in labor supply with the increase in members of society. Individuals determine the level of leisure that maximizes their utility, imagining a society in which the consumption and leisure of others are equal to their own.

to be complied with. Those who become Type 1 after birth attempt a rebellion once they realize that they are in slavery.

What has been stated here is not an arbitrary value judgment but has been derived consistently from the foundational value of dignity. First, let us focus on what Dworkin has said.

We should distinguish between living well and having a good life. These two different achievements are connected and distinguished in this way: living well means striving to create a good life, but only subject to certain constraints essential to human dignity. (Omitted) I now introduce two principles, that I believe state fundamental requirements of living well. (Omitted) The first is a principle of self-respect. Each person must take his own life seriously: he must accept that it is a matter of importance that his life is successful performance rather than a wasted opportunity. The second is a principle of authenticity. Each person has a special, personal responsibility for identifying what counts as success in his own life; he has a personal responsibility to create that life though a coherent narrative or style that he himself endorses. Together the two principles offer a conception of human dignity: dignity requires self-respect and authenticity. (Dworkin, 2011: 195–204)

Dworkin placed the concept of dignity at the foundation of his luck egalitarianism. The idea of dignity pays equal respect to people who regard their lives as challenges to live well. Those who seek to live a life of dignity grant others equivalent status. Those who wish to live in a society that recognizes one another as dignified individuals want to live in a society based on equality of resources. Equality of goods and utilitarianism is unacceptable because it involves enslavement. Utilitarianism is a command economy, which is also against freedom and inimical to human dignity. Failing to treat people equally and leaving them to their own mercy, the state of nature, also does not treat them in a dignified manner.

It could be criticized that assuming that prenatal individuals want to live in a free and equal society is pre-emptive. As a minimal counterargument to this criticism, it is possible to contend that the assumption that prenatal individuals intend to maximize expected utility is also pre-emptive. However, this counterargument is considered too modest. A social contract is an agreement with other parties. It does not stand without an idea of what kind of social relationships they want to enter with others. They consider not only the magnitude of personal gains, but also whether the self–other relationship implied by the contract makes sense. It is a major challenge that the assumption of maximizing expected utility luck concerns such a self–other relationship. Although not an examination of luck egalitarianism per se, the experimental studies suggest a difference between maximizing expected utility and concern for social relationships. For instance, Frignani and Ponti (2012) report three experiments: choice under the veil of ignorance, choice under risk, and choice of social relations with inequality. Their research revealed that the choice under the veil of ignorance is similar to the choice under risk, but not very like the choice of

social relations with inequity. The choice of social contract, which is discussed in this section, is not the maximization of the expected utility of an individual,^{4,5}.

Dignity is the key to implementing luck egalitarianism in a relational manner. In comparing luck egalitarianism and relational egalitarianism, Lippert-Rasmussen (2020) and Frost (2020) highlight that relational theory does not limit its concern to the allocation of resources, but deals with the broader question of whether the relationships between people are just or unjust. Relational considerations should be incorporated in the choice of a social contract. Without relational concerns, utilitarianism, rather than equality of resources, would be chosen.

Even the hypothetical insurance market should be criticized as being based on personal utility maximization. The relationship between luck egalitarianism and the hypothetical insurance market of Dworkin requires careful examination. When considering luck egalitarianism, the theoretical framework of choosing social contracts, as discussed in this paper, is more suitable than the hypothetical insurance market, not only because the contractual approach enables a seamless connection between prenatal choice and real-world regimes, but also because the approach allows for the consideration of relational aspects in societies, which are absent in the hypothetical insurance market.

3.4 The Handicapped in Transforming Resources into Utility

In the discussion thus far, adequate attention has been paid to the handicapped in production capacity (efficiency). Roemer studied the handicapped in transforming resources into utility (e.g., the bedridden). He points out a paradox that the hypothetical insurance market induces the transfer of resources from the handicapped to healthy people (e.g., Roemer, 1996).

The model described in this section can also reproduce the essence of Roemer's point. For instance, rewrite the utility function of Type 2 as follows:

⁴ Harsanyi's argument was originally presented as a question of difference principle presented by John Rawls in *A Theory of Justice* (Rawls, 1971). In response to the question, Rawls published a paper in *the American Economic Review* in defense of his theory (Rawls, 1974). In the paper, Rawls argues that his theory (called maximin in the paper) is "a macro not a micro principle." Although the meaning of the "macro principle" is not always clear, Rawls recognizes that what matters is not the magnitude of individual gains, but whether the relationship between people is just.

⁵ Similar results have been shown in other experimental studies. For example, Carlsson et al. (2005) point out that the degree to which people are inequity-averse is more significant than the degree to which they are risk-averse. Kameda et al. (2016) report the results of an experiment to choose the options of the three consequences of gambling or distribution to the unknown. The report emphasizes the correlation between individual choices in gambling and interpersonal allocation. However, as far as the data being reported (details in Kameda, 2020) is concerned, it seems that the number of subjects who choose the utilitarian type tends to decrease in the allocation scene. Whichever they are, the focus of luck egalitarianism is on the responsibility for being in a certain state, but these experiments lack consideration of such responsibility. The implications of these previous studies on the issues discussed in this paper are not direct.

$$U_2 = \frac{1}{10} C_2^\alpha L_2^{1-\alpha}, 0 < \alpha < 1. \tag{8}$$

The remaining settings of the model are the same as earlier. Type 2 has a handicap in transforming resources into utility (as well as a handicap in production).

The three social contracts other than utilitarianism do not presuppose a level of comparability in utility between types. Therefore, the allocation of consumption (C_i) and leisure (L_i) under each social contract does not change, even if Eq. (3) is switched to Eq. (8)'. The only point those changes is Type 2 utility (U_2), and likewise, total utility ($U_1 + U_2$). In contrast, in utilitarianism, maximization is carried out on the premise of level comparability of utility between types, and by switching Eq. (3) to (8)', the allocation of consumption (C_i) and leisure (L_i) is also affected.

The equivalent of Roemer's paradox arises when a social contract is selected from the perspective of the prenatal individual based on maximizing expected utility. Table 3 shows the solution when Eq. (3) is replaced with Eq. (8)'. As shown in Table 2, $\alpha = 0.5, \beta = 3$, and only utility is shown in the table. Since the utility of Type 2 has a limited impact on the economy overall, under utilitarianism, there is a corner solution, in which Type 2 is given no leisure, and all of its products are devoted to the consumption of Type 1.

In Table 2, not only goods and leisure but utility is also equal, in the case of equality of goods and leisure. However, in Table 3, equality of goods and leisure no longer results in equality of utility. It is clear that equality of goods and leisure (resources) does not necessarily mean equality of utility (welfare). Equality of goods and leisure becomes inferior to the state of nature, let alone utilitarianism, in terms of total utility. Prenatal individuals choose utilitarianism, which leaves no resources for the handicapped, even though there is a 50% chance of having the handicap in transforming goods into utility after their birth. Furthermore, the harsh state of nature is preferred to equality of goods and leisure. As Roemer points out, even with the setting of a prenatal individual, it is not possible to relieve the handicapped in transforming resources into utility.

The response of luck egalitarianism to this paradox is that it does not stand on the assumption that prenatal individuals want to maximize their expected utility. Individual utility maximization, which is assumed in both a utilitarian social contract and

Table 3 The handicapped in transforming resources into utility

	The state of nature	Equality of goods	Equality of goods and leisure	Utilitarianism (command economy)
U_1	0.336	0.268	<i>0.305</i>	0.533
U_2	<i>0.027</i>	0.032	0.030	0
$U_1 + U_2$	0.362	0.300	<i>0.335</i>	0.533

Note The numerical values are traced horizontally (row direction), and the ones with the smallest values are in standard font. The highest numerical values are in **bold/italic**, and values in the middle are in **bold** and in *italic* in descending order

a hypothetical insurance market, is not an appropriate foundation for implementing luck egalitarianism.

Luck egalitarianism argues that equalizing resources among people involves treating them with dignity. People are treated *as if* they are equal in their ability to enjoy utility. I am not afraid to admit that this luck egalitarian response is not completely immune to criticism. In Table 3, the utility of Type 2 under the equality of goods and leisure is only 1/10 of the utility of Type 1. An alternative to equality of resources is equality of welfare. Welfarist egalitarianism, as Scheffler (2003: 16) notes, implies that resources should be channeled disproportionately to Type 2, without regard for the way in which doing so depresses the levels of well-being of Type 1 and the economy as a whole can achieve. Welfarist egalitarianism is not immune to criticism. There is no choice but to come up with the right answer somewhere between equality of resources and equality of welfare. However, equality of resources has the advantage of respecting dignity. Individuals assume responsibility for living well. Furthermore, compared to welfare, resources can be objectively measured. Therefore, starting from the equality of resources (equality of goods and leisure), once signs are found that the resources allocated based on the equality of resources alone are not sufficient to improve the situation of the unfavorable, additional reallocation to the unfavorable shall be considered.⁶

4 Practical Challenges

4.1 Three Challenges

In this section, as shown in the middle column of Table 1, practical challenges that must be resolved for social implementation are considered.

The first challenge concerning the design of social safety nets is to distinguish between option and brute luck. Are people's choices really free? Scheffler (2003: 18) points out that people's voluntary choices are routinely influenced by unchosen features of their personalities, temperaments, and the social contexts in which they find themselves. For example, unhealthy habits, such as smoking, may be due to the influence of the environment in which they were born and raised. Marmot (2015) suggests that people's health is deeply influenced by their social environment. In

⁶ Luck egalitarianism is the idea of equality of resources. Once differences in utility functions are introduced, the difficulties that arise for luck egalitarianism are not limited to the case of the handicapped in transforming resources into utility. In the case of the equality of goods and leisure, in the previous sub-section, when Types 1 and 2 have different utility functions, their views on the ideal balance between consumption and leisure differ, and a solution cannot be derived. In this case, too, the answer from the luck egalitarianism is the same as in the case of the handicapped in transforming resources into utility. Luck egalitarianism starts by ignoring differences in utility functions, but allows for redistribution of resources when signs that the resources allocated based on the equality of resources alone are not enough to improve the situation of the unfavorable are found.

theory, an even more difficult problem is the treatment of bad luck in the higher order. Even when we decline safe and secure choices and make risky choices, we will either be lucky or unlucky. Is it not necessary to close the gap between the two? Fleurbaey (2006) considers the case of a motorbiker who just wants to have a taste of the wind in her hair for a while and has had an accident just at that moment. Fleurbaey argues that it seems too harsh to consider that the biker should bear the full consequences of her behavior. The biker would not have taken off the helmet if she had been omniscient and foreseen the future. Luck egalitarianism blames her for not being omniscient, which is inappropriate in the opinion of Fleurbaey. Even if luck egalitarianism can satisfactorily handle various risks that conventional social insurance cannot cover, it will be transformed into a logic that only provides limitless relief when it cannot be held accountable somewhere. Limitless relief ends up with simple egalitarianism in outcome, as the world of *all-luck view* of Hirose (2015: 51) regards all as brute luck. In the all-luck view, the animal spirit of taking risks is wiped out, and vitality of the economy is lost.

The second challenge is known as the harshness objection by Anderson (1999: 295–296). For example, Anderson considers that an uninsured driver who negligently makes an illegal turn that causes an accident with another car is dying at the scene of the accident. At this juncture, the question concerns whether it is just to abandon this injured driver. According to Anderson, luck egalitarianism should find no problem with the abandonment of reckless drivers. This criticism casts a doubt on the claim that luck egalitarianism brings solidarity through mediation of freedom and equality. The question is that it is inappropriate that there is no limit to the responsibility that accompanies freedom and that harsh pursuit of responsibility is against solidarity.

The third challenge is dealing with the tension between luck egalitarianism and the private sphere. Even if we intend to rescue a child from a poor family, the child's family environment may be so poor that it may be difficult to rescue by funding alone. Is it allowed to step up to the point where the child is separated from the home? Plato's *The Republic* (460C) proposes that officials take children and place them in the hands of childcare workers who live in isolation in a corner of the country. However, this measure conflicts with the views of modern families. Concerns of privacy are becoming increasingly serious in the wake of technological advances. Knowing individuals' states and behaviors that led them to those states is a technical premise for implementing luck egalitarianism; however, it conflicts with privacy. Anderson (1999: 305) presents the following example: Beautiful or ugly looks would determine personal success. Should the government record each person's appearance and make a judgment of its beauty and ugliness to eliminate the inequality of luck, assuming that appearance is inborn?

These challenges are practical issues that need to be resolved when building social safety nets based on luck egalitarianism. Simultaneously, they are points raised by philosophers such as Anderson and Scheffler, who are critical of luck egalitarianism and are called democratic egalitarians.

4.2 *Resolving Practical Challenges: Dignity as a Fundamental Value*

In this sub-section, as listed in the right-hand column of Table 1, these three practical challenges shall be addressed. First, how to respond to each of the challenges is considered, and then the motif that penetrates the entire response is discussed.

In order to answer the first challenge, the distinction between option and brute luck, ultimately, we must face the challenge of free will. However, we failed to obtain a convincing response to this question. Nevertheless, the first to consider is, as Hirose (2015: 52) points out, that it is easy to identify pure cases of brute luck, differences in natural endowments, even if it is difficult to identify pure option luck. As Vallentyne (2002) argues, residual luck has the properties of both option and brute luck to varying degrees, with pure brute luck of the difference in endowments as the endpoint. Luck egalitarianism can at least claim relief for the difference in endowments, and for the rest of luck, relief is required as the extent of brute luck, and responsibility is pursued as the extent of option luck. In the real world, a poor environment in which a defendant grows up does not mean that she is acquitted. There is consensus in society regarding cases in which it makes sense to hold responsibility. As for the luck of higher order, which was raised by Fleurbaey, it is the standard, which society recognizes as reasonable, to identify reasonability, and it is not appropriate to bring out the omniscient and use it as the standard. The standards for determining who should be rescued are derived from the idea of human dignity. The question of what to attribute to a person and what to exclude from her is closely linked to treating individuals as a dignified being. It is through the establishment of reasonable standards, embodied in social institutions, that we can best support the challenge of living well.

With regard to the second challenge, harshness objection, dignity is the key to the solution again. As Beitz (2013) points out, both historically and theoretically, dignity has been the source of many of human rights. As has been discussed, human dignity supports luck egalitarianism, and likewise, the idea of minimum guarantee is derived from dignity. Not providing rescue in the event of a traffic accident is an affront to the dignity of victims, and the minimum guarantee is an important measure to protect dignity. What about the treatment of people who are above the minimum level, but suffer from a situation that can be considered harsh? It is necessary to consider that human beings are prone to make mistakes. Relief may be appropriate, even above the minimum. Fleurbaey (2008) proposes forgiveness and help to make fresh starts in events of repentance for those who suffer from distress as a result of their choices. Repentance reconciles forgiveness and dignity. However, it is impossible to forgive without limits because someone is burdened with additional resources needed to make a fresh start. It is necessary to decide what kind of predicament, how to repent, and how to forgive. These decisions need to be made on reasonable standards and institutionalized in rules of social safety nets.

The third challenge, tension with private life, is formidable. Does luck egalitarianism extend into the private sphere? Does luck egalitarianism remain outside the

private space? Considering the history of basic human rights gained from resistance to oppression, the social implementation of luck egalitarianism must begin with respect for the private sphere. Therefore, there is no way to completely compensate for the inconvenience of individuals due to brute luck, and luck egalitarianism must be an institutional arrangement that compensates based on rules. Tan (2012) takes the position of limiting the application of luck egalitarianism to social institutions, not individuals. Along with luck egalitarianism, privacy is also derived from dignity. It is important for everyone to live autonomously, and privacy must be respected. Luck egalitarianism and privacy are mediated and integrated by institutions. Making luck egalitarianism institutional is advantageous. After deciding the rules in advance, it is possible to set the room and limits for entering private territory. For instance, it is widely practiced as workfare (e.g., Temporary Assistance for Needy Families, TANF in the United States) to support those who are above the minimum level while stepping into their private sphere, in the sense that support is conditional on employment. In the case of appearance, insurance coverage for the treatment of burn scars can be interpreted as an example in which compensation is enabled through the involvement of medical experts. Determining whether it is appropriate to step into the private sphere is once again based on the standards that are agreed to be reasonable. This agreement is not immutable. For example, in rescuing unlucky children, they have been separated from their families from time to time, and it is left to future discussions whether separation is more often used.

A common motif appears in the responses to these three challenges. The motif is that luck egalitarianism is institutionalized with reasonable social consensus. In the context of discussing the distinction between option and brute luck, Scheffler writes:

The more common or intuitive view, I believe, is that the fairness or unfairness of differences in advantage resulting from, on the one hand, factors beyond people's control and, on the other hand, people's voluntary choices, is highly dependent on the prevailing social context and institutional setting. (Scheffler, 2003: 32–33)

It is the prevailing social context and institutional setting, that is, according to this study, a reasonable social consensus, that determines the fairness or unfairness of differences in advantage. In institutionalization, the broader concern with whether the relationship between people is just as important as the distribution of resources. Luck egalitarianism is rooted in the concept of dignity, which supports the idea of living well as key to formulating social institutions. This enables luck egalitarianism to be mediated with minimum guarantees and privacy, which are indispensable in practice.

A reasonable social consensus can be informal, similar to social conventions. However, in democracies, important agreements are reached through democratic procedures, whose superiority in reaching a reasonable consensus has been observed throughout history. There are various procedures for democratic decision-making, such as unanimous agreement, majority voting, and deliberation, and there is no simple answer as to which is best. However, there may be some consensus that a democratic decision, in its broad sense, is desirable. The implementation of luck egalitarianism through democratic procedures is promising.

5 Conclusion

There has been disparity between luck egalitarianism and the reality of economy, widening inequality between the rich and the poor. The purpose of this paper is to promote the implementation of luck egalitarianism in social safety nets to resolve this disparity. Given the recent economic and social developments—dysfunction of social insurance, difficulties in social solidarity between the rich and the needy, and advances in information technology—it is imperative to consider the social implementation of luck egalitarianism.

This study addresses the question of implementation. First, by examining the function of luck egalitarianism under resource constraints, the promising nature of the equality of resources (goods and leisure) is shown. Equality of resources is an excellent choice for those who want to live in a free and equal society in which the relational aspects between people are considered with full regard for human dignity. The idea of a hypothetical insurance market, separate from luck egalitarianism, should be abandoned. Second, this study considers the practical challenges of implementing luck egalitarianism. To resolve the three challenges of the distinction between option and brute luck, the harshness objection, and tension with the private sphere, luck egalitarianism should be implemented in a relational way, guided by the idea of dignity and embodied as reasonable standards within social institutions. Democratic procedures can help to establish reasonable standards and institutions.

Finally, I would like to locate my idea of luck egalitarianism as implemented in a relational way in history. The combination of the art of building elaborate institutions and the democracy of finding a reasonable consensus increases the chances of success of luck egalitarianism. Rather, it is appropriate to mention that the arrival of an era when good administration of institutions and democracy has become established enables us to proceed with the implementation of luck egalitarianism, which is a dream of humankind from ancient times.

The dream of ancient times is by no means an exaggeration. Nussbaum (1986: 3) argues that ancient Greek thinkers were concerned that a good life for a human being must to some extent, and in some ways, be self-sufficient, immune to the incursions of luck. Since ancient times, people have been worried about happiness. The question has been asked whether one can be happy if one has life for justice. We have been hesitant to acknowledge that knowing that just life does not necessarily promise happiness.

It can be said that Plato's *The Republic* is an attempt to demonstrate that the righteous are happy. In response to the challenges from Glaucon and Adeimantus that the righteous are not always happy and that it is imperative to show what profit is justice in itself to the man who possesses it (358e-359b, 367b-d), Socrates stepped into the construction of his republic. However, it is a myth what Socrates brings out at the end of the dialogue. He states that what the just or the unjust man receives in this world is "nothing in multitude or magnitude compared to those that await each when dead" As an example, Socrates narrates the testimony of a man named Er, who

returned from afterlife. According to his testimony, the just and unjust are sorted into blissful heavens and hardships underground after death.

Human beings are ephemeral. No matter how well they behave and how modest they are, they live in the face of losing happiness in an instant. The sighs of those who come in to see the huge difference in endowments never cease. Under these circumstances, ensuring that people can live with dignity has been a perennial challenge.

Apart from the mythical world of Er, only humans can reach out to the real world so that they do not suffer misfortunes. Since we are humans, we must be subject to resource constraints in the economy as a whole. Only humans can decide whether to leave or reach out to those who have been convinced by gambling. Drawing lines from limited knowledge about who is to be relived is always at risk of error. If God steps into the private sphere, everyone thinks that it cannot be helped. However, if it is a human, everything is not all right.

In this paper, what humans can do to solve these difficult problems is considered.

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Chapter 12

Does the Choice of Well-Being Measures Matter in Respecting Human Dignity? Empirical Results from an Indian Slum Survey



Yuko Mori and Norihito Sakamoto

Abstract This study compares and analyzes four leading well-being measures: standard monetary measures (income and expenditure), subjective well-being (life satisfaction), equivalent income, and the Alkire-Foster multidimensional poverty index (MPI). To consistently compare these measures, we conducted a field survey of Delhi's low- and middle-income respondents in India. Using our dataset, we find that the equivalent income approach tends to ignore the economic value of education because of an adaptive preference problem caused by standard measures of life satisfaction. The MPI approach shows that educational deprivation is prominent in our survey. The results suggest that the MPI may complement traditional income comparisons by appropriately setting components, weights, and deprivation cut-offs. Additionally, we find many violations of the dominance principle in these measures, except for MPI.

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1 Introduction

How can human dignity be defined? The history of human dignity reveals that the term has been used in more ambiguous and polysemic ways than expected. For example, in the traditions of ancient monarchies and Catholics, dignity simply meant respect for those of higher social positions and their privileges. According to Kant (1785), dignity is inalienable, invaluable, and non-transferable worth granted to autonomous and rational humans, who should be treated as an end in themselves, not a means to some other end. Under the Kantian view, human dignity should have intrinsic value that cannot be compromised by any quantity of resources and money. In bioethics, human dignity is often interpreted as a simple aspect of *self-determination* (Macklin, 2003). Recently, Nussbaum (2006, 2011) stated that a life with human dignity requires a list of *basic capabilities* to be higher than some threshold levels. However, a major problem with these concepts of dignity is that persons with severe intellectual or mental disabilities or dementia who need daily care cannot be the object of dignity because they seem to lack autonomy, reason, or some basic capabilities. Trying to reconstruct the idea of dignity in terms of care ethics, Kittay (2005) made some reasoning in a justification for the dignity of persons with disabilities.

Even in the context of evaluating individual well-being, the implications of respect for human dignity are ambiguous. Consider the *indexing dilemma* shown in the context of Rawlsian primary goods (Gibbard, 1979). This indexing dilemma shows that interpersonal comparisons of individual well-being that satisfy two plausible requirements must lead to a cycle. Formally, it states that no acyclic well-being ranking exists that satisfies the principles of individual preference and dominance. The *individual preference principle* requires that each *intrapersonal* comparison of one's well-being reflects only one's preference. The *dominance principle* requires that for all *interpersonal* comparisons of well-being, individual *i*'s well-being is at least as good as *j*'s well-being whenever *i*'s consumption bundle (or functioning vector) is weakly greater than that of *j*. *Acyclicity* requires that no cycle exists for all interpersonal comparison rankings.¹ It is well known that these principles are incompatible in various contexts of social choice theory (Brun & Tungodden, 2004; Fleurbaey, 2007; Pattanaik & Xu, 2007; Weymark, 2017). This means that any well-being measure faces difficulties in comparing individual well-being whenever there are differences among individual preferences.²

It seems plausible that respecting each individual's preference in assessing their living standards should be part of dignity regarding self-determination. Suppose an individual's evaluation of their living standard is not respected, and their situation is simply evaluated by social value judgment. In that case, it may be too paternalistic and perfectionistic to take dignity as self-determination seriously. On the other hand, it

¹ Formally, acyclicity is defined as follows: for all alternatives x_1, \dots, x_n , if x_1 is strictly better than x_2 , x_2 is strictly better than x_3 , ..., and x_{n-1} is strictly better than x_n , then x_n is not strictly better than x_1 .

² See Weymark (2017) for elegant survey on the indexing dilemma and the related impossibility results.

also seems plausible that respecting a dominance relation in assessing living standards among different individuals is consistent with the view that a life with dignity should be full of sufficient basic capabilities. As Adam Smith (1776) pointed out, life with human dignity requires a certain material basis. It is valid to claim that the living standard of a wealthier person is strictly better than that of a poorer person. An individual who appears in public feeling shameful (i.e., having inadequate food, clothing, shelter, etc.) can hardly be said to be in full respect for human dignity. This study does not offer a definitive argument as to which principles should be respected in the debate over the indexing dilemma and human dignity. Instead, we review the key measures that have received attention as important indicators of individual well-being and investigate their application issues by focusing on the indexing dilemma.

Let us provide a short history of the measurement of well-being. Traditional methods based on GDP per capita have failed to adequately reflect distributional considerations (especially the lives of the low and middle classes). Moreover, GDP per capita could not consider any deterioration of important components of social welfare (e.g., declining social bonds, worsening inter-group conflicts, degradation of the natural environment, and rising inequality of opportunity). Since the well-known report by Stiglitz et al. (2009), many governments and international organizations have started to consider and use various policy evaluation methods, such as the Alkire-Foster multidimensional poverty index (Alkire-Foster MPI), equivalent income, OECD better life index, and some subjective well-being indices, instead of the traditional GDP per capita. These novel methods are expected to shed light on various individual and social well-being aspects. Specifically, the Alkire-Foster MPI has become a common method for policy evaluation by capturing the deprivations in health, education, and living standards that a person faces simultaneously. (Alkire & Foster, 2011; Alkire et al., 2015). On the other hand, the equivalent income approach, which is a revival version of classical money-metric utility (Samuelson, 1974; 1977) and Pazner-Schmeidler's egalitarian equivalent approach (Pazner & Schmeidler, 1978), has been now on some trials by applying standard econometric methods to measuring individual well-being (Decancq et al., 2015a). Subjective well-being is a very popular method in many happiness studies and has been considered a surrogate for well-being, reflecting non-monetary life dimensions, such as social relationships (OECD, 2013, 2019). These approaches have several reasonable properties and are useful for measuring various aspects of well-being.

However, each measure used in this study is known to have some defects. For example, the standard money-based approach, which focuses on income or consumption levels, cannot reflect the various disadvantages of discriminated or vulnerable groups that suffer from education and employment opportunities. It also fails to consider the unequal treatment of women in their ownership of household assets, which is often observed in developing countries where gender discrimination is so strong. Furthermore, even if individuals are given the same goods and purchasing power, there are non-negligible individual differences in what they can do due to

disabilities and other factors.³ The subjective well-being approach has the problem of adaptive preferences, where people often adapt to their circumstances and are likely to report that their subjective well-being is not so bad, regardless of whether they are in a favorable or unfavorable circumstance.⁴ Generally, neither the income nor life satisfaction approach satisfies the dominance and individual preference principles.⁵ On the other hand, the MPI approach satisfies the dominance principle among the poor identified by some MPI criteria, but it violates the individual preference principle.⁶ In contrast, the equivalent income approach satisfies the individual preference principle but violates the dominance principle.

While each well-being measure has some limitations, there are surprisingly few comparative and comprehensive analyses of these indices.⁷ This is mainly because no database allows simultaneous comparison of these indices. Hence, this study compares and analyzes four leading well-being measures (simple money-based indices, happiness as life satisfaction, the Alkire-Foster MPI, and equivalent income)

³ Note that the income approach also has some problems from the well-known life-cycle perspective. Sen (1985) proposed the capability approach as an appropriate method for measuring well-being that can solve these problems. However, its empirical methodology to embody an idea of the capability approach and formal models to clarify its theoretical performance are still in development, and further examination is needed.

⁴ See Decancq et al. (2015a) for the issues of adaptive preferences, hedonic treadmill, and aspiration treadmill. They point out that there are problems with the equivalent income approach using subjective well-being when adaption is severe, as shown in this study.

⁵ The income approach violates the dominance principle depending on the dimensions of well-being. Now, consider the set of functionings according to the capability approach. Let $f(y_1, i)$ and $f(y_2, j)$ be functioning vectors of a healthy person i with income y_1 and a disabled person j with income y_2 , where $f(y_1, i) > f(y_2, j)$ and $y_2 > y_1$. This violates the dominance principle. Similarly, given external and internal resources, it is easy to consider a case where the income approach violates the individual preference principle. Also, it is easy to consider the case in which the subjective well-being approach does not satisfy both the principles of dominance and individual preference. In the context of intrapersonal comparisons of well-being, there can be a lot of paradoxical situations whenever subjective well-being easily adapts to the status quo. Consider, for example, a miserable man who ignores his family and friends in pursuit of career promotion and monetary rewards and continues to work excessively, resulting in economic success. Suppose he is unhappy because he has lost close connections with his family and the meaning of life and is on the verge of a psychological crisis. How can we make an intrapersonal comparison of his well-being? In the ex-ante evaluation, he prefers to live a materially rich but spiritually poor life, while in the ex-post evaluation, he prefers to live a spiritually rich but not materially rich life. See Decancq et al. (2015a) for the argument of experienced and decision utility.

⁶ Another major problem is that the MPI approach may violate unanimous judgments on interpersonal comparisons of well-being; see Sakamoto (2018) for the possibility theorem of the principles of consensus and dominance.

⁷ Decancq and Neumann (2016) recently compared five well-being indices (income, subjective well-being, composite well-being index, equivalent income, and von Neumann and Morgenstern utility) using the German SOEP dataset. Decancq et al. (2016) compare four well-being indices (income, subjective well-being, composite well-being index, and equivalent income) by using the official Colombian dataset. However, these findings are limited because they do not consider the adaptive preference problem and violations of the dominance principle.

using original survey data from Delhi, India. As a result, we show how often theoretical flaws occur and the extent to which informational loss can be supplemented by using another measure.

This study contributes to the literature on well-being measurements. First, we show that in our dataset from India, the problem of adaptive preference is so serious that the subjective well-being approach cannot work well for measuring individual well-being.⁸ This result further strengthens the conventional perception that we should not only evaluate social welfare in terms of subjective well-being. Second, the problem of adaptive preferences implies that one method of the equivalent income approach, that is based on subjective well-being estimation, fails to reflect some important aspects of well-being, such as education, which does not matter regarding subjective well-being. The fact that subjective well-being among the poor and the low caste is often high also implies an endogeneity problem in previous empirical estimation methods of equivalent income. Third, by comparing leading measures with income and consumption per capita, we show that the Alkire-Foster MPI has a low correlation coefficient with the money-based measurements. This fact suggests that MPI is more sensitive to several aspects of well-being than other measures because it can consider material and social information such as housing, health, job status, and education. Finally, our sample suggests that violations of the dominance principle are the rule rather than the exception in all measures except the Alkire-Foster MPI.

The remainder of this study is organized as follows. Section 2 explains the survey design and methods of calculating the measures. Additionally, the basic statistics and properties of the well-being measures are reported and discussed. Section 3 compares the results of four measures by using pairwise rank correlation between them and observing some characteristics of the bottom 10%. Finally, Sect. 4 summarizes the results and discusses the remaining issues.

2 Data and Methodology

2.1 Survey

We surveyed low- and middle-income individuals in Delhi, India, in November 2017 to consistently compare various well-being measures.⁹ To generate our sample, we first randomly select five assembly constituencies. The results of this selection included Jahangirpuri, Lajpat Nagar, Hauz Khas/Malviya Nagar, Raghbir Nagar, and Okhla. Next, to obtain a sample representing low-income individuals,

⁸ The problem of adaptive preference was originally pointed out by the classical study of Sen (1985). This problem may be caused by the history of caste discrimination and less social mobility in India.

⁹ We conducted the survey in collaboration with *Outline India*, a research agency in Haryana. Prior to the main survey, the pilot survey was conducted, and the agency trained all surveyors before conducting in-person interviews.

we randomly selected jhuggi-jhopdi (JJ) colonies, which are slum resettlement locations, using the list of JJ colonies available on the Delhi Municipality website. For the middle-income group, areas adjacent to the JJ colonies were selected for the survey. After selecting low- and middle-income localities, we randomly selected households for the survey.¹⁰ Ultimately, 510 respondents completed the survey. The average age of respondents was 35.36, and men were 46.08%. The number of respondents who belong to households holding the ration card (below the poverty line type, BPL)¹¹ is 226, which is almost half the sample. Additionally, 28.63% of respondents receive no official education.

Our survey covered the following information: (1) demographics (gender, age, family configuration, caste, religion); (2) happiness as life satisfaction; (3) education; (4) occupation and employment status; (5) income and consumption level; (6) health status; (7) housing facilities and household assets; (8) social capital; and (9) security and environment. The following subsections explain the four well-being measures used in this study.

2.2 *Income and Expenditure*

The first well-being measure is based on the income/expenditure approach, which has traditionally been mainstream in poverty and inequality analysis. Income level has often been interpreted as a surrogate for individual well-being and plays an important role in policy goals and evaluation. However, income is just one of the various tools through which an individual achieves well-being. Moreover, there are difficult problems with the income approach, such as life cycle (e.g., a tendency to have low income in one's youth and old age and high income in middle age) and diversity among human abilities to transform goods into functionings (i.e., differences among individual living levels due to diversity of abilities and social discrimination in gender, class, occupation, and race). Hence, using income level as a surrogate for human well-being requires significant research. Note that, as is widely recognized in recent years, consumption expenditure is a more suitable surrogate for human well-being than income.¹²

In the survey, annual household income and expenditure brackets included 50 or less, 50–100, 100–200, 200–300, 300–400, 400–500, 500–600, and 600 or above, denominated in thousands of rupees. Therefore, to calculate individual income, household income was divided by the square root of the number of persons in the

¹⁰ Specifically, we followed systematic random sampling. We selected every fourth household for both income groups. If households refused to participate or were vacant, we went to the next household and followed our every fourth-household rule.

¹¹ BPL is determined by various factors such as expenditure and occupation. In our survey data, even among low-income respondents, there is a mix of BPL and non-BPL households.

¹² Stiglitz et al. (2009) clearly state that consumption expenditure is more appropriate than income for measuring individual well-being. But, of course, income is relatively easy to observe, while it is difficult to observe and collect consumption expenditure objectively.

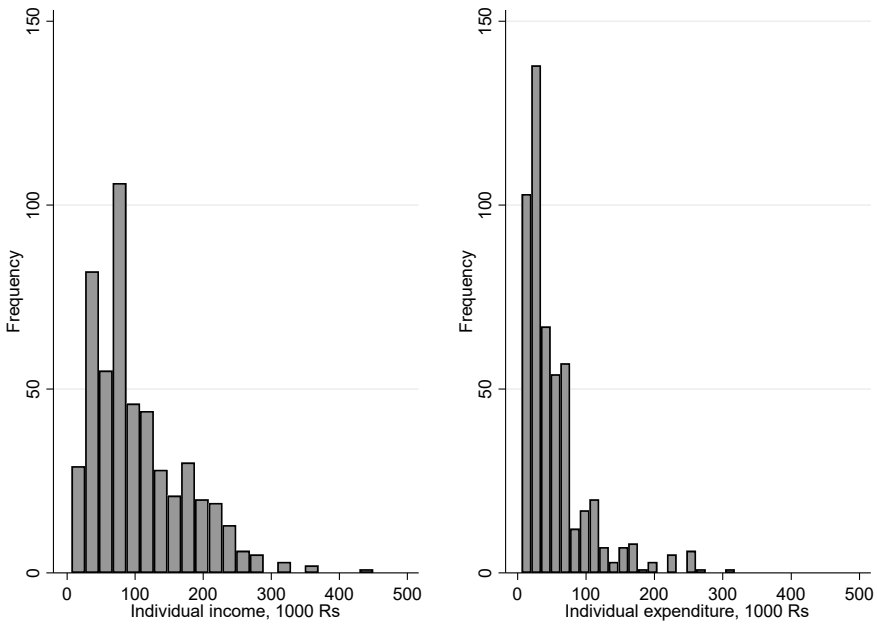


Fig. 1 Distribution of individual income and expenditure

household.¹³ Figure 1 depicts the histograms of individual income and expenditure. Using a poverty line (Rs. 13,608) for urban areas in Delhi, only 2.6% of respondents were below the poverty line in the case of individual incomes, while 16.3% were below the poverty line in the case of individual expenditures. Generally, individual expenditures seem to be a good surrogate for one’s living standard. They are suited to identify the poor since consumption directly generates utility and is smoothed over one’s life cycle. However, previous studies have used individual income because of its availability and simplicity, and we use both income and expenditure variables in the following sections.

¹³ For this calculation, we use each median for each bracket. For the 600,000 and above bracket, we use Rs. 600,000. This estimation is very standard in practical applications but has many theoretical issues to consider. See Decancq et al. (2015a, Sect. 5.1) for the problem of estimating household equivalence scales.

2.3 Alkire-Foster MPI

The second well-being measure is the Alkire-Foster MPI, a multidimensional poverty index proposed by Alkire and Foster (2011).¹⁴ The Alkire-Foster MPI satisfies some desirable properties, such as monotonicity, poverty focus, and decomposability. MPI is defined as a generalization of the weighted average deprivation rate,¹⁵ which is a natural extension of the well-known single-dimensional income inequality measure (Foster et al., 1984). Therefore, it is expected to be more adequate in analyzing the details of poverty at individual or national levels compared to traditional money-based methods, such as average income and consumption expenditure. The global MPI evaluates national poverty in three dimensions: health (infant mortality and malnutrition), education (school attendance and years of schooling), and living standards (housing facilities and assets), and it succeeds in showing multifaceted deprivations in developing countries.¹⁶ However, there are certain problems with the MPI approach. For example, any MPIs fail to respect unanimous judgments of interpersonal well-being comparisons.¹⁷ Additionally, since empirical results strongly depend on a specification of the MPI, such as choosing dimensions, setting each poverty line in each dimension, selecting the poor, and deciding on weights, the rationale of the MPI is still unclear and has to remain arbitrary.¹⁸

The aggregation method proposed by the Alkire-Foster MPI considers both the incidence and intensity of poverty. Generally, an individual or group i 's Alkire-Foster MPI is calculated as follows:

$$MPI_i = \begin{cases} \sum_{d \in D} w_d \left[\frac{\max\{y_d^* - y_{id}, 0\}}{y_d^*} \right]^\alpha & \text{if individual } i \text{ is a poor,} \\ 0 & \text{otherwise,} \end{cases}$$

where d is a component of the MPI, y_{id} is i 's value of component d , y_d^* is the poverty line of d , and w_d is the weight of d with $\sum_{d \in D} w_d = 1$. Let $\max\{y_d^* - y_{id}, 0\}/y_d^*$ be the deprivation rate of d . If $\alpha = 0$, MPI measures the percentage of components that

¹⁴ There exist several other multidimensional poverty indices in addition to the Alkire-Foster MPI. See Decancq and Lugo (2013) and Chakravarty and Lugo (2016) for details. See also Alkire et al. (2015) for practical applications of the Alkire-Foster MPI.

¹⁵ In special cases (in which the parameter of deprivation aversion equals zero), the Alkire-Foster MPI is just a head count ratio. But, generally, it takes the form of a weighted average of the powers of the deviation rate from the poverty line.

¹⁶ See the latest global MPI report in OPHI.

¹⁷ To improve the shortcomings of MPIs, Sakamoto (2018) proposes two interpersonal well-being comparison rankings (maximin and median consensus). Moreover, Decancq et al. (2019) propose a variant of MPIs that reflect individual preferences.

¹⁸ One way to treat MPI's arbitrariness is to focus on robust results with the addition of various factors (Foster et al., 2013). Alternatively, a structural estimation method may be useful, in which factors related to poverty are summarized and analyzed as a latent variable. Another option is to focus on robust results even if the weights change within a certain *rational* range. See Seth and McGillivray (2018) for details.

Table 1 Dimensions, components, and weights for calculating MPI

Dimensions	Components	AF-MPI-3D	AF-MPI-4D	AF-MPI-5D
Health	Subjective health	1/3	1/4	1/5
Education	Years of schooling	1/3	1/4	1/5
Living standards	Cooking fuel	1/18	1/24	1/30
	Sanitation	1/18	1/24	1/30
	Drinking water			
	Quality of water	1/36	1/48	1/60
	Location of water source	1/36	1/48	1/60
	Electricity	1/18	1/24	1/60
	Housing	1/18	1/24	1/60
Employment	Assets	1/18	1/24	1/60
	Unemployment		1/8	1/10
Environment	Working hour		1/8	1/10
	Quality of air			1/10
	Safety			1/10

are deprived within the poor. If $\alpha = 1$, it is equivalent to the weighted average of the deviation rates. We calculate the Alkier-Foster MPI for both cases in which $\alpha = 0$ and 1, but the case where α is zero shall not be listed in our results to save space.

The dimensions, weights, and components are presented in Table 1. We calculated three types of Alkire–Foster MPI by considering three (AF-MPI-3D), four (AF-MPI-4D), or five dimensions (AF-MPI-5D). For these three dimensions, we consider health, education, and living standards, which have the same dimensions as the global MPI. Additionally, we add the employment dimension for the AF-MPI-4D, and the environmental dimension for the AF-MPI-5D since the dimensions of employment and environment are also considered for estimating the equivalent income based on life satisfaction.

Table 2 summarizes the questions in our questionnaire for measuring each component and the cut-off points for deprivation. Note that our survey is not based on the household level but at the individual level. Since we asked one respondent within each household in our survey due to budget constraints, we have only information about the respondent’s health, education, and employment status.

Health is measured by the so-called subjective health index. Previous studies show that the subjective health index can represent the respondent’s actual health conditions (See van Doorslaer & Jones, 2003).¹⁹ We asked respondents to rate and evaluate their health on a 5-point scale: very good, good, fair, bad, and very bad. We

¹⁹ We confirm the correlation between the subjective health index and other variables related to health conditions such as disabilities, fatigue, and pain. For robustness check, we will use variables of nutrition and disabilities as alternative measures for health. Nutrition is measured by the availability of food. A person is considered deprived if their household members skip or cut the size of meals because of being poor. Disabilities are measured by the method developed by the *Washington Group*

Table 2 Components, related questions, and deprivation cut-offs

MPI components	Questions	Deprived if...
Subjective health	How is your health in general?	The answer is “bad” or “very bad”
Years of schooling	What is the highest education leaving certificate, diploma, or education degree you have obtained?	The respondent has completed less than 10 years of schooling
Cooking fuel	What type of fuel does your household mainly use for cooking?	The household cooks with kerosene, coal, lignite, charcoal, woods, straw, shrubs, grass, agricultural crop, or dung
Sanitation	Where is the toilet facility located?	The answer is “elsewhere”
Quality of water	What is the main source of drinking water for members of your household?	The answer is not “piped water”
Location of water source	Where is that water source located?	The answer is “elsewhere”
Electricity	Does your home have an electric installation for use of your family?	The household has no electricity
Housing	Enumerators observation: 1. Main material of the floor of the dwelling 2. Main material of the roof of the dwelling	The floor is of natural materials or the roof is of rudimentary materials
Assets	Do you or other members of your household have the following? (Car/Jeep/Van, Scooter/Motorcycle/Moped, Bicycle, air conditioner, computer/laptop, washing machine, refrigerator, fan, tv, radio, mobile phone, non-mobile telephone)	The household does not own more than one of these assets
Unemployment	How would you define your current labor status?	The answer is “unemployed”
Work hour	How many do you work per week, on average?	The respondent works over 48 h per week
Quality of air	How is the quality of air in your area?	The answer is “bad” or “very bad”
Safety	How is safety in your area?	The answer is “bad” or “very bad”

assume that a person is deprived if their answer is “bad” or “very bad.” *Education* is measured by years of schooling. A person is considered deprived if the number of years of schooling is less than ten, which is the lower secondary education level. *Living standards* are measured in almost the same way as the global MPI: cooking

on Disability Statistics. We use variables related to seeing, hearing, walking, cognition, self-care, and communication to calculate the disability index.

Table 3 The share of deprived respondents in each component

MPI components	Share of deprivation (%)
Health	14.31
Education	38.63
Living standard	
Cooking fuel	2.36
Sanitation	16.67
Drinking water	
Quality of water	13.73
Location of water source	11.18
Electricity	0.98
Housing	2.16
Assets	1.76
Unemployment	11.60
Working hour	28.35
Quality of air	12.55
Safety	22.64

fuel, sanitation, drinking water, electricity, roofs and floors, and assets. Drinking water was divided into two categories: quality of drinking water and location of the water source. *Employment* was measured by two categories: unemployment and working hours. In urban areas, employment matters for well-being. Therefore, a person is considered deprived when they are unemployed. Additionally, a person is considered deprived when they work over 60 h per week since such long working hours seem to affect physical and mental conditions. *The environment* was measured in two categories: safety and air quality. Respondents were asked to rate and evaluate their area's safety and air quality on a 5-point scale. A person is considered deprived when the answer is "bad" or "very bad."

Table 3 shows the proportion of respondents considered deprived for each dimension. The share of deprivation of education is close to 40%, which is the highest among all dimensions. Figure 2 presents the distribution of the weighted averages of the deprivation rates related to the five dimensions. Although about 50% of respondents in our survey were from BPL households, the most frequent deprivation rate was 0 among all dimensions. Regarding living standards, no individual is simultaneously deprived of all categories, while about 30% of individuals are deprived of at least one category. Note that the deprivation rates for education and employment can range from zero to one.

Finally, we calculated the weighted average deprivation rates of all respondents using three types of Alkire-Foster MPI with $\alpha = 1$ ²⁰: AF-MPI-3D, AF-MPI-4D,

²⁰ If a person is deprived of a third or more of ten (weighted) components, the global MPI identifies them as poor. However, since there is no specific reason and rationale for this identification strategy, we calculate the sum of deprivation rates.

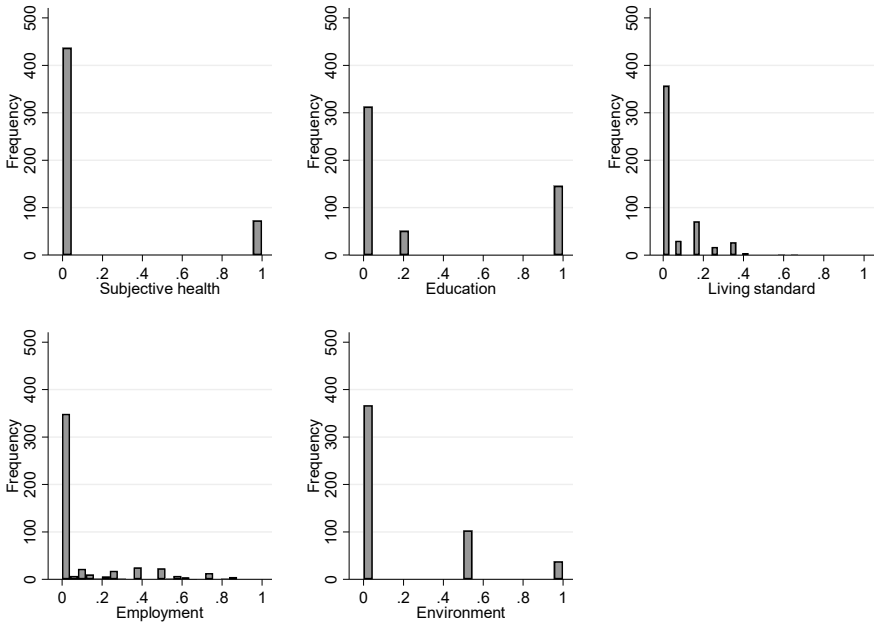


Fig. 2 Distribution of deprivation score related to five dimensions

and AF-MPI-5D. Figure 3 shows the distribution of deprivation rates for all the respondents. The global MPI identifies the poor when at least 33% of the weighted components are zero. The solid line in Fig. 3 is the global MPI threshold of the poor (0.33). The poverty ratios identified by AF-MPI-3D, AF-MPI-4D, and AF-MPI-5D were 36%, 18%, and 16%, respectively. While education is a significant dimension that increases deprivation scores, the weights for education decrease as the dimension increases. As a result, the poverty ratio decreases as the number of dimensions considered in the AF-MPI increases.

2.4 Subjective Well-Being as Life Satisfaction

The third well-being measure is *happiness as life satisfaction*, a key measure of subjective well-being. Generally, subjective well-being, such as life satisfaction, measures the *cognitive* aspect of subjective well-being by focusing on reflective and objective evaluations of well-being rather than the emotional factors that lead to a feeling of happiness. The biggest problem within the subjective well-being approach is an *adaptive preference problem* due to both the hedonic and aspiration treadmill. This leads to many paradoxical situations. For example, because individuals with disabilities or low incomes also change their preferences and aspirations to suit their circumstances, they often evaluate their lives at normal levels. As a result, their

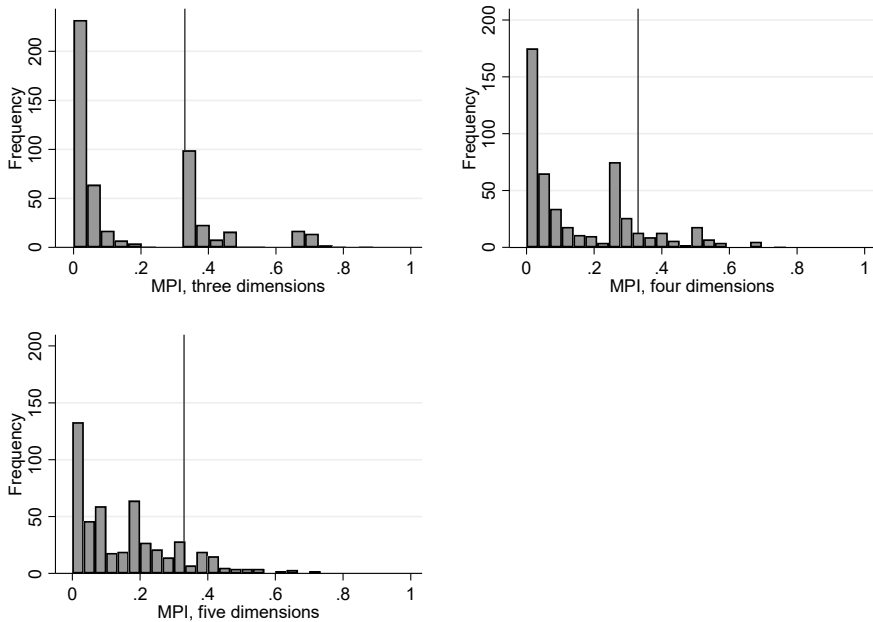


Fig. 3 Distribution of AF-MPI-3D, AF-MPI-4D, and AF-MPI-5D. *Note* The solid line represents the poverty line for the MPI, that is, 0.33

subjective well-being levels are the same as (or higher than) those of a healthier or wealthier person (Loewenstein & Ubel, 2008; Oswald & Powdthavee, 2008). Our analysis also suggests that an adaptive preference problem exists in our survey.

Following Diener et al. (1985) and OECD (2013), our survey asked five questions on subjective well-being. Respondents were asked about their degree of agreement with the five statements on a scale of 1–7, where 1 meant “strongly disagree,” and 7 meant “strongly agree.” The five-question statements were as follows:

1. “In most ways, my life is close to my ideal.”
2. “The conditions of my life are excellent.”
3. “I am satisfied with my life.”
4. “So far, I have gotten the important things I want in life.”
5. “If I could live my life over, I would change almost nothing.”

Using the above standard measure for life satisfaction, we summed up the five scores (Fig. 4). While the distribution of life satisfaction was skewed to the right, the scores showed sufficient variation. For example, the highest score for life satisfaction was 30 on the histogram. This suggests that most people are satisfied with their lives, regardless of their actual living standards (i.e., the adaptive preference problem seems to occur).

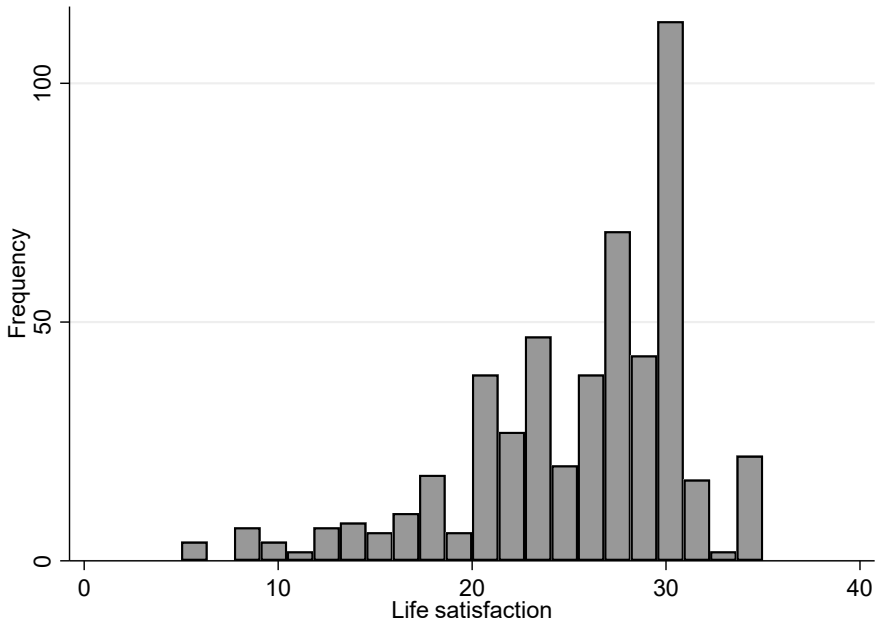


Fig. 4 Distribution of life satisfaction

To investigate the factors affecting life satisfaction, we used an ordered logit model to estimate the correlation between life satisfaction and various factors.²¹ The dependent variable is life satisfaction, and the explanatory variables are a log of income; components of MPI such as subjective health index, years of schooling, living standards, employment, and environment²²; other health-related variables such as nutrition, disability score, fatigue, pain, and mental conditions; social capital such as the number of friends, relationship with family, and relationship with neighbors²³; demographic variables such as gender, age, and square of age; and dummy variables for caste groups, religious affiliation,²⁴ and assembly constituencies. The nutrition and disability scores were used as alternative measures for the health dimension of the Alkire-Foster MPI, and the detailed definitions are explained in footnote 18.

²¹ The number of observations is reduced to 432 because some variables are missing due to respondents' refusal to answer.

²² Education is measured by educational years from 0 to 16. Living standards are measured by the presence or absence of six components and take values from 0 to 6. For employment, we create two dummy variables for unemployment and hours worked deprivation respectively, and add them together. Similarly, for the environment, we create two dummy variables for quality air and safety deprivation respectively, and add them together.

²³ We asked respondents about their relationship with family and neighborhoods on a 1 to 5 scale, where 1 means "very bad" and 5 means "very good."

²⁴ Religions are divided into three categories: Hindu, Muslim, and others.

Additionally, we used fatigue, pain, and mental conditions to control health conditions. For caste groups, scheduled castes (SCs), scheduled tribes (STs), and other backward classes (OBCs) were used.²⁵ Others represented higher-caste individuals. To explore the different functional forms of life satisfaction between social categories such as castes and religions, we investigated the specifications between SCs and non-SC individuals separately.

Table 4 presents the results. As shown in Column 1, the coefficients of individual income and living standards representing material wealth are statistically insignificant. Additionally, the coefficient of years of schooling was statistically insignificant. On the other hand, the coefficients of subjective health index, environment, and relationship with family are larger than other coefficients and are statistically significant.

Columns 2 and 3 display the results for SCs and non-SCs, respectively. For example, while the coefficient of individual income is positive and statistically significant among SCs, it is small and statistically insignificant among non-SCs. Additionally, while the coefficient of the relationship with family is insignificant among SCs, it is significant among non-SCs. There are other different results, such as environment, age, and disability. These different coefficients between SCs and non-SCs suggest that functional forms of life satisfaction differ among social groups.

As shown in previous studies, our regression results are consistent with the claim that non-monetary factors are important for subjective well-being. Additionally, because many individuals are materially poor but sufficiently satisfied, there seems to be an adaptive preference problem.

2.5 *Equivalent Income*

The fourth well-being measure is based on the equivalent income approach proposed by Fleurbaey (2005) and many studies (Fleurbaey, 2007; Fleurbaey et al., 2013; Decancq and Neumann, 2016; Decancq & Schokkaert, 2016; Decancq et al., 2015a, 2015b, 2017). A person's equivalent income is defined as an income level that would make the person indifferent between her actual situation and the hypothetical reference situation, where she would be at the reference values for all non-income dimensions. This approach satisfies the individual preference principle but violates the dominance principle. Although this approach has many problems, it is considered acceptable for measuring individual well-being.²⁶

²⁵ In the definition of ethnicity in India, SCs are former untouchable castes, STs are socially and economically marginalized ethnic groups, and OBCs are other socially and educationally backward classes. Although affirmative actions have been taken since the independence, the disparity in the living standards between SC/ST households and other households remains stark. Castes still play an important role in India. Munshi (2019) reviews the consequences of caste involvement in the Indian economy.

²⁶ Generally, this approach has two big problems. First, the approach depends on the choice of reference points. Second, a regressive income transfer (an income transfer from someone with

Table 4 Life-satisfaction regression

	(1)	(2)	(3)		(1)	(2)	(3)
Sample	All	SCs	Non-SCs	Sample	All	SCs	Non-SCs
Individual income (log)	0.185 (0.145)	0.539* (0.297)	0.00331 (0.165)	Employment	0.167 (0.151)	-0.395 (0.336)	0.213 (0.177)
Nutrition	0.192 (0.375)	0.811 (0.697)	0.393 (0.465)	Years of schooling	0.00807 (0.0186)	-0.0446 (0.0388)	0.0225 (0.0216)
Subjective health index	0.557 ^c (0.109)	0.943 ^c (0.253)	0.506 ^c (0.124)	Age	0.0184 (0.0304)	-0.283 ^c (0.0885)	0.0665 ^b (0.0315)
Disability (log)	0.0193 (0.0203)	0.120 ^c (0.0440)	-0.00988 (0.0227)	Age ² (/ 100000)	-4.313 (34.53)	311.0 ^c (103.4)	-48.48 (34.84)
Mental	0.557 (0.519)	-0.438 (0.955)	0.987 (0.665)	Male	0.316 (0.208)	0.388 (0.382)	0.301 (0.249)
Pain	-0.0147 (0.233)	0.0313 (0.532)	-0.0661 (0.268)	Friends	0.0243 (0.0460)	-3.08e-05 (0.0704)	0.0501 (0.0509)
Fatigue	-0.119 (0.223)	0.341 (0.519)	-0.344 (0.253)	Relationship with family	0.502 ^c (0.140)	0.00685 (0.302)	0.630 ^c (0.161)
Environment	0.394 ^b (0.161)	0.559 (0.352)	0.376 ^b (0.186)	Relationship with neighbors	0.180 (0.133)	0.250 (0.263)	0.300 ^a (0.168)
Living standards	0.0472 (0.157)	0.399 (0.302)	-0.0161 (0.191)	Pseudo R2 Observation	0.0442 432	0.0812 126	0.0539 322

Notes

1. ^a significant at 10%, ^b significant at 5%, ^c significant at 1%
2. Standard errors are reported in parenthesis
3. Dummy variables for assembly constituencies, caste groups, and religions are included in the specifications
4. The results are from the ordered logit regression

Two practical methods for estimating equivalent income have been proposed in the literature. One method is to estimate the WTP for a hypothetical reference situation by using the contingent valuation method to calculate the equivalent income. For example, Fleurbaey et al. (2013) asked respondents the highest amount they would pay to be in perfect health for one year and estimated their equivalent incomes. Another method is to estimate equivalent income using a regression of life satisfaction. For example, Decancq et al. (2015a) estimated equivalent income under the highest reference values for health, education, and housing. This study follows the latter strategy for estimating equivalent incomes since the contingent valuation method has many disadvantages in evaluating hypothetical reference situations of several non-income dimensions.²⁷

a low equivalent income to someone with a high equivalent income) may be seen as a welfare improvement. See Sects. 3 and 4 in Decancq et al. (2015a) for defenses of these issues.

²⁷ The other method is to calculate equivalent incomes by using the estimated *revealed preferences*. Indeed, Akay et al. (2020) infer the revealed preferences on the income-leisure domain using the UK dataset and calculate equivalent incomes. However, this method focuses on only two life

Next, we explain our estimation strategy. Following Decancq et al. (2015a, 2016), we calculate the equivalent income using life satisfaction regression. Note that their methodology requires the strong assumption that all individuals in the same group classified by some demographic properties have the same preference relationship. Therefore, we first select the life dimensions to be analyzed to estimate the preference structure using life satisfaction regression. Considering the standard variables of life satisfaction regression and the availability of our data, we selected the following six life dimensions: income, health, education, living standards, employment, and environment. All life dimensions are measured using the same components to calculate the Alkire-Foster MPI in Sect. 2.4. The definition of each variable was the same as that used in the regression analysis of happiness.

We consider the following regression specification:

$$s_i = \alpha + (\beta + \varphi \times d_i) \ln(y_i) + (\gamma + \delta \times d_i)' x_i + \theta' z_i + u_i,$$

where s_i is life satisfaction described in Sect. 2.4, y_i is an individual annual income, z_i is a vector of variables reflecting individual characteristics, x_i is a vector of non-income life dimensions, d_i is a vector of dummy variables reflecting membership in socio-demographic groups, and u_i is an error term. To consider differences in preference structures among socio-demographic groups, the coefficients on income and other functions are allowed to differ for the robustness check. We consider SCs and Muslims for socio-demographic groups and then separately run the regression using either dummy variable. Regarding z_i , we included dummies for male, age, the square of age, assembly constituencies, castes, and religious groups. This specification was estimated using an ordered logit model.

An equivalent income (y_i^*) is defined as an income level that would make individual i indifferent between i 's actual situation and the hypothetical reference situation where i would be at maximum levels (\tilde{x}) for all non-income life dimensions. As shown in Decancq et al. (2016), we can measure the equivalent income as follows:

$$y_i^* = y_i \times \exp \left[\left(\frac{\gamma + \delta \times d_i}{\beta + \varphi \times d_i} \right)' (x_i - \tilde{x}) \right],$$

where y_i^* is the equivalent income and \tilde{x} are the maximum levels of x_i .

Table 5 presents the regression results.²⁸ The results were almost the same as those of the life satisfaction regression, except for individual income. While the coefficient of individual income in Table 4 is statistically insignificant, that in Column 1 of Table 5 is positive and significant. This may be because the relationship with family

dimensions (income and leisure). Since we aim to compare well-being measures regarding various life dimensions, we opt for the simple strategy based on the subjective well-being equation to calculate equivalent incomes.

²⁸ The number of observations is reduced to 432 because some variables are missing due to respondents' refusal to answer. However, for the estimation of equivalent income, the number of observations is 494 because we included respondents with missing variables such as caste categories.

matters in subjective well-being estimations. If a person with a high income tends to be highly satisfied with better social relations, then adding social relations as a variable will underestimate the effect of income. On the contrary, if better social relations tend to yield high incomes that directly contribute to improving life satisfaction, ignoring social relations will overestimate the effect of income due to omitted variable bias. Our results suggest that it is difficult to select control variables to estimate the effects of individual income on life satisfaction. Additionally, the coefficient of education is quite small and statistically insignificant since education has little impact on life satisfaction. Thus, education is rarely considered in the equivalent income, which causes quite different results in identifying the poor between the equivalent income and the Alkire-Foster MPI approaches.

3 Comparison of Well-Being Measures

3.1 Comparisons to Income/Expenditure

Income/expenditure is the most popular measure to identify poor individuals. Here, we compare income/expenditure with other measures, such as the Alkire-Foster MPI, life satisfaction, and equivalent income. Figure 5 shows the relationship between the AF-MPI-5D and individual income/expenditure. As the figure shows, some people with low incomes or expenditures have low deprivation scores and are not poor in the AF-MPI-5D. On the contrary, people with an MPI score of 0.4 have various incomes widely distributed from 0 to 300. This implies that income is only one aspect of poverty and that we should identify the poor by considering other non-income dimensions.

Figure 6 shows the relationship between life satisfaction and individual income/expenditure. While people with high incomes are not necessarily highly satisfied with their lives, people with low incomes are often highly satisfied, which suggests an adaptive preference problem in our survey.

Finally, Fig. 7 shows the relationship between equivalent income and monetary measures (income and expenditure). Owing to the adaptive preference problem, some equivalent income is almost the same as the corresponding actual income over various income levels. Moreover, some individuals with high incomes have very low equivalent incomes, which suggests that there are violations of the dominance principle in many cases. Figure 8 displays scatter plots of income and equivalent income measured by different functional forms of life satisfaction among social groups. Panel A is the same as that on the left-hand side of Fig. 7. In Panel B, we control for the interaction term between SCs and each function, while the interaction term between Muslims and each function is controlled in Panel C. Due to the small estimates of the interaction terms, the three figures are almost similar.

Since the coefficients of life dimensions are used as weights for calculating the willingness to achieve the reference vector of life dimensions, the relationships

Table 5 Equivalent-income regression

	(1)	(2)	(3)
Individual income (log)	0.267 ^a (0.136)	0.175 (0.154)	0.355 ^b (0.145)
SC/Muslim*individual income (log)		0.330 (0.292)	
Subjective health index (1–5)	0.540 ^c (0.0931)	0.521 ^c (0.108)	0.606 ^c (0.0992)
SC/Muslim*subjective health index		0.0749 (0.204)	
Year of schooling (0–16)	0.00798 (0.0173)	0.0133 (0.0199)	–0.00418 (0.0188)
SC/Muslim*education level	0.245 ^a (0.140)	0.178 (0.162)	0.199 (0.150)
Living standard (0–6)	0.241 ^a (0.144)	0.191 (0.165)	0.147 (0.154)
SC/Muslim*living standard		–0.0134 (0.0349)	
Employment (0–2)		0.310 (0.310)	
SC/Muslim*employment	0.319 ^b (0.149)	0.301 ^a (0.176)	0.323 ^b (0.158)
Environment (0–2)		0.0473 (0.319)	
SC/Muslim*environment		0.117 (0.314)	
Age	0.0175 (0.0292)	0.0167 (0.0292)	0.0132 (0.0298)
Age ²	–2.035 (33.88)	–0.243 (33.80)	2.649 (34.56)
Dummy for male	0.458 ^b (0.189)	0.448 ^b (0.190)	0.466 ^b (0.190)
Pseudo R2	0.0368	0.0382	0.0413
Observation	478	478	478

Notes

- ^a significant at 10%, ^b significant at 5%, ^c significant at 1%
- Standard errors are reported in parenthesis
- Dummy variables for assembly constituencies, caste groups, and religions are included in the specifications
- The results are from the ordered logit regression

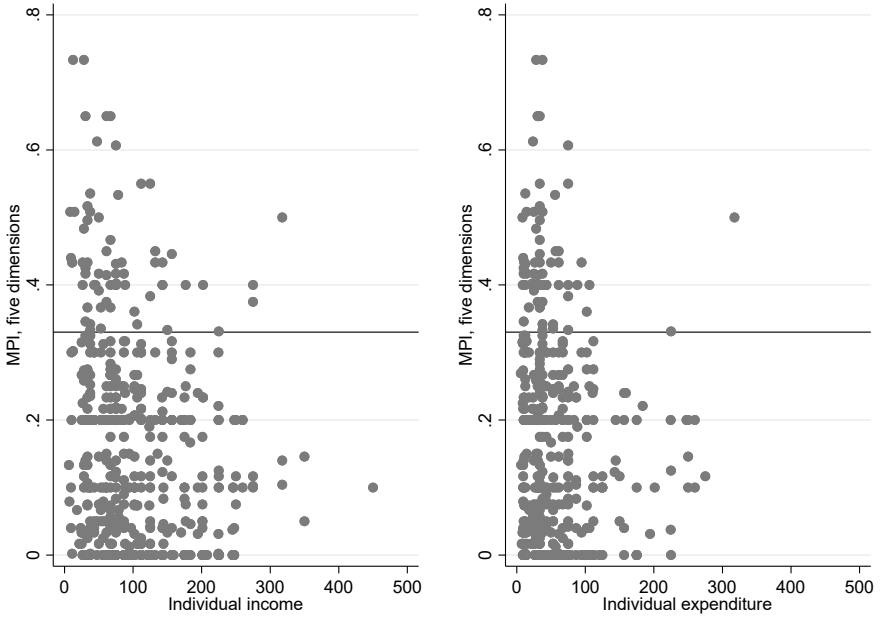


Fig. 5 Individual expenditure and AF-MPI-5D

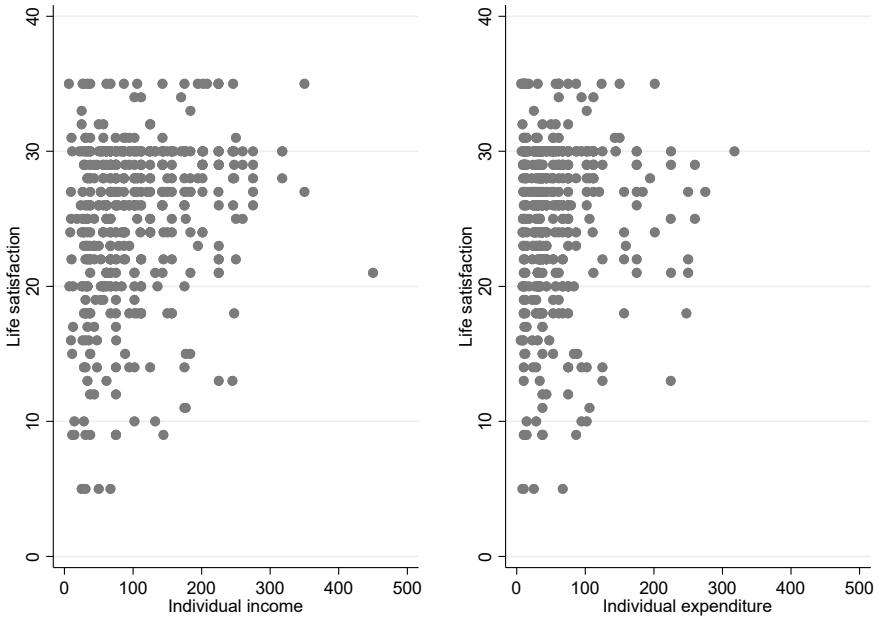


Fig. 6 Individual income and life satisfaction

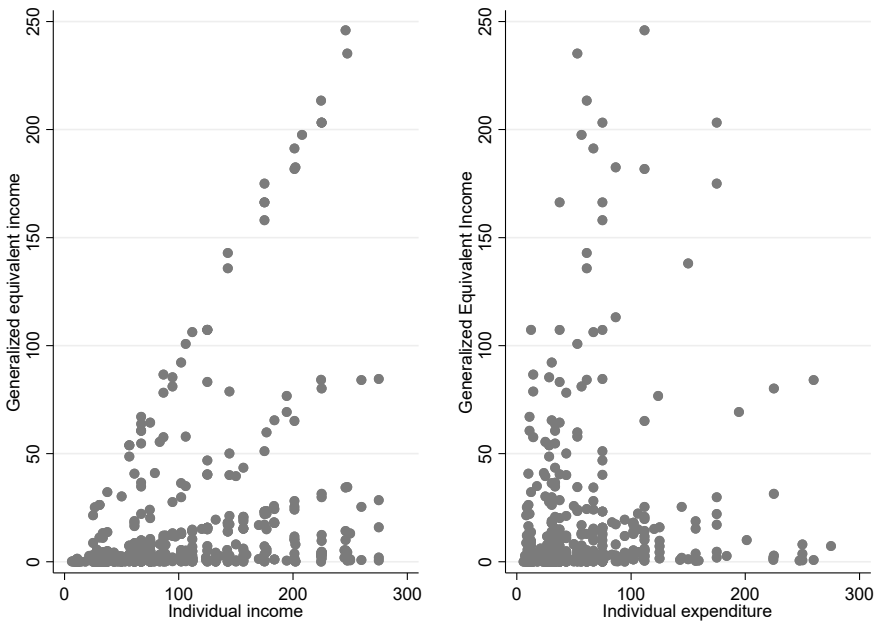


Fig. 7 Individual income and equivalent income

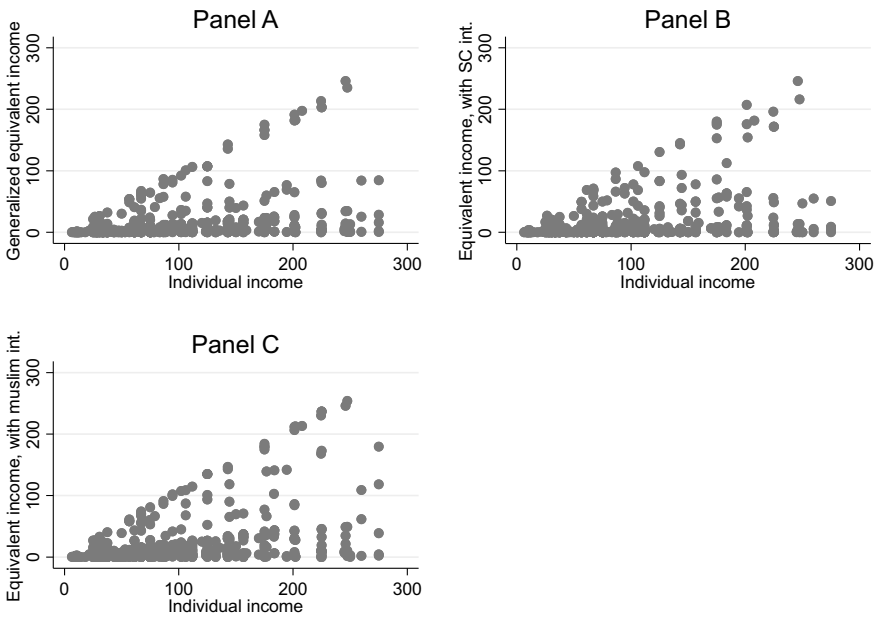


Fig. 8 Individual income and equivalent income when SCs/muslims have different preferences

between life satisfaction and life dimensions play a major role in estimating one's equivalent income. However, life satisfaction is not necessarily correlated with meaningful life dimensions that significantly impact human flourishing. As a result, the equivalent income approach fails to satisfy the dominance principle among different groups.²⁹

3.2 Ranking, the Worst-Off, and the Dominance Principle

To compare the interpersonal well-being rankings generated by these measures, we calculated Spearman rank correlation coefficients among seven measures: individual income, individual expenditure, AF-MPI-3D, AF-MPI-4D, AF-MPI-5D, life satisfaction, and equivalent income.³⁰ Table 6 presents the results. The correlations between MPI and individual income and expenditure ranged from 0.10 to 0.22. On the other hand, the correlation between MPI and equivalent income is approximately 0.6. This is partly because equivalent income is estimated using the same MPI dimensions. Life satisfaction was also used to calculate the equivalent income. However, the correlation between life satisfaction and equivalent income is lower than that between the MPI and equivalent income. Additionally, life satisfaction is weakly correlated with other measures because it is influenced by various non-income factors other than material assets and education.

Next, let us consider and compare the bottom 10% of respondents identified by different measures. Table 7 summarizes the means of the basic variables. The average income and years of schooling differed among the measures. The bottom 10% identified by MPI or life satisfaction included individuals with high income. In the AF-MPI-3D and AF-MPI-4D results, the average number of years of schooling was less than one year. This is because both the AF-MPI-3D and AF-MPI-4D have a heavier weight of education compared to the other measures. As shown in Table 5, subjective health had a larger impact on life satisfaction than the other variables. Consequently, a person with low subjective health tends to be identified as poor using the equivalent income approach. Additionally, because education is less correlated with life satisfaction, the equivalent income approach implies that individuals with lower education levels are not included in the worst-off group. As the effects of individual characteristics strongly depend on the specifications and definitions of well-being measures, the bottom 10% groups are quite different among the measures. Our results showed that the bottom 10% group identified by AF-MPI-3D had the largest share of women.

Finally, we consider the violations of the dominance principle. The dominance principle requires interpersonal comparisons of well-being to be consistent with

²⁹ See Fleurbaey and Blanchet (2013, Chap. 4) and Decancq et al. (2015a) for several defenses of the equivalent income approach to violations of the dominance principle.

³⁰ In this section, we exclude respondents with at least one missing variable among seven indices from the analysis.

Table 6 Pairwise rank correlation coefficients between well-being measures

	Individual income	Individual expenditure	AF-MPI-3D	AF-MPI-4D	AF-MPI-5D	Life satisfaction	Equivalent income
Individual income	1						
Individual expenditure	0.71	1					
AF-MPI-3D	0.22	0.18	1				
AF-MPI-4D	0.16	0.12	0.89	1			
AF-MPI-5D	0.18	0.10	0.81	0.89	1		
Life satisfaction	0.23	0.06	0.18	0.17	0.21	1	
Equivalent Income	0.45	0.25	0.56	0.59	0.67	0.36	1

Table 7 Basic statistics of the bottom 10% according to different well-being measures

	All	Individual income	Individual expenditure	AF-MPI-3D	AF-MPI-4D	AF-MPI-5D	Life satisfaction	Equivalent income
Individual income	104.42	23.12	42.31	78.16	86.87	76.67	79.09	60.84
Health	3.67	3.38	3.67	2.24	2.35	2.06	3.02	1.94
Year of schooling	8.28	7.35	7.90	0.80	0.94	2.39	7.35	5.16
Living standards	5.65	5.48	5.59	4.94	5.37	5.33	5.56	5.21
Working condition	1.60	1.60	1.66	1.60	1.14	1.41	1.50	1.3
Environment	1.65	1.46	1.67	1.52	1.57	1.16	1.31	0.96
Age	35.36	35.77	33.74	43.38	43.10	41.65	35.26	40.78
Dummy for male	0.46	0.33	0.36	0.22	0.37	0.31	0.37	0.40
Observation	494	52	61	50	51	51	62	50

resource dominance relationships. That is, individual i 's well-being is better than that of individual j whenever i 's relevant life dimensions are greater than those of j . Generally, MPI satisfies the dominance principle on the set of *poor* individuals,³¹ but the other measures violate it. Panel A of Table 8 shows how often these measures cannot satisfy the dominance principle. We calculate the violation ratios of the dominance principle according to several life-dimension scenarios. Generally, there are many violations of the dominance principle for each measure. Violations of the dominance principle tend to increase as the number of life dimensions is reduced, or personal attributes are increased in the equivalent income approach. Additionally, when education, which has a low correlation with life satisfaction, is included in the life dimensions, violations of the dominance principle increase. As shown in Panel A of Table 8, all measures substantially violate the dominance principle, meaning that disadvantaged individuals are often judged to be better than wealthier individuals in some life dimensions. Moreover, Panel B of Table 8 shows that the situation is the same with the bottom 10%. This invokes serious problems in policy intervention since it sometimes recommends antiegalitarian transfers from a disadvantaged to an advantaged group.

Generally, the equivalent income approach is strongly affected by life dimensions that greatly impact life satisfaction.³² Moreover, individuals deprived of these dimensions are judged to be disadvantaged in interpersonal comparisons of equivalent incomes. The Alkire-Foster MPI has a fixed weight; therefore, deprivation in one life dimension disadvantages interpersonal comparisons of the MPI by that weight. If the MPI weights were determined using statistical methods such as life satisfaction regression and principal component analysis, a large part of the differences between the MPI and equivalent income approaches might disappear.³³

Although many life dimensions seem important for well-being, they do not necessarily significantly affect life satisfaction. Moreover, the relationship between life dimensions and life satisfaction could be very weak because of the aspiration/hedonic treadmill problem. In this study, we have been able to illustrate that education is such

³¹ Since the Alkire-Foster MPI is a measure focusing on *the poor* only, it takes all zero values for *non-poor* individuals. As a result, there are violations of the *weak* dominance principle for non-poor individuals. In the case of generalized composite indices, violations of the dominance principle never occur, even in a weak sense.

³² In addition to the equivalent income estimation based on life satisfaction, we have also estimated equivalent incomes based on the so-called satisfaction of the *life-of-ladder* method. Then, violations of the dominance principle among the bottom 10% are drastically decreasing compared to the life satisfaction estimation method. However, since there seem to be no significant differences in the other results worth noting, we skip them.

³³ Decancq and Neumann (2016) estimate equivalent incomes using income, health, and unemployment as life dimensions and education as individual characteristics. Their results show that there is little difference between ranking by the equivalent income and that of the composite measure (only the bottom 10 percent differs between the two approaches), but this paper finds the opposite result. Many studies have shown that weights and living dimensions matter in these well-being measures.

Table 8 The share of cases where well-being measures violate the dominance principle

	The number of violations of the dominance principle	Individual income	Life satisfaction	Equivalent income
Panel A: All sample				
Three dimensions (education, living standard, health)	83,884	0.366	0.342	0.155
Four dimensions (+ labor)	63,953	0.372	0.342	0.116
Four dimensions (+ environment)	68,583	0.354	0.316	0.106
Five dimensions (+ labor and environment)	52,930	0.362	0.316	0.071
Panel B: Bottom 10%				
Three dimensions (education, living standard, health)		0.352	0.400	0.444
Four dimensions (+ labor)		0.350	0.438	0.328
Four dimensions (+ environment)		0.338	0.467	0.200
Five dimensions (+ labor and environment)		0.325	0.490	0.141

a factor and that there are still major challenges in using well-being measures to estimate equivalent incomes and determine endogenous weights.³⁴ We must develop a measure of life satisfaction that can adequately reflect a cognitive evaluation of a good life based on appropriate life dimensions. We also need to consider developing a methodology for better preference-based interpersonal comparisons.

4 Conclusions

As the indexing dilemma shows in the context of individual well-being measurement, there is a sharp conflict between the individual preference principle (requirement of dignity as a self-determinant) and the dominance principle (requirement consistent

³⁴ This result suggests that the revealed preference method, another estimation method for the equivalent income approach, may have the opposite result against the life satisfaction method. While education is not correlated with life satisfaction, individuals spend a lot of time and money on their education. This fact would lead to the exact opposite estimation results between the two methods, where the impact of education on well-being is strong in the revealed-preference method but very weak in the life-satisfaction method.

with the dignity view as sufficient basic capabilities). While philosophical considerations are important in determining which requirement of human dignity should be respected, we empirically analyze the extent to which key well-being measures conflict with the two principles. This study conducts a field survey in and around the slums of Delhi to consistently compare four leading well-being measures: individual income/expenditure, the Alkire-Foster multidimensional poverty index, happiness as life satisfaction, and equivalent income. As Sen (1985) suggests, regarding the problem of adaptive preference in India, we find that lower caste or Muslim respondents tend to have high life satisfaction. Therefore, following the subjective well-being approach based on life satisfaction, even lower-caste respondents with health problems or lower living standards are evaluated as enjoying good lives. On the other hand, due to this adaptive preference problem, the equivalent income approach based on life satisfaction regression fails to grasp various important aspects of well-being, such as education and health. Additionally, this study confirms that the MPI approach could reflect various deprivation levels of the poor while strongly depending on the functional form of MPIs. From our survey data, the correlation between MPI and individual expenditure is relatively low among our measures, suggesting that the MPI approach can be a complementary and useful tool for measuring individual well-being. Moreover, our results show that violations of the dominance principle are not rare, following both subjective well-being and equivalent income approaches. These empirical results suggest that a more sophisticated strategy is needed in the estimation methods and theoretical analysis of well-being measures to take human dignity and decent lives seriously.

The remaining issues of this study are as follows. First, our sample is small and limited because we focused on slums in India. Additionally, our survey data did not include details of household information, especially for children. More comprehensive data are required to further investigate the properties of various well-being measures. In particular, we should reexamine how often violations of the dominance principle occur in equivalent income and subjective well-being approaches by testing them with a large dataset.

Second, we cannot sufficiently reflect the differences among individual preferences to calculate equivalent income in the previous estimation method. Although the equivalent income approach emphasizes the importance of reflecting individual preferences for interpersonal comparisons of well-being, the previous method strongly assumes that individual preference structures are the same for similar demographic groups. Thus, an improvement in measuring equivalent incomes is needed, and we must consider the heterogeneity of preferences within similar demographic groups.

Third, among the individual well-being measures for evaluating human dignity and decent lives, a consensus-based method proposed by Sakamoto (2018) is consistent with a unanimous judgment and satisfies the dominance principle. Similar to the estimation strategies of the equivalent income approach, we can also use three methods: life-satisfaction-based estimation, inferring willing-to-pay to obtain one's reference bundle, and revealed-preference-based estimation. If the dominance principle plays a dominant role in measuring individual well-being, these methodologies should be developed.

Finally, a theoretical framework for social evaluation should be developed for aggregating individual well-being. Practical exercises of the social welfare ordering approach require us to develop a class of acceptable individual well-being measures and construct a class of desirable aggregation rules for various contexts of social choice theory. It is especially important to characterize a class of ethically appealing social welfare orderings in uncertainty and risky situations.

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Chapter 13

Conclusion: Could We Reciprocate to the Wounded Little Bird?



Reiko Gotoh

Abstract Building on Rawls’s philosophy of contingency and Sen’s normative economics, this chapter seeks a theory of justice that incorporates the hard cases from the beginning. Furthermore, it tries to reconstruct the value assumptions of liberalism, taking the concept of dignity as a clue. The disparity in status between the right to work and the right to well-being and the disregard of the utilization ability to use the rights to liberties are criticized. Furthermore, based on Rawls’ philosophy of contingency and Sen’s normative economics, the logic of “public reciprocity,” which incorporates both hard and normal cases, will be explored. Finally, while standing on the inviolability and incomparability of the dignity inherent in the individual, this chapter sought a logic in the capability approach to denounce actions that violate the obligation to respect dignity and to measure the damage for compensations. The discussion here indicates the possibility of a contribution of economics to the theory of value in a new way completely different from the price theory, which helps us to envision the future of the welfare state.

1 Introduction

Allow me to tell you the story of the wounded little bird again!¹

Four men stand in four different corners of a room, each holding a gun.
They all set their sights on each other and none of them can turn down his gun.
They are at a deadlock in a four-way standoff.

¹ The first appearance of the wounded little bird is Gotoh (2018), p. 24.

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Then, suddenly, a wounded little bird flies down and falls right in the middle of the four men. Strangely, its faint breath travels across their guns and is perceived clearly on their hands.

At this moment, the four men all lower their guns, deeply appreciating the fact that they escaped the worst situation at the last minute.

The unexpected presence of the small bird suddenly changed the critical situation faced by these individuals and in turn, totally changed their behavior.

Now, they realize that there was no reason to raise their guns in the first place.

Let us continue with the tale.

The four men abandon their guns and take up hoes instead.

They cooperate in cultivating the soil, resulting in a rich harvest in autumn.

Now many lively birds visit the field and their songs can be heard.

Wealth and peace are finally achieved, and they live happily ever after!

However, there is one question we have forgotten to ask.

What then happened to the wounded little bird?

The wounded little bird was left behind and ascended quietly to heaven.

No one noticed it.

When autumn came the leaves covered it, and snow covered it in winter.

There was no sign at all of the injured bird by early summer when the four men began fighting with each other again, this time with hoes:

“To whom do these crops belong?”

This fight continued, again, until another wounded little bird fell from heaven.

Cooperation among “ourselves” is not only unjust but also unstable if we forget and neglect the visitor, the other who triggered our cooperation, and if we delude ourselves that cooperation was achieved by “ourselves” only, pushing the visitor’s existence into a category essentially similar to our own, based on a scientific cognition of *continuity*.

However, how can we understand the tiny bird that is entirely different in nature from “ourselves” without losing equality as a norm? Is there any risk that the asymmetric being is going to be treated as *a means* for symmetric beings to achieve their cooperation?

In this chapter, as a conclusion of this book, the future of the welfare state is envisioned based on the reweaving of a theory of justice and normative economics. We will first explore how to make a theory of justice more *real* as well as more *ideal*, resolving the work incentive problem and having the idea (logics and ethics) of public reciprocity, based on Rawls’s philosophy of contingency and Sen’s capability approach with social choice theory.

Economics has explicated the work incentive problem that may make Rawlsian justice theory self-defeating. Economics has also examined the possibilities and limits of reciprocity, which does not necessarily lead to mutually beneficial outcomes, and which does not hold equity. The idea of public reciprocity represents a social cooperation that is established through the medium of mutually acceptable rules. It overcomes the limitations of reciprocity by acknowledging the existence of people in adversity and giving them thanks. It also solves the

work incentive problem by opening the means-object relationship of labor and benefits to society as a whole, rather than closing it to the individual.

We will next explore the concept of dignity in terms of its potential contribution to the deconstructing and restructuring of liberalism. The disparity in status between the right to work and the right to well-being, and the disregard of the utilization ability to use the rights to liberties are criticized. Lastly, this chapter seeks a logic in capability approach to denounce actions that violate the obligation to respect dignity, and to measure the damage for compensations, while standing on the inviolability and incomparability of the dignity inherent in the individual.

2 Rawls's Theory of Justice Revisited

2.1 *The Reality of Rawls's a Theory of Justice*

Rawls's *A Theory of Justice* is sometimes critically described as "idealistic" (Rawls himself used the term!). If this term implies a detachment from reality, then the term is inappropriate in two ways. On one hand, Rawls's *A Theory of Justice* seeks the conditions for making the institutional ideal work in the actual world, and in that sense, it is realistic enough. On the other hand, the "well-ordered society" stipulated in the "two principles of justice" presented by Rawls may not capture serious problems of the actual world, and in this sense, it is not ideal enough. In what follows, we will reevaluate the methodological framework that Rawls used to make the ideal more real while exploring ways to make the ideal of institutions presented by Rawls more *ideal*.

The *reality* of Rawls's *A Theory of Justice* first appears in the nested structure of the "institutional ideal" (the principles of justice) and the "individual real". That is, individuals who implement particular principles of justice must participate in the process of consensus-building for those principles of justice. For individuals to form a consensus on certain principles of justice, they must participate in the society in which the principles of justice are carried out. This nested structure suggests that the contents of the principles of justice cannot be independent of the evaluation and the behavior of the individuals in society.

It should be noted, however, that the individuals considered here are not literally "real", who are removed from the "institutional ideal." There is an ethical assumption here. Individuals who desire and aspire to the ideal of the institution will and should explore the conditions of effectiveness to make it real. These conditions include the consciousness and behavior of the individuals themselves. The individuals pursue the "individual ideal" to make the "institution ideal" more real. To add, as his term "realistic utopia" (Rawls, 1999a) indicates, the key to "realism" that keeps the ideal from an unrealistic is the transformation of people's consciousness and behavior driven by the institutional ideal.

The above points are crystallized in Rawls's methodological framework of "political constructivism" (which he initially called "Kantian constructivism"), which has the following characteristics.² That is, neither the "individual ideal" nor the "institutional ideal" has such overwhelming certainty that one can be the basis of the other. The validity is ensured only when their mutual consistency is confirmed through practical reasoning and public reflections.³

There can be many variations on the specifics of the "individual ideal" and the "institutional ideal." Rawls himself posits the "moral personality" that consists of rationality and reasonableness, and correspondingly, the "two principles of justice," where the latter call for equal guarantees of basic liberties, substantive equality of political freedom and opportunities, and maximizing the expectations of the least advantaged. This framework clearly demonstrates the reach and limits of the liberal welfare state. Eva Feder Kittay, for example, proposes extending "moral powers" to include "a sense of attachment to others, an empathetic attention to their needs, and responsiveness to these needs" (Kittay, 2010). Cynthia A. Stark proposes that the parties to the overlapping consensus are in a position to ratify the principle of justice that takes account of the interests of cognitively impaired individuals (Stark, 2010).

This chapter finds the limitations of Rawls' concrete conception, first, in allowing the work incentive problem under the assumption of "moral personality." This assumption cannot prevent the amount of social transfer from being arbitrarily reduced depending on the incentive of the person to transfer. Second, it fails to take into account differences in the utilization ability of individuals to exercise their rights to liberty. An individual with a smaller utilization ability cannot prevent or avoid a violation of human rights or dignity with his/her right in hand. However, before moving to these discussions, we would like to emphasize the methodological importance of Rawls's political constructivism in realizing the institutional ideal, regardless of its concrete content.

2.2 *The Influences of Economic Theories on a Theory of Justice*

A collateral evidence of the realistic nature of Rawls's *A Theory of Justice* is its affinity with economic theory.⁴ Part I of *A Theory of Justice* adopts a framework in which the principles of justice are agreed upon by parties behind the veil of ignorance. This framework is similar to the axiomatic approach in social choice theory in economics, which characterizes a distributive principle as a combination of primitive criteria. The

² Rawls (1980, 1999a, 1999b).

³ The method of J.J. Rousseau's "social contract theory," which attempted to directly connect the real individual with the ideal system, was rearranged topologically, so to speak, by the method of Kant's reasoning based on practical reason (Neal, 1987; Shionoya, 1984).

⁴ The details are spared here, but the academic exchange with Kenneth Arrow and other economists in the process of producing Rawls's theory of justice cannot be ignored.

new welfare economics, led by Abram Bergson, Paul Samuelson, Kenneth Arrow, and others, developed a theory of “social welfare functions” that makes it possible to compare various principles of justice, including utilitarianism criticized by Rawls and “the difference principle” proposed by Rawls.⁵

Part II of *A Theory of Justice* takes a further step toward real socio-economic institutions. Here again, the nested structure of the principles of justice and the real individual is vividly revealed. Individuals use institutions as parameters to maximize their personal goals, and institutions use individual preferences and actions as parameters to maximize social goals. The difference principle is formulated as a higher-order principle for balancing, with optimal weights (i.e., tax rates), the various common-sense precepts of justice such as “distribution according to need” and “distribution according to contribution.” This framework was developed in the theory of optimal taxation by public economists, including R. A. Musgrave and J. A. Mirrlees.⁶ A model was devised in which optimal working hours and optimal tax rates are determined simultaneously.

However, these affinities with economic theory were a double-edged sword for Rawls’s theory of justice. The “difference principle” aims to maximize the expectations of the least advantaged, but it can be self-defeating, insofar as the strict priority of equal liberties exists. Another variable, the individual’s incentive to work (reflected in the choice of working hours and quality), enters into the equation and there is no guarantee that the basic needs of the least advantaged will be met even if the difference principle is adopted and their expectations are maximized. This is the conundrum known in public economics as the “work incentive problem.”

With this in mind, Rawls readily conceded the argument that to maximize the benefits to the least advantaged, it is better to stop increasing the rate of redistribution just before people’s willingness to work falls significantly. He might have concluded that this is as far as one can argue under the primacy of formal equality of liberty and substantive equality of opportunity, even if it is not desirable from the perspective of consequential equality.

One can interpret that Rawls’s characterization of his theory as “idealistic” is a warning against being taken in by “realistic” reasoning in economics. Acknowledging this point, we should note that there is an underlying assumption in economic models that we can completely compare, exchange, and rank the social positions of all individuals. This means that if there exist individuals who are incomparable in their social positions, they must be excluded from the beginning of the discussion. This point corresponds to Rawls’s remark that the scope of his theory of justice is limited to “normal” people, excluding “hard cases” such as the severely mentally and physically handicapped and those with incurable diseases.

As an aside, the “difference principle” has been interpreted by economists as a “maximin principle” under uncertainty.⁷ An individual following this behavioral pattern would presumably choose to avoid the worst rather than maximize the

⁵ See Arrow (1951/1963), Bergson (1938), Samuelson (1947/1983), Sen (1970/2017).

⁶ See Mirrlees (1971), Musgrave (1974).

⁷ Musgrave (1974).

expected utility. This interpretation seems to be a strong reason to support the difference principle because in its monic logical structure norms (that is, “ought to”) are derived from the fact of human propensity (that is, “is”). However, there is a danger in this very logical structure. It may undermine an individual’s existential decision on ethical choices, holding the liberty to pursue his/her conception of the good.

Rawls, through his discussions with economists, makes it clear that the individual is not the carrier of a single utility function that can uniquely rank all social states (Rawls, 1974a/1999b; 1974b/1999b). While Rawls assumed “indifference to others”, he kept righteous resentment or indignation against the injustice suffered by others as an assumption (Rawls, 1963). Indeed, a clue to freeing Rawls’s theory of justice from its economic spell is to be found in Rawls’s theory itself. Before that, let us review Sen’s framework of normative economics in the social choice theory.

3 Sen’s Critique of “Welfarism”

3.1 Challenge to Welfarism

Rawls’s caution against “realism” in economics overlaps with Amartya Sen’s critique of “welfarism” that characterizes neoclassical economics (Sen, 1979). Welfarism adopts as its sole criterion a unitary preference, which guarantees to make complete and consistent orderings of all social states. It thus allows us to always obtain an optimal choice for any given set of alternatives. Sen sharply points out that this “welfarism” provides a normative justification of the free and competitive market mechanism, while making it difficult to support other economic systems that implement social transfers of resources. The critique of the difference principle based on the problem of work incentive discussed above is only the tip of the iceberg.

Sen’s challenge to welfarism first took the form of an extension of the concept of rationality (Sen, 1977a). Economics reduces the concept of rationality to the principle of internal consistency of preferences and the principle of self-interest maximization (Sen, 1993/2002). In contrast, Sen includes the following human behaviors in rationality by focusing on the correspondence between preferences and external norms.⁸ A person sometimes empathizes with the grief or agony of another as if it were his or her own, or makes decisions based on the goals of others as his or her own. Sometimes one commits oneself to acts that prevent injustice without regard to one’s own interests. One may also have a “fiduciary responsibility” toward a vulnerable person (e.g., a friend’s surviving child).⁹ That is, one places ethical constraints on the range of actions one can take.¹⁰ In addition, a person sometimes expresses a public

⁸ For representative references, see Sen (1977a, 1977b, 1979, 1993).

⁹ Sen (2002).

¹⁰ Sen emphasizes that assuming fiduciary responsibility should be formulated not as “desire” but as “acceptance of the rule.” In this respect, it is similar to the concept of “public reciprocity” discussed below.

judgment that is not internally consistent with his or her private preferences.¹¹ These provide a logic for responding to the criticism of Rawls's difference principle. Even if one's disposable income is reduced as a result of increased tax rates, there are rational reasons to maintain a willingness to work either as a duty to oneself who happens to have the ability to work or as empathy or commitment to others in adversity. A society with a sufficient number of such individuals can probably achieve a decent level of benefits for the least advantaged.

Second, Sen's challenge to welfarism took the form of a critique of *completeness*.¹² For example, in his paper "Equality of What?" (Sen, 1980), Sen points out that seemingly opposing thoughts and ideas commonly seek to realize equality in some space, they only differ in the space in which they seek to achieve equality. Libertarians guarantee the exercise of formally equal liberties. Communitarians seek substantive equality among community members in the space of the enjoyment of certain values shared in the community. The capability approach focuses on the equality of the exercise of rights to liberties and the equality of values of basic capabilities among different individuals (Sen, 1980). What space a society should care about is open for public reasoning and discussion.

Sen's challenge to welfarism turns thirdly to the "invariance requirement" (Sen, 1977a). The application of the invariance principle requires the assumptions of *separability* to be implicitly presumed in the statement of "holding other things constant (*ceteris paribus*)" among others.¹³ For example, as noted above, Rawls treated only the normal case as a variable, given the hard case fixed, suggesting that he would extend the theory by including the hard case as a variable in the next stage. In response, Sen criticized that there was no guarantee that the theory derived in this way would be the same as a theory created with both cases from the beginning.

3.2 *The Capability Approach and Trans-Positional Theory of Justice*

Sen summarizes his critique of Rawls's *A Theory of Justice* by calling it the "transcendental approach" to justice and then contrasts it with the "comparative approach" to justice (Sen, 2009). The heart of his critique is interpreted to be on the five properties that Rawls imposes on his principles of justice (the right in general): universality, generality, publicity, ordering, and finality. If we interpret "publicity" as shared knowledge of public rules including market prices, "ordering" as a pair of transitivity and completeness, and "finality" as logical or empirical demonstrability

¹¹ Sen proved that if just one person would form a public judgment in favor of a "right to liberty" guarantee rule, the liberal paradox can be resolved (Sen, 1970). See also Sen (1979).

¹² Refer to "Obviously completeness is a desirable characteristic of social preference, but we shall not make a fetish of it" (Sen, 1970/2017, 48).

¹³ The property of "independence of irrelevant alternatives(IIA)" (Arrow, 1951/1963) is a typical example.

(such as passing a test of falsifiability), then the five properties are those implicitly assumed by the general equilibrium theory that proves the existence of a globally free and competitive market mechanism. Sen's critique of Rawls is indeed a challenge to the methodology of the liberal social sciences and philosophies, spearheaded by economics.

However, it is important to note that Sen did not abandon a theory with a broad format that overlooks various opposing theories and practices. His point is to clarify the contradictions that plausible criteria entail and to limit the reasonable scope of the theory. Sen's social choice theory relates individual choices to his/her plural preferences, evaluations, and judgments. Sen's theory of identity approaches the multiple identities of an individual who simultaneously belongs to diverse social groups, positions, and categories.

The capability approach presented by Sen views an individual's (dis)advantage as an opportunity set of functioning vectors (i.e., "capability") that he/she has reason to choose.¹⁴ It provides a framework to understand individuals' situation by synthesizing goods and resources available to them, physical and mental abilities attributed to them, plural preferences and evaluations they form, and subjective sense of well-being and happiness they hold. Capability indices are essentially multi-dimensional and non-deterministic (imperfect in the list of functionings), unlike uni-dimensional indices such as money, income, utility, etc.

Through these conceptions, he explores a trans-positional theory of justice, that progressively connects different social positions or groups with multilayered evaluation functions defined under plural spatiality and dimensionality (Sen, 2009). The scope of his theory includes people suffering from severe physical and mental illness and disabilities, domestic abuse, psychological trauma, social isolation, and the cycle of revenge and forgiveness. Instead of hiding the existence of hard cases in actual society, it has the potential to improve injustices in institutions and policies from a hard-case perspective. In the next section, we focus on the philosophy of contingency in Rawls's Theory of Justice with a brief note on his idea of responsibility.

4 Philosophy of Contingency

4.1 Contingency and Work Ethics

Suppose that something will happen at least once in 100,000 dice and, if there are 100,000 people in the world, it could happen to any one of them. Even so, why did the terrible disaster happen to you and not to me at that time and place? No theory of probability or measures can explain why. The Japanese philosopher Shuzo Kuki called it "pioneering projection" (Kuki, 1935, 254) in which one dares to accept and

¹⁴ See, for example Sen (1980, 1985, 1999)

live with a morally arbitrary contingent event that cannot be explained as having a specific cause and effect.

As a young soldier, Rawls' experience of the death of his friend is reminiscent of these words of Kuki. In a situation where one of them was going with the Colonel and the other was giving blood, not Rawls, who happened to have a right blood type, but his friend went with the Colonel and was immediately killed (Rawls, 2009, 262). There is a lucid recognition of contingencies and moral arbitrariness behind Rawls's *A Theory of Justice*, as the following words indicate.

No one can benefit from morally arbitrary contingencies, such as class origin or natural ability unless they also benefit others (Rawls, 1974b, 246).

To what extent can we say that this is my moral desert? Individual (dis) advantage is largely affected by social and natural contingencies (origin, talent, characteristics, etc.) beyond the will and choices of the individual. If this is so, Rawls concludes, that no one should be allowed to benefit from natural or social contingencies without benefiting others.

What is at stake is that this recognition of contingencies and moral arbitrariness shakes to the core our common sense precepts of justice as the proportional distribution of goods or bads in response to the marginal "merit," "contribution" and "work" of the individual, or the proportional punishment and compensation in response to the marginal "wrongdoing," "crime" and "offense" of the individual. It does not stop there.

This recognition provides a normative perspective on work ethic as follows. The individual who happens to be working, earning wage income, and paying taxes has already benefited from contingencies in being able to engage in such activities. No matter how free and competitive the labor market may be, the wage rate determined there cannot escape contingency and moral arbitrariness. Their cooperation with others has inseparably contributed to producing achievements. If such logic and ethics were accepted by people, labor would be recognized as an end and a means for a person to live together in society, and people might refrain from manipulating their working wills merely to maximize his/her self-interest. Rather, if and only if people happen to be able to work and contribute, they will take it upon themselves to do so as a self-evident necessity, that is, as an obligation. The scope of the theory of justice based on the philosophy of contingency is broad.

4.2 Contingency and Responsibility

It should be noted, however, that Rawls' philosophy of contingency retains the perspectives of responsibility and property ownership. Here are two very different examples. The first is that Rawls places the responsibility for the atomic bombing of Hiroshima not on civilians or soldiers but on the leaders who exercised power in the highest decision-making body of the nation (Rawls, 1995). Rawls rejects arguments

that hide the guilt and responsibility of leaders by appealing to the notion of responsibility shared by all the people including general citizens. Note that this position of Rawls leads to recognizing the demands of the victims of the atomic bombings for state compensation based on the responsibility that initiated and continued the war.

The second example is the following. Rawls calls “property-owning democracy” a system that aims at “ex-ante” equality of resources (Rawls, 1971a, 274f). Its idea is to respect the freedom and responsibility of individuals to maintain and utilize their owned stock (land, capital, labor, etc.). It goes beyond the “welfare state,” which focuses exclusively on “ex-post” redistribution of market wage income. Equalization of the ex-ante stock in the current period would require more than correcting inequalities of ex-post flow in the previous period. By combining with the difference principle, the idea of property-owning democracy” can be organized to maximize the expectations of the least advantaged with the goal of stock equality.¹⁵ This perspective can be connected with the capability approach, which focuses on the freedom and responsibility of an individual to maintain and utilize his/her capability (an opportunity set of functioning vectors).

In the next section, we will examine the conception of “public reciprocity,” which is envisioned on the basis of Rawls’s philosophy of contingency and the capability approach.

5 The Logic and Ethics of Public Reciprocity

5.1 Externalities and Gratitude

As mentioned above, Rawls’ philosophy of contingency did not preclude the responsibility of individuals in positions of power to be undeniable. In general, however, there is an inevitable tension between contingency and responsibility. Suppose, for example, that a bad event has happened and you recognize strong influences of contingencies far beyond individual will and actions. While the causal character of the responsibility of the perpetrator recedes into the background, those who suffer the damage remain vividly in the foreground. Who on earth should be held responsible, and on what basis, for those who have suffered the disadvantages?

In such a context, it is “compensation” based solely on needs that gains validity, rather than “rewards” based on pre-existing contractual agreements, “atonement” claimed based on causality, or “returns” requested for debts or liability.¹⁶ However, if the victim can demand compensation as his or her right, a corresponding obligation to contribute would be assigned to the non-victim. Thus, the logic and ethics that implement such an assignment of rights and obligations under feasible conditions

¹⁵ This is a concept originally developed by James Meade (Rawls, 1971a, 1971b, 274n).

¹⁶ To borrow a phrase from Rawls, “rewards,” “atonement,” “gratitude” are all play important roles in as common sense criteria of justice, yet “need” criterion is unique in that it is not founded on any other factor.

might be required. Actually, it is a subject of the idea of “society as a fair system of cooperation” in Rawls’s theory of justice (Rawls, 1980, 16).

The concept of externalities in economics gives a hint. If society can fairly appreciate people in adversity, who are living and resisting the disadvantages, say, as non-market values, income redistribution can be seen as an exchange between market values and non-market values. Or, income transfer from those who earn in the market to those who are in adversity can be interpreted as gratitude for intangible benefits that the former receive from the latter.¹⁷ Moreover, if the activities of individuals are recognized to be inseparable and interrelated with each other, then, one can hardly say that an individual’s achievements are solely his or her moral deserts.

5.2 The Logic of Public Reciprocity

Alternatively, we can consider the following logic. If a certain public rule is commonly accepted, there is a possibility of the broad meaning of reciprocity among individuals even in asymmetric positions. Let us suppose the following public rule.¹⁸

If you can work and afford to provide, do provide, if you are in need take provision and be well.

We can find that the statement of both the former part and the latter part becomes conditional through the following two kinds of correspondence. First, it is a *purpose-feasibility correspondence*, that is, the latter statement shows the purpose of the former statement and the former shows the feasibility of the latter statement. Note that a *purpose-feasibility correspondence* needs not to be revealed within one person. It is required to be realized in society as a whole. In a society, there may be individuals who only work and provide throughout their lives, while there may be individuals who only are needy and receive throughout their lives. Even if this is so, *purpose-feasibility* correspondence can be established in society as a whole.

We find, second, a *right-ethical obligation correspondence* in that rule. For the latter part to be exercised as an individual right, the first part must be carried as an individual obligation. This correspondence also does not need to be revealed to one person. Even if there are individuals who never exercise the latter part as a right during their lifetime, and even if there are individuals who never carry the first part as an obligation during their lifetime, it is sufficient if the right is exercised and the obligation is carried by society as a whole.

The key to transforming these two correspondences, i. e. liberating from the bindings of the intra-individual correspondence, and reaching the intra-society correspondence, is called the ethics of “public reciprocity” (Gotoh, 2009). Public reciprocity is

¹⁷ Refer to Goffman’s idea of “deference” and “consideration” (1963, 25), refer also to Gotoh (2020, ch.7).

¹⁸ The following statements are owed to Gotoh (2009, 152f).

characterized by imaginary alternating of asymmetric positions based on the philosophy of contingency and the acceptance of a common rule. More concretely, with the above public rule, we can recognize the ethics of public reciprocity in the following two kinds of asymmetries.

5.3 *The Ethics of Public Reciprocity*

One is an *asymmetry* between individuals who work and provide and individuals who are needy and receive. There is indeed asymmetry in their actions yet we can recognize public reciprocity between providers and receivers inasmuch as they are equally constrained by this rule. If you (I) can work, you (I) also provide; if you (I) are in need, you (I) also receive. The other is an asymmetry among individuals who commonly work and provide but are different in their amounts, and an asymmetry among individuals who are commonly needy and receive but are different in their amounts. In these cases, we can recognize *public reciprocity* in the following sense. I (you) who can contribute will contribute, trusting that you (I) who can contribute will contribute. Similarly, I (you) who are in need will receive the benefit, trusting that you (I) who are in need will receive the benefit.

A few notes on the conceptual meaning of public reciprocity. Like market exchange, reciprocity generally has a bidirectional relationship (closing arrows), whether two-party or multi-party, direct or indirect. Also, voluntary interactions are expected. However, reciprocity in general differs from market exchange in that it does not require equivalence in exchanged values.¹⁹ Rather, “alternating dissymmetry” (Henaff, 2009, 128) is crucially relevant for reciprocity.

The distinguishing feature of *public* reciprocity is that even if bidirectional relations are not recognized as a fact, bi-directionality is recognized through the alternation of imagined positions mediated by rules. Note that the concept of “justice as reciprocity” provided by Rawls (1971b), which is considered as a characteristic shared by justice and fairness, is considered to be realized in reciprocal procedure embodied in rules, which are adopted by individuals, and which themselves represent reciprocal correspondences in society as a whole.²⁰

The welfare state has developed various systems of public reciprocity for victims or sufferers.²¹ However, if people are not convinced of the reasons for social transfers, then there is a risk that social transfers will be kept at a low level. What this section

¹⁹ Marcel Henaff, a philosopher and anthropologist, explains “the strongest mode of reciprocity” as follows. “Actions are thus characterized by their successiveness and positions by their alternating dissymmetry; this does not imply any inequality between agents; on the contrary, a balance is obtained through alternation and therefore develops or is anticipated through time.” (Henaff, 2009, 128).

²⁰ The Idea of fair terms of cooperation is reciprocity, i.e., that each person fulfills the role required by the rules and procedures (Rawls, 1980, 16).

²¹ Japan, for example, has the following systems relevant to public reciprocity. Compensation for Atomic Bomb Survivors, Compensation for Health Damage Caused by Pollution, Support for

has done is to explore the logic that underpins these institutions, taking as its starting point Rawls's philosophy of contingencies. The next section sheds light on issues that are often overlooked under the priority of equality of basic liberties by the concept of dignity, one of the keywords of this book: degrade between negative and positive rights, degrade between asymmetric social positions regarding contributions and benefits, for example, between providers and recipients of care.

6 The Limits and Possibility of Liberalism Illuminated by Dignity

6.1 *Why Liberalism Has not Addressed Dignity Directly?*

One of the reasons why liberalism has not addressed dignity directly is the belief that the dignity of the individual is naturally preserved through the exercise of rights and obligations by the individual. Relationships based on rights and obligations can be free from the domination/subjugation relationship that tends to arise under one-way transfers of value (services and goods), such as giving/receiving grace, protection, care, and teaching. Because both rights and obligations are universal and anonymous, individuals can engage in an imaginary alternation of positions through the exercise of rights and obligations.

For example, the right to well-being has replaced private assistance based on gifts or charity with public assistance. There is no domination, at least logically, between the individual with the right to receive and the individual with the obligation to work and provide. It just happens that there is a person who does not need public assistance now and another who does need it. Whoever exercises the right to life contributes to publicizing the successful functioning of the relations of rights and duties in society. There is no need for any individual to feel humiliated by receiving public assistance. In reality, however, there is a constant stream of people who lose their lives before they apply for and receive benefits.

In general, rights can be divided into two categories: negative rights (not to be socially prohibited from doing what one is capable of) and positive rights (to request social support for doing what one is not capable of). For example, the rights to "freedom to work" and "liberty of pursuing happiness" are negative, while the rights to "freedom to well-being" are positive. In principle, neither should be more valuable than the other. The priority of liberty in Rawlsian justice theory also did not imply superiority of value under a single measure, such as excellence. But it did, in fact, condone the subordination of B to A in value. In reality, however, modern liberalism may have allowed the subordination of negative rights to positive rights in value. In a universal equal rights and obligations system, domination, oppression, and pecking

Crime Victims through Payment of Benefits for Crime Victims, etc., System for Relief of Victims of Adverse Reactions to Drugs.

order do not manifest themselves in the visible form of transgression of the law and violence. They can manifest themselves through the manipulation of work incentives, or in the tacit form of the degradation of dignity. We would like to return to this issue in conclusion.

6.2 *Freedom of Movement and Dignity*

Another reason why liberalism has not addressed dignity head-on is because freedom of movement has often been taken for granted. Freedom of movement is closely related to freedom of body, freedom of displacement, and freedom of economic transactions. A society under a free competitive market mechanism can achieve Pareto efficiency, that is, resources can be allocated without waste, and each individual can maximize his or her utility. Moreover, if the welfare state has a system of equality of opportunity and public assistance, then the resulting disadvantages, if any, indicate diverse preferences of individuals and therefore their responsibility.

For example, if there is a concern about human rights violations in a certain hospital, its patients should move to another hospital that respects human rights. In this way, hospitals that violate human rights will go out of business, and only those that respect human rights will survive. When freedom of movement is taken for granted, individuals staying in a hospital can be interpreted as there is a sufficient benefit that more than compensates for the human rights violation.

Without access to information about where patients can be transferred, they cannot exercise their freedom of movement. Or, even with access to such information, they still cannot exercise their freedom of movement if it turns out that no hospital can provide a decent level of well-being for them.

Moreover, individuals tend to have customs that do not allow them to leave easily. People tend to be loyal not only to their families and communities, but also to their workplaces, schools, institutions, hospitals, and other places where they live, work, speak, and see each other. If individuals have invested mental, physical, and time resources in a place, they may calculate that they will not be able to collect their earnings if they leave the place (exit).²² Resentments and indignations without the threat of “exit” may be bought off cheaply by their counterparts. As a result, the problem will not be discovered until it causes irreparable damage to them.

J.S. Mill (1869) is famous for his call for the “freedom to divorce.”²³ He said that even slaves have the freedom to run away and serve another master, and it is not right

²² Albert Hirschman viewed voice and loyalty as human motives other than exit. Voice refers to changing the gathering from within, while loyalty refers to contributing to the gathering without leaving, despite the damage to one’s own interests. It should be noted that even vulnerable users described below may remain due to these motives toward the gathering (Hirschman, 1972).

²³ Until a conviction for personal violence, or at all events a repetition of it after a first conviction, entitles the woman ipso facto to a divorce, or at least to a judicial separation, the attempt to repress these “aggravated assaults” by legal penalties will break down for want of a prosecutor, or for want of a witness (Mill, 1869, 64).

that women should not even have the freedom to run away. He is only telling half the story. To have the real freedom to divorce, you have to be able to live a decent life where you run away. Furthermore, you must be able to live a decent life without divorcing. If a decent life is impossible within a marriage, then choosing divorce is not freedom but a rational necessity.

To have autonomy and responsibility truly, an individual must have lives that he or she has reason to choose, that is, that the choice is within his or her capability to make. It is not too late to scrutinize the individual's preferences in terms of autonomy, once this is sufficiently confirmed.

6.3 The Obligation to Respect Dignity, Capabilities for Dignity

Let us start with Kant's concept of dignity. It states that there is an absolute, incomparable value of dignity for all human beings if the existence of goodwill cannot be denied. To "respect the dignity of any and each person" is a categorical imperative that demands a mere obligation. Insofar as this statement is true, logically, the degradation of dignity cannot be specified and measured by the consequential loss of dignity. To accuse the degradation of dignity, the following question should be answered. "What does it mean that dignity is not respected?" Then, we can define a list and the level of functioning of dignity to be secured as rights. With Sen's capability approach, we might be able to estimate the "capability for dignity" (the opportunity set of functioning vectors) of individuals. A list of functionings of dignity may include, for example, not being humiliated, not having a dialog unilaterally interrupted, and having customary manners of eating and defecating respected.

Rawls considers mutual respect to be a sufficient condition and an almost necessary condition for self-respect. Its sufficiency can be, analogically, explained in the context of dignity as follows. we can consider that the capability for dignity is maintained if there is respect from others, even if the person's cognitive functions deteriorate. Respect for the person's dignity by others, such as family members, medical personnel, and caregivers, can complement the person's ability to respect his or her dignity and increase the person's capability for dignity.²⁴

Its an almost necessity can be explained as follows. It is difficult, if not impossible, for a person to maintain his or her own "capability for dignity" in the absence of mutual respect for dignity with others. It would not be impossible, for example, if one still holds the memory of one's self-respect and utilizes it to transform the present dignity as a resource. In general, however, that is difficult, because the self-image reflected in the "steady gaze" of others may limit the person's perception of capability. According to Rawls' well-turned word, "(s)elf-respect is reciprocally self-supporting." (Rawls, 1971a, 179).

²⁴ Dworkin (1993/1998, 233).

For example, if a person is forbidden to defecate in the toilet and is not even allowed to clean up the waste scattered around him or her, or if he or she is imprisoned and then enshrined as a sacred object to be admired, it would be difficult to find one's own dignity in the gaze of others. If dignity only evokes an obligation, an argument can be made that the concept of dignity is redundant, since "respecting an existence" and "respecting the dignity that an existence possesses" are almost synonymous. The former would probably be sufficient to capture a violation of duty. However, the concept of dignity as a value is necessary to understand the right to "capability for dignity that correspond to duties of "respecting an existence".

7 Concluding Remark: Price and Dignity

Two methods have been used to discuss the theory of justice. One is to separate the normal case from the hard case and concentrate only on the former, as Rawls did. The other is to construct the theory, removing the separation and placing all individuals on a single scale (e.g., by considering "disabled" and "non-disabled" as a matter of degrees or severity of disability).²⁵ The latter appears to be significantly more egalitarian, since it places each and any individual over a single, continuous scale, while the former only covers normal cases.

However, as detailed in Sect. 2, economic models using a welfare index defined on income and leisure warn that neither method can solve the work incentive problem. This is because a continuous scale allows for a de facto reversal of the welfare ranking after income transfers. This reversal of the welfare ranking could invite a feeling of unfairness and reduce the work incentives, which result in the decline of total fruits, and then, the decline of the recipient's welfare. The work incentive problem is really a conundrum for the welfare state to implement income transfers.

The idea of this chapter to solve this problem is to start from the irreversibility of welfare rankings between the normal case and the hard cases while taking into account the value of the hard cases seriously. The capability approach that captures differences in utilization abilities to use rights to liberties in multi-dimensional functionalities clearly shows that income transfer is unlikely to cause a rank reversal in capabilities for well-being, which circumvents a feeling of unfairness, and then, the work incentives problem.

Yet the assumption of the de facto irreversibility of positions is a double-edged sword, since it may induce degradation of dignity by irreversibly advantaged individuals to disadvantaged individuals, for example, by tax-payers to recipients or by caregivers to caretakers. Harsh acts of retaliation by the latter, where the restoration of his/her dignity is at stake, could provide the former an apparently legitimate excuse for a patent violation of human rights.

What is needed here is the construction of logic and ethics, which starts from the recognition of the irreversibility of positions and results in the acknowledgment of

²⁵ See, for example, Nussbaum (2006).

individuals' values including human dignity. As mentioned in Sect. 5, the concept of externalities gives a hint. If society can fairly appreciate people in adversity, who are living with and against disadvantages, as valuable existences (possibly non-market values), the transfer of resources from the taxpayers to the people in need can be interpreted as gratification from the former to the latter. Taking an action of gratitude might be effective in restraining people from engaging in degrading behaviors.

The concept of public reciprocity, with the philosophy of contingency, creates the possibility of imaginary alternations among asymmetrical positions, mediated by a common set of rules. That is, if I (you) can work and provide, I (you) will do; if I (you) need help, I (you) will receive it. At the same time, this creates reciprocity among individuals, whose amounts of provisions or receptions are different from one another. I (you) will provide according to my ability, trusting that you (I) will provide according to your ability. I (you) will receive according to my needs, trusting that you (I) will receive according to your needs.

Here we can again refer to the capability approach. As mentioned above, we can formulate individuals' capabilities for well-being as an interpersonally comparable index in terms for social policy. Similarly, we can construct capabilities for dignity as an interpersonally comparable index for social policy. In addition, without contradicting this, we can also consider an individual's capability as an interpersonally non-comparable value, which cannot be reduced to a given list and is inherently open and non-deterministic. Human dignity is interpreted as being at its core.

We conclude that the capability approach makes it possible to operationally formulate the "incomparability" that Kant takes to be the essential meaning of the concept of dignity.²⁶ This conclusion indicates the possibility of a contribution of economics to the theory of value in a way completely different from the price theory, which envisions the future of the welfare state.

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²⁶ See for example, Gotoh (2020).

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Postscript

This book has a three-level telescopic structure. At the very front, there is a scope of reexamining the political liberalism in the light of dignity. Behind it is a scope of reconstructing a theory of justice in modern society. Further behind it, there is a scope encompassing reflection on the methodology of liberal social sciences and philosophy. We leave it to the reader's imagination as to which scope to read this book through, and what image will emerge from the three scopes taken together. More details are presented in the book's introduction, but our research concerns can be summarized as follows.

Modern society is characterized by the fact of contingency, uncertainty, and ambiguity. The purpose of this book is to transform this phenomenal fact into a hopeful norm. As a clue, the book examines the concept of dignity and looks forward to a new definition. So far, the concept of dignity has been peripheral to the concerns of liberal social sciences and philosophy. For example, Rawls's theory of justice regards dignity as a comprehensive belief related to the conception of the good and it did not fit into the subject of the conception of justice, while he was deeply aware of the influences of natural and social contingencies and the existence of individuals placed in adversity. He was also aware that cooperation among "free and equal" individuals is never stable. The same is true of Keynes, as argued in this book.

The concept of dignity illuminates their limitations and possibilities by asking the liberal social sciences and philosophy the following questions. Can the theory of justice or discourse ethics truly realize the well-defined society it envisions in a fundamentally contingent, uncertain, and ambiguous situation? Can societies be inclusive of minorities relegated to the periphery with their dignity undermined? Can we resist the temptation to construct huge hierarchical stairs, forcing individuals to place themselves on one of its steps, and thus lining up different and diverse entities in a long sequence, and eventually bringing about totalitarianism?

With these questions in mind, the task of this book was to create a logic and ethic for the social cooperation of people in asymmetrical positions, stretching the possibilities of the idea of justice. As we are editing this book, news is coming in that the world's military spending last year was the largest since statistics began being collected in 1988 (by the Stockholm International Peace Research Institute).

When a photographer focuses his camera, he cannot save his subject's predicament. Viewers of the photos of the victims uniformly ask. Why didn't he lend a hand before he focused the camera? The same question is posed to the researcher. There are people in front of us who are exposed to the degradation of their dignity. What is the reason (or excuse) for rushing to revise the theory of justice without directly denouncing this degradation? It is because a theory of justice that can counter the logic of dominant hierarchies is indispensable to guarantee dignity to all individuals as a value that cannot be compared among individuals.

We hope that this book helps readers envision a "realistic utopia", in which "no one is left behind," including wounded little birds (those suffering from territorial wars or mental illness as in brain wars), who might be triggers for "free and equal" individuals to cooperate.