

IS THE RIGHT TO LIFE OR IS ANOTHER RIGHT THE MOST FUNDAMENTAL HUMAN RIGHT – THE “URGRUNDRECHT”?: HUMAN DIGNITY, MORAL OBLIGATIONS, NATURAL RIGHTS, AND POSITIVE LAW

Josef Seifert*

Abstract: Moral obligations and basic human rights must be distinguished from each other and from positive rights and laws. Ethics and basic human rights rest on human dignity. The right to life is shown to be a natural and “absolute right,” but it is also in a certain sense the absolutely foundational concrete human right (Urgrundrecht) grounded in ontological dignity: all other human rights presuppose necessarily human life while human life has no more fundamental foundation in other goods but constitutes their ground. Other ideas about the most foundational right (such as the habeas corpus) are less foundational for the reason that they are more insignificant, can be suspended, are not immune to emergency states, such that their violation is not under all circumstances a grave violation. Moreover, they presuppose the right to life. These rights also refer only to a small sector of humanity, not applying to babies or comatose patients. The right to life is held by all human beings without exception, it is unrenounceable. For these and many other reasons the right to life is in an important sense the most fundamental right, in accordance with the first point of view for determining which is the most basic human right: Which right refers to the most basic good that is the condition of all others? However, there are two other points of view to determine the most basic right: The second point of view is expressed in the question: “Which human right is the most universal and comprehensive one and includes all others?” This is not true of the right to life which does not say anything about any other right. The respect for human life would not necessarily prevent a person from depriving another person of all other human rights, selling her as slave, torturing her, etc. From this point of view the right to life is in no way the Urgrundrecht, but rather the “universal right to be respected in one’s human dignity,” as well as “the right not to be harmed.” A third point of view to determine the Urgrundrecht considers the value rank of a good in which a human right is founded. From this point of view the “right to the freedom of conscience” linked to the highest (moral) values and the “right to religious freedom” are higher human rights because to just live without any other value and good in one’s life is certainly not the highest good. The paper concludes to a trilogy of the most basic human rights respect for which includes respect for all human rights.

*Dr. JOSEF SEIFERT, Professor, International Academy of Philosophy Spain–Instituto de Filosofía Edith Stein Granada, Spain. Email: jseifert@iap.li.

I. Questions about the Dignity of the Human Person as Foundation of Moral Obligations and Basic Human Rights

Ethics rests to a large extent on the insight into the dignity of persons. But is there such a dignity? And granted its objective reality, what is this “dignity”? And how can we know it? And if it exists and we can know it, could it not just pertain to some selected individuals, to the strong, healthy, intelligent ones, or to a higher class and thus not give rise to universal human rights? Can we seriously justify the claim that every human person (regardless of sex, race, sickness, old age, mental inabilities, cast, class, or any other differences between different members of the species man) possesses the same value and dignity? Can we say that this dignity raises even the most deformed and sickest embryo in the most miserable state, whom perhaps his proper parents want to abort, or the Alzheimer patient who wishes herself dead or whom her husband wishes dead (as in the 2012 movie *Amour*), high up above all impersonal creatures? (Seifert, 2004, Ch. 2). Or should we claim with Peter Singer (Singer, 1979, 41-61) that a healthy pig has more value than a human being with serious problems of mental and physical health? Can we claim that this human dignity is the source of strict moral obligations to respect human life during all its phases?

There is hardly any other theme that is as central to man’s survival, and above all to any ethics, as the dignity of the human person. In the first part of this paper, I will defend the thesis that this dignity exists and can be known, and that there is a first fundamental kind of human dignity that has no degrees, is possessed by each and every human being and gives rise to absolute rights and obligations; other dimensions of human dignity, which do indeed have many degrees, must therefore not be confused with this universal human dignity. A thought that opens up to the true nature of things, as is the ideal of realist phenomenology, is not truly realist unless it recognises, besides objective being and truth, objective values as well, since the good and values constitute in a certain manner the heart and the most important dimension of being (Seifert, 1970, 301-332); being without them would be neutral, void, or even absurd. Whether or not human dignity is not only an objective but also a sublime value that raises the person incomparably above any animal is of utmost significance on the theoretical as well as on the practical level. On the theoretical level, the issue of human value and dignity is decisive, since any true knowledge of a being requires knowledge of its value, and any true knowledge of the human person requires knowledge of her particular value that we recognise as being his or her dignity.

We can recognize every empirical detail of the human body and psyche – without possessing any *veritable knowledge* of man, as long as we do not have access to knowledge of his dignity and as long as we treat a human being as if they had no more value than a piece of garbage in a waste bin. Given that the human person possesses dignity, it is only when we understand the dignity of the (human) person and its roots that we really recognise the human person and nature. The issue of human dignity is also of the highest practical importance: It is a matter of life or death. Millions of human lives depend on convictions about human dignity. Millions and millions of human beings have been and are being killed because we deny them dignity. Scientific progress as well is devoid of value without knowledge of human

dignity. Medical progress in scientific and technical fields is impressive – however, as soon as we come face-to-face with the misuse of progress and the instrumentalization of human life and of medicine for torture or murderous purposes, medicine turns into its own opposite. Even though medical progress saves millions of human lives, other millions of people will die in euthanasia and abortion, if such progress remains disrespectful of human dignity, or will be “utilised” for deadly research purposes or explantations of organs.

Moreover, without recognizing the value and dignity of human life, states will not respect basic human rights, obey the most fundamental rules of justice, and further family growth. Couples will have no children. Consequently, there is hardly any higher duty and responsibility for anyone of us, and for philosophers and politicians in particular, than the search for the truth about human dignity.

A. How can We Know Human Dignity? However, it might seem that there can be no philosophical knowledge of human dignity and that this notion rests entirely on religious beliefs. How can one know persons in a manner that relies on universal human experience and reason, and recognise their dignity on the basis of rational understanding, without presupposing religion? That can be done in two ways: a. One can choose as a starting point the aspects and structures of the personal being that can be directly experienced and analysed in their essential traits: (1) rational intentional consciousness; (2) the capacity to know, language, etc.; (3) free will, autonomy; (4) spiritual forms of feeling; (5) relatedness to the *world* instead of a simple relationship to the environment; (6) human community (I-Thou-we); (7) relatedness to God. b. A philosophical anthropology that simply consists in the analysis of experienced acts and traits of human persons can be distinguished from a more metaphysical understanding of the person that proceeds to understand the ultimate ground of this experience. To be precise, one can, by starting from the internal experience of our own personal being and acts, as well as from the experience of other persons, seek to understand, by means of rational intuition, along the lines of a “universal return to things themselves,” the ultimate metaphysical essence and being of the person that grounds all those characteristics of persons that one experiences immediately; also these ontic roots and metaphysical structures of the person are directly and indirectly *given* and not constructs of our minds. Such a metaphysical surpassing of the immediately given traits of personhood is necessary if a great number of human beings (unborn children, comatose or otherwise unconscious patients, etc.) are not to be declared non-persons. For their personal being does not manifest itself immediately in experience but requires a “going beyond” what is immediately experienced. However, the going beyond of such a metaphysics of the person should remain close to the data, be realist and phenomenological at once.

B. Person and Dignity: Ontological and axiological understanding of the Person

An appropriate metaphysics of the person specifically leads to two very different “definitions” of the person as: (a) an ultimate ontological subject (substance) of rational nature and (b) a subject that is distinct in virtue of its dignity. Person as an individual subject of Rational nature. The first “classical” definition of a person is the one given by Boethius as follows: “a person is an individual substance of rational nature (*persona est rationabilis naturae individual substantia*).” There is an inalienable

truth in this definition also accepted by many Jewish, Islamic and, implicitly at least, by many Eastern thinkers (Quiles, Ismael, 1986). In fact, a person cannot be the mere property of any other thing, but must absolutely stand in itself in being (be a substance) if it is truly a person. A person itself is in an autonomous manner *someone* and does not exist only in another thing. It stands even necessarily and in an archetypal form in itself in being and can never be the attribute of something else. Even Kant, whose philosophy did not admit of such an intuition, understood this fundamental truth about persons (Kant, 1821, 201-202).

A person has to be in itself in still another sense: No being that is nothing but a pure intentional object of our consciousness is really a person. Dreamt persons, fictitious persons and phenomena (Kant), “persons” perceived by a patient of schizophrenia (as in the movie *A Beautiful Mind*), constructs of social or cultural consciousness, *are not* persons. The characters of Shakespeare’s dramas are neither men nor persons because they have a way of being that is constituted only through the acts of other subjects. As persons objectively exist in themselves (or else do not exist at all), without realism, which establishes the knowledge of the thing in itself, there is no possible knowledge of persons (Seifert, 1976, 1987, 2000). This philosophically required realism includes both a realist theory of knowledge and realist metaphysics – the two being required by any appropriate understanding of the person.

If we describe the person as “substance,” we do not mean that the person is “a thing,” let alone a purely material thing, but only that the person is an ultimate subject that stands in itself in being. The person is living and at the same spiritual, indivisible and invisible (of course, a *human* person is a rational subject that is an incarnate personal being, whose body can be seen), and in possession of reason. Thus, a person cannot be identical with the material substance of the brain, composed of billions of neurons, each one consisting of uncountable non-identical parts. The unrepeatable unity of each person as well as his or her absolute and simple individuality, distinguishes the spiritual person from all material and purely biological substances, whose being is extended in space and has innumerable non-identical parts; thus the indivisible simple person cannot be identical with the brain. Likewise, the genetic code – the same in identical twins and present and duplicated in all body cells as it is – can never account for this unique, indivisible and unrepeatable character of each person. A person is also essentially characterised by the fact that she stands in relation to the world, to others, and ultimately to an absolute being. This distinctive relational essential feature of the person, which is decisive for at least three of the four sources of personal dignity, should not be confused with an unbearable reduction of personal being to relational being: each person is a unique *subject* and any real interpersonal relation already presupposes the substantiality of its terms. Persons *are not* relations, but find themselves essentially in such relations. This standing in relation characteristic of persons is not an entirely abstract ontological moment of “relation” that applies to all things, but rather a being ordained of persons to enter into personal relations, to give appropriate value responses, to stand in loving relations to other persons – in a word, to enter into specifically personal contacts of the kind we can never find in the impersonal world (von Hildebrand, 1987, Ch. 1-3; 17-18).

A Definition of the Person by His “Inviolable” Dignity. The person is not only defined as an individual subject of rational nature, but also as a being distinguished in virtue of its dignity. Dignity, if it exists at all beyond the mere meaning of a word, is first of all an intrinsic and *objective* value. It never exists only as something that gives me subjective satisfaction: the person possessing dignity means that the person is precious in itself. This preciousness in itself is more than, and the foundation of, what Kant calls the person being and always having to be treated as “an end in itself.” If a soldier, who torments a child, says that such an act is a source of pleasure for him in the same way that recognising the dignity of this child and protesting the cruelty of the soldier give us subjective pleasure, the absurdity of such a statement becomes clear. Man’s dignity is an absolute and objective value, and does not depend, as pleasure, on subjective preferences. Dignity is not only an objective value, but also a high and *sublime* one which for this reason has no price (as Kant asserts) and is not alienable. We cannot sell beings that have dignity as slaves; we should not, for money, sell personal beings to teams of organ transplantation or leave them at the mercy of prostitution because they have inalienable dignity. As beings eminent by their dignity, persons are also bearers of human rights and from them issue *absolute* moral obligations.

How can we, however, recognise this central value of dignity? We answer that even for persons who do not believe in the overwhelmingly higher dignity of the person that a Christian believer recognizes in every human being, the dignity of the person is, within some limits, purely philosophically understandable. Already Cicero and Sophocles had found in ancient times magnificent words about this dignity which grows intelligibly from the essence and reality of persons. Of course, values and dignity are not like other “natural” characteristics of objects. The not entirely clear or fortunate notion of “natural” properties (which chiefly means sensibly verifiable but also all other constitutive properties of beings) and “non-natural” properties was introduced by G.E. Moore (1971). Ross (1960) added the distinction of founding or original and “consequential” properties, counting values among the latter. Crosby (1970) and Seifert (1970) sought to distinguish valid and invalid meanings of these terms, defending the full objectivity of value and of value cognition. We cannot see values such as dignity, smell them, touch them and test them in a laboratory, nor are they “constitutive” properties such as (immaterial) feelings or cognitions. This is why certain philosophers used to regard something such as value and dignity as “quaint” or “queer” and for the reason of its “oddness” used to reject it (Mackie, 1977). However, we have got to avoid the very primitive view that whatever is not given to the senses, does not exist. We also cannot see, smell, touch nor experimentally verify in a laboratory the truth of a proposition, or the logical validity of a form of reasoning and logical argument. Yet, everyone, including those philosophers who put forward this unreasonable argument against values, views the truth of their assertions and the logical validity of the forms of argument by which they derive their conclusions from their premises as an understandable and objective thing – although they cannot be verified by sense perceptions and laboratory testing. Finnis (1980) developed a similar critique of related theories of Mackie (1997, 1990) and others lucidly.

If we dispel the objections against value knowledge in general, the question remains whether all human persons have the same value and dignity, and how one can deny that there exists a gradation of human dignity and that an embryo or a person in a coma does not have the same dignity as an adult or a conscious child. The answer to this question lies in the following distinctions:

II. The Fourfold Source of Human Dignity

A. Ontological dignity of the human person as such. The first source of human dignity is simply the nature and the real existence of the human person: this is the “*dignitas humanae substantiae*.” The being of a person as such is the condition of the possibility of any awakening of the conscious person and of the dignity residing in thinking – *yet it precedes that!* And this being of the person as such is endowed with a high value that we call “ontological dignity.” The root of this first dimension of human dignity lies in what an individual and rational subject *is* and what it happens to incorporate as potentiality: act and potencies of *any* person is the root of this dignity. Many contest today the dignity of unborn children; they require abortion, forgetting that it is not true that whoever *is a person* must also be *able to act as a person*. There is not only the actualised and developed personal being, but also the actual being of persons that possesses all potentialities of further awakenings and developments; the latter comes necessarily before every “actual awakening” of consciousness. The ontological dignity of the person is not an ideal object and even less just an object of our feelings and consciousness. On the contrary, it exists in the innermost core of the being of the person. It intelligibly springs from the essence and the existence of each and every person. The ontological dignity of the person is also *inalienable* and belongs to each human person, *in a manner that absolutely cannot be eliminated*; thus *one cannot lose this dignity either*. It is *independent of age, consciousness and illness*: the sheer fact of possessing human life suffices to possess it.

There are no *degrees of perfection* of this human dignity which is thus *indivisible*, and not weak in certain men and “strong” in others. It possesses an *ontological inviolability* that makes it impossible for a man to be deprived of his ontological dignity, and a *moral inviolability and an untouchable character* that makes it always unethical to act against a person endowed with dignity. Its *undisposability* is the reason why human trafficking and slavery are essentially *immoral* and why it is legally impossible as well from the viewpoint of natural human rights to dispose of persons as if they were things. For example, selling them is objectively a pure fiction that has no effects in reality. With the *unconditioned* nature and *inalienability* of dignity, we likewise grasp its law-establishing role and the fact that each positive legal order presupposes and above all *ought to respect* human dignity; we are speaking here of a natural law that precedes *any man-made law*: no positive law and no human act can prevent or abolish human dignity or rescind, in a morally or legally effective way, the respect we owe it - precisely because dignity is *unconditioned, innate, and inalienable* and cannot be removed from a person by any state or individual.

This ontological dignity also is the foundation of absolute obligations on the moral and legal order (and of an *intrinsece malum*, of the intrinsically evil character of all acts directed against it). Since this ontological dignity *cannot be the object of a calculation or weighing*, of a balancing the good and bad effects as if a preponderance of good effects could justify the violation of human dignity, or as if a person endowed with dignity could be reckoned in terms of costs and benefits, any utilitarian and consequentialist ethics that rejects intrinsically immoral acts is unjustified here. The violation of human dignity is *always an injustice*, a fact expressed in the principle of “*neminem nocere*” (*do not do wrong to any one, or: damage nobody!*) so powerfully stated by Socrates in Plato’s *Crito* and in the Hippocratic Oath. The absolutely fundamental *human rights* and legitimate rights, which should not be violated by others, are based on this dignity: the *right to life* (which forbids any murder or homicide, abortion or euthanasia), the *right not to be used as a pure means* (which forbids, for instance, research on embryonic stem cells, the *right not to be sexually abused* in a state of unconsciousness for pornographic films or sexual acts as well as the *right to a treatment that is worthy of man*).

B. Dignity of the conscious and rational person and its levels. “All our dignity resides in thought,” says Blaise Pascal in a magnificent and all the same dangerous passage of his *Pensées* (Pascal fr. 347; 365). He draws attention in this sentence to a real and totally different source of personal dignity. There is undoubtedly such a fully new dignity of the *conscious* person, which also experiences a new level of realization in the adult and mature person. The characteristics of this second dimension/source of dignity are totally different from those of the first. To be a *conscious* person is its condition. This condition *can be lost*. It has *many degrees* (weak and strong).

A paradox of modern society comes from the fact that, on the one hand, this dignity is today disdained, for example in the praxis of “*terminal sedation*” and other acts which treat humans as if they were rabbits that could simply be put to sleep until death, and immoderately exaggerated by Peter Singer and others as the unique source of human dignity and human rights, on the other. This dignity is the source of many other human rights that do not apply at all to unconscious embryos or to persons in a coma. Some of the human rights originating from this second source of human dignity are as follows:

1. Human rights that are rooted in thought and consciousness as such, including the right not to be thoughtlessly deprived of consciousness.
2. Human rights that are rooted in the capacity of transcendent knowledge of the subject: the right to truth (Havel, 1990); also the right to its search and not becoming imprisoned in a world of illusions due to a given state’s lies, etc.
3. Human rights that are based on freedom: the right to the enjoyment of freedom, particularly the freedom of conscience; the human right to the free choice of a husband or wife; the right to found a family; to have as many children as one wants and to educate one’s own children; and to political activities.
4. Human rights rooted in the faculty of feeling and the affective life of persons prohibit various actions: torture, psychological terror, cruel experiences with human feelings, etc. They are rooted in the emotional experiences of human persons (they would have no sense for a person who is exclusively endowed with intellect and will).

5. Human rights based on the relationship of the person with the world: the right to a world view (*Weltanschauung*): a general cosmological view of the world (case of Galileo), as well as a comprehensive vision of reality inclusively of its spiritual dimensions; which is violated by militant political Marxism and many other ideologies and political systems.

6. Human rights and community: The right to marriage, family and family cohesion; and the right to set up associations as well as secular and religious communities. Totalitarian, dictatorial, racist, but also private actions often violate these rights.

7. Human rights that spring from the human relationship to God: If I speak here and in the following of God, I wish to point out from the beginning that I do not consider the existence and moral and legal role of God to be a pure matter of religious faith but also an object of rational philosophical knowledge, (Seifert, 2000, 2010), but both the relations to God as object of rational philosophical knowledge and as object of religious belief are protected by a fundamental human right. The fact that the human person is ordained to know, love, and worship God is the foundation of other human rights: the human right to a philosophical defence of God's existence and the right to the freedom of religion (for without freedom religion loses its true meaning) and to private and public worship: the right to celebrate religious services and liturgical feasts.

Militant atheism - but also regimes that want to force men to embrace specific religions – violate these human rights.

C. Third source and sort of dignity: “acquired dignity”. A totally different dimension of human dignity draws its origin from the use of reason and will. It stems from the activity of persons and supposes it anyway. It is of radically different types. Acquired dignity as such should be distinguished from immanent and more technical improvements of human abilities through teaching and learning that have hardly anything to do with dignity. Only a more profound value can be described as dignity: such as the dignity the person acquires through the search for, and the recognition of, truth, and moral dignity. This more profound dignity of the person is in the last resort unthinkable in a purely subjective, self-encapsulated consciousness retreated into itself, but is on the contrary possible only through a *fundamental* human relationship to a truth, to values, to other persons, and to God who *transcend* human subjectivity and are *independent of our opinions* but to which the subject can enter into relation. The climax of this dignity and a completely new sense of “acquired dignity” are to be found in moral dignity. Within the dignity built on the transcending relationship of the person with truth and the good, moral dignity is the highest of all and is of a completely new nature compared to ontological dignity and to the dignity of the rational conscious subject as such.

This dignity is absolutely *not* “innate”. It *is not* the ontological value of the person *that one cannot lose* (first dimension); it is much rather the fruit of human acts. Moral dignity has, in contrast to the first, *numerous levels*, forms and dimensions. It is not only *morally relevant* like the first, by imposing a moral obligation to respect it on us, but it is also *moral dignity* in itself. The ontological value of person (first dimension) does not make a person morally good; but since it constitutes the

foundation of moral calls and obligations, it is morally *relevant* (Hildebrand, 1978, Ch. 19). Moral dignity, in contrast, is precisely the dignity a person acquires by becoming morally good. It possesses, as opposed to the first kind of dignity, an opposite (*loss of dignity and the vileness of evil*). Such dignity is thus *not a possession* but a *conquest*, as Gabriel Marcel observes. This moral dignity also establishes *new human rights*: the right to receive a kind of *respect* that corresponds to the moral status of a just life. *The right to a reputation not damaged by unfair reports, lies, or calumnies*, etc., even the vilest criminal possesses but only the good person possesses *the right to a good reputation that cannot be ruined by the truth* but only by lies. Many rights of the second level of the dignity of the rationally awakened person that a criminal loses depend on the lowest degree of the third dimension of dignity (non-criminal behavior): the loss of the right to the freedom of movement through imprisonment, for instance, is the just consequence of a criminal act. Then, the criminal loses particularly the right to be honoured in society, the *right not to suffer from true remarks that attribute to him a bad reputation or affirm that he is a criminal*.

D. Fourth source/dimension of dignity – gift and Bestowed Dignity. The fourth dimension and source of human dignity that is bestowed upon a human being from without, can be conceded by men (or a human community), such as the dignity of judges elected by a people, or flow from interpersonal relations (such as the fact of being parents, husbands, or wives), from nature (in the form of specific talents) or directly from God (such as blessings and graces). Natural relations with other persons (such as the fact of being a parent) establish, for instance, that dignity which is the subject of the fourth commandment of the Decalogue that demands to honour father and mother; this dignity addresses itself specifically to the children of these parents, and is consequently in a certain sense a relational dignity. There is also a dignity stemming from special offices or ranks, such as that of a king or judge. This humanly and socially bestowed dignity is not entirely *humanly bestowed* but has also sources that do not come from the human community: such as the nature and value of justice that a judge or a sovereign should exercise and that give his office and person dignity. From the fact of being loved and chosen by other persons emerges a new value of the *beloved being* that Saint Exupéry described in the *Le Petit Prince* as “*being tamed*,” which differentiates a beloved being from all others of the same nature: the dignity that an accepted or adopted child or a fiancée, etc. has. Like the third, the fourth source/dimension of dignity has also an infinite number of degrees and exists in fundamentally different forms. The ontological dignity of the person, however, is absolutely irreducible to this level, though such a reduction is often attempted, as when one supposes that the embryo would receive a status that is worthy of protection only if it were first loved and chosen by its parents, or when parental acceptance decided on the life and death of a child as according to Roman law.

There are also many sorts of dignity not granted by men, whose most profound sources which transcend human nature and humanly bestowed gifts, are of a religious nature:

E. This kind of dignity may be a *universal value* of *each* human person (such as the fact of being created, of being made in the image of God and of being loved by

God according to all monotheist religions, or, if Christians are right, the fact that all men have been redeemed by Christ, the Son of God become man). Bestowed dignity in its religious dimensions can also result from a sort of inner union and collaboration between bestowed dignity (4th source) and dignity acquired through freedom, such as that dignity which flows according to the Islam from true faith and divine blessings, and according to Christianity from real faith, divine grace, sacraments and active love. While the recognition of religiously “bestowed dignity” can only be accepted by religious faith, in its human and social levels the fourth source of dignity that is bestowed on man (of judges, kings, loved ones, etc.) is manifest also for the non-religious person. It is interesting to recall that the very name of ‘person’ historically speaking comes from the recognition of this fourth source of human dignity, as it is expounded by Thomas Aquinas and by a commentary Edith Stein gives of Thomas: “All that is perfect should be attributed to God because His essence contains all perfection. This name [person] should thus be attributed to God.” The original meaning of the word *persona* refers to the various roles in a play and masks worn by actors: “Since well-known men are represented in comedies and tragedies, the word person has served to designate dignitaries. That is why some people have defined the word person as follows: person is a hypostasis [substance] whose distinguishing feature is something pertaining to dignity (*proprietas distincta ad dignitatem pertinente*). And as it is a great dignity to possess a nature endowed with reason, any individual being endowed with reason is called person... But the dignity of divine nature surpasses any other dignity; that is why the word person in the highest degree is God’s due.” (Aquinas, 1980, Ia., q.29, a.3, ad 2; Stein, 1962/1986, 330 ff.)

The characteristics of this “borrowed” dignity are as follows: It does not *originate in personal acts*, but in *acts of other persons, and in gifts*. There are within it countless degrees, inequalities and sorts of gifts, talents, roles, etc. It *can be lost*. This dignity can be universal but this is not always the case. *Brotherhood* and brotherly behaviour (*fraternité*) hence does not mean *equality (égalité)* (Marcel, 1964). There are numerous fundamental human rights that arise from this fourth source of dignity in its interhuman dimensions like, for instance, parents’ rights, children’s rights, the right of the independence of judges and others.

There is a close relationship among the four dimensions of dignity: the first dimension of dignity is the foundation of all others, while the second is the absolute condition for the emergence of the third. The most profound bearings of the third dimension of dignity are only possible through the cooperation and co-action of the third with the metaphysico-religious dimension of the fourth. The first ontological dimension of dignity is likewise *destined* to lead also to the second, the second to the third and to many aspects of the fourth dimension of dignity. Any scepticism, general relativism or value relativism, but also any insufficient and limited understanding of the foundation of human dignity (for example, its derivation from social acts and from the human dimensions of the fourth source, or its being explained as a mere result of fear and anxiety of being reckoned among those who do not possess human dignity, etc.) can lead to grave violations of the dignity of many persons and of the human rights founded in it. Only the objectivity of the dignity of the person can found natural and human rights which command absolute respect.

III. The Difference between Rights of Other Persons (Natural or Positive Legal Claims) and Moral Obligations

The *ethical* question of respecting any human person in virtue of her dignity is not at all restricted to the aspect of fundamental human rights. Both fundamental human rights and many moral obligations are founded on the same good, human life and its dignity, but the moral imperatives rooted in the dignity of persons go much farther and are in no way restricted to demands to respect the rights of persons. On the contrary, many spheres of moral and immoral acts have nothing to do with human rights; for example some of the most evil acts towards other persons, hatred and envy, are profoundly opposed to the moral requirements flowing from the value of the person as such but do not violate the rights of persons, as long as they do not attack the other person in actions or words. But whereas the strict and universal *moral* obligation of the individual and of the representatives of the state are more foundational and different from respecting any person's "rights," an important theme of ethics, to which we will now turn, concerns precisely the respect of human rights, especially the most fundamental ones.

Rights are distinct from moral imperatives chiefly for the following reasons:

They entail a certain claim on another person on the part of the person who possesses a right, whereas on the fulfillment of my moral obligation as such no other human person has any claim; my rights do not entail a claim on the other person's fulfilling her moral obligations in the way in which I "possess" a right to her performing or not performing certain external actions that concern my rights.

My human rights refer only to actions of other persons that aim at the realization of states of affairs external to these acts, and even with respect to these only to the external side or part of these actions, not to the inner motives which are of decisive significance for the moral value or disvalue of these actions. Therefore vast spheres of moral life, inner responses and attitudes, as well as the inner moral intention underlying human acts, fall, with exception of the penal law which is the closest to having an essential connection with morality itself, completely or at least largely outside the sphere of the law and of my rights. I have no rights over another person's submitting to her moral obligations while I do indeed have a right that she respect my rights and refrain from certain actions towards me. This can also be seen by considering that if my rights extended to the moral obligations of the other person, I would have the same rights over his or her fulfilling them in acts directed at third persons, because the moral obligations are the same regardless of whether they concern me or another person. But this is not so. Linked to this is the fact that rights, including natural or basic human rights, are enforceable and actionable. I can bring an action against someone before the court if he does not respect my right and the jurisdiction can force a person to respect my rights and can punish transgressions. This is not possible with purely moral obligations and their fulfillment or non-fulfillment. Enforcing them would even be an absurd contradiction to the root of morally good acts in free will.

Within rights we find many kinds. The most important ones of them are those *natural rights* that do not only proceed from the nature and dignity of human persons

or from certain human faculties and a priori structures of human acts, but concern most fundamental goods. These we can call natural law in the strict sense (different from natural moral law) and fundamental human rights. These rights, grounded in the nature and dignity of the human person and related to the most basic human goods, are human rights that no positive legislation is permitted to violate. Partly coinciding with them and partly differing from them are what Adolf Reinach calls a priori rights or laws, which I take to be the more general class of rights of which the natural human rights and fundamental human rights are the most substantial part. The main difference between them is that not all a priori laws regarding legal claims and obligations are strictly speaking normative, quite unlike the natural human rights in the strict sense which are always normative and inalienable. Some of the a priori rights are only in a limited way “normative,” and instead of being quite “untouchable” by the state may be to some extent freely modified (Reinach, 1989; 1983: xxxiii-xxxv; 1-142). For example, certain legal claims and obligations which proceed from the a priori essence of human acts, viz. from their effect, such as from contracts or promises, may be modified and even be suppressed by the positive law under certain circumstances. I have tried to show that the well-nigh complete freedom to modify them or to suppress their natural consequences of claims and obligations postulated by Reinach does not exist, even though are not in the same way “normative” as, let us say, the right to life (Seifert, 1983, 197-230).

Those rights which positive legislation bestows on us through legal enactments and positive law in general must be completely distinguished from these natural or pre-given rights that precede any positive legislation which, apart from enacting and in a sense creating new rights, has as its primary and most noble task to declare the fundamental human and natural rights, and to secure their enforceability by integrating them in the constitution, the preambles and catalogue of basic rights (Grundrechtskatalog) and by concretely applying them and their logical implications in more concrete laws. The huge error of Hans Kelsen (Kelsen, 1960) was the belief that all rights and claims have their only reason and cause in the will, or the special acts of enacting positive laws whose nature Adolf Reinach lucidly analyzed in his main work (Reinach, 1983; 1989). But while such enactments of positive laws are no doubt the origin of the existence of the latter, they can in no way explain rights and obligations that arise from acts such as promising according to their a priori essences, let alone the natural human rights.

Natural basic human rights are of central importance and utmost significance for human society and must be seen to be sharply distinguished from moral obligations even though these are closely related to them. (For example: respect for human rights is also morally obligatory and part of the virtue of justice). The difference between moral obligations and legal claims that proceed from human rights will become much more evident if we distinguish moral obligations from that sphere of natural rights or fundamental human rights that is closest to morality, namely “absolute rights,” such as the right to life, which one might be tempted simply to identify with the moral obligation not to kill, but this would be an error.

IV. “Relative” and “Absolute Rights”

We should distinguish “relative” or better “relational rights” such as my right that a specific person who has made me a promise fulfill her promise or the rights of children in relation to their parents, and “absolute” rights such as the right to life which we have towards any human being and not only in relation to a certain individual. (Such “relative” or “relational rights” have to be distinguished from “conditional rights”). Reinach drew this very fine distinction between conditional contents of an unconditional right and conditional rights as such (Reinach, 1983; 1989). My right to the promisor fulfilling the terms of a promise or of a contract he has entered with me constitutes a right of mine addressed to another person who has a legal obligation towards me to keep his promise or the terms of our contract; his obligation does not exist in relation to other persons nor does my right and justified claim exist towards others. My right to life is not of this kind; it is an absolute right, towards any other human being.

Now the “right to life” is obviously not an absolute right in the sense that a person would have an “absolute right to be given life through his parents,” or a “right to life in relation to God” (who would be “forbidden” or in whom it would be evil to take our life or not to have given it, as it would be intrinsically evil and therefore impossible for God to punish us for personal crimes we have not committed as if we had committed them). Such absolute rights which even extend to our relation to God do exist, for example the right not to be judged unjustly or on the basis of lies and false accusations. The “right to life,” in contrast, is a right somebody receives upon being endowed with existence and which he possesses only with respect to other human persons, who have no right to destroy our life. They do not only lack a “moral right to kill us” but, if they do kill us, they not only commit a morally evil act but also violate our most foundational right to life. The “right to life” is a right of every innocent human being not to have his life taken by other human persons in a direct assault on it.

Calling this right to life an “absolute right” in the sense described does not mean the same absoluteness that the moral obligation not to kill an innocent person possesses. For the moral obligation does not have the same reference *to* an individual human person that the legal obligation has that refers to and founds another person’s claim towards or against me, which I have the duty to respect. Morally speaking I am not obliged *to* a fellow human being, but I am morally obliged absolutely or in front of God. Fulfilling a moral obligation does not as such respond to another person’s natural right (and just claim founded in it) to which the legal obligation refers. It does not have that earthly reference point in another human being that all human rights, including the absolute right to life, have. We can see this difference better if we understand the following: I have no right that the other person fulfill her moral obligation not to kill me, an obligation that is quite independent of my rights. We can see this better when we consider that the same kind of moral ought also forbids the other person to hate me or to envy me, although in this case I do not have a right or just claim against her that she would violate through her hatred, whereas in the case of

her violating my right to life I, or my legal representatives, do have such a claim against her, both if I actually die and, in a modified way, if I am only victim of attempted murder. The moral obligation not to kill (just as “do not hate”, “do not envy and covet the goods of other persons”) is therefore an absolute one in another sense than the right to life.

It is not only addressed to everyone, but it also is not an obligation “towards me” or to any other human person, whereas the respect for my right to life has this character of respecting *my* rights, and *my* claims founded in them, and thus respecting something or fulfilling a duty which matches my corresponding claim. A moral obligation thus differs from a legal one based on human rights because any legal obligation exists towards a person and its fulfillment is owed to me (or to another individual or community), while the moral obligation does not have such a human reference point.

V. The Right to Life Is, in an Important First Sense, the Most Fundamental and Basic Absolute Natural Right (*Urgrundrecht*) Because It Refers to the Good that Is the Condition of All Other Goods and Rights

The right to life is not only a natural and an “absolute right,” as also the right to the freedom of religion or the right to choose one’s wife freely upon her consent are, but it is also an, or even in a certain sense *the*, absolutely foundational concrete human right (*Urgrundrecht*). That the right to life is in a certain sense *the* most foundational and fundamental right (the *Urgrundrecht*), one can see through the following reflection: all other human rights presuppose necessarily human life and human existence while human life itself has no more fundamental foundation in other goods of the human person but constitutes rather their ground. Of course, the right to life belongs to human persons in virtue of not just having plant or animal life but of being a living being of rational nature, a living person endowed with the dignity that pertains to her, which is the foundation of other more universal human rights that make, from other points of view, a valid claim (founded on this universality of theirs) to being the *Urgrundrecht*, as we shall see.

We cannot see, however, as the earlier Martin Kriele, such an absolutely foundational human right in the *habeas corpus*, or with Kant, in the right to freedom (Kant, 1968, AA 06 229 ff.; 231 ff.; 237 f.) Kant calls this right the “right to freedom, inasmuch as it can coexist with the freedom of others”: the right to “Freiheit (Unabhängigkeit von eines Anderen nöthigender Willkür), sofern sie mit jedes Anderen Freiheit nach einem allgemeinen Gesetz zusammen bestehen kann.” (Kant 1968, IV, VI237). Martin Kriele puts in his earlier writings a special emphasis on the “*habeas corpus*-Grundrecht,” and declares the „*habeas corpus*” as source and real origin of human rights (Kriele 1990, 71-235, especially 79 ff.) He corrected and limited this thesis in his later article on “Freedom and Liberation” (Kriele, 1988, 204-235). There he counts the *habeas corpus* among the most insignificant group of basic human rights which, firstly, can be suspended, not being immune to emergency states (they are not „notstandsfest”). Secondly, he points out that the violation of these

rights cannot count under all circumstances as “grave violation.” (Kriete, 1990, 205 ff.) Kriete distinguishes three levels of human rights:

(1) The weightiest and most fundamental ones: to them correspond „grave violations” that call for international responses (such as genocide, enslavement);

(2) the second layer would be „notstandsfeste Bürgerrechte”, human rights which also apply in cases of states of emergency (such as not to be tortured and arbitrarily killed, discriminated because of race, gender, religion, or social background, freedom of conscience and religion, etc.)

(3) Finally there are other civil rights such as the *habeas corpus* (against arbitrary incarceration), the right to be heard by independent judges, the rights of prisoners, foreigners, minorities, etc., which can be suspended under certain circumstances (Kriete, 1988, 205 ff.; Seifert, 1997, 165-185).

For all these reasons the *habeas corpus* right and the right to freedom cannot claim the rank of an *Urgrundrecht* as the right to life can.

For in the first place, any right to freedom, *habeas corpus* as well as any other right, *presupposes* the right to life because they would come to naught without it. Secondly, a right to freedom as well as the “*habeas corpus*” right (which only refers to a small portion of the right to freedom, just forbidding to incarcerate and to hold a prisoner without due process), apply only to a small sector of humanity; neither one of these rights applies to small babies or comatose patients, and both can under circumstances of emergency or national peril be temporarily suspended. In sharp contrast, the right to life is held by *all human beings without exception*. Thirdly, these rights exist only on the level of the second dimension and source of human dignity, the dignity of an *awakened human person*, and even only of a conscious person of a certain maturity. Babies and small children do not have the *habeas corpus right*, which their parents would infringe on by not letting them walk around at their leisure, and also their “*right to freedom as long as they do not infringe on other persons’ rights*” only comes to actual existence and application in the measure in which children grow up; this “right to freedom from any other will imposing any necessity on them” is non-existent or at least purely potential in the not yet or no longer rationally conscious agent; how could a baby that has to be fed and diapered or a comatose patient have this kind of right to freedom and independence? It is even very limited until children come of age, and therefore it is not true to claim with Kant that the right to freedom is the only original right a person possesses in virtue of his humanity [“ist dieses einzige, ursprüngliche, jedem Menschen kraft seiner Menschheit zustehende Recht.”] (Kant, 1968, AA 06 229 ff.; 231 ff.; 237 f.).

The right to freedom, however, is not a right that man possesses in virtue of his humanity but only in virtue of his conscious and mature awakened being, and even then it may be questioned, and was questioned for centuries, whether every human person in every class and sector of society and regardless of all previous commitments and bonds entered by his or her parents, possesses this right to freedom and unbounded autonomy. Even any standing under parental, military, or other authority restricts this right. In contrast, the right to life (as likewise that of not being just treated as a means, that Kant himself so clearly formulates in one of his personalist formulations of the first categorical moral imperative, or the right not to be

sexually abused, mutilated, intentionally infected with diseases, etc.), and the right not to be treated unworthily of a human person are truly rights *of every human person from conception to natural death*, and are fully grounded in the ontological dignity of a person, i.e. of a substance of rational nature and thus can be regarded as the most basic human rights. Inasmuch as human life is the very existence of a human person, the right to life can be regarded as the most basic one among these most basic and universal human rights grounded in the ontological human dignity, and thus can be called the *Urgrundrecht*. Quite apart from the fact that also the right to life does not solely belong to the unconscious persons of embryos and comatose patients but also to awakened human beings who experience this right as a most basic one, it is in a sense *the* most basic one inasmuch as all other human rights presuppose it and also because it is, while also fully belonging to the rational consciously awakened person, precisely inalienable and not dependent on the conscious state of the person.

VI. The Right to Life, Unlike Some Other Basic and Inalienable Human Rights such as the Right to Ownership, Is an Unrenounceable Fundamental Human Right

The right to life is, under the first point of view, not merely the most foundational and basic human right (*Urgrundrecht*) but it is also, just as the most fundamental rights according to the second and third point of view, an unrenounceable human right, and this in a twofold sense: like all basic human rights, being rooted in the nature and dignity of persons, also the right to life inalienably belongs to every human person. Above and beyond this, and in contrast to other basic human rights such as that to have property, which a monk may freely renounce by taking a vow to radical poverty, the right to life is unrenounceable also in the sense that I cannot renounce receiving what this right entails by giving other persons a “carte blanche” to kill me, which does not exclude that I may, and that it is often extremely noble to do so, sacrifice my life for another person, but this act can be distinguished from renouncing my right to life. For example, Maximilian Kolbe who took the place of a family father condemned to die in a hunger bunker in a concentration camp, did not allow the Nazis to take his life or renounce his right to life but he offered himself as innocent victim to the Nazis in place of another man whom they would equally unjustly have killed. This act does not renounce one’s right to life nor authorize the evil authorities of the camp to violate any person’s right to life, which precisely is unrenounceable. In contrast, in other cases I can dissolve legal obligations of other parties towards me, for example by renouncing my legitimate claims from a contract (Reinach, 1989) and can even renounce some fundamental human rights such as the right to have private property.

While I can legitimately sacrifice my life by taking the place of an unjustly murdered person, as did Maximilian Kolbe, I cannot tell another person that he can legitimately kill me because I have renounced my right to life. Not even in relationship to my own action I can abdicate this right and legitimately commit suicide, even though here it is more the question of the pure moral obligation “do not kill” than a question of rights which make no sense in relation to my own action. Also this fact sheds light on what was mentioned above: that moral obligations are irreducible to respecting rights. The limits of this paper do not allow us to discuss at

greater depth the relations between (the impossible) renouncing or foregoing the right to life and the noble act of sacrificing one's life for others.

Three points of view are for determining the most fundamental right (Urgrundrecht), and three different and true answers are to the question about the *Urgrundrecht*. We have said that in a certain sense the right to life is the most fundamental and basic natural human right. Now we have to clarify in which sense this is true and which are other points of view, perceived from which the right to life is not the most fundamental one, and whether these other points of view to determine the most basic human right are more foundational or fundamental ones. We will here omit the purely historical point of view, which basic human right was the first one to be included in a modern human rights catalogue, because we do not deem this question to be relevant for our analysis.

The most basic good that is condition of all other goods and rights is regarded as referent of the "Urgrundrecht" and the "right to life".

The first point of view for determining which is the most basic human right (the point of view we have chiefly considered until now) is: Which right refers to the most basic good that is the condition of all others? Now if *vivere est esse viventibus* and the existence is the condition of all other goods of a person, there is no other good more fundamental than existence and life and hence the right to life is the most basic one. In support of this thesis we refer back to our whole discussion of this point and in particular to the three arguments we have given above against the *habeas corpus* right or the right to freedom being the most foundational and most basic human rights.

B. The most universal and comprehensive right as "Urgrundrecht"

The second point of view under which the most basic human right could be determined would correspond to the question: "Which human right is the most universal and comprehensive one and includes all others?" This is not at all true to say of the right to life which refers to a very specific and most basic good but does not say anything about any other right a person might possess. For the respect for human life would not necessarily prevent a person from depriving another person of all other human rights, selling her as slave, torturing her, etc.; and obviously if one only recognized the right to life but would violate all other rights of a living person, one would still violate a human being's fundamental human rights in the most horrible way, for example by torturing a person, sexually abusing her, refusing to grant her the right to education, to freedom, etc. From this point of view therefore the right to life is in no way the *Urgrundrecht*, but rather "the right to be respected in one's human dignity," as well as "the right not to be harmed" (which includes, besides the right to life many other rights such as not to be calumniated, sexually abused, to be deprived of freedom of conscience or religion, etc.), or even the "right of every man never to be just treated as a means but always also as an end in himself" are much better candidates for the claim to be the most basic human right. Another potential candidate for being the most universal and basic human rights would be "the right not to have any objective evil inflicted upon ourselves". To claim that this right (which seems to amount to another formulation of the right not to be harmed) is the most basic human right would concord well with the first moral obligation of the physician according to the Hippocratic Oath, (*primum non nocere*), and with the Socratic teaching in the

Crito that it is never justified, even in retaliation for injustices suffered by us, to inflict harm on anyone. This right could well be considered the most basic one which includes the right to life as well as all other fundamental human rights. The problem with saying that the “right not to be harmed” is the most basic human right is twofold: a) first, not all objective evils inflicted on us violate our rights, for example being given a bad example by our friends; b) Second, this right is very abstract and lacks the concreteness of the right to life, but because this second objection refers to all rights of this group and to the very idea of “the most fundamental” character of an “Urgrundrecht,” it is not relevant here.

Thus, summarizing the chief points of our preceding discussion of human rights, I propose to give the most basic human right, under this point of view, both a positive and a negative formulation and say that it is “the right to be respected in one’s human dignity in the sphere external interpersonal acts and relations,” as well as “the right not to be harmed by acts that have effects or directly realize states of affairs distinct from these acts themselves,” for example by theft or violation as distinct from envy. The absolutely foundational character of the right to life, inasmuch as it refers to the condition of the reality and possibility of all other rights that could not exist without life and right to life, thus in no way excludes the validity of the entirely different second kind of *Urgrundrecht*, which consists in the most general and comprehensive natural human right.

The third point of view for determining the “Urgrundrecht”: the Dignity of the Consciously Awakened Person and the sublime rank of a good in which a right is founded. The reasons that prompted us to call the right to life the most basic natural human right (the *Urgrundrecht*) likewise do not exclude that other fundamental human rights, rooted in the dignity of the awakened human person, have precisely for this reason a more specifically “personal character” because they exist *only on the level and dignity of the rational conscious life* of the human person. If we define the *Urgrundrecht* under our third point of view, we must pay tribute to Kant and Jellinek. There is definitely a valid sense in which those rights that are grounded in the actualized lived personal existence fulfill the idea of human rights and a fortiori of the most fundamental right most fully. A legal claim to something, a right, seems to make full sense only when we are faced with a consciously awakened person and not when we deal with unconscious subjects of rational nature like the unborn who are not yet awakened consciously to their personhood. In this respect, those mentioned rights that are rooted in conscious rational life of persons, such as the “right to freedom” so much emphasized by Kant, or the “right to religious freedom” regarded by Jellinek as *the most basic human right*, seem to have an advantage as candidates for being the most basic human right (*Urgrundrecht*), because they go hand in hand with the experienced and fully personal claim to some goods.

The third point of view to determine the *Urgrundrecht*, however, cannot be sufficiently determined by the fact that a given right belongs only to the consciously awakened person, which is true for countless natural human rights, many of which we have mentioned in the discussion of the second source of human dignity. Rather, we have also to consider the value rank of a good for the consciously awakened human

person in which a human right is founded. If this good is the highest one, the right to access this good would be the highest right and, in this third sense, the *Urgrundrecht*. Correspondingly, to violate the right that refers to the highest intrinsic value and to the highest good for the human person would be the most grievous violation of the highest and most fundamental right. We cannot explain here in depth why moral and religious values, inseparably connected with the free will of persons, are the highest values (Hildebrand, 1978, Ch. 15 ff.; Seifert, 2013). From this point of view the “right to the freedom of conscience” – now so fiercely debated in the USA with respect to the Obama-care – is a *crucial right for members of the medical profession today*. Because of the legalization of “naturally criminal acts” such as abortion, infanticide, and euthanasia in many countries, the right to the freedom of conscience takes on a crucial importance. Likewise, the “right to religious freedom” would be a far higher and more basic human right than the right to life because to just live without any other value and good in one’s life is certainly not the highest (though the most basic) good for a human person. If we therefore look for the most fundamental right (the *Urgrundrecht*) among rights possessed by rational conscious agents, those rights that are connected with the highest values linked to human consciousness and free acts, can make a well-founded claim to this title.

Some authors regard the freedom of religion as *Urgrundrecht*. In possibly the first explicit declaration of human rights, the *Bill of Rights* of Virginia (1776), art. 16, this right is explicitly guaranteed, as well as in Article 10 of the French *Déclaration des Droits de l’Homme* (1789). In the American *Bill of Rights* (1791), in the First Amendment it is the first one mentioned among a list of basic human rights. According to Jellinek, it is the “*Urgrundrecht*” (Jellinek, 1895/1904, 18, 90). Hence the rights to realize freely those highest values which appeal to, or are even borne by, free will, i.e., the spheres of moral and religious values, are excellent candidates to be called the most fundamental human rights.

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