



## **Human dignity and human rights. On the normativity of the social world.**

### *1. Introduction*

The discourse on human dignity and human rights is based on the premise that human beings possess human dignity and human rights simply because of the fact that they are human beings. It calls into question our understanding of the word 'human'. We can either grasp it as a descriptive predicate referring to the natural state of being human; this entails the problem of how a normative state of affairs can be contained in or accounted for in a natural state of affairs. Many authors believe this to be impossible, casting doubt on the whole idea that human dignity and human rights could be givens in conjunction with biological human existence, and being instead of the opinion that both entities are awarded socially. Or we -- alternatively -- comprehend the word 'human' as a normative predicate which encompasses human dignity and human rights as a conceptual implicature. In this case, both really are givens in conjunction with human existence. And the question arises of the relationship between the normative concept and the biological concept of being human. For, undoubtedly, a creature can only possess human dignity and human rights if it is a human being in the biological sense and if it possesses the characteristics relevant to human beings.

This constitutes the fundamental problem confronting all talk of human dignity and human rights. It concerns the relationship between normative concepts and natural human existence as the sum of characteristics relevant to it. In this paper I would like to show how the solution to this problem lies in the idiosyncrasy and structure of the social world. Accordingly, human dignity and human rights are not founded upon circumstances within the natural world -- biological human existence -- but within the social world. We possess them not from being born, but from being members of human soci-



ety. At first glance, this theory might not seem very exciting, and yet within philosophical and theological debate it is extremely contentious. Many authors are of the opinion that, because of their objective and compulsive character, these normative concepts have to be based on something preceding their social recognition and respect; and the only candidate for such a precedent seems to be factual, natural human existence.

I shall proceed by clarifying the difference between the natural and the social world (2.). The subsequent section endeavours to show how human dignity is anchored within the structure of the social world, as well as the extent to which this is so (3.). The same is then true of human rights, provided that they can be shown to be a logical implicature of the idea of human dignity (4.). Regarding the issue of which creatures may be awarded human dignity and human rights, I shall conclude by turning to the debate on the status of prenatal human life (5.).

## *2. Natural and social world*

In a first approach, the difference between the natural and the social world can be outlined as follows. In the natural world things are what they are -- e.g. a blade of grass, a table or a human being in the biological sense -- independently of our recognition and respect. In contrast, the social world is based on recognition and respect. *Recognition* governs social belonging and social status. It governs who belongs to the social world or to a particular group within it, as well as the social status a person has within this world. On the other hand, *respect* has to do with the claims and rights a person has on the basis of social belonging or a certain social status. There is a close connection here between recognition and respect. A lack of respect for the claims which somebody has on the basis of social belonging calls into question the recognition of this belonging and thus the very belonging itself, and the effect is ostracising and discriminating.



If this, initially very rough characterisation of the social world applies, it is marked by an *epistemic paradox* resulting from the creative character of recognition which generates a reality. Recognition refers to a reality -- a social belonging, social status -- which is not already there, but which *becomes* social reality through that very recognition. Yet how can something be recognised as real which only becomes real as a result of such recognition? It is this paradox from which the view that human dignity is socially *awarded* primarily draws its plausibility. Awarding is different from recognising in that the entity it refers to is *not there by default*, but is only given as a result of the awarding. Critics of this view sense it is in danger of abandoning human dignity to caprice. The question of which creatures possess human dignity then depends on which creatures are awarded human dignity. In order to circumvent this, the only alternative seems to be to make human dignity a given in conjunction with something which precedes all awarding or recognition; and the obvious answer is to attribute it to the biological nature of human existence. As already mentioned, this in turn raises the question of how a normative state of affairs ought to be a natural given. For, in its entirety, nature knows no 'ought'.<sup>i</sup>

Quite obviously, neither version pays tribute to the idiosyncrasy of the social world. In order to understand how something can be recognised as real which is only real because of this recognition, it is necessary to see that, in the social world, recognition is bound to *criteria* which function as both necessary and sufficient conditions for persons to whom this recognition is due. These criteria are what is given with respect to recognition. If these criteria are satisfied, what is recognized becomes social reality.

I would like to illustrate this point using an example from corporatist society, namely the status of a knight. The relevant criteria here are either descent or a knighthood. Of course, these criteria do not *make* a knight a knight. It is not having one's back touched with a piece of metal that trans-



forms a non-knight into a knight. This would amount to witchcraft or magic. The status of the knight is far more a social status which is founded in social recognition, and the ritual of the knighting ceremony is aimed at generating such recognition, which is why it is performed publicly, for all to see. Generating social recognition is the function of all social rituals, and in this function they can be comprehended only against the background of the epistemic paradox which characterises the social world.

However, the status of the knight does not depend merely on *factual* recognition. It is possible for somebody to have his recognition as a knight denied and yet at the same time still be a knight due to fulfilment of one of the criteria. And *vice versa* -- think of con artists, for example -- somebody can enjoy recognition as a knight without actually being a knight. The status of the knight is rather based on the fact that recognition as a knight is *due* to the relevant person as a result of his descent or a knighthood, and this recognition *makes* him a knight in social reality. This means that we have to make a difference between a normative status and an empirical status, a difference which does not exist in the natural world. As already mentioned, normative status is given when somebody is due recognition as a knight because one of the criteria is fulfilled. As an indication of this normative status, the word 'knight' is a *nomen dignitatis*, i.e. a predicate of dignity. Accordingly, being a knight means being somebody who is to be *recognised* and *respected* as a knight. In contrast, empirical status is measured according to factual recognition. As stated, somebody can have the normative status of a knight without having the empirical status of a knight. As a variation on Art. 1 of the German Basic Law, we could also say that the dignity of a knight is inviolable -- because it is a normative status which is independent of factual recognition and respect.

This example clarifies the connection between the epistemic paradox characterising the social world and the normativity inherent in it. The social



world compensates for the not-yet-existence of a reality which is the object of recognition and which only becomes real through that recognition by using normativity in the shape of a *recognition due*. This due-ness makes a distinction between recognising and mere awarding, which can be arbitrary. Within this due-ness is the precedent of recognition, in some respects as a substitute for the not-yet-existent reality which emerges only through recognition. In contrast, the confusions within the debate on human dignity and human rights are caused by a transferral of the natural world paradigm to the social world, creating the impression that only something which is already there can be recognised, just as in the natural world only that which is already there can be recognised. Following this train of thought, human dignity already has to be there in order for us to be able to recognise it. The consequence is a naturalism which anchors human dignity beyond the social world within the biological nature of human existence. In our example, that is the same thing as a knight being due recognition as a knight because, as a result of his descent or a knighthood, he already *is* a knight. And yet, as we have explored, it is not descent or a knighthood which make somebody a knight, but far more a *normative* state of affairs: he *is* a knight if, as a result of his descent or a knighthood, recognition as a knight is *due* to him. For the status of a knight is a social status, and not a status which, independently of social recognition, is imparted purely biologically or founded in magical practice.

The alternative we are concerned with here is clarified by another example which is particularly enlightening in this respect. It is Robert Spaemann's understanding of the person, as developed in his book "Persons". On the one hand, Spaemann sees personal existence as a status within the social world. Personal existence is noticed by an act of "free recognition"<sup>iii</sup>. On the other hand, Spaemann restricts this formulation to the epistemic "way of givenness" (*Gegebenheitsweise*) of persons. *Cognitively* they are only given in the act of recognition. We do not first perceive persons in order then to recog-



nise them as persons; instead, our perception is inextricably linked to our recognition. Yet, for Spaemann, recognition as a person does not *make* somebody a person. Recognition is thus not attributed with having a constitutive significance for personal existence. Spaemann's argument for this is: "We never consciously 'make' persons. Personal existence is in the highest sense existing 'out of one's origin', something unsusceptible to external inducement."<sup>iii</sup> This argument is hardly convincing. The corporatist society does not consciously make a knight by recognising somebody as a knight. Nevertheless, somebody only has the empirical status of a knight because of the social recognition and respect extended to him by society. What is important here is the distinction between the intentional perspective of recognition, which does not occur consciously with the intention of producing that which is recognised, and the perspective of reflection upon what has been brought about by the recognition. In contrast, Spaemann would like to base the ontological status of the person on something other than recognition, namely biological descent.<sup>iv</sup> Personal existence is thus given with biology: "Those competent to define the beginning and end of the person are therefore also those who are competent to define the biological beginning and end of human life."<sup>v</sup> And yet how can a social state of affairs, namely membership of a recognising community of persons, possibly be biologically given? Personal existence as existing-out-of-one's-origin is, incidentally, included within the cultural concept of person perception which, as Spaemann states, has found its way into our cultural consciousness via Christianity. It cannot therefore be played off against the basing of personal existence on such perception and recognition. If personal existence were a status given by nature and possessed from birth, then, as has been said, the origins of the normativity of the person concept which many, including Spaemann, believe to be so important would require explanation. The recognition of a creature as a person would then be recognition of a naturally given fact, but a person would inspire no moral ought, no obligation to recognise and respect that person as a person. Spaemann actually advocates the



very same naturalism which he himself criticises in the traditional Lockean concept of the person, one which bases personal existence on natural characteristics such as consciousness or rationality, the only difference being that for him biological descent is the relevant natural characteristic which persons have to thank for their personal existence.

### 3. *Human dignity*

For our understanding of human existence, a distinction between the natural and the social world means that we have to make a differentiation between the biological concept of human existence and a social concept. The latter refers to membership of the human community. This is not already given with biological human existence, but is a social status based on recognition and respect. This is the only explanation for the way in which some beings that are human in a biological sense are ostracised by means of refused recognition and are viewed and treated as non-human or "sub-human". Biological human existence is a *criterion* for the recognition of social human existence, but it does not *make* one a human being in the sense of belonging to the human community.

As in our example with the knight, with regard to social human existence we also have to make a distinction between a normative and an empirical status. Empirical status is measured according to factual recognition. In contrast, a normative status is given when a creature is *due* recognition as a human being, *on the strength of which* it has the empirical status of a member of the human community. And *due* because that creature fulfils the necessary criteria. As an indication of this normative status, the word 'human being' is a *nomen dignitatis*. Being human in the sense of this normative status means being a creature which is to be *recognised* and *respected* as a human being. In connection with degradation or torture this normative meaning becomes clear in appeals such as: "But they are human beings!" (i.e. creatures who *may not* be treated in this way). This appeal demands the recogni-



tion and respect which permit human beings to be human beings in the sense of members of the human community. The *human dignity concept* makes the normative content of the term 'human being' explicit. Human dignity is thus nothing other than a conceptual implicature of the social concept of human existence. We are not members of the human community on the one hand, and in possession of human dignity on the other. Rather, we have human dignity as members of the human community. This leads to a simple definition of the human dignity concept: *having human dignity means being a creature which is to be recognised and respected as a human being in the sense of a member of the human community, and which is to be treated accordingly*. As a normative status independent of factual recognition and respect, human dignity is also "inviolable". This formal definition of human dignity does not, of course, tell us which creatures are to have human dignity, nor what human dignity entails.

According to this way of thinking, human dignity is based on due recognition and respect. Let us not forget, however, that this contrasts with the view that human dignity precedes recognition and respect. As a representative of many authors who share this view, I shall cite Eilert Herms. For him the only alternative is that human dignity is pre-given or based on attribution:

"Is human dignity as a way of being from one human being to another human being a pre-given for its addressees, through which they suffer the preemptory imposition of having to understand and respect the state of being worthy that is prescribed to them? Or is human dignity as a way of being in its possessors for its addressees a result of free attribution on the part of precisely these addressees?"<sup>vi</sup>

Herms advocates "recognition of the pre-giveness of human dignity with regard to all potential acts, that it be understood and respected"<sup>vii</sup>. He believes himself able to demonstrate this via a purely conceptual examination



of human dignity. Yet it is obvious that the concept of human dignity cannot be defined independently of the concepts of recognition and respect. Contained within the concept of dignity is the idea that it deals with something which has to be recognised and respected. Human beings do not possess dignity as a result of an existence as human beings which is somehow independent of recognition and respect. Such a view would raise the question of how a normative claim to recognition and respect can possibly ensue from a state of being which does not encompass this claim. Far more, human beings possess dignity as a result of a state of human existence for which the normative claim to recognition and respect is constitutive and essential, and that is their social human existence, i.e. their membership of the human community or human race. Like Spaemann and other authors, Herms fails in bridging the gap between the social and the natural world. On the one hand, the concept of human dignity has to do with recognition and respect. This of course opens up the possibility that the class of possessors of human dignity might be smaller than the class of creatures belonging to the biological species 'human'. In order to avoid this, Herms, on the other hand, maintains that human dignity is a pre-given for all recognition and respect, whether factual or due, i.e. which exists prior to it and independently of it as a quality of the state of human existence, covering all stages of human becoming from conception onwards.<sup>viii</sup> As has already been said, this in turn raises the question of how we should imagine a dignity to be which does not already encompass the idea of due recognition and respect. But if dignity cannot be imagined without this idea, then the question concerning the criteria, according to which a creature is due recognition and respect as a human being, becomes irrefutable. This due-ness then not fixed with its very membership of the species, but is measured according to the social concept of human existence, precisely as, in the example of the knight, it is measured according to the social concept of a knight. As we shall show, the extension of the social concept of the human being is in fact smaller than the extension of the concept of the human species.



This makes it clear that human dignity is established within the constitutive state of the social world, as well as how. It is not given "by nature". As mentioned, the anchoring of human dignity within human nature cannot explain the origins of the normativity contained within the concept of human dignity. It results from the epistemic paradox which characterises the social world and which has to be compensated through normativity. A creature is not to be recognised as a human being in the sense of a member of the human community because it *is* a human being in this sense, but rather it is a human being in this sense because *it is to be recognised as such*, due to fulfilment of the relevant criteria.

We have thus found an interpretation for the premise behind the discourse on human dignity and human rights which we assumed in the introduction. It needs to be specified as follows: human beings in the *biological* sense have human dignity and human rights only due to the fact that, because of their biological human existence, they are to be recognised and respected as human beings in the sense of a *social* human existence, i.e. as members of the human community.

This is, it should be noted, not a *justification* of human dignity and human rights in the sense of deducing a normative conclusion from a normative premise. If the statement were to be viewed in this way, then the justification of the premise could be questioned: Why are human beings, due to their biological human existence, to be recognised and respected as human beings in the sense of a social existence? In order to substantiate this, one would have to draw on at least one further normative premise, the justification of which could in turn be questioned, and so on, *ad infinitum*. In contrast, one can find substantiation for the fact that human beings have human dignity in the constitutive state of the social world. The specification above allows us to *understand how it can be* that human beings have human dignity and hu-



man rights. This is because belonging to the social world is based on due recognition and respect. Because the normativity of human dignity is founded on the constitutive state of the social world, it does not require a philosophical or theological normative justification. It can only be *made plausible* by illuminating the structure of the social world. And that is a good thing. For if human dignity were to depend upon such normative justifications, then in consideration of the controversial nature of such justifications it would stand on extremely unsafe foundations. Those disregarding human dignity disregard a *social reality* and not a philosophical or theological edifice. The exclamation "But they are human beings!" draws on this reality and demands that it be recognised and respected.

Two questions arise at this point. The first concerns the criteria dictating which creatures are due recognition as human beings in the social sense. We shall return to this in the section about the status of prenatal life. At this point let it suffice to say that these criteria are not freely disposable, but are pre-given through our cultural or religious understanding of the human being, just as in our example with the knight the criteria of descent and knighthood are pre-given by the cultural or social concept 'knight'. This understanding therefore has to be clarified. Here lies the problem surrounding definitions of human dignity by way of natural law, which attempt to deduce something from human nature which in truth is anchored and pre-given in the cultural understanding of the human being. The second question concerns definition of the content of human dignity. I shall not go into this point in any more detail within this paper, except to say the following: I do not believe that the content of human dignity can be reduced to one single aspect. Any such definition harbours the danger of neglecting other aspects of human dignity. For example, it has been proposed that human dignity be viewed as the right not to be humiliated, i.e. injured in one's self-respect.<sup>ix</sup> Putting various examples of violations of human dignity to the test immediately reveals that this definition is too narrow. If in the war in Bosnia a Ser-



bian band of soldiers drove a lorry over captured Muslims, then this without doubt constitutes a violation of human dignity. Yet is this violation really to be perceived in the fact that through this type of killing the Muslims were injured in their self-respect? That seems to be a belittlement of what has happened. The Muslims were killed in a brutal manner! Similar questions arise in conjunction with a reduction of human dignity to the idea of autonomy. Here too, we have to ask whether in this example the violation of human dignity is adequately described if it hinges on an infringement of the autonomy of the Muslims. Thus the view that the idea of human dignity has its core in the idea of autonomy and that in principle it can be substituted by this thought does not really appear plausible.

From these few comments it should have become clear that the concept of human dignity and human rights is not a universal, cross-cultural concept. Much points to the structure of the social world with its epistemic paradox, requiring compensation through a normativity boasting a universal character. But what is not given, independently of culture, is the issue of who is to be recognised and respected as a member of this world, whether it be only the members of one's own tribe, one's own ethnic group or indeed all "featherless bipeds"<sup>x</sup>, nor the obligations that this respect entails, e.g. whether it excludes torture or killing. The concept of human dignity and human rights is the result of a cultural development which has brought forth a particular understanding of the human being transcending the borders of one's own group or race. It is not easy to accept this historical-contingent character of the human dignity concept, and maybe here is one of the motives for attempting to anchor human dignity in the biological nature of the human being instead of grasping it as a culturally developed concept.

On the confusion that this leads to, let us just say this. There are authors of the opinion that the concept of human dignity is "constitutively speciesistic"<sup>xi</sup>. If human dignity were given with the biological nature of the human



being, then this really would be the case. And yet if we pursue the line advocated here, then there can be no talk of speciesism. When we respect the dignity of a human being, then we respect him as a member of the community of recognition and respect within the social world and *not* -- as that view presumes -- as an example of the biological 'human' *species* within the natural world, for example because we attribute a higher ontological or moral status to this *species* than, let's say, the *species* of frog or cockroach. The concept of human dignity does not refer to a status which the human being has because of his nature in comparison to non-human nature, but refers to his status within the social world. The opinion that the human dignity concept is "constitutively speciesistic" misconceives the difference between biological and social human existence.

If nothing else is at stake here, then let it be the following issue. In the social world, 'respecting the dignity of a human being' means: respecting *him/her* as a human being. Here the respect is directed towards the individual concerned, paying heed to the circumstance that he or she is a human being, i.e. a member of the human community. This is expressed in the close relationship existing between the concept of human dignity and the concept of the person, for example in the work of Kant. The concept of the person characterises a human being in his individuality and distinctiveness. If, in contrast, human dignity were based on membership of the biological species, then the respect would be directed not towards persons or individuals, but towards examples of the 'human' species, which as such are a general case. Biologistic binding of the human dignity accolade to the human *species* thus entails an erosion of the human dignity concept. One such example would be violations of human dignity which consist in robbing human beings of all indications of their individuality as persons and treating them like "numbers", as was the case in the concentration camps at the time of the Nazis.



Incidentally, the same erosion of the human dignity concept is encountered in the equation of human dignity with an *intrinsic value* within the human being. Here, too, 'respecting the dignity of a human being' does not mean: respecting *him/her* as a human being, but far more: respecting the intrinsic value which he has *qua* a human being, i.e. as an example of his class. Human dignity is not an intrinsic value. It is based on recognition and respect, something which is always due to individuals.

It is easy to forget how dangerously close we are here to a naturalism which directly circumstantiates human dignity in biological characteristics. It was, after all, the racial research of the National Socialists which made a direct biological attempt to lay down the borderline between human beings and non-human beings or "sub-human beings". This research was inhuman not just because of its envisaged outcome: its very point of departure, a reduction of the human being to its biological nature, was already inhuman. Here it becomes clear that humanity, in the sense of respecting the dignity of human beings, cannot be safeguarded naturalistically via biology, however tempting this might be concerning the objectivity of the natural world, i.e. its detachment from our perception, recognition and respect.

Finally at this juncture, let me include a comment on the issue of whether the concept of dignity can be transferred to animals or plants. On the basis of what has been said, it is at least clear that animals and plants do not have a dignity which is comparable to human dignity. The latter results from the constitutive state of the social world, in which social belonging and social status are based on due recognition and respect. Animals and plants, in contrast, belong to the natural world and they are what they are -- a snail, a blade of grass -- independently of our recognition and respect. Unlike the term 'human being', the word 'animal' or 'plant' is not a *nomen dignitatis*, i.e. it does not have a normative import. Of course, it is possible to charge these words with such an import. For example, one could imagine that parents,



upon seeing a child who is torturing an animal, will frown and say: "But that is an animal!". Thus children learn that animals are not to be treated arbitrarily and they associate the word 'animal' with a normative import. In this sense it is possible to speak of a dignity possessed by animals and plants. And yet, according to the above, this dignity is fundamentally different from human dignity, the latter being anchored in the constitutive state of the social world.<sup>xii</sup>

#### *4. Human rights*

Having a right to something means having a valid claim to something. Whether or not a claim is valid depends upon whether it can be justified. Rights are therefore characterised by the fact that they have to be justified. This distinguishes human rights from human dignity. The latter, as has been said, can only be shown with understanding.

How can moral rights be justified? When someone says, "I have a right to be told the truth", he asserts that others have an obligation towards him to tell him the truth. His right can thus be justified through the obligation in which his opposite number finds himself. He can cite this obligation in order to enforce his right. As we know, not all obligations justify rights. For example, an obligation to charity leaves the bearer of this obligation free to decide whom he should benefit when fulfilling this obligation and how generously. A right to be considered cannot be enforced. On the other hand, in cases where obligations leave no freedom to manoeuvre, the obligation does correspond to a right for those who are the beneficiaries of the obligation.

This can be transferred to the relationship between human dignity and human rights. Following what we have said so far, having human dignity means being a creature which is *to be recognised and respected* as a human being in the sense of social human existence. This is an obligation *towards* this creature and not an obligation leaving one free to decide whether or not



this particular creature is to be recognised and respected. This means that he has a corresponding right on his side to be recognised and respected as a human being and treated accordingly. In this way human rights are founded on human dignity. An individual in possession of human dignity also has human rights. Like human dignity, human rights are thus also anchored in the constitutive state of the social world. And, like the disregarding of human dignity, the disregarding of human rights is a disregarding of social reality.

Then what added value is to be had from talking about human rights rather than human dignity? The crucial difference is as follows. According to what we know about the epistemic paradox of the social world, the social human existence of a human being, in other words his human dignity, is not to be recognised and respected because he *is* a human being in the social sense and thus *has* human dignity: far more, he is this and has this because the relevant recognition and respect are *due* to him. The position with human rights is different. Human rights are to be recognised and respected because a creature is a human being in the social sense, i.e. *is* a member of the human community and because, following what we have said, this implies rights, it therefore *has* rights. Human rights thus *precede* their recognition. As justified and therefore valued claims, they mark a *social position* in which their owner finds himself with respect to third parties. There is a big difference whether, with regard to B, A does something because A has an obligation to do it or because B has a right to it. In the latter case, the reason for A's behaviour is the position which B has with regard to him, and A's behaviour constitutes a manifestation of his *recognition* of this position. *Relationships between rights owners are relationships of recognition*, and this point of view is of fundamental significance to the social world. A "decent society"<sup>xiii</sup> is characterised by the way in which it treats its members as the owners of rights. This is especially true on a global scale. Particularly in the face of the marginalisation which is linked with poverty and affliction,



the idea that human beings *qua* human beings have rights becomes crucially significant.

Ultimately, this point is also relevant to the debate about animal or plant rights. Here the question is: what is the point of attributing rights to animals or plants? What is to be gained by talk of the rights of non-human nature instead of our obligations towards it? The resulting actions are the same, whether they have their justification in obligations towards animals or plants, or in the rights of animals or plants. Usually argumentation in favour of animal rights is constructed so that its point of departure is in the rights which we recognise in conjunction with human beings. That is then followed by the question of whether there are any relevant differences between human beings and animals which could give us cause to exempt animals from having rights. According to the above, there is such a difference. To the best of our knowledge, animals or plants have no idea of what it means to be the owners of rights or to be recognised as a legal entity. For them, the only thing that counts is human actions which affect them, and with regard to these actions it is irrelevant whether they are based on obligations or rights. It is crucially significant for human beings, on the other hand, to be recognised and treated as the owners of rights.

##### *5. On the status of prenatal human life*

In the literature on the status of prenatal life, a difference is sometimes made between an ontological status and a moral status. It is suggested that these are two separate things, and that the first objective must be to clarify the ontological status of a creature, with its moral status then depending upon it. In order to determine its ontological status, an obvious path is recourse to biological characteristics and facts. The SCIP arguments -- species, continuity, identity and potentiality -- playing such a key role within this debate are of this type.



If we follow the path of our previous contemplations, the distinction between an ontological and a moral status is misleading. For the ontological status of a social human existence is based on a moral circumstance. A creature is a human being in the sense of belonging to the human community because he is morally due recognition and respect as a human being. Thus here ontological and moral status coincide. It is not possible to elicit, first, an ontological status in order, second, to deduce a moral status. In order to determine ontological status, it is far more authoritative to ascertain which creatures are morally due recognition and respect as human beings, and that in turn is measured according to the criteria which are valid and pregiven through the prevailing understanding of the human being, no different from in our example with the knight. Instead of making biological observations, it is thus important to clarify this concept, as well as the understanding of the human being contained within it.

This point is, of course, a source of intense irritation. Can the answer to the question, for example, of whether or not human beings are killed during stem cell acquisition from embryos seriously depend upon our understanding of the human being? Is this not "subjective" and liable to change? Does this question not require that objective criteria be sought and found? This irritation most likely stems from the paradigm and objectivity ideal to be found within the natural sciences and probably underlying this entire debate. The idea is that the reality of human existence has to be equally objectively given, i.e. independent of our perception, recognition and respect, as scientific data, and that what is at stake here is not our *understanding* of the human being, but *facts*. The biologicistic way of viewing prenatal life serves this idea.

And yet, as our deliberations about the social world have shown, human reality cannot be grasped according to this paradigm. It is not pregiven, independently of our perception, recognition and respect; for in the social



world everything depends upon our attitude towards it. To counter allegations of subjectivism, the fact that something is substantiated in perception is on no account the same thing as saying that it is merely subjective. John McDowell clarified this in an analogy between moral perception and the perception of colour.<sup>xiv</sup> Colours, too, are only perceived and do not exist beyond our perception, but that does not make them subjective in the sense that they only exist for your or my perception. As a result of our biological nature, we share responses and powers of perception enabling us to communicate regarding colours. According to McDowell, in a similar way we have at our disposal shared responses and perceptions which enable us to grasp phenomena in their moral significance. Thus we can also communicate regarding topics such as the degradation or cruelty of an action, or that a creature is a human being in the sense of possessing human dignity. This is given as a result of prevailing perception patterns which we have internalised culturally. In this context McDowell speaks of our "second nature". The alternative to a naturalistic basing of the ontological status of creatures on natural characteristics therefore consists in reconstruction of these prevailing patterns. Anchored in the latter are the natural characteristics which are relevant as *criteria* for the perception and recognition of a creature as a human being in the sense of possessing human dignity. And here, too, the ontological status of prenatal life is decided.

In contrast, the SCIP arguments are complete arbitrary. They have recourse to a biological fact and deduce from it human existence in the social sense, i.e. in the sense of possessing human dignity. In the case of the species argument, this is membership of the species: "All creatures which descend from human beings are human beings -- regardless of whether this descent is via natural procreation and conception, via artificial reproduction or via cloning."<sup>xv</sup> Saying that all entities which descend from human beings are human beings, i.e. creatures possessing human dignity, is of course questionable even from a biological perspective. For the human species includes



human embryos, i.e. organismic entities. And yet we make a difference between human beings and human organisms. We even make this difference in conjunction with non-humans. When we say "There goes a rabbit hopping across the meadow", we do not mean: "There goes a rabbit-like organism hopping across the meadow". A rabbit *has* an organism, but it is not the same thing as this organism. We thus distinguish between a rabbit and a rabbit embryo, and also between a human being and a human embryo. Human dignity is bestowed upon human beings and not upon human organisms or bodies. Talk of human dignity for embryos is based on a categorial misunderstanding. And following what has been said so far, human dignity is not bestowed upon human beings because they are human beings in a biological sense, but because as a result of their biological human existence they are due recognition and respect as human beings within the social world. Their social human existence, i.e. their human dignity, is not given with their membership of the species.

No less questionable is the continuity argument. It purports that, within the course of development from an embryo to a human being, it is impossible to establish a biological turning point where beforehand there is no human being and afterwards there is. Therefore it is also impossible to determine a point in time when human dignity should be bestowed upon a developing being, and this apparently leads to the conclusion that it has to be bestowed upon human life from its earliest stages. Like the previous one, this argument fails to recognise that social human existence is not based on a biological developmental process, but on recognition and respect. And this, as stated, is measured according to certain criteria. If we take these criteria as a basis, then in the development from an embryo to a human being there certainly is a decisive turning point, namely at the beginning of pregnancy. From this moment onwards -- at least with a considerable degree of probability -- there is a given connection between an embryo and a future human being, who at birth will become a physical adversary within the sphere of



the social world. We know that the majority of embryos do not become embedded in the womb. For these embryos there is, then, no biological continuity towards becoming a human being; instead they perish as organismic entities before they reach the stage of biological human existence.

Our cultural understanding of the human being is characterised by our grasp of the human being as a born human being.<sup>xvi</sup> Prenatal life thus forms part of social human existence to the extent that it develops into a born human being, including life which has not yet entered the stage of biological human existence. We view life inside the body of a pregnant woman as something to be respected as the life of a human being, and this is the reason why we deem it worthy of protection. The continuity argument, the identity argument and the potentiality argument all reflect this cultural understanding of the human being in the way they attempt to deduce a human dignity for prenatal life from the human dignity of born human beings, to which it correlates in continuity, identity and potentiality. As has already been said, this deduction fails, however, in conjunction with embryos which are not embedded in the womb and which therefore do not correlate to a later born human being which will enter the sphere of the social world.

This cultural understanding of the human being meant that, until the introduction of *in vitro* fertilisation, the termination of pregnancy was the central ethical problem surrounding prenatal life, and not the status of the embryo. The confusion arising in conjunction with this issue began with reproduction medicine. It put at the disposal of human beings what had previously been beyond their reach, namely the beginning of life. The shifting of this beginning from pregnancy to the fusion of gametes occurred against a background of understandable fear that human life had been laid open to manipulation.



It is possible to share this fear without needing to resort to the questionable concept of a human dignity for embryos. Jürgen Habermas, for example, suggested in this context that we speak of a "dignity of human life", which he distinguishes from human dignity. This reflects our intuition that even human life which has no correlation to a later born human being is to be viewed as something which we cannot treat totally arbitrarily. The special status of the human being, as expressed in our social understanding of the human being, clearly impacts on this form of life, too. The statement 'in every human embryo, human life is to be respected' obviously makes sense. The creation of embryos using gamete fusion expressly for research purposes is viewed as incompatible with this act of respect. But does this mean that stem cell acquisition from surplus embryos created for *in vitro* fertilisation is also incompatible with this act of respect? Or therapeutic cloning? Or the selection of embryos during preimplantation genetic diagnosis (PGD)?

Clarification of the confusions surrounding the status of prenatal life is urgent, not least because of their devastating consequences in ethical terms. Do we really have to attach an equal moral importance to each and every non-embedded embryo as, say, to the human beings in Darfur?<sup>xvii</sup> The flip-side of an ethical maximalism elevating each non-embedded embryo to the same moral plane as a born human being can easily be the cynical attribution of a greater moral weight to the fate of non-embedded embryos than to the fate of born human beings. One example of this is the PGD debate, in which PGD opponents object to the selection of embryos in order to prevent hereditary diseases by referring to their human dignity, thereby accepting that hereditary diseases which have plagued families for generations will continue to be passed on, a terrible fate for the families involved.

Let us look at a concrete example: from an institution in Switzerland for long-term patients, most of whom have mental diseases, I am aware of one case in which a patient suffers from Huntington's disease. His mother grew



up as an orphan. When the disease broke out in his grandmother, his grandfather shot first her and then himself. The patient experienced the disease at first hand in his mother. When he was 18 years old, he decided to find out whether or not he, too, had inherited the disease. The diagnosis was positive, leading the patient to seek contact with an organisation for medically assisted suicide in order to keep this option open for as long as he was of sound mind. He is now 22 and the symptoms of the disease are beginning to show. He has recently become severely addicted to alcohol and it is safe to assume that he is no longer of sound mind.

These are the cases at stake here. PGD makes it possible to save human beings belonging to future generations from a similar fate. Rejecting this possibility by appealing to a supposed human dignity for embryos is expression of a way of thinking which is not only false, but also merciless, attaching more weight to an ideological edifice than to the fate of born human beings.

I have argued for the idea that, in order to determine which creatures are human beings in the sense of possessing human dignity and human rights, the only yardstick can be the *understanding* of human existence which we have internalised culturally, and not human biology. This might lead some to question why this understanding of the human being, which has come to us contingently through history, should be binding and not flexible, e.g. able to include human embryos. There is only one answer to this: it is binding for us because we have internalised it culturally. We cannot escape our cultural perspective. By saying that 'human embryos are human beings', one claims that human embryos should be included within the term 'human being'. Whether or not this is so, is dictated by the extension of this term. And this in turn is dictated to us by the language which we speak, which is not simply open to negotiation.



This established cultural perspective does not, of course, completely exclude change or historical development, and our understanding of the human being is actually a very good example of this. And yet, in order for such a change to take place, a mere posit such as that of existence as a human being for every human embryo is not sufficient. Neither can change be brought about through mere rational arguments of the SCIP type. Such arguments, in the view of their advocates, might render plausible the *idea* of existence as a human being for every human embryo, and yet, in reality, they do not lead to a perception of the same. This is shown by cognitive dissonances. For example, those who are against stem cell research on the basis of the SCIP arguments do not usually object to contraception using the coil, aimed at preventing embryos from becoming embedded and causing them to die. If every embryo really is a human being, then this would be equivalent to the killing of countless human beings, which could be described as a moral catastrophe. Not even the churches, with their commitment to protecting human life, have to date gone as far as to demand that the coil be banned, no doubt fearing that this would inspire a general shaking of heads and lack of public understanding. This of course raises the question of whether the idea of existence as a human being for every human embryo is not in truth just functioning as a strategic argument against embryonic stem cell research or other embryonic manipulations, motivated by the fact that rejection of them is intuitive, without any true underlying conviction extending as deep as personal perception and experience. This would then be an example of how discourses conducted argumentatively can take on a life of their own and detach themselves from life world perceptions. With the SCIP arguments the situation is similar to proving the existence of God: finding proof for the existence of God does not make experiencing God a given.

Following what has been said, our understanding of the human being is anchored in a perception which extends to deep, emotional layers. It can only be altered, therefore, by reaching these layers and influencing perception.



Narrative descriptions and reports about the vulnerability, humiliation and torment of human beings have played a crucial role in asserting the idea of human dignity and human rights for *all* human beings. This is on a completely different level from the debate about the ontological status of the embryo.

### 6. *Final remarks*

These deliberations have not contained theological argument, and maybe some readers will have been expecting the opposite from a theological ethicist and have thus found them lacking. There exists a theological viewpoint which states that human dignity is bestowed upon human beings by God and that its only justification therefore has to be theological. In contrast, I have argued that the normativity contained within the idea of human dignity is anchored within the structure of the social world. It is a social reality which is independent of the prerequisites imposed by religious faith. Theological considerations have more weight when we address the extension and content of the human dignity concept, in other words the issue of which creatures are due recognition and respect as human beings and what this respect involves. Here the Christian understanding of the human being is involved. However, when reflecting on the concept of human dignity it is vital to open one's eyes to its anchoring in the structure of the social world. For, as has become clear, here lies the source of all misunderstandings surrounding this concept.

Zurich, 18th August 2009 JF/ak

---

<sup>i</sup> Kant, *Kritik der reinen Vernunft*, in 10 volumes, ed. by Wilhelm Weischedel, Vol. 4 (Darmstadt: Wissenschaftliche Buchgesellschaft, 1983), 498 (B575). *Critique of Pure Reason (The Cambridge Edition of the Works of Immanuel Kant in Translation)* ed. by Paul Guyer & Allen W. Wood (Cambridge: Cambridge UP), 1999.

<sup>ii</sup> This is Robert Spaemann's chosen formulation. Cf. *ibid.*, *Personen. Versuche über den Unterschied zwischen 'etwas' und 'jemand'* (Stuttgart: Klett-Cotta, 1996), 193. Cf. *ibid.*, *Persons: the difference between 'someone' and 'something'*, Robert Spaemann, trans. Oliver O'Donovan, (Oxford/New York: Oxford University Press, 2006), p. 183.

<sup>iii</sup> *loc. cit.* 257. *loc. cit.* p. 241.

<sup>iv</sup> *loc. cit.* pp. 255-6. *loc. cit.* p. 239.



---

<sup>v</sup> loc. cit. 264. *loc. cit. p. 247 (my translation).*

<sup>vi</sup> Eilert Herms, Menschenwürde, in: Klaus M. Girardet, Ulrich Nortmann (ed.), Menschenrechte und europäische Identität. Die antiken Grundlagen (Stuttgart: Franz Steiner Verlag, 2005), 183-214, 200. (*My translation*).

<sup>vii</sup> loc. cit. 205.

<sup>viii</sup> This is then turned into a theological argument by Herms, who asserts that this is the Christian view of the human being (loc. cit. pp. 208). For Herms, all other views are incompatible with the Christian belief in creation (loc. cit. 212, comment 36). According to this belief, all "entities in a state of becoming... are there by the selection and grace of God" (*my translation*). Faith does not admit coincidence. I was unable to deduce from Herms' text how exactly this should lead one to the conclusion that every non-embedded human embryo is a possessor of human dignity.

<sup>ix</sup> Peter Schaber, Menschenwürde als das Recht, nicht erniedrigt zu werden, in: Ralph Stoecker (ed.), Menschenwürde -- Annäherung an einen Begriff (Vienna: öbv & hpt, 2003), 119-131.

<sup>x</sup> e.g. Richard Rorty, "Human Rights, Rationality, and Sentimentality." In: *Shute, Stephen & Hurley, Susan* (eds.). *On Human Right*. (New York: Basic Books, 1993), 111-134.

<sup>xi</sup> Wilfried Härle, Menschenwürde -- konkret und grundsätzlich, in: *ibid.*, Menschsein in Beziehungen. Studien zur Rechtfertigungslehre und Anthropologie (Tübingen: Mohr Siebeck, 2005), 396.

<sup>xii</sup> For Herms human dignity is only one special instance of the dignity which is attributed to all things being (loc. cit. 195). This is linked to his view that dignity precedes its recognition and respect, i.e. that it exists prior to and independently of the latter. In this respect there is no distinction between human dignity and the dignity of that naturally being. Here, then, human dignity is not specific to the social world.

<sup>xiii</sup> Cf. Avishai Margalit, *The Decent Society* (Cambridge MA: Harvard UP, 1996).

<sup>xiv</sup> John McDowell, Value and Secondary Qualities, in: Ted Honderich (ed.), *Morality and Objectivity* (London: Routledge and Kegan, 1985), 110-129.

<sup>xv</sup> W. Härle, Menschenwürde -- konkret und grundsätzlich, loc. cit. pp. 391-2. This declaration of Härle's is merely an assertion, i.e. not justified any further. Härle does not distinguish between the biological and social concept of human existence. Far more, human dignity directly hinges on membership of the species. (*My translation*)

<sup>xvi</sup> This is also true of the understanding of the human being purported in Biblical and Christian scriptures. Even the Bible comprehends the human being as a born human being, as God's partner in the sphere of the creaturely. The lines in the Bible which mention prenatal life as the life of human beings refer to human beings later born, whom God formed in the womb. This does not permit a deduction of human existence for non-embedded embryos.

<sup>xvii</sup> This is seriously the opinion of the churches in Germany, which award -- and here, indeed, 'award' is a fitting term -- godlikeness and human dignity to every embryo, whether embedded or not -- thus placing them on the same level as born human beings. This is then preached as Christian understanding of the human being, even though it stems neither from the Bible nor from Christian scriptures, but instead from embryology. This information is set down for all to read in the joint declaration of the churches "Gott ist ein Freund des Lebens" from 1989 (cf. pp. 43), which is still officially valid.