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# 3 Grounding Market Boundaries on Human Dignity

The previous chapter covered the idea that market activity is confined by boundaries. These boundaries (e.g. in the form of laws and regulations) tell us where and how we allow a market to operate and these are guided in part by moral convictions. In this thesis, we are particularly concerned with one manifestation of a boundary encapsulating the workings of the market, namely the ILO's Decent Work Agenda and the associated international labor standards. In this market boundary, the concept of human dignity can be identified as a grounding principle. In this chapter we take a closer look at this specific moral concept in order to obtain a better understanding of the implications of invoking this concept.

This chapter is divided into three sections. In the first section, I discuss the concept of human dignity vis-à-vis the market. The second section contains an exploration of the way the concept of human dignity is deployed in the religious, philosophical, and legal sense, respectively, and what implications there are when viewed as a foundation for market boundaries. This exploration will show that the application of human dignity comes with certain methodological issues. The subsequent section addresses these issues using the work of Avishai Margalit.

## 3.1 Discussing dignity vis-à-vis the market

When the German philosopher Immanuel Kant speaks of human dignity, he refers to that which has no price. Therefore, when the International Labor Organization states, as it did in 1999, that its mission is to secure decent work for all, which in turn enables human dignity, it is invoking a concept (i.e. human dignity) that is alien to the logic and workings of the market. This goes for all institutions that use this concept while serving as fences around market activity including the Universal Declaration of Human Rights (and its subsequent Covenants) that use human dignity as a grounding principle. The fact that these boundaries are entwined with the concept of human dignity—as well as the fact that the concept has presented throughout the history of Western thought as a concept that could mitigate or steer market outcomes—warrants a closer view of this concept.

Economics in general and mainstream economics in particular has devoted little to no attention to the concept of human dignity. This is in no doubt due to the belief that economics is a positive and value-free science as noted in the previous chapter (see e.g. Lutz, 1995). In addition, it could be argued that when there are no prices involved—as in the secular account of human dignity by Immanuel Kant—it has no business in economics. However, as pointed out above, the concept serves as a cornerstone for contemporary (international) legal theory including the institutions that can rightfully be regarded as market boundaries. If only through this connection, human dignity provides what Davis (2006) calls "a normative point of entry for social-economic policy".[40]

Any exploration of the concept of human dignity will be immediately presented by a considerable hurdle, namely the absence of a broadly shared definition of human dignity. The term dignity originates from the Latin *dignitas* that roughly means social honor, refers to that aspect of virtue or excellence that makes one worthy of honor. In this sense, dignity refers to a kind of deserving and to something deserved. Human dignity could subsequently be derived from this by assuming that that which makes one worthy of honor (or respect) is one's humanity and it is in our nature. Marcus Tullius Cicero (106 BC–43 BC), who was the first to speak of human dignity in his essay *On Duties* or *De officiis* (44 BC), stated that in our nature there already is a dignity and that this is not merely the result of or contingent on the way we dress, walk, or talk. (Wetz, 2005, p. 21)

From this very rudimentary etymology it does not become clear as to *why* one should assume that a human being should be worthy of respect to begin with. Even if one were to accept that human beings (for whatever reason) deserve respect and that there is such a thing as human dignity, one is subsequently faced with a new hurdle. This second hurdle is related to the question of how the concept is operationalized: should it be seen in terms of *having* or in terms of *being*? In other words, is human dignity something human beings have and thus may lose and possibly (re-)gain whether in a binary fashion or in terms of degrees? Or is human dignity such an integrate part of human beings that it, therefore, should be seen as part of the existence of the human being itself, and thus as intrinsically linked with being? The answer to

[40] See also Davis (2009)

this question has practical consequences once the concept of human dignity is deployed in a social-economic setting, as we shall see in the next section when the concept is reviewed in greater detail.

## 3.2 Exploring the concept of dignity

The standard way to discuss the concept of dignity is to review it by the eras and the way it is incorporated.[41] However, rather than presenting a historical argument on the relationship between human dignity and market forces, I will here explore the concept and review how it was discussed vis-à-vis the market in selected settings.

The first of these deals—using the papal encyclical *Rerum Novarum*—with the way in which human dignity from a religious perspective was invoked to provide a foundation for the reining in of the forces of the market and strengthening the position of workers. Subsequently, I intend to discuss the way in which (secular) philosophy deployed the concept in order to steer (influence/limit) market outcomes. The work of Immanuel Kant, who provided a definition of human dignity (i.e. that which has no price), which is in direct opposition with the market, is central to this exploration. Lastly, I will look at the more pragmatic perspective on human dignity. The focus will be placed on the way the concept became part of the (international) legal tradition of universal human rights and international labor standards, actual manifestations of boundaries against the market.

### 3.2.1 Religious perspective: Rerum Novarum

In the religious sphere, human dignity is closely associated with the idea of divine creation and the assumed special place for humanity herein. There exists a large body of literature on the place of human dignity in the three major monotheistic religions. For a comprehensive overview and discussion of the history of the concept in the major religions see e.g. Sacks (2002), Kraynak and Tinder (2003), Soulen and Woodhead (2006) and Kamali (2002). In this section, we shall confine ourselves to the way dignity in the religious sphere is used in relation

[41] So, for instance, Dalton (1999) subdivides the history of the concept of human dignity in the Western tradition into three eras: the Biblical and Christian, the Enlightenment and the Twentieth Century. McCrudden (2008) in his article "Human Dignity and Judicial Interpretation of Human Rights" talks about three strategies in order to talk about human dignity, which he dubs the religiously based, philosophical and lastly the historical. Franz Josef Wetz in his book *Illusion Menschenwürde* (2005) provides a cultural history of the concept wherein he distinguishes between six eras ranging from the Antiquities, late Antiquities and Middle Ages, Humanism and the Renaissance, Modern Times to Present day.

with the market and with a specific example hereof, namely the papal encyclical *Rerum Novarum: On the Condition of the Working Classes* by Pope Leo XIII (1891). This encyclical—the first of what is now known as the social encyclicals—is one of the first instances in the Catholic, if not religious, sphere where a link between market activities (and specifically labor) and human dignity was explicitly made; its main topic being that of the "rights and duties of capital and labour".[42]

The aim of the encyclical was in part to draw attention to the destitution and perilous situation of the worker while subduing the rise of communism and the call to revolt. Overall, it was a response of the Church to the new political and economic landscape dominated by the nation state and the forces of the free market.[43]

Pointing towards an alternative way to address the "misery and wretchedness" common to the majority of the working classes, the encyclical defends the market system as being morally superior to the socialist alternatives which it asserts would hinder workers in their liberty and development. The basis for this is found in the idea of natural rights (or laws of nature), which is in turn used to provide a justification of private property. Any proposal to address the situation of workers that goes against the existence of private property is considered to be against justice itself.[44]

Turning to the situation of the workers the text points towards historical developments that have helped shaped it. The encyclical argues that the demise of the ancient guilds (and with "no other protective organization <taking> their place") had ensured that workers had

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[42] The introduction by Leo XIII of the concept of human dignity can be seen as a novelty — in general and especially in relation with the issue of labor. A review of the encyclicals of his immediate predecessors in the nineteenth century (Popes Pius IX, Gregory XVI, Pius VIII, Leo XII and Pius VII) did not yield any reference to the term "human dignity". Although these encyclicals contain many references to "dignity", these are all in relation to an office or position rather than in terms of "human dignity".

[43] Commonly the works of two bishops are identified as having been instrumental in the realization and creation this encyclical, namely the German Wilhelm von Ketteler (1811–1877) and the Englishman Henry Edward Manning (1808–1892). (Coleman and Baum, 1991) The influence of the latter was especially prevalent as he (in his then role of Cardinal) actively helped in the drawing up of the text of the encyclical. Many of his ideas on the position of labor in modern society (which he had laid out in a lecture titled "The Dignity and Rights of Labour" and delivered at the Leeds Mechanics' Institution in 1874) ultimately found their way in the encyclical. In his lecture, he laments what he calls the depreciation of unskilled labor and asserts that a laborer "…must be first and last the judge and the controller of his own life, and he must pay the penalty if he abuses that freedom. This carries with it also the right to say whether he can subsist upon certain wages." (Manning, 1877, p. 84).

[44] The introduction of the language of natural rights was a novelty for the teachings of the Roman Catholic Church (Fortin, 1992). Although he is not mentioned by name, the ideas of John Locke play a key role in the defense of private property.

surrendered to "the hardheartedness of employers and the greed of unchecked competition." (Catholic Church and Pope Leo XIII, 1891, §3). This in turn had led to a situation wherein the burden of laborers was deemed to be very much comparable to that of slaves. In order to mend this situation the encyclical argues that both capital and labor need to be reminded of their duties towards each other. Theirs is a mutual relationship of dependence; labor needs capital just as capital needs labor.[45]

The most important duty of workers is—as discussed above—to respect private property. In the case of capital these duties are presented thus: "The following duties bind the wealthy owner and the employer: not to look upon their work people as their bondsmen, but to respect in every man his dignity as a person ennobled by Christian character. They are reminded that, according to natural reason and Christian philosophy, working for gain is creditable, not shameful, to a man, since it enables him to earn an honourable livelihood; but to misuse men as though they were things in the pursuit of gain, or to value them solely for their physical powers—that is truly shameful and inhuman." (1891, §20)

One striking aspect of this quote is the way the encyclical aims to lift the status of labor and that it should not be looked at with contempt.[46] But more important is the prescription of the need to not treat men as if they were things and demand that employers respect the dignity of every man. Here, the explicit position is taken up that people (and thus labor) are always more important than capital. The encyclical also outlines other duties for capital stating, for instance, that employers need to provide safe working conditions (physically as well as spiritually) and pay fair wages, meaning above the subsistence level, enabling the worker to further his/her development.

Apart from stating the duties of employers/owners of capital and workers, the encyclical also covers the role and duties of the state in relieving the plight of the working classes. It asserts that the state has as its primary duty to ensure that the laws and institutions are geared towards the improvement of the public at large adding that "<...> the more that is done for the benefit of the working classes by the general laws of the country, the less need will there be to seek

[45] This assessment can be contrasted with the work of Polanyi (1944) who accords a greater role of this transformation to changes in the regulative and legislative framework. See also §1.2.5

[46] This idea translated as the Dignity of Labor became one of the pillars of the tradition of Catholic Social Thought

for special means to relieve them." (1891, §32) Governments should, therefore, actively intervene to counter the results of market forces, e.g. by introducing laws covering working conditions as well as the regulation of working hours (introducing ceilings), wages based on the notion of a fair wage (introducing minimums) and the prohibition of child labor. The encyclical also expresses the desirability of trade unions and discusses the criteria by which they should be guided. (1891, §57)

The role of unions assigned in the encyclical is predominantly in the provision of a social safety net. When it comes to protecting workers against employers, i.e. when the latter fails to observe the duties outlined above it is the state that ultimately needs to be called into action: "<…> or if employers laid burdens upon their workmen which were unjust, or degraded them with conditions repugnant to their dignity as human beings; finally, if health were endangered by excessive labor, or by work unsuited to sex or age—in such cases, there can be no question but that, within certain limits, it would be right to invoke the aid and authority of the law." (1891, §36) In other words, the state was supposed to play a crucial role in the realization of the ideas stated in the encyclical.

When it comes to the question of to whom the laws and intuitions of the state should be applicable, the encyclical returns again to the concept of human dignity—which states that "[no] man may with impunity outrage that human dignity which God Himself treats with great reverence"—and infers from this the equality of all human beings whatever their worldly circumstances or social position (1891, §40).

**Dignity as Imago Dei**

The way human dignity is used in the encyclical can be considered to be innovative on two levels. First of all, the fact that it was used at all was a relative novelty compared to the previous papal encyclicals.[47] To this may be added that the usage of the concept in the

[47] See footnote 42 of this thesis

religious sphere is not as straightforward as is it may seem given the fact that neither the Old nor the New Testament contain an explicit reference to human dignity.[48]

The second innovative aspect of the way human dignity is used in *Rerum Novarum* lies in the fact that the way the concept is used differs from the way it was used in the (Biblical and Christian) religious tradition up until then. Under the traditional religious sense or biblical version of human dignity the concept is directly linked with the idea of divine creation of the world and man. The main focus is on the usage of "Imago Dei" that refers to the idea that man is created in the image of God. It is this attribute shared by all human beings that sets them apart of all other beings. Over the centuries (especially in medieval Christianity) this was translated in what has come to be called 'the Great Chain of Being': the idea that in the natural world there is a "hierarchy with the human species at the top, possessing a special right of dominion over the lower species." (Kraynak, 2003, p. 85; see also Dalton, 1999).

In the encyclical, this approach to human dignity can be found stating that it is "the soul which is made after the image and likeness of God; it is in the soul that the sovereignty resides in virtue whereof man is commanded to rule the creatures below him and to use all the earth and the ocean for his profit and advantage." (1891, §40) However, the encyclical expands on this conception by introducing the capacity of reason. It notes that reason is the basis of the difference between human beings and animals. Animals are said to have only two driving instincts, namely self preservation and the propagation of the species. Animal nature is there to serve and obey humankind because humans are endowed with reason. Note that this argument is not put forward to denote human dignity but to argue specifically that humans have the right to have possessions, that is to own something in a durable and permanent sense rather than in temporary use. Nevertheless, the inclusion of reason (which paved the way for the introduction of natural law) endows human beings with another shared trait apart from being created in the image of God. In short, the concept of human dignity used in *Rerum Novarum* is grounded in the idea of Imago Dei—a hierarchical or vertical understanding of human dignity—but with an added twist in reason being the grounding of the equality of all humans.

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[48] To this can be added that unlike the Tanakh and the Bible, the Quran does contain an explicit reference to human dignity, namely in reference to Adam: "We have bestowed dignity on the progeny of Adam (laqad karramna bani Adama)... and conferred on them special favours, above a great part of Our creation. (al-Isra', 17:70)" (Kamali, 2002, p. 1); Similar to the account given by the early church fathers, human dignity in Islam is closely associated with the concept of a spiritual ranking as well as the affirmation of God's love for humankind.

**Implications**

In his review of the reception of the encyclical, Schäfers (1991) notes that in certain countries the reception of the encyclical was lukewarm at best. This he attributes to the fact that the ideas of *Rerum Novarum* were already widespread and proposed legislation was already in place. So, for instance, by the time of publication the German Catholic trade union had already been in operation for nearly half a century (Schäfers, 1991). Likewise, many European countries had already passed legislation prohibiting child labor.

Thus, on a practical level, the impact of the encyclical may not have been that great. Nevertheless, it did provide a framework on how to think about the market in moral terms based on the ideas that a) man was created in the image of God and is, therefore, endowed with dignity and, b) because we are all creations of God we are all equal. The implications for the market of all this can best be seen as the re-appraisal of the relationship between capital and human beings. The encyclical lays out why people are more important than capital and its recommendations or provisions safeguarding the position of workers should be seen in that light. Employers and owners of capital are instructed to acknowledge the shared traits between themselves and workers (i.e. the endowment of human dignity) and act accordingly by not treating people as if they were objects or animals, by not taking advantage of them, paying them fair wages, etc. Similarly the state through its laws and institutions should be geared towards the improvement of the working classes and thus contribute to safeguarding the respect for human dignity.

**Critiques**

Although the encyclical introduced rationality as a shared trait among human beings it is not presented as the source or foundation of human dignity. Here, human dignity is based on *Imago Dei* and the hierarchical relationship vis-à-vis the rest of nature. Against this religious account of human dignity, two important critiques can be identified. The first concerns the objection against the introduction of God (or any form of deity) as a foundation or source for human dignity as it would hinder the concept from becoming truly universal i.e. for those whose beliefs differ in this respect. The second critique has to do with the idea of placing one species (i.e. human beings) above all other species. This critique, known as speciesism, moves beyond the theological debate and is one of the more poignant criticisms levied against the concept of human dignity. At the heart of the objection lies the idea that human beings are not

more special than other species, which are also capable of experiencing pain. We shall return to this argument in the next section that covers the Kantian account of human dignity.

**Towards a Kantian conception of Dignity**

As said in the text above, the encyclical stated that rationality is a shared human trait yet human dignity is derived from God and exemplifies man's place in the hierarchy of nature. Later, the publications of the Catholic Church saw a transformation of the underlying definition of human dignity from being based on *Imago Dei* to a more Kantian idea of humans as being beyond any price and equal. This is especially visible in *Gaudium et Spes,* one of the four Apostolic Constitutions that came out in the Second Vatican Council (published in 1965), and ultimately in the Pope John Paul II encyclical letter *Evangelium Vitae* that refers to "the incomparable worth of the human person" (Catholic Church and Pope John Paul II, 1995). This idea of the incomparable worth of human beings can be traced back to the writings of the 18th century philosopher Immanuel Kant, which is the topic of the next section.

### 3.2.2 Philosophical perspective: Immanuel Kant

We now turn to the philosophical account of human dignity. The focus lies especially with humanistic morality, which takes human beings to be the measure of all things yet makes no appeal to the divine for a justification. Here, Kant's work on this subject is especially of importance in bringing the concept to prominence.

For Immanuel Kant (1724–1804), the dignity of man is unconditional and an intrinsic aspect of humanity. Only people, as he famously declared in his *The Metaphysics of Morals* published in 1797, have dignity, they have no price but are to be prized in themselves: "In the system of nature, man (*homo phaenomenon, animal rationale*) is a being of slight importance and shares with the rest of the animals, as offspring of the earth, an ordinary value (*pretium vulgare*). <…> But man regarded as a *person*, that is, as the subject of a morally practical reason, is exalted above any price; for as a person (*homo noumenon*) he is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in himself, that is, he possesses a *dignity* (an absolute inner worth) by which he exacts *respect* for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them."(Kant, 1991, p. 254; also cited in Shell, 2003, p. 64/65).

From this description, several aspects of dignity can be inferred. The first aspect of his account of dignity is that of unconditional worth. Secondly, the value of that which has dignity cannot be compared with anything else as there is no equivalent for it. In his *Groundwork of the Metaphysics of Morals* first published in 1785, he phrased it thus: "What has a price can be replaced by something else as its *equivalent*; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity" (Kant, 1998, p. 42; also cited in Kerstein, 2002, p. 175). This entails that that which has dignity cannot be exchanged nor ever be replaced or (legitimately) surrendered for something that has a price (and hence no dignity). In addition, but less clearly so, Kant states that, that which has dignity cannot be replaced by something else that also has dignity. This derives from the premise that there is no equivalent for an entity endowed with dignity. Therefore, in practical terms, Kant says it is not permissible to sacrifice, that is to kill a being with dignity even if it was in order to save another(s) who is/are also endowed with dignity (Kerstein, 2002, p. 175). This position stands in dark contrast with the *teleological* ethical traditions, most notably with utilitarianism. Under the basic utilitarian approach, the only relevant issue in deciding whether an act is morally sound is its consequences. Therefore, in its basic incarnation, the act of sacrificing a human being is permissible provided that the subsequent consequences warrant and legitimize such an act. The key point here is that utilitarianism in its basic form does not from the outset prohibit the taking of a life in order to save (an)other(s).

As to the question of why human beings are endowed with dignity, the answer for Kant lies in his assertion that a human being is "subject of a morally practical reason" (Kant, 1991, p. 254; also cited in Shell, 2003, p. 64/65). As such a human being is not only capable of understanding morality and, therefore, capable of following it but also a potential creator of moral law. As lawgiver, man is in turn bound by reason to follow the categorical imperative, which Kant presented in various formulations. He published his first formulation of the categorical imperative in *the Groundwork of the Metaphysics of Morals*: "Act only on that maxim through which you can at the same time will that it should become a universal law."(Kant, 2005, p. 97). Reason, in short, is paramount in Kant's account of human dignity (Shell, 2003, p. 69). However, this close connection between rationality and dignity creates a new set of questions, again relating to the problem as to whom dignity shall refer to. If we accept that it is a shared human trait and that it is derived from reason, are human beings with slight

rationality still eligible for the endowment of human dignity?[49] We shall return to this issue after first discussing the overall implications of this conception of human dignity.

**Implications and Issues**

Any discussion on the implications of Kant's conception of human dignity for the market must start out with making a distinction between what we can argue that Kant's philosophical work entails for social arrangements and Kant's own judgments on social arrangements (Wood, 2008, p. 11). Firstly, there are clear contradictions between the way we actually live and the way we should live based on moral principles; this is just as valid nowadays as it was in Kant's era. Secondly, there is the issue of changes in *Weltanschauung* that may explain some of the contradictions that we now find in the philosophy and judgments of the past. For instance, although Kant was a champion of liberty, which he saw as an essential ingredient of personal autonomy, he saw no contradiction with the idea that liberty was less applicable for women, children, and servants (Wetz, 2005, p. 69). Similarly, the framers of the US Declaration of Independence saw no problem with combining the assertion that all men are created equal and the inequality of colored people and women (Wood, 2008, p. 11).

Another reason why we cannot rely on Kant's own writings on the market is that he did not devote any significant attention to this topic. Much of what constitutes a Kantian approach to the market or economy has come from later commentators.[50] With regard to market boundaries it can be noted that Kant is considered to be a theorist within the liberal tradition and held the position that the sole purpose of the state is to protect "individual rights and property through coercive force" (Wood, 2008, p. 193). However, the extent of government intervention in society is subject to debate with some seeing in Kant a representative of a libertarianism while others find that the demands of the categorical imperative imply and point towards a requirement of a welfare state (Wood, 2008, p. 194 & 197).

Given these considerations, we now turn to an account of the implications of the Kantian conception of human dignity for the market. One of the most important ones is that human beings themselves are beyond the realm of the market; they may be active in the market but as beings never subject to it. The most obvious example hereof is the prescript that follows from

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[49] See also Sedgwick (2008)

[50] See for a discussion of various contributions chapter 11 on Social Justice in Allen Wood's *Kantian Ethics* (2008, pp. 193-205)

Kant's imperative of not treating humanity as a thing or object with a price, which clearly rules out slavery. This imperative, as Bowie (1998, 2002) notes in his writings on Kantian business ethics, does not prohibit commercial transactions from the outset, but it does, however, put a limit on the nature and scope of these transactions, i.e. one person cannot use another to satisfy their interests and we cannot treat people as objects, as in the case of slavery.

In more general terms, one can also deduce from Kant's writings that a human being should not be subject to coercion or deception as either would entail using a person as a tool. Bowie (2002) finds additional implications by introducing Kant's preoccupation with freedom (which autonomy requires) and especially with positive freedom. The Kantian notion (derived from the categorical imperative) of positive freedom entails the freedom needed to develop one's rational and moral capacities, in short one's human capacities. With this the market implications of the Kantian maxims including his conception of human dignity can be said to demand that people in a commercial relationship should not be used, which again includes not being coerced or deceived. Secondly, commercial structures should be organized in such a way that they "contribute to the development of human rational and moral capacities, rather than inhibit the development of these capacities." (Bowie, 2002, p. 8).[51] In addition, I would contend that from these demands there flows a logical requirement of creating the institutions that determine that the market should at least also take them into account.

**Critique**

Kant's philosophy is deemed to be one of the foundational contributions to the deontological (rights-based) traditions in ethics. With its assertion that it is not the consequences of an action but the action itself that determines its moral status, it stands in clear juxtaposition with the traditional utilitarian accounts of ethics. There is another important matter of dispute between the Kantian approach to morality and utilitarian accounts which is related to the question what should be the scope of our moral concern. One of the key thinkers of the utilitarian school of thought, Jeremy Bentham (1748–1832), not only advocated a

[51] Bowie further distils from his analysis of Kant's positive freedom a definition of meaningful work consistent with Kant's views. In describing what he believes to be the characteristics of this type of work, he starts out with the assertion that it is work that is freely chosen and that allows the employee to exercise autonomy on the job. In addition, it is work that does not undermine the rationality of human beings (as this is immoral) but rather supports this rationality. The third characteristic has to do with the height of the pay that should be such that it enables physical welfare for the employee. Finally, the work should not interfere with the moral development of the worker (Bowie, 1998, p. 1083, 2002, p. 10).

consequentialist approach in ethics but also thought that our moral concern should not be confined to human beings but should include all those who are capable of suffering. Stating that there are two sorts of agents that are susceptible to happiness and under the influence of human action (namely other human beings and other animals), he includes the following in a footnote: "It may one day come to be recognised that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose they were otherwise, what would it avail? The question is not, Can they *reason*? nor Can they *talk*? but, Can they *suffer*?" (Bentham, 1823, p. 311; also cited in Singer, 1979, p. 56). This position lies at the heart of the critique mentioned earlier in §3.2.1 under the heading of "speciesism". There is no coherent reason, the argument goes, that justifies positioning human beings as a separate and superior class of animals.[52]

There are two interconnected aspects in this critique. One has to do with the idea of separating human beings from other animals, which we term the vertical dimension. The second issue has to do with the horizontal dimension as it questions whether this account of human dignity is capable of providing justification of dignity with human beings that lack in mental abilities. Many contributors to this critique levied against the Kantian account of human dignity focus primarily on this second issue; presumably because if there is no horizontal dimension to human dignity, then the claim of species membership weakens or even falters and with it the basis for the vertical relationship.

Therefore, for instance, Tinder in his essay on personal dignity addressed the issue of horizontal dimension as follows: "We speak of "dignity of the individual." What do we mean? Not <…> that every person commands respect by virtue of his potentialities, for we affirm the dignity of those who are mentally retarded and hopelessly ill." (Tinder, 2003, p. 28) This

[52] Objections of this kind have been put forward by many groups but especially by philosophers with a utilitarian background. Häyry (2004), for instance, argues that: "According to the utilitarian view, dignity cannot be limited to humanity or rationality, and it cannot be based on theological or biological considerations. Its foundation is the empirical phenomenon of suffering, and its protection is aimed at promoting the well-being of sentient, including human, animals" (2004, p. 11)

leads Tinder to conclude that the Kantian approach to human dignity is not able to explain the dignity of those "whose potentialities are relatively slight."

Likewise, Peter Singer, the Australian philosopher who has taken a very critical stance on the concept of human dignity in various publications once noted that: "We are always ready to find dignity in human beings, including those whose mental age will never exceed that of an infant, but we don't attribute dignity to dogs or cats, though they clearly operate at a more advanced mental level than human infants. Just making that comparison provokes outrage in some quarters. But why should dignity always go together with species membership, no matter what the characteristics of the individual may be?" (Singer, 2007). However, whereas Tinder seeks to resolve this issue of the Kantian conception of human dignity by introducing the idea of the divine destiny of human beings, Singer sees in the failure of providing a coherent justification of dignity among all the members of the human species the refutation of the entire concept.

Although the critique of speciesism is the more dominant, there are other critiques levied against this account of human dignity. While writing on Kant's conception of human dignity, Schopenhauer laments the concept, calling it "the shibboleth of all perplexed and empty-headed moralists" (1840, 1903, p. 100). To this he adds that the way it is presented as an absolute value (incomparable and unconditional) is in essence unthinkable not unlike "the highest number" or "greatest number" (p. 102). This idea, that the concept of human dignity is an empty concept and that it does not add anything to the debate of morality has found resonance in recent times in the field of applied ethics, which is discussed in the next section.

Despite these critiques, the account provided by Kant has had a great impact on the development of Western philosophy and ultimately also in the realm of politics and judicial spheres. The concept of human dignity, besides providing grounding for deontological morality, also creates a basis for the idea of rights. Kant's contribution can be seen as one of the important hinges that facilitated the transition of earlier doctrines of human "duties" to the conviction that human "rights" should be central in political theory and a preoccupation of political philosophy (Dalton, 1999, p. 33). Ultimately, these rights found their way into the traditions of international ethics (see e.g. Nardin and Mapel, 1992) and in the language of international organizations (e.g. the ILO and the UN) and (legal) texts such as the Decent

Work agenda and the Universal Declaration of Human Rights. This, the institutional and legal sphere, is the topic of the next section.

### 3.2.3 Legal sense: Decent Work and Human Rights

There is what Jürgen Habermas calls "a striking temporal dislocation" between the history of human rights, on the one hand, and the rise of human dignity in the legal discourse, on the other hand (2010, p. 466). While the former can trace its historical roots well into the seventieth century, the latter only came to prominence after the Second World War.

This assessment sits well with the assertion (as made by Dicke, 2002) that the concept of human dignity is one of the most important and innovative elements introduced in international law by way of the UN charter, signed on June 26, 1945, and subsequently in the 1948 Universal Declaration of Human Rights (UDHR). Although these two institutions (the charter and the declaration) have been paramount in advancing the concept into the (international) legal sphere, they were not the first to do so; the Declaration of Philadelphia, issued by the International Labour Organization in 1944, already contained a reference to dignity.[53] Of all these institutions, the overall impact of inclusion in the UDHR was by far the largest if not only based on the number of publications devoted to it in addition to the frequency that the concept is invoked in the text itself.[54]

The Universal Declaration of Human Rights contains a total of five references to dignity: twice in the preamble[55] in the first article[56] and twice in connection with social and economic

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[53] For a bibliography of the use of dignity in a legal setting see Broberg and Ladegaard Knox (1999)

[54] There is one further example that needs to be mentioned and that can be found in the constitution of UNESCO (Adopted in London on 16 November 1945). Here, too, the concept of dignity is invoked but it is done *ex negativo*. By this is meant that the constitution in its preamble does not offer a definition of dignity in positive terms but by alluding to what happens when it is not respected, namely the horrible results of WO II: "That the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races;" (p. 7). Although this approach has not been the subject of intense study, its approach is distinctive enough to be mentioned here especially given that the ex negativo approach will be discussed at greater length in the next chapter.

[55] From the preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," and "Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women" (United Nations, 1948)

[56] From the first article of the UDHR: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."(United Nations, 1948)

rights[57]. From these references in the preamble and first article, Dicke (2002) distils three arguments that constitute what he calls the founding function of human dignity. First, dignity is something that is to be recognized (discerned). This is amended in the second reference to dignity, whereby the recognition is equated with faith (see footnote 55 of this thesis). Dicke extracts from this that the existence of dignity does not depend on it being recognized, which simultaneously implies an obligation to recognize dignity given that it is the foundation of freedom, justice, and peace. The third argument distilled by Dicke is from the reference in the first article, which indicates that human dignity is "quality owned by all members of the human family." (2002, p. 114).

The UDHR—which can be seen as a boundary protecting the individual against governments but also against other forces, including those of the market within a society—abstains from referring to any specific philosophical or religious tradition. Therefore—Dicke's analysis notwithstanding—the exact location of dignity, i.e. its origin, remains open for debate. This begs the question of why the framers of the declaration did not take the time to add what is meant by human dignity; the document after all was on all accounts already filled with philosophical language, so it would not have been that out of place.

Precisely how the concept of human dignity became to be included in the UDHR also remains unclear (McCrudden, 2008, p. 675/676). However, the work of the French philosopher Jacques Maritain and his involvement in formulating the Universal Declaration of Human Rights in 1948 can shed some light on the matter at hand.

Maritain was of the opinion that the common human experience could lead to agreement among the members of the UN on "practical truths regarding their life in common". And this agreement would subsequently lead to the consensus and formulation of a set of shared fundamental human rights. The knack in achieving this feat is the 'neutral language' of practical truths. On the achievement and the issue of the common ground, Maritain said "We

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[57] From articles 22 and 23 of the UDHR: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." and "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."(United Nations, 1948)

agree on these rights, providing we are not asked why. With the 'why' the dispute begins." (cited in Alford and Naughton, 2001, p. 23/24; see also McCrudden, 2008, p. 678).

Although this account provides some insight into how the concept was incorporated in the UDHR, it does not acknowledge or take into account that the concept of human dignity had been hovering around international law for some time already. It had already found its way into official documents like the aforementioned UN Charter of 1945 and the 1944 Declaration of Philadelphia of the ILO.[58] It is, therefore, striking that although much has been written on the inclusion of human dignity in the UN institutions including the UDHR, this has not been matched in degree or in kind with regard to the inclusion of the concept by the ILO; comparatively little has been written about how human dignity was included in the Declaration of Philadelphia and thus in the ILO's constitution. The same can be said for the discussion on the meaning, grounding, and ultimate usage of the concept of human dignity in this context.

The second article of the Declaration of Philadelphia, which was to become an amendment of the ILO's 1919 constitution, reads as follows: "(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;" (ILO, 1944, 2009). This citation also shows another difference between the UDHR and the ILO's approach to dignity; the way it is deployed in the latter ("in conditions of dignity") does much less in working toward dissecting its meaning. Based on this, one could argue that it refers to conditions befitting human dignity (i.e. an intrinsic aspect) but it could just as well allude to a more external and social aspect of human beings. The text itself is not very clear on this issue. A better insight in what is meant by dignity here can be obtained by reviewing the work done in preparation of the 26th International Labour Conference (1944 in Philadelphia) and the Declaration itself. Via this route, the inclusion of the reference to dignity can be traced back to the report of the Committee on Employment that was presented and discussed during the conference and that included the following statement: "First and foremost, the Committee wishes to state its conviction that policies to assure full employment constitute an

[58] In the case of the UN Charter, Paul Tiedemann in his *Was ist Menschenwürde* (2006) describes how the South African Prime Minister Jan Christiaan Smuts played an important role in the initial suggestion of including the concept.(p. 13) Smuts initial contribution to the preamble included references to the "dignity of human personality". After the term "human personality" was dropped in favor of "human being" Smuts withdrew his support, undoubtedly because the ramifications this alteration had for his policy of apartheid.

indispensable condition for the successful solution of the problems with which this Conference is faced. Access to employment in the production of useful goods or services is essential for the preservation of human dignity as well as for the proper support of physical existence." (International Labour Office, 1944, p. 352). Here, the concept of dignity, explicitly named "human dignity", is deployed in a more specific manner compared to the declaration. However, here too, we are not offered a clarification of its meaning and the apparent separation of human dignity from physical existence does not make it easier to unearth its precise meaning.

Without the advantage of additional indications in the text itself, one further attempt at uncovering the status of human dignity was executed by reviewing the Record of Proceedings, transcriptions of the various International Labour Conferences (ILC) that have been held annually ever since the ILO's inception in 1919 in the hope that they may shed some light on the matter.

This review shows that the first time that the concept of human dignity was used within the sphere of the ILO it was invoked by a representative of the Brazilian government by the name of Dr. Fausto Ferraz. During the first ILC in the fall of 1919, he noted the following: "It is a fact that everywhere are to be found unjust labor conditions, and even hurtful to human dignity, resulting in misery and privation to millions of individuals who, are living outside of the social community, for whom justice has been merely an abstract idea, an Utopia which does not console, and, being very ambiguous, rather irritates and revolts, causing subversive ideas which tend to tear away the world's axis from the hinges of peace and order, to cast it into the unknown, to the abyss of social war, to the exterminating fight between capital and labor."(League of Nations, 1920, p. 195). This early usage should not, however, be taken as an indication that the concept was commonly invoked, as it was not, but it does show that the concept was hovering within the ILO for some time before the Philadelphia declaration.[59]

It is nearly impossible to precisely determine what the origin is of the first usages of human dignity in relation to the workings of the ILO. The concept of dignity had of course already

[59] During the first ten years of the ILO, the phrase "human dignity" shows up only nine times in over more than ten thousand pages of transcriptions of ILC proceedings

been invoked quite often in relation with labor before the emergence of the ILO and often so with a reference to the Catholic concept of "the dignity of labour." (e.g. Manning, 1877; Sorely, 1907) as discussed in §3.2.1. This and other circumstantial evidence would seem to support the hypothesis that there is a link between the two in that the Catholic conception of human dignity and the idea of the dignity of labor contributed to the incorporation of the concept in the workings of the ILO. There is, for instance, the observation that most of the contributions that included this concept during the early years of the ILO (199–1929) came from the citizens of (predominantly) Catholic countries, such as Argentina, Brazil, Belgium and France.[60] However, in the absence of more definitive proof, the conclusion must be that there is no way of knowing the philosophical underpinnings of the concept of human dignity within the realm of the ILO. In addition, one could argue that given the way some ILO representatives have talked about human dignity in recent times there is in fact no foundation; human dignity is alternatively viewed as an external attribute to human beings (which can be enhanced) and as an intrinsic component of human beings (which is either respected or not). We shall return to this issue in chapter 6 when the focus is placed on the ILO's Decent Work Agenda.

**Meaning and Implication of Dignity in Legal texts**

From the analysis presented above, one must conclude that the way dignity is included in international legal institutions can best be described as pragmatic. And this pragmatic approach has created a point of departure to talk directly about dignity in the realm of policy yet also leaves the door open for multiple mutually exclusive definitions to be used. On the one hand, this absence of an elucidation on the origin and meaning has created a diverse set of definitions all claiming to capture the same thing. Simultaneously, due to the inclusion of the concept, especially in the social-economic rights it has also taken up the function of a normative benchmark in socio-economic debates: extreme poverty, for example, can (and is) now framed as constituting a violation of human dignity and hence of human rights. Because of this, the inclusion of human dignity in these institutions (and particularly in the UDHR) has in effect created a concept of human dignity that goes beyond theoretical moral philosophy in that it is closely attached to specific conditions that are deemed to be minimal requirements for life worthy of human dignity.[61]

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[60] Or countries with considerable Catholic communities such as Canada

[61] See e.g. Eijkman (2007) for a discussion and application of an instrumental approach to human rights.

The socio-economic rights of the UDHR are formulated as being 'indispensable for the dignity of man and the free development of his personality.' In this sense, dignity has become a representative yardstick for success: "Our evaluation of dignity should not be a question of whether this person subjectively feels devalued or if a reasonable person in his position would feel devalued. Instead the focus should fall on the impact of the denial of basic needs and whether enough has been done by the society to remedy this situation." (Liebenberg, 2005). This representation of human dignity as a form of an 'under defined' yardstick is also discussed in Dicke (2002). What most contributions to this topic, however, fail to acknowledge is that the language used in the separate Covenants that constitute the declaration makes a distinction between the required compliance for what is commonly described as political and civil human rights, on the one hand, and the social, economic and cultural rights, on the other hand.[62]

The economic, social, and cultural rights are treated differently compared to the other human rights listed in the UDHR when it comes to the demands set for compliance. While adherence to political and civil rights is expected from every country regardless of their political or economic circumstances, this is not the case for the socio-economic rights. This difference is clearly marked in Article 22 in the addition, 'in accordance with the organization and resources of each state'. No demand is made for full compliance but countries are expected to ensure the 'progressive realization' of these rights (Biermans, 2005). It is not entirely clear as to how this separation may have an impact on the concept of human dignity, if at all. However, it does seem odd to state that, based on human dignity, one is immediately entitled to certain political (and mostly negative) rights while other aspects that, according to the declaration are indispensable to live a life worthy of dignity, are things that depend on exogenous factors, such as the level of development in terms of resources. This touches upon the capabilities approach to development as laid down by Amartya Sen (see e.g. Sen, 1987, 1999, 2000, 2002 and Nussbaum and Sen, 1993). At the basis of this approach is the idea that income, as a

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[62] This distinction is in part based on the notion of negative freedom and what a government is supposed to do or rather not do. As such, the distinction has been contested over the years as some of the political rights actually go beyond the provision of negative freedoms while some of the social rights are in fact negative freedoms (e.g. the right to form and join trade unions as laid out in article 23 of the UNDHR). In addition, it is argued, notably by Henry Shue (1996) in his book *Basic Rights*, that in order to be able to fully enjoy the substance of certain political rights, enjoyment of some of the social rights is indispensible.

yardstick for development, is by itself insufficient and that any evaluation of social arrangements should have at its core the extent of freedom that people have to promote or achieve objectives that they themselves value.[63]

Klein Goldewijk (2002) in her work on dignity uses the capabilities approach in order to operationalize a direct link between human dignity and the social and economic rights by way of human agency and functioning. This approach differs from the accounts of others (such as Dicke and Liebenberg) in that she creates a conceptual framework based on the premise that dignity is foremost a category of *being* and not just of *having*, in that human dignity cannot be limited to something people 'have' and that the inherent nature of human dignity goes beyond this (2002, p. 6). By way of the capabilities approach, she links the intrinsic nature of human dignity with the possibility of human beings to be (or become) the authors of their own lives; Respect for human dignity is warranted because it creates the possibility of meaningful autonomy (2002, p. 7). Klein Goldewijk is right in making the distinction between understanding human dignity in terms of *having* or in terms of *being*. Only if we take human dignity to allude to an intrinsic value does the term add anything meaningful to the debate.

**Issues with Dignity**

The exploration of the concept of human dignity in this section showed that it is not without opposition and comes with certain methodological issues attached to it. With regard to the religious and Kantian accounts of human dignity there is the critique of speciesism. In the latter, there is also the issue of providing a basis for human dignity for those who are not in full possession of reason. In the legal sphere, the concept although used (even extensively in some areas) is under-defined and consequently allows for different and even contradictory definitions to be deployed. The only condition that needs to be fulfilled in order to have

[63] This was argued by Sen in his monograph "Inequality Re-examined" (1992). The freedom that is needed is by no means a form of mere negative freedom. If it is to mean anything, it is the type of freedom that secures the functioning needed for the life one chooses to live, to secure autonomy, or as he writes together with Martha Nussbaum: "The life that a person leads can be seen as a combination of various doings and beings, which can be generically called functions. These functionings vary from such elementary matters as being well nourished and disease-free to more complex doings or being, such as having self-respect, preserving human dignity taking part in the life of the community, and so on. The capability of a person refers to the various alternative combinations of functionings, any one of which (any combination, that is) the person can choose to have. In this sense, the capability of a person corresponds to the *freedom* that a person has to lead one kind of life or another." (Nussbaum and Sen, 1993, p. 3). Therefore, the key element here is that the assessment of social arrangements must include more than mere economic arrangements; the non-economic aspects of life, such as dignity and self-respect should be included. See also Graafland (2006, pp. 168-170) and Morris (2010)

human dignity in the legal sphere is to be human and no further justification is provided nor any further elaboration on its meaning.
The fact that there is not much consensus on what human dignity exactly means has led some to abandon the concept in its entirety on the grounds of it being an elusive concept that adds little in substance to practical discussions or applied ethics. Macklin (2003), for instance, in an editorial for the *British Medical Journal* argues that the concept as used in medical ethics adds "nothing to an understanding of the topic" and appeals to dignity "are either vague restatements of other, more precise, notions or mere slogans". The argument here is that human dignity means no more than respect for persons or their autonomy that contributes little extra to the field of medical ethics.

Concern over the 'usefulness' of the concept of human dignity has a considerable history of its own. In an article on the dignity of man published in *Ethics* in 1946, it was noted that: "Few expressions call forth the nod of assent and put an end to analysis as readily as "the dignity of man". It sounds wholesome and real, and its utterance easily quiets our critical faculties." (B. Morris, 1946, p. 57). This view of human dignity, as a concept to end all discussion is voiced by several writers on the topic. In Bayertz (1996), a similar argument can be found and likewise in Kass (1990) who phrases such a position—without subscribing to it—thus: "[Human Dignity and the sanctity of life] convey elevated, indeed lofty, ideas: what, after all, could be higher than human dignity, unless it were something sacred? As a result, each phrase often functions as a slogan or a rallying cry, though seldom with any regard for its meaning or ground." (p. 34). These assertions that the concept of human dignity is empty and does not rise above mere rhetoric echoes Schopenhauer's claim that it constituted a shibboleth without real meaning.

This skepticism points towards the importance of providing a sound definition. Only through offering a well defined concept can we avoid the pitfall of ending up with mere words, with empty moral language. Furthermore, when introducing a concept such as human dignity as a boundary value one must also explain what this means for economics and especially for economic policy making. Currently, it is the concept of efficiency that functions as the "normative point of entry" in mainstream economics. This automatically brings with it an agenda for economic policymaking. However, as Davis points out: "The goal of efficiency recommendations is of course to eliminate inefficiency. What, then, is the goal of policy

recommendations that make dignity a central value standing between freedom and human rights? Conversely, what is it that we wish to eliminate in the interest of promoting human dignity?" (Davis, 2006, p. 80).

One possible answer can be found in the work of Avishai Margalit. The next section takes a closer look at this work, which in turn addresses the three main issues raised during this exploration of human dignity so far. His work is of extra interest, as he has created a moral framework based not only on the notion of human dignity but also on the concept of decency that are both central in the ILO's Decent Work Agenda.

Before moving on to the next section a short recap of these issues is provided. First, there is a problem associated with the vertical hierarchy depiction of human dignity. This assumption raises the question of why people should be more important than other creatures. The second issue relates with the basis for the horizontal view of dignity. What is the foundation for the assertion that we are to consider all human beings as equal? If we were to assign reason to this, one needs to explain why we also attribute dignity to those human beings not capable of rational thought. Both of these issues are captured under the header of speciesism. The third and last issue derives in part from the previous two issues, and deals with the question of whether the concept of human dignity can really be a meaningful addition rather than constituting mere rhetoric.

## 3.3 From Human Dignity to Decency – Margalit

In his book *The Decent Society*, Avishai Margalit (1996) developed *ex negativo* a concept of human dignity by defining what constitutes a violation of human dignity. The theory developed in this book is built on the notion of humiliation (a society is decent when its institutions do not humiliate) that in turn is closely linked with self-respect: "Humiliation is any sort of behaviour or condition that constitutes a sound reason for a person to consider his or her self-respect injured.". Therefore, here we have a framework wherein the notions of decency and dignity play important roles as is the case with the ILO's Decent Work Agenda. In the next chapter, we will review the framework of *The Decent Society* in greater detail, and in this section we focus on Margalit's account of human dignity as found in his various publications.

In a more recent publication ("Human Dignity between Kitsch and Deification"), Margalit (2007) revisited and expanded on his conception of human dignity in order to clarify what makes human beings so special that each should deserve respect, and why; respect or indeed honoring them for what they are and not so much for what they do or have done.[64] He starts out with the remark that this is a particularly difficult task as the mere observation that human beings deserve respect because they are human beings is often not considered to be an adequate justification. This, however, is precisely the claim that Margalit (2007) makes adding (in the extended lecture versions) that, from a humanistic point of view, "being human is all we have for justifying respect for humans, or rather it is the ability of every human being to be an icon for all the rest of humanity."(2004b, p. 20 and 2011 at 41:46) Other humanistic justifications miss the mark when they claim respect should be awarded based on humans being "potential victims" or as "potential moral legislators". The former involves the kitsch to which the title of his paper refers and the latter to deification.

Margalit believes that moral honor has only one dimension, namely a horizontal one. This type of honor deals with the idea that all human beings should be respected regardless of their material circumstances or mental conditions. It has a horizontal dimension in that it refers to the honor one bestows on one's equals or peers. He contrasts this idea of moral honor with what he calls social honor that has, in addition to a horizontal dimension, also a vertical dimension that alludes to the honor a person bestows on those who are superior, that is above him or her.

This assertion with regard to moral honor immediately brings about a possible objection, namely that moral honor might also be seen to have a vertical dimension; and if this is not the case it assumes ex ante a hierarchy between human beings and other types beings. This objection ('speciesism') is as we have seen in §3.2.2 one of the key critiques in the human dignity discourse wherein the assumption is made that humans stand at a higher level than other beings. Margalit does not explicitly counter this objection but does provide an argument

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[64] Margalit delivered an earlier and more extended version of the publication referred to here as the 2004-5 Litowitz Lecture hosted by the Program in Ethics, Politics and Economics at Yale University on October 14, 2004. More recently (November 16, 2011) he again delivered the extended lecture "Human Dignity Between Kitsch and Deification" in Berlin for the research network *Recht im Kontext*. In this text the published article is used as point of departure complemented with the (extended) lecture incarnations, namely (2004b) and (2011) respectively.

that to some extent sidesteps this issue by focusing on the nature of the horizontal relation between human beings, which he dubs an "iconic relationship".[65] (Margalit, 2004b, 2011) Before going deeper into this argument I will first discuss his position regarding other attempts of the grounding human dignity in specific human traits.

With the denotation 'kitsch'—as used in the title of his publication "Human Dignity between Kitsch and Deification"—Margalit refers to the sentimentalism associated with kitsch and the way this sentimentalism distorts reality. The term is used to describe the attempts at providing a justification of the respect a human being should have by pointing towards the idea that all humans are capable of suffering and that this trait could serve as a justification for respect. Margalit thinks that this route risks perceiving humans as victims and, moreover, as *innocent* victims and that trait would then constitute their shared identity. He considers this distortion to be potentially harmful given that one of the moments that it is most crucial to treat someone with respect is when he or she lacks purity or innocence. This account presents the danger that respect becomes contingent on sympathy: "Kitsch sentimentality creates a culture of victimization. It sentimentalizes others, the marginal, by endowing them with great spirituality to compensate for their lack of power and thus making them objects of great innocence, who are constantly attacked by the soulless mighty." (2007, p. 12) In summation, Margalit's main objection to the sentimentalist account of the grounding of respect, i.e. the respect human beings deserve for being human in suffering is the risk of a culture of victimhood whereby there is a serious risk that what is created is pity rather than respect.[66]

At the other end of the spectrum regarding the justification of human dignity is what Margalit calls the 'deification' justification, of which he views Kant as being very much a representative. Margalit thinks that Kant is on the mark with asserting that people should not be treated as things, or in the case of means and ends, as a mere tool.[67] However, when it comes to

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[65] Margalit does acknowledge that animal welfare is an important issue in its own right but sees this in terms of physical cruelty. (1996, p. 84)

[66] Here, Margalit invokes an example of moral reasoning from Victorian times to make clear that the sentimental picture of humans cannot only distort the basis of respect (e.g. victimization) but also the idea of justice. It was after all quite acceptable to help the poor, who should be pitied, but a structural adjustment in terms of redistribution was definitely not part of it. (Margalit, 2007, p. 12) Although he is not explicit about this, one can assume that Margalit is here referring to the idea that emerged in Victorian times (see §1.2.5) that a redistribution of wealth towards the poor would have dire consequences for the morality of those receiving it (See chapter two of Hirschman, 1991, for a concise overview of this argument; as well as Polanyi, 1944).

[67] He does, however, add that there is an even worse situation imaginable, namely that of a person *not even* being treated as a mere tool (Margalit, 2007, p. 15).

deploying reason as the ultimate grounding for human dignity, Margalit expresses some reservations, like what this approach would mean for those who lack the mental capabilities. Furthermore, Margalit does not feel that Kant was really revolutionary in his conception of dignity but that he rather offered a secular version of the religious or divine account of human dignity, namely the idea that the source of dignity is reflected glory. In the religious account, as Margalit phrases it, human beings are by themselves not special, but God is and, because human beings are created in the image of God (*imago Dei*), people are special too and thus worthy of respect. The similarities between this account of the Kantian account lie in the fact that in the latter people are obliged to follow the moral law and that it is the moral law that first and foremost deserves respect. Respect for human beings is thus a derivative of this respect for the moral law.

These attempts outlined above and in the previous sections of this chapter can be described as examples of attempts to provide a positive justification for respecting human beings. This approach seeks to ground the respect that people deserve based on their humanity in finding traits that are shared by all human beings that in turn ground this type of respect. Margalit himself puts forward an interesting trait of human beings, namely that of radically changing one's life as a potential basis for a positive justification (Margalit, 1996, p. 71). This trait is most definitely a human one; it is shared among humans and it is not to be found among 'other animals' in that only humans possess this trait: "Thus in one direction the human capacity for living a moral life deserves respect in that it is a proven ability that constitutes a presumption for the future, while in the other direction respect should be based on the presumption that human beings are capable of changing their life." (Margalit, 1996, p. 75). However, this assessment still leaves open the issue of relevance for those with very slight mental capabilities.

In the end, Margalit concludes that this route of positive justification will ultimately not be successful; it is futile to look for a good-making feature wherein we can ground human dignity as there will always be an exception, i.e. someone who does not—by way of defect or disease—have this feature. His own approach starts with what at first may look contradictory, namely the assertion that respecting "<…> Man generically, coheres best with all our other

moral beliefs." (Margalit, 2004b, p. 20) With this approach, he in fact starts out with assuming that which should be demonstrated.[68]

However, Margalit does make an argument along these lines. He asks whether we are capable of acting in such a way as befitting to human dignity, without a grounding of the concept itself. Margalit argues that we can and he uses the analogy of the use of paper money. Pieces of paper once derived their value from the gold that guaranteed its underlying value. Paper money has evolved whereby the link between the gold, that guaranteed its underlying value, from promissory note to a consented carrier of value, to the value people are willing to accept as such. Correspondingly, human beings can be said to have value not because of an intrinsic value but because other people value them. This reverses the justification: instead of looking for a shared trait that justifies respect it is "<…> the attitude of respect for human beings that gives value to the trait of being human." (1996, p. 77).

Margalit's concept of human dignity (which Julia Glahn (2009) has dubbed the social concept of human dignity) is thus based on the idea that all human beings are capable of recognizing other human beings as human beings; in other people we recognize ourselves. To this, Margalit adds that not recognizing others as human beings requires an effort namely that of ignoring their humanity thereby failing to recognize them as members of the human commonwealth.

In short, dignity for Margalit forms the basis of the respect that is to be awarded to every member of the human commonwealth precisely because of this membership. And it is (especially) when dignity is not adhered to, in the form of humiliation that we recognize dignity (Margalit, 2002, p. 115). Humiliation in turn is defined by him in terms of injuring a person's self-respect, and their sense of intrinsic value. And this brings us to the proposed relationship between self-respect and dignity.

Margalit differentiates between self-respect and self-esteem. In the former, he sees the honor an individual bestows upon themselves by virtue of their humanity while the latter has to be validated through interaction with others. To make the distinction even more clear: respect,

[68] His justification to restrict himself to human beings (i.e. excluding non-humans) is itself also grounded in the idea that this "coheres better with the totality of moral judgements" (Margalit, 1996, p. 84).

according to Margalit, constitutes a ground for treating people equally, whereas esteem forms a basis for ranking people. He matches this differentiation by contrasting dignity with pride. Pride, he explains, is the expression of self-esteem; dignity, on the other hand, is the expression of the feeling of respect individuals feel toward themselves as human beings.[69] Therefore, in this sense, dignity constitutes the external aspect of self-respect; as a representation and not as a presentation of self-respect (Margalit, 1996, p. 51).

The account provided by Margalit of human dignity, dubbed by him as the *sceptical solution* (1996) as well as the *iconic justification* (2004b, 2011), is an attempt to break through the impasse found in the efforts to justify the respect for human beings regardless of who or what they based on specific traits. In the end, he is less interested in determining what is conducive for human dignity but in identifying what constitutes a violation of human dignity in the form of humiliation. And subsequently by identifying forms of humiliation determining what needs to be done to make it stop. In the next chapter, we take a closer look at this overall framework whereby we shall also review in greater detail what the implications are for the market and its boundaries.

## 3.4 Chapter Summary

In order to discuss the normative desirability of market outcomes one needs to look at the boundaries that confine and thereby determine where and how the market in a society is allowed to operate. The Decent Work Agenda of the ILO including the associated labor standards can be viewed as fulfilling this boundary function. An important element in these institutions is the concept of human dignity, which serves as a grounding principle.

In this chapter, we explored this concept in greater detail by reviewing its usage in various settings. What most of these settings had in common was an attempt at coming to a concept of human dignity by way of identifying specific traits (e.g. rationality) that could be ascribed to all human beings. This approach is not without difficulties as in most cases it is possible to identify some human beings that do not posses this specific trait.

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[69] In other words: "Dignity, unlike social honor, is not a positional good." (Margalit, 2002, p. 114)

In the case of the international legal sphere, it was found that the concept was and is invoked without a clear foundation of the concept itself resulting in various and at times contradictory interpretations; for instance regarding the issue of whether human dignity should be viewed as a matter of *having* or as a category of *being*. The answer to this has important implications when the concept is operationalized, for instance, by way of policies; aiming at safeguarding something that is already there as opposed to enhance or secure realization.

Avishai Margalit offers a concept of human dignity that is based on the idea that each of us can recognize the humanity in the other. His conception of human dignity is ultimately prompted by practical concerns rather than metaphysical ones. Margalit's concern lies with the violation of human dignity, i.e. not treating someone as a person and thereby excluding him from the human commonwealth. One of the key differences between this and other accounts of human dignity is that the focus is not placed on the question of which conditions are befitting to human dignity but rather which conditions are a violation of human dignity.

In his book *The Decent Society*, Margalit presents a normative framework for the running of a state. This framework almost by default also covers issues that can be considered as boundaries against market forces. Before turning our attention to ILO's Labor Standards and the Decent Work Agenda (based on two explicit normative concepts) the focus will first be placed on Margalit's attempt at creating boundaries based (among others) on the same two concepts, namely decency and dignity.