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LA DIGNITÉ (*1^{re} partie*)

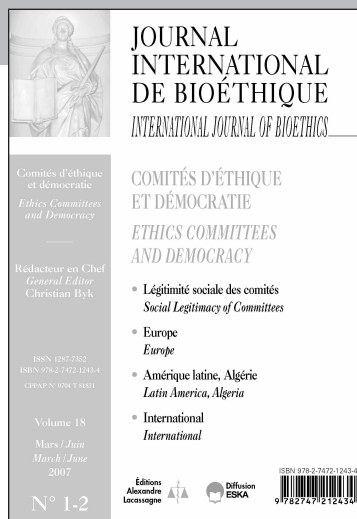
Un concept humaniste à l'ère du post-humain ?

DIGNITY (*1st part*)

A humanist concept in a post-human era?

Journal international de bioéthique

*International Journal
of Bioethics*



SOMMAIRES / CONTENTS

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SOMMAIRE

Journal international de bioéthique, 2010, vol. 21, n° 3

LA DIGNITÉ (*1^{re} partie*)

Un concept humaniste à l'ère du post-humain ?

Juste un mot, R. Andorno 11

AUX SOURCES DE LA DIGNITÉ

Chapitre 1

Dignité et liberté : vers une contradiction insoluble ?
Pierre Le Coz 17

Chapitre 2

Dignité humaine : une approche philosophique et théologique
Luka Tomasević 29

QUELLE VALEUR ACCORDER À LA DIGNITÉ HUMAINE ?

Chapitre 3

Reconnaissance sociale de la dignité humaine
Johannes Fischer 45

Chapitre 4

Dignité humaine : valeur intrinsèque ou valeur relative ?
Marie-Jo Thiel 51

Chapitre 5

Dignité humaine : principe régulateur et valeur absolue
Nikolaus Knoepffler, Martin O'Malley 63

Chapitre 6

La dignité, principe fondateur du droit

Bertrand Mathieu 77

Résumés 85

Bulletin d'abonnement 2010 96

Revue de livres, pp. 28, 42, 50, 84, 91-94

CONTENTS

Journal international de bioéthique, 2010, vol. 21, n° 3

DIGNITY (*1st part*)

A humanist concept in a post-human era?

Foreword , R. Andorno	13
------------------------------------	----

THE SOURCES OF DIGNITY

Chapter 1

Dignity and freedom: towards an insoluble contradiction? Pierre Le Coz	17
---	----

Chapter 2

Human dignity: a philosophical and theological approach Luka Tomašević	29
---	----

WHAT VALUE SHOULD BE ATTRIBUTED TO HUMAN DIGNITY?

Chapter 3

The social recognition of human dignity Johannes Fischer	45
---	----

Chapter 4

Human dignity: intrinsic or relative value? Marie-Jo Thiel	51
---	----

Chapter 5

Human dignity: regulative principle and absolute value Nikolaus Knoepffler, Martin O'Malley	63
--	----

Chapter 6

Dignity, founding principle of law Bertrand Mathieu	77
--	----

Abstracts	85
------------------------	----

Subscription Form 2010	96
-------------------------------------	----

Book Review, pp. 28, 42, 50, 84, 91-94

Juste un mot

La dignité humaine, une notion « porteuse » de sens

La plupart des contributions rassemblées dans ce numéro du Journal (et dans celui à venir) sont issues d'un colloque interdisciplinaire sur la dignité humaine, les droits de l'homme et la bioéthique tenu à Zurich le 5 et 6 novembre 2009. Ces journées ont été organisées de manière conjointe par l'Institut d'Éthique Biomédicale de l'Université de Zurich et l'Association internationale droit, éthique et science de Paris, avec le généreux support du Programme de Recherche en Éthique de l'Université de Zurich (*Universitärer Forschungsschwerpunkt Ethik, UFSP*).

L'objectif des journées était double : d'une part, celui d'explorer le rôle que la notion de dignité humaine joue en bioéthique et en biodroit, et d'autre part, d'essayer de mieux comprendre le rapport étroit entre cette notion et les droits de l'homme. Bien que le principe de respect de la dignité humaine ait toujours eu une place de premier ordre en droit international, le rôle éminent qu'il joue dans les normes internationales relatives à la bioéthique, par exemple de l'UNESCO et du Conseil de l'Europe, est absolument unique. Cependant, le fait que cette notion ne soit jamais définie ou justifiée de manière précise conduit certains auteurs à soutenir qu'elle n'est en réalité qu'un simple *slogan*, c'est-à-dire une simple formule rhétorique sans aucune signification pratique. Est-ce bien le cas ? Ou, au contraire, le recours à la dignité humaine ne reflète-t-il pas une réelle préoccupation quant à la nécessité de promouvoir le respect de la valeur intrinsèque de chaque individu et parallèlement, de protéger l'intégrité et l'identité de notre espèce ?

Quatre séances ont été consacrées au vaste sujet proposé. Après un rapport introductif par le professeur Johannes Fischer (Zurich), la première séance, avec Nikolaus Knoepffler (Jena) et Marie-Jo Thiel (Strasbourg), visait à mieux préciser le concept de dignité humaine ; la deuxième séance, avec Simone Zurbuchen (Fribourg), s'est concentrée sur la question de l'universalité des droits

de l'homme ; la troisième séance, qui a compté avec les interventions de Roger Brownsword (Londres) et de moi-même, était de nature philosophico-juridique et a abordé la question du rôle de la dignité humaine dans le biodroit international ; la quatrième séance, avec Christian Byk (Paris) et Bernhard Rütsche (Zurich), a exploré le même sujet, mais dans la perspective du droit fondamental et du droit constitutionnel.

Les séances ont été suivies de trois tables rondes portant sur des questions très concrètes de bioéthique, dans lesquelles la notion de dignité humaine est souvent invoquée : la première, sur la pratique des mutilations génitales féminines, avec les interventions d'Elise Johanssen (OMS, Genève) et d'Elham Manea (Zurich) ; la deuxième, sur le trafic d'organes, avec Nikola Biller-Andorno (Zurich) et Luc Noël (OMS, Genève) ; et la troisième, portant sur les limites aux recherches biomédicales sur des mineurs, qui a compté avec les interventions d'Effy Vayena (Zurich) et de Susanne Boshammer (Berne).

Enfin, les journées de Zurich ont permis d'explorer un sujet très vaste et de mettre en relief que, au-delà du caractère inévitablement abstrait de la notion de dignité humaine, elle semble appelée à jouer un rôle de premier ordre dans le domaine de la bioéthique. En même temps qu'elle contribue, par la médiation des droits de l'homme, à assurer le respect des individus en matière biomédicale, elle est aussi invoquée dans les efforts visant à assurer la protection de l'espèce humaine. En réalisant cette double tâche, le principe de dignité humaine parvient à donner leur sens ultime à l'ensemble des pratiques et des normes relatives à la bioéthique.

Roberto ANDORNO



Foreword

Human dignity, a meaning-giving concept

Most of the essays collected in this issue of the Journal are the result of an interdisciplinary workshop on human dignity, human rights and bioethics held in Zurich on 5 and 6 November 2009. This event was jointly organized by the Institute of Biomedical Ethics of the University of Zurich and the International Association of Law, Ethics and Science (IALES) of Paris, with the generous support of the Research Program in Ethics of the University of Zurich (*Universitärer Forschungsschwerpunkt Ethik*, UFSP).

The aim of the Workshop was twofold: first, to explore the role that the concept of human dignity plays in bioethics and biolaw, and second, to try to better understand the intricate relationship between this concept and human rights. Although the principle of respect for human dignity has always had a central place in international law, the role it plays in the emerging international instruments relating to bioethics, such as UNESCO and the Council of Europe) is absolutely unique. However, the fact that this concept is never defined or justified in precise terms led some authors to argue that it is just a slogan, or a simple rhetorical tool without any practical significance. Is it true? Or rather does the recourse of human dignity reflect a real concern about the need to promote respect for the intrinsic value of each individual and, simultaneously, to protect the integrity and identity of our species?

Four sessions were devoted to the broad topic proposed. After an introductory speech by Professor Johannes Fischer (Zurich), the first session, with Nikolaus Knoepffler (Jena) and Marie-Jo Thiel (Strasbourg), aimed to clarify the concept of human dignity; the second session, with Simone Zurbuchen (Fribourg), focused on the question of the universality of human rights; the third session, which counted with the participation of Roger Brownsword (London) and myself, was rather of philosophico-legal nature and discussed the role of human

dignity in the international bio-law; the fourth session, with Christian Byk (Paris) and Bernhard Rütsche (Zurich), explored the same subject, but from a constitutional law perspective.

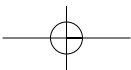
The sessions were followed by three panel discussions on concrete bioethical issues, where the notion of human dignity is often invoked: the first, on the practice of female genital mutilation, with the participation of Elise Johanssen (WHO, Geneva) and Elham Manea (Zurich); the second, on organ trafficking, with Nikola Biller-Andorno (Zurich) and Luc Noël (WHO, Geneva), and the third, on the limits on biomedical research on minors, with presentations by Effy Vayenas (Zurich) and Susanne Boshammer (Bern).

In sum, the Zurich Workshop offered the opportunity to explore a vast subject and to emphasize that, beyond the inevitable abstract nature of the concept of human dignity, it seems to be called to play an increasingly important role in bioethics. At the same time that it contributes, through the mediation of human rights, to ensure respect for individuals in the biomedical field, it has also a central place in the efforts aiming to protect the human species. By performing this dual task, the notion of human dignity attempts to give their ultimate meaning to all practices and normative frameworks relating to bioethics.

Roberto ANDORNO



Aux sources de la dignité
The sources of dignity



Chapitre 1

DIGNITÉ ET LIBERTÉ : VERS UNE CONTRADICTION INSOLUBLE ?

*Pierre LE COZ**

INTRODUCTION

Le terme « dignité » est omniprésent dans les textes de droit et les chartes internationales. La référence au respect de la dignité comme tribut que l'on doit accorder à toute personne est particulièrement prégnante dans les mœurs médicales. Les étudiants qui se destinent à exercer dans le champ de la santé y sont de plus en plus fréquemment sensibilisés, à la faveur de formations initiales et continues qui se développent au sein des cursus universitaires. C'est ainsi que la dignité se trouve pointée à plusieurs reprises dans la récente Charte de

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l'éthique des facultés de médecine¹. Les professeurs de médecine sont appelés à en faire la pierre angulaire de leur enseignement.

Tout se passe comme si, à une époque où le vieillissement de la population soulevait des problèmes inédits², ne serait-ce que quantitativement parlant (accroissement des maladies dégénératives et du nombre de fins de vie difficiles), notre société éprouvait le besoin de rappeler que la dignité est indissolublement liée à la personne. Plusieurs questions se posent alors : une telle insistance serait-elle l'indice d'une crise de notre représentation de la dignité ? En devenant une sorte de ritournelle, la dignité ne va-t-elle pas sombrer dans l'insignifiance ? La banalisation de son usage ne va-t-elle pas en faire un terme certes édifiant mais vidé de toute substance sémantique ?

Le fait est que ce que le mot gagne en extension, il le perd en compréhension. Forme plastique, la « dignité » semble parfois se confondre avec la « qualité de vie ». Mais c'est surtout sa confusion avec le degré de liberté du sujet qui entame sa consistance sémantique. Valeur qui n'a cessé de s'affirmer comme souveraine, depuis les années 1960, la liberté serait-elle devenue consubstantielle au concept de dignité ? Faut-il dire au contraire que c'est lorsque la liberté devient fragile et incertaine que la dignité prend tout son sens ? Dans les débats actuels de l'éthique médicale autour de l'usage lucratif de son corps ou de l'euthanasie c'est surtout sous la forme d'une opposition frontale que semblent se dessiner les relations entre liberté et de dignité. Allons-nous vers une contradiction insoluble entre ces deux valeurs ?

1. LA « SAUVEGARDE DE LA DIGNITÉ DES MOURANTS »

Dans la Déclaration universelle des droits de l'homme de 1948³, la dignité a été reconnue comme « inhérente » à tous « les membres de la famille humaine ». Inhérente veut dire indissolublement attachée. Cependant aujourd'hui un sentiment diffus se répand : la dignité peut être perdue, chemin faisant, en fonction des aléas de la vie. Elle peut notamment être mise en péril par des pratiques médicales d'obstination non thérapeutique.

¹ http://www.cidmef.u-bordeaux2.fr/pdf/chart_et.pdf

² Veron J., *L'espérance de vivre. Ages, générations et sociétés*, Seuil, Paris, 2005.

³ Préambule de la Déclaration Universelle des Droits de l'Homme, 1948, <http://portal.unesco.org/education/fr>

Témoin de cette évolution du sens du terme, l'équivoque que comportent les textes de loi dont la philosophie est portée par un souci de faire valoir la dignité comme trait distinctif de la personne à dessein d'éloigner la perspective d'une légalisation de l'euthanasie. Ainsi, la loi Leonetti du 22 avril 2005 énonce dès son article premier que « le médecin *sauvegarde* la dignité du mourant et assure la qualité de sa vie »⁴. Dans cette phrase, le verbe « sauvegarder » pose problème. Car enfin, dire que le médecin doit « sauvegarder » la dignité, n'est-ce pas reconnaître implicitement que celle-ci peut être mise en péril et qu'elle n'est donc pas consubstantielle à la personne ? On ne cherche à sauvegarder que ce que l'on risque de perdre (un fichier informatique par exemple). L'ambiguïté n'est pas levée par le qualificatif de « mourant » auquel s'applique la sauvegarde. A partir de quand un homme rentre-t-il dans la catégorie de « mourant » et risque-t-il, comme tel, de perdre sa dignité si nul ne fait l'effort de la « sauvegarder » ?

Quoiqu'elle fut consensuelle à l'échelle politique, cette loi relative à la fin de vie a été critiquée *via* les médias par certains partisans d'un droit de mourir dignement qui regrettaient qu'elle n'aille pas jusqu'à la dépénalisation de l'euthanasie. L'idée sous-jacente à la revendication en faveur d'une aide à mourir dans la dignité est que la dignité est *relative* au regard que la personne porte sur elle-même. La dignité serait susceptible de se flétrir comme une fleur fanée au fil des années. La maladie grave et incurable fragilise la dignité de la personne qui ne peut la retrouver qu'au moment où on l'aide à en finir avec la vie. Paradoxalement, la personne en fin de vie retrouve sa dignité dans sa manière décente de disparaître.

Assurément, la loi Léonetti s'inscrit en faux contre cette conception mouvante de la « dignité » comme forme ployable en tous sens et variable au fil du temps. Elle encourage à « sauvegarder » une dignité chancelante pour trouver une alternative à la consécration juridique d'un « droit de mourir dans la dignité ». Pourtant sa formulation ne va pas sans reconduire la philosophie relativiste des partisans de l'euthanasie. Car si le mot dignité désigne une valeur absolue inhérente à la personne, il ne peut tolérer son inflexion relativiste par l'usage du verbe « sauvegarder » (cette opération de sauvegarde s'appliquerait-elle à un « mourant »).

⁴ Loi no 2005-370 du 22 avril 2005 relative aux droits des malades et à la fin de vie ; www.legifrance.gouv.fr

2. LA DIGNITÉ DÉFINIE COMME TRAIT DISTINCTIF DE LA NATURE HUMAINE

Penser que la dignité peut être perdue lors de la dernière étape de l'existence, particulièrement lors de la survenue de maladies dégénératives incurables ou de fins de vie inconscientes, revient à introduire une rupture avec l'éthique qui avait présidé à la déclaration des droits de l'homme de 1948, à savoir l'éthique kantienne, éthique dite « déontologique » (ou « personnaliste »⁵) selon laquelle la dignité est l'essence même de la personne. Dans la philosophie kantienne, la dignité est une grandeur qui impose le respect. On peut avoir de l'affection pour l'animal, mais il revient à l'homme d'inspirer un sentiment de respect. Cela vient, comme l'a établi Lévinas, de ce que l'homme est le seul animal qui ait un visage. Par sa droiture, le visage de l'autre impose en retour une certaine rectitude dans notre conduite à son égard. La grandeur qui émane du visage n'est ni estimable, ni quantifiable.

Pour parler comme Pascal la dignité est de « l'ordre du cœur ». La raison ne vient qu'après coup pour donner à la dignité la forme d'une idée générale. Dit autrement, l'expérience concrète et sensible de la rencontre avec un visage est nécessaire à la compréhension de la notion de dignité⁶. Ce serait ignorer ce que l'éthique doit à la sensibilité que de penser la dignité comme un pur concept sans substrat empirique. Nous pouvons imaginer que Dieu, s'il existe, perçoit directement la valeur intrinsèque et absolue de la créature humaine au regard des autres êtres de sa Création. En revanche, pour nous autres humains, c'est la perception affective du visage qui nous permet d'accéder, par intuition, à la signification du concept de dignité.

C'est sa valeur inconditionnelle qui fait de l'homme un *sujet* par opposition à l'objet qui n'a qu'une valeur relative autrement dit un *prix*. Le prix est une variable indexée au taux de désuétude. Il varie en fonction du degré d'altération des propriétés de l'objet. Cette construction du concept de *dignité* par opposition au *prix* le doit au philosophe allemand Emmanuel Kant qui en a proposé la première formalisation⁷. La dignité est inconditionnelle en ce sens qu'elle ne dépend pas des conditions sociales du sujet, elle ne dépend ni du sexe, ni de l'âge, ni de sa santé, ni d'aucune caractérisation particulière. Elle n'est pas relative à l'état de dégradation physique et ou mentale de la personne.

⁵ Mounier E., *Le Personnalisme*, PUF, coll. « Que sais-je ? », Paris, 1949.

⁶ Lévinas E., *Éthique et infini*, Livre de Poche, Paris, 1984.

⁷ Kant E., *Fondements de la métaphysique des mœurs*, Delagrave, trad. V. Delbos, [1785], Paris, 1957 et *Critique de la raison pratique*, PUF, coll. « Quadrige », Paris, [1788], 2000.

N'est-ce pas précisément cette idée d'une dignité universelle et « ontologique » (inscrite dans l'être de l'homme) qui se trouve malmenée aujourd'hui ? Beaucoup se demandent si les maladies neurodégénératives graves, l'altération des facultés mentales ou les formes sévères de paralysie générale n'entament pas la dignité d'une personne. Il ne s'agit pas là d'une dérive vers quelque idéologie totalitaire qui fixerait des normes discriminatoires en fonction desquelles serait décrétée en haut lieu que telle vie est digne d'être vécue tandis que telle autre ne l'est pas. Nous gardons trop vive la mémoire des génocides et des drames épouvantables générés par les tentatives politiques de destituer certains êtres humains de leur dignité. Nul ne pourrait soutenir, sans heurter de front l'opinion publique, que telle ou telle personne a perdu toute dignité et que la vie qu'elle mène ne vaut pas d'être poursuivie. On ne saurait parler de la perte de dignité comme d'un fait objectivement constatable, à la façon dont on parle de la perte de la valeur d'un objet usagé.

3. DIGNITÉ, RELATIVISME ET PLURALISME ÉTHIQUE

Cependant que répondre au témoignage persistant, empreint de gravité et de sincérité, d'une personne faisant état d'une perte de dignité subjectivement ressentie ? L'idée selon laquelle la dignité suit l'homme comme son ombre, quelles que soient les infortunes qui peuvent jalonner sa vie, devient plus difficile à soutenir dès l'instant où cette prise de position émane du principal intéressé. Nous ne pouvons pas répondre sans ambages à celui qui prétend avoir perdu sa dignité que sa conception de la dignité est erronée et le renvoyer à l'implacable rigueur terminologique des textes de loi.

Pourquoi sommes-nous mis en difficulté par le sujet gravement malade ou handicapé qui prétend avoir perdu sa dignité ? Est-ce parce que nos esprits se sont familiarisés avec l'idée (relativiste) que toutes les positions se valent ? Imaginons qu'une personne affirme qu'elle a perdu sa dignité et qu'elle souhaite en finir avec une vie qui n'est plus qu'humiliation et souffrance. Peut-on se borner à lui rétorquer que sa dignité ne peut pas être mise en cause puisqu'elle lui est « inhérente » et qu'en conséquence sa demande d'euthanasie est irrecevable ?

Ce que nous appelons « relativisme éthique » nous renvoie à l'idée selon laquelle les valeurs ne sont pas intangibles et immuables mais variables en fonction des sociétés ou des appréciations subjectives des individus. Les observateurs des évolutions culturelles de notre société semblent parfois tentés

par cette grille d'analyse⁸. Nous serions gagnés par un relativisme généralisé. Néanmoins, il ne semble pas que nos concitoyens aient relativisé toutes les valeurs. Nous nous trouvons non pas dans une situation de *relativisme* mais de *pluralisme* moral⁹. La dignité demeure une valeur essentielle dans notre culture mais elle doit désormais composer avec la liberté, cette autre valeur cardinale qui n'a cessé de gagner les mœurs au fil des dernières décennies¹⁰.

Le pluralisme éthique signifie autre chose que le relativisme. Pluralisme veut dire que les valeurs sont intangibles, non révisables, absolues mais que nous n'arrivons pas à les incarner toutes en même temps. Si nous tenons absolument à ce qu'une valeur soit incarnée dans la réalité, nous allons être obligés d'en sacrifier une autre. Par exemple, si nous voulons que la valeur du respect de la vie soit incarnée dans toutes les situations sans exception, nous allons prendre une position hostile à l'avortement, au risque de sacrifier la valeur de solidarité à l'égard des femmes qui se trouvent enceintes contre leur gré.

Dans le cas qui nous intéresse, si nous définissons le mot « dignité » comme une valeur inconditionnelle, dans le sillage de Kant, alors la liberté ne peut lui être opposée comme une valeur prétendument supérieure en certaines circonstances. Pour Kant, il ne peut pas y avoir de conflit de valeurs entre liberté et dignité car la liberté n'a de sens que si elle qualifie un comportement « digne ». Être libre, ce n'est pas agir sous l'impulsion de la spontanéité. Être libre, c'est agir de façon autonome et responsable, de façon réfléchie et en vertu de principes d'action universalisables. De ce point de vue rationaliste, une personne qui estime que sa vie ne vaut plus la peine d'être vécue, qui tient pour acquis qu'elle a perdu sa dignité et souhaite se suicider, n'est pas libre mais dominée par sa spontanéité émotionnelle. Kant, du reste, a condamné le suicide. Il n'y a pas de pluralisme éthique. Je peux et je dois incarner les deux valeurs, dignité et liberté, en même temps.

Nous sommes dans un contexte culturel différent de celui de Kant. Nous ne réservons plus le sens du mot *liberté* aux seules conduites marquées du sceau de la raison. Notre époque a dilaté le sens de la liberté à toute forme de conduite qui n'est pas contrainte par une autorité extérieure. Le passage de la liberté comme « autonomie » à la liberté comme « indépendance » a été décrit comme celui

⁸ Sur cette question, cf. les réflexions suggestives de Rorty R., *Objectivisme, relativisme et vérité*, PUF coll. « L'interrogation philosophique », Paris, 1994, et Bourquin Le relativisme, éditions quintette, Paris, 1998.

⁹ Engelhardt T., *Foundations of bioethics*, Oxford University Press, New-York, 1986.

¹⁰ Lipovetsky G., *L'ère du vide, essai sur l'individualisme contemporain*, Gallimard, coll. Folio/Essai, Paris, 1983.

d'une culture « moderne » à une culture « post-moderne », de l'âge de la *personne* à l'ère de *l'individu*¹¹. Aujourd'hui, si une personne affirme qu'elle a perdu sa *dignité*, il nous semble que si nous n'en tenons pas compte, nous attentons à sa *liberté* d'expression. Nous sommes en présence de deux valeurs et tout se passe comme si pour en respecter une, nous devons nous résoudre à en sacrifier une autre.

Le problème de l'euthanasie est au cœur de cette problématique post-moderne du pluralisme éthique. L'affaire qui a défrayé la chronique en 2003, celle du jeune Vincent Humbert, tétraplégique, sourd et aveugle à la suite d'un accident de la circulation, est emblématique à cet égard. En lui refusant le droit de mourir dans la dignité, le Président de la République de l'époque auquel ce jeune homme s'était solennellement adressé, n'a fait que rappeler l'impossibilité dans laquelle nous sommes, dans notre système juridique actuel, d'incarner liberté de jugement personnel et respect de la dignité.

Pour éviter que la dignité ne se trouve relativisée par la valeur que nous attachons à la liberté, avons-nous d'autre possibilité que de refuser droit de cité à la liberté d'expression de la personne qui proclame sa déchéance en dignité ? Et si nous reconnaissons comme recevable son opinion, qu'allons-nous opposer à sa demande d'en finir avec une vie qui n'est plus qu'indignité à ses yeux ?

4. LE SUBJECTIVISME

Le problème éthique est alors de savoir sur la base de quel critère nous appuyer pour trancher un débat lorsque la dignité entre en conflit avec la liberté. Une des manières de dénouer une tension entre des valeurs consiste à prendre pour étalon de mesure la subjectivité de l'individu. C'est ce qu'on appelle le *subjectivisme*.

Le fondement du subjectivisme peut être résumé comme suit. Dans la mesure où nos sociétés sont émancipées du joug théologico-politique, que les valeurs n'ont plus à nos yeux de fondement transcendant, il reviendrait à l'intériorité de l'individu de décider à laquelle de ces deux valeurs il attache le plus d'importance. « C'est moi qui suis le seul juge de ma dignité » écrit en ce sens le sénateur Caillavet¹², père fondateur de l'association du « Droit de Mourir dans la Dignité ». Le subjectivisme part du principe que les valeurs ne peuvent avoir

¹¹ Renaut A., *L'ère de l'individu*, Gallimard, Paris, 1989

¹² Cité par De Closets F., *La dernière liberté*, Fayard, Paris, 2001.

d'autre siège que notre vie intime et personnelle. En l'absence d'un Dieu garant des valeurs, chacun est renvoyé à la solitude de ses choix : « nous sommes condamnés à être libre »¹³. L'homme n'est pas digne du simple fait qu'il est une créature de Dieu et qu'en tant que tel, il revêt une valeur inconditionnelle. Il est digne parce qu'il s'attribue une valeur supérieure aux objets et aux animaux. Il s'agit d'une décision culturelle, libre et contingente. On pourrait concevoir un monde où l'homme ne s'attribuerait pas une forme de vie ou une valeur supérieure aux autres animaux de la planète, comme on le voit dans le courant holistique de la « *deep ecology* »¹⁴.

La justification de cette subjectivisation de la dignité qui alimente la revendication d'une majorité de nos concitoyens en faveur d'un droit à une « mort digne » est que la perte de liberté sape les assises de la dignité. Nous perdons notre dignité quand notre vie n'est plus digne d'être vécue. Une existence n'est plus digne d'être vécue dès lors que ce n'est plus nous qui la menons mais c'est elle qui nous mène, et nous malmène.

Une valeur demeure inconditionnelle : la liberté. La dignité, en revanche, devient relative à la libre appréciation de celui qui en est (ou s'estime ne plus en être) porteur.

C'est en ce sens que la Charte de « l'Association pour le Droit de Mourir dans la Dignité » énonce que pour « avoir une fin de vie digne et sereine », « il faut avoir une pleine *liberté* de décision face à l'échéance finale, proche ou lointaine »¹⁵. Il apparaît à travers ces lignes que la dignité n'a pas une valeur absolue (inconditionnelle) puisque l'individu s'en trouve dépossédé dès lors qu'il entre dans un état de dépendance. Il devient difficilement possible de parler de dignité là où la liberté n'a pas été affirmée au préalable. Le sujet souffrant qui continue à vouloir attacher une valeur inconditionnelle à sa vie (ce qui sera souvent le cas pour un fidèle de l'une des trois grandes religions monothéistes) sera dit « libre » d'un choix qu'il ne peut imposer aux autres.

Dans cette optique relativiste/subjectiviste, le sens du mot « dignité » se trouve sensiblement remanié ; il cesse de désigner une grandeur incommensurable pour qualifier une variable tributaire de l'appréciation personnelle de chacun. La dignité définit une « convenance à l'égard de soi »¹⁶.

¹³ Sartre J.P., *L'existentialisme est un humanisme*, Nagel, Paris, 1970.

¹⁴ Cf. sur cette question Ferry L., *Le Nouvel Ordre écologique « L'arbre, l'animal et l'homme »* publié en 1992 aux éditions Grasset.

¹⁵ de l'ADMD, <http://perso.club-internet.fr/admd>

¹⁶ Selon un concept évoqué dans l'avis 63 du Comité Consultatif National d'Ethique pour les Sciences de la Vie et de la Santé, *Les cahiers du CCNE N°23*, « fin de vie, arrêt de vie, euthanasie », avril 2000.

Poser la liberté de jugement comme une condition de la dignité permet de résoudre des problèmes éthiques mais en pose de nouveaux, peut-être plus redoutables encore. On peut schématiquement les résumer par cette interrogation : la mort dans la dépendance physique et la perte de la faculté de discernement serait-elle une mort indigne ?

On pourrait, il est vrai, distinguer la dignité de la personne de l'indignité de sa vie. Mais cela reviendrait à promouvoir une vision désincarnée de la personne puisqu'il serait fait abstraction de sa biographie, de son existence. Dire « cette personne est digne mais sa vie ne l'est pas » reviendrait à couper l'être humain de ses conditions concrètes d'existence et réduire la catégorie de « personne » à une entité artificielle ou fantomatique. Il semble que c'est parce qu'il estime que sa vie n'est plus digne d'être vécue qu'un sujet affirme qu'il a perdu sa dignité. C'est ce que l'on voit dans l'affaire citée précédemment du jeune Vincent Humbert.

5. LA DIGNITÉ RELATIVISÉE PAR LA LIBERTÉ ?

Nous avons vu que du point de vue de l'éthique kantienne, la dignité et la liberté étaient non seulement compatibles mais indissociables. Être libre, c'est respecter la dignité en soi et en autrui. Certains auteurs comme Louis Dumont estiment néanmoins que l'orientation libérale et individualiste de la philosophie moderne était inéluctable. A partir du moment où l'on considérait que les hommes « naissent libres », il devenait impossible d'enrayer la progression du mouvement d'affirmation de son indépendance. La logique post-moderne de « l'émancipation » (enclenchée dans les années 60) était en germe dans l'avènement de la modernité dès le XVIII^e siècle. La modernité réside en effet dans l'affirmation « au plan moral et politique » de l'« être humain (...) se suffisant idéalement à lui-même »¹⁷. Elle se reconnaît dans le « je pense donc je suis » de Descartes, figure emblématique des temps nouveaux que notre époque oppose au « je suis le fils ou la fille de » de la société traditionnelle et holistique. Pour le dire comme Emmanuel Mounier « l'homme moderne ne veut être le fils de personne ; il ne veut être que le fils de ses propres œuvres »¹⁸.

Plus aucune valeur ne peut être affirmée sans avoir été préalablement soumise au libre examen. Hegel avait entrevu ce phénomène irréversible d'absolutisation

¹⁷ Dumont L., *Essais sur l'individualisme. Une perspective anthropologique sur l'idéologie moderne*, Le Seuil, Paris p. 69.

¹⁸ *Le personnelisme*, Op. cit.

de la liberté individuelle dès le XIX^e siècle : « Le droit de la volonté subjective consiste en ceci que ce qu'elle doit reconnaître comme ayant de la valeur soit jugé par elle comme bon »¹⁹. Contre Kant, notre époque affirme qu'on peut être libre envers et contre toute raison. On est libre même quand on se traite comme un simple moyen. Les tentatives pour bannir la prostitution comme une pratique d'un autre âge, au nom du principe de la dignité de la personne, ont échoué. La valeur de la liberté a toujours prédominé, en dépit de l'opacité des conditions dans lesquelles la location sexuelle de son corps peut parfois s'exercer. Certes, il est fréquent que la liberté soit limitée au nom de la protection de l'enfance (cas de l'interdiction en France de la pratique de la gestation pour autrui par la loi de bioéthique). Mais les situations de conflit entre dignité et liberté qui tourneraient en faveur de la première valeur au détriment de la seconde sont rarissimes. La liberté dans l'usage du corps est celle que J. S. Mill avait promu dans son *traité sur la liberté* : « La seule raison légitime que puisse avoir une communauté pour user de la force contre un de ses membres est de l'empêcher de nuire aux autres (...) Sur lui-même, sur son corps et son esprit, l'individu est souverain »²⁰.

CONCLUSION

Comment sortir de la contradiction qui semble s'instaurer de nos jours entre dignité et liberté ? Il semble qu'en dehors de la dignité appréhendée comme concept universel et ontologique, il faille accorder sa place au sentiment personnel de la dignité et admettre que ce « sens de la dignité » (Mill) peut varier en fonction des aléas de la vie. De ce point de vue, il ne servira à rien de dire à un homme qu'il garde sa dignité en toute circonstance (et quel que soit son état de santé) tant qu'il sentira au fond de lui-même qu'il ne peut plus prouver sa valeur ni aux autres ni à lui-même, du fait de l'atrophie de ses possibilités intellectuelles, sensorielles ou physiques. Cette perception *intime* de la dignité ne doit pas être confondue avec une dignité *au sens ontologique* qu'il appartient aux proches et aux soignants de faire valoir en prodiguant leur réconfort, leur soutien et leur affection aux personnes en fin de vie.

Comme valeur inconditionnelle, la dignité n'est pas susceptible de variations dans le temps ou l'espace. Elle ignore l'état de santé du sujet, son âge, son sexe

¹⁹ Hegel F., *Principes de la philosophie du droit*, 1821, Vrin, § 132, p. 169.

²⁰ John Stuart Mill, *De la liberté*, traduction et commentaire par Gilbert Boss, Grand Midi, Zurich, 1859, 1987, 2004 (« Un État qui rapetisse les hommes pour en faire des instruments dociles entre ses mains, même en vue de bienfaits, s'apercevra qu'avec de petits hommes rien de grand ne saurait s'accomplir. »).

ou la couleur de sa peau. Elle n'est pas tributaire du degré de liberté des personnes. La liberté au sens d'une indépendance souveraine et autosuffisante n'est pas une composante intrinsèque au concept de dignité. Contre la relativisation subjectiviste de la dignité, il importe de rappeler, à la suite de Lévinas, que quel que soit son état de dégradation physique et (ou) mentale, l'homme demeure porteur d'un visage. Même lorsque la peau de son visage est usée par le temps ou creusée par la maladie, il reste un visage qui rappelle son appartenance irréductible à la communauté des hommes. Ceux qui aident les patients atteints de la maladie d'Alzheimer témoignent de l'intensité du moment où le visage du malade se laisse illuminer par la force mystérieuse du regard, même à un stade avancé de la maladie, y compris parfois dans les ultimes instants de sa vie. On doit se souvenir que si la liberté nous sépare, c'est la dignité qui nous lie.

REVUE DE LIVRES

Frans de Waal, *Primates et philosophes*, ISBN 978-2-746-503731, Ed. Le Pommier, Paris, 2008, 24 euros.

S'appuyant sur Darwin et ses propres observations, l'auteur explique comment nous sommes issus de l'évolution d'une longue lignée d'animaux qui s'occupent des plus faibles et établissent entre eux des liens de coopération fondés sur des transactions réciproques.

Aliocha Wald Lasowski, *Pensées pour le nouveau siècle*, ISBN 978-2-213-63674-0, Ed. Fayard, Paris, 2008, 24 euros.

En quoi le XXI^e siècle commençant est-il nouveau ? Ce ne sont plus seulement les civilisations qui se savent mortelles mais le monde qui, à travers la crise écologique, entrevoit sa fin. 26 acteurs de la recherche contemporaine sont sollicités pour identifier les tracés de la pensée française dans sa diversité.

Alexandre Ganoczy, *Christianisme et neurosciences*, ISBN 978-2-7381-2186-8, Odile Jacob, Paris, 2008, 31 euros.

Travail de théologien en dialogue avec des scientifiques, cet essai propose une nouvelle image de l'homme qui soit plus compatible avec les neurosciences que la vieille conception d'un être composé de deux parties distinctes, le corps matériel et l'âme spirituelle.

C. Byk

Chapitre 2

HUMAN DIGNITY: A PHILOSOPHICAL AND THEOLOGICAL APPROACH

*Prof. dr. sc. Luka TOMAŠEVIĆ**

INTRODUCTION

The man is magnificent in his permanent and uncontainable scientific and technical progress, in his research of nature and himself, in his constant search and perception of the truth. Admiring all this, at the same time we started to be afraid of this enormous advance as the man tends to forget the moral judgement of his action and he lost the unique vision of himself and his deepest mystery in the world. Therefore, the topic of human dignity or the dignity of an individual is imposed as a crucial question of the life itself and especially of the human life.

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What gives the man dignity which he permanently attributes to himself? Why do people feel the need and duty to help other people similar to them? We can witness the fact that today there are many international institutions and organizations that try to help people in the fight against hunger, in disease prevention and against violence.

There is always one answer, seen from the religious or humanist point of view: the man and his dignity. Human dignity is an universally accepted term for all people and it is essential while talking about freedom, justice and peace. It is a specific mark only for people which makes them equal and raises them above other beings on the earth. The man has the right on the food, protection and help of congeneric species. According to this, the General declaration on human rights says that all people have the same dignity and the same rights.

Human dignity seems to be a principle related to the protection of life, health and scientific research on man. However, it is much more difficult to define this term and its basis. Is human dignity objective or it is based on cultural values which change throughout the history?

Can human dignity be found in his self-determination as opposed to the power of a society or the state? What does philosophy say about dignity and what Christian theology? Which are bioethical implications for today's world?

1. HUMAN DIGNITY: CONCEPTION

While speaking about human dignity, a question should be asked: what is it based on? As the man is a person, carrier of some rights and duties which are realized in a society, it is important to explain the basic terms in order to understand the right meaning of the term human dignity. Today the term of human dignity is present in legislation, such as international declarations and constitutions of some states, starting with UNESCO, General Declaration on Human Rights, World Health Organization, Council of Europe etc. All these declarations and constitutions seem to have the same ethical inspiration: to protect human dignity. Human dignity is a principle related to the protection of life, health and research itself.

The General Declaration on Human Rights, issued on December 10, 1948, in its first article says: "All people are born free and equal in dignity and rights"¹.

¹ Comp. United Nations. General Declaration on Human Rights. Text according to: Human Rights–Human dignity, Philosophic-theological reflections. I. Koprek (ed). FTI, Zagreb, 1999, p. 11.

The concept of human dignity seems to be closely connected with the idea of basic rights and that is the reason why every man has certain rights.² As human dignity is a basis and precondition for all the rights that should be provided, it is inevitable to examine it.

1.1. Roman conception of human dignity

For the Romans, the term “human dignity” meant the degree, the position or the power possessed. It is a role a person has in the society. In this sense the word *dignitas* has two aspects. The first refers to distinction (*distinguo*), i.e. something that differs a man from somebody else, especially while speaking about social position. The other aspect refers to a *virtus*, i.e. an efficient merit a person got and therefore has *dignitas* as a position that requires honour and respect.³ It is well known that one of the most precious values of the Roman society ordered to each citizen to build his own and family dignity.⁴ It socialized the term dignity which is present even today.

According to one definition “dignity” is a generosity a man has due to his position, quality of his own temper which should be respected by himself. This definition is present today when we are told to pay attention to our dignity or we consider that somebody has lost his honour and dignity.

The term dignity is given to the whole picture that a man has about himself in public, eg. his face expresses dignity. Occasionally, dignity, as a term, is applied to the service a man has in the society (judge, bishop) and sometimes is impressed on arms. However, in the classical period there is no notion about *the legal term*, but about *ideologic one*.⁵

Dignity is not synonymous with power, as the power can force to obedience and dignity makes us respect it at will. In this sense, dignity can be hurt easily, but it remains indestructible.

² Comp I. Macan, Čovjek i njegovo dostojanstvo. Razmišljanje o ljudskim pravima. In: Ljudska prava..., p.80.

³ Compare United Nations, General Declaration on Human Rights, text according Human rights-human dignity, philosophical and theological considerations. Koprek, I., FTI, Zagreb 1999, p.11.

⁴ Comp. Das Staatsdenken der Römer, München, 1973.

⁵ Comp. F. Bartolomei, p. 88, note 2.

1.2. Dignity according to biblical conception

Judeo-Christian tradition strongly emphasizes human dignity, which is based on its revelation, i.e. on theology. Namely, according to this vision a man has no dignity by himself, but it is given to him by somebody who made him for love (compare Post 1.31). The human dignity becomes a feature of human nature, which results from God's mercy. The man is an only being on the Earth that God talks to directly. This is a sign of sublime dignity which cannot be taken from a man. It is God's gift and therefore it is good by itself. Who has this dignity is raised above other creatures, but he became responsible to God on whose own image he has been made (Post 1,26).

The importance of human dignity is not in the fact that God created it, because God created all other creatures, but in his similarity to God. The man got the highest dignity which is based on similarity. Dignity unifies the man with God because it reflects God's essence and places him on the top of all creatures. At the same time, it is the end of the period of cosmic chaos. The act of creating a man, as God's decision, is very interesting. The life, offered to a man by the God, is a gift in which God gives to his creature a part of himself. The man becomes a living soul.

The man is a creature that God created for himself, as his interlocutor and co-creator, and the man was created in the image and likeness of God. He is a sublime *dignitary* although he remains a created, dependent and confined creature. The man finds his dependance and confinement in the very nature of creation. The Bible wants to emphasize the main fact: the personal God, God of communication places in front of himself a man-the person who is oriented to his relationship with others (God, brother, nature). Differently from the Greek man, who tends to define all the things, to determine their essence and to consider them separately in ontologic prospection, the Biblic man tends to *talk* and describe his relations (historic prospective). Therefore, the Bible never defines God, nor man or the world, but it mentions only the stories which speak about the relations with God, man and the world. The man is node of all relations: he is *nefes* (understood in our sense of a person), in his relation to God he is *ruah* (ghost) and in his relation to the others and the world he is *basar* (body). These stories show that the man conceives himself as an active, creative and responsible creature. He is not an absolute master of himself or of the life in the world, but only a responsible administrator. He does not create *ex nihilo*, only God does so, and the man controls.

The Cristianity emphasizes another fact: *although the man is created in the image and likeness of God, he has lost his dignity due to his sin, he damaged this*

image and needed somebody who could restore his dignity. Jesus Christ could do it and he became savior of the mankind.

1.3. Philosophic interpretations of human dignity

Biblic and Christian conception of human dignity will be completed with the conception of man as a reasonable being. The mind makes the man what he is, it enables him to live morally, i.e. to direct his own life to good and bad. In this sense a man is an unique and unrepeatable being who possesses his dignity and can answer God in his wisdom and morality of his life. He is a subject who freely and willingly takes the position of his moral demand.

The concept of wisdom is taken from Greek phylosophy, Platon first who considers a man an reasonable animal “trained for science” and then from Aristotel who views a man as “the only animal with mind” which enables him to distinguish good from bad, right from wrong, useful from useless. Therefore, the man has some “divine element” which elevates him and makes him moral.

It can be said that throughout the Christian tradition human dignity is raised, protected and strenghtened due to this basic theologic conception.

St. Thomas places the man on the top of all creatures in nature. The man is “a person, the most perfect thing in the nature, something that survives in its rational nature”.⁶ The man is created “in the image and likeness of God” and he can direct his commitments to God. It gives him sublime *dignity*. In his cognition and love for God, the man respects God and repays him everything God gave to a man (according to the Book of Genesis and Wisdom) (12,10).

Famous G. Pico della Mirandola in his speech about human dignity glorifies the man’s ability of self-determination. He is convinced that the man’s greatness and dignity result from his constant effort to understand the sense of thing, to learn the real truth meditating about the universe and exploring it to understand its deepest sense. The man is center of the visible reality and can raise or fall which depends only on the man himself.⁷

⁶ St. Thomas, *Contra Genetiles*, III, 110. “Persona significat id quod est perfectissimum in tota natura, scilicet subsistens in natura rationali”.

⁷ Comp. G.Pico della Mirandola. *Discorso sulla dignita dell’uomo*. La scuola. Brescia. 1987.

Christian-thomist conception of human dignity starts to change after the appearance of Enlightenment. The German philosopher Kant was the first to do it. His attitude about human dignity is based on the concept of “value”. He establishes the relation between the value and dignity. He starts from the fact that a man is raised to the dignity of a person, i.e. above any other value and it cannot be considered a means to achieve our goals, but only the goal in itself. It means that he possesses his dignity, his absolute inner value which makes other beings respect him as a goal which he has in himself, as a creature who possesses a value which is not relative as the prices, but always remains intrinsic and has dignity.⁸

Kant considers that everything with its price can be substituted with the thing of the same value, while something that exceeds every price is always higher and has no counter-equality, but only dignity. Dignity of a reasonable being consists of the fact that it is not subjected to any law that was not passed by itself. Therefore, morality is *conditio sine qua non* of the legal autonomy which is manifested in human dignity. Therefore, moral and humanity are the only things that have no price.⁹

Kant uses not only the terms “means” and “goal”, but also “value” and “dignity”. The term “value” derives from economy of that time, but it became a philosophical concept. The value was first evaluation of one thing compared to another. That’s why values could be considered equal and transform into prices. In Kant’s philosophy there is a value which can not be substituted, i.e. value which has no price as it is not comparable. It is absolute or internal value which becomes normative because it can determine the price of all other things. According to Kant such “absolute” or “internal” value is dignity which exists only in man as a reasonable being. The man is a being which has its moral identity, rationally-practical responsibility to himself and ability to rational self-determination.

In this conception it is easy to understand the hierarchy of values whose top and final goal is human dignity as an absolute value which can never be substituted. It differs the man from other creatures so that it is to be recognized and respected. Such an order should not be denied by any reasonable being in the world and the peak is self-respect. It makes all the subjects equal.

Dignity should be recognized, but each individual should look for his own dignity. Besides, who despises others, despises himself too, because all people are members of the same humankind. In this way, Ego and Alter are equalled.¹⁰

⁸ Comp. N. abagnano, *Dizionario filosofico*. Utet, Torino, 1961, voce “Dignità”.

⁹ Comp. *ibid.*

¹⁰ Barolomei, p.82.

The first reaction to Kant's conception of human dignity is found in the French constitution of 1789 (French revolution) which announces that all people are born free and equal. Dignity is related to "human rights". These two terms have been practically inseparable since then.

Luhmann defined human dignity as "the condition of man's successful self-promotion of his own individual personality"¹¹ which gives a social dimension to the conception of human dignity.

Podlech will emphasize the functional concept of dignity. Namely, according to him the concept of dignity should be directed legally and understood in the context of:

- personal and social life safety;
- legal equality of all people;
- protection of human identity and integrity;
- limitation of the power of state towards an individual;
- respect of one's body integrity.¹²

Some theologists at the end of 20th century develop the idea that a man can dominate his instincts by the power of his morality and it raises him above other beings and gives him the power of spiritual freedom, which is the peak of his dignity.¹³

Even the 2nd Vatican Council remains faithful to the Biblic scheme and bases human dignity upon the creation, redemption and eschatologic encounter of the creature and the Creator in the ordeal.

1.4. Bioethical consideration of human dignity

In the era of the internet, cybernetics and genetics, human dignity has obtained an extremely important place. Today, we all tend to emphasize the human right to the freedom of communication and self – determination but also the right to our own dignity. We talk about the dignity to live and die, the patient's dignity etc. Dignity implies body and soul and while speaking about the

¹¹ Comp. Bartolomei, p.86.

¹² Comp. Ibid. p.87.

¹³ Comp. B. schueller. L'uomo veramente uomo. La dimensione etica dell'uomo. EDI OFTES. Palermo 1987.

man and human researches, his genetic code, it is required to determine some ethical rules and behaviour, but the legal principles as well.

A famous Italian lawyer Francesco d'Agostino says that all the contemporary philosophers and bioethicians frequently use the term human dignity. This has become the crucial word for them which appears in the Convention from Strasbourg on human rights and dignity where it is mentioned three times.¹⁴ We can conclude that this term should become the basis of European bioethics. It could be a hidden common idea of European Committee for Bioethics (Cdbi), as well as the legal principles concerning the relation between bioethics and international law.¹⁵

However, a French physician and moral theologist Bruno Cadore noticed that the frequent use of this term is not followed by its clear interpretation, at least in legal terms. According to his opinion the realization of decision making (on what should be done) in technomedical advance and the man's conception of the same advance should be closely related. Reference to dignity should not be an argument a priori because the principle of human dignity is the principle of experience and practical wisdom. We should never neglect the relation between human dignity and creativity.¹⁶

The question of dignity is not bioethical primary concern, but bioethics defined it. Apart from being a social topic, bioethics is a man's moral reflection over his new scientific powers. The concept of human dignity, which should be related to ethical questions and dilemmas, requires to ask ourselves about "something" in human nature that should be respected. The conception of human nature is closely connected with the man's wish to "live well" or "blissfully", so his technical and scientific power which enables him to go deep into himself should respect it. Consequently, bioethical argumentation on dignity has three aspects:

1. dignity speaks about untouchableness of a person which is a true human reality;
2. dignity means more than reality, i.e. it means the quality which obligates and requires unconditional respect;

¹⁴ Comp. F. D'Agostino. *Bioetica e dignità dell'essere umano*. In: C.M. Mazzoni, *Un quadro europeo per la bioetica?*. Leo S. Olschki ed. Firenze, 1998.

¹⁵ Comp. N. Lenoir, B. Mathieu. *Les normes internationales de la bioéthique*. Puf. Paris. 1998.

¹⁶ B. Cadore, *L'argument de la dignité humaine en éthique biomédicale*. In: *Le supplément*, 1994, n. 191, p. 73-98.

3. dignity means autonomous ability of a person who has become an object of treatment.

Cadore calls these aspects “appeals for dignity” which should not be infringed, especially when a person is unable or dependent of somebody else. In these conditions the man’s dignity as a patient should be recognized.¹⁷ The scientific development and advance is not a problem, as well as the experiments in the field of genetics and biomedicine. The real problem is present in the orientation of these sciences and in their attitudes about the life and the man.

2. DIGNITY AND HUMAN EXPERIMENTS

I would like to state a thought of C.S. Lewis from 1947 that the man will master himself with his own eugenics, prenatal condition, creating public opinion with the propaganda instead of real psychology. “Human nature will last surrender to a man”.¹⁸

What is permitted or not permitted in science? Who should decide on the basic scientific criteria and how far should it develop? These are the actual questions discussed all around the world which provoke acrimonious debates?

Scientists, philosophers, ethicists, sociologists, physicians, theologians and the public participate in the discussion. But, it is frequently forgotten that the most important is philosophical question about the life, man and real values of human life and the life of all living creatures in the world. As we live in a pragmatic mentality, a question could be asked if the society is obliged to maintain old people who have become dependant of social help in order to decrease the food needs. Maybe in very near future a political party could be formed which will promote euthanasia as a social and economic policy? It is not only about politics and economics, but about greater moral values and questions.

Who can give the answers to today’s scientists on what is absolutely right or wrong? Who can determine and make a judgement on basic ethical principles when the modern societies are secularized and the religious principles are not listened to? In our world decisions should be made and principles established, because the science, connected to the interest of profit, will determine its own rules which are deprived of human attitudes and ethical sensibility.

¹⁷ Comp. Chiodi, *tra cielo e terra. Il sensi della vita a partire dal dibattito bioetico*. Cittadella Editrice. Assisi. 2002. p.101-112.

¹⁸ C.S. Lewis. *The Abolition of Man*. New York. The Macmillan Company, 1947.

The answers should be found, as always when we speak about normative ethics, in two ethical and normative theories: deontologic and theleological. According to deontologic theory the moral judgement does not depend on the consequences which result from actions (contrary to proportionalism), or the action is *contra naturam* or *ex defectu iuris in agente*, i.e. is the agent of the action permitted to do it?

Theleologic theory is followed by those who judge according to the consequences (proportionalism) which derive from the actions, biotechnological science in this case.

In the case of biotechnology, as always when we speak about bioethics and normative ethics, there are two difficulties: one that refers to the evaluation of empiric data and the other that refers to axilologic data that should be applied.

In order to determine ethical principle in the field of biotechnology, we still miss a detailed cognition about the science itself and we are in danger to judge it on the basis that it could become. Biotechnology is a relatively new science and is still developing and connected to the industrial interest. It seems that the estimation of individual and well established applicative possibilities and not global biotechnology is the basis for a good moral estimation of this science, as well as genetic engineering.

If we know that this science is able to modify genes, to substitute and eliminate them, we should establish that it is *contra naturam* because the man intervenes in the natural process and modifies it according to his goals. However, it would be a condemnation of genetic engineering and research which could be very useful to the mankind. Even if applied on a man, if the research is *therapeutical*, it can not be considered unpermitted, even less if applied in vegetative and animal world.

At this point we should mention the second deontologic principle, referred to by many other scientists and believers: *illicitum ex defectu iuris in agente* (unpermitted because the agents has no rights on it). It is not natural to modify and shift genes and the man has no right to do it. If considered biblically, the man has the right to change, adapt and repair the nature, but he has no right to interfere in the development, especially the genetic one. From this point of view every biotechnological procedure should not be permitted because the man has not got a permission and he disrupts the natural order. Therefore, biotechnology is unnatural and unpermitted.

Theleologically, the consequences of a procedure should be considered to establish if it is aimed to the improvement of an individual and mankind in general. While speaking about the application of genetic engineering on the

vegetative world, it should be established if it is good and reasonable, therefore permitted, if the research is aimed at the improvement of the mankind, such as food production.

It is quite the same with the research and application on the animal world. The animal has its value, but when a superior value is threatened it becomes the value-means. It happens in cases when the man's health and wellbeing are threatened. According to this principle we eat meat. Accordingly, trials on animals, important for man and his health are permitted, but the animals should not be hurt.

Taking into consideration technological science, we can conclude the following:

1. If is used in diagnostic procedures (diagnosis always follows the cognition and wants to establish what is healthy and what is ill), it is permitted on all living creatures, even the man.
2. If used in therapeutic procedures, biotechnology is permitted, because its main aim is to cure.
3. If used in alternative aims, i.e. to modify the natural process, create unknown plants or animals, especially in cases in which new creatures would destroy the natural ones and their development and the food would be harmful or poisonous to a man, it should not be permitted.

3. SOME CHRISTIAN PRINCIPLES

Christianity emphasizes that the man can be only an aim, but never a means of a research or a procedure. The present Pope Benedict XVI says that "every new scientific discovery should serve the integral good of a person, with constant respect for his or her dignity"¹⁹ It means that genetic interventions should be based on certain principles respecting human dignity and integral good of a person. In this sense, determination of ethical principles in genetic interventions should consider the human complexity and great changes in the fields of genetics. It is well known that human dignity can not be related to human genes and his DNA, but the genes do not delete differences among human beings. Therefore, we talk about the principle of "non-discrimination" which is promoted in human rights, in physical and genetic factors. This principle

¹⁹ Adress of His Holliness benedict XVI, Dolentium Hominum, XXI, no. 61, 2006 (1), p.7.

confirms the Christian view of human dignity which says that each man is the same and possesses the same dignity because it is made in the image and likeness of God (see Post, 1,26). According to Christian points of view, new information and cognition, as well as technical abilities should be accompanied by ethical questions and ethical principles. However, ethical questions are not answered, as genetics develops rapidly. Tomorrow other new questions will seek for answers.

Generally speaking, genetic engineering implies several ethical problems. The main problems can be related to 1. research, 2. diagnostic application, 3. therapeutic application²⁰, while recently the problem has been related to alternative engineering (eugenics). Accordingly, the ethical problems of genetic engineering are related to:

- the safety of experimental laboratories
- drug research obtained by genetic engineering techniques,
- genetic diagnosis and new problems imposed by medical diagnostics;
- human genes invention or DNA sequences;
- human genome project;
- problems of prenatal diagnostics, cloning and human embryos experiments²¹

Some Christian principles should be the following:

1. *Confidentiality*. This principle should be based on the spirit of love which requires confidence in human relationships. The protection of confidentiality is important for confidence. In order to protect the man's privacy, the data about his genetic constitution should be confiding, except in cases when the man decides to reveal them. It is obligatory to reveal the information in a case when the harm can be done by keeping the genetic information secrete. This principle is found in the Gospels according to Mt 7.12 and St. Paul (Fil 2.4).
2. *Truthfulness*. Researchers are obliged to tell the truth. It means that while speaking about the results of a genetic research, the truth should be told to the public and the individual as well, without holding out false hope.

²⁰ divided according Italian bioetician A. Serra, comp. L. Ciccone, Bioetica. Storia, principi, questioni. Ares. Milano 2003, p. 206.

²¹ ibid., p. 207.

3. *Relieving and preventing pain and suffering.* This is a human, but highly Cristian principle and duty. (comp. DJ; 0.38; Lk 9.2). Therefore, the main aim of human genetic intervention should be the treatment or prevention of diseases and pain and suffering relief. Genetic modifications of bodily or mental characteristics should be done with great care, in order to prevent the abuse and unknown biological risks.
4. *Freedom of choice.* The man is free and if able to make a reasonable decision, should decide whether or not undergo genetic testing. He should decide on the information obtained by genetic testing, except in cases when it can harm other people. The moral decision can include the avoidance of a known risk by giving up child-birth due to serious congenital defects. As such decisions about procreation and genetic testing are deeply personal, a man should make them taking into consideration a general good.
5. *Human dignity.* People are more than a sum of their own genes. Human dignity cannot be decreased by genetic mechanisms. People should be treated with dignity and their individual quality should be respected and not divided according to their genetic heritage.

REVUE DE LIVRES

Charles Darwin, *L'autobiographie*, ISBN 978-2-020-979016, Seuil, Paris, 2008, 20 euros.

Cette autobiographie écrite à l'attention de ses enfants par Ch. Darwin est le texte le plus intime et le plus révélateur qu'il ait laissé. S'y mêlent son voyage autour du monde, ses problèmes de santé, son mariage et les débats suscités par sa théorie.

Bruno Halioua, *La médecine au temps des hébreux*, ISBN 978-2-86746-486-7, Ed. Liana Levi, Paris, 2008, 24 euros.

Au carrefour des principales voies de communication de l'antiquité unissant l'Afrique à l'Asie et l'Asie à la Grèce, les Hébreux ont rassemblé de nombreuses connaissances médicales. Par une étude minutieuse de la Bible et du talmud, l'auteur retrace les compétences médicales acquises et montre qu'elles étaient au cœur de la vie quotidienne des Hébreux et que la médecine y jouissait alors d'un prestige considérable.

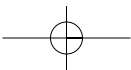
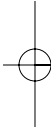
Bruno Halioua, *La médecine au temps des pharaons*, ISBN 978-2-86746-480-5, Ed. Liana Levi, Paris, 2008, 24 euros.

Si la connaissance de la médecine par les Egyptiens est attestée par les momies et leurs pathologies, les papyrus et les stèles et l'explication qu'ils donnent sur la manière de traiter les patients, la manière dont les Egyptiens pratiquaient et maîtrisaient la médecine méritait encore d'être racontée avec précision et passion. C'est désormais chose faite.

C. Byk

*Quelle valeur accorder à la dignité
humaine ?*

*What value should be attributed
to human dignity?*



Chapitre 3

THE SOCIAL RECOGNITION OF HUMAN DIGNITY¹

*Johannes FISCHER**

Some considerations about a fundamental question connected with the concept of human dignity. I gladly accept this invitation, and I hope my remarks may be useful as an introduction to the subject of this conference. My considerations are motivated by a very special debate we have in Switzerland concerning the question of whether the concept of dignity can be transferred to monkeys. This debate has been triggered by an article in the Federal Constitution of Switzerland which stipulates that the ‘dignity of creatures’ (‘Würde der Kreatur’) is to be respected in all kinds of research within the field of nonhuman nature, that is to say animals and plants.

Those who choose to transfer the concept of dignity to monkeys usually refer to the similarity of the biological properties of monkeys, on the one hand, and human beings on the other. This argument presupposes that human beings possess human dignity because they have a human nature in a biological sense.

¹ Remarks at the beginning of the international workshop “Human Dignity, Human Rights and Bioethics” 5th - 6th November in Zürich.

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Monkeys, and especially anthropoids, share the same morally relevant empirical properties, and therefore the concept of dignity can be transferred to them.

In my opinion, this kind of reasoning ignores a fundamental difference between human beings and monkeys, but this difference is not to be found in different empirical properties. The difference I am thinking of is indicated by the fact that, in some contexts, the expression ‘human being’ is a *nomen dignitatis*, i.e. an expression with a normative meaning. In connection with degradation or torture, this normative meaning becomes clear in appeals such as: “But they are human beings!” (i.e. creatures who *ought not* be treated in this way). In contrast, the expressions ‘monkey’, ‘animal’ or ‘plant’ do not have any normative meaning. What are the reasons for this difference? How can we explain the normative meaning of the expression ‘human being’? In my view, this is the most fundamental question surrounding the concept of human dignity.

This question requires some considerations concerning the specific structure of the social world in contrast to the natural world. In the natural world, things are what they are – a monkey, a blade of grass 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.

If this characterisation of the social world applies, it is marked by an *epistemic paradox* resulting from the creative character of recognition which generates social 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. Recognition implies the idea that there is something which precedes recognition and which is the reason for recognition. Those who do not recognise human dignity are making a moral mistake. Awarding does not imply any such idea. The reality it refers to is only given as a result of the awarding. Critics of this view feel that 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. Human dignity then seems to have to be anchored in certain properties, whether they be

an ability to reason or to take action, or whether they be biological characteristics. As far as the latter are concerned, in the debate concerning the human dignity of prenatal life the SCIP arguments – species, continuity, identity and potentiality – are of this kind.

In my opinion, a possible solution to this problem would be the following. In order to be a member of the human social world, a creature must have certain biological properties which are common to human beings. But this is only a necessary, and not a sufficient condition because being a member of the human community is not a natural, but a social status, based on recognition and respect. On the other hand, it is not *factual* recognition and respect which membership of the human community is based on – as those think who regard human dignity as socially awarded – but the fact that recognition and respect are *owed* to a creature because of its biological human properties. This means that membership of the social world is not an empirical status based on factual recognition, but a *normative status* based on due recognition. A creature can have this normative status without having the empirical status because recognition as a member of the human community is refused, and it is treated as a non-human or ‘sub-human’. It is important to see that a creature does not have 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 has to be recognised as such*, due to its natural human properties. This is what is meant by the statement that membership of the social world is a normative status.

This consideration can clarify 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*. It is in this due-ness that recognising differs from mere awarding, which can be arbitrary. Within this due-ness is the precedent of recognition, as a substitute for the not-yet-existent reality which emerges only through recognition. In contrast, the confusions within the debate on human dignity are caused by a transferral of the paradigm of the natural world 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 of this is that human dignity has to be anchored in certain characteristics displayed by human beings. This raises the question, on the one hand, of the extent to which these characteristics can be a basis for dignity; and it necessarily results, on the other hand, in human dignity forfeiting its character

as a social status linked to membership in the social world and, as such, substantiated in recognition and respect.

In sum, for our understanding of human existence, the distinction between the natural and the social world is crucial. It means that we have to differentiate between the biological concept of human existence and a social concept. The latter refers to membership of the human community. With regard to the social concept, we 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 *owed* recognition as a human being, on the strength of which *it has the* empirical status of a member of the human community. It is *owed* because that creature fulfils the necessary biological 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 has to be *recognised* and *respected* as a human being. The concept ‘*human dignity*’ makes the normative content of the term ‘human being’ explicit. Human dignity is thus best conceived as conceptually implicated by the social concept of human existence. If this is true, human dignity is a *social reality* and not only a philosophical or theological idea or construction. This leads to a simple definition of the concept of human dignity: *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*. And this is equivalent to *being a member of human community*. As a normative status independent of factual recognition and respect, human dignity is “inviolable”. This formal definition of human dignity does not, of course, tell us which creatures are to have human dignity and which biological criteria are relevant to this fact – for instance regarding the status of prenatal life –, nor what human dignity entails.

This leads us back to monkeys and our debate in Switzerland. If these considerations are true, then animals and plants do not have a dignity which is comparable to human dignity. The latter results from the specific character 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 independently of our recognition and respect. Therefore, 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 may be possible to speak of a dignity possessed by animals and plants. And yet, this dignity is fundamentally different from human dignity, the latter being anchored in the constitutive state of the social world.

It may have been noticed that these considerations do not have the character of a justification or proof of human dignity in the shape of a derivation from a principle like freedom or autonomy or the religious doctrine of *Imago Dei*. Rather, they have the character of showing it, of making it plausible as a social reality by illuminating the structure of the social world. Human dignity does not require proof or justification, but it requires understanding, and once it has been understood it cannot be denied. It cannot be denied because we cannot deny the existence of the social world. If these considerations are true, it can no longer be controversial whether human beings, in the sense of members of the human community, have human dignity. They *have* it by the mere fact that they are members of the human community. There are only two questions which can still be controversial, namely the question of which creatures belong to the human community, and the question of which duties and rights this membership entails. The first question cannot be answered in a naturalistic manner, i.e. by referring to natural properties, but only by an investigation of the social concept of the human being, in turn depending on which natural properties are relevant to the recognition of a creature as a human being in the social sense. For example: Is the fact that a being, for instance an embryo, descends from a human being a sufficient condition for the social recognition owed to it as a human being? Regarding the second question, we may ask whether the duties and rights which membership of the social world entails can be reduced to one single aspect, like autonomy or the right not to be humiliated. By the way, it is an important question whether human dignity is in itself a right, or whether it constitutes rights, namely human rights. In my opinion, the concept of human dignity is connected not with the concept of right but with the concept of duty or obligation, namely the duty of recognition and respect. Human rights can be derived from this obligation, and this means that they also become a social reality, based on the social concept of the human being, i.e. on membership of the human community. Those disregarding human rights disregard a social reality (and not just a philosophical or theological idea). But this is a wide field of discussion, and I hope that this conference will help to clarify some of these questions.

REVUE DE LIVRES

Théo Klein, *Sortir du ghetto : les juifs et leurs craintes*, ISBN 978-2-86746-475-1, Ed. Liana Levi, Paris, 2008, 12 euros.

Pour Th. Klein, figure majeure de la communauté juive de France, le ghetto, ce n'est pas seulement un élément clé de la longue histoire des juifs et de leur exclusion, c'est aussi et paradoxalement le repli que les Israéliens mettent en pratique à leur tour face aux menaces extérieures, allant jusqu'à ériger un mur pour s'en protéger. Th. Klein nous invite ainsi à nous interroger, à l'heure de la mondialisation, sur ce « ghetto protecteur et rassurant ».

Grand Orient de France, *Questions de santé publique et de bioéthique (tome IV)*, ISBN 978-2-8743-0126-1, Editions du Grand-Orient de France, 2008, 19 euros.

Cet ouvrage (le 4^e volume de la série) publie les actes de la journée que la très active commission de bioéthique du Grand Orient a organisé à Nancy en 2007 sur Douleur et souffrance.

Dalil Boubakeur, *Le Coran tolérant*, ISBN 978-2-247-07498-3, Dalloz, Paris, 2008, 3 euros.

Recteur de l'Institut musulman de la mosquée de Paris, Dalil Boubakeur affirme avec « ce petit ouvrage » la volonté de soumettre le Texte à la raison ce qui peut passer par la reviviscence des sciences sociales et de la « déthéologisation » de l'interprétation coranique.

C. Byk

Chapitre 4

HUMAN DIGNITY: INTRINSIC OR RELATIVE VALUE?

*Marie-Jo THIEL**

Is human dignity an intrinsic value, or a relative value particularly associated with the notion of “quality of life”? In contemporary bioethics, the term “dignity” has become a kind of slogan. All major trends in public opinion refer to it, sometimes, paradoxically, in order to justify strongly opposed positions. For example, in France, the “Association for the Right to Die with Dignity”¹ uses dignity to demand the legalization of euthanasia, whereas the promoters of palliative care support the concept specifically to reject this legalization.

How should dignity be understood? Some relate it directly to that quality of life evaluated by everybody with their own autonomous judgment: therefore it can be earned or lost, given or removed. For others, such as Macklin², the

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¹ Equivalent to *Exit* in Switzerland.

² Ruth Macklin, “Dignity is a Useless Concept”, *British Medical Journal*, 2003, vol. 327, p. 1419-1420.

concept is already included in the notion of respect for the autonomy of the person, and is therefore redundant. Finally, for some others, including me³, dignity means above all the intrinsic and inalienable value of every human being. Therefore, it is an essential safeguard against instrumentalisation of, and discrimination against, human beings, as well as a source of responsibility.

After offering some historical perspectives, this contribution considers the nature of dignity evaluated with reference to quality of life, before suggesting an inversion of the proposition: the quality of life as a requirement of human dignity.

SOME HISTORICAL PERSPECTIVES

In the past, dignity has not been a matter of major interest, not even among Christian writers. Nevertheless, various concepts related to dignity that were developed in previous centuries still remain topical. In the 20th Century, two major factors have modified them: the Shoah, and the increasing technological powers over living beings, and in particular, over ourselves.

Philosophers

In Antiquity, the term “dignity” was mainly used to refer to a quality attached to an official office, a rank, or outstanding behaviour. It was dignity – *dignitas* – which implied a respect legally acknowledged.

During the Enlightenment, the point of views changed, sufficient to cause a split between Hobbes and Kant. The former considered dignity solely from the intersubjective judgements of the market and eliminated all connection with any real excellence:

“The value or worth of a man is, as for other things, his price; that is to say as much as would be given for the use of his power and therefore it is not an absolute value, but a thing dependent on the need and judgment of others.”⁴

³ We refer in this contribution to arguments from earlier articles, without developing them: Marie-Jo Thiel, “Au nom de la dignité. Perspectives éthiques et théologiques”, *Médecine de l’homme*, n°251, January-March 2001, p. 5-21; “La dignité humaine. Perspectives éthiques et théologiques”, in: Gilbert Vincent (ed.), *Le corps, le sensible et le sens*, Strasbourg, Presses Universitaires de Strasbourg, 2004, p. 131-164 ; “Dignité? Circulez !”, in: Anne-Marie Dillens; Bernard Van Meenen (ed.), *La dignité aujourd’hui. Perspectives philosophiques et théologiques*, Bruxelles, Publication des Facultés Universitaires Saint-Louis, n°117, 2007, p. 103-122.

⁴ Thomas Hobbes, *Leviathan*, Paris, Sirey, 1971, chapter 10, citation p. 81-82.

Kant does not quote Hobbes. However in defining human dignity as something having no price, as being above all price, he takes the opposite view while still leaving the Stoic position on merit and *dignitas*:

“What is above all price and therefore admits of no equivalent has a dignity. What is related to human general inclinations and needs has a market price.”⁵

Kant bases dignity neither on anthropology nor on theology, nor on happiness, usefulness, financial price or the caprices of the will. He builds it on a morality which places the human person above all price. Thus the human being's intrinsic value is given a name, dignity (*Würde*). This value is something that does not depend on the esteem given by others, but relies on the human condition itself, which is characterized by the autonomy of the will, which is able to formulate universal moral laws and to freely follow them.

This view, which sets dignity of the person against the heteronomy of free choice, and which proclaims the primacy of the moral law, will strongly influence Western thinking as well as national and international legal documents. However, possible reversals of this position result when autonomy is regarded as a complete autarchy, no longer following the moral law, but following one's merely subjective reasons or feelings: in this case dignity is no longer intrinsic, but subject to the vagaries of the individual, varying with time, space and culture...far away from the Kantian view.

Christianity

Until quite recently, Christianity had not developed too much a theoretical explanation of human dignity as this concept was held to be self-evident: each human being is created in the image of God (a Trinitarian God), and at the same time, is created after the image of the first-born of all creatures, Jesus-Christ. This is the deepest foundation of human dignity according to the Christian faith.

This view is therefore one of a fundamental, intrinsic, or ontological dignity. However, the term dignity is also used with a moral connotation meaning the worthiness or unworthiness that may result from behaving, or not, in an ethical

⁵ Emmanuel Kant, *Grundlegung zur Metaphysik der Sitten*, 1785, Berlin, Akademie-Ausgabe, IV, p. 385-463; trad. Victor Delbos, *Fondements de la Métaphysique des Mœurs*, Paris, Delagrave, 1907, rééd. 1969, p. 160.

manner. For instance, during the Eucharist, believers consider themselves unworthy⁶ to receive Holy Communion as the Body of Christ.

In Catholicism, the Vatican Council II emphasizes these two facets of dignity in the document *Gaudium et Spes* of 1965, especially in chapter one entitled “The dignity of the human person”⁷.

Human dignity, human rights and bioethics

With the recognition of the Shoah and the emergence of bioethics, the expression “human dignity” asserted itself in our culture as a major reference and appeared in international legal documents.

The “Never again” which followed the Second World War found expression in the Nuremberg Code (1947) and the Universal Declaration of Human Rights (1948) and subsequently in numerous major international and national texts. The Nuremberg Code does not include the term ‘dignity’ but presupposes it, in order to require from thence forth the free and informed consent of every person undergoing medical research. The Universal Declaration of Human Rights in stating its principles declares: “*The recognition of the dignity inherent in all members of the human family, and of their equal and inalienable rights, forms the foundation of liberty, justice and peace in the world.*” Therefore it establishes the intrinsic inalienable dignity of every human being, of whatever race, colour, gender, religion. Subsequently, many other international texts emphasize this perspective (for instance, in the field of bioethics, the Oviedo Convention).

The reference to dignity would have seemed self-evident, until an article by Henry K. Beecher⁸ suddenly demonstrated in 1966 the opposite: his critical study of 22 medical research programmes conducted in the USA after the Second World War concluded that they infringed explicitly respect for human dignity and constraints on consent as stated in the Nuremberg Code, the Code which

⁶ Marie-Jo Thiel, *ibid.*

⁷ See, for instance, the following passages: “For Sacred Scripture teaches that man was created ‘to the image of God,’ is capable of knowing and loving his Creator, and was appointed by Him as master of all earthly creatures” (n°12); “Man judges rightly that by his intellect he surpasses the material universe, for he shares in the light of the divine mind” (n°15); “For man has in his heart a law written by God; to obey it is the very dignity of man” (n°16); “Hence man’s dignity demands that he act according to a knowing and free choice that is personally motivated and prompted from within, not under blind internal impulse nor by mere external pressure (n°17); “The Church holds that the recognition of God is in no way hostile to man’s dignity, since this dignity is rooted and perfected in God” (n°21).

⁸ Henry K. Beecher, “Ethics and Clinical Research”, *New England Journal of Medicine*, 274 (1966) : 1354-1360. This study concerns the *Brooklyn*, *Willowbrook*, and *Tuskegee affairs*.

contributed decisively to the birth of bioethics. During the 1960s and 1970s, dignity became a key-principle while questions were raised about its constituents and its demands for respect.

DIGNITY EVALUATED AS A MEASURE OF THE QUALITY OF LIFE

Quality of life (or “health-related quality of life” in the English-speaking world) thus becomes progressively a [or: the] measure of human dignity, the gauge which assesses the still “viable” nature, or otherwise, of an existence, “useful dignity” (in Utilitarianism). Indeed the concept only grows progressively in the frame of factual medicine (evidence-based medicine): the evolution of a quality of life based on some objectively measurable elements seems to be highly attractive.

Emergence of concept of quality of life

In the 1960s and 1970s the incredible achievements in controlling the living body were recognised, as were the resulting dilemmas. The latter favoured the emergence of a concept of dignity directly linked to a perception of the quality of life, or more precisely, its “non-quality” or “lack of worth”, especially at the end of life. Thus, pro-euthanasia movements demand (particularly in France) the provision of death in the name of human dignity, at the risk of actually losing it. Conversely, the pro-palliative care movements rely on the intrinsic dignity of every human being to maintain or demand a quality of life during the final support of a patient.

Simultaneously, medical advances examine, in more and more detail, the human being. They describe more and more precise stages of embryonic development and specify modalities of brain functioning such as consciousness to such an extent that one hesitates to recognize an identical dignity in everyone. The latter becomes relative (and to some extent proportional) to the best, the most developed, the most rational, the most lucid. Quality of life becomes the other key-word of a medicalized society⁹ focusing on the health, which seems to become the *telos* of existence.

⁹ See Marie-Jo Thiel, “Le mouvement de médicalisation de l’existence humaine”, *Revue d’éthique et de théologie morale*, n°241, Special issue n°3, September 2006, p. 87-117. Marie-Jo Thiel, “La santé totalitaire: mythe ou réalité?”, in: Jean-Michel Boles (dir.), *Les Carnets de l’Espace éthique de Bretagne Occidentale*, Montpellier, Ed. Sauramps médical, 2009.

From the 1970s and 1980s on, quality of life is measured and becomes, as it were, a means to confirm or invalidate dignity. In 1994, the World Health Organization defined quality of life as:

“the perception by an individual of their place in existence, in the context of the culture and systems of values in which they are living, in relation to their objectives, standards, hopes and fears. It is a wide conceptual field, including in a complex manner the physical health of the person, their psychological status, level of independence, social relations, personal beliefs and relations with the specificities of their environment.”

The basic points of that definition are first, the notion of perception (the point of view of the person) and second, the multidimensional scope. The considered factors seem to gather under the same banner numerous properties contributing to the definition of dignity in the course of history and in formulating it as “relative” so that it suits everybody... One thinks about joy or pleasure, as opposed to suffering, in an utilitarian view. One thinks about the power to buy and to consume (Hobbes), now turned into a criterion for quality of life in a capitalist society. The QALY¹⁰ refers to health economy... Dignity is not simply linked to reason, but to the capacity for taking rational decisions, so that the question as to whether one can be a human without being a person is raised (P. Singer). Lastly, with the extension of individualism, dignity has dependent upon subjective perception. However in the context of factual medicine, this subjectivity is considered “unworthy”. Finally, in order to resolve this contradiction, quality of life is quantified for evaluating “useful” lives, “providing the greatest happiness for the greatest number”, allowing consumption and enjoyment of life.

Classically, three categories of tool are available to assess quality of life: the usefulness measurement (QALY), the generic measurement¹¹ and the specific measurement related to a pathology. In a so-called medicalized society, the quality of life of a population is indeed a major issue for politics and the economy. However, is it an accurate reflection of dignity? Does it determine dignity to such an extent that a poor quality of life can be said to distort dignity or even that such a life is no longer worthwhile? That its “poor quality” justifies what in France is called “l’arrêt de vie” (life/death decision) of the neonate, or euthanasia of the adult, whether consenting or not? Or even that prenatal

¹⁰ Quality Adjusted Life Years. This index balances the time spent in a given health status by a factor assessing the quality of this status; the factor is comprised between 0 (death) and 1 (complete health status).

¹¹ They provide data on the health status and the quality of life whatever the pathology or even in the absence of any pathology.

evaluation gives a free hand to decide whether or not pregnancy should continue (Perruche judgment)? Or even whether this living being can also serve other uses such as research, organ or stem cell harvesting?

Limitations to the quality of life concept

It is in the interest of medical teams to have at their disposal criteria for the evaluation of care and therapy. Has not the goal of Hippocratic medicine always been the well-being of patients? Quality of life can act as a convenient tool, all the more essential in that it invites evaluation of practices according to the totality of the person. However, could it not be a perverse tool when it becomes an ontological indicative, allowing the taking of life or death decisions, instead of being, as at the beginning, a practical method aiming at standards of care as well as the support of individuals? Because the concept has evolved, even in the English-speaking world: according to Wyatt¹², the *descriptive* view-point, the first sense of the word “quality”, and usually employed for people, has become an *evaluative* view-point, mostly reserved in the past for manufactured items.

In fact, what can be measured with any precision? In the prenatal and the postnatal period for instance, how does one evaluate objectively a judgment as subjective as the future quality of life of a child? How can it be believed that a biological, radiological or another assessment can predict its future quality of life? Is the part taken by the anticipative imagination not totally disproportionate?

What are the limits when evaluating lives as unreasonable or unworthy? Beethoven, Stephen Hawking, Michel Petrucciani – would they still be born today? There are of course tragic situations; however they are not the most common, far from it.

At the other extremity of life the situation is similar: how to judge the quality of life of another, especially at a time when he or she “feels” less well? How do I judge the quality of my life just after a cancer resulting in blindness has been diagnosed, or a Charcot’s disease (amyotrophic lateral sclerosis), which will asphyxiate me? Relatively good health in the present time has become a standard which will make unbearable its loss in the future. As a result, people resort to assisted suicide or demand euthanasia in order not to see themselves, or to show

¹² John Wyatt, “Les décisions de fin de vie et les jugements sur ‘la qualité de vie’”, Marie-Jo Thiel (ed.), *Quand la vie naissante se termine*, Strasbourg, Presses Universitaires de Strasbourg, 2010 (in press).

to others, what is judged in advance as a status of indignity, or even as “non-person”. Others (a majority?) produce advance directives, as this allows them to “imagine” that the need for these directives will only arise in “extreme cases”, with the goal of maintaining distance. Therefore they hardly ever demand provision of death in spite of the nerve-racking hazards of reality...

As for the elderly, they are almost singled out in our ageing society: as soon as they stop consuming, as soon as their future turns misty or their family, if it still exists, distances itself, so that “logic” claims that death is better than life. Consequently, euthanasia finds its “fine justification” inasmuch as many of the elderly, tired of struggling and obtaining very little, effectively end in giving up and waiting for death.

Thus, the quality of life concept presents a real challenge to our society: either it dismisses human beings placing them in the hands of evaluators, or it institutes and (re)constitutes the human beings as they remain linked to their intrinsic dignity, supporting them and forbidding their reduction to capacities and utility. It is convenient to choose between these two whilst remaining aware of the consequences. According to Folscheid¹³:

“If these are the qualities of life which make a man a man, then man is merely a being without quality. In judging him only on the nature within him, his status of historical being is denied. His humanity is repudiated.”

QUALITY OF LIFE, A REQUIREMENT OF DIGNITY

Instead of being the decisive principle, quality of life can be understood as a requirement of intrinsic dignity. In this case it is regulated by the latter as a principle of respect and equality of rights. If intrinsic dignity is not fundamental, rooted in the human being, it is definitively lost and with it, the basis of all human rights. The latter are only recognized and respected if, from the outset, common human dignity is recognized and respected.

Thus, this primacy of inalienable dignity modifies the manner of understanding of quality of life and its use in practice. It specifies at the outset the equal humanity of everybody, the equality of value and right, the autonomy of every member of the human race. That prime and inalienable quality forms the basis from then on for the obligation to support quality of life, to take care in its

¹³ Dominique Folscheid, “La valeur de la vie” in : Marie-Jo Thiel (ed.), *Quand la vie naissante se termine*, *ibid.*

evaluation, not to decide for another, nor to pass a sentence of indignity, but for supporting an essential equality–brotherhood. Somebody with lesser quality of life is thus entitled to keep the same dignity as everyone else.

Certainly, it will be said, but not everybody can exercise their autonomy and, on the other hand, it can still be felt that one's life lacks dignity.

When the use of autonomy is reduced

This occurs for instance in Alzheimer's disease, a paradigmatic illness particularly evocative for those invoking intellectual downfall and lack of dignity. In fact, aesthetics plays a role all the more essential in quality of life as we are members of a society strongly dominated by image. Physical appearance plays a very strong sentimental and symbolic role. Just as a mother is seized by tender feelings at the sight of her newborn child – and antenatal echography can contribute to this – mental disease, uncontrolled loss of functions considered essential, deterioration of consciousness, loss of interaction with others... so all these elements can suggest feelings of unworthiness if one puts at the beginning, and as the basis of dignity, quality of life as a determining factor. However, of the mother or the elderly person, is one less worthy? If so, is that person not deprived of humanity and can therefore be separated from it?

Giving dignity to both is to use intrinsic dignity as a springboard in the service of quality of life and for engaging in a struggle in which that dignity is also a task and a fight.

It is to attempt to set up a procedure which simultaneously recognizes the autonomy of the other and corrects the lack of *use* of that autonomy: for instance it requires that doctors speak and explain matters to patients, as to anybody else, even if it is known that they will not understand everything, only certain aspects, often associated with emotions. It requires, when a decision has to be taken, the establishment of a team which is prepared to take advice from an external third party, while including the patient in the process.

And when one feels one's life lacks dignity?

Recognizing intrinsic dignity does not imply that every individual experiences it fully, nor always acts in conformity with it. But it is to refuse to build dignity entirely on an expression of psychological feeling and lived experience.

The foundation of dignity would consist either in the characteristics of human beings, on feelings, or in each culture and therefore subordinated to it. Our position is that dignity must be recognized in its intrinsic nature; in other words, that it has to be recognized beyond the qualities, always potentially discriminatory, of human beings, and irrespective of cultural settings. It is indeed from above (on this side of the qualities of the human substance itself) and from below, in a meta-position. Therefore it can be proposed for *all* cultures, as it belongs to no one in particular, inviting everybody to provide singular roots to it, but without monopolizing it, without exhausting it, as it is always beyond all cultures, in an eschatological position, a dignity to be established, a human truth to be unveiled.

Therefore intrinsic dignity can establish links with theoretical and practical¹⁴ developments which are very different, even totally irreconcilable, as at the time of its proposition, when, unestablished, it establishes principles, it is also in a meta-position, as an untouchable, irrefutable value, inviting attestation and possibly protestation. René Simon puts this in the following terms:

- The “attestant” testifies before men, even also before God, to the inalienable dignity of every human being. Even in the absence of immediate results, he must persevere in the name of dignity as a prophetic and eschatological truth assigned to an ethical commitment¹⁵.
- The “contestant” protests, that as not everything is acceptable one must be ready, if required, to risk one’s life for it. Nobody would do this if dignity were a merely relative notion.

The other aspect consists in articulating the various levels inextricably linked to dignity, more precisely in circulating between a fundamental intrinsic dignity, linked to membership of humanity, a subjective, experienced and phenomenological dignity, and finally, an objective dignity, deployed in in real-life and which designates an ethical point of view. As this matter has already been considered several times in the past¹⁶, this last aspect will only be discussed briefly. Intrinsic dignity is fundamental, linked to the individual, ontological. Nobody could exist without being recognized in their constituent dignity and the responsibility which this implies for all others. According to Eric Weil¹⁷ :

¹⁴ The various monotheisms propose for instance specific roots for the dignity concept.

¹⁵ René Simon, *Pour une éthique commune. Réflexions philosophiques et éclairages théologiques 1970-2000*, Paris, Cerf, 2009, p.144.

¹⁶ See note n° 3.

¹⁷ Eric Weil, *Philosophie morale*, Paris, Vrin, 1992, p.131.

“I can demand the respect for my dignity as a human, not because it is I who demands it, but because I cannot demand it for myself without demanding it for every human being and therefore also for me.”

However, that fundamental dignity does not prevent vague yearnings, differentiated feelings of dignity, variable in time and space, linked to both the personal history of each individual and their social roots. This feeling of dignity originates from self-esteem, from self-appreciation, while assuming the complexity of the human condition, even its contradictory aspects. One who reads in the eyes of another, that his life has become useless can also feel himself unworthy to continue. Someone whose quality of life is physically very limited, but who remains deeply attached to one or several relations, can behave with great dignity. This articulation of feeling with intrinsic dignity then becomes essential: as strengthened by that recognition one can go beyond appearance and ill-temper, count more on one or another aspect of the quality of life and allow oneself as well as another to become reimbued with dignity, common to all humans in order to live better.

The third level, the objective displayed dignity, could also be called “ethical dignity” if this expression might not lead to confusion. Indeed the feeling of dignity is not necessarily linked to the ethical quality of actions (for instance, psychological perversion). According to Kant, the intrinsic dignity of beings having their own aims, commands them to comply with the moral law. “The objective dignity displayed then designates for everybody the ethical implementation of their humanity, always at a distance from the ideal, always “only” human and not inevitably guilty, when evil and finiteness are involved. In this case it will be qualified as “objective indignity”. However, we must remember that no human existence could inherently result solely from such an indignity.”¹⁸

The circulation between these three polarities of dignity leads therefore to an assumption of the complexity of being human, to suppress one’s own desire to alienate others or oneself. Of course, this does not offer an immediate response to bioethical questions. But it suggests that one should not idolize realities, potentials or techniques, and take seriously both subjectivity and objectivity. “Detached from that systemic regulation, denied in their reciprocal links, the three levels of understanding and, finally the wealth of dignity, become dystrophic and open the door to numerous potential abuses: formalism, subjectivism, legalism and many others.”¹⁹

¹⁸ Marie-Jo Thiel, “Dignité? Circulez !”, *ibid.*

¹⁹ *Ibid.*

Intrinsic dignity is therefore also a regulating and motivating dialectic notion. It invites respect as well as struggle, attestation and sometimes resistance. It is a gift of the human condition which simultaneously founds human rights and invites to laying bare this dignity in order to live.

Chapitre 5

HUMAN DIGNITY: REGULATIVE PRINCIPLE AND ABSOLUTE VALUE

Nikolaus KNOEPFFLER¹, Martin O'MALLEY²

Rapid scientific, medical and social developments necessitate a structure of legal regulation to deal with the hard cases that push established moral actions and principles into conflict. Such cases should not be resolved by expediency or according to majority opinion. Rather, the process of resolving such cases as well as the solutions themselves ought to respect and reflect the moral convictions of a pluralistic society. The search for common moral bonds between people sharing different ideological positions – religious and secular – is independent from the legal process, but it is integrally associated with it and can learn much from its example of resolving hard cases. Citizens accept the legal system that governs them to the extent that they believe its laws represents their interests and values, and to the extent that they believe they share some

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participatory access to the continuing development of those regulations. This is a way of saying that the law has legitimacy.³ Legitimacy does not imply that the system of law represents a situation of perfect justice, especially in a pluralistic society with divergent notions of justice. Yet legitimacy and respect for the law go hand-in-hand, whether we are referring to constitutional articles or local statutes. While legitimacy and the objective justice of the law are two different things, the effectiveness of the law depends upon a people's conviction that the law reflects their fundamental moral convictions – or at least does not violate them.

The following argument seeks to demonstrate that just as the law's legitimacy requires fundamental principles of human rights, the legitimacy of moral discourse and decisions depends upon the recognition of human dignity as a principle with absolute value. Though this recognition provides no easy solutions, it plays an essential regulative role that provides a framework for resolving cases of conflict. The paper concludes with an example from embryo research explicating the theoretical discussion.

1. HUMAN DIGNITY HAS ABSOLUTE VALUE

1.1. The principle of human dignity was affirmed following the experience of its violation

In 1945, the world community knew the full extent of the Nazi's racially motivated crimes against the Jewish people. The murder of millions of Jews was a singular crime that together with the other atrocities of the period awakened the consciences of people across the world. The depth of the Nazi's inhumanity was also demonstrated by their treatment of other ethnic groups including the Slavs. A statement of Himmler from October 4, 1943 is documented on a memorial plaque in the concentration camp Flossenbürg:

“What happens to the Russians and what happens to the Czechs are matters to which I am completely indifferent. Whatever good blood we can find among them to enrich our own people we will simply take. If necessary, we will steal their children and raise them among us. Whether the other peoples live in

³ The notion of legitimacy here is broad enough to include the range of theories from Frank Michelman to Habermas. It is essentially the basis of the western contractarian principle of democracy.

prosperity or if they are ravaged by hunger – that interests me only to the degree that we can make them slaves to serve our culture. Everything else is uninteresting. Whether digging a tank ditch entails the death of 10,000 Russian women from exhaustion, or not, I am only interested to the degree that the tank ditch is completed for Germany.”

The foundation of these Nazi atrocities consists of two principles:

1. You are nothing, the nation is everything.
2. The Aryan race is uniquely valuable; all other races are inferior and some should be destroyed.

This history motivated the Charter of the United Nations (1945), the Universal Declaration of Human Rights (1948) and the West German Basic Law (1949) to affirm the principle of human dignity unequivocally and thereby reject the Nazis’ two principles. The words of the UDHR (1948): “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.”

The UNDR is very clear, in one article after another, that it is responding to the horrifying human rights violations of the Nazis, responsible for the deaths of more than 20 million people (see Morsink 2001). Against this background, therefore, the principle of human dignity must be understood as standing in contraposition to the two Nazi principles in the following sense:

1. The principle of human dignity affirms the conviction that every person possesses a fundamental subject status. This means that the individual may never be sacrificed for another purpose, whether that purpose is the nation or a utilitarian principle of increasing the happiness of the greatest number of people.
2. The principle of human dignity affirms the fundamental equality of all human beings, regardless of race, skin color, gender, religious or philosophical convictions, wealth, or capacities.

1.2. The Principle of Human Dignity in Light of the Principles of Marxism and Utilitarianism

The Preamble of the UDHR intrinsically links the principles of human dignity and human rights when it recognizes that “the inherent dignity and ... the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” This understanding of human dignity

should be distinguished from the so-called humanism based on Marxist theories. Unlike the Nazis and other fascist theories such as Italian fascism, socialists following Marxist principles did not adopt racist practices or beliefs and actually accepted the fundamental principle of human equality. However, they roundly rejected the principle of universal human subject status. Whereas the Nazis claimed “You are nothing, the nation is everything”, the socialists declared “You are nothing, the party is everything.” Thus Erich Mielke, the former DDR (GDR) minister of national security, declared that “We cannot tolerate a single rogue to survive in our midst. If I have knowledge of one now, he would not survive through tomorrow. There is no reason to delay. Because I am a humanist – that is why I am of such a mind. [...] This whole business against death sentences and executions – its all baloney (Käse) comrades. Just execute him. If necessary, without a court order.”

An ethical system that emanates from the principle of human dignity also differs in principle from utilitarianism. Utilitarianism negates the principle of human subject status, the first principle, in a moral calculus that prioritizes the happiness of the greatest number. Such a calculus places the individual in potentially jeopardy. The second principle of fundamental equality is also relativized within a system that is so teleologically ordered to an end of fostering empirical or subjective quantities of happiness without safeguarding principles for individual persons. Taking the example of preference utilitarianism, the claim is that because happiness is a subjective experience, every person must determine for themselves what is “good” for them. This places a burden on individuals to be capable of cognitive abilities, i.e., recognizing their preferences. A person with severe mental retardation lacks the ability to develop preferences, whereas a so-called healthy person has preferences for such things as education, basic protections, political participation, etc. If the subject is therefore responsible for determining his own good, the resulting society is one that lacks universal rules that treat all people equally (see Singer 1994).⁴

Holding to the principle of human dignity and the associated principles of human rights necessarily precludes treating human beings instrumentally – as merely means, as opposed to ends in themselves. This is a fundamental contrast to fascist systems, of course, to the socialist systems that existed in Eastern Europe, Asia and elsewhere, and to forms of utilitarian convictions that continue to inform political decisions today. Holding to a principle of human dignity precludes, therefore, the instrumentalization of human beings for economic,

⁴ Perhaps one could make an argument for Rule Utilitarianism, where the greatest possible happiness requires that the dignity of every person is recognized and protected.

social, religious or political ideals. The classic formulation of this principle was made by Kant in the categorical imperative, the well-known end-in-itself principle (1785). “Act in such a way that you always treat people as ends, and never merely as means to an end. This applies to yourself and every other person.” This formula is clearly open to various interpretations and applications, and it does not lend itself to a simple or obvious ethical determination. Rather, its use in ethics is in shedding light upon when persons are being instrumentalized such that they have become merely instruments, and they are thus not being treated as ends in themselves. A common misinterpretation of the “never merely as means” principle includes the following objection: We use people as means all the time, such as for example, when we ask for directions to the train station. Yet asking a question that treats the questioner as a means does not at the same time rob that person of their status as an end in themselves. Asking for directions allows the person to respond or not in freedom, without exploiting them, and thus they are not “merely” a means.

This Kantian mode of ethics has influenced the German courts’ interpretation of human dignity. The principle of “the subject status of every person” has been integrated into the way the German highest court interprets the Basic Law’s first article on human dignity. According to the Federal German Constitutional Court, the principle of human dignity prohibits any action that “treats a person simply as an object of the state, whether through direct action or the absence of action, and thereby fundamentally endangers their status as a subject” (BVerfGE 50, 166/175; 87, 209/228).

1.3. Differentiating Other Conceptions of Dignity

Human Dignity is to be differentiated from the following:

1. Dignity understood generically. The dignity of human beings as a species is a dignity “in that weak sense in which we also ascribe to the human body as having ‘dignity’” (Birnbacher 2001, 400). Such a generic dignity would not be violated if, for example, the rights of some random individual were violated. But this is precisely what is involved with the determination of human dignity as a fundamental principle of equality and dignity.
2. Dignity in the sense of a claim demanding not to be humbled. This sense of dignity does not achieve a universal level and is in many ways dependent upon other people to grant the dignity whether through a recognition or at least a level of tolerance. Further, such a notion of

dignity has also been associated with the view that only those possessing a certain degree of mental competence can have such a dignity violated.

3. Dignity with distinct levels, such as that which the Swiss constitution grants animals, i.e., a dignity inferior to that of humans. It is inherently contradictory to posit various levels of a dignity principle that claims fundamental equality as well as subject status. How could one assert equality while simultaneously differentiating levels of equality status? It is meaningless and somewhat silly to claim that some are more equal than others. Similarly, there can be no differences in claims to dignity and likewise to the need for the protection of dignity.

Human dignity and fundamental rights associated with it (to life, physical integrity, freedom of religion, etc.) are not dependent upon persons' capacities or upon how they exercise them. Rather, persons have dignity simply by virtue of their being human beings. As a crucial principle for every human society, human dignity, in the sense argued for in this paper, is therefore only alienable through death. As such, it should also be differentiated from the following:

4. Social dignity, granted by society because of a public role (Latin, *dignitas*). This is the dignity of rank and respect, and it can be lost or alienated. Such is the dignity owed a bishop or a mayor. Persons have it by virtue of their social position, though it is like honor in the sense that its quality is dependent upon a range of social factors and its value can be degraded.
5. Expressive dignity. This is the dignity earned by sustaining one's station in life. One earns it by meeting social expectations and by persevering in family and occupational roles even under difficult circumstances. Examples include the honest banker, the hard-working farmer, the knowledgeable salesperson, etc.
6. Moral dignity. This dignity is granted by society because of moral action, the hero's dignity. Such honor is bestowed upon people in society through actions expressing the moral standards of society: of courage, strength, good will, sacrifice, ... etc. Moral dignity can also be lost through less revered behavior or the shifting of social mores.
7. Aesthetic dignity. Mountains or cathedrals have dignity because they are distinct and visually awesome.

2. THE PRINCIPLE OF DIGNITY AS A REGULATIVE PRINCIPLE

The principle of dignity should not be confused with less fundamental and more malleable moral principles. Such principles might be amendable, negotiable or repealable under specific conditions or time-sensitive contexts. For example, physicians have standard disinfecting practices before surgery that include washing hands. If an emergency arises that demands urgent action, however, the surgeon might forgo the standard protocol with its hand-washing rule. Such a decision under such circumstances would even be praiseworthy.

The principle of dignity, by definition, cannot be scrapped in the pressure of competing principles or compromising circumstances. It is a claim with universal validity and there can be no situation where its violation is praiseworthy or even tolerable. Precisely because of its fundamental nature, the principle should be considered not merely one important principle among others, but rather as a central principle necessary for understanding and applying all moral reasoning. It thus is most appropriately categorized as a meta-principle.

Human dignity, as a meta-principle, dynamically affects the relationship of the moral actor and the situation requiring moral action. What does this mean? It means that, like Kant's categorical imperative, the principle has a formal character with content is supplied by the moral actors and decisions made. Concrete decisions and actions together with reflection upon the principle itself take place within a specific context. Over time, the utilization of the principle provides a dynamic of learning achieved by the continual challenges posed by either new situations, or the internal contradictions that emerge from previous decisions.

This point may seem either blatantly obvious or overly theoretical, so the analogy of moral to constitutional argumentation should help clarify it. A nation's constitution is a necessarily short and general legal outline, and most constitutions have generously borrowed from other nations' constitutions in both structure and content. The UDHR, for example, had a powerful influence on the writing of the West German Basic Law that was promulgated in 1949. Yet that document was a purely formal and theoretical thing before it was put to the test by inevitable challenges. As those challenges were resolved during the course of the nation's history, the actual words of the Basic Law may have remained the same, with modest amendments, but the nation's legal system achieved a hard-won pattern of understanding. The continual negotiating and investigation in no way constitutes an erosion of the meaning or absolute validity of the principle of

human dignity. Instead it reveals the authors' conviction that the principle of human dignity possesses a special plasticity that parallels the diversity of authentic but unique human cultures. Thus the meaning contained in the principle unfolds in its use in a way that is not entirely predictable from an abstract consideration.

The principle of human dignity is therefore a different kind of principle than individual rights. Human dignity is not the simple sum of the fundamental rights and duties given to all humans implicitly, but rather dignity is their foundation. It would not be hard to demonstrate that virtually all ethical approaches allow the restriction or dismissal of basic rights under specified circumstances. Self-defense is a good example of when rights and duties can come into collision. And the law follows this broad moral consensus, as the German Basic Law succinctly demonstrates with reference to the right to life, physical integrity and personal freedom: "These rights may be interfered with only according to the law" (article 2 paragraph 2 GG). The unconditional principle of human dignity, however, is subject to no conditions (such as certain restrictions imposed by law). Because it is the foundation of basic human rights, it exists on a different level. It cannot be denied. Rather, either dignity is honored, or it is not.

Therefore, human dignity, in contrast to principles of human rights, is a unique and higher-order principle. It is the principle "behind" the principles, the foundation of the edifice of ethical principles. Klaus Dicke (2002, 115) therefore speaks of dignity as the fundamental principle in the light of which all political and legal decisions are made. We would add ethical decisions to that list as well.

3. THE ROLE OF EXPERIENCE IN THE FOUNDATION OF HUMAN DIGNITY

The recognition of human dignity as a principle is rooted in a collective experience: people experienced the terrible consequences of the violation of this dignity, and they thereby recognized the need to establish a new world organization grounded in the transparent and concrete principle of human dignity together with the associated human rights and values. That is why the preamble of the UDHR (1948) begins with the fact that only the "recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The Preamble also cites three core values to be preserved by the human dignity and human rights. These values were distinguished as essential for a successful human life. The recognition of human dignity and human rights and related

values of freedom, justice and peace have a fundamental objective of creating conditions so that human life could be protected and thereby succeed.

We are not arguing that the experience of human atrocity is a necessary element for recognizing human dignity and its associated values. People have also come to be convinced of these principles' value and necessity without such an experience, and have testified to their consent with heroic actions of implementing the values in concrete ways. Many of our contemporary generations have lived their whole lives in peace and have never experienced war firsthand. And yet they are convinced of the perduring human values of life, liberty, justice and peace. They are working for peace in the world by various means available to them. Ironically, the generation of students who studied in the 1950s were in some ways less sensitive to violence and suffering. For example students of that era who studied Catholic religion were thrilled with the Bible accounts of the God of Abraham, Isaac and Jacob throwing the Egyptians into the Red Sea and thus saving the people of Israel. Students from the 1970s, however, were concerned with the nature of a God who could be so cruel in simply killing so many Egyptians.⁵ And today, the religious figures who function as shining examples are many people of peace, like Mahatma Gandhi and Martin Luther King.

But what does it mean to say that the values of human dignity and human rights and their associated values such as life, freedom, justice and peace have been experienced? This way of speaking indicates that these values were not constructed. They do not have their existence because of a process of negotiation and their continuing existence is not dependent upon the reasonableness of their constructions. Rather, this approach leaves open the question whether this coming-to-conscientiousness and affirmation of dignity involved a process of (re-)discovery such as natural law theorists would argue, or if it was a process of true historical innovation. The mothers and fathers of the UDHR were very careful in avoiding a position regarding this question, and the intervention of the Chinese representatives insured that they avoided any explicit reference to natural law doctrines.

It is possible to understand human dignity, human rights and the rights protected in the values to life, liberty, justice and peace as real historical innovations. The argument in favor of innovation is a compelling one because at one point in history there was no trace of them. Historians have shown the development of rights as they expanded from subjective rights first for

⁵ I thank my uncle, Father Karl Jahnke, who hat taught Religion for forty years at a secondary school, for this example.

individuals and special groups, then to national citizens before being universalized in the American and French constitutions. And there are fewer but analogous treatments of human dignity, freedom, justice and peace as they developed through the centuries. If they undergo development as the history seems to clearly show, how do we understand the relationship between human experience and the creation of norms and values such as human dignity and human rights? If they are indeed innovations, does the recognition of them as such lessen their validity and force? Our argument here is that they should be recognized as innovations and not primarily as constructions because the values have the property of having been developed over history on the basis of human experience and reflection. And we argue that their innovative emergence in no way harms the absolute nature of human dignity.

Human dignity's historical character as an innovation, and not a construction, acknowledges the human agency involved in achieving such an understanding of the importance of protecting every single person. A construction implies the creation of something for a specific purpose, such that another construction might also serve that purpose. But, dignity is not a construct that can be torn down and replaced with something else. It is an achievement that represents something true, such that its loss through deconstruction could not be replaced with another constructed understanding of human life. The recognition of dignity won through bitter experience remains a poignant landmark. We should not forget or lose the depth of urgency contained in the demand "never again". The innovation with respect to human dignity implies the achievement or birth (Foucault, Bottero) of a principle that is unique and irreplaceable insofar as it reveals the value of every human person.

4. THE QUESTION OF THE EXTENSION OF HUMAN DIGNITY AND HUMAN RIGHTS

The global consensus on human dignity and human rights, as it is expressed in international declarations, applies to all people. And it can be understood as gaining clarity and wide application through an experience of consensus among peoples of widely different world views and religions. "All people are born free and equal in dignity and rights." All people are enclosed within the UDHR's mantle of protection regardless of their capacities, location or material circumstances. This mantle of protection means different things for different peoples and speaking pragmatically, as Roberto Andorno has argued, it is "soft

law” without authority to overrule systems of national law.⁶ But as soft law it remains a form of law and is not simply list of ethical guidelines or hopeful aspirations. The movement from soft law to “hard” law happens in two general ways. Either it takes the form of binding treaties or it develops as part of nations’ customary law. This development, in both cases, reveals the persisting relevance of the UDHR’s trajectory from the experience of moral tragedy, to the innovation of human dignity and human rights, to the concretization of the international declaration in national and local laws. The moral force of horror at the violation of human dignity remains relevant even as that experience takes the form of specific laws promulgated in national constitutions and legal statutes and enforced by their respective governments. Moral conviction influences consensus regarding the law, and this is no small aspect of the law’s continuing legitimacy.

The UDHR’s source in experience continues to influence how we perceive and condemn violations of human rights and human dignity. Revulsion at Nazi atrocities makes us especially sensitive to situations when people are targeted as less than human. Every person is born with dignity. It is his genuine right. This claim to rights, which is currently linked to no other criterion than that of being human, rose in this world from the experience of what happens when human rights are excluded from people for various reasons: people can be excluded from the legal community and murdered. This is why we immediately recognize the name of “Auschwitz” as a symbol of violated human dignity. We continue to tap into its memory when we condemn analogous contemporary violations of human dignity, and the insight of its lesson can be expanded to recognize the injustice perpetrated because of other race, gender, sexual preference, ... etc. differences among human beings. The experience of Auschwitz arms us with insight to see the injustice and potential violence lurking behind of all attempts to define who belongs outside the circle of human beings. Such an attempt to exclude is synonymous with the authorization of an ultimately arbitrary court composed of citizens. They judge who is to be included as worthy of social inclusion, and who is not. (Schweidler 2003, 25) The memory and lessons of Auschwitz continue to reinforce the necessity of “a public commitment to the unmitigated respect for human dignity” (ibid., 24).

The insight from section 3 is that we have a practical as well as moral motivation for protecting the universal aspect of dignity. If we allow exclusions to what it means to be “human”, or if we allow exceptions in a universal

⁶ Andorno, Roberto, “Human dignity and human rights as a common ground for a global bioethics.” *Journal of Medicine and Philosophy*, 2009, 34(3): 223-240.

principle, then we have cracked the rational structure of the principle itself. We then do not have a weakened dignity, we have a broken principle.

The experience of 1933 to 1945 is unique, especially in its motivation of the UDHR, yet the insight into both the universality of human dignity and the potential for humans to violate that dignity is not essentially bound to any single remembrance. In fact, the singular focus on one experience screens us from the dangers to human dignity that fall beyond the scope of what the Nazis did. The international community is pretty good at recognizing and condemning certain kinds of crimes, but others such as economic depravity and mass hunger go effectively unaddressed. The Declaration just leaves open, for example, the question regarding when human dignity applies to a human organism. In addition, the Declaration leave the question open regarding how we might apply the principle of human dignity to a person wishing to end their own lives for whatever reason.

5. EXAMPLES FROM MEDICAL ETHICS

This section applies examines the classic cases of conflict arising from the lack of consensus regarding precisely when we can say that human life begins and ends. The attribution of human dignity is difficult in cases without this hard line of consensus.

5.1. Beginning of Life

Life begins: Essentially three positions advocated:

- Position 1: claims that human dignity exists from conception, namely with the union of genetic material from the egg and sperm cells.
- Position 2: claims that human dignity belongs to the embryo from the formation of the primitive streak.
- Position 3: claims that the human embryo or fetus has human dignity at a later date, the latest at birth.

Representatives of the first position cannot allow any adverse treatment of the embryo, whether it be for research on the embryo or obviously abortion. Cases involving saving the mother's life might be allowed with a double-effect or similar rationale. But the embryo from the moment of conception is a human due every element of dignity that is due to a university professor. If one grants an

embryo the status of human being, then it is not a reach to apply Kant's "never as a means" categorical imperative. A person ought never to be sacrificed as a means for another person's well being, and that prohibition also applies with respect to the health of future generations. (Schockenhoff 2008, 127) Representatives of the second and third positions do not see the life of the embryo as a full-standing human person, and seek to balance its well being with the good to be gained from embryo research. But only the representatives from the third position could possibly give ethical sanction to abortion. For the third position, the dignity and self-determination of the mother have over-riding preeminence. Of course, following the rulings of the German Constitutional Court, most abortions are illegal in Germany.

5.2. End of life

At life's end, the question must be understood in a different way. For the patient with a very serious illness, whose disease is irreversible and who may not have long to live, the relevant question is whether that person might conscientiously decide to end their own lives. There are two mutually exclusive positions and both rely on human dignity. One position holds that the dignity of the person dying must be respected. The other position forbids any actions which are deliberately intended to shorten the patient's life because the dignity of life cannot be served by ending life.

After a position now to demand respect for the dignity of the dying man fulfill his wish, after another request, this position may not be met, just because life is the necessary condition that someone belongs to human dignity.

6. CONCLUSION

These two situations also show how helpful is the principle of human dignity for the differentiation of conflict situations. But they also show why additional assumptions are necessary if one wants to arrive at clear solutions. Additionally, it is clear to see, that the absolute value of human dignity, the understanding of which was made possible with the experience of its negation, in certain contexts has only regulatory significance, but is not capable of determining uncompromising solutions.

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Chapitre 6

LA DIGNITÉ, PRINCIPE FONDATEUR DU DROIT

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Au plan international, comme au plan national, la dignité est un principe emblématique de tout texte intéressant les questions biomédicales. Très nombreux sont les textes internationaux et constitutionnels qui font référence au principe de dignité. Le caractère souvent récurrent des formules employées démontre l'inspiration commune de nombre de ces textes. L'on a parfois l'impression qu'il s'agit d'une figure emblématique, point de passage obligé d'une déclaration des droits. Ainsi, la Déclaration sur la protection du génome humain, élaboré par l'Unesco et adopté par l'Assemblée générale de l'ONU inscrit dans son article 1 le principe selon lequel « la protection du génome humain a pour but la sauvegarde de l'intégrité de l'espèce humaine comme valeur en soi, ainsi que la dignité de chacun de ses membres ». L'article 12 prévoit que les Etats encadrent les activités de recherche, dès lors que cet encadrement est nécessaire, notamment, à la sauvegarde de la dignité de la personne humaine. De même la Déclaration universelle sur la bioéthique et les

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droits de l'homme adoptée par la Conférence générale de l'Unesco le 19 octobre 2005, précise dès l'article premier que « La dignité humaine, les droits de l'homme et les libertés fondamentales doivent être pleinement respectés ». La même construction se retrouve dans les textes européens. Le principe de dignité ne figure pas, en tant que tel, dans la Convention européenne des droits de l'homme de 1950. La Cour européenne des droits de l'homme a cependant considéré¹ que ce principe était implicitement exprimé, notamment, par la protection de la vie et (article 2) l'interdiction des traitements inhumains ou dégradants (article 3). Plus précisément, la Convention dite « bioéthique », ou d'Oviedo du Conseil de l'Europe est intitulée « convention pour la protection des droits de l'homme et de la dignité de l'être humain à l'égard des applications de la biologie et de la médecine ». La référence à la nécessité de protéger la dignité de l'être humain se retrouve dans le Préambule du texte comme dans son article 1. Le droit de l'Union européenne n'échappe pas à cette évolution. La Charte des droits fondamentaux de l'Union européenne est le premier texte relatif à la protection des droits fondamentaux et à vocation généraliste à consacrer un chapitre spécifique aux questions biomédicales regroupées sous l'intitulé « la dignité humaine »². C'est également en se référant à ce principe que la Cour de justice des Communautés européennes va apprécier la conventionnalité de la directive sur la protection juridique des inventions biotechnologiques en ce qu'elle concerne les éléments du corps humain³.

Ainsi, et c'est également vrai pour le droit français, le principe de dignité se présente comme le principe fondateur du droit des pratiques biomédicales. Si l'on s'interroge sur l'effectivité de cette construction, il convient d'abord que le principe de dignité soit un concept juridiquement identifiable, puis qu'il soit un concept juridiquement efficient.

I. LA DIGNITÉ, UN PRINCIPE JURIDIQUEMENT IDENTIFIABLE⁴

Cette unanimité dans la reconnaissance du principe masque un certain flou dans la définition de sa signification et de sa portée. Certains auteurs se sont

¹ Par exemple décision C. Goodwin c. Royaume Uni du 11 juillet 2002.

² Cf B. Mathieu, La Charte européenne des droits fondamentaux et la bioéthique, *Revue européenne de droit public*, 2002, vol. 14, n°1, p. 841.

³ 9 octobre 2001, Pays Bas c. Parlement et Conseil de l'Union européenne.

⁴ Sur ces questions, cf. A. Laude, B. Mathieu, D. Tabuteau, *Droit de la santé*, PUF, 2007 et B. Mathieu, *La Bioéthique*, Dalloz, 2009.

même interrogés sur l'aptitude de la doctrine à en déterminer le sens⁵, cette fonction étant réservée au juge. En ce sens, le principe de dignité ne serait qu'un principe directeur, dont la substance ne peut être appréhendée que par une démarche casuistique. L'on peut cependant considérer qu'il y a un paradoxe à considérer à la fois que le principe de dignité est le principe cardinal en matière de bioéthique et qu'il n'a pas de signification préétablie. En réalité, cette prudence qui se manifeste dans l'appréhension juridique du principe traduit le plus souvent la volonté de ne pas encadrer, a priori, et de manière restrictive, les développements potentiels des pratiques biomédicales. En fait, si l'on examine le sens des formulations qui ont conduit tant le juge européen que le juge constitutionnel français, à reconnaître le principe de dignité, il ne faut pas faire un grand effort pour considérer que, s'inspirant du courant humaniste et de la philosophie kantienne, il signifie d'une part l'égale appartenance de chaque être humain à l'humanité conçue comme une commune nature et, d'autre part, l'interdiction de traiter un être humain comme un objet, corrélation de sa reconnaissance comme sujet.

Comme pour tout principe juridique, sa proclamation ne dispense pas d'analyser sa portée juridique. Sa spécificité tient, notamment, au fait qu'il est la matrice d'un grand nombre de droits, dont certains son directement applicables dans le domaine biomédical, qu'il présente, contrairement aux autres droits, un caractère absolu et enfin qu'il se présente essentiellement sous la nature d'un droit objectif.

1. Le principe de dignité, principe matriciel

Parmi les principes relatifs aux droits et libertés fondamentaux, certains principes sont des principes majeurs, des « principes matriciels » en ce qu'ils engendrent d'autres droits de portée et de valeur différentes. Ainsi, le droit à la dignité est la matrice d'un certain nombre de principes dérivés. Il en est ainsi des principes de la primauté de la personne humaine, du respect de l'être humain dès le commencement de sa vie, de l'inviolabilité de l'intégrité et de l'absence de patrimonialité du corps humain, ainsi que de l'intégrité de l'espèce humaine⁶. De même, selon la Charte des droits fondamentaux de l'Union européenne, dérivent du principe de dignité, le droit à la vie, le droit à l'intégrité de la personne, l'interdiction de la torture et des peines ou traitements dégradants et l'interdiction de l'esclavage et du travail forcé.

⁵ Cf s.d. C. Girard et S. Hennette Vauchez, *La dignité de la personne humaine*, PUF, 2005.

⁶ Conseil constitutionnel, décis. 94-343 DC.

2. Le principe de dignité, principe indérogeable

En Europe continentale, le principe de dignité occupe une place prééminente au regard même du principe de liberté individuelle. Ainsi, il peut être apporté des restrictions aux libertés individuelles au nom du respect du principe de dignité, alors que la situation inverse n'est pas admise. C'est ce qui ressort nettement de la décision rendue par le Conseil constitutionnel français, en 1994, à propos des lois de bioéthique.

Ce caractère absolu se retrouve dans d'autres ordres juridiques. Ainsi la Charte des droits fondamentaux de l'Union européenne proclame que « la dignité humaine est inviolable ». Ce caractère absolu du principe de dignité ne se retrouve pas nécessairement dans les principes dérivés. Ainsi le droit à la vie n'est pas un droit absolu. De fait ces droits dérivés, qui contribuent à donner de la substance au principe de dignité, entrent, en concurrence avec d'autres droits fondamentaux ou d'autres exigences, en particulier la liberté de la recherche et les libertés économiques.

3. La dignité, un droit objectif

Une première analyse, en amont du droit positif, peut conduire à considérer que la dignité exprime l'essence de l'humanité, la dignité de l'homme est donc la reconnaissance de l'appartenance à cette humanité. La dignité peut également être considérée comme le principe fondateur des droits de l'homme, principe dépourvu d'effets directs. En ce sens l'explication de la Charte des droits fondamentaux de l'Union européenne « établie sous l'autorité du Præsidium de la Convention européenne »⁷, précise que la dignité est la base même des droits fondamentaux. Mais comme l'affirme également le même texte, elle doit également être appréhendée comme un droit fondamental. C'est cette double nature qui explique la place particulière qu'elle occupe au sein du système des droits fondamentaux. Son appréhension comme un droit subjectif, c'est à dire un droit dont l'individu est titulaire, qu'il peut opposer à toute autorité publique ou à tout autre particulier et pour la protection duquel il peut s'adresser à un juge, conditionne son effectivité.

Cependant, le principe de dignité est essentiellement un droit objectif. En ce sens, indépendamment, de toute action individuelle en vue de sa protection, il

⁷ Qui a rédigé le projet de Traité établissant une Constitution pour l'Europe dans lequel la Charte est insérée.

s'impose comme une obligation que chacun doit respecter. Le principe de dignité n'est pas un précepte moral. Il n'impose à l'individu, dans ses rapports avec lui-même, aucune limite. Il interdit de porter atteinte à la dignité d'autrui, le consentement d'autrui ou l'incapacité d'autrui à consentir, ne levant pas cet interdit ou ne justifiant pas l'atteinte.

II. UN PRINCIPE CONCURRENCÉ : DIGNITÉ VERSUS LIBERTÉ

En réalité, le droit applicable aux pratiques biomédicales montre que deux logiques s'affrontent. Elles prennent toutes deux appui sur les deux principes qui sont au fondement de l'ordre juridique, celui de liberté et celui de dignité. Le premier est un principe qui s'inscrit dans une vision libérale, individualiste et subjectiviste du droit. La liberté de l'homme est également un principe conditionné par l'aptitude à la liberté de celui qui en est le titulaire. Le principe de dignité s'inscrit dans une vision humaniste et objective de l'homme et de ses droits. C'est un principe inconditionné, seule la qualité d'être humain conditionne sa dignité. Bien sûr, ces deux principes concourent ensemble à la protection de l'individu. Ils sont cependant susceptibles d'entrer en conflit. Par exemple, la liberté ne peut s'appliquer à l'homme définitivement inconscient, elle concerne difficilement le faible d'esprit. La dignité protège également l'imbécile, l'homme en fin de vie. Il peut y avoir des conditions de vie insupportables, il n'y a pas de vie indigne d'exister. Poussée à ses limites, la liberté, permet à celui qui le souhaite de vendre ses organes, de devenir objet ou de rester sujet. La dignité au contraire interdit à l'homme de traiter l'homme en objet, alors même qu'il y consent. La dignité n'est pas, juridiquement, une règle morale qui pèse sur le sujet. En revanche, la dignité formule un interdit, celui de ne pas utiliser un tiers comme un objet à une fin qui lui est étrangère.

L'on pourrait trouver de nombreuses traces de ce conflit, par exemple, à son paroxysme, dans ce qui oppose Sade et Kant⁸. Plus concrètement, la philosophie anglo saxonne fondée sur l'utilitarisme et le culte de la liberté, et de tradition protestante, s'avère plus ouverte aux techniques biomédicales que la philosophie des sociétés de l'Europe continentale, largement marquées par l'influence du catholicisme et du principe de dignité.

Liberté contre dignité, démocratie contre dogme, progrès contre réaction, libre épanouissement de l'individu contre contraintes morales, libre pensée

⁸ Cf. F. Ost, *Sade et la loi*, Odile Jacob, 2005.

contre pesanteurs de la religion, voilà à quoi se résume le débat chez certains auteurs⁹. Prenons, à titre d'exemples, deux ouvrages qui dénoncent les critiques de l'évolution du droit et des pratiques biomédicales fondées sur le principe de dignité humaine.

Cependant la référence à un système de valeurs, fut-il celui sur lequel est construit l'ordre juridique, n'est pas idéologiquement neutre. Le choix entre la liberté et la dignité comme principe cardinal ne s'impose pas de lui même. Il relève d'une adhésion à une conception que l'on peut qualifier d'idéologique de l'homme et de la société. De ce point de vue, le principe de dignité est probablement ancré dans une culture qui place l'individu au centre de l'ordre spirituel et social. Bien qu'il vise à l'universalité, ses racines sont probablement substantiellement occidentales. Cet engagement idéologique du juriste est légitime, lorsqu'il s'attache à rechercher, au fondement de l'ordre juridique positif, les valeurs qui ont vocation à en déterminer le sens, voire même à défendre ces valeurs. La position inverse est particulièrement dangereuse lorsqu'il s'agit de questions aussi fondamentales que celles qui relèvent de la bioéthique. Comme le relève Alain Supiot : « Ce sont ces vérités très simples que l'expérience des horreurs de la seconde guerre mondiale avaient remises dans la mémoire des hommes et qu'oublent de nos jours les juristes qui, renouant avec les idéaux positivistes de l'avant-guerre, prétendent, au nom de la science, que tout « choix de valeur » relève de la morale individuelle et doit demeurer extérieur à la sphère juridique »¹⁰. Il convient cependant que l'analyse distingue le postulat, qui ne peut être vierge de toute idéologie, du raisonnement proprement juridique. Ainsi l'affirmation selon laquelle « les hommes naissent libres et égaux en droit » est un postulat indémontrable sur lequel le droit est fondé. Déterminer si certaines discriminations sont acceptables, au regard de ce principe, relève essentiellement de l'analyse juridique.

En fait le relativisme auquel aspire le juriste ou le philosophe au soutien d'une conception délibérative de la démocratie, ou d'une vision strictement positiviste du droit, favorise le fort au détriment du faible en se refusant les moyens d'influer sur le cours des choses. Les droits subjectifs protègent ceux qui ont les moyens de se défendre, leur infinie multiplication affaiblit chacun d'eux. Les droits

⁹ Sur cette question, cf notamment, O. Cayla et Yan Thomas, *Du droit de ne pas naître*, Odile Jacob 2002, G. Girard et S. Hennefet Vauchez, *La dignité de la personne humaine, Recherche sur un processus de juridicisation*, PUF, 2005, B. Mathieu, *Playdoyer d'un juriste pour un discours bioéthique engagé*, in s. d. N. L. Douarin et C. Puigelier, *Science, éthique et droit*, Odile Jacob, 2007.

¹⁰ *Homo juridicus, essai sur la fonction anthropologique du droit*, Le Seuil, 2005.

objectifs définissent des interdits qui s'imposent à chacun, alors même que la victime potentielle ne peut se défendre.

La stratégie, consciente ou inconsciente qui vise à relativiser ou à affaiblir la portée du principe de dignité permet d'éroder le seul obstacle qui se dresse face à l'instrumentalisation de l'homme par l'homme. L'économie a aujourd'hui besoin du matériau humain comme elle avait, hier, besoin de la force de travail de l'homme. L'individu n'est aujourd'hui pas plus protégé par le seul principe du consentement que le travailleur ne l'était au XIX^e siècle par le seul principe de la liberté contractuelle.

REVUE DE LIVRES

Pierre Murat (dir.), *Droit de la famille*, 4^e édition, ISBN 978-2-247-05246-2, Dalloz, Paris, 2008, 98 euros.

Hommage à celle qui en a initié la rédaction, le Prof. J Rubellin-Devichi, cette quatrième édition intègre les nombreuses réformes, qui tentent d'harmoniser les droits applicables aux différentes familles et de mieux protéger les personnes vulnérables. Elle innove également par la volonté de traiter dans un même ouvrage le droit interne et le droit international, la circulation des familles hors frontières n'étant plus une exception.

Roger Klaine, *Les valeurs de l'occident et la Bible*, ISBN 978-2-204-08721-6, Cerf, Paris, 2008, 12 euros.

Destinés aux jeunes en quête d'autre chose que « l'argent », « ce petit bouquin » vise à introduire et éclairer sur les valeurs de notre monde ceux qui cherchent à avoir un but (autre que matériel) pour réussir leur existence d'homme.

Bartolomé de Las Casas, *L'Evangile et la force*, ISBN 978-2-204-08746-9, Cerf, Paris, 2008, 19 euros.

Dans le premier et le plus violent affrontement entre l'Eglise et la colonisation, le dominicain espagnol tente de démontrer avec éloquence et zèle l'incompatibilité absolue entre le message de l'Evangile et le recours à la force. Ce contretemps des saintes écritures est ce qui leur permet encore aujourd'hui, ainsi qu'à la parole de B de Las Casas, d'être un vivant manifeste pour les impératifs de la conscience chrétienne vivant dans un temps qui reste agité par la violence et les injustices.

C. Byk

RÉSUMÉS — ABSTRACTS

— *Pierre LE COZ*

DIGNITÉ ET LIBERTÉ : VERS UNE CONTRADICTION INSOLUBLE ?

La dignité est un trait distinctif que notre culture a choisi de rattacher à la personne. Valeur inconditionnelle, la dignité est l'apanage de l'homme. Il va de soi pour nous aujourd'hui que quels que soient son statut mondain, son âge, son sexe, la couleur de sa peau, son état de santé, etc., un homme possède une dignité. Pourtant, au regard de l'histoire, rien ne paraît moins spontané que d'attribuer à tous les hommes une égale dignité. L'idée d'une dignité ontologique, d'une dignité enracinée au plus profond de l'être humain, est le fruit d'une longue et laborieuse histoire qui porte la marque de la culture judéo-chrétienne, de la philosophie des Lumières, et des dispositions juridiques internationales consécutives aux atrocités commises lors de la seconde guerre mondiale.

Cependant l'inflation sémantique du concept, désormais omniprésent dans les textes de droit, les débats de société ou les recommandations éthiques, menace de le faire sombrer dans l'insignifiance. Au lieu de féconder l'argumentation, il devient un prétexte pour se dispenser d'avoir à argumenter. Concept au contenu imprécis, la dignité est devenue au fil du temps une sorte de mot magique qui permet, au nom de l'éthique, de défendre une prise de position et son contraire. L'argument de la dignité permet ainsi de justifier la dépénalisation de l'euthanasie (on attenterait à la dignité d'un être en lui refusant le droit d'en finir avec une vie qui n'est plus que souffrance) et sa condamnation (on ferait injure à la dignité de l'homme en apportant pour seule réponse à sa demande de soutien moral l'administration d'un produit létal). Confondue avec l'exercice de la liberté ou la qualité de la vie, la dignité tend fâcheusement à cesser de définir une valeur inconditionnelle ; elle devient une propriété malléable, fluctuante, parfois même considérée comme relative aux conditions de vie ou à l'état de dégradation physique et mentale.

Mots-clés : Liberté, Dignité, Kantisme, Euthanasie, Soins de fin de vie, Valeur de la vie, Qualité de vie.

DIGNITY AND FREEDOM: TOWARDS AN INSOLUBLE CONTRADICTION?

Dignity is a distinctive trait that our culture has chosen to attach to the individual. Dignity is an unconditional value and the prerogative of man. It goes without saying for us today that whatever his worldly status, his age, his sex, the colour of his skin, his state of health, etc, a man possesses dignity. However, from the point of view of history, nothing seems less spontaneous than to attribute to all men equal dignity. The idea of an ontological dignity, a dignity rooted in the depths of the human being, is the fruit of a long, laborious history which bears the mark of Judeo-Christian culture, of the philosophy of the age of Enlightenment, and of the international legal clauses that followed the atrocities committed during the second world war.

Yet the semantic inflation of the concept, henceforth omnipresent in texts of law, society debates or ethical recommendations, threatens to make it sink into insignificance. Instead of enriching the argument, it becomes a pretext for not having to argue. A concept with an imprecise content, dignity has become through time a sort of magic word which, in the name of ethics, makes it possible to defend any position and the contrary. Thus the dignity argument makes it possible to justify the depenalising of euthanasia (it would be an attempt on the dignity of a being if he was refused the right to put an end to a life which is nothing but suffering) and its condemning (it would be an insult to a man's dignity if the only answer to his appeal for moral support was the administration of a lethal substance). Confused with the exercising of freedom or the quality of life, dignity has a regrettable tendency to cease to define an unconditional value; it has become a malleable, fluctuating property, sometimes even considered as related to living conditions or the state of physical and mental breakdown.

Key-words: Freedom, Dignity, Kantism, Euthanasia, Terminal care, Value of life, Quality of life.

— *Luka TOMAŠEVIĆ*

DIGNITÉ HUMAINE : UNE APPROCHE PHILOSOPHIQUE ET THÉOLOGIQUE

Nous utilisons tous fréquemment et allègrement le terme « dignité humaine ». Ce terme existe aussi dans la législation, dans les déclarations et les constitutions de certains pays, à commencer par l'UNESCO, l'OMS, le Conseil de l'Europe. Ils ont tous la même inspiration d'atteindre le même objectif : la protection de la dignité humaine. La dignité humaine semble être un principe relatif à la protection de la vie elle-même, à la protection de la santé ; elle est également reliée à la recherche. Mais, aujourd'hui il est nettement plus difficile de déterminer la signification de ce terme et les fondements sur lesquels il est basé.

La dignité humaine est-elle quelque chose d'objectif ou est-elle fondée sur des valeurs culturelles qui varient au cours de l'histoire ?

La première découverte de la dignité humaine se trouve-t-elle dans son auto-détermination contre le pouvoir de la communauté, c'est-à-dire l'état ? Que disent la philosophie et la théologie chrétienne sur la dignité et quelles sont les implications bioéthiques de notre époque ?

L'auteur nous présente d'abord le développement du sens du terme « dignité humaine », en partant de la période pré-chrétienne, en passant par la perception chrétienne de la personne et de sa dignité, la notion philosophique et les fondements de la dignité humaine, pour ensuite donner l'idée de la dignité selon les normes bioéthiques.

Mots-clés : Dignité, Interprétation biblique, Christianisme, Kantisme, Fondement philosophique, Contrôle social de la science, Génie génétique.

HUMAN DIGNITY: A PHILOSOPHICAL AND THEOLOGICAL APPROACH

We all use the term “human dignity” both often and gladly. This term exists also in legislation, such as declarations and constitutions of some countries, beginning from UNESCO, WHO, Council of Europe, and they all have the same inspiration to achieve the same goal: protection of human dignity. Human dignity seems as a principle connected with the protection of life itself, protection of health, and is also connected with research. But, today it is far more difficult to determine the meaning of this term and on what grounds it is based. Is human dignity something objective or is it grounded on cultural values that vary throughout history?

Is the primary finding of human dignity in its self-determination against the power of the community, i.e. state? What do philosophy, and Christian theology have to say on dignity and what are the bioethical implications of our time?

The author first introduces us to the development of the meaning of the term “human dignity”, starting from the pre-Christian time, through the Christian perception of person and one's dignity, philosophical notion and grounds of human dignity, to then give the idea of dignity according to bioethical standards.

Key-words: Dignity, Interpretation of the Bible, Christian ethics, Kantism, Philosophical foundations, Social control over science, Genetic engineering.

— *Johannes FISCHER*

RECONNAISSANCE SOCIALE DE LA DIGNITÉ HUMAINE

Cet article cherche à démontrer que la notion de dignité humaine est liée à un statut social dont la reconnaissance est due par la société. Par conséquent, ceux

qui violent la dignité humaine violent une réalité sociale. Cela signifie que la dignité n'a pas besoin d'un fondement philosophique ou théologique. Au contraire, elle peut mieux être comprise en étudiant la structure du monde social.

Mots-clés : Dignité, Interaction sociale, Représentation sociale.

THE SOCIAL RECOGNITION OF HUMAN DIGNITY

This paper argues that the notion of human dignity has to do with a social status, whose recognition and respect are owed by society. Therefore, those who violate human dignity violate a social reality. This means that human dignity does not need any philosophical or theological foundation. Instead, it can be understandably demonstrated by exploring the structure of the social world.

Key-words: Dignity, Social interaction, Social representation.

— *Marie-Jo THIEL*

DIGNITÉ HUMAINE : VALEUR INTRINSÈQUE OU VALEUR RELATIVE ?

La dignité humaine est-elle une valeur intrinsèque ou est-elle une valeur relative, dépendant de la perception, voire de l'évaluation de la qualité de vie ? L'histoire lui a conféré certains accents, mais c'est l'avènement des Droits de l'homme et la Shoah qui vont lui donner une impulsion décisive, en particulier dans le domaine bioéthique. Mais si la médecine moderne la considère comme décisive, elle estime ne pouvoir s'y appuyer qu'en l'évaluant et en la mesurant. La qualité de vie devient ainsi la jauge de la dignité et partant du caractère viable ou non d'une existence, éventuellement suivi d'un « laisser-mourir » ou d'une « autorisation » d'arrêt de vie... L'article estime que ce concept de qualité de vie a de l'intérêt dans la pratique médicale, mais à condition de ne pas être ce par quoi l'on mesure la dignité, mais ce qui est impéré par une dignité posée comme nécessairement intrinsèque. Si la qualité de vie évalue la dignité, l'humanité se répartit en vies dignes ou non, et devient une jungle. Poser la qualité de vie comme exigence de la dignité intrinsèque ne règle pas automatiquement tous les problèmes et n'élimine pas un ressenti d'indignité. Mais cela garde au discernement sa valeur « humaine » : l'égal respect pour tout être humain.

Mots-clés : Dignité, Qualité de vie, Aspect historique, Fondement philosophique, Christianisme, Droits fondamentaux de la personne, Valeur de la vie.

HUMAN DIGNITY: INTRINSIC OR RELATIVE VALUE?

Is human dignity an intrinsic value? Or is it a relative value, depending on the perception or assessment of quality of life? History had delineated some of its key features, but the advent of human rights and the Holocaust put special emphasis on this notion, particularly in the field of bioethics. But if modern

medicine regards human dignity as crucial, it tends to support this notion while assessing and measuring it. The quality of life becomes the gauge for measuring human dignity, starting from a distinction between a viable and a non-viable existence, which may eventually lead to assisted death, or to letting die. This article argues that the concept of quality of life is of great relevant for medical practice, but on the condition of not being used as a standard to measure the dignity of the individual. Rather, the quality of life should be regarded as an imperative posed by human dignity, which is necessarily intrinsic. If the quality of life measures dignity, humankind is divided into two categories: lives worthy of living, and lives unworthy of living, and society becomes a jungle. Raising the quality of life as a requirement of the inherent human dignity does not solve automatically all problems and does not eliminate a feeling of unworthiness. But it ensures its 'human' value: the equal respect for every human being.

Key-words: Dignity, Quality of life, Historical aspects, Philosophical foundations, Christianity, Fundamental rights of the persons, Value of life.

— Nikolaus KNOEPFFLER, Martin O'MALLEY

DIGNITÉ HUMAINE : PRINCIPE RÉGULATEUR ET VALEUR ABSOLUE

Cet article cherche à démontrer que de la même manière que la légitimité du droit demande le respect des droits de l'homme, la légitimité du discours moral dépend de la reconnaissance de la dignité humaine en tant que principe à valeur absolu. Bien que cette reconnaissance n'apporte pas de solutions faciles aux enjeux bioéthiques, elle joue un rôle régulateur majeur en fournissant un cadre pour résoudre des conflits dans ce domaine. Cet article conclue avec des exemples tirés des dilemmes bioéthiques relatifs aux questions de début et fin de vie.

Mots-clés : Dignité, Droits fondamentaux de la personne, Marxisme, Utilitarisme, Nazisme, Kantisme, Valeur de la vie, Début de la vie, Soins de fin de vie, Déclaration universelle des droits de l'Homme.

HUMAN DIGNITY: REGULATIVE PRINCIPLE AND ABSOLUTE VALUE

This paper seeks to demonstrate that just as the law's legitimacy requires fundamental principles of human rights, the legitimacy of moral discourse and decisions depends upon the recognition of human dignity as a principle with absolute value. Though this recognition provides no easy solutions, it plays an essential regulative role that provides a framework for resolving cases of conflict. The paper concludes with some examples regarding bioethical issues at the beginning and end of life.

Key-words: Dignity, Fundamental rights of the persons, Marxism, Utilitarianism, National socialism, Kantism, Value of life, Beginning of life, Terminal care, Universal Declaration of Human Rights.

— *Bertrand MATHIEU*

LA DIGNITÉ, PRINCIPE FONDATEUR DU DROIT

Le principe de dignité a fait une apparition remarquée dans le champ juridique à l'occasion de l'adoption des premiers textes relatifs à la bioéthique. Il y a en effet une corrélation évidente entre la nécessité d'encadrer certaines pratiques et le principe de dignité humaine. Cette reconnaissance, qui se manifeste tant dans le droit international et européen que dans les droits nationaux, est marquée par certaines ambiguïtés quant à sa signification et à sa portée. C'est alors à l'exercice d'une analyse juridique que ce principe doit être soumis. Il présente, de ce point de vue, trois caractéristiques principales, c'est un principe matriciel, indérogeable et il constitue un droit objectif. Aujourd'hui, au-delà de sa reconnaissance formelle, l'effectivité du principe de dignité est affaiblie par une tendance à faire prévaloir l'exigence de liberté, en tant que droit subjectif. Au-delà du débat idéologique sur cette question, c'est la protection de l'individu qui est en jeu.

Mots-clés : Dignité, Droit international, Droits fondamentaux de la personne, Liberté, Utilitarisme, Kantisme, Union européenne, Unesco, Convention sur les droits de l'homme et la biomédecine, Cour de justice des communautés européennes.

DIGNITY, FOUNDING PRINCIPLE OF LAW

The principle of dignity made a noted appearance in the legal field on the occasion of the adoption of the first texts concerning bioethics. There is in fact an obvious correlation between the need to provide a framework for certain practices and the principle of human dignity. This recognition, which can be seen in international and European law as much as in national law, is marked by certain ambiguities as to its meaning and its impact. So this principle should be subjected to a legal analysis. From this point of view, it presents three main characteristics, it is a matrix principle, which cannot be waived and it constitutes an objective right. Today, beyond its formal recognition, the effectiveness of the principle of dignity is weakened by a tendency to give prevalence to the requirement of freedom, as a subjective right. Beyond the ideological debate on this issue, it is the protection of the individual that is at stake.

Key-words: Dignity, International law, Fundamental rights of the persons, Freedom, Utilitarianism, Kantism, European Union, Unesco, Convention on Human Rights and Biomedicine, Court of Justice of the European communities.

REVUE DE LIVRES

Christian Byk (dir.), *La constitution face au défi de la bioéthique*, ISBN 978-2-84874-094-2, Les Etudes Hospitalières, Bordeaux centre, Les cahiers de droit de la santé du sud-est, 2008, 40 euros.

Le colloque, tenu le 3 avril 2008 au palais du Luxembourg, et dont les actes sont ici publiés, visait à apporter la réflexion des juristes à la proposition du Président de la République d'insérer les principes fondamentaux de la bioéthique dans le préambule de la Constitution.

La réflexion qui s'en dégage oscille entre scepticisme et prudence, seuls des principes stables et incontestés, et non leur déclinaison légale, pouvant donner lieu à inscription au préambule de la Constitution.

Jean-Jacques, Kupiec, *L'origine des individus*, ISBN 978-2-213-62924-7, Fayard, Paris, 2008, 20 euros.

Dans cet ouvrage, J-J Kupiec démontre que le déterminisme génétique ne doit pas seulement être rejeté pour des raisons morales mais aussi pour des raisons scientifiques car il est contraire aux données acquises de la biologie moléculaire. En effet, l'environnement n'est pas uniquement ce qui est extérieur à l'organisme mais il se prolonge dans son milieu intérieur où agit la sélection naturelle. Ainsi, l'autre est présent dans les fondements biologiques de notre identité.

Max Thürkauf, *Le Christ et la science expérimentale moderne*, ISBN 978-2-7403-1447-0, Ed. Pierre Tequi, Paris, 2008, 10 euros.

Les trois essais contenus dans ce livre (le Christ et la science expérimentale moderne ; Evolution, science et foi ; la responsabilité morale des scientifiques à l'égard de la vie) visent à répondre à la question du sens de la recherche et de la doctrine scientifique.

Pour l'auteur, scientifique et philosophe, tant que nous ne suivrons pas la règle de Saint Benoît (« Ora et labora »), les scientifiques et techniciens sauront toujours mieux comment faire mais toujours moins ce qu'ils font.

Congrégation pour la doctrine de la foi, *Instruction Dignistae Personae sur certaines questions de bioéthique*, ISBN 978-2-7403-1496-8, Pierre Téqui, Paris, 2008, 7 euros.

Inscrite dans l'enseignement de l'instruction Donum Vitae (1987), ce nouveau texte réaffirme, au regard du principe fondamental du primat de la vie humaine, un profond désaccord entre la vision du Magistère et les pratiques de procréation médicalement assistée.

Se fondant sur le fait que le corps d'un être humain n'est jamais réductible à l'ensemble de ses cellules mais s'insère dans un ensemble anthropologique, sociologique, éthique et théologique, le présent texte analyse, pour les condamner, les nouveaux pro-

blèmes concernant la procréation et plus particulièrement les nouvelles propositions thérapeutiques qui comportent la manipulation de l'embryon ou du patrimoine génétique humain.

Benoit XVI, *Combattre la pauvreté, construire la paix*, ISBN 978-2-7403-1497-5, Pierre Téqui, Paris, 2009, 2,50 euros.

Il s'agit du message du pape pour la célébration de la journée mondiale de la paix et dans lequel il conclut que « dans la réalité mondialisée actuelle, il apparaît toujours avec plus d'évidence que la paix ne se construit que si l'on assure à tous la possibilité d'une croissance raisonnable ».

Bernard Hœrni, *86 réflexions sur la médecine*, ISBN 978-2-35816-007-0, Glyphe, Paris, 2008.

Ce septième ouvrage de réflexion sur la médecine publié en 25 ans par le Prof. Bernard Hœrni, éminent cancérologue et spécialiste d'éthique médicale, est bien plus qu'un recueil d'articles sur la médecine et sa pratique. Il est une véritable méthodologie de la réflexion éthique en médecine. La pratique comme la confrontation de l'homme de science et de savoir au contact des problèmes de son temps s'y révèle un fructueux terreau de réflexion sur la place et les perspectives de la médecine, son éthique, ses pratiques, notamment dans une discipline humainement difficile comme la cancérologie, ses relations avec les malades.

Du cœur de cet ouvrage émerge ainsi le sens profond de la démarche et de la vie de B.Hœrni ; un combat au service d'une communication claire et loyale entre médecins et malades. Puisse donc ce « spicilège » (recueil de gerbes), pour emprunter au titre d'un ouvrage de Montesquieu, servir longtemps de livre de chevet aux médecins comme à leurs patients.

Dominique Chevé et Michel Signoli (dir.), « Les corps de la contagion », revue *Corps*, ISSN 1954-1228, Ed. Dilecta, Paris, oct. 2008, n° 5, 18 euros.

Ouvert par un entretien avec le philosophe F. Dagognet, le dossier central de ce numéro est consacré au corps épidémique et présente huit contributions qui s'attachent à démontrer l'imbrication complexe des aspects biologiques et culturels du phénomène épidémique via des approches pluridisciplinaires.

Pierre Delion, *Séminaire sur l'autisme et la psychose infantile*, 2^e édition, ISBN 978 2 7492 1026 1, Editions Eres, Toulouse, 2009, 10 euros.

Depuis la parution de la première édition de cet ouvrage en 1997, la perception sociale de l'autisme évolue au cœur de revendications qui tendent parfois à vouloir retirer les enfants autistes des mains des psychiatres. C'est le débat que met en avant le mot de psychose maintenu dans le titre de la présente édition. Pour l'auteur, professeur de pédopsychiatrie à la faculté de médecine de Lille, ce qui a changé en 12 ans, c'est la nécessité d'intégrer le champ des neurosciences sans idéalisation mais aussi sans crainte. En revanche, ce qui n'a pas changé, ce sont les questions institutionnelles qui montrent la complexité du dis-

positif souhaitable – ouvert sur les différents partenaires – de la prise en charge de ces enfants.

Stéphane Tessier (dir.), *Familles et institutions : cultures, identités et imaginaires*, ISBN 978 2 7492 1049 0, Editions Eres, Toulouse, 2009, 23 euros.

A partir de l'expérience de leur pratique au contact de familles de migrants, des professionnels du champ médico-social s'interrogent sur la question de la culture, débarrassée de naturalisme anthropologique, comme élément de compréhension de l'identité et de l'altérité.

Hannah Arendt, *Responsabilité et jugement*, ISBN 978 2 228 90406 3, Petite Bibliothèque Payot, Editions Payot et Rivages, Paris, 2009, 9 euros.

Face à une situation politique et sociale qui voit s'effondrer du jour au lendemain l'ensemble des normes, comment éviter de devenir complice d'un régime dictatorial ? Hannah Arendt estime que pour distinguer alors le bien du mal, il convient de pleinement analyser chaque situation et pour cela, il faut penser par soi-même. Mais, si cet acte n'est pas réservé à une élite, précisément parce que celle-ci peut être défaillante, il n'en suppose pas moins une volonté de se référer à des valeurs et des comportements qui ont traversé les siècles : le courage, une certaine noblesse et de la dignité.

Dominique Vinck, *Les nanotechnologies*, ISBN 978 2 84670 237 9, collection Idées Reçues, Le Cavalier Bleu, Paris, 2009.

Professeur à l'institut national polytechnique de Grenoble, D. Vinck nous définit les nanotechnologie, leur utilité, analyse les craintes qu'elles évoquent et nous en dresse les perspectives de développement.

Louis Laurent, Jean-Claude Petit, *Les nanotechnologies doivent-elles nous faire peur ?*, ISBN 978 2746502192, collection Les petites pommes du savoir, Le Pommier, Paris, 2007.

Ce petit livre nous apprend à réfléchir sur les nanotechnologies ; quels enjeux leur sont associés ? Quels risques ont été identifiés ? Comment concilier les progrès qu'elles recèlent avec les attentes de nos sociétés ?

John Money, *Lovemaps*, ISBN 978 2 228 90407 0, Petite Bibliothèque Payot, Editions Payot et Rivages, Paris, 2009, 9 euros.

Spécialiste de l'identité sexuelle, l'auteur analyse pour le lecteur intéressé les cartes affectives (« lovemaps ») qui expliquent nos fantasmes sexuels. Dans une première partie, il répond aux questions comment une carte affective se développe-t-elle ? Peut-elle se transmettre aux enfants ? Est-elle modifiable ? Les hommes et les femmes ont-ils de cartes affectives différentes ?

Dans une deuxième partie, il analyse les cartes affectives anormales et répertorie plus d'une quarantaine de ces « paraphilies ».

Christophe Dejours, *Les dissidences du corps*, ISBN 978 2 228 90409 4, Petite Bibliothèque Payot, Editions Payot et Rivages, Paris, 2009, 8,50 euros.

Les dissidences du corps, ce sont ces comportements insolites qui font que parfois le corps ne fait pas ce qu'on attend de lui, qu'il échappe au pronostic médical et au déterminisme biologique. Pour l'auteur, psychanalyste et psychiatre, la réponse à ces comportements tient sans doute au fait que les maladies du corps sont plus humaines et sociales qu'on ne le pense.

Arjun Appadurai, *Géographie de la colère*, ISBN 978 2 228 90408 7, Petite Bibliothèque Payot, Editions Payot et Rivages, Paris, 2009, 7,50 euros.

Pour l'auteur, qui enseigne l'anthropologie à la New School University de New York, les haines ethniques qui alimentent la violence à l'heure de la mondialisation n'ont pas le caractère de peur primaire qu'on leur prête mais constituent plutôt un effort pour exorciser la crainte générée par les incertitudes identitaires, géographiques et politiques liées à la « globalisation ».

C. Byk

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