SCIENTIFIC CONTRIBUTION

# Human dignity and human rights in bioethics: the Kantian approach

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Abstract The concept of human dignity plays an important role in the public discussion about ethical questions concerning modern medicine and biology. At the same time, there is a widespread skepticism about the possibility to determine the content and the claims of human dignity. The article goes back to Kantian Moral Philosophy, in order to show that human dignity has in fact a determinable content not as a norm in itself, but as the principle and ground of human rights and any deontological norms in biomedical ethics. When it comes to defining the scope of human dignity, i.e., the question which entities are protected by human dignity, Kant clearly can be found on the "pro life"-side of the controversy. This, however, is the result of some specific implications of Kant's transcendental approach that may be put into question.

 $\label{eq:keywords} \begin{array}{l} \mbox{Deontological} \cdot \mbox{Euthanasia} \cdot \mbox{Human dignity} \cdot \\ \mbox{Human rights} \cdot \mbox{Embryo research} \cdot \mbox{Kant} \cdot \mbox{Personhood} \cdot \\ \mbox{Status of the unborn} \end{array}$ 

### The discussion about human dignity

Anyone interested in the concept of human dignity as an ethical and legal principle is today confronted with the following situation. On the one hand, the dignity of human

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beings plays an important, perhaps even central role in the public discussion about questions of modern medicine and biology taking place throughout the world. The constitutions of many Western countries have adopted the concept of human dignity and not infrequently give it the status of being the highest principle of law. In many influential documents on the level of international and supranational relations, from the *Universal Declaration of Human Rights* to the *EU-Basic Rights Charter*, human dignity occupies a core position. In the 1998 *Council of Europe's Convention on Human Rights and Biomedicine* and in the *Universal Declaration on Bioethics and Human Rights* adopted by UNESCO in 2005, respect for human dignity even merits top rank in their substantive goals.

This overwhelming presence of human dignity in public space stands in marked contrast to the reserve, even the skepticism of experts in matters of applied ethics, including medical ethics. This skepticism is based not least on the impression that the concept of human dignity possesses so little tangible content that it can be deployed to support or undermine any position whatsoever. This is particularly striking in the case of euthanasia. On the one hand, the notion of "dying in dignity" is advanced as an argument for euthanasia. This view argues that it contradicts human dignity to die in pain and suffering, to remain in a "vegetable" state with the attendant loss of self-control. Accordingly the ultimate triumph of freedom and dignity over the adverse circumstances of human existence lies precisely in being able to freely choose one's own death, even if the help of another person is required. The idea of human dignity therefore would demand the legalization of active euthanasia. On the other hand, if we start from the notion of human dignity inspired by the Christian tradition, where the dignity of a human being consists precisely in the inviolability of every human life including one's own,

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we will arrive at exactly the opposite conclusion. Other discussions show similar lines of conflict, from the debate about PGD to the question of conducting research on those unable to give informed consent.

# Immanuel Kant's concept of human dignity: principle of rights and duties

Anyone who would investigate the tenability of the concept of human dignity for applied ethics, especially in view of its inflationary and apparently arbitrary use, will have to closely examine the philosophically most substantive formulation of the concept, namely Kant's critical ethics. Not surprisingly, reference is frequently made to Kant in the German debates about medical ethics and bioethics. One reason for this is certainly that Kant's teachings are still well-represented in German universities. But the main reason is that human dignity has the status of highest constitutional principle in Germany's Fundamental Law (Grundgesetz), and the legal interpretation of this principle has made much use of Kant since the 1950s. I will therefore attempt to shed light on Kant's scattered remarks pertaining to questions of medical and bioethics, viewing them against the background of Kant's conception of human dignity, while critically assessing their basic premises.

In order to understand his conception, we must first turn to the so-called "Second Formulation of the Categorical Imperative," which forbids the use of human beings as "mere means to an end." The full formation runs as follows: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means." (Kant 1996a, p. 80/AA 4, p. 429<sup>1</sup>) Second in order of importance is the distinction between "value" and "dignity," which Kant employs for the purpose of further explicating his concept of human dignity (Kant 1996a, p. 84-85/AA 4, pp. 434-435). In the relevant debates, the "Second formulation" plays a greater role, although in the end it caused more confusion than it did clarity. Thus, in Germany's political and legal discussions it has led to an understanding of human dignity in the sense of an independent "right to noninstrumentalization." Furthermore, this right is brought into association with the definition of human dignity as "inviolable" found in the German constitution. This link hinders the subsequent weighing up of costs and benefits entailed by certain courses of action.<sup>2</sup> Since this right is considered the only inviolable right, all others are assumed to be objects of contestation and eventually even elimination. Only a minority of German constitutional scholars consider human dignity a legal principle rather than an independent legal norm.<sup>3</sup>

However, the majority philosophical perspective on Kant offers a completely different picture.<sup>4</sup> Here, the "means to an end" formulation is regarded as less important than the categorical imperative in its first formulation.<sup>5</sup> It is held that the "means to an end" formulation is the ground of the imperative's validity, but does not represent an independent source of norms. This interpretation is confirmed by Kant himself. Kant explains immediately after introducing the "means to an end" formulation "that he who transgresses the rights of human beings intends to make use of the person of others merely as means, without taking into consideration that, as rational beings, they are always to be valued at the same time as ends, that is, only as beings who must also be able to contain in themselves the end of the very same action." (Kant 1996a, p. 80/AA 4, p. 430). This description contains in condensed form two distinct levels of normative demand. In the first place, the "end in itself" character of persons interdicts any action they cannot consent to because such an act violates the categorical imperative in its first formulation and therefore cannot be consented to in principle. In the second place, it permits an action that is in agreement with the imperative if and only if every affected person also makes the end of the action their own end. In this sense, nothing more is required from the "means to an end" formulation than the actual consent of a person affected by the action to this action. This requirement is obviously the result of the universalizability rule since the maxim "it is permissible to force another person to do something against their will which serves only to realize my own relative ends" surely will not do as a universalizable law.

The demand never to treat human beings "as mere means to an end" therefore does not provide a criterion for deciding legitimacy or illegitimacy, but instead derives its force from another source: as we can now see, it draws on the first formulation of the categorical imperative. What the

<sup>&</sup>lt;sup>1</sup> Pagination indicates first the page of the Cambridge University Press edition, then the page from the Akademie Ausgabe of Kant's works.

<sup>&</sup>lt;sup>2</sup> A good survey of the discussion can be found in Jaber 2003. The German Bundestag's Study Commission "Law and Ethics in Modern Medicine" also understands "Human dignity" essentially as a "right to non-instrumentalization" (cf. in particular: Study Commission "Law and Ethics in Modern Medicine" 2002, p. 18).

<sup>&</sup>lt;sup>3</sup> The only prominent legal work to appear in the German language recently that has argued along these lines is Enders 1997.

<sup>&</sup>lt;sup>4</sup> Cf. for example Wolff 1973; Prauss 1983 and Atwell 1986.

<sup>&</sup>lt;sup>5</sup> For the sake of completeness we cite it here: "Act only in accordance with that maxim through which you can at the same time will that it become a universal law" (Kant 1996a, p. 73/AA 4: 421).

"end-in-itself" formulation prohibits or commands is the result of the universalizability rule alone. The result at this stage of our argument is thus that the dignity of human beings, as Kant understands it, is essentially nothing more than the *moment of the deontological* itself in a rigorously deontological ethics. In the framework of Kant's moral philosophy, human dignity is the ultimate ground for the fact that except in situations of self-defense, all duties toward human beings hold categorically and their rights are to be respected categorically, but it provides not a single specific duty or a single specific right, especially not an "incontestable right to non-instrumentalization." What Kant's concept of human dignity does ground is the "incontestability" of every duty and the inviolability of every right. Although this does not sound like much, with respect to questions in medical and bioethics human dignity proves to be an essential principle, since it stipulates categorical inviolability of at least the central human rights, those relating to life and limb. Being thus inviolable, they cannot be annulled by any casuistry, by any consequentialistic cost-benefit analysis, or even by weighing up the pros and cons of the "four principles of biomedical ethics."

On this reading the (pseudo-)problem frequently discussed in German legal debate of an insurmountable antithesis between rights and legally protected interests cannot arise since from the very outset no right contains an entitlement to violate the rights of others. Rights cannot collide in the framework provided by Kant's—in this respect completely convincing—conception of rights and duties, since they do not "run into one another" but rather contain their limits within themselves. There is therefore no collision between the right to life and the right to self-determination which would have to be decided in favor of the one or the other by a consequentialistic "deliberation." Instead, the right to self-determination contains from the outset no implication of a right to violate another's right to life.

Besides this clear and unproblematic interpretation of the principle of human dignity as the ground of validity for the categorical imperative of the first formulation, Kant himself occasionally applies the "means to an end" formulation directly as an ethical norm. This use is readily seen in a passage relevant to medical and bioethics since it contains an immediate reference to the question of euthanasia. In his discussion of the moral evaluation of suicide, Kant rejects taking one's own life with the argument that the human being is thereby using himself as a mere means to the end of avoiding pain and suffering: "To annihilate the subject of morality in one's own person is to root out the existence of morality itself from the world, as far as one can see, even though morality is an end in itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one's person (*homo noumenon*), to which the human being (*homo phaenomenon*) was nevertheless entrusted for preservation." (Kant 1996b, p. 547/AA 6, p. 423).

As is well known, the distinction between a human being as a creature belonging to the natural world of appearances, subject to natural causality (homo phaenomenon) and a human being as something that belongs to the intelligible world, the realm of freedom, subject only to the legislation of practical reason (homo noumenon), is one of the pillars of Kant's entire moral philosophy. In the reflections on suicide, this distinction becomes even more relevant since it reveals the real intention of the "means to an end" formula. The "ends" it refers to are clearly those of the phenomenal self, a self without freedom, a creature of sense subject to his natural drives. In opposition to the phenomenal self is the noumenal self, to whom respect and esteem are due. Only because the human being partially belongs to the noumenal "realm of freedom" does his existence have any claim to respect, which is expressed in the concept of human dignity. In this reading, the "means to an end" formulation amounts to the fundamental incommensurability of the ends and value judgments belonging to phenomenal man with the absolute value of noumenal man. What the claim to respect that follows from this value demands most of all is for Kant doubtless the absolute respect for the life of every human being, which ultimately includes respect of one's own life. This coincidence of human dignity and a ban on killing is already prefigured in Kant's definition of the concept of "end in itself," when he first introduces it, as "something the existence of which in itself has an absolute worth." (Kant 1996a, p. 78/AA 4, p. 428).

The separation of human dignity from the right to life, as is often discussed in Germany where, for instance, the recommendation is made to accord human embryos human dignity but not a right to life, or alternately a reduced right to life but no human dignity, cannot be justified by Kant's conception of human dignity. But that does not mean that the right to life could only be grounded on the "means to an end" formulation. As a duty to other persons it is unproblematic, and much more plausible, to derive it from the categorical imperative in the first formulation. As a duty to oneself, however, it is inextricably bound up with the "means to an end" argument, which is only sound as an application of the Kantian dichotomy of homo phaenomenon and homo noumenon as the source of its normativity. Although it is a slight overstatement, one could say that there is no suicide for Kant. Every supposed case of suicide would actually be a murder of the homo noumenon committed by the homo phaenomenon for selfish reasons. From this perspective then, euthanasia would amount to a "contract killing."

#### Who has human dignity? The Kantian answer

The dichotomy between homo noumenon and homo phaenomenon also plays a significant role in another passage that is important for medical and bioethics, a passage whose concern is to determine who the bearer of human dignity and human rights is. Kant's answer will be exploited both by the so-called "pro-life" advocates as well as from the so-called "liberals," who support embryonic stem cell research. Thus, the Berlin philosopher Volker Gerhardt refers directly to Kant when he says: "To begin with the human being means: with a full grown, responsible and reasonable human being who does not merely have reasons as well as understand reasons, but can also follow reasons."<sup>6</sup> Since for Kant human dignity is grounded in the ability of human beings to have a rational morality, Gerhardt and many other thinkers conclude that a human embryo that possesses no selfawareness, no independence and no responsibility, cannot be a bearer of human dignity and human rights. Small children and the mentally handicapped, one must hasten to add, would not be bearers of such traits either.

In his book "The Decent Society" Avishai Margalit sets out from the same interpretation of Kant, but instead of relying Kant as an authority, Margalit takes aim at Kant for this very interpretation. Margalit contends that Kant ties human dignity to a set of properties, in particular to the capacity to act morally and to give oneself laws independently of natural causality. But, writes Margalit,

The traits listed by Kant are possessed by different people in different degrees. One person's moral ability as a self-legislator is not the same as another's. The traits in Kant's list are ranking traits that do not justify what Kant originally wanted to justify: equal respect for all human beings just because they are human. (Margalit 1996, pp. 63–64)

Now Margalit has obviously overlooked the fact that Kant explicitly rejected locating human dignity in concrete deeds of moral action and the actual capacity to carry them out—be it biological, social or psychological—but instead in the fundamental (*prinzipiell*) capacity to act morally, which, according to Kant every human being possess as a transcendental quality.

This problem requires great precision. Human dignity belongs to human beings in Kant's conception for the specific reason that they are on the one hand *homo noumenon*, i.e., free persons subject only to reason's universal legislation. As *homo phaenomenon*, on the other hand, sensible beings subject to natural causality, human beings possess no such distinction from (other) animals. Only with respect to their noumenal side are human beings "ends in themselves" and possess human dignity. To be *homo noumenon* is certainly not to possess an empirical property, as Margalit seems to think, which can be present "in different degrees" or "in differing amounts," but rather a determination belonging to every human being as such.

To answer the question of the status of unborn human beings from a Kantian perspective, it is essential to know how we are to understand the term "human being," and whether the fetus is human or not. For Kant himself it seems relatively indisputable that the question should be answered with a "yes." Evidence for this is given in Kant's reflections on suicide, which he begins with the remark that a suicide may not only be a crime against one's own person, but in some circumstances also against the person of another: namely, if a pregnant woman commits suicide (Kant 1996b, p. 546/AA 6, p. 422). Kant is even clearer in his Doctrine of Law, in which he rather casually establishes the moment of conception as the beginning of personhood:

For the offspring is a *person*, and it is impossible to form a concept of the production of a being endowed with freedom through a physical operation. So from a practical point of view it is a quite correct and even necessary idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative [...] They [the parents] cannot destroy their child as if he were something they had made (since a being endowed with freedom cannot be a product of this kind) or as if he were their property, nor can they even just abandon him to chance, since they have brought not merely a worldly being but a citizen of the world into a condition which cannot now be indifferent to them even just according to concepts of right. (Kant 1996b, § 28, pp. 429–430/AA 6, pp. 280–281)

Kant leaves no doubt in this passage of his view: human beings are to be accorded the status of *homines noumenales* with human dignity from the moment of conception.<sup>7</sup> The reason Kant gives is not as trivial as it might seem given the occasional nature of the remark. His tone does not succeed in masking the fact that Kant is here stumbling over a fundamental problem of his transcendental

<sup>&</sup>lt;sup>6</sup> Gerhardt 2004, p. 130. Similar considerations can be found in Trapp 2002.

<sup>&</sup>lt;sup>7</sup> Volker Gerhardt argues against this by interpreting the passage as stating that the embryo is a person before birth only if the parents would acknowledge him as a person in an act of freedom that corresponds to the act of love that lead to conception. Admittedly, this interpretation suffers from the disadvantage that it projects into the text precisely the opposite of what is clearly stated there. Moreover, it attributes to Kant a very un-Kantian, very romantic concept of freedom. The result is more an act of hermeneutical violence than a hermeneutical act of love enacted in freedom (cf. Gerhardt 2004, pp. 122–127).

anthropology, the problem of how the two sides of phenomenal and noumenal human beings relate. It appears under the guise of the question how one can at all conceive the beginning of a noumenal creature's existence in the phenomenal world. Kant's answer is as simple as it is rigorous: one simply cannot conceive such a beginning. This answer is rigorous because conception is in fact a "physical operation," that is, a natural event in the phenomenal world which is subject to natural laws, causality and the forms of intuition of space and time. But homo noumenon, by virtue of which alone human beings possess dignity, stands outside the phenomenal world. It is therefore impossible in principle to comprehend it has having originated in a spatio-temporal event structured by the category of causality. In particular, its genesis cannot even be comprehended as a genesis because every genesis, every event, presupposes a temporal before and after.<sup>8</sup>

On the other hand, human beings in the phenomenal world clearly have not always existed, but come to be and pass away. This contradiction can no longer find a theoretical solution within the framework of Kant's philosophy. Instead, the two sides are bridged by a "practical idea"—a procedure Kant frequently adopts. In the case before us, conception is defined as the beginning of the noumenal being's existence. But this definition, and Kant puts great store by this, is not the result of an arbitrary decision of the individual, but instead a "correct and necessary one": a definition that is compelling for every rational being and therefore morally obligatory. The real difficulty here lies in the fact Kant offers no further justification for this very claim. In my view, it is nevertheless possible to at least partially reconstruct such a justification.

Indeed, it would seem that the very absence of prior conditions and the development they imply allows conception to appear as the "necessary" starting point of existence. Since the noumenal human being stands outside the form of intuition of time and is not subject to the causality of nature, its coming to be cannot be conceived as a development over time. Every hiatus preceded by biological or social development over time, for example from embryo to fetus, or from unborn to born human being, is thus ruled out. Since the validity of human dignity is a transcendental quality that cannot depend on empirical conditions—such as brain activity, extra-uteral viability, etc.—all of which *per definitionem* belong to the phenomenal world, the starting point must be as unconditioned and as free of presuppositions as possible: the condition of the validity of human dignity must, if there is to be one at all, be of a non-empirical sort.

The only natural event that fulfills both criteria is conception. Conception is first of all, despite a certain temporal duration, an event that is not temporally preceded by a natural development. It is an event marked by necessary discontinuity, namely between the non-existence and the existence of a human organism. Just such discontinuity and timelessness is required by practical reason's analogical inference for the absolute beginning of noumenal existence.

Secondly, starting with conception means that no empirical states of affairs such as brain activity or extrauteral viability can serve as conditions for the validity of human dignity. Only being human as such counts. One might object at this point that belonging to the species "human being" is obviously an empirical property. But in the framework of Kant's philosophy, such an objection loses its plausibility: it only concerns the phenomenal side of being human. But being human is distinguished from other empirical conditions precisely by the fact that it possesses a phenomenal and a noumenal side. Even if one were not convinced by this argument, starting with merely being human would still be "correct and necessary" given Kant's premises, since being human would still be the most general, most empty and poorest in presuppositions of all possible empirical properties. To that extent, simply being human fulfills the second of the postulates of practical reason mentioned above, according to which if human dignity is to be valid, then either no empirical conditions are admitted, or only one with the least content.

Both postulates are based on something one might call a "transcendental-pragmatic analogical inference" from the noumenal to the phenomenal world and from the theoretical to the practical point of view. Since the existence of a noumenal human being cannot be conceived from a theoretical point of view as either temporal or as conditioned, only such a natural event can be selected as starting point from a practical point of view that is the most proximate analogy to being empirically unconditioned and temporally discontinuous. And that is what conception is.

Given this background it is not surprising that a whole series of well-known philosophers and constitutional scholars in Germany who take their bearings from Kant can be found on the pro-life side of the discussion about the status of the unborn. Examples include: Gerold Prauss (Prauss 2001), Reinhard Brandt (Brandt 2003), Wolfgang Wieland (Wieland 2002) and Otfried Höffe (Höffe 2002, pp. 70–72). And by all appearances their interpretation of Kant is also correct, in contrast to Gerhardt, Trapp, Margalit, etc. Reminders of the Kantian position turn up frequently in the so-called "potentiality argument"—which is now easy to explain, although the Kantian framework adds

<sup>&</sup>lt;sup>8</sup> Cf. Kant's explanation in the footnote to the above quoted § 28 of the Doctrine of Right, in which he goes so far as to say that since the *noumenal* side of human beings cannot be subjected to the form of intuition of time, it is not even possible to think of the *homo noumenon* as created by God!.

a new twist to the argument. The reason for assigning human dignity obviously cannot be the actual performance of moral actions, writes for example the Heidelberg philosopher and physician Wolfgang Wieland (Wieland 2002, pp. 160–164), but rather only the capacity in principle to act morally. This capacity belongs to every human organism qua human being, and therefore belongs already to human embryos and fetuses, even though they have not yet reached a stage to actualize this capacity. In an even more Kantian vein, Robert Spaemann has expanded the argument by rejecting in principle the distinction between "potential" and "actual" persons. Human beings are always, according to Spaemann, from conception to death actual persons and never merely potential, for everyone is an "actual person" who has in principle the potential for moral action. The whole discussion about "merely potential persons" is therefore philosophically absurd (Spaemann 2007, pp. 236-248). This argument rests of course, albeit tacitly, on Kant's distinction between homo phaenomenon and homo noumenon. We can unpack Spaemann's point by stating that every human organism, at every stage of their existence, is an actual person because it is at every stage always homo noumenon, whereas all biological and social changes and developments it is subject to concern only the phenomenal side of human existence, the side irrelevant to the question of human dignity.

## Conclusion

The preceding reflections clearly show the scope as well as the problem of Kant's concept of human dignity in medical and bioethics. Above all, they show what premises one must accept whenever the Kantian concept is employed, and which premises actually provide the foundation of arguments inspired by Kant. These include in particular the strict dichotomy between the phenomenal and noumenal sides of human beings. This view of human beings has not only become problematic recently: in Kant's time as well it provided one of the most important occasions for revising Kant's philosophy.

As strange as Kant's theory of phenomenal and noumenal human beings may appear to us today (as it did in its own days), some form of independent mental processes must nevertheless be assumed in order to even begin to explain phenomena such as self-consciousness and the human being's capacity to act morally, as well as to ground moral rights and duties. The question is therefore not whether to introduce such a distinction, but rather how do formulate it in such a way so as to avoid falling prey to the insoluble contradictions contained in Kant's version of the dichotomy. For the problem of justifying human rights, which specify a categorical limit to the possible activities of medicine and the bio-sciences which cannot be repealed by any sort of casuistry, this question can be neglected, since human dignity is here merely a principle and ground for validity of the categorical imperative in the first formulation.

It is all the more relevant, however, when either the "means to an end" formula is used as an immediate source of norms, as in the case of suicide, or else when the dichotomy of *homo noumenon* and *homo phaenomenon* is used to determine the domain within which human dignity is in force. In such cases, the Kantian dichotomy becomes a bioethical problem.

Within Kantian philosophy itself, there is no theoretical solution to this problem, as we have already stated, but only a practical way of bridging the divide. If one were to work out an alternative, as was attempted for example in German Idealism, it would be necessary to go beyond the framework of transcendental philosophy. The perspective opened up by Hegel or Schelling would consist in bringing the relation of noumenal and phenomenal sides of human beings into a plausible and temporally structured developmental point of view without succumbing to a platitudinous materialistic reductionism.

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