

THE PROBLEM OF PHILOSOPHICAL FOUNDATIONS OF HUMAN DIGNITY IN LAW

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Summary: May human dignity be the basis of human rights? May human rights still be derived from human dignity if we also accept a non-hierarchical organization of law? Or are human rights and human dignity more of a moral character which needs to be constantly justified? Is it not a paradox that human dignity, which is the basis of human rights, may be associated not only with rights, but also simultaneously with obligations? We derive human rights from human dignity as the highest value. May we admit other values besides dignity and how shall we deal with responsibilities? Although the Kantian concept of dignity as a philosophical historical concept is inconsistent with the modern understanding of dignity in law in many respects, we would still find in Immanuel Kant a concept of dignity consisting more in duties than in rights, due to the moral nature of dignity and law according to him.

Keywords: human dignity, human rights philosophy, theory of derivation of human rights, rights and obligations, moral philosophy, values in law, Immanuel Kant, transhumanism.

1 Introduction

The paper deals with the concept of human dignity as the basis of human rights, from the point of view of legal theory and legal and general philosophy. In the first chapter, dignity is viewed as a collective historical emotion. In the second chapter, the article presents a number of current theoretical-legal perspectives on the concept of dignity as the basis of human rights (the theory of derivation) and on the related problematic aspects of the philosophy of human rights, which are commented on later.

The question of the moral nature of human rights is addressed as well. The character of human rights, which in content carry obligations rather than rights, is closely connected with this, while the same may also be derived from Kant's concept of dignity and his ethical philosophy. Is the theory of the derivation of human rights in the light of Kantian philosophy rather a paradox of the age of rights? Dignity presents not only rights, but also obligations. Dignity may also be understood as Jeremy Waldron's concept of status. The topic is summarized

in the fourth chapter, which is bridged by the third chapter rather indicating the conditionality of the theory of derivation from the hierarchical concept of law as a system.

The paper develops and confirms the author's previous research on the topic of human dignity, where the inconsistency of the modern legal concept of human dignity compared to the original historical concept of Giovanni Pico della Mirandola and Immanuel Kant was found.¹ Due to the scope of the article, the question of Renaissance humanism in Pico and transhumanism, or transhumanist dignity and morphological freedom will not be addressed here. This topic will be the subject of a separate article.²

2 Human Dignity from Collective Emotion to Right

Law reacts relatively conservatively to social events and it is rarely progressive and motivating to a different model of social behaviour. Such progressive exceptions could be noticed, for example, when the Anti-discrimination Act was adopted in the Czech Republic³ and in many ways it could be seen that the legal consciousness was seriously lagging behind the requirements of EU law and the value of equality recognized in Western-Europe. Over the course of the decade since the adoption of the Act, people, officials, judges and lawyers learned to recognize indirect discrimination, and behaviour toward certain minorities gradually began to change, discussion groups were formed, non-profit organizations were activated, while discrimination became a topic of discussion in which generational disputes are expressed and collective emotions flow through society. Dignity is an important element in anti-discrimination law, but not every anti-discrimination case also involves a violation of dignity. Even before the adoption of the Anti-discrimination Act, it was possible to defend human dignity also as a right within the framework of personality rights, in accordance with the Civil Code.⁴ This is still possible. This concerns the individual personality requirements. As a rule,

1 ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie. *Právnický*, 2021, vol. 160, no. 7, pp. 525–548.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity. In *Human Dignity. Studies in Law, Politics and Society*, 2022, vol. 88, pp. 41–65 (Chapter 3), Emerald Publishing, doi:10.1108/S1059-433720220000088003.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva. Giovanni Pico della Mirandola & Immanuel Kant*. Praha: Leges, 2019, 171 p.; ROSENKRANZOVÁ, Olga. Důstojnost člověka podle Giovanniho Pika della Mirandola – inspirace pro právo. *Právnický*, 2017, vol. 156, no. 2, pp. 134–151.

2 The topic was discussed in a wider scope at the workshop on human dignity on 4th December 2023 at the Faculty of Law of the University of Olomouc.

3 Act No. 198/2009 Sb. regulating equal treatment and on legal means of protection against discrimination and on the amendment of certain acts (the Anti-discrimination Act); BOUČKOVÁ, Pavla, HAVELKOVÁ, Barbara, KOLDINSKÁ, Kristina, KÜHN, Zdeněk, KÜHNOVÁ, Eva, WHELANOVÁ, Markéta. *Antidiskriminační zákon. Komentář. 1. vydání*. Praha: C.H. Beck, 2010, 425 p.

4 LAVICKÝ, Petr et al. *Občanský zákoník I. Obecná část (§ 1 až 654). Komentář. 2. vydání*. Praha: C.H. Beck, 2022, p. 2292

however, they do not become the subject of social debates, on the contrary, the victim usually does not wish for greater publicity of the case, while the protection of the right to dignity, on the contrary, goes hand in hand with certain degree of secrecy and confidentiality, intimacy.

When does the concept of dignity become an object of collective emotion? We know that collective emotions gradually enter politics and thus also law through the legislative process as part of social debates. “András Sajó asks how emotions that shape collective moral judgements contribute to the formation of constitutional institutions by means of collective actions and intentions.⁵ Research in the field of emotions and *neuroscience* has reached the finding that there is no such thing as morality, only emotions, either individual or collective ones. Moral emotions, as Sajó states, reflect cultural differences.⁶ Nevertheless, how do moral emotions become normative facts and how do individual emotions become socially relevant constitutional institutions?, Sajó asks.⁷ Sajó describes how, in the French revolutionary environment, the emotion of the equality of all people before the law and freedom was prominent, which was finally formulated and collectively shared as a moral sentiment to recognize the rights of the individual and the concept of modern law. There is a process of sifting and emotional selection among the collective emotions, which emotion will succeed, while the emotion resonates with moral intuition. Legal emotions require a rationalistic transformation into legal language, as *rights of a person*.⁸ In social discussion, however, it is desirable to keep social emotions under control and create certain choices. If there is no mechanism to control the recognition of social emotions, emotionalism, as Sajó says, is rather harmful.”⁹

This is how the concept of human dignity entered social discussions and the legislative process in Germany in the past after the Second World War. This was not just about Germany, which reflected its own sense of guilt by anchoring the concept of dignity as the highest absolute value.¹⁰ However, the notion of dignity resonated throughout the Western Christian world at the time and was a powerful promise of global peace based on respect and reverence for every human being and co-created the platform for many international agreements.

This is how we find the legal regulation of human dignity in law, for example in Article 1 of the Universal Declaration of Human Rights (1948), in Article 1 of the German Constitution, the Basic Law, in which the inviolability of human dignity

5 SAJÓ, András. The Constitutional Domestication of Emotions. In Sellers, M.N:S. (ed.): *Law, Reason and Emotion*. Cambridge: University Cambridge Press, 2017, pp. 55–79., p. 55.; SAJO, Andras. *Constitutional sentiments*. New Haven & London: Yale University Press, 2011, 382 p.

6 SAJÓ, András. *The Constitutional Domestication of Emotions*., p. 62.

7 Ibid., p. 64 et seq.

8 Ibid., pp. 72–73.

9 Ibid., p. 76.

10 JASPERS, Karel. *Otázka viny. (Příspěvek k německé otázce.)*, Praha: Mladá Fronta, 1991, 96 p.

is stipulated.¹¹ The many national legal regulations that followed were an echo of the anchoring of dignity in the international environment and in Germany. Today, this legal regulation of the 20th century may be characterized as a manifestation of modernity manifested in grand narratives and ideals, furthermore by humanism, while in the West, by liberal democracy. This step was taken by the countries of Central Europe only after the fall of the communist regime, and in their eagerness for Western values, they embraced the constitutional-legal doctrine of human dignity, as applied by German jurisprudence in the post-war period, that is, in absolute concepts of dignity as the highest value. After a certain period of time when they adopted this praxis, in the 1st decade of the 21st century, they sobered up and became aware of the problematic nature of absolute immeasurable human dignity. However, in the Czech Republic, German constitutionalism continues to be a significant and leading source of inspiration in matters of dignity.¹²

3 Human Dignity as the Basis of Human Rights – Does the Derivation Theory Still Apply?

Human dignity has become the basis of human rights. However, there is much that is disputed and debatable in this thesis, although it is repeated very often.¹³ In legal philosophy, not only is it entirely unclear what human dignity is, but also the concept of human rights is equally problematic. Rowan Cruft, S. Mathew Liao and Massimo Renzo introduce the publication on the philosophical foundations of human rights with the sentence that human rights are a legal, moral and political concept that has existed for only 60 years and whose development was initiated by the Universal Declaration of Human Rights (1948).¹⁴ It is also questionable since when we talk about human rights in the modern sense of the word. The philosophical concept is of course older, primarily, it concerns iusnaturalism.

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- 11 MANGOLDT, Hermann von, KLEIN, Friedrich, STARCK, Christian. *Kommentar zum Grundgesetz: GG, 1. Band, 7. Auflage*. München: C.H. Beck, 2018.; MAUNZ, Theodor, DÜRIG, Günter. *Grundgesetz. Kommentar. Loseblattsammlung. 55. Lieferung*. München: C.H. Beck, 2009.; *Grundgesetz für Bundesrepublik Deutschland*. 23rd May 1949. [online] Available: <https://www.gesetze-im-internet.de/gg/GG.pdf>; WAGNEROVÁ, Eliška, ŠIMÍČEK, Vojtěch, LANGÁŠEK, Tomáš, POSPÍŠIL, Ivo. *Listina základních práv a svobod. Komentář*. Praha: Wolters Kluwer ČR, 2012, p. 58, p. 72; HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian, KOPA, Martin, et al. *Listina základních práv a svobod. Komentář. 1. vydání*. Praha: C.H. Beck, 2021, 1451 p.
- 12 DÜRIG, Günter. *Der Grundrechtssatz von der Menschenwürde*. In Archiv des öffentlichen Recht 81, 1956, pp. 117–157.; DÜWELL, Marcus. Human dignity: concepts, discussions, philosophical perspectives. In DÜWELL, Marcus, BRAARVIG, Jens, BROWNSWORD, Roger, MIETH, Dietmar (eds.). *The Cambridge handbook of Human Dignity. Interdisciplinary perspectives*. Cambridge: 2014, Cambridge University Press, pp. 23–49.
- 13 BARTOŇ, Michal et al. *Základní práva*. Praha: Leges, 2016, p. 608.; HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian, KOPA, Martin, et al. *Listina základních práv a svobod. Komentář*.
- 14 Rather 80 years – p. 1 – CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo. Philosophical Foundations of Human Rights: An Overview. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp 1–41.

The authors summarize the questions that the human rights debate has been addressing for decades: Do human rights even exist? Or should we be sceptical or nihilistic?¹⁵ Which human rights are truly human? As we see that the concept of non-human rights, the rights of groups, legal entities and environmental protection has also developed. How shall human rights be justified? If there are human rights, what are they? Are they legal or moral?¹⁶ Usually, theories of justification concern human rights on a moral level.¹⁷

The basics of human rights, more precisely, their theories divide into three groups, namely 1. instrumental justification, 2. non-instrumental justification and 3. practical justification.¹⁸ In the first group, we may discover the moral concept of rights, the theory of interests and competences (e.g., James Griffin, S. Matthew Liao, John Tasioulas, Amartya Sen, Martha Nussbaum). The second group is characterized by emphasizing the values and nature of man as a bearer of rights, his high status (Frances Kamm, Thomas Nagel). The third group includes a pragmatic justification of human rights, which is based on politics and international relations (John Rawls, Joseph Raz, Charles R. Beitz).¹⁹

As part of the theoretical-philosophical debate, John Tasioulas addresses the basis of human rights.²⁰ For Tasioulas, human rights are based on interests and moral rights, he claims that:

*“Human rights are rights that all human beings possess simply in virtue of their humanity; on an interest that generates duties on the part of others. Although it would be pleasingly symmetrical, there is no implication that the duties must also be universal, i.e., that all persons bear the duties correlative to the human rights enjoyed by all.”*²¹

The concept of humanity, character and the nature of humanity, according to Tasioulas, expresses the specificity of a person as biological species, outstanding features of exceptionality such as: physical height and reproduction, life span, psychological abilities such as perception, self-awareness, reflection, memory,

15 The author takes a nihilistic stance here – DEMBOUR, Marie-Benedicte. *Who Believes in Human Rights? Reflections on the European Convention*. Cambridge: Cambridge University Press, 2009, 310 p.; PINKER, Steven. The Stupidity of dignity. *The New Republic*. [online] Available: <http://www.ub.edu/valors/Estilos%20UB/imagenes/Documents/The%20stupidity%20of%20dignity.pdf> Accessed: 28.05.2008.; KACZOR, Christopher. 2012. The importance of dignity. A reply to Steven Pinker. *The Wisterpool institute. Public discourse (online)*, published on 31st January 2012. <http://www.thepublicdiscourse.com/2012/01/4540/>; Accessed: 31.01.2012.

16 HAPLA, Martin also partially follows this debate. HAPLA, Martin. *Utilitarismus a filozofie lidských práv*. Praha: Leges, 2022, 240 p.

17 Ibid.

18 p. 11 – CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo. *Philosophical Foundations of Human Rights*.

19 pp. 11–23 for details on the Theories of Justification see – CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo. *Philosophical Foundations of Human Rights*.

20 TASILOULAS, John. On the Foundation of Human Rights. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp. 45–70.

21 Ibid., p. 50.

rationality, use of language, normative understanding, evaluation, morality, wisdom and aesthetics, emotions. All this, i.e., human character, nature and phenomenon, shapes human dignity, while to this extent, dignity as a value is a characteristic element of human rights.²²

On the basis of this definition, Tasioulas continues with the idea that the consequence that all human beings are equal in moral status and all people are equally important shall be implied. Historically, we encounter the moral equality of all people in the case of the Stoics, Thomas Aquinas, John Locke and Immanuel Kant.²³ Tasioulas thinks that the claim to human dignity is not in itself a claim to some social position, as it often results from the possible political implication of human rights. Thus, Tasioulas disagrees with the opinions of Jeremy Waldron, who defines dignity in this way.²⁴ The value of human dignity is shared by people in equality. According to Tasioulas, rationality and other ethical assumptions do not matter. Humankind is capable of being a holder of rights. Tasioulas characterizes human dignity as a universal human interest.²⁵ He then elaborates his conclusions regarding dignity as the foundation of human rights as follows:

*“Human dignity is ground on human rights, as of interpersonal morality in general, does not prevent it from playing a more prominent role in the shaping of some moral standards, including some human rights, as compared with others. This is because some moral standards are more directly protective of equal human status than others.”*²⁶ Tasioulas classifies examples of violations of human dignity into two types, the first type being the violation of the moral prohibition of

22 Ibid., p. 54.

23 Ibid., p. 50.

24 WALDRON, Jeremy. *Dignity, Rank and Rights*. Oxford: Oxford University Press, 2012.; For details on other concepts of human dignity, see: BALZER, Philipp, RIPPE, Klaus Peter, SCHABER, Peter. *Menschenwürde vs. Würde der Kreatur. Begriffsbestimmung, Gentechnik, Ethikkommissionen*. 2. unveränderte Auflage. Freiburg/München: Karl Alber Verlag, 1999, 83 p.; BARAK, Aharon. *Human dignity. The constitutional value and the Constitutional Right*. 1st edition. Cambridge: Cambridge University Press. 2015. 260 p.; DÜWELL, Marcus, BRAARVIG, Jens, BROWNSWORD, Roger, MIETH, Dietmar (eds.). *The Cambridge handbook of Human Dignity. Interdisciplinary perspectives*. Cambridge: Cambridge University Press, 2014, p. 608.; GRIMM, Dieter, KEMMERER, Alexandra, MÖLLERS Christoph (eds.). *Human dignity in Context, Explorations of a Contested Concept*. Baden-Baden: Nomos, 2018, 637 p.; TIEDEMANN, Paul. *Menschenwürde als Rechtsbegriff. Philosophische Klärung.*, 3. Auflage. Berlin: BWV, 2012, p. 730.; SCHABER, Peter. *Menschenwürde*. Stuttgart: Reclam, 2012, 126 p.; ROSEN, Michael. *Dignity: Its History and meaning*. Cambridge, Mass: Harvard University Press, 2012, 176 p.; PELE, Antonio. *Human dignity in Kant as a technology of the self: a Foucauldian approach*. [online], Available: https://www.researchgate.net/publication/334362964_HUMAN_DIGNITY_IN_KANT_AS_A_TECHNOLOGY_OF_THE_SELF_A_FOUCAULDIAN_APPROACH Accessed: 2019; PFORDTEN, von den Dietmar. *Menschenwürde, Recht und Staat bei Kant. Fünf Untersuchungen*. Paderborn: Mentis, 2009, 107 p.; DONNELLY, Jack. Human Rights and the Human Dignity. In *Analytic Critic of Non-Western Conceptions of Human Rights. The American Political Science Review*. 1982, vol. 76, no. 2, pp. 303–316.; HORÁK, Filip. *Lidská důstojnost. Kritická reflexe jejího postavení a funkce v ústavním právu*. Praha: Leges, 2019, 123 p.

25 p. 55 – TASIOLUS, John. *On the Foundation of Human Rights*.

26 Ibid., p. 56.

discrimination and the second type being the degradation of a person into a non-human animal. Rights are actually based on interests. It is the universal interest of people to be holders of the same moral value, which generates obligations to ensure this. According to Tasioulas, duties are moral reasons.²⁷ If, like Tasioulas, we understand human rights as moral values, based on the equality of all people to dignity and the possession of rights, then we characterize it as a universal human interest.²⁸ However, his premise of morality is somewhat questionable. We also find the moral concept of law in Immanuel Kant.²⁹ He presupposes the duality of law and morality, or rather, I believe, combines them iusnaturalistically. Onora O'Neill criticizes Tasioulas as follows.³⁰ From the reciprocal nature of law and duties, we come to the conclusion that interests and their theories cannot be considered suitable for justifying human rights. According to O'Neill, it is not sufficiently justified how rights become obligations in Tasioulas's concept, i.e., if obligations are generated by the equal status of people and interests. O'Neill concludes his reasoning that unlike obligations, rights cannot be derived, while everyone is the bearer of obligations.³¹

One may agree with O'Neill's critical reservations, especially with regard to my earlier texts, in which I consider whether the content of the concept of dignity is more connected to rights or rather to duties.³² If it is about dignity in the sense of subjective right, then we may work, similarly as O'Neill, with reciprocity. However, this argumentative basis is, I believe, inapplicable to the concept of dignity as a value or principle.

Pavel Dufek follows on Tasioulas in rejecting foundationalism and explains that: *“human rights cannot be conceived in a non-ideological way [...] If we want to reject this thesis, we may only claim that there is some ontologically and normatively “correct” and at the same time epistemically accessible definition or concept of human*

27 Ibid., p. 56.

28 Ibid., p. 70.

29 KANT, Immanuel. *Základy metafyziky mravů*. Praha: Nakladatelství Svoboda, 1990, p. 128.; KANT, Immanuel. *Die Metaphysik der Sitten*. Stuttgart: Reclams Universal Bibliothek, 2016, 408, p.; p. 5 – BYRD, S. B., & HRUSCHKA, J. *Kant's doctrine of right. A commentary*. Cambridge: Cambridge University Press, 2012, 336 p.; DEBES, Remy (ed.). *Dignity. A history*. Oxford: Oxford University Press, 2017, p. 408.; ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.; ROSENKRANZOVÁ, Olga. Důstojnost člověka podle Giovanniho Pika della Mirandola – inspirace pro právo.

30 O'NEIL, Onora. Response to John Tasioulas. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp. 71–78.

31 Ibid., p. 78.

32 ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity. In Human Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.; ROSENKRANZOVÁ, Olga. Důstojnost člověka podle Giovanniho Pika della Mirandola – inspirace pro právo.

rights. In the political and legal thinking of the past and present, but also in ordinary public discourse, various versions of moral realism or objectivism applied to human rights have been typical candidates for this role – that is, the belief that certain values are somehow woven into the fabric of this world and that human rights either belong to these values or are undoubtedly derived from them. We are talking about so-called foundationalism in the justification of human rights, which also includes the natural law tradition.³³

Another possible justification of the basis of human rights may be found in the good life. S. Matthew Liao comes up with this theory and states that the existence of positive rights, i.e., the justification of human rights may be seen in the basic conditions for a good life.³⁴ For Liao, the political justification of human rights is insufficient mainly because of its temporal determination. Liao looks for a more timeless solution and inclines towards naturalism, which corresponds to the thesis: “All human beings at all times and places would be justified in claiming them.”³⁵

Jeremy Waldron directly addresses the question of whether human dignity may be the basis of human rights.³⁶ Waldron sets out to investigate whether human rights are derived from human dignity and whether human dignity may therefore be the basis of human rights.

I would like to outline my point of view here. These questions, I would say, are connected and essentially express the same idea, since by deriving human rights from dignity, we affirm that dignity is their basis. What actually happens during the process of derivation? The aim is to determine a specific human right, that is, to specify the content and define its scope in relation to a more abstract value or principle of human dignity. If we understand human dignity as a legal principle according to Robert Alexy, as an order to optimize, then we may state the conclusion that human dignity serves as a principle to define the aim where individual legal norms, including human rights, should go and what they should achieve.³⁷

It is clear that this model of derivation, as a function of human dignity, i.e., being the basis of human rights, is only valid if we talk about dignity as a value. On the contrary, it is not valid, it is not plausible if we conceive dignity

33 DUFEK, Pavel. Lidská práva, ideologie a veřejné ospravedlnění: co obnáší brát pluralismus vážně. *Právník*, 2018, vol. 158, no. 1, pp. 50–70; citation on p. 54.

34 p. 81 – LIAO, S. Matthew. Human Rights as Fundamental Conditions for a Good Life. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: OUP, 2015, pp. 79–100.

35 Ibid., p. 95.

36 WALDRON, Jeremy. Is Dignity the Foundation of Human Rights? In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: OUP, 2015, pp. 117–137.

37 ALEXY, Robert. Human dignity and the principle of proportionality. *Právník*, 2015, vol. 154, no. 11, pp. 867–878.; ALEXY, Robert. Menschenrechte ohne Metaphysik? *Deutsche Zeitschrift für Philosophie*, Berlin: 2004, vol. 52, no. 1, pp. 15–24.; ALEXY, Robert. *Theorie der Grundrechte*. Sinzheim: Suhrkamp Taschenbuch Verlag, 2018, 548 p.

as a human right into the framework of this assumption. It also presupposes a certain hierarchy and systematic conception of law, however, there are also non-hierarchical conceptions of law within sociological approaches.³⁸

Another question is whether legal obligations may also be derived from human dignity? With respect to the binary and symmetrical nature of human rights, if we assume this, then duties may also be derived from human dignity. Nevertheless, if not, if we say that duties would not correspond to human rights as public subjective rights, then we could not even claim that human duties may be derived from human dignity. I think the first option applies.

Even Tasioulas claims that dignity is more of a moral concept associated with human rights, while this confirms my previous conclusions about Kantian philosophy and his concept of dignity, which is more associated with duties and as Oliver Sensen states, these duties may rather be understood as the content of Kantian dignity.³⁹ This is proven by the fact that Kant's concept of law is more moral and also that his concept of dignity is based on Kantian ethics, as Waldron also mentions.⁴⁰

If, according to Immanuel Kant, dignity in his concept is rather connected with obligations, then this confirms the conclusions of Tasioulas about the moral concept of human dignity, while I would also add details about the iusnaturalistic starting point, while it also confirms Waldron's conclusion about the problematic nature of the whole concept. However, I do not agree with Waldron that there actually is no dignity.

Let us go back to what Jeremy Waldron claims about the relationship between dignity and human rights.⁴¹ Waldron notes that rights are derived from dignity in judicial application to various forms of inhuman treatment. Waldron points to vague concepts of dignity, such as "intuitive understanding" by Oscar Schachter, or to McCrudden's concept of great human rights, sceptical concepts of "subjective squishy" within bioethics by Stephen Pinker and others.⁴² According to Waldron, it is not possible to deduce from the inconsistency of the concept the fact that dignity may be a source for deriving human rights. In a very general sense, Waldron presents the historical concepts of dignity, which he summarizes into two groups, while dignity is understood in the Catholic-Christian concept of the "*image of God*" based on the Kantian concept of dignity as the autonomy of moral ability.⁴³

38 ONDŘEJEK, Pavel. *Koncepce práva jako systému*. Praha, Wolters Kluwer, 2020, 272 p.

39 p. 169 – SENSEN, Oliver. *Kant on Human Dignity*. Kantstudien, sešit 166, Berlin: Walter De Gruyter, 2011, p. 230.; SENSEN Oliver (ed). *Kant on Moral Autonomy*. Cambridge: Cambridge University Press. 2015, p. 301.; ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.

40 KANT, Immanuel. *Die Metaphysik der Sitten*. Stuttgart: Reclams Universal Bibliothek, 2016, 408, p.

41 WALDRON, Jeremy. Is Dignity the Foundation of Human Rights?

42 Ibid., p. 121.

43 Ibid., p. 122

It is very common that there are many philosophical, legal, ethical, theological concepts of dignity, however, I am not sure that it is possible to conclude from this plurality alone that this excludes one of the theories, as Waldron argues. Historical concepts will be interpreted differently with the passage and influence of time, as evidenced by my research on Kant's and Pico's concept of dignity that they are no longer compatible with the modern concept in many respects.⁴⁴ However, it does not change the fact that those historical concepts are a source of ideas and create our historical perception of concepts and discourses and create a context of understanding.

Waldron explains how the theory of derivation developed in German constitutionalism, which was influenced by Hans Kelsen's theory of the "Grundnorma" after the Second World War, i.e., in the 1950s. Dignity thus acquired the metaphysical character of Kelsen's "Grundnorma". It is the Grundnorma that has a legitimizing function for further implementation of the norms derived from it.⁴⁵ We may say with Kelsen which specific norms are applicable law and if they are in accordance with it, that is, whether they exist in the legal order.⁴⁶ Waldron goes on to characterize that the nature of the "Grundnorma" is over positive and also points to the inconsistency in the confusion of legitimacy and legality of norms in German constitutionalism.⁴⁷

Waldron finally arrives at his own theory that dignity is essentially a status concept, not a value concept.⁴⁸ He claims that: *"In law, a status is a particular package of rights, powers, disabilities, duties, privileges, immunities, and liabilities accruing to a person by virtue of condition or situation they are in."*⁴⁹ Drawing on Austin's theory of rights and duties, Waldron concludes that: *"if dignity is a status, then it will be a mistake – a sort of category mistake – to talk of dignity as the foundation of rights. Instead, we may say that dignity as a status that comprises a given set of rights."*⁵⁰ Furthermore: *"... if human dignity is a status, then we should say that it comprises not just a set of human rights, but an underlying idea which explains both the importance of each of these rights in relation to our being human and importance of their being packaged together in this regard. If this is so, then the objection we considered early on in this section is a mistake. It is wrong to criticize a claim that dignity is the foundation of rights by saying that all that dignity does is abbreviate a set of rights. It does not just abbreviate them, it refers to the idea that*

44 SENSEN, Oliver. *Kant on Human Dignity*; SENSEN Oliver (ed). *Kant on Moral Autonomy*; ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.

45 p. 126 – WALDRON, Jeremy. Is Dignity the Foundation of Human Rights?

46 KELSEN, Hans. *Všeobecná teorie norem*. Brno: Masarykova univerzita, 2000, 470 p.

47 p. 128 – WALDRON, Jeremy. Is Dignity the Foundation of Human Rights?

48 Ibid., p. 133.

49 Ibid., p. 134.

50 Ibid.

*underlies and unifies them.*⁵¹ According to Waldron, deriving rights from dignity is highly problematic, dignity is simply a foundationalist idea and a status concept.⁵²

Of course, critics of Waldron's theory may be found as well, for example, A. John Simmons would not use the theory of justification, but would use the theory of natural rights to find the answer whether human dignity is a concept for deriving human rights, that is, whether it is their basis.⁵³ It is clear that these starting points may not even be reconciled argumentatively, which we may see from Pavel Dufek's remark that foundationalism often works with iusnaturalism for justification. However, unlike Dufek, I do not think that this connection necessarily exists, since there are quite a lot of iusnaturalistic conceptions and they have a different basis and do not necessarily lead to the denial of pluralism within the discourse. On the contrary, participation in the discourse of the widest possible platform of starting points will underline pluralism.

In addition to iusnaturalism, Simmons refers to historical concepts of dignity, from which, according to him, it would be possible to conclude that dignity is the basis for the derivation of human rights.⁵⁴ Simmons justifies his claims by the nature of natural rights, especially their time-less and pre-institutional nature. The goal of modern human rights is, according to Simmons quoting Charles Beitz: "... to create the social conditions necessary for the living of dignified human lives."⁵⁵ Simmons refers to Kant's concept of right and innate freedom. He states that according to contemporary Kantianism, Kant's iusnaturalism is still suitable for justifying modern democracies.⁵⁶ According to Simmons, Kant sets a pattern for contemporary institutions in terms of their relationship to the individual, or their autonomy and the state, i.e., human rights.

Simmons's remarks on Kant may be confirmed, however, this topic requires further analysis. Kant's concept of freedom as autonomy determines modern liberal democracies. Today, we already know that freedom alone is not enough, and the question is how to stimulate a common social discourse in a postmodern technological culture and how to preserve human dignity at the same time?

4 Human Dignity as the Highest Value in Law?

Why should human dignity be the strongest and most powerful value in law? Why should the position of human dignity be central? Why do we imagine dignity as a value right at the top of the pyramid, as the highest value in law from which human rights are derived? The theory of derivation, which may be doubted and questioned, depends on this. We usually answer that it is because human dignity

51 Ibid., p. 135–136.

52 Ibid., p. 137.

53 p. 144–145 – SIMMONS, A. John. Human Rights, Natural Rights and Human Dignity. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp. 138–152.

54 Ibid., p. 145.

55 Ibid., p. 152.

56 Ibid., p. 150.

is the foundation of human rights; however, is this not a rather tautological statement? It does not really tell us more about their relationship. After all, there are non-hierarchical concepts of law based on postmodern philosophy, because in postmodernity all certainties and hierarchies and systems corrode while facing critical scepticism.⁵⁷

The problematic nature of the hierarchic concept is proven by the theories of international and EU law, while finally it depends primarily on the politics of the states, which norms, principles and values they will prefer while undergoing significant development. This shows that the universal approach to rights has been disappearing at the expense of cultural particularism conditioned by time and space.

When we argue for human dignity as a value, the concept of dignity as absolute usually prevails meaning that it may not be measured in a proportionality test.⁵⁸ Only if we work with dignity as a human right, usually a personality or anti-discrimination claim, then it is a relative dignity, i.e., it may be compared with other values such as freedom and equality, principles or human rights.⁵⁹ We may agree with Tasioulas confirming that the plurality of values in law does not necessarily lead to the justification of human dignity as the absolute and highest value. Nevertheless, I would very often prioritize the value of dignity, not only in view of the historical wartime experiences of inhuman treatment and humiliation, but also in view of the current challenges of transhumanism and its professed concept of morphological freedom, freedom of body ownership, leading on the one hand to the realization of one's own happiness and the improvement of the human body using technology and on the other hand, to the total instrumentalization of a human being by including them in the technological world of machines. Finally, posthumanism warns in this direction. I believe that by merely criticizing rationalism and abstraction, we will not yet achieve the dignity of humanity and non-humanity, i.e., the dignity of nature. Rather, I see the path

57 ONDŘEJEK, Pavel. *Koncepce práva jako systému*.

MOHR, Georg. Kants Begriff der inneren Rechtspflicht als Prinzip einer Begründung von Menschenrechten. In: MOSAYEBI, Reza (ed.). *Kant und Menschenrechte*. Berlin: De Gruyter, 2018, pp. 49–61.; ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.; SENSEN, Oliver. *Kant on Human Dignity*; SENSEN Oliver (ed). *Kant on Moral Autonomy*.

58 ALEXY, Robert. Lidská důstojnost a princip proporcionality.; ALEXY, Robert. Menschenrechte ohne Metaphysik?; ALEXY, Robert. 2018. *Theorie der Grundrechte*.; ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.

59 For more details on contradictions and conflicts of principles and values, see DUFEK, Pavel, *Lidská práva, ideologie a veřejné ospravedlnění: co obnáší brát pluralismus vážně*. *Právník*, 2018, vol. 157, no. 1, pp. 50–70.

to humanization in the Renaissance concept of natural philosophy revealing the letters of God's alphabet as patterns and matrices imprinting themselves on matter.

5 Human Dignity as a Right or Duty?

The concept of human dignity in law is based on Kantian philosophy. References to the Kantian concept may be found in almost every commentary on the constitution, sometimes even in some court decisions. For example, by analysing court decisions of the Constitutional Court of the Czech Republic up to 2019, I found out that 1,179 decisions contain the concept of dignity, while only in 39 cases it was a dispute concerning dignity where dignity was the key argument within *ratio decidendi*, of which only 4 cases explicitly contained the so-called *object formula*, the prohibition of instrumentalization pointing to the author of the formula, the German constitutionalist, Günter Dürig.⁶⁰ The explicit reference to Immanuel Kant appeared in other decisions than in connection with the topic of human dignity, therefore, I did not find any explicit reference to the concept of dignity, however, it is Dürig's *object formula* that follows on from Kant's philosophy, specifically based on the categorical imperative, even though Dürig does not explicitly refer to Kant.⁶¹

The object formula states that "[...] a person cannot be treated as a mere object of state will and interest. A person has the right to develop their personality and therefore the state is obliged to leave the individual an autonomous space for self-development. A person is conceived as an aim in themselves. Violation of human dignity occurs when a specific individual is placed in the role of an object, when he becomes a mere means and is reduced to the form of a generically interchangeable quantity."⁶² "The object formula is a prohibition of instrumentalization in law."⁶³ *Selbstzweckformel* is based on Kant's philosophy, precisely his "*Menschheits-Selbstzweck-Formel*", that is "humankind's purpose

60 DÜRIG, Günter. *Der Grundrechtssatz von der Menschenwürde*; PFORDTEN, von der Dietmar. *Menschenwürde, Recht und Staat bei Kant. Fünf Untersuchungen*. Paderborn: Mentis, 2009. According to him, it is literally a historical irony. Also in earlier work: PFORDTEN, von der Dietmar. *Zur Menschenwürde bei Kant*. In: *Jahrbuch für Recht und Ethik – Recht und Sittlichkeit bei Kant*. 2006, Vol. 14, pp. 501–517.; MOHR, Georg. *Person, Recht und Menschenrecht bei Kant*. In: KLEIN, Eckart – MENKE, Christof (Hrsg.). *Der Mensch als Person und Rechtsperson. Grundlage der Freiheit*. Berlin: Berliner Wissenschafts-Verlag, Menschenrechtszentrum der Universität Potsdam, 2011, Band 33, p. 247.; MANGOLDT, Hermann von – KLEIN, Friedrich – STARCK, Christian. *Kommentar zum Grundgesetz: GG, 1. Band*; MAUNZ, Theodor – DÜRIG, Günter. *Grundgesetz. Kommentar*; KANT, Immanuel. *Základy metafyziky mravů*. Praha: Nakladatelství Svoboda, 1990, p. 128.; KANT, Immanuel. *Die Metaphysik der Sitten*. Stuttgart: Reclams Universal Bibliothek, 2016, p. 408.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity; pp 150–151 – ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.

61 PFORDTEN, von der Dietmar. *Menschenwürde, Recht und Staat bei Kant. Fünf Untersuchungen*; PFORDTEN, Dietmar. *Zur Menschenwürde bei Kant*.

62 DÜRIG, Günter. *Der Grundrechtssatz von der Menschenwürde*.

63 DÜRIG, Günter. *Der Grundrechtssatz von der Menschenwürde*; ROSENKRANZOVÁ, Olga. *Věk práv? Lidské povinnosti ve světle Kantovy filozofie*; ROSENKRANZOVÁ, Olga. The New Point

formula about itself” from the *Groundwork of the Metaphysics of Morals*. Here Kant states: “Act so as to use humankind, as well as in your own person and in the person of each other, always as an aim, never merely as a means.”⁶⁴

The issue is that Kant’s conception of dignity is so different from the modern legal anchoring of dignity as an inviolable, innate, inherent, universal dignity in which all people are equal. Kant does come with the concept of innate dignity, but he distinguishes dignity towards oneself as internal, and dignity towards other people as external. In the context of the whole *Metaphysics of Morals* and *Groundwork of the Metaphysics of Morals* it may be seen that dignity is the basis of his ethical theories. First of all, the concept of self-respect is a fairly traditional model of dignity, as Oliver Sensen also states.⁶⁵ Together with Sensen, we may state that according to Kant, dignity is more connected with duties than with rights. Sensen states: “For Kant, dignity is not a sign, or a value that generates rights from itself. However, for Kant, the possibility of claiming rights arises from the duty of the agent. [...] Therefore, in this view of Kant, the concept of claiming rights precedes the concept of duty. Rights may be claimed as an acting memory of one’s duties arising from the categorical imperative. With regard to the inherent rights of every person, it is the right to freedom that may coexist with the freedom of someone else in accordance with universal law. One’s freedom is limited by the categorical imperative.”⁶⁶ Furthermore: “Dignity as the elevation of human beings above the rest of nature is based on freedom; freedom is a matter of moral law. What is moral is prescribed by law, which is constituted by one’s duty. If one complies with the law, one realizes one’s initiatory dignity in a true elevation of oneself above the rest of nature. Dignity is therefore linked to duty and only indirectly to rights. Moreover, one’s dignity is primarily a duty to oneself.”⁶⁷

If we work with the theory of deriving rights from human dignity, which serves as the basis of basic rights, then we necessarily observe the paradox of human rights derived not only from rights, but also from dignity, which is more of an

of View on Pico’s and Kant’s Concept of Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva*. Giovanni Pico della Mirandola & Immanuel Kant.

64 p. 75 – KANT, Immanuel. *The foundations of the metaphysics of morals.*; KANT, Immanuel. *Die Metaphysik der Sitten.*; p. 18 – MOHR, Georg. *Person, Recht und Menschenrecht bei Kant.*; p. 17 – MOHR, G. *Der Begriff der Person bei Kant, Fichte und Hegel*. In: STURMA, Dieter (Hrsg). *Person. Philosophiegeschichte – Theoretische Philosophie – Praktische Philosophie*. Paderborn, 2001.

65 SENSEN, Oliver. *Kant on Human Dignity*.

66 p. 169 – SENSEN, Oliver. *Kant on Human Dignity.*; KANT, Immanuel. *Základy metafyziky mravů*. Praha: Nakladatelství Svoboda, 1990, p. 128.; KANT, Immanuel. *Die Metaphysik der Sitten*. Stuttgart: Reclams Universal Bibliothek, 2016, p. 408.

67 p. – 170 – SENSEN, Oliver. *Kant on Human Dignity.*; For details see – MOHR, Georg. *Kants Begriff der inneren Rechtspflicht als Prinzip einer Begründung von Menschenrechten*. In: MOSAYEBI, Reza (ed.). *Kant und Menschenrechte*. Berlin: De Gruyter, 2018, pp. 49–61.; BYRD, Sharon B., HRUSCHKA, Joachim. *Kant’s Doctrine of Right. A commentary*. Cambridge: Cambridge University Press, 2012, p. 336.

obligation. The problem stems primarily from the characterization of human dignity as a moral obligation and from Kant's concept of moral right.⁶⁸

Another difficulty demonstrating the inconsistency of the historical concept for today's modern dignity in law lies in the fact that Kant distinguished two levels of person, namely *homo noumenon* and *homo phaeonomenon*, while only *homo noumenon* is qualified to bear rights and obligations, to be the subject of rights and obligations, i.e. of human dignity.⁶⁹ Of course *homo noumenon* and their dignity is a metaphysical, in other words, mental concept and is the opposite of the empirically conditioned and unfree phenomenon of a person.

Kant, as well as Sensen, perceives the concept of dignity as initiatory one, that is, you have to work on yourself, purify your thinking from impulses, inclinations and empirical influences so that a free, autonomous space for rational thinking is created while taking into account categorical imperatives as internal commands to act, even though it is an innate dignity as a disposition.⁷⁰ That is why Kant entrusts dignity to rational beings. We know that this is a very limited concept, corresponding to the enlightenment emphasis on rationality. Even for Kant, who also devoted himself to astrophysics, the concept of rational beings also meant extra-terrestrial entities and God himself.⁷¹ All this underlines the conclusion that Kant's concept of dignity is a starting point, however, it is inconsistent with the current legal concept of dignity. This is also confirmed by Michael Rosen.⁷²

6 Conclusions

We may see that the concept of dignity has been constantly evolving in both law and philosophy. Although historical concepts may serve as a starting point and inspiration, they are quite inconsistent with modern legal concepts; as the Kantian concept of the dignity of a reasonable person. Therefore, the modern concept has been slowly and surely replacing the postmodern perception of a person who is thrown down from the top of the food chain and falls in sacrifice to protect the dignity of creatures, entities and nature, as we find in posthumanism. However,

68 BYRD, Sharon B., HRUSCHKA, Joachim. *Kant's Doctrine of Right. A commentary.*; ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.

69 Ibid.; DEBES, Remy (ed.). *Dignity. A history.*

70 p. 169 – SENSEN, Oliver. *Kant on Human Dignity.*; ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie.; ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity.; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva. Giovanni Pico della Mirandola & Immanuel Kant.*

71 SOUSEDÍK, Stanislav. Důstojnost člověka v pojetí Tomáše Akvinského a Immanuela Kanta. In: NEJESCHLEBA, Tomáš – NĚMEC, Václav – RECINOVÁ, Monika et al. *Pojetí člověka v dějinách a současnosti filosofie. II. Od Kanta po současnost.* Brno: Centrum pro studium demokracie a kultury, 2011, pp. 9–18; BALZER, Philipp – RIPPE, Klaus Peter – SCHABER, Peter. *Menschenwürde vs. Würde der Kreatur. Begriffsbestimmung. Gentechnik, Ethikkommissionen.*; ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva. Giovanni Pico della Mirandola & Immanuel Kant.*

72 ROSEN, Michael. *Dignity: Its History and meaning.* Cambridge, Mass: Harvard University Press, 2012, p. 176.

as presented in this paper, many certainties fade away, such as the foundationalist understanding of human dignity as the basis of human rights. The theory of deriving human rights from dignity as the highest value is being questioned today, as it is increasingly problematic to talk about the hierarchical organization of law and there are equally valuable principles and values, besides dignity, such as freedom and equality. Last but not least, the article revealed the question of a certain paradox, whether human dignity is more connected with duties than with rights? The conclusion is that dignity is not only characterized by rights, but also by obligations. Finally, even this may be justified by the inspiring Kantian theory.

List of references

- ALEX, Robert. Lidská důstojnost a princip proporcionality. *Právník*, 2015, vol. 154, no. 11, pp. 867–878.
- ALEX, Robert. Menschenrechte ohne Metaphysik? *Deutsche Zeitschrift für Philosophie*, Berlin, 2004, vol. 52, no. 1, pp. 15–24.
- ALEX, Robert. 2018. *Theorie der Grundrechte*. Sinzheim: Suhrkamp Taschenbuch Verlag, p. 548.
- BALZER, Philipp, RIPPE, Klaus Peter, SCHABER, Peter. *Menschenwürde vs. Würde der Kreatur. Begriffsbestimmung, Gentechnik, Ethikkommissionen. 2. unveränderte Auflage*, Freiburg/München: Karl Alber Verlag, 1999, p. 83.
- BARAK, Aharon. *Human dignity. The constitutional value and the Constitutional Right*. Cambridge university press. 2015. p. 260.
- BECCHI, Paolo, MATHIS, Klaus (Eds.). *Handbook of Human Dignity in Europe*. Cham: Springer, 2021, p. 1012.
- BARTOŇ, Michal et al. *Základní práva*. Praha: Leges, 2016, p. 608.
- BORGHESI, Francesco, PAPIO, Michael, RIVA, Massimo (ed.): *PICO DELLA MIRANDOLA. Oration on the Dignity of Man. A new translation and commentary*. Cambridge: Cambridge University Press, 2016, p. 308.
- BOUČKOVÁ, Pavla, HAVELKOVÁ, Barbara, KOLDINSKÁ, Kristina, KÜHN, Zdeněk, KÜHNOVÁ, Eva, WHELANOVÁ, Markéta. *Antidiskriminační zákon. Komentář. 1. vydání*. Praha: C.H. Beck, 2010, p. 425.
- BYRD, Sharon B., HRUSCHKA, Joachim. *Kant's Doctrine of Right. A commentary*. Cambridge: Cambridge university press, 2012, p. 336.
- CICERO, Marcus, Tullius. *O povinnostech*. Praha: Svoboda, 1970, p. 193.
- COPENHAVER, Brian P. *Magic and the Dignity of Man. Pico della Mirandola and His Oration in the Modern Memory*. Cambridge/Massachusetts: The Belnap Pres of Harvard University Press, 2019.
- CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo. *Philosophical Foundations of Human Rights: An Overview*. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp 1–41.
- DEBES, Remy (ed.). *Dignity. A history*. Oxford University Press, 2017, p. 408.
- DEMBOUR, Marie-Benedicte. *Who Believes in Human Rights? Reflections on the European Convention*. Cambridge: Cambridge university press, 2009, p. 310.
- DONNELLY, Jack. Human Rights and the Human Dignity. In *Analytic Crytic of Non-Western Conceptions of Human Rights. The American Political Science Review*. 1982, vol. 76, no. 2, pp. 303–316.
- DUFEK, Pavel. Lidská práva, ideologie a veřejné ospravedlnění: co obnáší brát pluralismus vážně. *Právník*, 2018, vol. 157, no.1, pp. 50–70.

- DÜRIG, Günter. *Der Grundrechtssatz von der Menschenwürde*. In Archiv des öffentlichen Recht, 1956, no. 81, pp. 117–56.
- DÜWELL, Marcus. Human dignity: concepts, discussions, philosophical perspectives. In DÜWELL, Marcus, BRAARVIG, Jens, BROWNSWORD, Roger, MIETH, Dietmar (ed.). *The Cambridge handbook of Human Dignity. Interdisciplinary perspectives*. Cambridge: 2014, Cambridge University Press, pp. 23–49.
- GRIMM, Dieter, KEMMERER, Alexandra, MÖLLERS Christoph (eds.). *Human dignity in Context, Explorations of a Contested Concept*. Baden-Baden: Nomos, 2018, 637 p.
- Grundgesetz für Bundesrepublik Deutschland, [online] <https://www.gesetze-im-internet.de/gg/GG.pdf>; Accessed: 23.5.1949.
- HABERMAS, Jürgen. *K ustavení Evropy*. Praha: Filosofia, 2013, p. 270.
- HAPLA, Martin. *Lidská práva bez metafyziky: legitimita v (post)moderní době*. Brno: Masarykova univerzita v Brně, 2016, p. 156.
- HAPLA, Martin. *Utilitarismus a filozofie lidských práv*. Praha: Leges, 2022, p. 240.
- HORÁK, Filip. Lidská důstojnost v ústavním právu: legitimní argument nebo axiom? *Jurisprudence*, 2017, no. 4, pp. 3–14.
- HORÁK, Filip. *Lidská důstojnost. Kritická reflexe jejího postavení a funkcí v ústavním právu*. Praha: Leges, p. 123.
- HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian, KOPA, Martin, a kol. *Listina základních práv a svobod. Komentář. 1. vydání*. Praha: C.H. Beck, 2021, p. 1451.
- JASPERS, Karel. *Otázka viny. (Příspěvek k německé otázce.)*, Praha: Mladá Fronta, 1991, p. 96.
- KACZOR, Christopher. 2012. The importance of dignity. A reply to Steven Pinker. *The Wisterpool institute. Public discourse (online)*, [online] <http://www.thepublicdiscourse.com/2012/01/4540/>; Accessed: 31.01.2012.
- KANT, Immanuel. *Ethik und Religionsphilosophie*. Stuttgart: Greiner und Pfeiffer, Jeannot Emil Freiherr von Grotthuss, ed. August Messer, p. 161.
- KANT, Immanuel. *Základy metafyziky mravů*. Praha: Nakladatelství Svoboda, 1990, s. 128.
- KANT, Immanuel. *Die Metaphysik der Sitten*. Stuttgart: Reclams Universal Bibliothek, 2016, p. 408.
- KELSEN, Hans. *Všeobecná teorie norem*. Brno: Masarykova univerzita v Brně, 2000, p. 470.
- KRISTELLER, Paul Oskar. *Studien zur Geschichte der Rhetorik und zum Begriff des Menschen in der Renaissance*. Gratia-Verlag Gottingen 1981, p. 149.
- KRISTELLER, Paul Oskar. *The Classics and Renaissance Thought*. Harvard University Press, 1955, p. 106.
- LAVICKÝ, Petr a kol. *Občanský zákoník I. Obecná část (§ 1 až 654). Komentář. 2. vydání*. Praha: C.H. Beck, 2022, p. 2292.
- LIAO, S. Matthew. Human Rights as Fundamental Conditions for a Good Life. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: OUP, 2015, pp 79–100.
- LUTZ-BACHMANN, Matthias. Der Mensch als Person. Überlegungen zur Geschichte des Begriffs der “moralischen Person” und der Rechtsperson. In KLEIN, Eckart, MENKE, Christof (Hrsg.). *Der Mensch als Person und Rechtsperson. Grundlage der Freiheit*. Berlin: 2011, Berliner Wissenschafts-Verlag, Menschenrechtszentrum der Universität Potsdam, Band 33, p. 247.
- MANGOLDT, Hermann von, KLEIN, Friedrich, STARCK, Christian. *Kommentar zum Grundgesetz: GG, 1. Band., 7. Auflage*. München: C.H. Beck, 2018.
- MAUNZ, Theodor, DÜRIG, Günter. *Grundgesetz. Kommentar. Loseblattsammlung. 55. Lieferung*. München: C.H. Beck, 2009.
- MOHR, G. Der Begriff der Person bei Kant, Fichte und Hegel. In STURMA (Hrsg.). *Person. Philosophiegeschichte – Theoretische Philosophie – Praktische Philosophie*. Paderborn: Mentis, 2001.
- MOHR, Georg. Kants Begriff der inneren Rechtspflicht als Prinzip einer Begründung von Menschenrechten. In: MOSAYEBI, Reza (ed.). *Kant und Menschenrechte*. Berlin: De Gruyter, 2018, pp. 49–61.

- MOHR, Georg. Person, Recht und Menschenrecht bei Kant. In KLEIN, Eckart, MENKE, Christof (Hrsg.). *Der Mensch als Person und Rechtsperson. Grundlage der Freiheit*. Berlin: 2011, Berliner Wissenschafts-Verlag, Menschenrechtszentrum der Universität Potsdam, Band 33, p. 247.
- NEUMANN, Volker: *Menschenwürde und Existenzminimum*. Humboldt-Universität zu Berlin, 1995.
- ONDŘEJEK, Pavel. *Koncepce práva jako systému*. Praha, Wolters Kluwer, 2020, 272 p.
- O'MAHONY, Conor. There is no such thing as a right to dignity. A rejoinder to Emily Kidd White. *International Journal of Constitutional Law*. [online] Vol. 10, No. 2: 585–587.; <http://icon.oxfordjournals.org/content/10/2/551.full.pdf>
- O'NEILL, Onora. Responde to John Tasioulas. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp 71–78.
- PELE, Antonio. *Human dignity in Kant as a technology of the self: a Foucaultian approach*. [online]; https://www.researchgate.net/publication/334362964_HUMAN_DIGNITY_IN_KANT_AS_A_TECHNOLOGY_OF_THE_SELF_A_FOUCAULTIAN_APPROACH; Accessed: 2019.
- PFORDTEN, von der Dietmar. *Menschenwürde, Recht und Staat bei Kant. Fünf Untersuchungen*. Paderborn: Mentis, 2009, p. 107.
- PFORDTEN, von der Dietmar. Zur Menschenwürde bei Kant. In *Jahrbuch für Recht und Ethik*, vol. 14 – *Recht und Sittlichkeit bei Kant*. 2006, pp. 501–517.
- PICO DELLA MIRANDOLA, Giovanni: O důstojnosti člověka. OIKOYMENH, Praha 2005, p. 135.
- PINKER, Steven. The Stupidity of Dignity. *The New Republic*. [online] <http://www.ub.edu/valors/Estilos%20UB/imatges/Documents/Th e%20stupidity%20of%20dignity.pdf>; Accessed: 28.05.2008.
- PŘIBAŇ, Jiří – HOLLÄNDER, Pavel et al. *Právo a dobro v ústavní demokracii. Polemické a kritické úvahy*. Praha. Slon, 2011.
- RADBRUCH. *Rechtsphilosophie. Studienausgabe*. Herausgegeben von Ralf Dreier und Stanley L. Paulson, Heidelberg: C. F. Muller Verlag, 2003, p. 280.
- ROSEN, Michael. *Dignity: Its History and meaning*. Cambridge, Mass: Harvard University Press, 2012, p. 176.
- ROSENKRANZOVÁ, Olga. Důstojnost člověka podle Giovannio Pika della Mirandola – inspirace pro právo. *Právník*, 2017, vol.156, no. 2, pp. 134–151.
- ROSENKRANZOVÁ, Olga. Interpretace lidských prav veřejným ochráncem práv. In ČERVÍNEK, Zdeněk (ed.) *Lidská práva v soudní praxi*. Olomouc: Iuridicum Olomoucense, 2018, pp. 45–61.
- ROSENKRANZOVÁ, Olga. *Lidská důstojnost – právně teoretická a filozofická perspektiva. Giovanni Pico della Mirandola & Immanuel Kant*. Praha: Leges, 2019, p. 171.
- ROSENKRANZOVÁ, Olga. The New Point of View on Pico's and Kant's Concept of Dignity. In *Human Dignity. Studies in Law, Politics and Society*, 2022, vol. 88, pp. 41–65 (Chapter 3), Emerald Publishing.
- ROSENKRANZOVÁ, Olga. Věk práv? Lidské povinnosti ve světle Kantovy filozofie. *Právník* 2021, vol. 160, no. 7, pp. 525–548.
- SAJÓ, András. *Constitutional sentiments*. New Haven & London: Yale University Press, 2011, p. 382.
- SAJÓ, András. The Constitutional Domestication of Emotions. In Sellers, M.N:S. (ed.): *Law, Reason and Emotion*. Cambridge: University Cambridge Press, 2017, pp. 55 –79.
- SENSEN, Oliver. *Kant on Human Dignity*. Kantstudien, no 166, Berlin: Walter De Gruyter, 2011, p. 230.
- SENSEN Oliver (ed). *Kant on Moral Autonomy*. Cambridge: Cambridge University Press. 2015, p. 301.
- SCHABER, Peter. *Menschenwürde*. Stuttgart: Reclam, 2012, p. 126.
- SCHUHMAN, Karl. Giovanni Pico della Mirandola und der Hermetismus. In QUISPEL, Gilles. *Die hermetische Gnosis im Laufe der Jahrhunderte*. Birnbach: Rozekruis Pers, 2000, p. 695.
- SIKORA, Ondřej. *Kantova praktická metafyzika*. Praha: Univerzita Karlova, Karolinum, 2017, p. 309.

- SIMMONS, A. John. Human Rights, Natural Rights and Human Dignity. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp 138–152.
- SOBEK, Tomáš. *Právní rozum a morální cit: hodnotové základy právního myšlení*. Praha: Ústav státu a práva AV ČR, 2016. p. 339.
- SOUSEDÍK, Stanislav. Důstojnost člověka v pojetí Tomáše Akvinského a Immanuela Kanta. In: NEJESCHLEBA, Tomáš – NĚMEC, Václav – RECINOVÁ, Monika et al. *Pojetí člověka v dějinách a současnosti filosofie. II. Od Kanta po současnost*. Brno: Centrum pro studium demokracie a kultury, 2011, pp. 9–18;
- TASIOULUS, John. On the Foundation of Human Rights. In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp 45–70.
- TIEDEMANN, Paul. *Menschenwürde als Rechtsbegriff. Eine philosophische Klärung. 3. überarbeitete Auflage*, Berlin: Berliner Wissenschaftsverlag, 2012, p. 730.
- WAGNEROVÁ, Eliška, ŠIMÍČEK, Vojtěch, LANGÁŠEK, Tomáš, POSPÍŠIL, Ivo. *Listina základních práv a svobod. Komentář*. Praha: Wolters Kluwer ČR, 2012, p. 931.
- WALDRON, Jeremy. *Dignity, Rank and Rights*. Oxford: Oxford University Press, 2012.
- WALDRON, Jeremy. Is Dignity the Foundation of Human Rights? In CRUFT, Rowan, LIAO, S. Matthew, RENZO, Massimo (eds.). *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, 2015, pp. 117–137.