

Bundled Abstracts

The Future of Human Dignity

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Keynote Speakers (in alphabetical order)

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Ebrahim Azadegan

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Michael Schmidt

Emily Schultz

Asheel Singh

Saul Smilansky

Christine Susienka

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Kerri Woods

Keynotes

Dereck Beyleveld

What Human Dignity is and Why It Matters to Understand What It is.

This lecture argues that if human dignity is understood as the basis of human rights as defined by the UDHR 1948, then to have human dignity is to possess those capacities and properties that must be possessed to be an intelligible address or addressee of any practical precepts, which is to be an agent defined as a being subject to hope and fear about its existence and the meaningfulness of its existence. Human rights and their correlative duties are constituted by agential self-understanding, which entails that they are constituted by a dialectic between those aspects of the human condition that make understanding of hope and fear central to an understanding of reasons for action. In consequence, attention to hope and fear must be made the central focus not only of philosophical anthropology but also of the empirical sciences that try to explain human motivations at both individual and social levels.

Roger Brownsword

From Erewhon to AlphaGo: For the Sake of Human Dignity, Should We Destroy the Machines?

In March 2016, when AlphaGo defeated Lee Sedol, the South Korean world champion Go player, even the developers of this smart technology were surprised by the effectiveness of their machine-learning (ML) algorithms. Recalling Samuel Butler's cautionary tale in his nineteenth-century novel, Erewhon, the question in this paper is whether we are at a point when, for our own good and, in particular, for the sake of human dignity, we should suspend further development of smart machines.

Although—or so it will be suggested—the development of smart games-playing machines (such as IBM's Watson and AlphaGo itself) raises no serious questions about human dignity, there are other applications of ML where such questions

might be raised. From the many potential applications of machine learning (ML), three particular cases are considered: (i) the use of ML in consumer recommender systems; (ii) the programming of moral decision-making into autonomous vehicles; and (iii) the use of ML for the purposes of profiling and prevention in the criminal justice system.

Antoine Buyse

The Role of Human Dignity in European Convention Case-Law

Is human dignity an underlying principle which guides the interpretation of human rights? Or is it rather a minimum core that states and non-state actors alike should never infringe upon. This contribution will delve into these issues by looking at the practice of one of the world's key human rights mechanisms: the European Court of Human Rights. It will do so by assessing the ways in which human dignity is used and applied in the jurisprudence of the Court, from issues of life and death to housing circumstances. This will enable us to answer whether the use of human dignity in case-law is merely a rhetorical device or more than that.

Rutger Claassen

The Dignity Claim: A Defense

The Dignity Claim is the claim that human dignity is the justification of human rights: it gives us the justifying reason why we must ascribe moral validity to human rights claims. People should have human rights because they have dignity; an unconditional worth or status equal to that of others. Can this Dignity Claim be defended? Many authors have been skeptical of this. They have argued that if there is a sound justification of human rights, it can be made in terms of a property that all humans share, like rational agency. The fact that human beings have dignity in virtue of having this property does not add anything substantial to the justification of human rights; dignity as a conceptual

term is superfluous. This would falsify the Dignity Claim. The presentation discusses two specific conceptions of dignity to see if they are able to counter this skepticism and establish the Dignity Claim. First, it discusses the conception of dignity as an unconditional worth or value (as found in Christine Korsgaard's work), second it discusses the conception of dignity as a kind of social and moral status/standing (as reintroduced by Jeremy Waldron). I will argue that the first conception fails to ground the Dignity Claim, but the second conception succeeds. People should have human rights because they need to ascribe an equal standing to themselves and others.

Marcus Düwell

Taking Human Dignity Seriously

Human dignity is seen as the basis or the foundation of the entire human rights framework. But it is notoriously contested how this theorem can and should be understood. The paper tries to make sense of this basic assumption of the human rights-praxis. It will first of all distinguish between different ways of understanding human dignity (as a value, a status, a principle and a right), to subsequently argue that in order to make sense of human rights we should understand dignity as *status* that commands categorical respect. This raises, however, the question of what the conditions could be under which the normative priority of this status can be reconstructed and justified. The claim would be that these conditions are necessarily connected to specific views on the first-person-perspective and on the possibility of practical self-understanding. The paper tries furthermore to outline the relevance of those considerations for the understanding of the law ad intercultural comparisons. Getting a more comprehensive understanding of the function that human dignity effectively fulfils and the role it can and should fulfil is particularly important in contexts wherein human rights have to respond to significantly new challenges, such as contexts of globalization and climate change.

Katrin Flikschuh

Human Dignity: A False Universal?

Paulin Hountondji has recently argued that the Western philosophical tradition contains a number of false universals - concepts or propositions that claim but fail to meet relevant validity criteria. This paper asks whether the concept of human dignity may not be a false universal. The paper begins by setting out Hountondji's notion of 'false universals' and then considers the concept of human dignity in light of that notion. I go on to ask whether moral reasoning that claims global reach requires moral universals in order to do so, and I suggest that it may not.

Stefan Gosepath

Understanding Human Dignity as a Plurally Justified Normative Surplus

I begin my discussion with the diagnosis of a situation that seems paradoxical. On the one hand, human rights and human dignity have, in the postwar UDHR and its successive texts and practices, reached a level that is historically unprecedented: that of a global, transcultural, and transnational political and legal order. On the other hand, human dignity's central role in this politico-legal practice does not derive from or conform to one specific moral or legal theory. Many historically influential ethical and political theories in philosophy, as well as many legal systems and earlier human rights declarations, managed to get by without an explicit concept of human dignity, and some suspect that the latter is nothing but an empty phrase, both redundant and vague. Finally, there is disagreement in philosophy—as always—about the role, meaning and justification that can be given to human dignity. How then can philosophy, as a reflection of political practice, make sense of this concept in its postwar and contemporary legal context?

To answer this question I propose the following interpretation; it has two essential elements. First it will be argued—both methodologically and as a matter of content—that, through appropriate reflection, an ecumenically grounded consensus can be reached among differing worldviews, a consensus on the content, form, justification and juridical enforcement of those legal human rights documents, and of the place of human dignity in them. In this interpretation, the Universal Declaration will be seen as invoking, touching upon, or assembling under the deliberately vague and general term "dignity" a set of very different ideas. If one agrees with this interpretation, the concept of dignity does not constitute, by virtue of its strategic role as a reservoir of different religious and ideological views, some sort of final or absolute reason; rather, it functions like a banner, a common symbol. "Dignity" is to be understood, then, as a status-indicating term. The fact that we "have" dignity means in the first instance that we are bearers of specific human rights. But that's not *all* it means.

The second main element of this interpretation is that human dignity is an open umbrella term; it should be understood, at least in terms of human rights, as a thesis that is not fully specified.

For the purposes of justification one needs an elastic meaning, a conceptual content that is not yet fully interpreted. Human dignity is the "worthiness of every rational subject to be a law-giving member in the kingdom of ends" (Kant). Being such a law-giving member means not being disregarded in terms of legitimation, and knowing that others should not be disregarded. It's about not being dominated by other forces, forces that are not legitimized. We are obligated to respect the autonomy of ourselves and everyone else, and should therefore respect all individuals as "ends in themselves". The principle of human dignity highlights the singular status of its bearer, a status that is inalienable and can not be outweighed by other ethical (or extra-ethical) claims. The fact that we "have" dignity means nothing other than this: that by virtue of the status we reciprocally ascribe to one another, under commonly accepted procedures, we

ascribe certain rights to ourselves. This amounts to a constant, perpetually uncompleted, irreducible and non-deferable renegotiation of the normative surplus.

Although the equivalence thesis would be accepted in this interpretation, “human dignity” could also be expressed through a combination of other concepts. Under the (vague) discourse of equal (human) dignity is commonly understood that equal respect should be paid to everyone, that autonomy must be respected, and that the rules should in principle be intelligibly justifiable to everyone subject to them. The “ecumenical” interpretation presented here refuses to accept the obsolescence thesis: as a concept, “human dignity” is neither redundant nor, therefore, obsolete, because it is—according to the thesis—an umbrella term that includes under its coverage all human rights. Yet at the same time it takes into account a normative surplus that can and must be referred to, if new cases and new (human) rights are formulated in legal judgments. “Human dignity” has in this interpretation a normative surplus. When taken as a fundamental category, it keeps open the possibility that there may be additional or different specific basic or human rights than those previously known or acknowledged.

With this interpretation of the concept, the conditions and violations of human dignity (abasement, humiliation, degradation, etc.) can be adequately grasped. It is a structural definition that still remains open to surpluses of new information, especially in the case of phenomena that one might want to understand as violations of human dignity. It is often the case that a new phenomenon is only recognized in new experiences of a (possible) violation of human dignity; this structural openness enables the concept to informatively enrich our understanding of human and fundamental rights, when new phenomena are brought under the conceptual umbrella *as* human-dignity violations.

Dignity and Intrinsically Public Goods: The Case of Criminal Law

In recent years various components of the legal system have been privatized. Most significantly in many states prisons were privatized and private individuals are often forced to use private arbitration systems.

This paper argues that there are goods whose value hinges on their public provision. I focus upon the provision of punishment and argue that private provision of punishment undermines equality as it presupposes that the agent inflicting the sanction is superior to the agent upon whom the sanction is inflicted. To realize the primary goal of punishment namely condemnation, the infliction of punishment must be performed in the name of the polity as a whole.

By privatizing prisons, the privatizing state actively stamps the moral inferiority of those subject to the rule of private entities with a public seal. Hence, it is not that the agent (public or private) is chosen on the basis of his contingent expected success in providing the good but the value of the good (or even the very possibility of providing the good) depends upon its being provided by the designated agent.

This paper is part of a more comprehensive work in which I argue that various legal institutions and legal procedures that are often perceived as contingent means to facilitate the realization of valuable ends matter as such. The question of whether punishment is inflicted by public or private entities is not merely a matter of competence of the relevant entities; the value of punishment hinges on its public provision.

Christopher McCrudden

**From Practice to Theory: What Is the Relevance of Human Rights
Practice for the Theory of Human Dignity?**

My paper will speak to a significant question in human rights - that there is significant debate on their deep foundations. A great deal of philosophical, anthropological, historical, political science and legal literature on human rights theory has recently been published (much of it drawing on conceptions of human dignity) which has intensified the debate over the causes, scope and significance of this issue, without resolving it. On the one hand, then, a coherent and agreed deep *theory* of human rights is still struggling to be born. On the other hand, there is a vibrant and increasingly prevalent *practice* of human rights, domestically, internationally, and transnationally. Both the absence of an agreed theory, and the prevalent practice of comparison in the human rights context are well known, as separate aspects of human rights discourse. What has seldom been attempted, and where I hope my paper may make a contribution, is to marry these two issues, and consider how (or whether) the practice of human rights speaks to the theoretical issues. There are several features of this practice, but one in particular will be a focus of the paper: how *comparative* practice plays a critical role in translating, developing and interpreting rights and in understanding human dignity.

Julia Tao

**Confucian *Qing*-based Morality for Grounding a Secular Concept of
Universal Human Dignity**

This paper is an attempt to explore the moral resources within the Chinese Confucian philosophical tradition for grounding a notion of universal human dignity in a secular *qing*-based morality to provide an alternative view to

Kantian transcendental human dignity grounded in abstract reason. The paper points out that in the Confucian moral tradition, there is no equivalent concept of human dignity as it has come to be defined in Western philosophical traditions and used in contemporary modern liberal democracies to underpin a system of universal rights. The paper however also shows that there are strong textual evidences to suggest the existence of a distinct notion of natural moral equality in Mencius's theory of human nature more than two thousand years ago. In his theory, Mencius posits a strong notion of "natural nobility" which is intrinsic to all humans and which is sharply distinguished from "aristocratic nobility" based on social role and status.

The paper further draws attention to the lack of a notion of transcendence in Confucian philosophy, and the absence of the Judaeo-Christian notion of *creation ex nihilo* in both Chinese mythology and philosophy. It explains how from the Confucian philosophical perspective, human morality is a human construct, but it is a human construct that has a naturalistic foundation in human *qing*. Human *qing* is understood as the inborn emotions, desires, aspirations and inclinations equally possessed by all humans at birth. It is the foundation of human natural equality and the source of our common moral potentials. From the Confucian perspective, reason and emotion are not antithetical. Morality is not a purely formal concept, it must be based on and is also responsive to human *qing* in order to be a truly human and humane morality.

Living the moral life is to cultivate our natural human emotions and sentiments in the context of human relationships and social roles to realize our "natural nobility" which is the universal moral goal. In this way, the Confucian secular *qing*-based morality opens up the possibility of a process view and an intersubjective dimension of a notion of universal human dignity which accords a central place to human *qing* both as the standard and the moral force that motivates actions.

The paper concludes by examining plausible implications of a Confucian *qing*-based secular concept of universal human dignity for providing the moral

resources to condemn and oppose conducts and policies which fail to show respect for our shared humanity or to respond to our common human *qing*, thereby crippling our inborn capacity to pursue the moral life. Examples are inhumane governments or societies failing to provide education and economic well-being for the people or inhumane social practices of honour killing, foot-binding or torture; engaging in self-instrumentalization or instrumentalization of the human subject such as certain genetic engineering/enhancement procedures, sale of human organ or suicide bombing; endorsing discriminatory practices such as unequal educational opportunities for women, racial oppression or hate speech.

Kenneth Westphal

Hegel's Justification of the Human Right to Non-Domination

'Hegel' and 'human rights' are rarely conjoined, and the designation 'human rights' does not appear in his works. Indeed, Hegel has been criticised for omitting civil and political rights all together. My surmise is that readers have been looking for some modern counterpart to a Decalogue, and have neglected how Hegel justifies his views, and so have neglected just what views he does justify. Philip Pettit (1997) has refocused attention on republican liberty. Hegel and I agree with Pettit that republican liberty is a supremely important value, but appealing to its value, or justifying it by appeal to reflective equilibrium, are insufficient both in theory and in practice. By reconstructing Kant's Critical methodology and explicating the social character of rational justification in non-formal domains, Hegel shows that the republican right to non-domination is constitutive of the equally republican right to justification (Forst 2007) – both of which are necessary requirements for sufficient rational justification in all non-formal domains. That is the direct moral, political and juridical implication of Hegel's analysis of mutual recognition, and its fundamental, constitutive role in rational justification. Specific corollaries of the fundamental republican right

to non-domination must be determined by considering what forms of illicit domination are possible or probable within any specific society, in view of its social, political and economic structures and functioning.

Parallel Sessions

Human Dignity and the Future of Human Right Debate in the Islamic World

Modern conception of human dignity is now considered as the justification for international covenants on human rights. The reason why one should respect others then, is based on a common value that every human being holds. This value is supposed to be so precious that can ground the universal and necessity nature of moral requirements. Despite this essential role which the conception of human dignity is supposed to play in promoting the respect for human rights we see that in many Islamic countries, with enough textual and traditional sources in support of this conception, it cannot successfully play its role. Unfortunately we face with some sort of ignoring or disregarding views toward women rights or human rights among people who accept some sort of worth for humanity, the worth that mainly used by philosophers as the justification for the respect we owe to each other and to each other's rights. Then, where is the problem? The root of the problem I suggest is in different views or conceptions toward human dignity. We have already faced with two different conceptions of human dignity namely the Islamic conception versus modern conception. The main differences between these two conceptions are as follows: 1) in the Islamic conception, dignity is primarily belong to God and because every human being has inspired by divine spirit she has some potential value and worth that should be actualized and gained through faith and good action. So according to this conception, human dignity is a potential dignity that can be realized or wasted, while in the modern conception 'dignity' refers to an actual value that every human being possesses. 2) In the Islamic tradition the central emphasis is on human duties not on human rights. We ought to respect other's rights because it is our duty to act according to God's command that we ought to respect others rights. So human dignity is not supposed to be the ground on which the human rights might be declared. On the contrary, in modern world view

human rights are based on human dignity and our duties toward others would be to respect those appraised rights.

These differences might lead many to think that we have to establish some kind of Islamic human right convention in contrast with universal declaration or European convention on human rights. The rationale is that because our view about human being and dignity of humanity is in contrast with the view that is presupposed in UN declaration we have to have our own declaration of rights and laws. While I think this view has some worth I do not pursue this approach for I think this view still holds by the duty-oriented paradigm. And in the duty-oriented paradigm a false weighing between duties may easily lead to a huge catastrophe.

In this paper, I seek for a way in which one can accept both Islamic conception of human dignity and universal human right declaration. I suggest this is a way Kant has gone. I shall argue (following some other Kantian scholars) that Kant adheres to some sort of traditional conception of human dignity (which has several commonalities with Islamic conception) in his writings while he grounds the requirement to respect others on a direct and absolute command of reason that is categorical imperative or formula of humanity. According to Kant the reason why one should respect others is that it is commanded by categorical imperative. This view emphasizes on morality as an absolute and universal law. The benefit of this approach is that in the conflict of moral duties we never come out of morality. However it still holds by the duty-oriented world-view.

In the last part of the paper I shall introduce some re-interpretation of Islamic texts in order to support some sort of reconciliation between Islamic conception and modern conception of human dignity. This is the approach that contemporary reformists would pursue. This approach still faces with a difficulty of open-ended interpretations of sacred texts.

Nevertheless, I conclude that if we go through Kant's suggestion in his *Religion within the boundary of mere reason*, that morality be the basis of jurisprudence then we can establish an ethical community with people of God under ethical laws.

William Barbieri

Dignitarian Ethics in an Ecological Age: Two Genealogies of Human Dignity

A striking development in the rhetoric, politics, and jurisprudence of dignity is the extension of this discourse to nonhuman entities, in the form of personhood rights for hominids in New Zealand, Argentina, and several other settings; constitutional support for the rights of nature in Ecuador, and provisions for the "dignity of living things" (*Wuerde der Kreatur*) in Switzerland. Can the idea of dignity, so influentially married to the species of humans especially in modern times, meaningfully be extended to non-human entities? If so, in what sense? There is clearly much at stake in this question. For extending dignity beyond humans offers the prospect of bringing together two powerful ethical movements, the cause of human rights and the cause of ecological ethics, that have at times worked at cross-purposes to one another as a result of their respective anthropocentric and eco- or bio-centric perspectives. At the same time the potential risks of such a move include a diminution of the high sense of value or humans attach to themselves, an undermining of the claim to uniqueness so important to the power of the idea of human dignity, and an abridgment of the trump function associated with human rights.

In this paper, I explore the possibilities for and advisability of extending the ethics of dignity beyond the human. My route is circuitous. I begin with a critique of dignity, reflecting on some of the problems endemic to the term and commenting on some standard readings of its historical development into our contemporary conception of human dignity. I then propose an alternative way of thinking about dignity as a moral axiom, showing in the process how this line

of thinking can claim its own set of historical antecedents stretching back through Francis Bacon's *De Dignitate et Augmentis Scientiarum* (1623); to discussions among the Scholastics of the relation between *dignitas* and *persona*; and ultimately to classical logic, where *dignitas* translated the Greek term *axia*, the term for an object the worth of which is taken to be given or self-evident (axiomatic). In light of how, in this line of thought, dignity applies to those things whose goodness is manifest, part of my argument will involve a rehabilitation of the oft-maligned but recently resurgent theory of moral intuitionism; and along the way I will also have some remarks about the historicity of morals. Only at the conclusion will I return to the question of the applicability of dignity language in ecological ethics.

Paul van den Berg

**Re-activating Dignity for the Decent Society:
On Civic Duties to Combat Corrosive Disrespect**

Two decades after publication *The Decent Society* (DS), Avishai Margalit's analysis of disrespect and the harm it afflicts, stands as a towering monument of conceptual analysis in political ethics. However, debates about implications of DS for law- and policymaking end with a puzzling question: how can a Decent Society be sustainable if it also protects freedom of speech?

Examples from jurisprudence (like the 2011 Dutch trial and acquittal of MP Mr. Wilders) suggest that in a liberal-democratic *Rechtstaat* some expressions of disrespect are likely to erode a public culture of equal citizenship, yet cannot be banned by means of the criminal law alone; legal process may even precipitate the erosion. Adopting a term of Richard Sennett, I call this the problem of 'corrosive lawful disrespect'.

This paper explores three aspects of this complex problem:

- 1) What is the nature of this corrosive disrespect?

- 2) Which non-juridical duties of respect are imaginable that might combat it?
- 3) Which conception of dignity can support justifications for these duties in liberal societies?

Ad 1) Corrosive disrespect involves non-recognition of citizenship-status, I call it 'offensive neglect'. This type of disrespect fits uneasily in Margalit's twofold typology of 'humiliation' and 'social insult'.

Ad 2) If offensive neglect might have to be allowed by law, then how can we conceptualize a *Decent Liberal Society* (DLS)? My hypothesis: even if institutions and officials of the *state* fully comply to the decency-conditions stated by Margalit, *citizens* would have to be under additional, special duties of respect; call these duties of 'liberal civility'.

Specifically, I claim that if (and only if) their legal rights and positions are fully protected, citizens of DLS are under more-than-negative duties of respect. An additional duty of liberal civility may be that citizens respond defiantly when witnessing offensive neglect (even if the actual wording used is not illegal) if it is expressed in a public domain that is under 'their' collective jurisdiction.

The idea to expand a *DS*-type of theory (to include extra duties for by-standing citizens) may seem too farfetched for liberal thinkers. Not so however, if one accepts the following thoughts on liberal citizenship and respect: first, all citizens in a liberal republic are themselves everyday-officials, hence must carry some of the burdens of having authority (van Gunsteren 1998). Second, DLS cannot be built on 'first-person' duties of respect alone (i.e. on duties not to disrespect others); so-called 'second-personal' duties to *respond* to the disrespect *from* others, are equally essential to the concept of respect (Darwall 2006).

Ad 3) In order to develop this hypothesis into a normative argument (showing that extra duties of civility emerge when extending *DS* to *DLS*), one would also need an alternative (active or even re-active) conception of dignity, to supplement the (passive) conception of 'human vulnerability' on which the

1996 theory was based. However, the latter conception proves key to Margalit's thinking and to the 'Liberalism of Fear'-tradition in political thought he so adamantly represents (Shklar 1989)).

Marieke Borren

Rethinking Human Dignity as Worldliness

Engaging with the notion of human dignity, current political and legal philosophies of human rights and crimes against humanity face an unproductive divide between, on the one hand, liberal cosmopolitanism (which can be traced back to Locke and Kant) and a significant post- or even anti-humanist or -liberal undercurrent (dating back to Schmitt, Marx, and Burke, up to Hobbes). Whereas liberal cosmopolitans oppose post-humanists for their alleged cynicism, the latter argue that the former are blind to the paradoxical exclusions and dehumanization that the discourses and institutional frameworks of human dignity may engender.

To address this unproductive divide, this paper seeks to rethink human dignity in terms of human *worldliness*, based on Hannah Arendt's political and legal theory of human rights (HR) and crimes against humanity (CAH) on the one hand, and her phenomenology of human existence on the other.

Arendt was the first philosopher to reflect on the conceptual and practical (political and legal) perplexities of the human rights of refugees (*Origins of Totalitarianism*, 1951) as well as those of crimes against humanity (*Eichmann in Jerusalem*, 1963). To this day, she is considered an authoritative (though controversial) voice in theories of the HR of refugees, resp. CAH and genocide. So far, Arendt's accounts of HR and CAH have never been discussed in relation. Reading these accounts in conjunction reveals that she held a political (as opposed to a moral and metaphysical), practical and surprisingly non-human notion of humanity, defined in terms of worldliness, a key notion in her

phenomenology of the human condition (1958). Worldliness refers to our fundamental embeddedness in the human world of man-made political and legal institutions and legal personhood and in the shared tangible world of ‘public things’ that serve as an *inter esse*—a third in between self and others that binds them into a community (even if by contestation of this third).

In line with the spirit of Arendt’s work, I will first demonstrate that CAH do not merely destroy particular groups, or some inalienable human dignity, but, more pertinently, something that does not coincide with human beings but is outside of them, namely human *worlds*. Human dignity is affected if shared public things, including common land, things and legal personhood, are destroyed. Arendt’s example here is the Holocaust, which she considered the destruction of the European Jewish *world*. I will further illuminate this argument by discussing the workings of Apartheid in South Africa, through (amongst others) the destruction of urban areas and the forced removal of its inhabitants under the Group Areas Act (1950).

Likewise, secondly, Arendt argued that the stateless’ loss of HR is most accurately captured in the idea of their loss of a *place in the world*. The precarious legal, political and human status of today’s refugees and undocumented immigrants further illustrates this argument. Practices of detention, deportation and undeportability, and encampment may dehumanize refugees, because they deprive them of a place in the world.

Beside throwing into relieve the unproductive divide in current political and legal philosophies of human dignity, outlining Arendt’s worldly notion of human dignity aims to contribute to the current debate on the normative lack of Arendt’s political theory (Benhabib). While ‘worldliness’ does not provide an absolute independent normative foundation or yardstick for humanity, it is neither normatively empty.

Taking Subjectivity Seriously: Human Dignity and Objectifying Reductionist Neuroscience

As the concept of human dignity is notoriously imprecise and draws upon aspects from diverging lines of thought, one ought to be clear about the concept one is interested in. In this paper, it is the legal concept, the *right* to human dignity, that stands at the center of some constitutional and human rights frameworks and that provides enforceable claims of every citizens against the state (and, indirectly also against fellow citizens). In some legal systems, dignity marks the minimal entitlement between citizens. In the law, human dignity has been shaped especially through the jurisprudence of the German Constitutional Court, as it plays a foundational role in German law. Although not binding for other jurisdictions, the court's interpretation strongly influences European law. It is, however, not a clear-cut philosophical account, but rather an ensemble of various entitlements. A common theme, echoing Kant, is that dignity forbids treating others as mere objects. What this prohibition of objectification implies more precisely remains unspecified, in both jurisprudence and philosophy.

The talk explores whether one understanding that suggests itself but finds surprisingly little attention in German constitutional law merits further consideration – a positive turn, in which dignity demands treating others as subjects. It may comprise, inter alia, to respect the first-person perspective, the conscious states and psychological processes of a person. This demand to respect the first-person perspective may come into conflict with scientific approaches, primarily of reductionist neuroscience which seek to explain the person on the neurophysiological level – the third-person perspective, alone.

While science surely can and should adopt the paradigms it deems interesting, normative problems arise when social practices or state policies are built upon them. Abstractly, it makes a huge differences whether society or the state consider e.g. deviant behavior as caused by “chemical imbalances” in the brain

or as grounded in (perhaps ill-considered or irrational) reasons. The former draws upon the third-, the latter on the first person perspective. More concretely, neuro- interventions which aim at changing behavior (and mental aspects) of citizens are problematic in light of human dignity. Not only because of the desired outcome, but because of their mode of operation. Prime examples are compulsory treatments of criminal offenders (as part of punishment) or of mentally disordered patients through means which primarily work on the neurophysiological level. When explorations of why people act, their attempts to give sense and meaning to the world, tend to become less important because minds are reduced to neurophysiological occurrences and because neurobiological fixes that bypass psychological processes are readily available, objectification begins. The problem also arises e.g. in security measures and reemerges on a smaller scale, e.g., when public health insurance covers only access to less costly neurophysiological treatments (pharmaceuticals) rather than e.g. talk or psycho-therapy engaging with the mental realm of the patient.

In the near future, states will have to make decisions between policies involving different means to govern social processes. The neuroscientific temper of the times, increasing reductionist explanations and resulting practices, seem to run contrary to the understanding of dignity developed here – the demand to take subjects and their subjectivity seriously. While neuroscience may declare subjectivity as largely irrelevant for scientific reasons, social practices cannot uncritically adopt such a paradigm and follow suit.

Patrick Capps

The Evolution of Global Legal Authority

A complex, multipolar and interlocking set of global administrative bodies – that can be said to form part of a system of global law – has emerged in the last few decades. While these administrative bodies are forms of coercive ordering,

and individually often resemble state administrative bodies, collectively and systemically their relationship is not often similar to equivalent bodies that are parts of the hierarchical and centralised sovereign state. Although in some circumstances these bodies do claim authority by referring to the will of sovereign states, in other circumstances they do not. Instead their claim is justified on, for example, epistemic grounds, or because the bodies adhere to democratic or administrative law concepts. Against a model of ‘true’ authority, all of these claims can sometimes be understood as deficient or deformed cases of authority. In some cases, the evolution of authority in global administrative bodies can be traced from more to less deformed claims of authority, and towards true authority, while in other cases, global administration can be seen as a new way of insulating the exercise of political power from public control.

Gregg D. Caruso

Why Free Will Skepticism is Not a Threat to Human Dignity: Criminal Justice and the Public Health-Quarantine Model

One of the most frequently voiced criticisms of free will skepticism is that it is unable to adequately deal with criminal behavior and that the responses it would permit as justified are insufficient for acceptable social policy. This concern is fueled by two factors. The first is that one of the most prominent justifications for punishing criminals, retributivism, is incompatible with free will skepticism. The second concern is that alternative justifications that are not ruled out by the skeptical view per se face significant independent moral objections. Despite these concerns, I have recently argued that free will skepticism leaves intact other ways to respond to criminal behavior—in particular incapacitation, rehabilitation, and alteration of relevant social conditions—and that these methods are both morally justifiable and sufficient for good social policy (Caruso 2016; Pereboom and Caruso, forthcoming). The position I defend is similar to Derk Pereboom’s (2001, 2014), taking as its starting point his

quarantine analogy, but it develops the quarantine model within a broader justificatory framework drawn from public health ethics. The resulting model—which I call the *public health-quarantine model*—provides a framework for justifying quarantine and criminal sanctions that is more humane than retributivism and preferable to other non-retributive alternatives. It also provides a broader approach to criminal behavior than Pereboom’s quarantine analogy does on its own since it prioritizes the importance of prevention and social justice.

In this paper, I will briefly summarize my public health-quarantine model and defend it against recent objections by John Lemos (forthcoming), Michael Corrado (2016), and Saul Smilansky (2011, 2016). John Lemos, for instance, has argued that my model too easily gives way to the use of legal practices that would increase the number of innocent people being detained for crimes they did not commit. As such the view exhibits insufficient respect for the rights and dignity of innocent human beings. Saul Smilansky further objects that free will skeptics, like myself, are forced to seek to revise the practice of punishment in the direction of *funishment*, whereby the incarcerated are very generously compensated for the deprivation of incarceration. He goes on to argue that funishment is a practical *reduction* and hence free will skepticism is morally bankrupt. Lastly, Michael Corrado presents a series of objections against the quarantine model. First, he objects that it makes no distinction between people who are dangerous and yet have the sort of control captured by the reasons responsiveness condition, and those who are dangerous but lack this sort of control, and instead treats all criminals on the model of illness. Second, he objects that too many people will be drawn into the criminal justice system, since merely posing a danger is sufficient to make one a candidate for incapacitation. And lastly, he maintains that those who are incapacitated would need to be compensated, and this would be prohibitively costly.

In response, I will argue that each of these criticisms can be satisfactorily dealt with. Corrado’s first two objections, for instance, are based on a

misunderstanding of the quarantine model. Clarifying these points, I contend, helps strengthen the theory and makes clear that my approach does *not* treat all criminals on the model of illness. I further argue that, contrary to the concerns of Lamos, the public health-quarantine model *can* secure respect and dignity for innocent persons and prevent, in almost all cases, innocent people from being detained for crimes they did not commit. I argue that there are several moral reasons that count against the incapacitation of the dangerous who haven't committed a crime. I further argue that in certain rare cases where preventive incapacitation *may be* justified, retributivism leaves us high and dry and would need to be supplemented with something like the account I defend. Lastly, I address Smilansky's concerns about funishment and deterrence and argue that these too can be met. On both a philosophical and empirical level, I argue, there are good reasons for thinking that the public-health quarantine model would not result in the reductio he envisions—i.e., the cost to society would not be prohibitively high, crime would not skyrocket, and more people will not be drawn into the criminal justice system. In fact, I maintain, if implemented correctly, the public health-quarantine model would have the exact opposite effect.

Agostino Cera

Human Dignity in the Age of Technology: The Neo-Environmentality Paradigm

My paper exposes the outcome of a research activity: the establishment of *philosophical anthropology of technology*, grounded on the concept of *Neoenvironmentality*. This approach culminates in a new definition:

- 1) Of *man's humanity*;
- 2) Of *technology*.

1. The historical impossibility of postulating man's *essence* makes still necessary to individuate certain elements that characterize him in a specific way. In this regard, "essence" or "human nature" are here replaced with *anthropic perimeter*. Switching from *natura hominis* to *conditio humana*, the peculiarity of man is defined by his relationship with the frame, which contains him.

The core of the *anthropic perimeter* consists of man's *worldhood*, i.e. of the recovery of Jakob von Uexküll's *Umweltlehre* as reinterpreted by Gehlen and Heidegger: *man is that being that has a world (Welt), while animals merely possess an environment (Umwelt)*.

Due to his lacking biological endowment, man is bound by nature to create his own *oikos*. Only in this way an initial setting (*Umgebung*) can become "world". Man is «*world-forming*», a technological being by nature.

On the other side, the ecological interface of animal is environment: a natural mould to which it adheres completely and immediately. Overall considered, the animal and its ecological niche form a monadic unity.

Following Heidegger's *The Fundamental Concepts of Metaphysics*, man's worldhood and animal's environmentality are derived from a *pathic premise*: i.e., the *fundamental moods (Grundstimmungen)* that refer them back to their respective findingness (*Befindlichkeit*). In the case of animal, such *pathos* corresponds to a *captivation (Benommenheit)* that upholds its fusion with its relative vital space. The fundamental animal pathos corresponds to a sensitivity which is incapable of self-feeling.

On the contrary, man possesses a *Grundstimmung*, which enables him to transcend his within-the-world rootedness, and to acknowledge the unreachable background that is the condition of possibility for every world. It is *thaumazein, theorein* (contemplation).

2. Starting with this anthropological premise (and through the discussion of authors such as Günther Anders and Jacques Ellul), technology emerges as *the*

oikos of contemporary humanity. Therefore, the term “technology” will not refer to the sum of single technologies, rather to the world-view that has made them possible and that fulfils itself as a particular historical circumstance: i.e., as the summary of *disenchantment* (*Entzauberung*) and *rationalization* (*Rationalisierung*), under the imperative of *feasibility* (*Machbarkeit*).

Technology becomes the current form of the world insofar as it introduces in any human context its *ratio operandi*, i.e.: «the preoccupation in every field to find the most efficient method». In this systematic guise, technology demands a total adaptation from man. In order to achieve this, it systematically inhibits his ecstatic tendency (the *thaumazein/theorein*) while producing an artificial captivation that assimilates him to an animal condition, i.e. an environmental one. Technology stands out as (neo)environment that decrees the corresponding *feralization* of man.

The phenomenon of *Neoenvironmentality* reflects itself in the secularized transcription of a theological process. Caught by a soteriological anxiety (no more psychic but somatic), the feralized man gives birth to *technodicy*. Constantly summoned by the technological (neo)environment, he finds himself not able to meet the expectations of the «overmanned» world. Therefore, he entrusts himself to technology itself supposing it will correct the increasing «promethean gap» (now perceived as a fault) through a process of indefinite *enhancement*.

In its ambition to *reshape the anthropic perimeter*, here and now technology constitutes a threat for human dignity.

Benedict Douglas

**The Phenomenology of Dignity:
The Importance of Defining Dignity in Overcoming the UK's
Human Rights Hostility**

The UK's Human Rights Act 1998, which incorporates the protections of the European Convention on Human Rights (ECHR) into UK law, makes no reference to dignity. Similarly the UK courts have, unlike the European Court of Human Rights (ECtHR), rarely recognised the basis of human rights in dignity. This is a consequence of the prevalence of a positivist understanding of human rights within the UK. Here, in public and political discourse, human rights are not widely seen as deriving from the inherent fundamental value of the individual, but rather as merely norms like any other, protections granted by the largess of the state.

In this paper I will argue that recognising rights as inalienable and inherently grounded in a concept of dignity, characterised by the inherent value of the individual, is not however sufficient to bring the protection of rights in the UK into line with that recognised by ECtHR. This is because the fundamental phenomenological conception of the individual that predominates within the UK, is different from that recognised by the ECtHR as the basis to which the Convention rights attach. The European court sees rights as grounded in and protecting the capacity of the individual to freely choose how to live their life, this is the substantive content of the dignity of the individual under their jurisprudence. However in the UK, because of the UK's constitutional and social history, the nature of the individual is not understood as being defined by their capacity for freedom of choice. Rather, within the British legal system and public morality, the individual is conceptualised at a fundamental phenomenological level as a being who bears duties and by the content of the duties they owe to others and the state, not their freedom to choose how to live. This disagreement is the fundamental reason why the Human Rights Act faces hostility in the UK from across the political spectrum, and why calls for its repeal and replacement demand a new rights document which gives prominent recognition to individual duties alongside rights.

My conclusion from this is that if human rights are to be accepted in the UK on the same premises and to the same extent that they are protected by the

ECtHR, it is not enough that the British courts or a redrafted human rights law recognise that they attach to the inherent dignity of the individual. Rather dignity must be understood by the courts, the politicians and the public to have the same meaning as that attributed to it by the European court. This involves a change in the understanding of what it is to be human from that which currently prevails within the UK.

Nina van Egmond

Migration Policy Built on a Concept of Dignity as Non-Humiliation

Migration policies are to a significant extent determined by the requirements of the domestic employment market, and kept flexible in order to easily adjust to its fluctuations. Issues of work take central stage in current discourses on migration. The fear for unemployment and high unemployment rates among former migrants fuel anti-migration sentiments. On the other hand, it is the search for employment that motivates the majority of migrants to leave behind what is familiar. For refugees, access to work is a decisive factor for integration and gaining access to the social environment of their host communities.

Still, when we start thinking about the ethics of migration, the issue of work remains underexposed. The right to work is one of the most contested rights within the discourse of human rights, despite widespread agreement among scholars that labour force participation is of fundamental value for both the individual and society. Taking dignity as its founding concept, understood in the sense of Avishai Margalit's account of non-humiliation (Margalit, 1996), I argue that work deserves a central place in our moral thinking about migration. It is my suggestion that the right to seek employment should be understood as a general right, one that people are entitled to irrespective of their membership status. Work is not only a means of subsistence that carries pre-political urgency, the capacity to labour is a property that allows us to reciprocate within

the social and economic realm. It is this social dimension of work that is a decisive factor for a life of non-humiliation.

Such understanding is in contradiction with mainstream thinking about the right to work. Currently, access to legal employment is understood to be a membership right, one that individuals are entitled to on the basis that they belong to a political community. Joseph Carens takes a legal right to seek employment as the fundamental challenge against the conventional assumption that states have a right to exercise discretionary control over immigration (Carens, 2013). To what extent does a general right to seek employment alter a state's right to control immigration? Does a general right to seek employment imply a world without borders? Do states have a special obligation to ensure the labour participation of their members? In this presentation I want to answer these questions by exploring a stratification of membership that starts from the laws of hospitality, referring to the elaborations of Jacques Derrida (Derrida, 1996). While such an account requires an open border policy, I will argue that the principle of non-humiliation does allow states to make certain distinctions between members and non-members. Yet, a prohibition to work for the latter group is not one of them.

Adam Etinson

What's So Special About Human Dignity?

This presentation challenges two prominent ways of understanding the meaning and practical import of the concept of human dignity. These include (i) what we might call “gateway” understandings of human dignity: theories that take it to be a general indicator of moral status, legal status, or perhaps of one's status as a rights-bearer. And they include (ii) broadly Kantian theories that understand concerns about human dignity to be, in essence, concerns about autonomy, capability, or the inviolability of persons. The article argues that neither of these rich and diverse theoretical traditions fully captures the understanding of human

dignity implicit in everyday moral discourse. So far as our common practical intuitions are concerned, human dignity is a substantive normative concept closely tied to concerns about the social harm of humiliation or degradation. The article concludes by highlighting some of the difficulties and limitations of understanding human dignity in this way. It also reflects on how this understanding illuminates the role of human dignity in human rights discourse, and on why the concept seems so inescapable and important.

Liesbeth Feikema

Mediation and Human Dignity

During the last decades Alternative, and recently also ‘Appropriate’, Dispute Resolution (abbreviation ‘ADR’) has become increasingly popular at first in the U.S., and subsequently also in other countries. The argument for ADR: it takes less time and money than formal litigation procedures. Apart from that, confidentiality is warranted and parties have more control in the decisions about their dispute. In general ADR could be said to consist of arbitration, negotiation and mediation, although in different countries different varieties exist. I’ll be focussing on the latter. Specific for mediation is voluntariness (dispute parties decide for themselves whether to get involved in mediation) and confidentiality. Two main mediation styles can be distinguished: the so-called evaluative and facilitative mediation. In evaluative mediation the mediator is actively involved in the dispute resolution process and the outcome of the dispute is also influenced by the role of the mediator. In facilitative meditation the mediator stimulates the involved parties to be able to deal with their dispute themselves; the mediator facilitates this process by using intervention techniques such as posing questions that challenge involved parties to reflect on their conflict and

to process their anger, fear, sadness etc., and subsequently empowering them in their autonomy and self-determination¹.

Facilitative mediation is a popular and common mediation style in the Netherlands, because of the respect for autonomy and self-determination. This mediation style presupposes that dispute parties are able to solve their disputes in a way that is acceptable for all parties involved, and in a way that is also morally justifiable. The latter point remains implicit in literature about mediation, it could be argued that especially facilitative mediation presupposes a conceptualisation of human dignity that fits well in the way (neo)Kantian literature describes moral agency. This - novel - argument raises at first the question whether facilitative mediation presupposes a specific institutional context that aims to protect and safeguard human dignity (national states with a functioning democratic rule of law) and secondly whether, and under what conditions, this type of mediation could play a constructive role in states or orders, such as so-called Hybrid Political Orders, in which the judiciary is not independent and in which the rule of law is not functional.

Philipp Gisbertz

Overcoming Doctrinal School Thought

A Unifying Approach for a New Understanding of Human Dignity

Human Dignity is often considered the highest value of international law and legal ethics and likewise a vague, almost meaningless term. Thus, critics point to the multifaceted discussions, which Human Dignity is used in, and to the philosophical disputes about its content. There is no broad consensus about its meaning. Moreover, the possible common ground is constantly watered down by new, e.g. bioethical, heterogeneous discussions. Consequently, the challenge

¹ In the literature about mediation literature both the notions 'autonomy' and 'self-determination' are used.

for the philosophy of Human Dignity seems quite obvious: To find at least a core meaning that is principally able to reach consensus.

In my talk, I will address this challenge and present a unifying approach according to which Human Dignity refers to the personal identity, i.e. to the basic features of one's self-constitution and self-conception. This can be understood best, if we consider the main theories of Human Dignity and their implicit reference to personal identity:

1. There is a school that reduces Human Dignity to social acts. Luhmann, for example, defines dignity as successful identity performance. Dignity in this sense is not perceived as a necessary and intrinsic quality, but as a gradual and contingent sentiment. I take this focus on the identity as the basis of my approach, but Luhmann's reduction to contingency seems to be at odds with Dignity's quality as the most fundamental value of the ethical and legal system.

2. Accordingly, to bring together personal identity and necessity, it is helpful to look at the most categorical conceptions of Human Dignity, like Kant's, which connect it with some kind of autonomy. This is convincing if autonomy is qualified with regard to personal identity: We consider us as persons with an identity, only if we are able to make the main life plans and decisions on our own. And these autonomous decisions shape an essential part of our identity, not in a contingent way, but as a necessary part of personhood.

3. Opposed to autonomy approaches, there is a school that defines Human Dignity from the act of violation. Following Margalit, it locates this violation in a qualified humiliation, understood as non-violation of self-respect, but without defining what exactly self-respect means. Personal identity can offer a conclusive interpretation: Human beings share a space of symbolic reasoning, i.e. they can evaluate the symbolic content of an action for other human beings. Therefore, an action lacking recognition and respect can imply a symbolic denial of the worth of the other person's identity, which should be qualified as a humiliation in the relevant meaning.

4. Finally, there are accounts like Waldron's that consider Human Dignity as a status concept, demanding an equal substantial status for everyone. Effectively, this does not seem to be so different from humiliation approaches, because a downranking in the substantial status is always a violation of self-respect.

Thus, a unifying conception of Human Dignity as personal identity coherently brings together the main intuitions of many theories and can answer to criticism.

Jurriën Hamer

The Moral-Philosophical Dimension of Judicial Review

In this paper I will attempt to identify the moral-philosophical dimension of judicial review. More specifically, the practice of strong judicial review of parliamentary legislation ex-post will be investigated. I will mainly build on the arguments presented by Jeremy Waldron and Alon Harel, who are respectively opposed and in favor of such judicial review. The question will be asked what moral philosophers can actually contribute to this debate: which questions can only be resolved by taking a moral philosophical position, and which questions rightly belong to the practice of empirical scientists?

Waldron has insightfully separated the process arguments from the outcome arguments in debating judicial review. The process arguments deal with finding the fairest way to decide on fundamental political questions, while the outcome arguments seek to prove that judicial review is either better or worse in generating the right substantive outcomes.

I will argue that although Waldron is right in suggesting that both types of arguments fundamentally depend on the stance one takes on the availability of morally valid statements, his own position is incorrect. Waldron has argued that because all moral theories are controversial, judges cannot be trusted to articulate 'right' decisions, and the fairest way to resolve matters solely relies

on majority decision-making. I think his argument is question-begging, as he assumes but does not prove the validity of majority decision-making itself. I will conclude that if we want to endorse any kind of account of political authority, we cannot escape taking a stronger moral position.

The remainder of the talk will explore how such a strong moral position affects the process and outcome questions. On the outcome side, the question is to what extent the moral position can identify the correct norms and appropriately transfer expertise to a court of judges. While the philosophical dimension concerns the identification of fundamental norms, the empirical dimension concerns the likelihood of politicians and judges actually finding and effectuating these norms. On the process side, building on the work of Alon Harel, I will argue that the debate should assess the importance of both the democratic right to decide issues for oneself – and be wrong about them – and the right to challenge such decisions and ask for a justification. This debate seems to have a very strong moral-philosophical dimension and not rely on empirical concerns at all.

I will end the paper by giving a short assessment of these arguments and conclude that a tentative endorsement of judicial review should be defended.

Tamar Hostovsky Brandes

**When Dignity and Equality Collide:
The Right to Be Recognized as Unique**

The relationship between human dignity and equality is a matter of ongoing debate among jurists across the world. The two are often perceived to be intertwined: in Canada and South Africa, as well as in other countries, violations of human dignity have been used by courts as criteria for identifying when differential treatment constitutes discrimination or when certain conditions amount to violations of equality. In Israel, the unique situation in

which the right to human dignity enjoys constitutional status while the right to equality, for political reasons, does not, led the Supreme Court to determine that at least some aspects of the right to equality can be derived from the right to human dignity. The different views on the relationship between dignity and equality depend, of course, on the perception of dignity one adopts. The models described above have viewed the essence of human dignity to be, for the most part, protection against humiliation, protection of personal autonomy, or some combination of the two.

This article focuses on an alternative perception of the right to human dignity, according to which the essence of the right to dignity is recognition of the uniqueness of each man and woman. This perception is not to be confused with Charles Taylor's view of the right to human dignity as imposing a duty to recognize cultural belonging. While Cultural belonging is certainly an important aspect of identity, it's the combination of the physiological, psychological and cultural aspects that defines each person's uniqueness. While this notion of human dignity has been brought up in legal scholarship, in particular in the context of debates on the legality of stem cell research and human cloning, the article argues that it is largely overlooked, and that the contradictions between the right to human dignity, understood as the right of recognition of personal uniqueness, and the right to equality have been undermined.

The article argues that even the most nuanced versions of equality, those that take into account social and cultural characteristics, hierarchies, and past injustices are based, eventually, on categorization and comparison. The uniqueness of each individual, however, defeats categorization, and renders comparison complicated, if not impossible. In some situations, policies drawn based on the principle of equality may thus contradict the right to human dignity, and recognition of human dignity may contradict the principle of equality. The article demonstrates this claim by discussing the conflicts between equality and human dignity that arise in the context of healthcare policies, in

light of our growing understanding of the human genome and the development of personalized, patient-specific medicine, in particular in the area of cancer. In this context, the article argues, the two principles may not be reconcilable.

Dietmar Hübner

Human Dignity, Human Rights, and Instrumentalisation

The concept of dignity is often accused of being imprecise, unable to be put into operation, or even empty. However, when looking at basic problems of balancing rights in cases of conflict, there appears to be at least one obvious instance in which the concept of dignity may have a fruitful or even indispensable application. The more interesting question is whether this balancing function exhausts the ethical utility of this concept or whether there are other imperatives intimately connected to the idea of dignity.

In order to draw this out, I will first show that the concept of dignity can serve as a guideline for balancing conflicting rights referring to fundamental goods such as life, health or property. I will propose a basic rule in order to deal with dilemmas where one party can only be helped or saved at the expense of the other. This rule may be understood as an obvious instantiation of the norm of non-instrumentalisation, which, in turn, can be linked to the concept of dignity, following a Kantian line of argument. Thus, we arrive at a first and solid application of the concept of dignity, providing an essential instrument for trading-off opposing rights of different parties. This application suggests that, contrary to common reconstructions of such conflicts, it is not dignity that has to be weighed against other goods such as life or property. Rather, dignity should be regarded as the overarching principle specifying how these other goods have to be balanced against each other.

Although this first concretisation may represent the most important application of the concept of dignity, the question arises whether dignity might have

meanings beyond the proper balancing of rights. Even when we keep the link between dignity and non-instrumentalisation, there may be forms of instrumentalising other persons without infringing their more elementary rights. Unfortunately, such cases are difficult to identify, because usually, when a person is instrumentalised, that person is also improperly treated with respect to her fundamental interests at some level. As a consequence, instrumentalisation in these cases may reduce to a violation of her corresponding rights. However, I present a particular constellation from biomedical ethics where this connection may be disentangled. This is the example of using supernumerous embryos for research or therapy, which may be regarded an act of instrumentalisation without at the same time violating any more elementary rights.

Finally, it may be suggested that there are infringements of human dignity that neither concern the violation of more basic rights, nor establish any kind of instrumentalisation. I will discuss whether certain acts of humiliation may belong to this group. In particular, acts of abasement that neither harm the person in question nor serve any purpose besides degrading the person concerned may be candidates for this third group of violations against human dignity.

In sum, human dignity turns out to have at least three distinct functions in regulating human behaviour.

Willem Jansen

Human Dignity as “Conceptual Hinge” Between Law and Human Rights “From Below”: A Kenyan Case Study

Religion and human rights seem to be strange bed fellows. Yet, on a grass roots level, this does not always have to be necessarily so. In this paper I will use the field work conducted in Eastleigh, Nairobi (Kenya), from 2009-2014. In this

study I have come up with a broader understanding of human rights as “the culture of the human rights contained in declarations of human rights, hence the totality of beliefs, principles and values underlying these, and respect for that culture”.

Based on this definition of Van der Ven, e.a. (2004), regarding human rights as culture and put into the framework of Sen’s social choice theory of human rights as ethical values, I will address the usability of such a culture as a means to bridge the gap between the theory of international law and the day to day practice of interreligious human rights activism in Eastleigh. To that effect, I will identify six features of such a relevant human rights culture on the ground.

In Sen’s theoretical framework, this definition allows, at least six fresh perspectives on human rights, *viz.*: (1) human rights as values and ideas surpass a limited legal approach of human rights; (2) international human rights standards ‘from above’ are complemented by local human right ‘from below’; (3) human rights culture has ‘mobilizing power’ in a struggle that requires motivation or “confession”; (4) human rights as culture ushers in beliefs, values en principles; (5) human rights as culture has a ‘dialogical merit’ inviting public discourse on human rights values and, (6) human rights culture finds its moral source in practice.

Then, I will focus on the concept of human dignity that I will identify as the primary source of such a human rights culture. In order to buttress this concept of human dignity as the underpinning of human rights culture, I will introduce Habermas’ understanding of the idea. I will search for the common denominators of both human rights culture and the underlying concept of dignity by re-examining the six described characteristics of human rights culture in the light of human dignity. By doing so, the notion of human dignity will appear to be the “conceptual hinge“ between positive law and a human rights culture ‘from below’.

In this theoretical framework of social choice (Sen) complemented by the discourse theory (Habermas), I will describe how Muslims and Christians as the agents of Eastleigh’s civil society can find common ground by upholding the human dignity of their respective constituencies, and beyond. This joint human rights activism can be motivated by religious action-oriented connotations of dignity that goes beyond mere traditional religious ontology or foundationalism. By doing so, human rights as culture finding its origin in actual (violations of) human dignity, can play a modest, but constructive role in the interreligious relations at Eastleigh’s local African level. Human rights at the local intercultural level of Eastleigh appear not only to “exist” as international law, they rather “happen” contextually.

Machiko Kanetake

Subsidiarity in the Maintenance of International Peace and Security by the UN Security Council

Subsidiarity is one of the concepts which create a bridge between the issue of human dignity and international institutions, including the UN’s peace and security arm. Subsidiarity, a principle regarding the allocation of authority, favors “decentralised decision making” at a lower level of governance over “centralised decisionmaking” at a higher level of governance. In giving preference to localized decision making, subsidiarity makes a particular normative claim that places greater importance on autonomy, diversity, individual liberty—and, ultimately, human dignity—than on effectiveness, coherence, and unity, which demand centralized decision making. In the Catholic social thought in which the principle of subsidiarity was first articulated, subsidiarity was ultimately meant to help humans flourish, and one’s immediate human communities were considered as the best site for human flourishing. Given that subsidiarity is a normative claim, a shift of decision-making authority from one level to another would likely accompany a

change in the prioritization of normative foundations on which the decision making is based.

The paper analyzes the question of subsidiarity in the sphere of the maintenance of international peace and security. In essence, this area of law is increasingly torn between normative claims for centralization and those for decentralization. On the one hand, the UN Charter concentrates decision making at the UN Security Council for the imperative aim of international peace and security. On the other hand, the demand for decentralization reemerged with the greater relevance of the Security Council's exercise of authority to individuals' rights. This article analyzes how these opposite normative claims have arisen with regard to the Security Council's mandate and whether there are any criteria under international law with which to balance these claims.

Roland Kipke

Human Dignity and Meaning of Life

I would like to present the notion of meaning of life or meaningful life as a promising candidate for a new understanding and justification of human dignity.

For a long time the reflection on meaning of life in academic philosophy had only a marginal role or was even ridiculed or ostracized. Recently, however, there is an intensive international philosophical debate on the right understanding and the conditions of a meaningful life. Here, the majority of authors agree that this independent value dimension cannot be understood purely subjectively, i.e. that the ascription of meaning cannot depend (only) on subjective criteria of meaning experience and that we have to assume an (at least partially) objectivist understanding.

Amazingly, a connection between meaning of life and human dignity is almost nowhere seen, not to mention worked out systematically. However, there are already at first sight indications for a close relationship of the two concepts:

Both are key terms with foundational importance to our lives and normative self-understanding and are aimed at an intrinsic value, whose lacking consideration or existence impairs human life severely. To ascribe dignity means (at least also) to ascribe an absolute value or a particular significance. So it is with meaning: The assertion a life is meaningful can be reformulated, that it is intrinsically valuable or that it matters.

This first impression of a connection between the two ethical terms is confirmed on further inspection: It can be shown that if we assume the possibility of a meaningful human life in an objectivist sense we necessarily have to accept an unconditional and equal meaning of every human life. The reason is that according to almost any plausible understanding a human life obtains meaning (at least also) by positive acting for or with or relating to other human beings, i.e. by activities that protect, help, honor, promote, develop, inspire, satisfy, or recognize human beings. This meaning-conferring power does not depend on certain properties or achievements, is therefore unconditional, and is due to everybody qua human being, is therefore equal. The unconditional and equal meaning can be understood as the axiological core of human dignity. In this respect, one can say that human dignity is the condition of possibility of meaningful life.

This transcendental argument, however, does not say anything about the normative dimension of human dignity. But if meaning can play a central role for justifying human dignity, it seems likely to assume this also for the question of what follows normatively from dignity. And indeed, the respect for human dignity can be understood in a threefold sense in relation to meaning: 1. as respect for the individual as the bearer of the unconditional and equal meaning, 2. as respect for the individual concept of meaning, and 3. as enabling of the conditions for living a meaningful life (in the non-conditional, act-related sense). This threefold claim is substantiated by human rights.

This meaning theory of human dignity may overcome some of the well-known shortcomings of existing theories of human dignity while preserving and integrating their important insights.

Peter Lawrence

Human Dignity and Representation of Future Generations Through International Climate Litigation

This paper sketches a normative framework for bringing actions in international courts to pressure governments to take stronger action on climate change. The framework rests on a notion of indirect representation of future generations, and universal values of human dignity, human rights and democracy. Future generations' interests can be linked to international litigation, through states or NGOs bringing claims purportedly on behalf of future generations, and through courts applying international legal doctrines (eg intergenerational equity). Recent decisions of the World Trade Organisation dispute body inhibit renewable energy programs and thus substantively impact the interests of future generations. Currently there are significant barriers to bringing such claims, including narrow "standing" provisions which restrict who can bring claims, and in relation to the WTO, domination of a neoliberal pro trade approach. A strong normative basis resting on "human dignity" is essential in developing creative strategies to overcome these barriers.

Mette Lebech

Human Dignity as the Fundamental Value of the Human Being

It is often suggested that the concept of Human Dignity is not sufficiently clear to serve as foundation for the discussion of Human Rights, which nevertheless are uniformly believed to rest upon the principle. This paper puts forward the

idea that Human Dignity is the fundamental value of human beings motivating respect for them as such, and also seeks to corroborate this proposal by, on the one hand, outlining a value theory that allows for further analysis, and on the other, sketching a history of the concept's development in Europe, which shows that (and how) representative contributions could be seen to converge on the idea.

John Lemos

**Is Free Will Denial a Threat to Human Dignity?
A Look at Criminal Justice**

As Immanuel Kant says, human beings possess a special dignity and worth which demands that they be treated as ends in themselves and never as mere means. According to Kant, imprisonment could only be justified on the grounds that the criminal conduct was a product of the free willed choices of the criminal making him/her *deserving* of a punitive response. In recent years, the notion that human beings possess the kind of free will that can make us deserving of punitive sanctions has come under attack. For instance, Derk Pereboom (2001, 2014, forthcoming), Gregg Caruso (2016, forthcoming), and Bruce Waller (2011, 2015), claim that human beings lack the kind of free will required for moral responsibility in the basic desert sense. Because they hold such a view they are led to conclude that there should be significant reform of the penal system. They believe that the harsh treatment of criminals can only be justified on retributive grounds and since we lack the kind of responsibility that supports desert such harsh treatment is unjustified. They argue that the only criminals that should be detained and held separate from the rest of society are the most dangerous criminals and that while being detained they should be treated well and given the opportunity for psychological treatment and education, so as to reform them.

Pereboom and Caruso explicitly base their view on a quarantine model. The idea here is that since criminals are not responsible in the basic desert sense for their actions they do not really deserve to be detained and held separate from the rest of society. But just as it is permissible to isolate people with dangerous infectious diseases to protect the rest of society even though these people are not responsible for their illness, so too it is permissible to isolate dangerous criminals even though they are not responsible for their crimes. While Waller does not explicitly endorse the quarantine model, he holds a roughly similar view about what should be done with dangerous criminals.

I argue that such a view too easily gives way to the use of legal practices that would increase the number of innocent people being detained for crimes they did not commit. As such the view exhibits insufficient respect for the rights and dignity of innocent human beings. In particular, I note that the primary motivation for quarantine is to protect the rest of society from harm. As such, there is kinship between this approach and deterrence theories of punishment. I then appeal to a recent criticism of deterrence theories that has been developed by Saul Smilansky (1990), who argues that if the sole motivation for punishment is deterrence, then we would be justified in lowering the evidentiary standards used for criminal conviction. In doing so, we could take more criminals off of the streets and this would increase the overall wellbeing of society while at the same time some more innocent people would end up being convicted and punished due to the use of a lower evidentiary standard.

I argue that, while the quarantine view is not a deterrence theory of punishment, it is still motivated to protect society from harm. Thus, it can be argued that to better protect society from dangerous criminals the evidentiary standards for criminal conviction should be lowered so as to capture more criminals offering more protection for society. In doing so, I also note that there is actual precedent for this in the practices of the Centers for Disease Control.

Before concluding I note that Pereboom has offered a response to worries similar to those which I raise, but that his replies are inadequate in several respects.

Jana Lozanoska

Human Dignity as a Core of Human Rights through Hannah Arendt's Political Theory

The paper seeks to offer a normative framework on human dignity and to provide a basis and critique for rethinking of human rights and human dignity in the 21st century. Philosophical and legal scholarship is conceptualizing “human dignity” mainly through Kant having liberal and moral tradition in the grounding. From a purely legal perspective human dignity represents a vague concept. In international and human rights law the definition of “human dignity” is non-existent. Additionally, there is a debate whether or not this should be defined within the system of human rights. Nonetheless, there is an agreement that certain minimum is required, when it comes to human rights, but this minimum is unclear as well. In addition, the judicial practice on “human dignity” both regionally and internationally cannot be relied on since it is inconsistent.

The basic premise I attempt to examine in the paper is that Hannah Arendt is proposes a normative framework on human dignity. I will argue that Arendt's normativity is rooted in “human dignity”, which can be found to exist between the “human plurality” and “natality”, and inter/a/relation of public and private space, and represents normative force both behind the more specific and general concepts developed in her writings.

The central concept to be looked at will be Arendt's concept of “plurality” in combination with natality (*initium*) including the “unpredictability” and “new beginnings” related on one hand with “political action”; and on the other with

“thinking” and “judgment” (the substantive and missing link of Arendt’s complete work). Overall, through the essay I will look at inter/intra relationship between public and private space and interaction of Arendt’s *vita activa* and *vita contemplativa* in understanding this normativity on human dignity.

Arendt provides an interesting balance between theory and *praxis*. The concept of “plurality” not only shakes the “universality” the most basic concept of human rights, but also offers a new principle of worldliness that lost its meaning somewhere in between the passage of past and future opening space for “judgment” that links her theory on *vita activa* and *vita contemplativa*. The worldliness does not include the creation of world government but transcend national boundaries that are reflected in her abovementioned proposition in *The Origins of Totalitarianism*, and may suggest that the most sounded conceptual critique on human rights could be the cultural relativist mostly representing the anthropological position.

Nonetheless, is important to note, that this paper is not in any way an attempt to place Arendt within the conceptual critiques of human rights, although it may seem so. There are similarities and differences between, but Arendt moves beyond any of the existing conceptual critiques including cultural relativism, and provides an original and unique approach that might be used as a framework for providing fresh perspectives to human rights and human dignity in the 21st century.

Reza Mosayebi

A “Buck-Passing Account” of Human Dignity

Following the so-called “buck-passing account of value” (*T.M. Scanlon, What We Owe to Each Other 1998*), I shall present an analysis of the concept of dignity according to which dignity is not a simple, unanalyzable concept. Rather, to have dignity is a formal, higher-order property of having some more basic or

lower-order properties that provide reasons to consider, say, human beings as possessing dignity. According to this view, we judge that right holders are in possession of dignity because of other properties that they have. Likewise, we judge particular violations against the right holders as being against their dignity by virtue of the violation of other properties of the right holders constituting reason for such a judgment.

In a second section, proceeding in two steps I shall contrast the buck-passing view with two other conceptions of human dignity: according to a very common conception, human dignity is *one* intrinsically valuable property *alongside* other valuable properties of human beings, whether intrinsically or instrumentally; an alternative conception of human dignity, recently attributed to Kant (Sensen) conceives of it as a relationally valuable property. I shall show that both conceptions are not as helpful for the explanation and justification of human rights as they may seem.

In the last section of my contribution I shall expose the advantages of the buck-passing account of human dignity compared with the conceptions discussed in the second section. Among other things, I shall show how the buck-passing account fits better the role assigned to human dignity in the preambles of UDHR and ICCPR.

Sebastian Muders

Human Dignity: Intrinsic, Inherent, Absolute?

Human dignity enjoys broad support in international human rights law, beginning with the Universal Declaration of Human Rights of 1948, which is the foundation upon which the human rights system is built. This document grants human dignity a prominent place, stating in its first article that “[a]ll human beings are born free and equal in dignity and rights” and emphasizes in its

Preamble the “inherent dignity” of all members of the human family, expressing its deep-rootedness in each and every human being.

Similarly, the Geneva Conventions of 1949, which deal with the protection of prisoners of war and civilians in time of war, provide that “outrages upon personal dignity, in particular humiliating and degrading treatment [...] shall remain prohibited at any time and at any place whatsoever” (Common Article 3). “At any time and at any place whatsoever” evidently assigns to dignity an importance which leads to the prohibition of *all* instances of the mentioned action types, no matter under what circumstances they are happening.

Thirdly, at the national level, many constitutions adopted in the second half of the 20th century explicitly refer to human dignity as the foundation of the legal system, the most famous example being the German Basic Law of 1949. It declares that “[h]uman dignity is inviolable. To respect and protect it shall be the duty of all state authority” (Article 1). This suggests that human dignity is not merely an *indirect* objective which should be pursued for the sake of something else, and even has to be seen as the *sole* legitimate *endpoint* of all state action.

In philosophical terminology, these three characteristics of human dignity are usually brought under the labels “inherent”, “absolute” and “intrinsic”. In this paper, I will *first* try to specify *what is meant* by these characteristics when attributed to human dignity, understood as an individual status or value of a human being, seeking assistance from general axiology. After these preliminaries, in a *second step*, my task will be to examine whether all these three value or status properties can be reasonably attributed to plausible conceptions of human dignity, and if so, whether these characteristics can be systematically connected to each other in such a conception.

As I will argue in a *third step*, however, there *do not seem to exist semantic or ontological dependencies* between these characteristics: something can be

absolutely valuable without also being intrinsically or inherently valuable, and so for all the other possible constellations.

Nevertheless, I will show in a *fourth and final step* that there are *other reasons* rooted in human dignity itself to assume that we can indeed say that human dignity is an inherent, absolute and intrinsic value or status, and also that these three characteristics are properties of a *single* value or status. In a *concluding step*, I will briefly mention two conditions for the ontological basis of this status or value that suggest themselves in light of my considerations.

Sven Nyholm

Safety-optimizing Driving-Technologies and Human Dignity

In 2012, 27,700 people were killed in the EU in road-collisions. Around 313,000 people were seriously injured. Around 90% of all car-accidents are due to human error. One way of safety-optimizing car-use is therefore to take the human driver out of the equation. By handing over more and more driving-tasks to the cars themselves, the hope among many car-designers, engineers, and policy-makers is to make automobility much safer.

At one extreme we have conventional cars, and at the other extreme fully autonomous “self-driving cars.” But between these extremes there are different levels of automation, where the different levels are distinguished by what tasks are taken over by the car and what tasks a human driver is still responsible for. With currently available technologies, the safest cars may be somewhere in between the two extremes: the car takes over many tasks, but the human is still “in the loop” and responsible for certain key tasks. However, it is plausible to assume that with further development of these automobility-technologies, fully automated self-driving cars might soon become the safest option.

The automation of driving has recently caught the attention of moral philosophers and legal theorists. The focus has primarily been on how fully

automated self-driving cars ought to be programmed to react in accident-scenarios. Here, I will discuss a different issue. Specifically, I am interested in whether the introduction of safety-optimized automated cars creates an obligation to stop using conventional cars. Or would it perhaps create a disjunctive obligation to either use safety-optimized self-driving cars or use various added safety-precautions if we continue using conventional cars (e.g. speed-control technologies that would prevent us from speeding when driving conventional cars)?

One crucial way of approaching this question is via the ideal of human dignity. On a general level: what is the relation between the ideal of human dignity and the safety-optimizing potential of automated driving-technologies? More specifically: is requiring that human beings hand over driving-tasks and responsibilities to safety-optimizing technologies a threat to human dignity? Or can perhaps human dignity be one of the key ideals that ought to guide the way in which safety-optimizing technologies are introduced into the domain of automobility?

In discussing this topic, I will consider different conceptions of human dignity, e.g. those of Immanuel Kant (= dignity as absolute worth) and Aurel Kolnai (= dignity as a dignified bearing and demeanor). But I will primarily draw on Jeremy Waldron's understanding of human dignity. On this conception, human dignity is understood as a generalized high status and a special relation to law. Can dignity, thus understood, guide the ethics of safety-optimization of driving-technologies?

Ambivalence seems appropriate here. If driving-tasks and responsibilities are taken out of human hands, and handed over to safety-optimizing technologies, this might be seen as a threat to the dignity of self-applying the law and taking personal responsibility. But if safety-regulations are subject to democratic control and designed to protect human life, this can appear to honor human dignity. In my presentation, I will carefully articulate this issue of dignity and safety-optimizing driving-technologies, but not attempt to settle it.

Sini Paakkinen

Global Poverty and the Demands Arising from the Concept of Human Rights

According to Thomas Pogge, affluent countries and their citizens are participating in and reproducing the ongoing global order. This political and financial order harms the poor living in underdeveloped countries, and thus the rich are responsible for their poverty. More specifically, affluent people are breaking the hierarchically strongest, negative duty *not to harm others*. This means, as Pogge claims, that they should not only change the order to be more just but also compensate the wrongs done to the poor. The way rich countries are now acting can be seen as a "crime against human rights". Pogge's theory of global poverty has faced a lot of criticism, and it has recently been argued that it, and other theories addressing the role of solving the problem of global poverty to rich countries, are incapable of taking into account the meaning of agency and empowerment of the poor. This is despite the fact that these factors are necessary for the development of a country.

In this paper I defend the view according to which Pogge's theory is disabling the poor. I address the reason to be the way Pogge (and many international institutions) uses the concept of human rights. Human rights can never be stated in a relative position – and this is exactly what is happening now in the field of social justice. The human rights of poor people are firstly concerned when they are harmed by other people – but not when they just are not fulfilled.

For Pogge, the strongest demand is negative duty, and it concerns equally all people living in the world. But then, as his hierarchical order goes further, he states that we first have to help the ones that have a special relation to us (family, friends, our fellow citizens) and after that, other people. Still, I claim that because human rights are based on **equal human dignity**, they can not be relative in the sense that they induce different responsibilities in different

contexts. Let's imagine that there is a tsunami and 100 000 homes are lost and tens of thousands of people die. I see that this should be called as a human rights violation if people living in affluent countries do not help, even though they could. This could mean that human rights violations do not necessary include active harming by people², and that positive duties can sometimes be more demanding than negative ones. This is why I argue that *If* there are human rights, and we want to see human rights thinking as the ground for social justice, the responsibilities arising from global poverty are necessary also positive ones.

Elena Pribytkova

Is Human Dignity a Foundation of the Right to a Decent Standard of Living?

My paper will examine the relation between human dignity and the human right to a decent standard of living, which is aimed at protecting persons from extreme poverty, ensuring their involvement in society and providing the opportunity for their moral and intellectual flourishing. Economic, social and cultural rights indispensable to the embodiment of the principle of human dignity in the legal order have gained acceptance in international law. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights interpret human dignity as a foundation for socio-economic rights and recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (International Covenant on Economic, Social and Cultural Rights, Art. 11).

² I do not mean that there could be a human rights violation made by nature, but that if, in such a situation, there are people who are not helping even though they potentially could, then it can be called as human rights violation.

General Comments of the UN Committee on Economic, Social and Cultural Rights reaffirm that basic elements of the right to a decent standard of living – the rights to adequate food, water, sanitation, housing and health – are “indivisibly linked to the inherent dignity” of a person and “indispensable for leading a life in human dignity”. However, the practice of applying the concept of human dignity for the interpretation and protection of the right to a decent standard of living is very controversial.

My paper will concentrate on several interrelated questions: Does the right to a decent standard of living necessarily derive from the universal demand to respect for human dignity? Is human dignity an appropriate justifying basis for and a criterion of a decent standard of living? To what extent appealing to the principle of human dignity is able to promote the recognition and protection of the right to a decent standard of living locally and globally? I will explore interpretations of the right to a decent standard of living in legal and political philosophy, in core human rights instruments, as well as in the practice of international, regional and national courts and quasi-judicial bodies (in particular, the African Commission on Human and Peoples’ Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights).

Stephen Riley

Human Dignity and Institutions: The Changing Circumstances of Justice

This paper defends ‘interstitial cosmopolitanism’ as the best conceptualisation of human dignity’s institutional implications. That is, human dignity requires ensuring that individuals are included within the ambit of the state’s authority and ensuring that transnational actors are brought within the ambit of international regulation.

The ‘circumstances of justice’ are the natural conditions – environmental and anthropological – from which our basic ideas of normative ordering and obligation arise. It is, I argue, one of the functions of human dignity to refine the normative implications of, and where necessary respond to changes in, these circumstances such that basic and equal human status is maintained. More fully, the purposes of this paper are (first) to understand how human dignity interacts with the circumstances of justice, (second) understand how human dignity is a dynamic principle able to respond to changes in those circumstance, and (third) decide how this should be thought to have institutional implications.

First, human dignity refines the implications of the circumstance of justice by respecting status, equality, and the separateness of persons. It thereby acts as a direct side constraint on individual and collective action. It also serves as a heuristic in human rights adjudication ensuring that the interpretation of rights is responsive to those threats to human status that are not yet captured within the language and jurisprudence of positive law.

Second, human dignity has always permitted a dynamic institutionalisation of human rights law because it requires us to focus on basic human status and because it allows legal norms to be looked at in wider moral and political contexts (including aspects of lived experience that may have been neglected by legal and political processes). This dynamism is not, however, limitless and there is a tendency towards limiting human dignity to a narrow prohibitive norm.

Third, human dignity’s implications are not merely regulative but make demands on institutions and institutional design. We consider two different conceptions of its institutional implications: subsidiarity and institutional cosmopolitanism. Both have at times been associated with human dignity, revealing contradictory discourses of power (both towards and away from the individual) and discourses of authority (both towards and away from the state).

Finally, from that position, we are able to compare these aspects of human dignity with the most pressing, dynamic, aspects of the circumstances of justice, namely the threat of irreversible climate damage and the clashing forces of globalisation and nationalism. While these, together, seem to invite similarly contradictory implications in terms of power and authority, I argue that human dignity generates clear and direct consequences. It requires overcoming the exclusion of individuals and the gaps in authority produced that these forces produce. Human dignity therefore includes, but goes far beyond, an individual's right to have rights. It entails accountability for national actors at a transnational level, and accountability for transnational actors at a national level. This can be understood as an 'interstitial cosmopolitanism'.

Sandra Milena Rios Oyola

Human Dignity in Times of Transition

The concept of human dignity has greatly impacted transitional justice discourses and policies. Particularly, reparation and memory policies have focused their attention on restoring victims' dignity. The official recognition through apologies, truth commissions, and monuments among other mechanisms, is understood as a form to recognize the humiliation suffered by victims and their status as equal citizens and human beings that were wronged. Similarly, the accountability provided by trials is considered to be a way of recognizing victims' rights to justice, which was previously denied. Similarly, restitution of property has been seen as a form to return not only physical property but ownership, stability, and dignity (Atuahene, 2014).

The inclusion of the language of dignity in transitional justice is both a response to grassroots movements that claim the recognition of their dignity as disenfranchised groups, and a result of the transnational and global network of humanitarian work that find in the concept of human dignity a way to legitimize their demands. On the one hand, dignity or the 'politics of dignity' as have been

called by El Bernoussi (2015) are rooted in historical, economic and political demands of disenfranchised people for social inclusion. On the other hand, human dignity as the foundational normative category in international human rights evokes different sentiments and policies, using sensible lenses for instances of humiliation and dehumanization but which have led to criticize transitional justice for privileging an attention to human rights violations over other forms of abuses (Chapman, 2009).

Through documental analysis, this paper explores how those two perspectives complement or contradict each other. Tunisia's 'Truth and Dignity Commission' is examined as an example of a transitional justice case that seeks to respond to the grassroots demands raised in what has been known as the 'Revolution of Dignity'.

Michal Rupniewski

Human Dignity: Political or Metaphysical?

In the proposed paper I intend to tackle the problem of the nature of human dignity, or, in other words, the problem of the proper way in which the idea of human dignity should be understood, particularly when applied to the legal sphere. The numerous references to human dignity in legal texts and jurisprudence, not only in human rights law, but also in vast majority of constitutions, as well as in private law around the world (dignity as personal interest), call for a deep understanding thereof. Given the current political situation in many regions, it is not exaggerated to say that new investigations aiming at finding an idea of dignity that has a real meaning and impact in legal institutions are a desperate need. It seems that the future role of the idea of dignity in law depends on finding its proper understanding, endorsable in the cosmopolitan context.

When approached from the perspective of philosophy of law, dignity can be understood in two main ways. First, one can treat dignity as the status of the person (a purely normative approach, presently developed by Jeremy Waldron). Second, dignity can be understood as a "mode of being", an ontological characteristic of a person (an approach developed mostly by contemporary Thomism). In terms of political philosophy (of John Rawls in particular), the first approach is political, the second is metaphysical. The political notion of dignity does not require any strong ontological conception – it simply says that law gives (and should give) human persons special status respecting their ability of autonomous, principled and reasonable actions. It draws mainly on positive law as expressing the consensus on the special status of the person that occurs in many societies, as well as in the international community. The metaphysical notion of dignity, on the other hand, obviously requires some form of substantialism. But it is more than that. To say that human persons have dignity in this second sense is to say something about reality – humans exist as persons, and their mode of being is that of dignity. Even if on many occasions the dignity is not recognized, it still remains a significant feature of each human being.

The metaphysical idea of dignity, some would argue, cannot serve the role I took as the starting point of this paper, given its particularism, and perhaps paternalism. Namely, some would argue that the metaphysical notion of dignity comes from the Christian (Roman Catholic) tradition and therefore is dependent on the faith in the existence of God, and integrally connected to Christian morality. In my paper I will argue that it is not necessarily the case. Using the contemporary Thomistic categories I will show the independence and non-paternalism of the metaphysical notion of human dignity. Having this done, I will argue that the political notion of dignity cannot fully escape some metaphysical prerequisites, and therefore an attempt to build a universal political notion of human dignity cannot succeed.

The Controversial Dignity of the Severely Mentally Disabled A Justification-Based Approach of a Right to Adequate Advocacy

The issue I want to examine in my paper concerns the extension of human dignity and its consequences for the notion of status equality and corresponding moral, legal and political rights and duties. A major challenge in this respect are the severely mentally disabled and the question what human dignity means and implies with regard to them. Even if they are granted equal dignity in moral and legal discourse, the reality of our society tells another story: e.g. in Germany up to 90% of all embryos with Down's Syndrome are aborted. These statistics suggest a severe form of social and structural discrimination and exclusion which seems to be at odds with central human rights. I therefore want to focus on the problem of whether a deepened conceptualization of human dignity contributes to an adequate and justified concept of respect for *every* human being and her rights (including those who lack fundamental cognitive and linguistic resources).

I want to proceed in three steps. First, I argue that common interpretations of Kant's notion of dignity are problematic in two respects. Scholars who read Kant in an *exclusive* way mark the specific character of dignity as only applying to those (human) beings who are morally autonomous and capable of rational thinking. As a consequence, the severely mentally disabled are denied human dignity, thus undermining basic moral and legal entitlements. On the contrary, more *inclusive* readings of Kant who attribute dignity to all members of the human species face the problem of a biological speciesism and most often lack a substantial justification. My claim is that dignity cannot be made dependent on the actualization of a certain degree of autonomy or rationality, since these are not absolute but gradual capacities always implying sort of an unexploited potentiality. Accordingly, introducing a threshold sufficient to fulfil the conditions of dignity faces the problem of being necessarily arbitrary.

On these grounds I argue in a second step for an understanding of dignity as a substantial *normative claim* to respect and recognition that we reciprocally

demand from each other as constitutively social and interdependent beings. This claim corresponds to our responsibility towards other human beings as vulnerable and our duty to justify our actions to them (cf. Forst, *The Right to Justification*), since living together in multiple (reciprocal) relationships and a shared society, we are substantially dependent on each other. Thus in a third step I expound on an extensional interpretation of Rainer Forst's account of *justification* in terms of *recognition* and *responsibility* to overcome its rationalistic overload. I will show that a fullblown understanding of human dignity as normative claim to be treated as an authority of justification whose needs and interests must not be passed over, implies a *moral right to advocacy* (and a corresponding duty) for mentally disabled persons. This right to advocacy adds a substantive dimension to Forst's account: in moral and political respect, the disabled person has to be counterfactually treated as subject of justification *as if* she was able to demand reasons for norms and actions concerning her; while at the same time taking into account that she actually lacks those capabilities and therefore having to reconstruct her will and interest in the best possible way. Finally, I conclude by outlining what this dignity-based account of advocacy justification implies for the interaction with disabled persons in society and politics and how it can overcome the problems of paternalism.

Michael Schmidt

Human Dignity in a Reflective Equilibrium of Human Rights

I propose that 'human dignity' as a political term is best understood as a term serving as starting point in a political 'reflective equilibrium' concerning human rights.

'Reflective equilibrium' designates the method of justification of principles of justice which John Rawls used for his *Theory of Justice and Political Liberalism* and which is – despite some open questions – widely acknowledged by many moral and political philosophers as well as epistemologists.

This method is adequate for the justification of human rights because a) human rights are mostly claimed as constitutional rights or civil rights in a specific country (e.g. by the Charta 77 in Czechoslovakia, the ANC in South Africa or the Civil Rights Movement in the USA) so that it fits to the principles of justice aimed at by Rawls, and b) it can deal with the fact of reasonable pluralism of comprehensive doctrines which a justification of human rights has to face.

In a political reflective equilibrium which has to take into account a reasonable pluralism, there must be an overlapping consensus of relevant comprehensive doctrines on a freestanding module of justification. It has to consist of well-considered political judgments, background theories and principles of justice. The overlapping consensus must exist in a way that ensures that a dispute on the interpretation of the principles can be solved unanimously by reference to the well-considered judgements and background theories, thus providing a neutral vocabulary of justifying a specific interpretation of human rights, constitutional rights or civil rights.

The well-known notion of Rawls' 'original position' serves in his philosophical theory as a starting point for developing a web of beliefs which form his political reflective equilibrium. This is possible, since the original positions contain, in some condensed form, his main background theories and convictions of which he thinks that they can be shared in an overlapping consensus – such as a theory of person, a theory of procedural judgement and so on. In the political debate over the justification and interpretation of human rights, constitutional rights or civil rights, a philosophical construction such as the original position would be much too complex. Consequently, the term 'human dignity', which is much less complex, takes this functional role: If someone claims that something is not in accordance with human dignity, this serves as an easy starting point for further discussion. In this discussion within public reason – often professionalized by courts, parliaments or media – it is necessary to enrich the notion of human dignity with shared background theories (which are themselves in accordance with other political well-considered judgements) and thus

drawing a wide political reflective equilibrium in which a specific interpretation of rights can be publicly justified.

Emily Schultz

Investing Human Dignity in Justice and Sustainability Theory

Sustainable development is about securing the possibility of a good human life for every individual today and in the distant future. However, to ground and achieve these aims, normative investments are necessary. My argument contributes to the justification of human dignity and its specifications as the core of anthropocentric approaches to justice and sustainable development.

I begin by identifying a normative core around which both justice and sustainable development theories revolve. Implicit or declared, the normative core is set as the main target for protection, securing and forwarding and provides the reasons for the development and pursuit of justice and sustainable development, in theory and in practice. The Capability Approach to justice is taken to exemplify this (e.g. Sen, 1999; Nussbaum, 2008) (I). For the content of the normative core, I contrast three main proponents: Agency, freedom and dignity and argue for the deeper and more nuanced strength of dignity over both agency and freedom, focusing on three aspects setting it apart: (i) Its value conferring potential; (ii) its unchangeable quality; and (iii) its connection to human capacities, drawing on reciprocity and attachment (II). I turn to human rights and take them as one possible delineation of the boundaries of dignity, however, without a fully developed and philosophically grounded theory for their substantiation (e.g. Beitz, 2013; 2003). Nevertheless, I argue for their irreplaceability in normative theorizing and operationalization of the term dignity (III). Viewing justice in terms of justifiable domination rather than distribution (e.g. Simpson, 1980), I show how investing dignity as the normative core, with human rights as its boundary delineation, provides a

theoretical foundation for qualifying justifiable and unjustifiable domination, relevant for the implementation of justice and sustainable development (IV).

My argument maintains that by functioning as the normative core and grounding for justice and sustainable development theories, human dignity and its boundary delineation holds its normative relevance and strength. It also points towards the need for the continued development of an independent and philosophically grounded theory of human rights and their irreplaceability in the pursuit of justice and a sustainable human development.

Asheel Singh

Dignity is Dying **Resuscitating a “Useless” Concept Through Transhumanism**

In recent years, dignity has been criticised as a superfluous, vague, and ultimately “useless” concept. But how does the allegedly useless (yet revealingly persistent) concept of dignity change when we view it not as a quality underwritten by rationality or autonomy, but rather one grounded in the quintessentially human capacity to care?

My paper consists of two parts. First, borrowing on works by Thomas Christiano and Agnieszka Jaworska, I construct and defend a new conception of dignity. According to this new conception, what gives a person dignity is *her capacity to value*—or, to put it in another way, her quintessentially human capacity to *care*. I show how this capacity is distinct from autonomy or the mere capacity to reason, and how this route to dignity thus avoids criticisms laid against the current dominant (Kantian) conception of dignity.

In the second part of my paper, I demonstrate how this new conception of dignity will play an indispensable role in discussions about the future of humanity. Here, I show how dignity reimagined can enrich recent debates in bioethics regarding the ethics of radical human enhancement. Transhumanists

believe that we may eventually be able to, and should, use technology to remove pain and suffering from the human condition. On the other hand, bioconservatives argue that transhumanism fails to take seriously the threat radical enhancement poses to human dignity. Bioconservatives have in turn been criticised for appealing to a useless, ultimately meaningless concept—namely human dignity. I demonstrate how the revised version of dignity helps better explain the bioconservative's concerns. Somewhat unexpectedly, I also show how dignity can perhaps better defend the transhumanist's position. I argue that the question as to whether creating enhanced human beings is permissible ultimately turns upon the issue of whether these enhanced humans will possess dignity *qua* a recognisably human capacity to value or care. If I am right, then I will have provided reason to take seriously the view that dignity will remain an indispensable concept in bioethics for some time to come.

Saul Smilansky

The Hard Determinist Escape from Justice

One of the striking developments in the contemporary philosophical free will debate is the emergence of "Happy hard determinism" (HHD). While in the past libertarianism and compatibilism dominated the debate, and the prospect of living without free will and moral responsibility was by and large viewed with horror, this is clearly no longer the case. HHD rejects free will, desert and moral responsibility, but holds that we are better off without them, and indeed cherishes the prospect of revising social life to accommodate their absence. Much of the debate has focused on the topic of punishment.

I have recently argued that considerations of justice force hard determinism to seek to revise the practice of punishment in the direction of "funishment", whereby the incarcerated are very generously compensated for the deprivations of incarceration, since those cannot be deserved. I then claimed that funishment is a practical *reductio* of hard determinism; and that as a substantial moral stance

hard determinism must declare its bankruptcy. Neil Levy, Derk Pereboom, and Bruce Waller have responded in very different ways to my argument. I consider their responses, and another recent direction taken by Derek Parfit; and find them inadequate.

I argue that hard determinists must acknowledge the issue of justice as paramount in their position, and draw out the implications. Arguably, the inadequacy of HDD alternatives with respect to justice and punishment should lead to a re-consideration of modest forms of compatibilism. At any rate, I argue that hard determinists must meet the challenge of justice, for both principled and pragmatic reasons.

Christine Susienka

Invoking Human Rights, Respecting Human Dignity

Human rights are often discussed when violated or under threat of violation. For example, one often hears rights invoked in the contexts of abortion debates and government surveillance programs. Nonetheless, there are many contexts in which the content of rights is implicated, but in which rights themselves are not invoked. This paper considers the act of invoking rights and, specifically, what is distinctive about this act. By considering cases in which the content of rights is implicated but in which invoking rights seems superfluous, I aim to articulate the distinctive role human rights claims play in our broader normative practices of praising, blaming, and holding one another responsible. It will be the contention of the paper that when one invokes a right, one invokes a relationship, and that features of that relationship are relevant for determining whether a rights invocation is appropriate. When one invokes a human right in particular one invokes a basic relationship that exists between human beings qua human being. On this view, the most basic right that we have is to be regarded as a fellow human being, and I take this claim to be a central way of capturing what is meant by respecting one another's human dignity.

Ultimately, I defend a Background Account of Rights. On my proposal, rights characterize the context in which persons interact whether or not these rights are appealed to and whether or not they ought to be invoked given a particular situation. They frame the normative terms of a relationship, providing both parties with reasons for action and limitations on the kinds of interactions that are morally permissible, thus playing a role in the background. One need not think in terms of rights in order for them to provide this shaping role. Instead, rights ought to be invoked when A) their content is implicated, and B) other kinds of appeals fail to fully characterize the situation or to motivate others to act. I will further argue that the very conditions that make rights inappropriate to invoke in many contexts – namely their coercive, distancing, public, and general character – are the same features that make them appropriate and powerful in others.

An upshot of the approach is that, though we often do not describe it in these terms, we regularly work toward fulfilling the human rights of those around us. Thus, rather than consider rights merely in the contexts in which we claim them when they are under threat, we also consider the contexts in which they are positively fulfilled. This way of framing the discussion opens up further questions about whether the ways in which human rights are fulfilled best respect human dignity. On this view, human rights claims act as intermediaries—they flag the severity of a situation and highlight otherwise ignored normatively basic features, creating the circumstances such that new, more precise thick concepts can be identified. Identifying the distinctive role of rights invocations can further influence how we conceptualize human rights and aim to fulfill them.

Thomas Wachtendorf

The Dignity of Man as a Mythological Concept

The concept of the dignity of man has often been attacked as being a loose concept. This has its reasons mainly in the fact that this concept is usually construed either as referring to a certain object or as being dependent on common agreement (consensus). In both cases serious objections can be made since on the one hand the existence of an object as the dignity of man seems quite hard to prove and on the other hand consensus is no appropriate criterion to establish the meaning of a concept, because it is quite arbitrary. Moreover, the dignity of man is a concept that conversely is intended to influence the way a society establishes concepts itself. Thus, both ways of explaining the meaning of the dignity of man seem to fail.

The philosophy of Ludwig Wittgenstein and especially his thoughts on language games and family resemblance might lead the way to a reliable foundation of the dignity of man.

According to Wittgenstein there are certain kinds of sentences. *Empirical* sentences (a) tell us something about the world. They can be doubted, validated, and turn out to be right or wrong. Distinct from empirical sentences are *grammatical* sentences (b). They explain how to use words correctly, like: „Every rod has a length“ (PI, §251). These sentences can neither be doubted nor validated nor turn out to be right or wrong. However, the point of *On Certainty* (OC) is that there are sentences (c) which can be formally doubted like „I have two hands“, but which, in fact, are never doubted, because there is no *reason* to doubt them. They are self-evident. Finally there are sentences (d) which are empirical, but haven't been validated by the individual yet so that he believes them, because someone told him so or he learned them. Especially c-, but also d-sentences constitute a world-picture. A world-picture is not true or false, because „I did not get my picture of the world by satisfying myself of its correctness; nor do I have it because I am satisfied of its correctness. No: it is the inherited background against which I distinguish between true and false“ (OC, §94). The sentences which constitute the world-picture „might be part of a kind of mythology“ (OC, §95). Thus, „an entire mythology is stored within or

language“ (RFGB, 133). Speaking a language therefore always means working on one’s worldpicture.

I will argue that ethical concepts like especially the dignity of man are a subclass of (c). As „absolute metaphors“ (Blumenberg) they constitute our world-picture und therefore the way we see the world and react to it. Though, ethics is less a system of prescriptions, but rather an constant struggle for how we want to live. In this sense Wittgenstein’s early comment: „The world of the happy man is a different one from that of the unhappy man“ (TLP, 6.43) becomes understandable notably with regard to the dignity of man.

Elaine Webster (& Mary Neal)

Dignity as Rank: Triangulating the Relationship Between Human Rights and Intrinsic Worth

The language of ‘dignity’ features prominently in human rights discourse. A significant volume of literature is devoted to trying to elucidate the precise nature of the relationship between dignity and human rights, and we aim to contribute to this ongoing debate by advocating a novel approach which builds upon Jeremy Waldron’s conceptualisation of dignity as *rank* (‘equal high-ranking status’).

As we see it, the project of trying to elucidate the relationship between dignity and human rights is hampered by the widespread use of the word ‘dignity’ to refer to ‘intrinsic worth’. Building upon Waldron’s claim that dignity is a rank, or status, we argue that an understanding of ‘dignity as rank’ has the potential to transform the discourse by triangulating the relationship between intrinsic worth and human rights. That is, instead of attempting to make sense of a bilateral relationship between human rights and dignity *qua* intrinsic worth, we propose that the relationship should consistently be regarded as a tripartite one,

involving *three* elements: intrinsic worth, dignity (equal high-ranking status), and human rights.

Within the model we propose, ‘human dignity’ is the equal high ranking status conferred (as a matter of political/legal/social fact) to all human beings on the basis of their (assumed) equal intrinsic worth. Human rights are mechanisms by which the equal high ranking status (the ‘dignity’) of all human beings is observed, reaffirmed, maintained, and protected.

We claim a number of important advantages for our approach:

1. It increases linguistic and conceptual precision within human rights discourse, while reaffirming the central role of dignity therein;
2. It retains the link *between* dignity and intrinsic worth even as it argues against understanding dignity *as* intrinsic worth;
3. It foregrounds the social and relational dimensions of dignity, positing dignity as a socio-political, rather than a metaphysical phenomenon, while retaining a clear link between the socio-political (dignity) and the metaphysical (intrinsic worth);
4. It clarifies that *dignity* can be violated even when the *intrinsic worth* of human beings is understood as being unassailable;
5. Relatedly, and crucially, it provides a basis for recognising that dignity is fragile and vulnerable such that it makes sense to regard it as being ‘protected’ by rights.

Kerri Woods

Human Dignity and Vulnerability in a Community of Rights

Human dignity is widely understood to be foundational for human rights. Human beings have a moral property which can be described as, or exemplified in, an inherent dignity, which is a moral property that gives rise to the moral demand that any and all human beings ought not to be treated in ways that

threaten or are disrespectful to this quality. Explaining what exactly human dignity is, or what it consists in, is a difficult enterprise, but the most promising attempts rely in whole or in part on a Kantian account that understands human dignity to lie in the unique human capacity for rationality, which gives to humans their capacity for both autonomy and morality. The reciprocal recognition of our capacity for rational reflection is key to Gewirth's influential notion of a community of rights (Gewirth 1982).

Other strands of thought, some of them hostile to the rationalist orientation of Gewirth and his fellow travellers, have also understood the idea of a community of rights to play a significant role in shaping both our understanding of human dignity, and the moral standing of rights claimants (Rorty 1993, Fineman 2013). These debates are especially significant for those human beings who do not have what might be regarded as a fully human capacity for morality, which has prompted a literature on what has been called 'marginal cases' (Feinberg 1974; Singer 1980). What this literature reveals is that the grounding of human rights in the concept of human dignity understood in Kantian terms has difficulty explaining why and how such people are fully equal members of a community of rights.

One might simply conclude that they are not, but such a claim would be very contentious. Indeed, the persistence of widely held intuitions regarding the status of humans as rights-bearers, independent of their functional autonomy, gives us reason to look again at the fit with our moral reasoning. The challenge here is to defend an account of human dignity that is neither over- nor under-inclusive, and that does not collapse into speciesism.

An alternative approach to theorising human dignity, and one that has some support from analyses of recent European case law, takes its cue from the 'vulnerability thesis' (Fineman et al 2013). This approach rejects the centrality of the Kantian tradition for understanding the uniquely human moral property that calls forth a normative response most often articulated in terms of rights. In this paper I assess the promise of bringing together notions of human dignity and

inherent human vulnerability to offer a more inclusive account of a community of human rights.

While I argue that the vulnerability thesis can help to capture and explain widely held intuitions about human beings who have rights but lack autonomy, I conclude that this approach, if invoked as a justification of human rights for *humans*, does not have a more satisfactory answer to the charge of speciesism than do the alternatives it critiques.