tification in this perspective. By implication *Facing Up to Reality* accepts infanticide as well.

Tragically, this radically inhuman proposal undermines the whole of natural justice, and the notion of a just law. It divides human beings into two classes, the protected and the unprotected, the wanted and the unwanted.

In our time abortion and infanticide have come to be practices condoned by civil authority in some democratic jurisdictions. In this sense they are "legal" practices. Yet the distinction between what is legal and what is ethical can never be eradicated. Human history shows this. The millennial struggle to abolish slavery from human relations is the starkest example of this moral-legal distinction and of its consequences.

Legalized Forms of Homicide and the Medical Profession

The State cannot legally demand of a professional body, dedicated to protect life and health that it goes against its own aims and commitments. By doing so it would destroy the very nature of the profession and deprive the population of its service and dedication. This has been openly recognized by the World Health Organisation as regards the medical professional commitment *not to participate in capital punishment* – through lethal injection – as a medical task or "treatment".

As things stand in Ireland today the medical profession is guaranteed by law to maintain the fundamental object of its professional dedication – "to care for the sick and injured" – as the ground of its identity and social and legal status. The legislators cannot, without legal contradiction, ask of the doctors on the one hand to continue to exercise their professional commitment, and on the other to negate that commitment with the force of an unjust law that requires of them to take the life of some under their care.

To claim that "...abortion is treated as a health issue, since it requires a medical intervention" [1.1.5]. Is to reduce the notion of "medical intervention" to the idea of "bodily intervention in accordance with the wishes of the patient in order to obtain some personal benefit from it". Medicine is then reduced to mere "body technology". It loses its character of a dedication to benefit the sick, because they are sick, and to protect them from deliberate harm and injustice.

Clarification of the notion of dignity

A.M.M. LEBECH

Introduction

Clarifying the notion of dignity is difficult. This is partly because clarification of a term always is difficult, especially when the term cannot, as is the case with dignity, be easily defined. But it is difficult in this particular case also because various definitions of dignity are in conflict. Therefore the issue of defining dignity is what we call controversial. A clarification of the notion of dignity must take this into account.

We will start by analysing the slogan "death with dignity" and the ideal of dignity it sets forth. This will take us to an analysis of the idea of dignity itself. Next we will look at how this idea serves as a fundamental intuition or principle in the Human Rights tradition and how it came about that it has become a basic legal principle in several constitutions. This will finally bring us to discuss the paper of Kurt Schmoller and the relationship between the legal principle of human dignity and the legal concept of dignity.

Dignity and the Slogan "Death with Dignity"

A slogan, in fact, draws strength from using language in an novel or striking way. It coins a new phrase by using familiar terms, and is often thought-provoking and intriguing like a nickname, or innovating like a technical term. A slogan can reinvent words by applying them afresh, and through use, it can change the way we talk.

However, behind a slogan there is a reality. In this case it is the struggle of dying people to live their last hours, weeks, and months in accordance with their dignity. Some people claim a right to shorten their own lives or to be killed by request, when they see their dignity affected by illness. They claim a right to stay in charge, a right to a "death with dignity".

The strikingness of this particular slogan consists in associating dignity

and death,[1] realities often thought to be opposites. It is mainly used by the euthanasia movement. In fact, Donald W. Cox, a proponent of the *Hemlock Society* in America, in his book *Hemlock's Cup. The Struggle for Death With Dignity*,[2] has characterized the history of the whole euthanasia-movement as a struggle for "death with dignity". This struggle has left its mark on politics and law. Thus a United States Senate Committee conducted hearings in 1972 on "death with dignity",[3] and the Oregon Act permitting physician assisted suicide goes by the name "Death with Dignity Act". Several bills were advanced calling for legalisation of "death with dignity"[4] in Europe as well as in America.

In associating dignity with death, the slogan differs somewhat from other related expressions. "To die with dignity" associates dignity with the process of dying and not with death itself. Thus phrased, it becomes clearer that what has dignity is not death, but the life of the person, even when he or she undergoes the process of death. "To die with dignity" is used extensively by many Voluntary Euthanasia Societies responding to the name: *Association pour mourir dans la dignité* (France, Belgium, Luxembourg and Switzerland); *Fondacion/Asociación Pro Derecho a Morir Dignamente* (Spain, Columbia); *The society for the right to die with dignity* (India), *Japan Society for dying with dignity*, *Americans for dying with dignity*, etc.

"The dignity of the dying person" is another example of a related expression. It occurs in the title of this book, and clearly ascribes dignity to the person undergoing the process of dying, not to death itself.

However, "death with dignity" is unlikely to be understood, even by proponents of euthanasia, to be a direct attribution of dignity *to* death. It is, however, an association of the terms, which usually implies either or both of the following: *1.* that pain and suffering should be minimized for the terminally ill in so far as possible, even if this implies a shortening of the life of the patient; and/or *2.* that an induced death may be an acceptable way of facing suffering and death and should be allowed both ethically and legally. "Death with dignity" is understood in the latter case to include a "right" to choose death when faced with physical or mental suffering, and this in turn relies on an implicit recognition of dignity mainly or solely to autonomy. Autonomy in this connection is often taken to be not only the core or summit of the person, but the condition *sine qua non*. The person is understood to be entitled to dispose of him or herself, or to be assisted in this disposal, if he or she so wishes.

Along these lines we can mention the dissenting opinion of Brennan, Marshal and Blackmun in the Nancy Cruzan case, which stated that "Nancy Cruzan is entitled to choose to die with dignity".[5] Jack Kevorkian, moreover, described his suicide machine as "humane, dignified and painless",[6] and proposed to build suicide-clinics in which a "rational and comprehensive program of dignified, humane and beneficial planned death" could be conducted.[7] Timothy Quill, most importantly, stated that "it was extraordinarily important to Diane to maintain control of herself and her own dignity during the time remaining to her... I wrote the prescription with an uneasy feeling about the boundaries I was exploring – spiritual, legal, professional and personal. Yet I also felt strongly that I was setting her free to get the most out of the time she had left, and to maintain dignity and control on her own terms until her death".[8]

Already in 1969 the politics of euthanasia had been associated with dignity. The president of the *Voluntary Euthanasia Society* in England declared that "the moral right to a dignified and merciful death..., should be enshrined in the Universal Declaration of Human Rights adopted in 1949 by the General Assembly of the United Nations".[9]

Whether he meant that it already *was* enshrined in the Declaration which founds itself on the principle of human dignity, or that the Declaration should be *amended* to explicitly recognize a "right" to euthanasia, is unclear. He

[1] This idea is put forward in GRISEZ G., BOYLE J.M. Jr., *Life and Death with Liberty and Justice. A Contribution to the Euthanasia Debate*, Notre Dame Indiana: University of Notre Dame Press, 1979: 179. "Death with dignity" associates dignity with death, not with the process of dying, not with the person dying or with the life of the person dying.

[2] COX D.W., *Hemlock's Cup. The Struggle for Death With Dignity*, Buffalo–New York: Buffalo Books, 1993.

[3] *Death with Dignity: An Inquiry into Related Public Issues: Hearings before the Special Committee on Aging*, U.S. Senate, 92nd Cong., 2nd Sess., part 1 (August 7, 1972).

[4] *Death with Dignity: Legislative Manual*, Society for the Right to Die, New York, 1976. It has a model Bill on pp. 95-96.

[5] Cited by Cox p. 80. As Nancy Cruzan, at the time of the issuing of the opinion, had been unconscious for a long time, the choice referred to was deduced from the preferences of her previous conscious life remembered by her family and friends.

[6] COX, *Hemlock's cup*, p. 100.

[7] KEVORKIAN J., *Prescription Medicine: The Goodness of Planned Death*, Prometheus Books, 1991.

[8] QUILL, T., *A Case of Individualized Decision Making*, New England Journal of Medicine March 7, 1991.

[9] Earl of Listowel: *Foreword*, DOWNING A.B. (ed.), *Euthanasia and the Right to Death. The Case for Voluntary Euthanasia*, London: Peter Owen, 1969, p. 5.

says, in fact, that "although the case for voluntary euthanasia is a moral one, it seeks to establish a legal right, and this right, which depends on legislation, cannot be established in a democracy without the tacit or explicit consent of the electorate". We should therefore understand that if the "right to die with dignity", as advocated by the euthanasia movements, is not already endorsed by the Human Rights tradition, it ought, according to the same movements, to be thus endorsed, just as it ought to be a positive "right" enshrined in national legislation.

It seems reasonable to affirm that it is mainly this campaign for social change, already well expressed in 1969, which uses the expression, "death with dignity" as a slogan. Implicit in this campaign is the understanding that the person expresses himself fully in autonomy, and this in turn is thought to legitimize a choice of death.

Dignity, however, even for the euthanasia movements, is seen as a reality of the human person. It is often thought that it is precisely this reality which entitles him or her to the "right to die with dignity".

Boyle and Grisez distinguish two layers in the meaning of dignity.[10]

The first has its foundation in aristocratic society, where dignity signified the excellence of those who are born superior to others. The qualities of self-possession, composure, and ability to command were the traits that distinguished the superior from the inferior, and thus they were signs of dignity. The contrary to dignity in aristocratic society was degradation: if superior persons, members of the upper classes, should undergo or suffer something which made clear they were not so different from the vulgar mob, their dignity would be offended.

The second layer has its foundation in Christian thought. The Christians saw all human beings as dignified insofar as they were created in the image of God and called to be members of the divine family. God even made Himself instrumental in Christ for our sake, thus establishing our dignity as children of God. Dignity in this perception is ultimately established on the individual's relationship with God. The contrary to dignity in Christian thought is thus the disruption of this relationship – a relationship, however, which is impossible to sever in all its implications.

Let us call the first moment "elitist" – because it points out an elite which is dignified in contradistinction to the mob, and let us call the second moment "universalist" because it contends that each and every human being belongs to the "elite" of those upon whom God has bestowed dignity. From this way of formulating the difference it should be clear that the affirmation of the dignity of every human individual is precisely a universalization of elitism. Without elitist presuppositions, universalism could not have affirmed the superior value of all. On the other hand, without universalism, dignity would remain a term to designate the superiors of a given society.

We could also call the first moment "extrinsic" and the second "intrinsic". Extrinsic dignity may be recognized or bestowed by society, inherited or acquired through one's own effort, whereas intrinsic dignity belongs to the nature of man and therefore is equal in all. The dignity recognized by society and the dignity inherent in the human being are analogical concepts. Whereas the latter is the more fundamental, the first is of overriding practical importance in ethics and law.[11]

If universalism tends to "democratize" dignity, it is probably safe to say that without Christian universalism working as a leaven in European culture for 2000 years, democracy, as we know it today, would be inconceivable. Even in post-Christian democracies dignity seems to retain its universal character, as it assures basic political equality, liberty and justice: everyone is understood to be entitled to respect. The Kantian version of universalism, often taken as a starting point for secularist universalism, can be stated in its legal and negatively formulated variant: "human dignity is violated if the concrete person is debased to an object, to a mere means, to a replaceable quantity". Nevertheless it is uncertain whether a secularist ethic without a religious foundation can continuously provide a basis for respecting the dignity of every single individual.

Perhaps the euthanasia debate highlights the potential conflict between the two layers in the meaning of dignity. The meaning of dignity as used in

[10] GRISEZ, BOYLE, *Life and Death...*

[11] In the philosophical anthropology of Aristotle, human dignity (axia) is both inherent in the nature of man *and* recognized by society (*Nicomachean Ethics* 1131a 24ff., 1158a 30ff., 1159a 35). This accounts for his elitism, according full human status only to free, Athenian men. However, Christian universalism, through St Thomas, relies on Aristotle's understanding of the nature of the human being, but is broadened and universalized in Boethius' account of the person. His understanding of the human being as person (naturae rationalis substantia individua) accounts simultaneously for two important ideas: that the dignity of the human being depends on human nature, which is *intrinsic* to the individual, and that *all* human beings possess this dignity equally, precisely because it is inherent in their nature. Equality and inherent dignity are two aspects of the same idea. This could be kept in mind when reading both DWORKIN R., *Taking Rights Seriously*, Duckworth, 1977 and GLENDON M.A., *Rightstalk*, The Free Press, 1991.

the slogan " death with dignity " can be seen to be a certain variant of elitism in so far as it distinguishes superior from inferior on the basis of autonomy. Dignity may be expressed most adequately in autonomous acting, just as human rational nature reveals itself most strikingly in autonomy. However, if dignity is reduced to the exercise of autonomy, the nature of the person – the condition and capacity for autonomy – is neglected. Consciousness and autonomy are important features of the human being, a manifestation of his personal and rational nature, but the dignity of the person is not dependent on their actual exercise. Those who conceive dignity as inherent in human nature and see autonomy as the most perfect manifestation of this nature, differ from those who identify dignity with autonomous activity. The elitist, claiming that dignity consists in autonomous activity, understands life to be at the service of freedom. So much so that if life no longer serves autonomy, a free decision to dispose of it can be justified. The universalist, on the contrary, understands freedom to be embedded in human nature, even when it is not actually exercised. Disposing of human nature would necessarily be to dispose of human dignity.

There is of course no point in exaggerating the difference. However, when it comes to assessing the dignity of the dying person, the question becomes crucial. When faced with this extreme case, it is clear that the elitist notion of dignity, commonly used in the slogan " death with dignity ", does not consider human dignity to be intrinsic to the human being. If it did, no choice of death could be justified, as it would be an assault against someone possessing human dignity, even if this someone is oneself.

Sr. Michaël Schattner explores this difference in the concrete practice of the doctor attending dying patients. She distinguishes between an " ontological " dignity, which is more radical than its manifestations and which cannot be suppressed even by an acute awareness of humiliation, and a visible dignity. She regards the ontological dignity as something to be conquered, a challenge, always to be met anew and in openness towards others. Growing towards meeting this challenge becomes even more crucial as death approaches, and this, she claims, is the only truly human argument for affirming that one cannot terminate a human life even when it is pursued without any visible human dignity.[12] Schattner, by her account of human dignity as it manifests itself at the end of life, puts forward the ideal of an intrinsic dignity

[12] SCHATTNER M., *Souffrance et dignité humaine. Pour une médicine de la personne*, Paris: Mame, 1995: 123-132.

which may not be violated even by oneself. Human dignity, when considered as a universally valid principle, is normative also, and in particular, in regard to myself.

THE HUMAN RIGHTS TRADITION AND THE EMERGENCE OF " HUMAN DIGNITY " AS A LEGAL PRINCIPLE

Picturing the notion of dignity as stratified helps us to understand the potential conflicts arising from the notion. Seeing the concept of dignity as used in modern democracies as resulting from a secularized universalization of elitism will help us to understand the inherent difficulties in the basic legal principle of human dignity as it was forged in International and National Law after the Second World War.

In the *Covenant of Human Rights* – comprising the *Charter* (1946), the *Declaration* (1948), and the *Covenants* on Social and Economic Rights and on Civil and Political Rights (1966-1976) – all Human Rights are declared to derive from the inherent dignity of the human person.[13] This principle is said to be the foundation of freedom, justice, and peace.[14]

It must therefore be thought that the Human Rights tradition as it was formulated after the Second World War explicitly adopts a universalist stand and affirms that human dignity is intrinsic to all human beings.

In this sense, human dignity is a basic principle from which all Human Rights based law should derive. It has given rise to the proclamation of various rights often concerned with discrimination (of blacks and of women), but also with a wide range of other topics including the right treatment of prisoners, education, food, and technology. With the classic formulation proposed by

[13] Preambles in *Covenant on Economic, Social and Cultural Rights* (1966-1976) and in *Covenant on Civil and Political Rights* (1966-1976).

[14] The affirmation of " faith in fundamental Human Rights, in the dignity and the worth of the human person " is adopted by a great number of Human Rights instruments in their preambles, as for example *The United Nations Declaration on the Elimination of all Forms of Racial Discrimination* (1963) and the *Declaration of Elimination of Discrimination Against Women* (1967). For a more complete list see Broberg, Margareta and Knox, LADEGAARD J.B., *Dignity Ethics and Law. Bibliography*, Copenhagen: Centre for Ethics and Law, 1999: 76 ff. For another discussion of the role played by the notion of human dignity in the Human Rights documents, see TONTI-FILIPPINI N., *The Concept of Human Dignity in the International Human Rights Instruments* in VIAL CORREA J. DE D., SGRECCIA E. (eds.), *Identity and Statute of Human Embryo. Proceedings of Third Assembly of the Pontifical Academy for Life,* Città del Vaticano: Libreria Editrice Vaticana, 1997.

Günter Dürig, repeated in handbooks and commentaries, dignity is thought to be violated by torture, slavery, mass expulsion, genocide, deprivation of rights, forced labour, terror, mass murder, and experiments on human beings.

In the decades leading up to the making of the *U.N. Charter* and the *Universal Declaration,* several countries adopted the principle of human dignity into their own national constitutions. Among them were Mexico (1917), Ireland (1937), Cuba (1940), and Spain (1945). Germany (1949) was directly influenced by the development in International Law, and the discussion of Human Dignity as a basic legal principle has been the object of much commentary, discussion and controversy there. Paragraph 1.1 of the *German Basic Law* (Constitution) reads: " The dignity of the human being is unassailable. To respect and to protect it is the purpose of all state power ". This paragraph has been interpreted as both guaranteeing and ruling out the " right to die with dignity ".[15]

This means that the principle is interpreted in different ways *in practice.* In law, in fact, practice as well as interpretation is very important. Nevertheless, the legal principle of human dignity *itself* is not ambiguous: it has an inherent obligation to universalism. In practice, however, in the way it is interpreted, elitist components sometimes come to dominate. Moreover: the question of who is to count as a human person has become controversial, at least since the abortion debates in the sixties. The very definition of the human person whose dignity is recognized, has therefore become politically non-existent. Everyone agrees that human dignity should be protected, but there is no common consensus as to who are the persons to whom human dignity is attributed, and therefore as to who is worthy of protection.[16]

[15] See for example two Commentaries to the German Basic Law, published by the same publisher, but with contradictory interpretations of the first article concerning human dignity: AZZOLA ET AL., *Kommentar zum Grundgesetz fur die Bundesrepublik Deutchland,* Bd 1-2, Luchterhand, 1984 which argues for the " right to die with dignity " and SMIDT-BLEIBTREU, KLEIN, *Kommentar zum Bundesrepublik Deutchland,* Luchterhand, 6. Auflage, undated, which argues against. See also any German legal dictionary under dignity.

[16] When the Council of Europe leaves it up to the Member States to define the term " everyone " in *The Bioethics Convention* (meant to prolong the Human Rights tradition), we get the impression that the tradition has collapsed. This new political and legal reality leaves us with a very well developed legal system, and with a very well developed set of human rights to found it upon, but with no means of knowing who is covered by it. *Explanatory Report to the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine,* Directorate of Legal Affairs, Strasbourg, January 1997 (DIR/JUR (97) 1). The French *Bioethical Laws* from 1994 likewise adopt the legal standard of Human Dignity, but do not understand it to prohibit practices destined to eliminate embryos or fetuses. It too relies on the practical assumption that it is unclear who possesses human dignity.

The controversy attached to the definition of the human person also has repercussions in relation to euthanasia. If personhood were defined by consciousness alone, there would be no human person present in a comatose patient, for example, and his or her life could be ended or experimented upon without violating the dignity of any human person.

Elitism, in fact, often disguises itself in this way as universalism. Jürgen Habermas, for example, includes in his understanding of a universalist ethics all those who can defend their rights within the framework of a universal discourse. But not all human being can speak for themselves, whether it is because they are young, handicapped, ill, elderly, suffering or dying. John Rawls, as another example, bases his calculus of justice on conscious and expressed preferences. But the same category of people existing in real life, often do not express conscious preferences. Even if they do, as in the case with children, one should not always respect them.

An elitist would not regard the principle of dignity to be inherent in every human being, just because he or she is human, whereas a universalist would. Universalism thus defined presupposes an understanding of the human being, to be furnished by metaphysics and philosophical anthropology. Elitists of the Habermasian or Rawlsian type reject the possibility of such a doctrine. For them, consciousness or expressed preferences are the conditions *sine qua non* for humanity. These conditions, however, exclude from the category of person many whom we normally consider to be human beings, even those who are asleep. And this is clearly an abuse. Indeed, the Human Rights tradition has counteracted precisely the discriminatory mechanisms of racism and sexism which likewise accord personhood or dignity only to a certain class of people. It has done this on the principle that " recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace ".[17] So whereas the Human Rights tradition has been founded on an explicit universalist recognition of human dignity, it has shown special awareness of some typical violations by various kinds of elitism.

It is clear, given the historical circumstances of the drafting of *The Universal Declaration of Human Rights,* that the expression, " all members of the human family ", was not intended to include some and exclude others.[18] The background was that of the genocide inflicted on the Jews by the Hitler-

[17] ONU, *Universal Declaration of Human Rights* (1948), Preamble.

[18] VERDOODT A., *Naissance et signification de la déclaration universelle des droits de l'homme,* Louvain–Paris: Editions Nauvelaerts, 1964.

egime, which involved regarding Jews as non-persons. It was this particularly ernicious elitism, which the *Charter* was intended to make impossible in the ature. The German Constitution must be seen in the same light. When it said iat the "dignity of the human being is unassailable", it did not intend to iclude some and exclude others from the generic term "human beings". On ie contrary it hereby expressed a commitment of the state to respect the dig- ity of every human being, a commitment violated by the Hitler-regime.

HE PRINCIPLE OF HUMAN DIGNITY AND THE JURIDICAL CONCEPT OF DIGNITY

What is the nature of the basic principle of Human Dignity and of the qual and inalienable rights of all members of the human family, upon which ie Post-Second World War formulations of the Human Rights tradition seem) rest?

Kurt Schmoller's paper "Euthanasia and assisted suicide: juridical pro- les", presented to the Fifth General Assembly of the Pontifical Academy for ife and printed in this same volume, highlights the problem, as it proposes) discuss whether the legal principle of human dignity is an appropriate start- ig point for juridical reflections on euthanasia and assisted suicide.

Schmoller's argument runs as follows:

1. The juridical concept of dignity is best defined negatively in terms of hat violates it: "Human dignity is violated if the concrete person is debased) an object, to a mere means, to a replaceable quantity".[19]

2. In the list of violations rendered classic by Günter Dürig (torture, slav- ry, mass expulsion, genocide, deprivation of rights, forced labour, terror, iass murder, experiments on human beings), the deliberate killing of a per- on does not figure.

3. It is therefore doubtful whether the "juridical concept" of the dignity f man really does represent a criterion of primary importance for the juridi- al evaluation of euthanasia.

4. Nevertheless, euthanasia, if motivated by the worthlessness of someone, iust be regarded as a violation of human dignity because it acts on the remise that someone is not an end in him or herself.

[19] MAUNZ T., DÜRIG G. ET AL., *Grundgesetz. Kommentar,* Art. 1 Abs. 1 (München 1958).

5. But because respect for someone's self-determination is crucial with regard to respect for his dignity, suicide or assisted suicide cannot be demonstrated to be a violation of the legal principle of human dignity.

6. Thus, the legal principle of human dignity permits no unambiguous stand in the case of assisted suicide, and because assisted suicide and euthanasia are rightly associated, neither does it provide an adequate criterion for evaluating euthanasia.

The potential conflict between the layers in the notion of human dignity seems here to break open. Between 4 and 5 there is a conflict in the interpretation of dignity, which according to Schmoller renders the juridical concept of dignity ambiguous. This conflict is between the elitist layer of human dignity, on the one hand, affirming that human dignity belongs to and consists in the possession of autonomy, and the universalist layer, on the other hand, affirming that human dignity belongs to and consists in being human.

Because the juridical concept of dignity is defined negatively only in terms of its violations, as being "violated if the concrete person is debased to an object, to a mere means, to a replaceable quantity", it allows for two different interpretations: either the person is seen to be debased to a mere means by the illness (and thus losing his or her dignity through biological degradation) or the person is seen to be debased by an act of judgement (affirming that the person is worthless and acting upon this judgement – for example by killing him). For this reason, according to Schmoller, the principle of dignity is ambiguous.

But perhaps it is rather the difference between the *principle of human dignity* and human dignity as a *juridical concept* which accounts for this ambiguity.

The last expression is perhaps the expression with which the lawyer is most confident, because it safely refers to the concept *as it is used within the legal tradition and by his or her contemporaries*. It refers to the positivity of an "existing norm", interpreted in various ways and to some extent defined by its interpretations. It is the norm *as it works*. Not the norm as it *should* work. This juridical concept is influenced by use and custom, and it is one of the strengths of law that it adapts tacitly to new situations by accepting well-established practices. But it is perhaps also its central vulnerability: if the slogan "death with dignity" comes into legal practice with the status of "precedence" inducing a new interpretation of the juridical concept of human dignity, it may implicitly have convinced the legal tradition of an

identity between autonomy and dignity, and thus induced a return to a kind of elitism.

The principle of human dignity, on the other hand, is the one affirmed by the Human Rights tradition (and in constitutional law). It is a legal commitment to a moral ideal which is explicitly universalist, endorsed for the purpose of preserving peace. It is a *principle* (indeed a *first* principle), because it is meant to inform and penetrate the whole legal system, and through it the way people live. It is a legal principle because it is a positive norm among others, to which lawyers and prosecutors can appeal.

In the perfect society the juridical concept of human dignity would flow from the basic principle of human dignity. The political commitment to respect the dignity of every person would find practical means of doing so, and the legal tradition would help to bring this about by developing the legal concept of dignity in the midst of the practical life of the State. It is worth noticing that both the commitment to universalism on the part of the legal system, and the effort to develop concepts and positive norms within the legal tradition, serve one and the same purpose: the preservation of peace.

Robert Spaemann, in the paper printed in this same volume, argues, like Kant, that people committing suicide "look upon their existence as a means to achieve certain desirable states of being and the extinction of existence as a means to escape conditions which are undesirable", and thus that "the non-pathological suicide is the most fundamental violation of human dignity". Those who commit suicide do not value themselves for their own sake, but rather regard themselves as being *eliminable*.

Spaemann, like Schmoller, regards dignity as definable in terms of its violations: human dignity is violated if the concrete person is debased to an object, to a mere means, to a replaceable quantity. But, in contrast to Schmoller, he sees suicide as being the clearest example of this violation. Schmoller, in fact, is convinced that no one should be condemned for violating human dignity by trying to or succeeding in committing suicide, on the grounds that suicide is not a violation of human dignity. Spaemann agrees that suicide would not be penalized, but for another reason. It is because it is beyond the net of human relations regulated by the legal system and because it would make very little sense to punish someone who is ready to inflict death on himself. Following the interpretation of Spaemann, human dignity[20] actually *does* provide a standard with which suicide can be evaluated, if not punished within the legal system. Assisting suicide and euthanasia, however, imply killing at request, and are thus firmly within the sphere of human relations regulated by the legal system. The exemption of suicide from punishment would therefore not affect these practices. If suicide is against the principle of human dignity because it implies treating oneself as a means, assisted suicide, as well as euthanasia, are likewise against the principle of human dignity, but doubly so, because they request the participation of another person in the violation.

Even if suicide is a violation of the principle of human dignity, it may not be demonstrated to be a violation of the legal concept of dignity. The idea that a person is debased to a mere means by the illness (and thus losing his or her dignity through biological degradation) is obviously familiar to all those who have cared for people at the end of their lives. It seems close to the "visible" dignity Sr. Schattner contrasts with ontological dignity. But a violation of the visible dignity by the illness does not justify another violation of the ontological dignity by the doctor or by the patient himself. However, if one identifies dignity with autonomy, it could. But then the idea of a universal dignity intrinsic to human nature is compromised. And the resulting ambiguity of the legal concept is due to what we have called a certain kind of elitism.

However, it may also be that the juridical concept of dignity distinguishes itself from the (ethical) principle of human dignity, by being a right possessed over and against others, and not over and against oneself. This would explain why suicide would not be an offence against this legal right.[21] But it would not explain why assisted suicide and euthanasia would not be an offence, as they both imply rights with respect to others.

As a matter of fact, it is difficult to argue against euthanasia from the juridical concept of dignity. But it is likewise difficult to argue from the concept of the right to life. The right to life is interpreted by a large part of the judiciary to be accorded only partially to certain categories of people. But as this is not sufficient reason to give up claiming the right to life, it is likewise not sufficient reason to give up the basic principle of intrinsic and universal human dignity. In other words, it is not the interpretation of the juridical concept which, in the final analysis, determines the meaning of the principle, whether it be the principle of the right to life, or the principle of respect for human dignity. But we must strive to interpret as adequately as possible the

[20] I.e. the (philosophical or theological) principle of human dignity.

[21] I am grateful to Kurt Schmoller for this idea, which he kindly put it forward in private correspondence following the meeting in Rome.

juridical concepts that tradition provides us with. It is therefore important to return to the principle of human dignity as a constant resource for the legal concept of dignity, to avoid any unnecessary ambiguity in the concept derived from it.

These distinctions should be placed in their context. They should not allow us to lose sight of the idea that autonomy is the core and summit of the human person. Yet it has its foundation in the individual rational nature of every personal being and it is to this being that dignity applies. In fact, dignity expresses the depth of personal reality, over which the person has no power of disposition. Human dignity is basic and can be elucidated only when the biological and spiritual dimension of the human being are taken into account.

The juridical concept of dignity, only being ideally identical with the legal principle of human dignity understood as a universalist commitment, is therefore revealed as a crucial link between what should be and what in fact will be. It is also revealed as a cultural achievement which we must help to bring about, just as we must commit ourselves to universal respect for all human beings.

Conclusion

The juridical concept of human dignity, dependent as it is upon the existent interpretations and current language use, is, in spite of it being anchored in an explicit universalist commitment by the Human Rights tradition, easily slipping back into elitism.

It is in danger of doing this because of an intrinsic tension in the very notion of dignity. When dignity is identified with a particular characteristic – for example autonomy – it is no longer seen as being inherent in the (rational) nature of the human being. A kind of elitism may then replace the cultural achievement expressed in the *Covenant of Human Rights*.

The identification of dignity with autonomy, being implicit in some use of the slogan "death with dignity", may influence the interpretation of dignity in some legal contexts. However, the idea that human dignity is a right over and against others (and not over and against oneself) may not be a result of this, but may be an intrinsic limitation of the legal discourse, and be due to the pointlessness of punishing the consciously self-destructive. Yet, for the principle of human dignity to be truly universal, it must apply equally to all. Therefore, in principle it cannot be ruled out as a ground for arguing the legal case against suicide, assisted suicide and euthanasia. But it may be less effective on practical grounds, because so many people identify dignity with autonomy, and because legal concepts to a certain extent are dependent on public opinion. This also seems to be the case for the "right to life", however. Despite this, the commitment to universalism has an important role to play, in the midst of throw-backs towards elitism, and even as a sign of contradiction. On the one hand, it serves as a corrective to social and legal practices of the nations, and on the other hand, it provides a foundation for justice and peace in the world.