The Constitution of Human Dignity

By Anne Mette Maria Lebech, Faculty of Philosophy, National University of Maynooth, EIRE

A constitution is the basic structure of a complex, unified reality, which is thought to have a normative or regulative function. In the case of a state, the constitution is *laid down*, i.e., it is elaborated, adopted, proclaimed and promulgated in and by a community. In the case of a person, a constitution is presupposed, even if medicine may improve it and sleeping rough might ruin it[1].

The analogy of constitution inspired the early phenomenologists to talk about 'constitutional analysis'. To them, following Husserl, constitution is a function of the transcendental ego in and through which various acts cohere in order for a unity (e.g. a physical object) to appear[2]. It designates at the same time something which has to be taken for granted (as in the case of the constitution of a person), and something which is enacted or made (as in the case of a state's constitution). This it does in accordance with how unity appear: At the same time with imposing evidence and through a laborious effort.

The constitution of human dignity refers on the one hand to the way in which the phenomenon of human dignity appears to us. It also refers, however, in analogy with Hayek's *The Constitution of Liberty*[3], to the building of our civilization on the fundamental value of human dignity. *The Declaration of Human Rights* together with the *Covenant of Human Rights* play a role in the international community comparable to that of a constitution, and they explicitly refer to human dignity as what validates them. Hayek envisages a *culture* of liberty informing judiciary and administration alike. Analogously the "Constitution of Human Dignity" could refer to a *culture* of human dignity, over and above the written documents of the United Nations[4].

The values that found our civilisation and our apprehension of these basic principles are as inseparable as *noema* and *noesis*. This is what I want to bring out in the following, by first examining the nature of constitutional analysis (1), and enlarge its scope to values (2), then

direct attention to the constitution of *the other* in recognition (3), and how recognition is motivated (4). Finally I will proceed to the constitution analysis itself (5).

1. What is Constitutional Analysis?

The idea of constitutional analysis is inextricably linked to the work of Edmund Husserl (1959 - 1938). It occupied a central position in the development of his thought from phenomenological psychology to transcendental phenomenology. In his programmatic *Ideas*, he characterised constitution-analysis as the central viewpoint of phenomenology[5] and believed phenomenology as a whole to relate to the possible constitution of objects[6].

Constitution is the function through which *identification* takes place. It designates the way in which an object is built up and brought to appear as a unified whole[7]. This seems to indicate that anything unified - be it percieved, categorical, imaginary or even vague - would qualify for constitutional analysis. However, Husserl generally reserve 'constitution' to objects of objectivating acts[8]. Any object can be analysed as constituted within consciousness, in its structure and its elements, as well as in the kind of acts in which this structure and these elements are given[9]. That objects are constituted, or that they can be analyzed as such, therefore means that their structure can be rendered intuitable and be described. Constitution-analysis is a way of handling phenomena by breaking them down into their intuitable elements, or, to put it another way, a procedure which reveals the intelligibility of the thing by demonstrating how it is apprehended[10].

Ideas describes constitution as a function which is more or less automatic, as distinct from acts, which are intentional[11]. A function, however, functions in and through acts, in particular in the natural attitude, where we constitute unreflectedly[12]. It is only by suspending the judgement as to the reality of what we constitute, and by reflecting on what we do when we constitute - i.e. on the acts in which constitution takes place, - that we become aware of the field of constitutional phenomenology. Empirical entities are said on the one hand to constitute themselves, and on the other to be constituted by consciousness. This last expression stresses the dependance of the entities on consciousness, and the fact that they are relative to the acts in which they are

apprehended[13]. But as self-constituted, objects appear according to their essence through a function of the ego, which is beyond will or activity in any phenomenal sense.

The constitution of categorical objects is more linguistically accessible than percieved objects. Some, no doubt, would claim that all objects are categorical, i.e. graspable only in relation to something else, or on the background of difference. To constitute a categorical object is, in Sokolowski's words, "to bring it to light, to articulate it, to bring it forth, to actualize its truth"[14]. In fact, the term human dignity seems to accomplish two logical functions at the same time and thus refer to two categorical objects: It is the dignity of human beings and the kind of dignity which is human[15]. This seems possible only if human dignity is *essential* to being human, not a mere *part* of it, and this may well be what the expression 'human dignity' implicitly affirms[16]. So our task will be to bring this 'hyper-categorical' object to light, to articulate it, bring it forth and actualize its truth. Or even better: to let it manifest itself to us[17]. This entails constituting the objects upon which the categorical objects are founded, whether this be human being or axiomatic value.

Whereas human beings are constituted as empirical psychic personalities, pure experience *qua* experience, is not[18]. Pure experience, of which constitution is a function - or *the* function - , is the indescribabale condition for constitution[19], and this could very well be what we designate spontaneously as 'dignity'[20]. Perhaps the normative element present in the expression human dignity is best addressed if we analyse it as a value. Value is, however, for Husserl, always founded upon the object[21], it is not, as it is for Scheler, objective in itself[22]. In so far as human dignity is a kind of dignity, it is a value best analysed as objective in itself. We must therefore, for the moment, in order to address this aspect, turn from Husserl's phenomenology to Scheler's theory of values. Later, in 3., we will pick up the thread of the constitution of foreign constitution in human beings (3).

2. The Constitution of Values

Scheler very rarely uses the term 'constitution', and explicitly denies that values are constituted. They are, in the hierarchy they form, *apriori*, and this seems to imply that they are in need of no foundation outside the origin provided by personal preference. We therefore look in vain to Scheler for an analysis referred to as 'the constitution of values'. What we do find, however, is a vision of the correllation between values, feelings and the person, and an indication of how values appear within consciousness. They appear to the subject in feeling but they also appear as objective in others, namely in the way the adoption of values is formative of character or personality in them. To Scheler the person reveals him- or herself in the values adopted: the value hierarchy which determines his or her world-view is the closest we can come to the essence of the person. A person is therefore always individual and also inversely layered in comparison with the value-hierarchy, so that the highest values corresponds to the deepest layers of the person. The lowest values are those of the hedonist, who prefers the *agreable*, activating only the *physio-sensual* surface of the person. The attributes of the hero – courage, glory, fame or in general the *noble* – corresponds in contradistinction to a deeper, *psychic*, level of the person, whereas the values of the *genius*, such as knowledge and brilliance, corresponds to the yet more interior level of the *spirit*. Above all these values, the values of the sacred gleams through from the deepest levels of the personality of the saint[23]. It forms part of the essential relations of the realm of value-objectivities, that values are higher or lower; i.e. that they form a hierarchy and are relative to one another[24]. Preference, the act in which the value hierarchy is established, provides a perspective to the constitution of the world as a whole. Preference for the agreable will constitute the world of a hedonist, preference for the sacred will constitute that of a saint. Love is the only factor which makes the person realize the hierarchy of values *as it is*; it is the only factor which can influence preference, as it always enhances experience by revealing the higher values. Thus love, for Scheler, is the ultimate principle of realism[25].

This primacy of love means two things: First, Scheler does not regard the theoretical approach to the world to be the primary one, as Husserl did when he characterised value-apprehension as founded on theoretical acts, or as Kant did when he characterised the person as the logical subject

of rational acts[26]. The person experiences the world emotively before he experience it rationally. Second, the person is primary in relation to constitution. The transcendental ego recedes for the person who is in love responsive to values even before he apprehends, understands, identifies or constitutes[27]. To Scheler, therefore, the person is the condition of the world, and in this primacy consists her axiomatic value. To himself he is absolutely indispensable, no matter what value-hierarchy he adopts: he is axiomatic to value. Yet it might still be only Love, that orders preference thus, that personal value is valued above any other value. Scheler in fact states that 'the value of the person remains the highest value of the values'[28].

Values, to Scheler, constitute a special domain of objectivities, but their objectivity is *a priori* and ideal. This means that they do not need to be constituted in a bearer of values to excercise their attraction. They are pregiven to any content of representation, and consequently human dignity does not need to be instantiated, for me to adopt it as a value. Indeed, my adoption of the value does not force me to recognize it whereever it is present. Only love could. This is illustrated by the phenomenon of *ressentment*, where we 're-prefer' the values we are not able to strive for into negative ones, and thus exercise the empire preference gives us over values and the appearance of the world. However, values are constituted as 'having to be constituted' – this is what love is responsive to. Values appeal to us: they 'ought to be' both recognized and realised. They thus present themselves to us with a claim to reality, as potentially objective[29].

The hierarchy of values is established in preference according to five criteria: (1) *durability* (whether the values last or not), (2) *divisibility* (whether they diminish from being shared), (3) *foundation* (whether they are founded by other values), (4) *depth of satisfaction* (to what personal depth they correspond) and (5) *relativity* (whether they found other values)[30]. These criteria could be said to be the reasons for preferring. They are, according to Scheler, experiental and cannot be found on mere reflexion. This insertedness into experience is of course also what makes them contestable. Are they what *in fact* makes people prefer, or are they what *ought* to make them prefer? Are they part of the preferred outlook or are they constituted independently?[31] In either case they conspire to make the value of human dignity stand out as among the highest of the values, or as *the* highest: Human dignity lasts throughout the trials common to men: poverty, misfortune, illness and dying; it even shines most clearly in these situations; it is among the most lasting values we know (1). It is threatened only when others are involved in breaking down the

personality, as is the case of torture, and then it is not quite certain whether it is the dignity of the torturer or that of the tortured which is in danger. This illustrates that human dignity is something held in common. Human dignity, in fact, is shared by all in equal measure – there might be no positive value so evenly distributed among men. Hence, human dignity is not diminished from being shared, but is rather enhanced, both in the person sharing and recognizing it and in the one with whom he shares it or in whom he recognizes it (2). Human dignity acquires sense in relation to very few other values. It may be explained in relation to Nature, God, Reason or Society, but as it is the highest value shared between the outlooks which takes these factors to be central, it may well be the least relative or the most basic value we know of (3)[32]. Human dignity is felt as deeply satisfying because it affirms one's own axiomatic value at the same time as it is affirmed in the other (4). Human dignity founds other values such as care, hospitality, fairness, justice, benevolence and indeed all those we find expressed in the Declaration of Human Rights (5).

3. The Constitution of the Other

The constitution of the other appears to us as absolutely obligatory because of his axiomatic value. However, this obligation is shunned by any one or any philosophy with the slightest solipsistic tendency. Hannah Arendt explains this shyness by the functional solitariness of thinking, which is disturbed or even prevented from operating by the presence of others[33]. Solipsism is in fact a challenge which always has to be met anew, and the constitution of the other is the meeting of that challenge. The challenge is objective and personal at the same time; it cannot be avoided and it affects us deeply. The constitution of the other comes about in the act of recognition, in which I at the same time and for the same reasons recognize myself and someone else like myself[34]. The experience of recognition in which the other is constituted, also is the experience in which human dignity is constituted.

Recognition relies on the acceptance of cognizance. It presupposes cognizance as well as the establishment of the object of this cognizance as "the same" as something else, as of the same kind. We can recognize *something* as *something* (e.g. my pen), *something* as *someone* (e.g. a soldier in khaki disguise), *someone* as *something* (a human being, a teacher, a good scientist), and

finally *someone* simply as *someone* (a person). The recognition of something requires memory and ability to categorize. The recognition of someone requires reflexivity, and, as I in this kind of recognition learn what kind of an I, I am myself, it relies on recognition of the first kind. It is not possible to recognise someone who is not identifiable[35].

Our criteria for sameness are perplexing, yet Aristotle's definition is still useful: 'Sameness is clearly a kind of unity in the being, either of two or more things, or of one thing treated as more than one'[36]. The act of recognition, recognizing the same in something else or in another, constitutes a unity between two objects; a person and an object, or between myself and another who is like me. Diplomats constitutes this reality between states, and communication does between people. It is a reality vital for peace. How is it established?

The other responds to me in a way objects do not. He co-responds, in fact, not only by being constituted as a psycho-physical individual like me, but also (in and through being thus constituted), by being an *I,* like I am. This means that whereas his constitution is like mine, he is also beyond constitution, as the unity of experience. Admitting another I amounts to admitting that I am only one of a kind, *an* I, one way among others of constituting experience. Moreover, he prefers, as I prefer, and we may not prefer the same things. This again implies that his world may be constituted differently from mine because the values through which he views it are different. Accepting him as another I therefore means that the world may be different from what I percieve it to be.

Edith Stein claims that empathy is the kind of act in which foreign experience is given[37]. It is akin, of course, to perception, but what is constituted is objective and incarnate experience[38] simultaneously in myself and in the other. It is thus through empathy that the individual psycho-physical person is constituted in myself as in the other. Empathy, however, is not like constitution, a quasi-automatic function of the transcendental ego. The transcendental ego constitutes simply a human being, whereas empathy is an act, which persons can pose or not pose. The person unable or unwilling to empathize does not constitute a *shared* world[39], even if he may percieve other human beings. Human dignity, however, is constituted only in beings, with whom I can empathise and who happens to be human.

To Hegel recognition happens in the dialectics of self-consciousness, when a self meets another, failing to be this other by either possessing it or by being possessed by it, and thus emerging as the same as the other, which, as another, cannot be a possession. It is a failure which reveals that self-consciousness cannot be possessed without failing to be what it is, and thus failure turns to the victory of recognition. Hegel envisages this process to be, as he calls it, *a moment* in the development of the Spirit in-and-for-itself. What is truly happening in recognition is definitely a recognition of oneself, on the one hand as reflected in the eyes of the other and on the other as someone to whom the other is another self. Self and other are correlative terms, not only in the system of Hegel, but in the reality they reflect. In hegelian terms it would be possible to say, thus giving another expression to match an aspect of Stein's insight, that the constitution of the self and the constitution of the other are mutually dependant.

However, the difference between the hegelian perspective and that of Stein is the role played by the body and personal individuality and hence also by the objectivity constituted in which I recognize myself. For Hegel what matters is one self-consciousness recognizing itself in another, in order for it to surpass this difference into the concept of reason and ultimately into that of the Spirit. Personal individuality is merely a moment in the revelation of the Spirit to itself and bodily objectivity is only an obstacle necessarily invented by the Spirit for its own self-expression. The value of the individual human being is therefore insignificant in relation to that of the Spirit, and the idea that it would have axiomatic value would exemplify a moment comparable to that of the unhappy consciousness.

To Stein the role of empathy is not a transitory one. Awareness of foreign experience does give rise to intersubjectivity and therefore to a higher level of objectivity, but it is not surpassable into what she calls community-consciousness, even if the person is formed or molded by this latter[40]. The individual person alone is capable of feeling, and this, therefore, becomes a symbol of his individuality. The state, or the community which is its foundation, is dependent on individual persons to shape or direct its response to values, because it cannot itself feel[41]. Stein thus underlines the individual origin of value-perception and makes it clear that personality rooted in psycho-physical individuality has axiomatic value, because it is axiomatic in relation to value. Moreover, the recognition of personal individuality is always mediated by the body, as what I recognize is the psycho-physical manifestation of a centre of experience comparable to my own.

The unity established in recognition is for Hegel that of the Spirit beyond individual persons, but for Stein it is the very unity of the individual spiritual person. For Hegel, what makes me recognize the other is his defiance of death (whether hemmed in in work or bursting forth in power); for Stein, it is his body, sensing and sensible like my own, a body manifesting me as of a recognisable kind, the human kind. It also is the centre for my identification as white, healthy, and educated. If I take these unities to be essential to me as an I, I will recognize others only of the same kind. What I will then recognize is not human dignity, and I cannot fail to recognise it in others without failing to recognise it in myself.

However, apart from himself, I have as many reasons to prefer not to constitute the other as I have to do it. He challenges my worldview with his difference-in-sameness and therefore prevent me from thinking what I want, even as he also co-constitutes the objective world with me. Moreover, he may be useless, disagreable and even bad. He may, of course, also be useful, pleasant and good. These accidental reasons for constituting or not constituting him may make me take cognizance of him, and even force me to take account of him. But they cannot force me to recognize him as an equal in human dignity. So, how *am* I motivated to proceed from cognizance of the other to recognition of human dignity?

4. Motivation

Motivation, in Stein's words, 'is the connection that acts get into with one another: (..) an *emerging* of the one *out of* the other *for the sake of* the other'[42]. It takes place at all levels of cognizance. Intimations motivate perceptions, perceptions motivates the seeing of something in particular. This something motivates me to conceptualize it, and the way I conceptualize it will motivate me to take a stand in relation to it. This stand, of course, or attitude, will be motivated by the object as it is motivating my conceptualization of it, and it will, in turn, motivate my action at the level of the will. All these levels of motivation are under influence by the will, even if only the attitude can be directly commanded by it.

Recognition is, as a mental act, also motivated. It presupposes cognizance and acceptance:

cognizance as a stance towards the state of affairs, acceptance towards conviction. Cognizance motivates acceptance; so that it is only on the background of acceptance that we can talk about genuine recognition[43]. But recognition is motivated by the motive I 'make' of the state of affairs. Stein claims that the mental act is 'rational' when it is entirely grounded in the state of affairs, when, therefore, no 'foreign' motive motivates it[44]. Recognition or non-recognition is of course not unintelligible when it is based on motives differing from the state of affairs, indeed knowledge of the motives render it understandable, as motivated, however, by something else than cognizance[45].

Recognizing only those we have an interest in recognizing is very common. It takes mainly two forms: Recognizing those I can benefit from recognizing, and not recognizing those I would not profit from recognizing. This strategic recognition makes use of the three step process cognizance – acceptance – recognition to distinguish between these two categories. I may recognize human dignity as an axiomatic value out of self-interest, but it is unlikely that I will recognize it in all those from whose recognition I would not benefit.

Whereas positive values are in principle always beneficial, the experience of them is not always felt as such. Sometimes values are emptily grasped, like an object can be emptily grasped, when I know it only from hearsay. Likewise we can cognize an object without realizing its value emotionally, but we cannot recognize a person without at least emptily grasping his value. The dryness of this condition makes Kant talk about it being a *duty*, and makes him claim that *respect* is a rational attitude, motivated exclusively by the dignity of the moral law or its legislator[46]. Respect, however, makes no distinction between lawgiver and subject and does consequently not identify empirically who is concerned by the categorical imparative. This may in fact correspond to the experience we have that human dignity is not always in practice recognized, even when it is in principle, and earnestly, affirmed. But the categorical imperative only explains the constitution of human dignity in so far as humanity itself is regarded as a kind of dignity, and thus serves as the empirical basis for the identification of dignity.

Perhaps only love is in the very last analysis capable of identifying who is a moral subject. Kindness, the attitude of being of the same kind as the other, does, however, go a long way towards it. Moreover it seems we do this naturally. Most people, in fact, think we constitute human dignity

naturally, by this meaning something like: we do it without thinking, it takes little or no effort, and it really is self-explanatory. Aristotle defines 'nature' as the genesis of growing things, and the immanent principle from which a thing grows[47]. What is natural, is in accordance with this principle of growth. To recognize naturally could therefore mean, that to recognize this pattern of growth in others is part of our own pattern and process of growth. It also means that it is good to do it, in the same way as it is good that the cow gives milk and that roses bloom. It is beautiful, harmonious, perfect: it should not be disturbed.

5. The Constitution of Human Dignity

No matter the motivation, human dignity can be analysed as constituted by its noetic and noematic elements.

What is constituted (the noematic side) is a hyper-categorical object, accomplishing two logical functions simultaneously, that of qualifying a kind of dignity as human, and that of identifying the human kind as axiomatically valuable.

The act in which this is constituted (the noetic side) is recognition. Recognition on the one hand of a kind (the human kind), and on the other of a kind beyond kinds (the constitutive and valuating power of the I). Recognition means that what is constituted is constituted in myself and in the other simultaneously . It concerns me essentially, because I am also of this natural kind of axiomatic value. I also am of the same kind of being, the human kind. Recognition could also be of other features than humanity and of other dignities than the human. But then, of course, it would not be of human dignity.

The constitution of human dignity is a personal as well as a political challenge, because my own value as human is constituted as the same as – not merely similar to – that of all human beings. The recognition of myself as human, and as axiomatically valuable because of it, depends on this. My value as a self is constituted as the same as – not merely as similar to – that of all other selves. The recognition of my self as a self, and as valuable because I am myself, depends on this. Communication and community is founded on this universal 'law' of reciprocity. The society

which bases its constitution on the basic principle of human dignity thus favours community. The one which does not, does not. Human dignity inaugurates community subjectively, because it enables the individual to recognize others as well as itself. Human dignity inaugurates community objectively, because the state which adopts it in its constitution recognizes that the point of institutionalizing a community is to assist its growth. The values that found our civilisation and our apprehension of these basic principles are in fact inseparable, because the constitution of human dignity is a kind of covenant between the self and its other selves, presenting them as equally indispensable, valuable and vital to the self as itself. It would have to be an element in any civilisation.

[1] There seems to be no enactment of the constitution of a person, unless one would designate the fusion of gametes and thus the forming of the genetic code of the individual as the act or event in which the constitution is 'laid down'. As in the case of a state's constitution, there could, however, be various stages in the laying down of the constitution.

[2] Husserl, Edmund: *Ideas: General introduction to Pure Phenomenology*, transl. by Boyce Gibson (Allen and Unwin/The MacMillan Company, 1931), §86. In accordance with a more contemporary idiom this function is sometimes referred to as social construction. See Dermot Moran: *Introduction to Phenomenology* (Routledge, 2000) IV,3.

[3] *Magna Carta* was also by Henry Bracton called *Constitutio Libertatis* (*De Legibus*, fol. 186b).

[4] Hayek, Friedrich A. von: *The Constitution of Liberty* (Routledge, 1960). If one should suggest what this culture comprises, one is not likely to construct a program of a political party, in the same way as Hayek launches the party-program of libertarianism. Human dignity does not divide political interests, at least not in the present political situation. However, one is bound to mention the following factors among those promoted by the culture of human dignity: The value of the individual human person and its consequent individualism and egalitarianism; democracy; universal suffrage; the rule of law; general, compulsary education; appreciation of cultural diversity; acceptance of refugees and immigration; rejection of torture, and social welfare. The human rights tradition finds its root and legitimation in the culture of human dignity. However, the proceduralisation of human rights has created a political situation where factions fight for the recognition of opposite and incompatible sets of rights. This proceduralisation has become possible because human rights instruments (whether on the international or on the continental level) have gained status as quasi-positive law. The old labels of 'conservative' and 'liberal' might still be useful to designate the political factions of this struggle, if it is remembered that a social democrat can be 'conservative' and a faschist 'liberal' as well as the other way around. The drama of this struggle sometimes overshadows the outstanding achievement of the civilization of human dignity.

[5] *Ideas* §86.

[6] *Ideas* §135. Moreover 'the problem of the constituting function clearly betokens nothing further than that the regulated series of appearances which necessarily hold together within the unity of a single appearing object are open to intuition, and can be theoretically apprehended - and this in spite of their infinities (which in and through its determinate "and so forth" can be unequivocally controlled) - that they can be analysed and described in their own eidetic peculiarity, and that the law-conforming function of the correllation between the determinate appearing object as unity and the determinately infinite multiplicities of appearances can be fully seen into and so disrobed of all its mysteries' (§150).

[7] According to Sokolowski, Robert: *The Formation of Husserl's Concept of Constitution* (Martinus Nijhoff, 1970), p. 200–1, the term 'constitution' expresses the relationship between an absolute (which constitutes) and its corresponding relative (which is constituted). Husserl's idea of constitution was, according the his assistant Fink, very close to the idea of creation. It therefore is accompanied by a sense of the responsibility of the subject or the intersubjective community in relation to what it constitutes. However, Husserl is careful never to call constitution an act, even less an action (even if he does call it intentional), and does not either provide us with a theory of action, which could help us to distinguish between constitution and mental action. Arendt, Hannah: *Life of the Mind* (Hartcourt and Brace, 1971), Vol. I, p. 7 points to 'modernity's crucial conviction that I can know only what I myself can make', and to the fact that 'Husserl's phenomenology sprang from the anti-historical and anti-metaphysical implications of the slogan *Zu den Sachen selbst!*' (ibid. p. 9). The collapse of the distinction between theory of action and theory of knowledge is the core of the anti-metaphysical heritage of modernity, and this heritage is also Husserl's. This heritage is what I try to employ in this article to explain how human dignity is concieved.

[8] The exceptions are the ego and the stream of experience. The first is constituted as the pole of experience and the second constitutes itself in its own experience.

[9] Husserl uses already in *Philosophy of Arithmetic* the term constitution to designate the mental act in which groups are identified or collated. Here constitution designates precisely a non-necessity, an identification which could be said to be accidental, relying on the intention of the mathematician as much as on essential characteristics of numbers. In the *Logical Investigations* Husserl expands the field of constitution to comprise both meaning and objects of reference. A good example of constitutional analysis is Edith Stein's analysis of the constitution of the psycho-physical individual and of the person in *On the Problem of Empathy* (ICS, 1989).

[10] There is a mutual dependence between the intuition of essences, and the analysis of the way in which various aspects of the appearance of the essence are brought together in a unity for consciousness. Husserl talks about 'two different sections of our enquiry, the one bearing on pure subjectivity, the other on that which belongs to the

"constitution" of objectivity *as referred to* its subjective source' (*Ideen* §80). He insists that this is a division of two sections of enquiry and that whereas eidetics lays the ground for every factual science (§8), the sciences ought to thematize and investigate the constitution of their proper objects themselves. First Husserl understood constitution to take place from the *hyle* of sensations. Later, in *Formal and Transcendental Logic*, for example, the dicotomy between a material and a formal component of constitution is given up, and the idea of genetic constitution is introduced in its stead. Husserl thus comes to realize how also sensations are co-constituted with the object. Spiegelberg, Herbert: *The Phenomenological Movement* (Martinus Nijhoff, 1978), I, p. 178 characterises constitution analysis as supplying important insights into the way in which objectivities establish themselves in consciousness.

[11] *Ideas* §86.

[12] In order to reach the phenomenological startingpoint, we must set out of action the 'transcendent theses of nature-constituting consciousness' and direct the glance to pure consciousness in its own absolute being.

[13] Husserl claims that entities are positited in being and defined in their unity out of or from the ressources of the 'absolute ego' (*Ideas*, §54).

[14] Sokolowski, Robert: *Introduction to Phenomenology* (CUP, 2000), p. 92.

[15] i.e. not senatorial, kingly or priestly.

[16] $(x{\Rightarrow}p \wedge p{\Rightarrow}x) \Rightarrow (x{\Leftrightarrow}p)$.

[17] Cfr. Ibid., p. 93.

[18] Empirical personalities are 'mere unities of an intentional "constitution" - in their own sense truly existing; intuitable, experiencable, and on empirical grounds scientifically determinable - and yet 'merely intentional' and therefore "relative"' (§54). They are not absolute, only absolute experience is, but they are 'with appropriate shifting of the standpoint' immediately given in intuition (ibid.).

[19] Intersubjectivity forms part of this indicribable condition, because 'constituting relates in the first instance to an essentially possible individual consciousness, then also to a possible community-consciousness, i.e. to an essentially possible plurality of personal centres of consciousness and streams of consciousness enjoying mutual intercourse, and for whom *one* thing as the self-same objective real entity must be given and identified intersubjectively' (§135).

[20] Designating the axiomatically objective or what is axiomatic for objectivity as dignity has important historical precedence. *Axioma* was translated with *dignitas* by the Latin translators of Aristotle. The person was, by an unknown master mentioned by Albert the Great, Thomas Aquinas and Bonaventure, defined as *hypostasis proprietate distincta ad dignitatem pertinente*. Pico della Mirandola defined the essence of man as his ability to chose his status and destiny, in an oration named by his editor *On the Dignity of Man*. Kant identifies the subject of the moral law, as well as the law itself, as worthy of respect because of their dignity (Würde). See Lebech, Anne Mette Maria: 'Towards a definition of human dignity' in *Acts of VII Gen. Ass. of PAV (Supplement)*, Ed by Sgreccia and Vial Correrea (Libreria Editrice Vaticana, forthcoming).

[21] Constitution is most clearly envisaged by Husserl in what he calls the material ontologies. However, he explicitly envisages constitutional analysis within the presinct of other regions (§152), even if 'very difficult problems adhere to the interlacing of different regions'. This difficulty applies in particular to objects bearing a value. Valuing, however, is a 'positional consciousness', and value is doxically posited as being valuable (§116). In *Ideas (II) Studies in the Phenomenology of Constitution*, transl. By Rojcevicz and Schuwer (Kluwer Academic Publishers, 1989), Husserl distinguish two attitudes: the natural-scientific attitude, in which nature is constituted in an explicitly value-free manner, and the humanistic or personalistic attitude, which understands motivational relationships in the humanistic sciences. We are thus led to believe that the constitution of nature has a parallel in the perception, position, setting or acceptance of values (*Ideas* II, §55). Values, however, according to *Ideas I*, are founded realities, they exist in or on already constituted objects and they *motivate* the subject. But as the humanistic sciences, according to the final chapters of *Ideas* II found the natural sciences (the Spirit is absolute and the constitution of nature always relative to it), we enter a circle of foundational relationships, which corresponds to that of preference and constitution. For the later Husserl, it was the 'transcendental ego', which was to rescue the world from relativism and the meaninglessness of the philosophical enterprize. Like Scheler, Husserl understood the real ego to be constituted as a person in the world, but the foundation of the existence of persons in the world was the value-free constitutive function of the transcendental ego. But if in turn it was only the person - homeland of the Spirit percieving value - which founded the value-free domain as a part or aspect of its activity, it is hard to see how motivation and constitution can only for the sake of method be kept seperate and opposed. Already constitution would be motivated, and motivation would constitute its motives. There would be constitution of values as well as motivation by objects. This in fact is the position adopted by Stein, who also left her imprint on *Ideas* II. See Sawicki, Marianne: *Body, Text and Science. The Literacy of Investigative Practices and the Phenomenology of Edith Stein*, (Kluwer Academic Publishers, 1997), chapter 4.

[22] On the question of the objectivity of values in Scheler, see Moosa, Imtiaz: 'Are values independent entities?

Scheler's discussion of the relation between values and persons' in *Journal of the British Society for Phenomenology*, Vol. 24, No. 3, October 1993, p. 265 – 275.

[23] Scheler, Max: *Formalism in Ethics and Non-Formal Ethics of Values*, transl. By Frings and Funk (North Western University Press, 1973), 6.B.4/p. 502. Ethical values manifests themselves in relation to values of all kinds: they concern the manner of investment in the values, the attitude adopted in relation to them, and the practical options decided on. Ethics is consequently derived from the set of attitudes adopted or to adopt in relation to these values.

[24] Ibid. 1,I

[25] The person shuns objectification, as does love. It does not provide an objective standard of what the person should be, but only provokes him to become as best he can. 'In love there is no attempting to fix an objective, no deliberate shaping of purpose, aimed at the higher value and its realisation; love itself, in the course of its own movement, is what brings about the continuous emergence of ever-higher value in the object - just as if it was streaming out from the object of its own accord, without any sort of exertion (even of wishing) on the part of the lover' (ibid, p.157). Thus 'love is that movement wherein every concrete individual object that possesses value achieves the highest value compatible with its nature and ideal vocation; or wherein it attains the ideal state of value intrinsic to its nature' (ibid, p. 161).

[26] 'Instead of *first* showing what the essence of the person with its special unity consists in and then *demonstrating* that rational activity belongs to this essence, it is assumed that the being of the person *is* nothing but, and exhausts itself in, a point of departure, some *X* of a lawful rational will or a practical rational activity' (ibid. p. 371). Scheler's point is that we don't understand a person (and *a fortiori* a human person) to be merely a rational X exercising the categorical imperative. Rather: 'the person is the immediately co-experienced unity of experiencing' (ibid.).

[27] Thus world corresponds to the *act* of the *person*, in the same way as appearance correspond to the *function* of *constitution*. Persons, therefore cannot be said to constitute the world, but the correspondance between appearance and the constituting function is 'contained as a part within person and world' (ibid. p. 388 - 9), and thus the person's act embraces the constitutive function without being reduced to it. Whereas Scheler's 'ego' can be objectified, the person as acting never can. He or she "brings himself to givenness" in his acts, both to himself and to others (ibid. 6.3b/p. 387). Scheler hereby, in contrast with Husserl, stresses the practical aspect of the act, even if he does not turn the emphasis into a commitment, as later Sartre will. Scheler's theory is not a theory of action.

[28] The quotation continues: 'and the glorification of the person, ultimately the person of persons, i.e. God, remains the moral meaning of all moral "order"' (ibid. p. 504).

[29] Stein claims that it is because it is the egoic data which constitute values for us that values are so often made out to be 'merely subjective'. Values can, however, be held in common, and are then intersubjectively constituted. They thus transcend the purely subjective sphere, and they have a core sense.

[30] Frondizi, Risieri: *What is Value?* (La Salle, Illinois: Open Court Publishing Company, 1971), p. 113.

[31] The contestablility of these criteria, however, together with the attractiveness of Scheler's theory of preference, are what provokes Sartre to develop his theory of the experiental project. To him the person proves his or her existence by freely chosing how to view the world, groundlessly projecting his or her possibilities. See Sartre, Jean-Paul: *Being and Nothingness*, trans. Barnes (Routledge, 1989).

[32] See for a treatment of the foundation of human dignity within each of these frameworks my article: 'Towards a definition of human dignity' op.cit.

[33] *Life of the Mind*, I,II.

[34] For a full description of the dialectics of personal identity see my article 'Friendship. The Dialectics of Personal Identity' in the *Yearbook of the Irish Philosophical Society* 2001, p. 103 - 144.

[35] It is likely that other animals also recognize one another. The fact that they often refuse to mate with animals of other species show that even if they might not have capacity for conceptualization, they are able to recognize the kind of being they are themselves in others of the same kind. Reflexivity or recognition of an 'own kind' is more primitive or more fundamental than conceptualization.

[36] *Metaphysics,* V, 1017b27. The perplexities are described by Wittgenstein in the *Philosophical Investigations* (215) 'But isn't the same at least the same? We seem to have an infallible paradigm of identity in the identity of a thing with itself. I feel like saying: "Here at any rate there can't be a variety of interpretations. If you are seeing a thing you are seeing identity too." Then are two things the same when they are what one thing is? And how am I to apply what one thing shews me to the case of two things? (216) "A thing is identical with itself" – There is no finer example of a useless proposition, which yet is connected with a certain play of the imagination. It is as if in imagination we put a thing into its own shape and saw that it fitted.' Transl. Anscombe (Blackwell, 1997).

[37] Stein: *On the Problem of Empathy*, II,2

[38] The fact, not the content. Empathy, does not hand me the *object* of foreign experience. Only in the measure where the experience lies within my own experience, am I able to empathize with it. If the foreign experience lies outside what I can imagine, empathising requires some labour of imagination and representation. See Marainne Sawicki,

op.cit., chapter 3, for an expert critique.

[39] It seems that psychopaths do not constitute a world held in common with others.

[40] Stein, Edith: *Philosophy of Psychology and the Humanities*, transl. By Baseheart and Sawicki (ICS, 2000), second treatise: *Individual and Community*, II, and Stein, Edith: *Uber den Staat* (Max Niemeyer, 1970), I.

[41] This is one of the important differences between a collective and an individual person.

[42] *Philosophy of Psychology and the Humanities*, first treatise: *Sentient Causality*, III, p. 41.

[43] Affirmation of a state of affairs presupposes acknowledgement and adoption: acknowledgement as a stance towards the state of affairs, adoption towards conviction. Acknowledgement motivates adoption, so that it is only on the background of adoption, that we talk about genuine affirmation. Stein's example is that of reassurance of an ill person: my motive for affirming that he will get better is not exclusively grounded in the state of affairs of his illness, but in my wish that he get better and in my belief that his hopeful attitude is more conducive towards health than depression in the face of the seriousness of his situation, (ibid., § 4, p. 52 – 53).

[44] Husserl also (in *Ideas* II) talks about motivation as the lawfulness of the life of the spirit. He contends that for motivation to trigger position-taking, - what he calls 'absolute motivations' are presupposed ([220]/232). In other words: I take what motivates me to *be* in a preeminent sense. This is particularly clear in relation to rational motivation: These he characterises as: 'Motivations within the framework of evidence, which, if they are reigning in purity, produce constitutive unities of consciousness of a higher level along with correlates of the region "true being" in the broadest sense' ([221/232). Reason is thus to let motivations within the framework of evidence reign, or to be 'motivated with insight' by 'the matters currently functioning as stimuli'. Husserl sees this as 'the fundamental questions of ethics in the widest sense, which has as its object the rational behaviour of the subject' ([222]/233).

[45] Even so, differing understandings of rationality seems to be part of the challenge of life in common, simply because it is difficult to determine what render motives foreign to any given state of affairs, and thus to identify *simpliciter* the state of affairs. Rational motivation is as slippery a concept to analyse as it is indispensable in everyday life in common.

[46] *Grundlegung zur Metaphysik der Sitten,* II.

[47] *Metaph*. V, 4 (1014b16).