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Human Dignity and the Ethics and Regulation of Technology

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Abstract and Keywords

This chapter investigates how human dignity might be understood as a normative concept for the regulation of technologies. First, various distinctions that are relevant for the way human dignity can be understood are discussed. It is argued that it is particularly important that we should see human dignity as a concept that ascribes a specific status that forms the basis of the human rights regimes. Second, the author's own approach, inspired by Kant and Gewirth, is presented, it being proposed that we should see the concrete content of human dignity as the protection of the authority of human beings to govern their own lives. Third, various consequences for the evaluation of technologies are discussed. In a context of major global and ecological challenges, together with the replacement of human action by automation, the role of human dignity becomes one of guiding the development of a technology-responsive human rights regime.

Keywords: human dignity, Kantian philosophy of technology, agency, human rights, technology

1. Introduction

AT first sight, a chapter about human dignity might come as a surprise in a handbook about law, regulation, and technology. Human dignity played a role in ancient virtue ethics in justifying the duty of human beings to behave according to their rational nature. In Renaissance philosophy, human dignity was a relevant concept to indicate the place of human beings in the cosmos. In contemporary applied ethics, human dignity has been primarily disputed in bioethics (e.g. in the context of euthanasia or the use of human embryos)—technologies were relevant here (e.g. to create embryos) but the development and the use of technology itself was not the central question of the debate. A first look at

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this whole tradition does not explain why human dignity should be a central topic when it comes to the regulation of technology (for an overview about various traditions, see Düwell and others 2013; McCrudden 2013).

(p. 178) At first glance, this negative result does not change significantly if we look at human dignity's role within the human rights regime. Human dignity seems to function in the first instance as a barrier against extreme forms of violations, as a normative concept that aims to provide protection for human beings against genocide, torture, or extreme forms of instrumentalization; after all, the global consensus on human rights is historically a reaction to the Shoah and other atrocities of the twentieth century. But if human dignity were only a normative response to the experience of extreme degradation and humiliation of human beings, it would in the first instance function in contexts in which human actors have voluntarily treated human beings in an unacceptable way. If that were the relevant perspective for the use of human dignity, it would have to be seen as a normative response to extreme forms of technological interventions in the human body or to Orwellian totalitarian systems. However, it would be very problematic to take extreme forms of abuse as the starting point to think about the regulation of technologies, as the dictum says: 'extreme cases make bad law'.

The picture changes, however, if we focus our attention on the fact that human dignity is understood as the foundational concept of the entire human rights regime, which is the core of the normative political order after the Second World War. Then the question would be how human rights—as the core of a contemporary global regulatory regime—relate to developments of technologies. If human dignity is the normative basis for rights in general, then the normative application of human dignity cannot be restricted to the condemnation of extreme forms of cruelty, but must be a normative principle that governs our life in general. We can and should therefore ask what the role of human rights could be when it comes to the regulation of technologies that strongly influence our life. After all, technologies are shaping our lives: they determine how we dwell, how we move, how we are entertained, how we communicate, and how we relate to our own bodies. Due to technology, we are living in a globalized economy, changing the climate, and exhausting natural resources. But, with regard to all of these regulatory contexts, it is far from evident what human rights have to say about them. Technologies evidently have positive effects on human life; it may even be a human right to use certain technologies. However, most technologies have ambivalent effects, which we often cannot even predict. Some of these effects may in the long run be relevant for human rights, and some will affect the lives of human beings who are not yet born.

In all of these contexts, is it uncertain what the answer of human rights should be, and it is as of yet unclear whether human rights have anything relevant to say. Many scholars doubt this. But if human rights regimes had nothing significant to say about the most pressing challenges for the contemporary world—and nearly all of them are related to the consequences of technologies—it is dubious whether human rights could be seen as the central normative framework for the future. Perhaps human rights have just been a plausible normative framework for a certain (p. 179) bourgeois period; perhaps we are

facing the 'end of human rights' (Douzinas 2000) and we have to look for a new global normative framework. In line with this consideration, to investigate the relationship between human dignity and the regulation of technologies means nothing less than to ask the question what an appropriate normative framework for the contemporary technology-driven world could be.

In this chapter, I will (1) discuss some philosophical considerations that are necessary for the understanding of human dignity's role within the human-rights framework, (2) shortly sketch my own proposal for an understanding of human dignity, (3) outline some central aspects of human dignity's application to the regulation of technology, and (4) conclude with some remarks concerning future discussions.

2. Why Human Dignity?

Human dignity has been strongly contested over previous decades.¹ Some have criticized human dignity for being a 'useless' concept, solely *rhetoric*: that human dignity has no significance that could not be articulated by other concepts as well, such as autonomy—it is just that human dignity sounds much more ponderous (Macklin 2003). Some have assumed that it functions as a *discussion stopper* or a taboo; if this trump card is laid on the table, no further justification needs to be given. Some accuse 'human dignity' of being an *empty* concept upon which anybody can project his or her own ideological content. In that sense, liberals understand human dignity as a concept that defends our liberty to decide for ourselves how we want to live, while followers from different religious traditions have co-opted the concept as part of their heritage.

If these accusations were appropriate, this would be dangerous for the normative order of the contemporary world, because its ultimate resource for the justification of a publically endorsed morality would be solely rhetorical and open to ideological usurpation. Accordingly, references to human rights would not settle any normative disagreement in a rational or argumentative manner, since the foundational concept could be used by all proponents for their own ends. This situation explains the high level of rhetorical and emotional involvement around dignity discussions. For the context of this chapter, I will not discuss the various facets of these discussions, but will focus only on some elements that are relevant in the context of this volume; I will not give an elaborated defence of this concept, but will explain some conceptual distinctions and some conditions under which it can make sense.

(p. 180) 2.1 The Normative Content of Human Dignity

We have to wonder what kind of normative concept human dignity is. Is human dignity a normative concept that has a *distinct normative content*, in the sense in which specific normative concepts are distinct from each other (e.g. the right to bodily integrity as

distinct from a right to private property, or the duty to help people in need as distinct from a duty to self-perfection)? If human dignity did not have such distinct normative content, it would indeed seem to be empty. But at the same time, it is implausible that its content would be determined in the same sense as that of a specific right, because in that case it could not function as the foundation of specific rights; rather, it is a much more general concept. This question is relevant because some scholars claim that respect for human dignity would solely require that we do not humiliate or objectify human beings. (Kaufmann and others 2011). Such a humiliationist interpretation would reduce the normative scope of human dignity to the condemnation of extreme atrocities. I would propose, against this position, that we see human dignity as a *principle* that has the function of determining the normative content of other normative concepts, such as rights and duties, and the appropriate institutions related to these. Within the human rights regime, only this interpretation could make sense of the idea of human dignity as the foundation of human rights. This of course also condemns the use of human beings as means only, but would interpret this as having a much broader normative content. In such a sense, Kant's famous 'Formula of Humanity' claims that we have to treat humanity as an 'end in itself', which at once determines the content of morality in general and at the same time excludes by implication the reduction of humans to mere objects (Kant 1996: 80). For Kant, this formula does not only determine the content of the public morality that should guide the organization of the state, but at the same time forms the basis for his virtue ethics.

2.2 Value or Status

It is often assumed that human dignity has to be seen as *a fundamental value behind the human rights regime* and should be embraced or abandoned as a concept in this sense. This interpretation raises at least two questions. First, we can wonder whether it is convincing to *base the law on specific values*. Without discussion of the various problems of value-theory in this context, a philosopher of law could argue it is problematic to see the law as a system for the enforcement of action based on a legal order that privileges specific values or ideals; this would be particularly problematic for those who see the law as a system for the protection of the liberty of individuals to realize *their own* ideals and values. But why should we understand human dignity as a value in the first place? The legal, religious, and moral (p. 181) traditions in which human dignity occurred do not give much reason for such an interpretation. In the Stoic tradition, human dignity was associated with the status of a rational being, and functions as the basis for duties to behave appropriately. In the religious tradition, human dignity is associated more with a status vis-à-vis God or within the cosmos. In the Kantian tradition, we can also see that the specific status of rational beings plays a central role within the moral framework.² It therefore makes sense to interpret 'human dignity' not as a value, but the ascription of a *status* on the basis of which rights are ascribed (see Gewirth 1992 and—in a quite

different direction—Waldron 2012). Even a liberal, supposedly value-neutral concept of law has to assume that human beings have a significant status which commands respect.

2.3 A Deontological Concept?

How does human dignity relate to the distinction between deontological, teleological, and consequentialist normative theories that is often assumed to be exhaustive? All ethical/normative theories are supposedly either deontological or teleological/consequentialist—and ‘human dignity’ is often seen as one of the standard examples of a deontological concept, according to which it would be morally wrong to weigh the dignity of a human being against other moral considerations. These notions, however, have a variety of meanings.³ According to a standard interpretation, *consequentialist* theories examine the moral quality of actions according to the (foreseeable and probable) outcomes they will produce, while *deontological* theories assess moral quality (at least partly) independently of outcomes. One can doubt in general to what extent this distinction makes sense, since hardly any ethical theory ignores the consequences of actions (one can even doubt if an agent understands what it means to act if he or she does not act under assumptions about the possible consequences of his or her actions). At the same time, a consequentialist account must measure the quality of the consequences of actions by some standards—‘focusing on outcomes’ does not itself set such a standard. Human rights requirements can function as measure for the moral quality of political and societal systems. Those measures are sensitive to the consequences of specific regulations, but they will be based on the assumption that it is inherently important for human beings to live in conditions under which specific rights are granted. These standards consider the aggregation of positive consequences, but according to a concept of human dignity there will be limitations when it comes to weighing those aggregated consequences against the fundamental interests of individuals. We may not kill an innocent person simply because this would be advantageous for a larger group of people. William Frankena (and later John Rawls) used a different opposition when distinguishing between *teleological normative theories* that see moral obligations as functions (e.g. a maximizing) of a non-moral good such as happiness, and *deontological* (p. 182) *theories* that do not see moral duties as a function of a non-moral good (Frankena 1973: 14f). We can ignore here the sophisticated details of such a distinction; the relevant point is that in the Frankena/Rawls interpretation, human dignity could be seen as a deontological concept that allows for the weighing of consequences, but forms the criterion for the assessment of different possible consequences; actions would be acceptable to the extent that their consequences would be compatible with the required respect for human dignity. I think that this latter distinction is more appropriate in forming a model for the interpretation of human dignity as a deontological concept. Human dignity would not prescribe maximizing well-being or happiness, but would protect liberties and opportunities and would at the same time be open to the assessment of consequences of actions, which a deontological concept in the previous distinction would exclude. Human dignity would justify strict prohibitions of extreme atrocities (e.g. genocide), prohibitions that may not be weighed against other

prima facie moral considerations. At the same time, it would function in the assessment of consequences for other practices as well, practices in which it is required to weigh advantages against disadvantages, where the relative status of a specific right has to be determined and where judgements are made in more gradual terms. On the basis of human dignity, we can see some practices as strictly forbidden, while others can only be formulated as aspirational norms; some consequences are obviously unacceptable, while others are open to contestation. So, we can see human dignity as a deontological concept, but only if we assume that this does not exclude the weighing of consequences.

2.4 How Culturally Dependent Is Human Dignity?

To what extent is human dignity dependent on a specific Western or modern world-view or lifestyle, and, in particular, to what extent does it protect a specific form of *individualism* that has only occurred in rich parts of the world from the twentieth century onwards? This question seems quite natural because it is generally assumed that respect for human dignity commits us to respecting *individual* human beings, and this focus on the individual seems to be the characteristic feature of modern societies (Joas 2013). Thus, we could think of human dignity as a normative concept which was developed in modernity and whose normative significance is bound to the specific social, economic, and ideological conditions of the modern world. In such a constellation, human dignity would articulate the conviction that the respect individual human beings deserve is—at least to some extent—independent of their rank and the collective to which they belong. In the case of conflicts between collective interests, the liberty of individuals would outweigh the interests of a collective (e.g. the family, clan, or state). If collective interests are relevant, this is only because of the value individuals give to them, or because they are necessary for (p. 183) human beings to realize their goals in life. This modern view depends on a specific history of ideas. It could be argued that this conviction is only plausible within a world-view that is characterized by an ‘atomistic’ view of the human being (Taylor 1985), a view for which relationships between human beings are secondary to their self-understanding. Richard Tuck (1979) argued that the whole idea of natural rights is only possible against the background of a history where specific legal and social concepts from Roman law have undergone specific transformations within the tradition of natural and canon law in the Middle Ages. Gesa Lindemann (2013) proposed a sociological analysis (referring to Durkheim and Luhmann) according to which human dignity can only be understood under the condition of a modern, functionally differentiated society. Such societies have autonomous spheres (law, economy, private social spheres, etc.) which develop their own internal logic. Human beings are confronted in these various spheres with different role expectations. For the individual, it is of central importance that one has the possibility to distance him- or herself from those concurrent expectations, and that one is not completely dominated by one of those spheres. According to Lindemann, protecting human dignity is the protection of the individual from domination by one of these functionally differentiated spheres. This view

would imply, however, that human dignity would only be intelligible on the basis of functionally differentiated societies.

I cannot evaluate here the merits of such historical and sociological explanations. But these interpretations raise doubts about whether or not we can understand human dignity as a normative concept that can rightly be seen as universal—ultimately its development depends on contingent historical constellations. This first impression, however, has to be nuanced in three regards. First, we can wonder whether there are different routes to human dignity; after all, quite different societies place respect for the human being at the centre of their moral concern. It could be possible that those routes will have different normative implications—for example, it is not impossible that there can be a plausible reconstruction of an ethos of human dignity in the Chinese tradition, where perhaps the right to private property or specific forms of individualism would not have the same importance as in the Western tradition. Or, it is possible that the Western idea of a teleological view of history (based on the will of a creator, which is alien to the Chinese tradition) has implications for the interpretation of human dignity. In any case, we could try to reconstruct and justify a universal core of human dignity and discuss whether, on the basis of such a core, some elements of the human rights regime that are so valuable for the West really deserve such a status. Second, the assumed dependency of human dignity on the structure of a functionally differentiated society can also be inverted. If we have reason to assume that all human beings should be committed to the respect for human dignity, and if this respect can—at least in societies of a specific complexity—only be realized on the basis of functional differentiation, then we would have normative reasons to embrace functional differentiation due to our commitment to human dignity. Third, human dignity cannot simply be understood (p. 184) as an individualistic concept, because the commitment to human dignity forms the basis of relationships between human beings in which all of them are connected by mutual respect for rights; human dignity forms the basis of a ‘community of rights’ (Gewirth 1996).

These short remarks hint at a range of broader discussions. For our purposes, it is important to see that it is necessary for an understanding of human dignity in a global perspective to be self-critical about hidden cultural biases, and to envisage the possibility that such self-criticism would make reinterpretations of human dignity necessary. But these culturally sensitive considerations do not provide us with sufficient reason to abandon a universal interpretation of human dignity.

2.5 Human Dignity between Law and Ethics

Human dignity is a legal concept; it is as a concept of the human rights regime, an element of the international law. Many philosophers propose treating the entire concept of human rights not as a moral concept, but as a concept of the praxis of international law (Beitz 2009). I agree with this proposal to the extent that there is a fundamental distinction between the human rights system as it is agreed on in international law and

those duties which human beings can see as morally obligatory on basis of the respect they owe to each other. However, the relationship between the legal and the ethical dimension is more complex than this. From a historical perspective, human rights came with a moral impulse, and still today we cannot understand political discourse and the existence of human rights institutions if we do not assume that there are moral reasons behind the establishment of those institutions. Therefore, there are reasons to ask whether these moral reasons in favour of the establishment of human rights are valid, and this directly leads legal-political discourse to ethical discourse. This is particularly the case if we talk about human dignity, because this seems to be a concept par excellence, which can hardly be reconstructed as a legal concept alone.

On the other hand, if human dignity makes sense as an ethical concept, it ascribes a certain status to human beings which forms the basis for the respect we owe to each other. This respect then articulates itself in a relationship of rights and duties; this means that we have duties that follow from this respect, and we must then assume that responses to this required respect would necessarily imply the duty to establish institutions that are sufficiently capable of ensuring this respect. Thus, if we have reasons to believe that all human beings are obliged to respect human dignity, then we have reason to see ourselves as being obliged to create institutions that are effectively able to enforce these rights. In that sense, there are moral reasons for the establishment of political institutions, and the international human rights (p. 185) regime is a response to these moral reasons. Of course, we could come to the conclusion that it is no longer an appropriate response, and we would then have moral reasons to search for other institutional arrangements.

3. Outline of a Concept of Human Dignity

I now want to briefly present an outline of my own proposal of human dignity as foundational concept within the human rights regime.⁴ With human dignity we ascribe a status to human beings which is the basis for why we owe them respect. If we assume that human dignity should be universally and categorically accepted, the ascription of such a status is not just a contingent decision to value our fellow humans. Rather, we must have reason to assume that human beings in general are obliged to respect each other. If morality has a universal dimension, it must be based on reasons for actions that all human beings must endorse. This would mean that the moral requirements have to be intelligible from the first-person perspective, which means that all agents have to see themselves as being bound by these requirements. Human dignity can only be understood from within the first-person perspective if it is based on the understanding that each of us can, in principle, develop by ourselves reasons that have a universal dimension. That does not assume that human beings normally think about those reasons (perhaps most people

never do) but only means that the reasons are not particular to me as a specific individual.

Kant has proposed that understanding ourselves as agents rationally implies that we see ourselves as committed to instrumental and eudemonistic imperatives, but also that we must respect certain ends, namely: humanity, understood as rational agency (for a very convincing reconstruction, see Steigleder 2002). Gewirth (1978) has, in a similar fashion, provided a reconstruction of those commitments that agents cannot rationally deny from a first-person perspective. As agents that strive for successful fulfilment of their purposes, agents must want others not to diminish those means that are required for their ability of successful agency. Since this conviction is not based on my particular wish as an individual, but is based on my ability to act in general, an ability I share with others, I have reasons to respect this ability in others as well. The respect for human dignity is based on a status that human beings share, and on their ability to set ends and to act as purposive agents. Respect for human dignity entails the obligation to accept the equal status of all beings capable of controlling their own actions, who should therefore not be subjected to unjustified force.

(p. 186) If, in this sense, we owe respect to human beings with such capacity, then this respect has a variety of implications, four of which I want to briefly sketch. The first implication is that we must ensure that human beings have access to those means that they need to live an autonomous life. If the possibility of living an autonomous life is the justificatory reason for having a right to those goods, then the urgency and needfulness of those goods is decisive for the degrees of such rights, which means there is a certain hierarchical order of rights. Second, if the relevant goal that we cannot deny has to do with the autonomy of human beings, then there are negative limitations to what we can do with human beings; human beings have rights to decide for themselves and we have the duty to respect those decisions within the limits set by the respect we owe to human beings. Third, since human beings can only live together in certain levels of organization, and since rights can only be ensured by certain institutional arrangements, the creation of such an institutional setting is required. Fourth, these institutions are an articulation of the arrangements human beings make, but they are at the same time embedded in the contingent historical and cultural settings that human beings are part of. We cannot create these institutions from scratch, and we cannot decide about the context in which we live simply as purely rational beings. We live in a context, a history, as embodied beings, as members of families, of nations, of specific cultures, etc. These conditions enable us to do specific things and they limit our range of options at the same time. We can make arrangements that broaden our scope of action, but to a certain degree we must simply endorse these limitations in general—if we were not to endorse them, we would lose our capacity for agency in general.

I am aware that this short outline leaves a lot of relevant questions unanswered;⁵ it has only the function of showing the background for further considerations. Nonetheless, I hope that it is evident that human dignity as the basis of the human rights regime is not

an empty concept, but outlines some normative commitments. At the same time, it is not a static concept; what follows concretely from these considerations for normative regulations will depend on a variety of normative and practical considerations.

4. Human Dignity and Regulation of Technology

I have tried to sketch how I think that human dignity can be reconstructed as the normative idea behind human rights. This foundational idea is particularly relevant in contexts where we can wonder whether or not human rights can still function (p. 187) as the normative framework on basis of which we should understand our political and legal institutions. There may be various reasons why one can doubt that human rights are appropriate in fulfilling this role. In this section, I only want to focus on one possible doubt: if we see human rights as a normative framework which empowers individual human beings by ascribing rights to them, it could be that human rights underdetermine questions regarding the development of these technologies, and, accordingly, the way in which these technologies determine our lifeworld. To phrase it otherwise: perhaps human rights provide a normative answer to the problems that Snowden has put on the agenda (the systematic infringement upon the privacy of nearly everybody in the world by the CIA). But there is a huge variety of questions, such as the effect of technologies on nature, the changes of communication habits through iPhones or the changes of sexual customs through pornography on the Internet, where human rights are only relevant in the sideline. Of course, online pornography has some human rights restrictions when it comes to the involvement of children, or informed consent constraints, but human rights do not seem to be relevant to the central question how those changes are affecting people's everyday lives. Human rights seem only to protect the liberty to engage in these activities. However, if the human rights regime cannot be of central normative importance regarding the regulation of these changes of the technological world, then we have reason to doubt whether the human rights regime can be normatively important, if we bear in mind how central new technologies are in designing our lives and world.

In the following section, I will not provide any answers to these problems; I only want to outline what kind of questions could be put on the agenda for ethical assessment on the basis of human dignity.

4.1 Goals of Technology

A first consideration could be to evaluate the human rights relevance of technologies primarily with regard to the goals we want to achieve with them. The question would then be: why did we want to have these technologies, and are these goals acceptable? Technologies are developed to avoid harm for human beings (e.g. medical technologies to

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avoid illnesses, protection against rain and cold), to fulfil basic needs (e.g. technology for food production), to mitigate side effects of other technologies (e.g. technologies for sustainable production) or to facilitate human beings in life projects, such as by making their lives easier, or by helping them to be more successful in reaching their goals of action. Some technologies are quite *generic* in the sense that they support a broad variety of possible goals (e.g. trains, the Internet) while others are related to more *specific life projects* (e.g. musical technologies, apps for computer games).

(p. 188) From this perspective, the question will be: are these goals acceptable under the requirements of the human rights regime? Problematic technologies would then be technologies whose primary goal is, for example, to kill people (e.g. military technology) or which have high potential for harming people. Here a variety of evaluative approaches are available. One could, for example, think of the so-called *Value-sensitive design* as an approach which aims to be attentive to the implicit evaluative dimensions of technological developments (Manders-Huits and van den Hoven 2009). Such an approach has the advantage of reflecting on the normative dimensions of new technologies at an early stage of their development. From the normative basis of the human-rights regime, we could then firstly evaluate the potential of new technologies to violate human rights. This would be in the first place a *negative approach* that aims to avoid the violation of negative rights. But the human rights regime does not only consist of negative rights; there are positive rights which aim to support human beings in the realization of specific life goals (e.g. socio-economic rights).⁶ Such a moral evaluation of the goals of technology seems to be embedded in the generally shared morality, as people often think that it is morally praiseworthy, or even obligatory, to develop, for example, technologies to fight cancer, for sustainable food production, or to make the lives of people with disabilities easier. Thus, the goals for which technologies are produced are not seen as morally neutral, but as morally significant. However, there are of course all kind of goals for which technologies could be developed (e.g. we spend a lot of money for cancer research, while it is difficult to get funding to fight rare diseases). This means that we seem to have an implicit hierarchy concerning the importance and urgency of morally relevant goals. These hierarchies are, however, scarcely made explicit, and in a situation of moral disagreement it is quite implausible to assume that there would be a kind of spontaneous agreement in modern societies regarding the assessment of these goals. If, therefore, the assessment of the goals of technological developments is not merely rhetoric, one can reasonably expect the hierarchy behind this assessment to be explicated, and the reasons for this hierarchy to be elaborated. Content-wise, my proposal to justify a hierarchy in line with the concept of *needfulness for agency* (Gewirth 1978: 210–271). The goals of technologies would be evaluated in light of the extent to which the goals that technologies aim to support are necessary to support the human ability to act. If this were the general guideline, there would be a lot of follow-up questions, for example, on how to compare goals from different areas (e.g. sustainability, medicine) or, within medicine, on how the dependency

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on technologies of some agents (e.g. people with rare handicaps) could be weighed against the generic interests of a broad range of agents in general.

But is it at all possible to evaluate technologies on the basis of these goals? First, it may be quite difficult to judge technologies in this way because it would presuppose that we can predict the outcome of the development of a technology. Many technological developments can be used for a variety of goals. Generic technologies (p. 189) can serve a variety of purposes, some of which are acceptable or even desirable on the basis of human rights, whereas others are perhaps problematic. The same holds true for so-called 'moral enhancement', the use of medical technology to enhance human character traits that are thought to be supportive for moral behaviour. Most character traits can be used for various purposes; intelligence and emotional sensibility can be used to manipulate people more successfully. It seems hard to claim that technologies can only be judged by the goals they are supposed to serve.

Second, there are significant uncertainties around the development of technologies. This has to do with, for example, the fact that technological developments often take a long time; it is hard to predict the circumstances of application from the outset. Take for example the long time from the discovery of the double helix in the 1950s to the conditions under which the related technologies are being developed nowadays. In the meantime, we became aware, for example, of epigenetics, which explains the expression of gene functions as being interrelated in a complex way with all kind of external factors. The development of technologies is much more complex than was ever thought in the 1980s. We did not know that there would be an Internet, which could make all kind of genetic self-diagnoses available to ordinary citizens. It was not clear in the 1950s in which political and cultural climate the technologies would be applied: while in the 1950s people would have been afraid that totalitarian states could use those technologies, nowadays the lack of governmental control of the application of technologies creates other challenges.

These complications are no reason to cease the development of biotechnologies, but they form the circumstances under which an assessment of those technologies takes place. Some implications of these considerations on the basis of human dignity are: *firstly*, that we should *change assessment practices procedurally*. If respect for human dignity deserves normative priority, we must first ask what this respect requires from us regarding the development of new technologies, instead of first developing new technologies and then asking what kind of ethical, legal, and social problems they will create. *Second*, if it is correct that human dignity requires us to respect in our actions a hierarchy that follows from the *needfulness for agency*, then we would have to debate the legitimacy of the goals of technology on this basis. This is all the more relevant, since political discourses are full of assumptions about the moral quality of these goals (eg concerning cancer research or stem cell research). If respect for human dignity requires us to respect human beings equally, and if it implies that we should take seriously the hierarchy of goods that are necessary for the ability of agents to act successfully, then the assumptions of these goals would have to be disputed. *Third*, in light of the range of

uncertainties mentioned above, respect for human dignity would require that we develop an account of precautionary reasoning that is capable of dealing with the uncertainties that surround technological developments without rendering us incapable of action (Beyleveld and Brownsword 2012).

(p. 190) 4.2 The Scope of Technologies

An assessment of the basis of goals, risks, and uncertainties is, however, insufficient, because emerging technologies are also affecting the *relationships between human beings regarding place and time* in a way that alters responsibilities significantly. Nuclear energy is the classic example for an extension of responsibility in time; by creating nuclear waste, we endanger the lives of future people and we knowingly create a situation where it is likely that for hundreds and thousands of years, people will have to maintain institutions that are capable of dealing with this kind of waste. Climate change is another example of probably irreversible changes in the circumstances of people's lives. We are determining life conditions of future people, and this is in need of justification.

There are various examples of extensions of technological regimes already in *place*. There are various globally functioning technologies, of which the Internet is the most prominent example, and life sciences is another. One characteristic of all of these technologies is that they are developed through global effort and that they are applied globally. That implies, for example, that these technologies operate in very different cultural settings (e.g. genetic technologies are applied at once in Western countries and in very traditional, family-oriented societies). This global application of technologies creates a need for global regulation.

This context of technological regulation has some implications: firstly, that there must be global regulation, which requires a kind of subject of global regulation. This occurs in the first instance through contracts between nation states, but increasingly regulatory regimes are being established, which lead lives of their own, and establish their own institutions with their own competences. The effective opportunity of (at least smaller) states to leave these institutions is limited, or even non-existent, and so is their ability to efficiently make democratically initiated changes in the policies of these regimes. This means in fact that supranational regulatory bodies are established. This creates all kinds of problems: the lack or insufficiency of harmonization between these international regulatory regimes is one of them. However, for our purposes, it is important to see that there is a necessary tension: on the one hand, there is no alternative to creating these regulatory regimes at a time when there are globally operating technologies: technologies such as the Internet enforce such regimes. In the same vein, the extension of our *scope of action in time* forces us to question how future people are integrated into our regulatory regimes, because of the impact that technologies will have on the lives of future people. This means that the technologies we have established impact upon the possible regulatory regimes that are acceptable on the basis of the normative starting

points of the human rights regime. The human rights regime was established on the basis of cooperation between nation states, while new technologies enforce supranational regulatory regimes and force us to ask how future people are included in these regimes under circumstances where the (long-term) effects of technologies are to a significant extent uncertain.

(p. 191) I propose that the appropriate normative response to these changes cannot only consist in questioning what the implications of a specific right, such as the right to privacy, would be in the digital age (though we must of course ask this as well). The primary task is to develop an understanding of what the regulatory regime on the basis of human dignity might look like in light of the challenges described above. This means asking how respect for the individual can be ensured, and how these structures can be established in such a way that democratic control is still effectively possible. The extension with regard to future people furthermore requires that we develop a perspective on their place within the human rights framework. Some relevant aspects are discussed elsewhere more extensively (see Beyleveld, Düwell, and Spahn 2015; Düwell 2016). First, we cannot think about our duties with regard to sustainability as independent from human rights requirements; since human rights provisions are supposed to have normative priority, we must develop a unified normative perspective on how our duties to contemporaries and intergenerational duties relate to each other. This, secondly, gives rise to the question of what respect for human dignity implies for our duties concerning future people. If human dignity means that human beings have certain rights to generic goods of agency, then the question is not whether the right holder already exists, but whether we have reason to assume that there will be human beings in the future, and whether we can know what needs and interests they will have, and whether our actions can influence their lives. If these questions are to be answered positively, we will have to take those needs and interests into account under human rights standards. This raises a lot of follow-up questions about how this can be done.

In the context of these emerging technologies, we must rethink our normative framework, including the content and institutions of human rights, because our commitment to respecting human dignity requires us to think about effective structures for enforcing this respect, and if these institutions are not effective, we must rethink them. The outcome of this reconsideration may also be that certain technologies are not acceptable under the human rights regime, because with them it is impossible to enforce respect for human dignity. If, for example, privacy cannot effectively be ensured, or if there is no way to establish democratic control over technologies, this would affect the heart of human dignity and could be a reason to doubt the legitimacy of the developments of these technologies. In any case, human dignity is the conceptual and normative cornerstone of this reconsideration of the normative and institutional framework.

4.3 The Position of the Human Being in the Technological World

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Within the variety of further normative questions that could be extensively discussed are those about technologies that affect the relationship of human beings to themselves, to others or to nature. If the normative core of human dignity is related to the protection of the ability of human beings to be in control of their own actions, then there are various technologies which may influence this ability. We would have to discuss those forms of genetic diagnoses and interventions where others make decisions about the genetic make-up of persons, or the influence of medicalization on the practical self-understanding of agents. Another relevant example would be the architecture and the design of our lives and world, and the extent to which this design determines the ways in which human beings can exercise control.

However, technologies are also changing the place of human beings in the world, in the sense that our role as agents and subjects of control is still possible. That is not a new insight; critical theorists such as Adorno previously articulated this worry in the mid-twentieth century; in our context, we can wonder what the human rights-related consequences are. If respect for human dignity requires leaving us in control, then this would require, for example, that politics should be able to make decisions about technological developments and should be able to revise former decisions. This would mean, however, that technologies with irreversible consequences would only be acceptable if there could be hardly any doubt that their impact will be positive. It would furthermore require that technologies must be maximally controllable in the sense of human beings having effective influence, otherwise political negotiations would hardly be possible.

A further central question is the extent to which human decisions will play a central role in the regulation of technology in the future.⁷ This question arises if one extrapolates from various current developments into the future: we are integrating technologies in all areas of our lives for various reasons. The relevant changes range from the organization of the external world via changes in communication between people, to changes in our self-experience (e.g. the enhancement debate). Many of these changes are not at all morally dubious; we want to increase security, or we want to avoid climate change. We introduce technologies to make communication easier, and we want to support people with non-standard needs. *Prima facie*, there is nothing wrong with these aims, and there is nothing wrong with developing technologies to achieve these aims. The effect, however, is that the possibility for regulation by human beings is progressively diminished. The possibilities for action are increasingly predetermined by the technical design of the social and material world. This implies that the role of moral and legal regulation changes fundamentally. Regulations still exist, but parts of their functions are replaced by the organization of the material world. In this setting, persons often do not experience themselves as intentional agents responding to normative expectations, but simply as making movements that the design of the world allows them to make. From the perspective of human dignity, this situation raises a variety of concerns. These are not only about the compatibility of the goals of technological developments with human rights

concerns, or the modes of regulations, but also about the fundamental place of the human being within the regulatory process.

(p. 193) **5. Looking Forward**

This chapter has given a first outline of the possible relevance of human dignity for the regulation of technologies. My proposal is to put human dignity at the centre of the normative evaluation of technologies. Technologies are seriously changing both our lives and the world, the way that human beings deal with each other, and the way they relate to nature and to themselves. Finally, they are changing the way human beings act and the role of human agency. These changes do not only raise the question of how specific human rights can be applied to these new challenges, in the sense of what a right to privacy could mean in times of the internet. If these challenges are changing the position of the human being in the regulatory process to such a significant extent, then the question that has to be asked is what kind of normative answers must be given from the perspective of the foundational principle of the human rights regime. The question is then whether the current structure of the human rights regime, its central institutions and related procedures, are still appropriate for regulation.

My intention was not to promote cultural scepticism regarding new technologies, but to take the challenge seriously. My proposal is therefore to rethink the normative structure of an appropriate response to new technologies in light of human dignity. This proposal is therefore an alternative to the propagation of the 'end of human rights' because of an obvious dysfunctionality of some aspects of the human rights regime. This proposal sees human rights as a normative regime that operates on the basis of human dignity as its foundational concept, which ascribes a central normative status to human beings and protects the possibility for their leading an autonomous life. The appropriate normative responses of human rights will depend on an analysis of what kind of challenges human dignity is confronted with, of what kind of institutions can protect it, and of what forms of protection are possible. That means a commitment to human dignity can require us to change the human rights regime significantly if the human situation changes significantly. By this, I do not mean a new interpretation of human dignity in the sense of suddenly reinterpreting human dignity, for instance, in a collectivistic way. Rather, the idea is the following: if we do indeed have rational reasons to see ourselves as being obliged to respect human dignity, then these reasons have not changed and we do not have reasons to doubt our earlier commitments. But we have reasons to think that the possibility of human beings leading an autonomous life is endangered by the side effects of technology, and that in times of globalization and the Internet an effective protection against these technologies is not possible on the level of nation states. At the same time, respect for human dignity forms the basis for the legitimacy of the state. If all that is correct, then respect for human dignity requires us to think (p. 194) about significant changes in the normative responses to those challenges, distinct from the responses that the human

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rights regime has given in the past. That could imply the formulation of new human rights charters, it could result in new supranational governmental structures, or in the insight that some technologies would just have to be strongly restricted or even forbidden.

Respect for human dignity requires us to think about structures in which technologies are no longer the driving force of societal developments, but which give human beings the possibility to give form to their lives; the possibility of being in charge and of leading fulfilled lives is the guiding aspect of public policy. There is hardly any area in which human dignity should play so significant a role as in the regulation of technologies. It is surprising that contemporary debate about technology and debates on human dignity do not mirror this insight.

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Notes:

(1.) This section is built on considerations that are more extensively explained in the introduction to Düwell and others (2013).

(2.) I reconstruct the concept of human dignity in Kant in the line of his 'Formula of Humanity' because this seems to me systematically appropriate. I am aware that Kant uses the term 'human dignity' in a much more limited way—in fact he uses the term 'human dignity' only a few times (see Sensen 2011 on the use of the terminology).

(3.) Gerald Gaus (2001a, 2001b), for example, has identified 11 different meanings of 'deontological ethics', some of which are mutually exclusive.

(4.) Perhaps it is superfluous to say that my proposal is strongly in a Kantian line. Besides Kant, my main source of inspiration is Gewirth (in particular, Gewirth 1978) and, in this vein, Beyleveld and Brownsword (2001).

(5.) For a detailed defence of this argument, see Beyleveld 1991.

(6.) On my understanding, negative and positive rights are distinct in a formal sense. Negative rights are characterized by the duty of others not to interfere in what the right holder has a right to, while positive rights are rights to receive support in attaining whatever it is that the right holder has a right to. I assume that both dimensions of human rights are inseparable, in the sense that one cannot rationally be committed to negative rights without at the same time holding the conviction that there are positive rights as well (see Gewirth 1996: 31-70; this is a different understanding of the relationship between negative and positive rights to that in Shue 1996). To assume that there is such a broad range of rights does not exclude differences in the urgency and importance of different kinds of rights. Negative rights are not, however, always more important than positive rights. There can be positive rights which are more important than some negative rights; there can for example be reasons for a right to private property to be violated in order to support people's basic needs.

(7.) I thank Roger Brownsword for the inspiration for this topic (see Brownsword 2013, 2015; see also Illies and Meijers, 2009).

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