

# Why should we make a difference?

## How dignity can work in animal ethics

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### Abstract

On May 17th 1992, a new legal expression, «Würde der Kreatur», was enshrined in the Swiss Constitution. Since that time there have been intense discussions about the concept's theological origin, meaning, and relationship to human dignity («Würde des Menschen»). The debate focuses on the question of whether the word «Würde» has to be understood as semantically identical when paired with «creatures» and humans, or whether the two expressions reflect two totally different concepts. Animal ethicists either reproach a special human dignity as being speciesist, or try to apply it to non-human beings in order to show that they deserve moral respect («dignity of the animal»). The Swiss multilinguality enlarges the debate's complexity.

In this article, I first reconstruct the creational theological meaning of the concept «Würde der Kreatur» as the doctrine of the «goodness of creation» (*bonitas*-tradition), which is to distinguish, in principle, from the concept of a specific human dignity in the biblical tradition of the human being as the «image of God» or the Ciceronian *dignitas*-tradition. Since the primary religious foundation of creational goodness is not universally acceptable in light of the freedom of and from religion, many authors work with concepts of an «intrinsic value» or an «own good» of living beings. These concepts are implicitly based on a theory of natural teleology and fall under Hume's critique of an is-ought fallacy and incur reproach as a non-critical metaphysics of nature. Thus, with the help of Kant's critical philosophy, human dignity is primarily interpreted as a foundational concept that reflects the moral ability and duty of accountability of the human being. In this way, the autonomy-based theory of human dignity establishes a moral addressee, which animal ethicists may address with their animal ethical claims.

### «Würde der Kreatur» and «Würde des Menschen» – a challenging case in the Swiss Constitution

On May 17th 1992, a new legal term, «Würde der Kreatur», was enshrined in Art. 24novies of the Swiss Federal Constitution (SFC). The impulse for the new constitutional article originated in 1987 from an initiative of the Swiss people, who felt that human dignity was endangered by the developments of genetics and reproductive technologies.<sup>1</sup> Remarkably, the members of the then-established national experts' commission

suggested the extension of the original plebiscite's proposal for protecting human dignity; usually commissions draw narrower limits than plebiscites suggest. But in this case, they were convinced that human dignity could only be protected in the fields of biomedical technologies by taking into account basic research on animals, plants and microorganisms, too. The fact that biological unity of living entities enables the transfer of scientific methods and data between plants, animals and human beings challenged the legislator to take a biocentric perspective. With this background, in May 1992, the term «Würde der Kreatur» found its way into Art. 24novies Paragraph 3 SFC (today Art. 120 SFC adopted in 1999) in the following section:

#### «Art. 120 Non-human gene technology

1 Human beings and their environment shall be protected against the misuse of gene technology.

2 The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the dignity of living beings [«Würde der Kreatur»] as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species.»<sup>2</sup>

This citation from the English translation of Art. 24novies Paragraph 3 // Art. 120 SFC from the governmental homepage leads into the focus of this paper. Although it says that «English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force»<sup>3</sup>, it remarkably interprets «Würde der Kreatur» as «dignity of living beings». Obviously, the governmental translator wanted to avoid the religious term «creature». We will have to come back to this point. In the meantime, I prefer to use the original German term «Würde der Kreatur» in order to prevent premature judgments before having developed the problems – not only with regard to the word «creature»,<sup>4</sup>

1 <http://www.admin.ch/ch/d/pore/vi/vis1826.html> (accessed Nov 2nd 2011).

2 See: <http://www.admin.ch/ch/e/rs/1/101.en> (accessed Nov 2, 2011). I thank Roberto Andorno for the hint about the English official translation of the Swiss Federal Constitution (SFC).

3 See the headline on the English translation on <http://www.admin.ch/ch/e/rs/1/101.en> (accessed Nov 2, 2011)

4 The Federal Ethics Committee on Non-Human Biotechnology (ECNH) and the Federal Committee on Animal Experiments (FCAE)

but also regarding the question of whether applying «dignity» to non-human beings is adequate.

Since the term «Würde der Kreatur» was introduced into the Swiss Constitution, there has been an ongoing debate about its meaning and its relationship to human dignity. In 1992, the term «human dignity» was for the first time explicitly mentioned in the SFC, namely in Paragraph 2 of the same article 24novies. Up to that time «human dignity» had functioned only as an unwritten constitutional principle.<sup>5</sup> After the constitutional implementation of article 24novies the Swiss «Federal Office for the Environment, Forest, and Landscape»<sup>6</sup> successively consulted two German-language expert opinions in order to become wiser about the question of how to interpret the legal neologism «Würde der Kreatur». The expert opinions offered opposite interpretations of the term «Würde der Kreatur» and its relation to «Würde des Menschen» («human dignity»): The first held that «Würde» in both concepts has to be understood as semantically identical [37], the second argued for two totally different meanings [3, 4]. The subsequent ethical and legal discussion of the new legal term was ambiguous, too [6, 26, 43].

In 1999 the legislator seized the opportunity for a total revision of the antiquated and heterogeneous structure of the Swiss Constitution in order to separate «human dignity» (Art. 24novies Paragraph 2) from the «Würde der Kreatur» (Art. 24novies Paragraph 3) by distributing them into different articles (human dignity: Art. 119, Art. 119a; Würde der Kreatur: Art. 120). In addition, by including a specific general article on human dignity (Art. 7 SFC) they underlined that only human dignity, in opposition to the «Würde der Kreatur», shall be understood as a universal principle of the Swiss Constitution. In contrast, animal and nature protectionists are generally interested in emphasizing the similarities between humans and other living beings. They are critical of human dignity as a special characteristic of human beings because of its anthropocentric connotation. Therefore they either reject human dignity as being speciesist (e.g. [1]) or try to interpret dignity in ways that enable its application to non-human living beings, too (e.g. [37, 41, 42], similar [38]).

The conceptual confusion becomes worse considering the ambiguity the word «dignity» has had since antiquity. It may mean just a contingent form of a «value» or «worth» in the sense of the use of dignity in the Roman

Empire in order to describe the social reputation or performative duties of an office-bearer, or certain aesthetic or expressive qualities of humans, animals, or even objects (e.g. buildings). Or it may signify the specific immutable inherent «human dignity» referred to by Cicero in *De officiis* I.105s for the first time in the Western world [36]. It was this inherent dignity alone which was linked by the Church Fathers of the first centuries of Christianity to the theological idea of humans as God's image (Genesis 1,26), and also this alone is meant in Immanuel Kant's ethics, in the UN Declaration of Human Rights, and in several national constitutions adopted after 1948 [44].

Further, Switzerland as a multilingual country translated «Würde der Kreatur» into the Italian phrase «dignità della creatura» and, temporarily, into the French expression «dignité des créatures». But in 1999, the officials of the francophone department used the Constitution's total revision to quietly change the phrase into «intégrité des organismes vivants», because they felt uneasy when «speaking about the dignity of a carrot» (so [28], p. 31).<sup>7</sup> The Swiss philosopher Beat Sitter-Liver called for a public discussion about that secret change [30].

Beside these difficulties with the meaning of the word «dignity», we have already touched on a problem concerning the word «creature» when dealing with the publicly offered English translation of the term «Würde der Kreatur» into «dignity of living beings». «Creature» is a religious term introduced in the Constitution of Switzerland, a secular state, which is obliged to ideological neutrality. «Creature's» value is religiously based, derived from belief in the existence of a Creator. It cannot claim universal acknowledgement in pluralistic societies, because according to «Freedom of religion and conscience» (Art. 15 SFC) nobody «shall be forced to [...] follow religious teachings» (Art. 15, 4 SFC). The basic right of freedom of religion includes the dimension of freedom from religion. From this, it follows that, even if religious beliefs were reasonable and in accordance with legal norms, the legislator is asked to offer ideologically neutral concepts understandable by virtue of reason alone, because the Constitution and other legal documents must rely on universal recognition.

This leads to a dilemma concerning the constitutional term «Würde der Kreatur» in Art. 24novies // Art. 120: On the one hand, obliged to ideological neutrality, the legislator is not allowed to adopt the religious meaning of «creature».<sup>8</sup> But on the other hand, the term's success is based on the fact that creature is a value-laden concept, whereas «organism» or «living being» are nothing but descriptive biological concepts without an evaluative dimension. From this, it follows analytically that in case there is no rational secular value theory

offer in their English version of their booklet about the «Dignity of Animals» [16] «dignity of creation» in their self-made translation of Art. 120. But «creation» («Schöpfung») instead of «creatures» («Kreatur», «Geschöpf») evokes a holistic view and tends more to nature or species protection than to the protection of animal or plant individuals. Therefore, besides the problems with «dignity», the reference to «creation» in «dignity of creation» is not considered to be an adequate translation with regard to the object of protection (for these discussions see [6, 30, 37]).

5 The legislative process of Art. 24novies SFC and the background discussions are described in [26].

6 «Bundesamt für Umwelt, Wald, Agrarwissenschaft und Landwirtschaft» (BUWAL).

7 Kunzmann cites S. Poureau with the sentence: «Difficile de parler de dignité de la carotte pour un Français».

8 There is a similar case concerning «fellow creature» in Paragraph 1 of the German Animal Protection Law.

from which value can be derived, the only possible value source for organisms is the subject «Würde» of the genitive construction «Würde der Kreatur». But how are we to understand the element «Würde» in the «Würde der Kreatur», when it is true that «[t]he dignity of humans and the dignity of creation» may be «comparable but not identical»?<sup>9</sup> A lot depends on the right understanding of «Würde» in both legal expressions and on whether «Würde» in «Würde der Kreatur» is correctly translated. Thus I shall first analyse in more detail the theological background of the concept «Würde der Kreatur» to find out its original meaning, before dealing with the questions of its correct translation and its adequate secular understanding in legal texts.

### The theological background of the concept «Würde der Kreatur»

A variety of data shows that it makes sense to look for a theological reconstruction of the term «Würde der Kreatur», which is new in legal documents, but not in the theological history of ideas. In modern theologies of creation it is called the *doctrine of the goodness of creation*, but it has appeared under different names. One of the better known concepts in the history pertaining to the goodness of creation is Augustine's «footprints of God» (*vestigia Dei*) in his book «On the Trinity» (VI 10), a term which expresses that all creatures share the goodness of being since they are called into existence by the good creator. Thomas Aquinas took over Augustine's concept; but while Augustine in several writings promoted the idea of the goodness of creation against the widespread Gnostic devaluation of the material world in his period, Aquinas accentuated the top position of God's image (*imago Dei*; Genesis 1,26) in creation in contrast to the mere «footprints» (e.g. *Summa Theologica* I 93,2.6). Despite Augustine's efforts, the theology of creation has remained a minor dogmatic discipline since antiquity; the theological tradition is mainly anthropocentric, totally focused on the God-human relationship and mostly skeptical with regard to the relevance of the non-human creatures in a Christian order of salvation. In the 1980s, the Protestant theologian, biologist and environmentalist, Günter Altner [2] diagnosed together with other Protestant colleagues a «total lack of creational consciousness» («Schöpfungsvergessenheit») in theology.

In 1967, the US-medievalist Lynn White, Jr., in his famous Science article about «The historical roots of our environmental crisis», charged the Bible and the Chris-

tian theology with having caused our environmental problems [5]. With that he stimulated a vivid self-critical reconstruction of the role of non-human creatures in theology during the last third of the 20th century. Creational theology, environmental and animal ethics became topics in theology during the 1970s and 1980s. In the year 1983, at the 6th Assembly in Vancouver, the World Council of Churches (WCC) announced a worldwide ecumenical movement for «Justice, Peace, and Responsibility for Creation». Many political representatives held speeches about «our responsibility for creation»; so creation was on the way to becoming a political concept. After many local ecumenical assemblies about the issue in many countries, the European Ecumenical Assembly took place in Basel in 1989. The discussion about article 24novies SFC in particular received public attention during the Ecumenical Movement with creational theological impact on political issues and language (for literature see [6] pp. 47–52).

The environmentally inspired theologians discovered theological forerunners who dealt with the human-nature and human-animal relationship. Protestant theologians especially had contributed decisively to a vivid physico-theological and anti-Cartesian animal ethical debate already in the 18th century.<sup>10</sup> For instance, the Danish Protestant theologian and philosopher Lauritz Smith offered not only a treatise about our «duties to animals» (1791), but sketched a theory about a double «dignity» of animals in a proto-ethological and proto-ecological theoretical framework in his second edition (1793), some of which he himself translated from German into several European languages. In 1840, the Swiss theologian Peter Scheitlin, born in St. Gallen, published his influential work «Versuch einer vollständigen Thierseelenkunde», in which he tried to offer a complete overview of all animal soul ideas in the world. The so-called modern stewardship argument, which says that being God's image means being responsible for the well-being of the non-human creation, was developed more than two centuries ago. It delivered the basis for the development of nature, bird and animal protection societies in Protestant countries like Germany, Great Britain, Scandinavia and the U.S. Many nature and animal protection protagonists have been Protestant theologians. For instance, the influential writings of the pietist preacher Christian Adam Dann prepared the idea of animal protection societies in Germany. Shortly after he died, his younger friend Albert Knapp, also a pietist preacher, founded Germany's first animal protection society in Stuttgart in 1837. These few data show that for more than two centuries a vivid Protestant background for a creational responsibility has existed, although that sort of thinking was never the mainstream in theology until the environmental crisis discussion some decades ago. Mostly, the stewardship theology for fellow-creatures remained subtly

9 «The concept of the dignity of creation is new to ethical and legal discussions. Nowhere else in the world apart from the canton of Aargau has it been constitutionally enshrined. Since 1992 it has been represented in the Swiss federal constitution as a legal term. The constitution uses the term to cover animals, plants and other organisms but excludes humans.» ([16], p. 3)

10 Supported by only a very few exceptions among Catholic theologians.

in the underground and inspired special sympathetic thinkers, like Albert Schweitzer, who renewed this tradition with his ethic about reverence for life (for background and literature see [6] pp. 223–308).

The Swiss theologian Karl Barth was challenged by Schweitzer's prominent biocentric approach and feared the influence of the life philosophy. Thus he took great pains to work out his four volumes about creational theology in his «Church Dogmatics» [9], which previously had not been his theological focus. Barth's doctrine of creation is regarded as an important inspiration source for the concept of «Würde der Kreatur» in Swiss legal documents about animal protection [43].<sup>11</sup> It is at least not implausible, perhaps even obvious, when looking at the «Zeitgeist» caused by the environmental issues of the international ecumenical movement about justice, freedom, and responsibility for creation, that the mostly Protestant protagonists of the Swiss «Würde der Kreatur» have sought backing from the rich Protestant literature in the field of nature and animal protection.

In his «Theology of Creation» Barth spoke frankly about «Würde» of animals ([9] e.g. III/1 p. 198) and even of plants ([9] III/1, p. 170), derived from their being created the way they are by God. By doing so, Barth makes use of the theological idea of the «goodness of creatures/creation», expressed in the Creator's approbations of his individual creatures (Genesis 1:4.10.12.18.21.25) as well as of creation as a whole in the first chapter of the Bible: «God looked at everything he had made, and he found it very good.» (Genesis 1:31) The human creature, however, is the only one not acknowledged as being good, but designated as God's image (Genesis 1,26–28) in order to take responsibility for the creation. This biblical background explains why, although Barth uses the word «Würde» with regard to humans and to non-human creatures in order to underline the creational solidarity, he declares that it is only an analogous way of speaking. Especially concerning humans and animals he elaborates that they have their *own* specific «Würde» which is not comparable. He calls special attention to the fact that God challenges the human being with his own «Würde», which is characterised by his specific freedom to obey God's law ([9] III/1 pp. 195, 198). Barth makes use of the two different histories of the concepts, but without adopting the names, by which Augustine and Aquinas differentiated «God's image» (*imago Dei*) and «God's footprints» (*vestigia Dei*). Instead, Barth links the specific «Würde» of the human being to a concept of positive freedom for fulfilling the law.

With the help of the reconstruction of these two concepts we can distinguish «Würde des Menschen» (human dignity) from «Würde der Kreatur» (goodness

of creation/creatures) [6, 32], which delivers us good arguments for identifying an analogous use of «Würde» in the Swiss constitutional article 24novies. By reconstructing the theological history of the two «Würde»-concepts we have gained a plausible, no longer mysterious understanding of «Würde der Kreatur» as «goodness of creation/creatures», distinguished from the tradition of human dignity and God's image. Further, we can now understand the evaluative character of the term «Würde der Kreatur». But simultaneously we conceive that, with regard to article 15, 4 SFC (basic right for freedom of and from religion), the religiously based value concept «Würde der Kreatur» cannot be accepted as a constitutional concept. A reason why the politicians might have chosen the theological concept of the goodness of creatures may be that they were striving for a strong value theory for organisms. Since, however, «Würde der Kreatur» has a religious foundation, which is therefore not universally acceptable, the following section examines whether a currently popular philosophical secular theory about the intrinsic value of living beings may be a foundational alternative.

### Teleology, speciesism, and the question of dignity

In the Aristotelian natural philosophy, living beings have their own internal *telos*, that is, purpose, or end in themselves (*entelecheia* [Gr.: having the purpose of one's life in oneself]), whose realisation makes them good in themselves [18]. The kind and degree of a being's value in comparison to that of others result from its value position (external *telos*) within a hierarchical ordered cosmos, which is accomplished by the being's own life process (internal *telos* or *entelecheia*). By virtue of its teleological hierarchical structure, the cosmos is not only a descriptive ontological system but a value order, too, which informs the wise rational person about how to act morally, that is, in accordance with the natural order. Consequently, the *telos* (Gr.) (*causa finalis* [Lat.: final cause] is one of the four Aristotelian reasons (besides the *causae materialis* [matter], *formalis* [form] and *efficientis* [effective cause]) that lie at the base of the value order of the cosmos. In modern sciences and epistemology after Galilei, Descartes, Hume, Kant and Darwin, teleology is no longer accepted as a property of natural things, natural processes, or of nature as a whole. In criticising Aristotelian natural philosophy, Galilei already excluded the final cause from being an explanation principle. In his philosophy of biology, Kant concluded that in biology final causes may work as heuristic principles, but not as explanatory principles. The answer to the teleological question: For what is it good? proves nothing, but might perhaps deliver useful research ideas, in order to explain for example evolutionary questions by means of effective reasons only [22]. Natural things are not regarded as

<sup>11</sup> Before 1992 the expression already existed in the Cantonal Constitution of Aargau. In § 14 is claimed that activities in science and art should respect the «Würde der Kreatur» [42].

having their own ends, but only *as if* they had their own ends.

As a result, Hume's gap between fact and value was opened. Natural entities became mere facts without a nature-based intrinsic value. But how can a value-neutral fact, a natural incident, inform human actions involving values? A natural intrinsic value seems to be the necessary foundation for arriving at something like a so-called «moral status». Here we find the intricate problem of how to argue today for a natural intrinsic good of living beings – their intrinsic or inherent value or their integrity – without backing it up with implicit teleological explanations which sound like a mystery to the ears of modern scientists, epistemologists and philosophers of sciences.

The only value that has survived up to the present seems to be human dignity. Thus some natural ethicists try to attach value to living beings by attributing the word «dignity» to them. Others criticise human dignity as speciesist because it attaches a moral status only to humans (e.g. [1, 38, 39]). The word «speciesism» was coined by the British animal psychologist Richard Ryder with regard to the abuse of animals in the field of animal experiments in research at the beginning of the 1970s. Peter Singer, the utilitarian proponent of the new animal rights movement, took it over and made it a popular concept in animal ethics [21]. A speciesist understanding of human dignity is: Human beings have dignity because they are members of the biological species *Homo sapiens*. But belonging to a biological species is nothing but a mere fact. If we follow Hume's position, an «ought» cannot be derived from an «is». Just being a member of the species *Homo sapiens* is no foundation for ascribing any intrinsic or inherent value or something like a moral status to human beings. But that is true for any other living being, too. Seeking human dignity or other intrinsic values in a world of biological facts is not successful. Therefore, the bioethical debate on human dignity has revealed its ongoing deep crisis, since its meaning and function in ethical argumentation are not clear at all. Instead, the term is assumed to be an empty formula («Leerformel»; [10, 19]) or – compared with so-called autonomy – «a useless concept» [31]. The question of interest is whether there exists an understanding of human dignity which is, firstly, not speciesist, secondly, rationally founded and therefore universally acceptable, and thirdly, which could work in animal and nature ethics, too.

### End-in-itself – a seductive concept

Although the concept of human dignity is often blamed for being speciesist, «dignity of animals» is a surprisingly successful concept (so [27], p. 13; further [29, 16]). The Swiss legal term «Würde der Kreatur» succeeded especially in the field of animal ethics. There are also approaches which apply dignity to plants ([17], in

terms of integrity, see thoughtful analysis of [34]). Peter Kunzmann assumes that the success of speaking about animals' dignity derives from its appeal to the idea of «end-in-itself», which oscillates between a quasi-Aristotelian (*entelecheia*) and a quasi-Kantian understanding ([27], pp. 113–114). Imbued with a Kantian aura, the term is understood as an objection against a mere instrumental view of living entities due to the end-in-itself formula of the categorical imperative ([23] IV 429), which is widespread in bioethical debates. However, the Aristotelian understanding of having one's end-in-itself (*entelecheia*) depends on a natural teleology, which we have shown as epistemologically and ethically problematic. Both end-in-itself understandings, the Aristotelian and the Kantian, are often intermingled in animal-protection-literature, as Kunzmann states (e.g. Tom Regan's argument that animals deserve respect because they have inherent value, since they are subjects of their lives) [38]. The equivocation of «end-in-itself» suggests to ears adapted to ancient or medieval teleology that Kant himself might have been working with the nature-based teleological concept of *entelecheia* in order to establish human dignity as an absolute value in nature that deserves absolute moral respect. If this were true it would indeed be possible to transfer the Kantian dignity onto natural beings. But then Kant himself would have committed Hume's fact-value-fallacy by grounding human dignity in nature, which is not convincing. Instead, Kant faced the ongoing crisis of teleology and conceived the necessity of looking for other foundational strategies. Consequently, his declaration that humanity exists as an end-in-itself ([23] IV 430–431) cannot be understood in the framework of the system of *natural* ends, but in the framework of the system of *moral* ends – in the «kingdom of ends», as Kant would have said, not in the «kingdom of nature». Therefore, human dignity is not an «appearance in nature» ([41], p. 359), since intrinsic values are not defined in modern scientific concepts of nature. And even if humans' moral capabilities may be explained as natural evolutionary products, moral claims cannot be justified by historical derivations without committing a genetic fallacy. Explaining how (by which mechanism) a moral behavior was brought into existence, delivers no measure of whether this behaviour should be regarded as morally good or evil.

Facing these problems with regard to foundation and justification, it has been suggested that we transfer the Kantian concept of dignity just «metaphorically» from the human being to non-human natural beings in order to claim human's moral duties to respect bearers of duty [42]. However, this approach is weak because it offers no good reason why somebody should adopt such metaphorical speech. Why should people speak in terms of dignity about nature and natural beings? Further, it is not made explicit what it is that people should respect in naturally dignified beings? What shall I show to people who cannot see that dignity?

More weighty than these pragmatic doubts is the effect of transferring the Kantian concept of human dignity to the non-human natural sphere. Such a transfer destroys the justification of duty in general, and specifically, of duties regarding animals and other natural entities, because speaking metaphorically disregards human dignity's foundation. Since a natural foundation is no longer possible, Kant based the absolute value of human dignity on the concept of autonomy. «Autonomy is therefore the ground of the dignity of human nature and of every rational nature.» ([23] Ak IV 436)

### Human dignity and autonomy – towards a Kantian-based animal ethics

Following Galilei and Descartes by facing the crisis of teleology, and following Hume regarding the resulting gap between facts and values, Kant recognised that moral value cannot be found in natural facts. This is not only true for the value of life for living beings, but for human dignity, too. Whereas Cicero determined human dignity through human's rational position in a teleologically structured cosmos, Kant had to admit in his *Doctrine of virtue*: «In the system of nature, a human being (*homo phaenomenon, animal rationale*) is a being of slight importance and shares with the rest of the animals [...] an ordinary value (*pretium vulgare*). Although a human being has, in his understanding, something more than they and can set himself ends, even this gives him only an extrinsic value for his usefulness (*pretium usus*); that is to say, it gives one man a higher value than another, that is, a price as of a commodity in exchange with these animals as things, though he still has a lower value than the universal medium of exchange, money, the value of which can therefore be called preeminent (*pretium eminens*)» ([24] Ak VI 434). All three kinds of value mentioned by Kant, the ordinary, the instrumental, and the preeminent one, stem from the economic sphere, a sphere whose order is established by humans with regard to their needs and interests. Even the ordinary value (*pretium vulgare*) may not be understood as being derived from nature because, at the latest after his *Critique of Pure Reason*, Kant was aware that every order is a product of the human mind. Instead of following imagined natural orders, Kant takes his insight seriously and acknowledges the human being as an evaluator in relation to his needs and purposes.

Regarding the human being from the perspective of the varieties of needs and interests does not lead to a reliable measurement for an evaluative orientation in life, only to relative prices. In order to find an absolute standard, Kant changes the viewpoint to «a human being regarded as a *person*, that is, as the subject of a morally practical reason». Such a subject «is exalted above any price; for as a person (*homo noumenon*) he is not to be valued merely as a means to the ends of oth-

ers or even to his own ends, but as an end in himself, that is, he possesses a *dignity* (an absolute inner worth) by which he exacts *respect* for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them.» ([24] Ak VI 434–35)

Comparing these two sections show a change from «price» to «dignity», from «extrinsic value» to «inner worth», from «*animal rationale*» (Lat.: rational animal) to the «person» as a «subject of a morally practical reason». These oppositions imply a transition from theoretical observations of empirical data to the self-reflection and self-analysis of what happens when raising a *moral* claim. Raising moral claims means, as Kant says, to expect from «other rational beings» to be respected as an absolute inner worth, as a being with dignity. When raising a claim, I actually presuppose other rational beings capable of acting of their own will to show respect, without or before looking for theoretical proof that, in fact, such rational beings exist. While presupposing that the other is like me, I become aware of my own capability of self-obligation, of being able to determine my will. In consequence, reflecting upon raising moral claims leads to the discovery of the moral equality of moral subjects who claim mutual respect. Earlier, Kant had developed a model of practical self-relationship in terms of a contract between ourselves as *homo noumenon* (an ideal rational concept of a person) and as *homo phaenomenon* (the human being as she empirically appears), that helps us to conceive ourselves as beings who are able to oblige ourselves ([24] Ak VI 417–418). The possibility of self-obligation is the precondition for the duties we owe ourselves and for duties we owe to others. In other words: it constitutes moral subjects as addressees for moral claims.

Moral subjects stand in an interpersonal symmetrical relationship of mutual respect by virtue of the standard of morality. With that absolute measurement Kant can take a fresh look back at humans' empirical needs, which demand not only respect, but beneficence – so-called «duties of love» ([24] Ak VI 452) [12, 14]. In the section «On an Amphiboly in Moral Concepts of Reflection» ([24] Ak VI 442–444), Kant analysed obligatory relationships towards other-than-human beings, also to animals. These sections are often misunderstood because of the distinction between mutual «duties to» human persons and «duties with regard to» non-human entities [37]. The latter expression just reflects that non-human beings cannot be reasonably expected to enter into a mutual moral or legal relationship since they cannot oblige themselves to fulfill contracts. Nevertheless, they can and shall be objects of responsibility, since they are comparable to human beings with regard to their needs and their ability to experience pain, as Kant emphasised (for an interpretation of § 17 *Doctrine of Virtue* more in detail see [6, 7]). Needs and vulnerability constitute in fact *similarities* between humans and animals and open the material field of

concrete responsibilities. The structure of obligation, however, takes into account the *difference* in principle between human beings and other living beings with regard to the capacity for moral agency. Considering this decisive difference implies the necessary awareness to take oneself seriously as an addressee of moral claims – that we cannot leave this responsibility to animals or other natural beings. Denying this ethical fact puts ourselves back to a market place of needs and interests where nobody conceives himself as being responsible to consider any needs from a moral standpoint, e.g. in terms of justice.

In the *Groundwork*, Kant reflected these thoughts with the concept of autonomy as the foundation of human dignity ([23] Ak IV 436). It is decisive for an understanding of the Kantian transcendental logic to be aware that autonomy lies at the basis of dignity and *not vice versa*. Most applied ethical approaches use «autonomy» in the sense of an individual's empirical ability for self-determination (e.g. [11, 31]). That would lead back to the morally disordered multitude of interests on a marketplace. Kantian autonomy, however, denotes an ideal moral claim that challenges a moral agent to distinguish between the pleasant and the moral good by means of reflecting upon the possibility of universalisation. Taking autonomy seriously as the foundation of human dignity conceives the human being as being able to reflect rationally upon needs and interests – not only her own, but also in general. This opens an ethics, based on human dignity, that shows how human beings can be conceived as moral agents who are able to consider human and non-human needs and interests from a moral point of view. On these grounds, applied ethical argumentations like animal ethics can start.

### Conclusion: What about «Würde der Kreatur» and its relation to human dignity?

What is the outcome for animal ethics when human dignity is interpreted as the claim to set moral ends by means of autonomous, responsible choices? It is no more and no less the insight that it is ethically necessary to establish a moral addressee who is able to perceive, conceive and respond to moral claims – in other words: to acknowledge oneself as being responsible. Otherwise, ethics as a theory about morals would be an impossible enterprise and moral claims would run into emptiness.

Therefore animal ethicists who restrict themselves to indicating equality or similarities between humans and animals, while refusing to pay regard to the specific human character of moral responsibility, make moral appeals without addressing anybody. In a universe of merely sensitive beings there is nobody who could understand and follow moral appeals. In consequence, every normative ethical argument is incomplete with-

out at least an implicit ethical theory of moral subjectivity or moral agency. Thus, it is decisive concerning ethical foundational argumentation to consider the ethical difference between human beings and non-human beings. The modern concept of human dignity is based on autonomy, that is, the moral claim to evaluate needs and interests in a universalisable way. It reveals itself primarily as a foundational concept of ethical reflection. Although the concept of human dignity has practical moral implications too, it is not chiefly a concept of applied ethics. In consequence, with regard to questions in the field of applied ethics, both the ethical difference and the empirical similarities between human and non-human beings are of moral importance.

This paper has argued that it is historically plausible to understand the historical product of the Swiss legal term «Würde der Kreatur» theologically as the «goodness of creatures» in difference to «human dignity». Since it is a theological concept its religious foundation is not universally acceptable in light of the basic right of the freedom of and from religion. Therefore a secular understanding is needed for it to work as a legal concept in the Swiss Constitution. Intrinsic or inherent value theories, which are based on metaphysical teleological nature theories, are not convincing with regard to modern sciences, epistemology and philosophy of sciences. Thus, the «intrinsic value of living beings» needs not only a secular understanding, but also a foundation that is not based on a metaphysics of nature. With the help of the Kantian concept of a human dignity based on transcendental autonomy, we developed a consistent secular ethical theory that delivers a moral measurement which may function as an orientation in a moral «cosmos». There is not only room for reflecting on the fundamental ethical difference, but, ultimately, the moral significance of the empirical similarities between human and non-human beings. Since the human being is not only a moral subject, but also a sensitive and vulnerable living being, it is ethically consistent to take other living beings' vulnerability into moral account. Although animals cannot fulfill duties of respect, *their* vulnerability is morally significant to us because *our* vulnerability is morally meaningful to us. In other words: Human dignity is the name for the consciousness of the ability and moral duty to take responsibilities, not only with regard to respect for other possible subjects of responsibility, but also to take any vulnerability and needs which indicate fundamental good («goodness of creatures») into moral account.

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## Zusammenfassung

### Warum sollten wir einen Unterschied machen? Wie kann der Begriff Würde in der Tierethik funktionieren?

Seit dem 17. Mai 1992 gibt es einen neuen Rechtsbegriff in der Schweizerischen Bundesverfassung: die «Würde der Kreatur». Seither wird über die theologische Herkunft des Begriffs, seine Bedeutung und sein Verhältnis zur Würde des Menschen diskutiert. Im Zentrum steht die Frage, ob das Wort «Würde» in beiden Begriffen gleich verstanden werden müsse oder aber eine Äquivokation darstelle. Tierethiker verwerfen entweder die Menschenwürde als speziesistisch oder sie versuchen sie auf nichtmenschliche Tiere («Würde des Tieres») auszudehnen, um ihnen moralischen Respekt zu verschaffen. Die Vielsprachigkeit in der Schweiz vergrößert die Komplexität der Diskussion.

Der vorliegende Beitrag rekonstruiert zunächst die schöpfungstheologische Bedeutung von «Würde der Kreatur» als «Güte der Schöpfung» (*bonitas*-tradition), die von der Begriffstradition der gottebenbildlichen und ciceronischen Menschenwürde (*dignitas*-Tradition) prinzipiell zu unterscheiden ist. Da die der «Würde der Kreatur» anhaftende religiöse Primärbeurteilung aus Gründen der Religionsfreiheit nicht allgemein zustimmungsfähig ist, operieren viele Autoren mit einem «intrinsic Wert» oder dem «eigenen Gut» von Lebewesen. Die diesen Konzepten zugrunde liegende Naturteleologie sind Humes Kritik am Sein-Sollens-Fehlschluss sowie dem Vorwurf einer unkritischen Naturmetaphysik ausgesetzt. Mit Hilfe von Kants kritischer Philosophie wird Menschenwürde vor allem als ein begründungstheoretischer Begriff interpretiert, der die prinzipielle Fähigkeit und Pflicht des Menschen zur moralischen Verantwortungsübernahme reflektiert und somit überhaupt erst moralische Adressaten für tierethische Appelle etabliert.

## Résumé

### Pourquoi faire la distinction? Comment peut-on appliquer le concept de dignité à l'éthique animale?

Un nouveau concept juridique – celui de «Würde der Kreatur», c'est-à-dire de «dignité des créatures» – a été introduit le 17 mai 1992 dans la Constitution suisse. Depuis lors, un débat s'est ouvert sur l'origine théologique du concept ainsi que sur sa signification et son rapport avec la dignité humaine («Würde des Menschen»). Au centre du débat se trouve la question de savoir si le terme «dignité» doit être compris de la même façon, qu'il soit associé à l'être humain ou bien aux animaux, ou bien au contraire comme ayant une signification différente selon le cas. Parmi les défenseurs des animaux, certains rejettent la notion de dignité hu-

maine car elle reflèterait une position «espéciste». D'autres cherchent à appliquer le terme de dignité aux animaux pour signifier que les animaux méritent un respect moral. Le multilinguisme en Suisse contribue à la complexité du débat.

Cet article vise à reconstruire la signification théologique créationnelle de la notion de «Würde der Kreatur» d'après la doctrine de la «bonté de la création» (tradition de la *bonitas*), qui ne doit pas être confondue avec la signification de la dignité qui est un attribut spécifiquement humain tant dans la tradition biblique de l'«image de Dieu» que dans la philosophie cicéronienne (tradition de la *dignitas*). Etant donné que l'idée d'une bonté créationnelle n'est pas universellement acceptée en raison de ses racines religieuses, certains auteurs préfèrent faire appel à l'idée d'une «valeur intrinsèque» ou du «bien propre» des animaux. Ce concept repose implicitement sur une vision téléologique de la nature et se heurte à l'objection de Hume selon laquelle il est illicite de déduire le «devoir être» de l'«être». En outre, il serait fondé sur une métaphysique non critique de la nature. En ayant recours à la philosophie critique de Kant, il est possible d'interpréter la notion de dignité humaine comme un concept fondateur qui reflète la capacité et l'obligation de l'homme à porter une responsabilité morale. C'est par ce moyen qu'elle peut servir de point de départ pour répondre aux exigences de l'éthique animale.

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