

Aniceto Masferrer  
Emilio García-Sánchez *Editors*

# Human Dignity of the Vulnerable in the Age of Rights

Interdisciplinary Perspectives

# **Ius Gentium: Comparative Perspectives on Law and Justice**

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Aniceto Masferrer • Emilio García-Sánchez  
Editors

# Human Dignity of the Vulnerable in the Age of Rights

Interdisciplinary Perspectives



Springer

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# Preface and Acknowledgements

This volume is devoted to exploring a subject which, on the surface, might appear to be just a trending topic. In fact, it is much more than a trend. It relates to an ancient, permanent issue which directly connects with people's life and basic needs: the recognition and protection of individuals' dignity, in particular the inherent worthiness of the most vulnerable human beings. The content of this book is described well enough by its title "Human Dignity of the Vulnerable in the Age of Rights." Certainly, we do not claim that only the human dignity of vulnerable people should be recognized and protected. We rather argue that, since vulnerability is part of the human condition, human vulnerability is not at odds with human dignity. To put it simply, human dignity is compatible with vulnerability.

A concept of human dignity which discards or denies the dignity of the vulnerable and weak is at odds with the real human condition. Even those individuals who might seem more skilled and talented are fragile, vulnerable, and limited. We need to realize that human condition is not limitless. It is crucial to rediscover a sense of moderation regarding ourselves and a sense of reality concerning our own nature. Some lines of thought take the opposite view. It is sometimes argued that humankind is – or is called to be – powerful and that the time will come when there will be no vulnerability, no fragility, and no limits at all. Human beings will become like God (or what believers might think God to be). This perspective rejects human vulnerability as an intrinsic evil. Those who are frail or weak and who are not autonomous or not able to behave for themselves do not possess dignity. In this volume, it is claimed that vulnerability is an inherent part of human condition, and because human dignity belongs to all individuals, laws are called to recognize and protect the rights of all of them, particularly of those who might appear to be more vulnerable and fragile.

This book is the result of a research project which started in 2012. From its very beginning, we envisaged the convenience of inviting a group of distinguished scholars who might contribute to such an important subject from an interdisciplinary perspective (philosophy including ethics; law including international law, constitutional law, legal philosophy, legal theory, and legal history; political philosophy and medicine). That was our goal and we think we achieved it. Even more, we dare to

say that the contributors to this volume went far beyond our original expectations. The merit of this book is due to them, not to us. The only merit we may fairly deserve is to have contacted them and persuaded them to embark in this project. We are grateful to all of them for their generous cooperation and academic excellence. We also thank the *Institute for Social, Political and Legal Studies* (Valencia) for its support in sponsoring part of this project. We also wish to express our gratitude to Mortimer Sellers and James Maxeiner, the editors of the series “*Ius Gentium: Comparative Perspectives on Law and Justice*,” for agreeing to publish this book in this prestigious Springer’s collection, and to Neil Olivier and Diana Nijenhuijzen, for their generous availability and assistance.

Valencia, Spain  
6 August 2015

Aniceto Masferrer  
Emilio García-Sánchez

# Contents

<b>1</b>	<b>Vulnerability and Human Dignity in the Age of Rights .....</b>	<b>1</b>
	Aniceto MASFERRER and Emilio García-Sánchez	
<b>Part I Human Dignity of the Vulnerable:</b>		
<b>Ethical and Anthropological Perspectives</b>		
<b>2</b>	<b>Vulnerability as a Part of Human Nature.....</b>	<b>29</b>
	Alfredo Marcos	
<b>3</b>	<b>Ethics of Vulnerability .....</b>	<b>45</b>
	Adela Cortina and Jesús Conill	
<b>4</b>	<b>Vulnerable: To Be Between Life and Death .....</b>	<b>63</b>
	Aquilino Cayuela	
<b>5</b>	<b>The Vulnerability of Life in the Philosophy of Hans Jonas.....</b>	<b>81</b>
	Paolo Becchi and Roberto Franzini Tibaldeo	
<b>Part II Human Dignity of the Vulnerable:</b>		
<b>Biomedical and Sociological Perspectives</b>		
<b>6</b>	<b>Biotechnologies Inside the Self: New Challenges in Clinical Ontology .....</b>	<b>123</b>
	Luis E. Echarte	
<b>7</b>	<b>Paradoxes of Authenticity: A Neuroscientific Approach to Personal Identity .....</b>	<b>141</b>
	Luis E. Echarte	
<b>8</b>	<b>Vulnerability at the End of Life: A Medical Perspective.....</b>	<b>167</b>
	Joaquim Bosch-Barrera and Juan Vidal Bota	
<b>9</b>	<b>Cosmetic Vulnerability: The New Face of Human Frailty .....</b>	<b>189</b>
	Emilio García-Sánchez	

**Part III Human Dignity of the Vulnerable in the Age of Rights:  
Historical, Legal Philosophical and Political Perspectives**

**10** **Taking Human Dignity More Humanely** ..... 221  
Aniceto MASFERRER

**11** **Is Vulnerability the Foundation of Human Rights?** ..... 257  
Roberto ANDORNO

**12** **The Fragility of the Human Being and the ‘Right’  
to Die: Biojuridical Considerations** ..... 273  
Claudio SARTEA

**13** **Taking Vulnerability Seriously: What Does  
It Change for Bioethics and Politics?** ..... 293  
Corine PELLUCHON

**14** **The Principle of Respect for Human Vulnerability  
and Assisted Reproductive Technologies** ..... 313  
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# Chapter 1

## Vulnerability and Human Dignity in the Age of Rights

**Aniceto Masferrer and Emilio García-Sánchez**

**Abstract** The chapter emphasizes the fragility of human condition and the need for political powers and laws that pursue the protection of all individuals.

Part I points out the need for ‘the recognition of human vulnerability as a condition for the respect of human dignity’. Precariousness and frailty are constitutive features of human life. Every individual has always been characterized by dependency, by weakness... and by inexorable death. It’s the human condition, the history of our race and actually the only way of belonging to it. In a postmodern culture that exaggerates the value of aesthetics and welfare, in which the endeavour to exalt perfection over imperfection is present, the chapter suggests opening our eyes to a simple and authentic truth: human nature is fragile. It has always been defined by one characteristic: limitation, finitude.

Part II (‘Law and human rights for the inherent human dignity’) approaches the matter from a constitutional law perspective. To put it simply, it argues that legal systems should aim to ensure respect for the basic rights of individuals, not because they are intelligent or particularly skilled or talented, but just because of their human condition or, in other words, because of their natural dignity. All individuals are vulnerable, but some individuals are more vulnerable than others. If laws did not recognize and respect the natural dignity of all individuals in equal terms, these would be gravely damaged, particularly the most vulnerable ones. Laws, states and international organizations would be delegitimized, and societies would collapse. The chapter describes how international human rights instruments have emphasized the close relationship between human rights and human dignity, and more particularly, to which extent have explicitly recognized that human rights derive from the inherent dignity of the human person.

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Part III ('Taking vulnerability, human dignity and human rights more seriously') highlights that this volume aims to deepen our understanding of the relationship between vulnerability, human dignity and human rights. This explains why this volume analyses the human dignity of the vulnerable from different perspectives (I. ethical and anthropological; II. medical and sociological; and III. historical, legal philosophical and political).

## 1.1 The Recognition of Vulnerability as a Condition for the Respect of Human Dignity

Vulnerable human beings. That's what we are. Precariousness and frailty are constitutive features of human life. Every individual has always been characterized by dependency, by weakness... and by inexorable death. It's the human condition, the history of our race and actually the only way of belonging to it. Since the appearance of humankind, we have always been one and the same species, of one and the same nature, the same kind of beings. It's true: earth, creatures, animals ... As said by *Rousseau*: "men are not naturally kings, or lords, or courtiers, or rich men. All are born naked and poor, all are subject to the miseries of life, to sorrows, ills, needs, and pains of every kind; finally, all are condemned to death."<sup>1</sup> This is the most accurate portrayal of the members of the human family, a depiction that has passed through history since its origin.

All human beings begin their journey along paths of dependence and make their way towards independence, and never vice versa. Their roads must cross over human bridges that allow each individual to achieve a certain degree of autonomy, but such autonomy is never absolute. As vouched by *MacIntyre*, the key to independence is the recognition of dependence; we're dependent because we're vulnerable<sup>2</sup>; and we're vulnerable because we're human.

In a postmodern culture that exaggerates the value of aesthetics and welfare, in which the endeavour to exalt perfection over imperfection is present, we must open our eyes to a simple and authentic truth: human nature is fragile. It has always been defined by one characteristic: limitation, finitude. We're the scum of the earth even though we sometimes have a celestial – and human – wish of perfection, of improvement, of invulnerability... of infinity. The biography – and the genetic history of each individual – is entwined with episodes of fragility and of strength, sometimes with an excess of fragility that becomes too much to handle but that nevertheless reminds us of our condition. Physical invulnerability is not possible in our current

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<sup>1</sup>J.J. Rousseau, *Émile ou de L'éducation*, in *Oeuvres complètes* IV (Dijon: Editions Gallimard, 1980), Libro IV, pp. 503–504.

<sup>2</sup>A. MacIntyre, *Animales racionales y dependientes. Por qué los humanos necesitamos las virtudes* (Madrid: Paidos, 2001), pp.102–103.

universe, unless we stop being human and become trans-humans or *cyborgs*.<sup>3</sup> Without a doubt, it wouldn't be human, nor decent, not to use all of the resources in our power to cure disease, to alleviate suffering and to improve people's health. However, the desires of invulnerability and suffering are both inhuman or *non-human*.

*MacIntyre* claims that all individuals have a certain rank, a place on the ladder of disability, which they climb up or down during their existence.<sup>4</sup> The 'normal' human is not defined by perfect and independent self-governing states, on the contrary, it is characterized by temporal states of illness and dependency. Some diseased manage to cure themselves, others live healthy temporarily, a large amount become incurable, and ultimately they all die.

When the human nature unfolds itself and opens its eyes to existence, it perceives that it is unfinished and defenceless. It notices its incapacity, an existential uselessness, even before its own rationality, which forces it towards the aid of *relationality*.<sup>5</sup> To start living and to later survive, every man requires help and care of others like him – also relational, dialogical and vulnerable beings. The key to existence and to the deep meaning of life is coexistence, to live with others, giving oneself to others.<sup>6</sup> And as assured by *Ortega y Gasset*, one can only develop life by coexisting with the world and with others,<sup>7</sup> with whom he establishes a relationship even though it cannot always be symmetrically reciprocal. Man is the only being capable of putting himself in someone else's shoes, of comprehending their vulnerability and being compassionate. That's why he can be responsible for others like him, of the same condition. The human race possesses a natural instinct of duty that compels him to protect the weak; in fact, as said by *Jonas*, the essential responsibility of parental care is the first type of accountability that one feels.<sup>8</sup>

The manifestation of human weakness of every degree offers an opportunity to test the depth and quality of our respect towards people. Essentially, morality and the civil development of a society and of the State are measured specifically by the protection, respect, and care it shows towards its most weak and vulnerable citizens. The more vulnerable a man is perceived from a factual standpoint, the more inviolable is he seen from an ethical point of view.<sup>9</sup> Unjustly, it is on them – the weakest ones – that not only the suspicion but also the sentence of their shortage of dignity as human beings, falls. Allowing the inclusion of all of them without exception, and facilitating the resources so that the most dependent individuals achieve their integral development is what a State that wants to call itself civilized must configure.

<sup>3</sup> K. Warwick, *I, Cyborg* (University of Illinois Press, 2004).

<sup>4</sup> A. MacIntyre, *Animales racionales y dependientes. Por qué los humanos necesitamos las virtudes* (Madrid: Paidos, 2001), pp. 91–92.

<sup>5</sup> M. Buber, *Yo y tú* (Madrid: Caparrós, 1993), p. 9.

<sup>6</sup> L. Polo, *Antropología trascendental* (Pamplona: EUNSA, 1999), pp. 31–32.

<sup>7</sup> J. Ortega y Gasset, *¿Qué es filosofía?* Lección X. Obras Completas, vol. VII (Alianza Editorial).

<sup>8</sup> H. Jonas, *El principio de responsabilidad* (Barcelona: Herder 1995), pp. 172–173.

<sup>9</sup> J. Ballesteros & E. Fernández (eds.), *Biotecnología y Posthumanismo* (Cizur: Thomson-Aranzadi, 2007), p. 18.

Furthermore, ultimately, the recognition of the dignity of all human lives – regardless of their qualities – is the keystone of social justice. If there is indeed a crucial principal that must be prioritized by every political government, a basic presumption of inalienable citizenship, it would be equality. An equality that does not eliminate diversity, the differences between human beings. Because what is humanely most common are the differences, at genetic, chromosomal, physical, mental, aesthetic level, etc.... Differences that do not disfigure the human identity. It is a good and immeasurable richness that, even though there are differences, every human being possesses the privilege of being unique and unrepeatable.

The natural dignity is presented as an ethical meta-principle, an intrinsic property which can only be recognized in those who possess human nature. As Kant argued, being a person – and every human being is person – belongs to *the kingdom of ends* and it involves having an internal value (*Wert innere*) called dignity (*Würde*) which cannot be supplanted by any ‘equivalent’. Therefore, being a person, a human being, is always to be worthy. All human lives are equally worthy and deserving of respect because, as *Kant* said, each one constitutes an end in him/herself and is not merely an instrument.<sup>10</sup> However, those other lives that show disability, weakness or even complete absence of rationality must not be excluded from the protection of this ethical imperative. They should also be seen as an end and, therefore, treated with absolute dignity.

Clearly, renouncing vulnerability individually and denying it publicly as a human propriety inexorably would leave human life physically and legally unprotected. Deciding to remove the dignity of those individuals diagnosed as ill or of those that will find themselves in phases of critical dependence, of physical disability, of cognitive deterioration, of absence of beauty... implicitly supposes the extension of such indignity to the entire humanity. Human dignity would be restricted to the limits and conditions of utilitarianism and of hedonism, where only few would survive and create a social select club. In fact, today, in certain socio-political fields – as well as sanitarian ones – it is disputed whether it is ‘human’ to live a diseased life that does not guarantee optimal levels of autonomous freedom, quality of life, absence of pain, beauty and strength. There are new codes and regulations that dare define what human dignity is and try to impose the paramount conditions or requirements which are compatibility with human life. But if it were only compatible with life to live a healthy existence in an undefined way, and if that condition were chosen as a privileged indicator of vitality and dignity, what would happen with the extensive panorama of vulnerable human lives that suffer and that will suffer diseases, some of them irreversible and terminal? If one of the protagonists that has travelled through human history has been fragility, then why is there so much *unbearableness* towards something so genuinely human? The rebellion against this fragility becomes a threat against those most vulnerable and weak, and, ultimately, against the entire society.

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<sup>10</sup>I. Kant., *Fundamentación de la metafísica de las costumbres* (Madrid, Tecnos, 2005), 119–125, Ak. IV, 430–435.

No doubt the preimplantation genetic diagnosis and prenatal diagnosis can help prevent disease and to start earlier with genetic and intrauterine therapies. But ethics claim arises when these biomedical technologies are used clearly with eugenic purposes. That is, when they seek early diagnosis diseases – some of them still incurable today – for the only purpose of excluding those embryos and fetuses sick, preventing them from being born. The same applies to research on embryonic stem cells. Research to cure diseases is certainly a great biomedical progress, it is absolutely necessary for human health. But the illnesses are not cured eliminating the sick and experimenting with human embryos involving their death. In this sense, the medical ethics should protect and stand up for these vulnerable humans.

On the border of an unquestionable and desired improvement of human health, the diffusion of future enhancing biotechnologies, *enhancement*, that pursue in their most radical and eugenic<sup>11</sup> way the replacement of the true man – the suffering<sup>12</sup> *homo patiens* – with a strange, perfect, self-incomprehensible<sup>13</sup> and painless, invulnerable being: the *machina sapiens*, which threatens human beings, especially those who are most vulnerable.

## 1.2 Law and Human Rights for the Inherent Human Dignity

The legal system aims to ensure respect for the basic rights of individuals, not because they are intelligent or particularly skilled or talented, but just because of their human condition or, in other words, because of their natural dignity. All individuals are vulnerable, but some individuals are more vulnerable than others. If laws did not recognize and respect the natural dignity of all individuals in equal terms, these would be gravely damaged, particularly the most vulnerable ones. Laws, states and international organizations would be delegitimized, and societies would collapse.

The consequences of the denial and violation of the natural dignity in the World War II were terrible. The revival of the concept of human dignity since 1945 pointed out what humanity had forgotten and marked the path we should follow if we want to build peaceful and just societies. After World War II, human rights became the *lingua franca* of international relations. Both international legal instruments and national constitutions established human rights as the basis of legal systems. In doing so, legal texts cited human dignity explicitly as the source and foundation of human rights.

International and constitutional law scholars are the most fervent preachers of human rights and human dignity. They spread the gospel of human rights, but are

<sup>11</sup> J. Savulescu – N. Bostrom (eds.), *Human Enhancement* (Oxford, Oxford University Press, 2009).

<sup>12</sup> V. Frankl, *El hombre doliente*, Barcelona, Herder, 1987.

<sup>13</sup> J. Habermas, *El futuro de la naturaleza humana. ¿hacia una eugenesia liberal?* (Barcelona, Paidós, 2002), p. 62.

fully aware that views may vary considerably as to what these expressions mean.<sup>14</sup> It is undeniable that human rights “do not come out of the blue.”<sup>15</sup> History has played an important role in the formal recognition of human rights in the international scene. Human rights cannot be detached from their historical development.<sup>16</sup> In fact, the emergence of ‘human rights’ after World War II (WW II), of the ‘fundamental rights’ in the late eighteenth century, and of the ‘natural rights’ in the sixteenth century, cannot be explained without understanding the historical circumstances in which rights flourished. This does not mean, however that human rights are a mere historical or cultural construction. We do not think – as some do –, that “people have neither dignity nor rights ‘naturally’, but dignity and rights are meaningful constructs that are cultural and historical creations of man. It is exactly in these constructs that human beings have exceeded what they ‘naturally’ ‘are.’ ‘Culture’ is understood here as refinement of nature or semi-naturally predetermined.”<sup>17</sup> Historical or cultural development may be needed to go deeper in the understanding of the dignity of all individuals, but the twentieth-century history demonstrated that natural human dignity should not depend on just historical or cultural constructions.

In many international documents as well as philosophical theories, “human dignity is considered to be a source of human rights.”<sup>18</sup> There is no need to list those instruments here to show what can be easily observed by the idlest lecture of them.<sup>19</sup> It is important to note, however, how international human rights instruments have emphasized the close relationship between human rights and human dignity, and

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<sup>14</sup> The most recent – and exhaustive – work on this notion can be seen in Aharon Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge: Cambridge University Press, 2015).

<sup>15</sup> Christian Tomuschat, *Human Rights. Between Idealism and Realism* (Oxford: Oxford University Press, 2008), p. 1.

<sup>16</sup> On the history of human rights, see Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010); Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2008).

<sup>17</sup> Georg Lohmann, “How to protect ‘Human Nature’ – By Human Dignity, Human Rights or with ‘species-Ethics’ Argumentations?”, *Human Rights and Human Nature* (Marion Alber, Thomas Hoffmann, Jörn Reinhardt, eds.), Springer (Ius Gentium: Comparative Perspectives on Law and Justice Volume 35), 2014, p. 162.

<sup>18</sup> Corinna Mieth, “The Double Foundation of Human Rights in Human Nature”, *Human Rights and Human Nature* (Marion Alber, Thomas Hoffmann, Jörn Reinhardt, eds.), Springer (Ius Gentium: Comparative Perspectives on Law and Justice Volume 35), 2014, pp. 11–22, p. 11; on this matter, see also James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); Martha C. Nussbaum, *Frontiers of Justice: Disability, nationality, species membership* (Cambridge, MA: Harvard University Press, 2006).

<sup>19</sup> Barak, *Human Dignity: The Constitutional Value and the Constitutional Right*, Chap. 3; see also José Pablo Alzina de Aguilar, “Human dignity according to international instruments on human rights”, *Revista Electrónica de Estudios Internacionales* 22 (2011), pp. 1–24 (available at <http://www.reei.org/index.php/revista/num22/notas/human-dignity-according-to-international-instruments-on-human-rights>); Roberto Andorno, “Human Dignity and Human Rights”, *Handbook of Global Bioethics* (H.A.M.J. ten Have, B. Gordijn, eds.) (Dordrecht: Springer, 2014), pp. 45–57, particularly pp. 49–50.

more particularly, to which extent have explicitly recognized that human rights “derive from the inherent dignity of the human person.”<sup>20</sup>

It should not be overlooked the relevance of the explicit reference to ‘inherent’ character of human dignity. While the majority of the human rights international instruments refer to ‘human dignity’, some of them added the expression ‘inherent’. The express addition of this adjective is very meaningful. As it is well known, ‘inherent’ can be defined as “a **basic** or **essential feature** that **gives** something its **character**,”<sup>21</sup> “a **natural** or **basic part** of something,”<sup>22</sup> “existing in something as a **permanent**, essential, or characteristic **attribute**.”<sup>23</sup> In other words, “a quality that is inherent in something is a natural part of it and cannot be separated from it.”<sup>24</sup> To put it simply, characterizing the human dignity as ‘inherent’ means that individuals deserve to be respected for what they are (natural dignity), not for their behaviour or capabilities (moral dignity). Natural dignity is common to all individuals and this is the kind of human dignity that may be considered as the source of human rights.<sup>25</sup>

As said, the first reference to the ‘inherent’ character of human dignity in international documents can be found, after the II World War, in the Preamble of the *Universal Declaration of Human Rights* (1948):

*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world [...]*

Some years later, in 1966, the Preambles of the *International Covenant on Civil and Political Rights* (ICCP) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognized the inherent character of human dignity:

*[...] recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*

In addition, Article 10 of ICCP referred to the ‘inherent dignity of human person’,<sup>26</sup> and identical expression was employed in 1984 by the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which stated that human rights “derive from the inherent dignity of human person.”<sup>27</sup>

Similarly, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (1990) proclaimed that *migrant*

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<sup>20</sup>International Covenants on Civil and Political, and on Economic, Social and Cultural Rights (1966), Preambles.

<sup>21</sup>See <http://www.macmillandictionary.com/dictionary/british/inherent> (accessed 30 July 2015).

<sup>22</sup>See <http://dictionary.cambridge.org/dictionary/british/inherent> (accessed 30 July 2015).

<sup>23</sup>See <http://www.oxforddictionaries.com/es/definicion/ingles/inherent> (accessed 30 July 2015).

<sup>24</sup>See <http://www.ldoceonline.com/dictionary/inherent> (accessed 30 July 2015).

<sup>25</sup>See fn. n. 18.

<sup>26</sup>Article 10 of ICCP: *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person.*

<sup>27</sup>Two years after, in 1986, the General Assembly passed another text as the guidelines for new conventions on human rights. The text affirmed that human rights “derive from the inherent dignity and worth of human person.”

*workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity* (Art. 17.1).

The Vienna World Conference on Human Rights (1993) drafted the Vienna Declaration and Program of Action (July 12, 2003), with the following Preamble:

*All human rights derive from the dignity and worth inherent in the human person.*

The Preamble of the *Convention on the Rights of Persons with Disabilities* (2007), states that any discrimination against any person on the basis of disability would violate the “inherent dignity and worth of the human being.” Moreover, Article 3a provides the “respect of inherent dignity” as one of the basic principles of the convention.

UNESCO has issued several declarations concerning human rights, including declarations on bioethics, in which human dignity is considered as the basic principle. In this vein, Article 1 of the *Universal Declaration on the Human Genome and Human Rights* provides that “the human genome underlines the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity.”

There are also regional texts that mention the inherent character of human dignity. In Europe, in the framework of the *amendments to the European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), thanks to which the death penalty was abolished (2002), the Preamble of the *amendments* state that the derogation of death penalty is essential “for the full recognition of the inherent dignity of all human beings.”<sup>28</sup> In 2009 the Council of the European Union issued the *Guidelines Human Rights and International Humanitarian Law*, declaring that the “Promotion and protection of the rights of the child is a priority of the EU’s human rights policy. The European Union (EU) considers it of critical importance to address the issue of children and armed conflict not only because children are suffering in the present and will shape the future but because they have inherent and inalienable rights, as set out in the CRC, its Optional Protocols and other international and regional human rights instruments.”<sup>29</sup>

In America, Article 2 of the *American Convention on Human Rights* (adopted in 1969 by the Organization of American States –OAS–, but it entered into force in 1978), declares that “all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” The Preamble of the *International Convention on the Prevention, Punishment and Eradication of Violence against Women* (1994), states that every woman has the “rights to have the inherent dignity of her person respected and her family protected.”

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<sup>28</sup> *Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances* (Vilnius, 3 May 2002), Preamble.

<sup>29</sup> Emphasis is ours. Some rights are inherent to individuals because of their human condition, that is, for they possess a natural human dignity.

In Africa, the *African Charter on Human and Peoples Rights* (1986; drafted by the *Organization of African Unity* –OAU–), refers to the inherent character of human dignity in two articles. Article 5 provides that “every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.” In Article 3 of one of the protocols which added rights to the Charter, more specifically, in one of the protocols dealing with the rights of women in Africa, states that “every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.”

The adjective ‘inherent’ connected to human dignity has been used neither by the *Arabic League* nor by the *Organization of Islamic Cooperation*.

International documents contained “different conceptions of human rights”<sup>30</sup> because there are different conceptions of human dignity and human nature.<sup>31</sup> Therefore, the problem of ambiguity and subjectivity in human rights only “partly results from taking the concepts of international human rights instruments for granted.”<sup>32</sup>

If human nature is denied, there is no room for a natural human dignity or for an inherent human dignity. For those who defend this position, “man simply is what he does (...), there is no human nature at all, only human behavior.”<sup>33</sup> Human dignity is for them a mere historical and cultural construction. If there is no natural equality at all among individuals, the equal dignity needs to be built by the political power, that is, by the state through laws. There are no pre-political laws and rights. The consequences of this line of thought is that political power has only the limits he wants to impose to himself, and the rights of individuals are neither recognized nor granted, but totally designed and created by the state.<sup>34</sup> The problem is that enacting

<sup>30</sup>Harun Tepe, “Rethinking Human Nature as a Basis for Human Rights”, *Human Rights and Human Nature* (Marion Alber, Thomas Hoffmann, Jörn Reinhardt, eds.), Springer (Ius Gentium: Comparative Perspectives on Law and Justice Volume 35), 2014, p. 58.

<sup>31</sup>On this matter, see *Human Rights and Human Nature* (Marion Alber, Thomas Hoffmann, Jörn Reinhardt, eds.), Springer (Ius Gentium: Comparative Perspectives on Law and Justice Volume 35), 2014.

<sup>32</sup>Tepe, “Rethinking Human Nature as a Basis for Human Rights”, p. 57.

<sup>33</sup>J. Mitchell, “Why study human nature”, *Human nature: Theories, conjectures, and descriptions* (J. Mitchell, ed.), Metuchen: The Scarecrow Press Inc., 1972, pp. 23–24: “There are, of course, no universally accepted conclusions concerning human nature. Many scholars, especially since John Locke, are of the impression the term ‘human nature’ is a genuine misnomer, and, in fact, there is no such reality at all. Like other fictional contrivances, ‘human nature’ is but a reification, having no corresponding reality in the material world (...). Most modern theory suggests that man simply is what he does. Some are tame, others wild. Some sharing, others hoarding; some monogamous, others polygamous (...). You see, so the argument goes, there is no human nature at all, only human behavior. The possibilities are infinite as to the behavior a given man, or given society, may embark upon. This point of view, which I call the man-as-neutral concept of human nature, is probably the most widely accepted posture concerning human nature among twentieth century intellectual community.”

<sup>34</sup>On this matter, see A. Masferrer, “The fragility of fundamental rights in the origins of modern constitutionalism: its negative impact in protecting human rights in the ‘war on terror’ era,” *Counter-Terrorism, Human Rights and the Rule of Law*, ed. A. Masferrer and C. Walker (London: Edward Elgar Publishing, 2013), pp. 37–60 (defending that fundamental rights have a pre-political

laws ignoring the reality of human condition –with its basic needs, fragilities and vulnerabilities– makes individuals more fragile and vulnerable. As Heyd pointed out, “...if we do not have a concept of human nature, can we speak of rights of man or human rights which has to rest on human nature?”<sup>35</sup> As Griffin affirmed, once the metaphysical and epistemological background that natural rights “provided is abandoned, as it was in the course of the Enlightenment, what is left? Is enough left?”<sup>36</sup>

The denial of transcendence makes it difficult to find a consistent foundation, and to give a meaningful definition, of human dignity. Postmodernism started declaring the death of God in order to free individuals from moral, religious and irrational constraints,<sup>37</sup> and ended up announcing the death of man.<sup>38</sup> As has been rightly said, “Foucault announces the death of man during the 1960s and sees no other way than to destroy the anthropological ‘quadrilateral’ in its very foundation. (...), Foucault speaks of death of man as a necessary result of the death of God. Man and God belong one another, the death of the second is synonymous with the disappearance of the first.”<sup>39</sup>

We do not consider feasible the death of man or the destruction of humanity, but do we think necessary the express recognition of the natural human dignity, if we want to build a fair and peaceful, global society, whose laws respect and protect all individuals, and particularly the most vulnerable ones. For that to be possible we need to change the current model, which, “with its emphasis on success and self-reliance, does not appear to favour an investment in efforts to help the slow, the weak or the less talented to find opportunities in life.”<sup>40</sup>

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character, in the sense that their recognition and protection is what justifies the existence of the political order itself).

<sup>35</sup> D. Heyd, “Human Nature: An oxymoron”, *Journal of Medicine and Philosophy* 28(2), p. 168.

<sup>36</sup> J. Griffin, *On human rights*, Oxford University Press, 2008, p. 14: “Natural law began as part of a teleological metaphysics capable of supporting strong interpretations of how morality is rooted in nature, and it ended up at the close of the eighteenth century in something approaching vacuity. It is not the strong, non-vacuous conceptions of natural law do not have their own considerable problems. Still, many scholastic conceptions of natural law gave us at least *something* to go on in deciding what natural rights there are. Once the metaphysical and epistemological background that they provided is abandoned, as it was in the course of the Enlightenment, what is left? Is enough left?”

<sup>37</sup> Nietzsche, *The Gay Science* (1882), Section 125 (trans. by Walter Kaufmann): “God is dead. God remains dead. And we have killed him. How shall we comfort ourselves, the murderers of all murderers? What was holiest and mightiest of all that the world has yet owned has bled to death under our knives: who will wipe this blood off us? What water is there for us to clean ourselves? What festivals of atonement, what sacred games shall we have to invent? Is not the greatness of this deed too great for us? Must we ourselves not become gods simply to appear worthy of it?”

<sup>38</sup> M. Foucault, *The order of things. An archaeology of the human sciences*, New York: Vintage Books, 1994, pp. 341–342.

<sup>39</sup> Tepe, “Rethinking Human Nature as a Basis for Human Rights”, p. 64.

<sup>40</sup> Pope Francis, Ap. Exhort. *Evangelii gaudium* (24 November 2013), n. 209.

### 1.3 Taking Vulnerability, Human Dignity and Human Rights More Seriously

This volume aims to deepen our understanding of the relationship between vulnerability, human dignity and human rights. In doing so, it analyses the human dignity of the vulnerable from different perspectives. This explains the division of the book into three parts. Part I contains an ethical and anthropological approach. Part II deals with the medical and sociological perspectives. Part III focuses on the subject from historical, legal philosophical and political perspectives.

Part I ('Human Dignity of the Vulnerable: Ethical and Anthropological Perspectives') starts with Chap. 2 ('*Vulnerability as a Part of Human Nature*'), written by Alfredo Marcos, who deals with the vulnerability of human persons from a philosophical point of view. The author defends the thesis that we the humans are vulnerable by nature, or said in another way, that our vulnerability is due to our own human nature. As a consequence, one is not less human for being more vulnerable. All persons, whether they are more or less vulnerable, possess equal dignity.

In order to establish this direct linkage between vulnerability and human nature, the chapter discusses, first, the concept of human nature itself, identifying the most common positions in this debate, which we can summarize through three descriptions: negation, radical naturalization and artificialization without criteria. Some authors outright deny the existence of human nature. Others reduce it to a pure animal condition. Still others —trans and post-humanists— advocate for a deep artificial intervention in human beings. The author raises a criticism to these positions and compares them with the Aristotelian idea of human nature. According to this Aristotelian position: (i) There is indeed a human nature; (ii) it includes our animal condition, this is what makes us vulnerable; so, vulnerability is part of human nature; (iii) however, human nature is much more than simple animality; we are also social beings and rational by nature, endowed with self-awareness and some degree of freedom. These three aspects of human nature —animal, social and rational— are found integrated into the unity of the person. Hence, we can mitigate our vulnerability thanks to our social interdependence and our condition as a rational being.

Next, the author draws the consequences that follow from these ideas in relation to human vulnerability. He argues that vulnerability must be recognized—which itself results in important new knowledge—and at the same time mitigated, showing, in addition, that other alternative strategies turn out to be less defensible in theory and practice. Simple resignation in the face of vulnerability is not acceptable, given the harm that it causes to those who are most vulnerable. In turn, the utopian attempt to reduce vulnerability to zero is also unacceptable, since it seeks to achieve its ends via a supposed overcoming of human nature itself. This latter proposal involves an effort which has lost all sense of direction, an effort that is of a eugenic stripe, and which could end up by prejudicing those persons who are most vulnerable. Actually, the quest for the invulnerable superhuman has been often accompanied by undervaluing those who are most vulnerable, who have been reduced to

social invisibility and exclusion, who have seen their condition as persons be denied, or, as has occurred in certain cases, they have been directly eliminated. The correct way to mitigate human vulnerability –concludes the author– is not the overcoming of the human, but rather a deepening in the human, that is, the appropriate integration of all the aspects proper to human nature.

In Chap. 3 ('Ethics of Vulnerability'), Adela Cortina and Jesús Conill show that vulnerability is an unavoidable dimension of all living beings, and therefore, of human beings, too. It is an ontological and biological dimension. All human beings are subject to the natural and social lottery, which also makes them passive subjects of their lives, and not only agents of them. This occurs throughout life, but especially during childhood, old age, in sickness and situations caused by injustice, such as poverty, hunger, refugee camps, the suffering of immigrants, etc.

However, the history of Western ethics is marked by the eagerness to exclude vulnerability from the projects of good life. The ideal of self-sufficiency is the ideal of the wise, from Cynics, Epicureans and Stoics; and later on Kantian autonomy, Nietzsche's will of power or Sen's agency. There last three examples are different formulations of the eagerness to be acting subjects of one's own life. Cortina and Conill describe how a considerable number of authors today, such as Williams, Nagel, MacIntyre or Nussbaum, propose that vulnerability should come to the foreground of consideration, both in projects of good life and in projects of justice. In the projects of good life, it must appear as a dimension whose existence is unavoidable because dependence and contingency are a facticity. The development of virtues will thus be essential to reach happiness. But the issue becomes more difficult when establishing the foundation for the demands of justice. To answer the question, "Is any moral obligation deduced after verifying that all human beings are vulnerable?". It is necessary to go beyond the analysis of facticity and pose the question about the rational validity of the obligation to protect and empower vulnerable beings.

The authors analyse three relevant proposals of ethics that deal explicitly with the moral obligations towards vulnerable beings. Firstly, the ethics of care, which starts with Hyginus and counts on names such as Heidegger, Boff, and authors from the fields of neuroscience and evolutionary biology, such as Churchland, who consider that the propensity to care is an attitude that is contained within our biological humanity. A reference to the Earth Charter is essential, here. Secondly, the insufficiencies of the ethics of care lead us to analyse the ethics of responsibility, as proposed by Jonas, as well as by discourse ethics, in the versions of Apel and Habermas, underlining the differences that exist between them. However, the discourse ethics of Apel and Habermas is still insufficient to establish the foundation for the moral obligation of caring for vulnerable beings, and the chapter proposes a third ethics: the ethics of cordial reason, which is a warm version of discourse ethics.

In Chap. 4 ('Vulnerable: To Be between Life and Death'), Aquilino Cayuela focuses on the metaphysical aspects of vulnerability. All human being physically and existentially stands between life and death. This situation combines the three-dimensional human being: the existential pathos of 'being in time', where we are vulnerable; the biological body and the interiority; and the capacity of the human

subject. The conjunction of these three dimensions allows us to reach a deep ontological analysis of man and his life. Cayuela's research includes an analysis of the Greek concept of 'pathos' and the oversight of the 'vulnerability' in the history of Philosophy.

In developing this subject, the author divides the chapter in five sections: (1) To be between life and death, where the author proposes his thesis; (2) Path-Ethic, where he develops an analysis of the concept pathos; (3) Vulnerable, which contains a proposed definition of vulnerability; (4) Human all too much Human, where Aquilino Cayuela seeks an outcome of the initial proposals; and (5) Ex-istence, where the author develops a critique of contemporary ontological positions and, in particular, to the metaphysics of Sartre.

Cayuela's research demonstrates the importance of 'being between life and death' and 'being vulnerable' as a true and radical human essence. He also offers an upgrade of bioethics research on a path towards a 'Path-Ethics' and 'Bio-philosophy'.

In Chap. 5, entitled 'The Vulnerability of Life in the Philosophy of Hans Jonas', Paulo Becchi and Roberto Franzini Tibaldo analyse, as the title reflects, Jonas' thought on vulnerability. The authors show a deep and exhaustive knowledge of the German philosopher of Jewish origins, Hans Jonas (1903–1993). Authors' aim is to highlight the manifold relevance of the idea of vulnerability to Jonas' philosophy: ecological, biological, ethical and bioethical, metaphysical. Moreover, their aim is to understand his contribution to the present-day ethical and bioethical debate regarding issues, such as the ecological crisis, genetic manipulation, euthanasia, brain death and organ transplantation, exploitation of other living beings. In this vein, authors' thesis is twofold: first, to show that the notion of vulnerability can be understood as the *fil rouge* of Jonas' thinking; and second, to emphasize that the abovementioned ethical and bioethical issues can be understood precisely thanks to the idea of vulnerability, which provides valuable insight in order to tackle the related problems and promote care, caution, wisdom and responsibility.

The chapter begins with an analysis of Hans Jonas' most celebrated book, *Das Prinzip Verantwortung* (1979) (§ 2). Becchi and Franzini consider issues such as the present-day technological development, the ecological crisis and, in particular, Jonas' discovery of the vulnerability of nature and biosphere. Then their analysis moves backwards to the previous phase of Jonas' thinking, namely his 'philosophical biology' (*The Phenomenon of Life*, 1966), where vulnerability seems to characterize not only the menaced terrestrial biosphere, but the very essence of organic life (§ 3). This leads to further investigations into the metaphysical dimension of vulnerability that involves the very relationship between God and the Creation (§ 4). In the last section (§ 5), authors try to carry out an in-depth analysis of the issue from an ethical and bioethical perspective.

Becchi and Franzini's chapter shows how Jonas constantly reminds us, in the current era of triumphant rights, our duties: duties towards terminally-ill patients in the case of euthanasia, duties to comply with human dignity in the cases of experimentation with human subjects and organ transplantation, duties to comply with the image of man in the case of genetic and biological engineering, extension of life

span, and behaviour control, duties towards the future of humanity and terrestrial life. These duties highlight specific aspects of the overall duty towards the vulnerability of life as manifested chiefly through human existence and its uniqueness. Jonas insists on setting ethical constraints over technology and casts doubt upon those technological and biomedical interventions that threaten the future and integrity of the worldly adventures of vulnerability or endanger the sacrosanctity of human dignity. As for the reasons supporting these duties, Jonas to some extent subscribes to both the utilitarian and the deontological point of view. However, he also states that these doctrines are not enough, unless the manifold meaning of vulnerability is closely understood and explained both in theoretical terms, and in practical and motivational ones. And this is precisely what his enquiry endeavours to achieve.

The chapter clarifies Jonas' contribution to the following issues, which are related to the vulnerability and fragility of (human) life to technology and its overwhelming power:

1. *Ecological crisis*: Jonas' understanding of the critical vulnerability of nature is supported by a viewpoint which is *stricto sensu* neither anthropocentric nor biocentric, but rather reappraises arguments supported by both perspectives. According to Jonas, politics and economy ought to undergo a deep ecological turn. This means that responsibility ought to inspire individual and collective deeds, so that the integrity of animate nature (including animals) and the existence of future generations can be safeguarded.
2. *Extension of life span and behaviour control*: Jonas underlines that these practices are *per se* problematic since they provide humanity with the illusion of getting rid entirely of vulnerability itself.
3. *Genetic manipulation, biological engineering, and experimentation with human subjects*: apart from the possible arising of unforeseen and even undesired long term effects related to these interventions, this kind of manipulation highlights dangers related to an 'enhanced' view of humanity. The questions Jonas poses are: 'in what image' is the human being to be re-created or better created? And does the human being really need to be ameliorated or enhanced thanks to the employment of technology? Although Jonas makes reference to religion, his arguments against 'transhumanism' are independent from religious belief and are based on notions like human dignity, the integrity of the human being's essence, individual rights, and the protection of the most vulnerable.
4. Jonas underlines two problematic aspects related to *organ transplantation* from patients, who continue breathing with the help of a respirator but are in fact neurologically dead: the risk of fulfilling indiscriminate reification of the human being, if the only purpose is to maintain a bank of fresh organs to be eventually transplanted; the risk of authorising the physician to take advantage of the patient's vulnerability and utilize his or her body without restrictions.
5. *Euthanasia*: according to Jonas, any individual has the right to determine his or her own life, but this right can be integrally fulfilled by that individual alone. Euthanasia raises an ethical issue when other persons are involved in the deci-