Part II

Developments
Würde des Menschen: Restoring Human Dignity in Post-Nazi Germany

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I. A ‘Non-Interpreted Thesis’

The genesis of the German Basic Law’s human dignity article¹ has so far played a rather marginal role in the interpretation of this provision.² The numerous commentators have focused on the deeper philosophical or religious ‘roots’ of the concept.³ However, hardly anybody has considered the question what the ‘mothers and fathers of the Basic Law’,⁴ the 65 delegates from the State Parliaments assembled as Parliamentary Council in Bonn between September 1948 and May 1949,⁵ could have meant by the term ‘Würde des Menschen’.

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¹ Article 1, paragraph 1 of the Grundgesetz für die Bundesrepublik Deutschland, 23 May 1949, Bundesgesetzblatt I, 1 (German Basic Law) states: ‘Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.’ – ‘The dignity of man is inviolable. To respect and protect it is the duty of all state authority.’

² See also M O’Malley, ‘A Performative Definition of Human Dignity’ in N Knoepfler et al (eds), Facetten der Menschenwürde (Freiburg and Munich, Karl Alber Verlag, 2011) 75: ‘[t]he principle’s historical aspect is downplayed’.


⁴ BVerfGE (Entscheidungen des Bundesverfassungsgerichts) 103, 142, 158: ‘Mütter und Väter des Grundgesetzes’.

There might be several reasons for this: First and foremost, the German Federal Constitutional Court held already in one of its very first decisions that not the subjective notions of the framers but the ‘objectified will of the legislator’ or the ‘will of the law’ was crucial for the interpretation of legal provisions. Second, there was and there is still a widespread assumption that the records of the Parliamentary Council’s proceedings were unproductive with regard to the meaning of the legal term of ‘dignity of man’. Finally, these records were only partially published in 1949. The records of the proceedings of the ‘Committee dealing with Basic Issues’, where article 1 of the Basic Law was mainly and intensely discussed, were not published until 1993. Until then, one had to manage with a summary, written by three staff members of the Parliamentary Council and published in the first volume of the new series of the Yearbook for Public Law in 1951. This summary, entitled ‘History of Origins of the Provisions of the Basic Law’, is outstanding, and it is still a treasure chest for anyone who wants to learn more about the genesis of the Basic Law. However, it is not exhaustive. The seven pages about Article 1 contain only one clue to a possible positive understanding of the term ‘dignity of man’: It is the famous but ambiguous dictum of Theodor Heuss that human dignity was a ‘non-interpreted thesis’. This statement was often quoted and taken as evidence that the framers had deliberately chosen a term that was meant to


6 BVerfGE 1, 299, 312.
7 Deutscher Bundestag and Bundesarchiv (eds), Der Parlamentarische Rat 1948–1949. Akten und Protokolle, Band 5, Ausschuss für Grundsatzfragen (Boppard am Rhein, Harald Boldt Verlag, 1993).
9 A 2nd edn, completed by a concise introduction written by Peter Häberle, has been published some years ago: P Häberle (ed), Entstehungsgeschichte der Artikel des Grundgesetzes. Neuausgabe des Jahrbuch des öffentlichen Rechts der Gegenwart Band 1 (Tübingen, Mohr Siebeck, 2010).
be freely interpretable or maybe even inaccessible to any kind of interpretation. This false assumption did not remain without consequences.

II. Loss of Meaning

What is meant by ‘Würde des Menschen’, usually translated as ‘dignity of man’ or ‘human dignity’? Ironically, we do not know what human dignity is, but we know exactly whether human dignity is violated or not’, states the author of a popular textbook on German constitutional law. In the 1950s, things were different. Having dignity means: being a personality’, formulated Günter Dürig, maybe the most influential German constitutionalist at that time, in 1952. In his opinion, a person ‘ripen’s to a personality by affirming and serving the values the person is ‘essentially’ related to, namely the eternal ‘You’ of God, the ‘You’ of the others and the ‘We’ of the community. The subject of the fundamental right guarantees of the Basic Law is, according to Dürig, ‘always the responsible person, never the bondless individual’. None of the fundamental right guarantees protected the ‘subhuman’. Consequently, Dürig and others were convinced that the use of violence, drugs and psycho-technical means could be allowed and perhaps even constitutionally required in the interrogation of ‘hardboiled’ lawbreakers. On the other hand, Dürig literally


16 ibid 261, my translation.

17 G Dürig, ‘Der Grundrechtssatz von der Menschenwürde’, (1956) 81 Archiv des öffentlichen Rechts 117, 128; F Klein in H von Mangoldt and F Klein, Das
‘shuddered’ to even think about issues like artificial insemination with the help of a sperm donor. Dürig had not the slightest doubt that such acts violated human dignity ‘as such’.\footnote{Dürig ibid 130.}

Dürig’s deliberations shaped and dominated the interpretation of Article 1 of the Basic Law for years. Fundamental criticism did not emerge until the mid-1960s. In 1964, Peter Badura pointed out that the common value-based and personalistic interpretation of the first article of the Basic Law did not see men as they are but in the way they should be, according to the ethical ideal of the autonomous personality. However, those people not corresponding to this ideal because of their behavior or their constitution, needed to be protected. Paradoxically, the personalistic understanding of human dignity was forced to give reasons for the dignity of these people, as if they were a problematic borderline case. And even worse: this interpretation made it possible to exclude the most vulnerable people from the protection of Article 1 of the Basic Law. Badura therefore argued that one should no longer theorize about the moral personality of man but rather agree on a casuistry of clear infringements of human dignity.\footnote{Badura, ‘Generalprävention und Würde des Menschen’, (1964) 19 Juristen-Zeitung 337, 340–41.} His proposal was later called the ‘negative interpretation method’,\footnote{See HG Dederer, ‘Die Garantie der Menschenwürde (Art. 1 Abs. 1 GG). Dogmatische Grundfragen auf dem Stand der Wissenschaft’, (2009) 57 Jahrbuch des öffentlichen Rechts der Gegenwart 89, 105–07.} and it did not last long until Baduras’ approach became the prevailing opinion. Günter Dürig, changeable as a chameleon, relented in the early 1970s and declared, as if he had never claimed anything else: ‘One should not presume to interpret the principle of human dignity positively, but you can say what violates it.’\footnote{G Dürig, ‘Zur Bedeutung und Tragweite des Art. 79 Abs. III GG’ in H Spanner et al (eds), Festgabe für Theodor Maunz zum 70. Geburtstag am 1. September 1971 (Munich, C.H. Beck, 1971) 41, 44–45, my translation.}

A positive definition of human dignity was considered dispensable, because – this is how Dürig formulated it – ‘after the experience of our people, there is a very precise consensus about how a political and social order should look and how it should not look.’\footnote{Ibid 44, my translation.} This assumption, however, soon proved illusory. In 1982, the first German test-tube baby was born,
and it soon became apparent that it would be impossible to reach an agreement about the status of the embryo in vitro and the constitutional review of these new opportunities. Human dignity therefore was not the appropriate word, Peter Lerche concluded. According to him, human dignity could only defend its contours if one limited the use of this concept to those topics consented to by the community, and in vitro fertilization was, obviously, none of these cases. In the mid-1990s, Horst Dreier proposed to ‘free’ the abortion debate ‘from the heavy burden of Article 1, paragraph 1 of the Basic Law’ as well, because, even in this case, there was no consensus in sight.

In the first edition of his legal commentary on the Basic Law, which was published in 1996, Dreier listed slavery, servitude, deportation, stigmatization and torture as examples of self-evidently and universally consented violations of Article 1, paragraph 1 of the Basic Law. Nevertheless, only a few years later, a German police officer threatened a kidnapper with considerable pain to find out the whereabouts of the kidnapped child. All the courts later concerned with this tragic case stated clearly and without exception that this was a violation of the kidnapper’s dignity, even though the police officer had tried to save the life of an innocent child. However, German constitutionalists began to discuss seriously if the so-called ‘rescue torture’ could be allowed by Article 1 of the Basic Law. Critical observers anxiously diagnosed that the inviolability of human dignity seemed no longer as obvious as before. The findings of the


26  See, most recently, Oberlandesgericht Frankfurt/Main, 1 U 201/11 of 10 October 2012 at www.lareda.hessenrecht.hessen.de; European Court of Human Rights, Gafgen v. Germany, European Human Rights Reports 52 (2011) 1; Bundesverfassungsgericht, 1 BvR 1807/07 of 19 February 2008 at www.bverfg.de.

27  For discussion of this topic, see H Goerlich (ed), Staatliche Folter: Heiligt der Zweck die Mittel? (Paderborn, mentis Verlag, 2007); G Beestermöller and H Brunkhorst (eds), Rückkehr der Folter. Der Rechtsstaat im Zwielicht? (Munich, C.H. Beck, 2006).
Federal Constitutional Court concerning the dignity of innocent passengers on board a hijacked aircraft in the Aviation Security Act decision were also discussed controversially. A kind of ‘tiredness with dignity’ and a tendency to solve problematic cases without using Article 1 of the Basic Law could not be overlooked. ‘After the knowing about the meaning of human dignity has faded away, it is now also becoming increasingly unclear to us why we still need it,’ the German constitutionalist Uwe Volkmann remarked.

III. Rediscovering the Original Meaning

What was meant by ‘dignity of man’? During the first meetings of the Plenary Assembly of the Parliamentary Council, rather nonspecific ‘dignity-talk’ prevailed: Delegates from all parties emphasized that freedom and dignity were the ‘highest goods’ and that it would be the main task of the Council to secure them again. However, some delegates already distinguished explicitly between ‘freedom’ and ‘dignity’. Adolf Süsterhenn for instance, one of the most influential Christian Democratic members of the

28 BVerfGE 115, 118, 152–54.
Council,\textsuperscript{32} stated that human dignity, ‘inner freedom’ and the ‘inner value’ of the personality remained ‘fine words’ as long as the individuals had no possibility to make use of these capacities in their daily lives.\textsuperscript{33} Helene Wessel, one of the two delegates of the Catholic Center party, emphasized in a very similar way the necessity to convey to the Germans the notion of ‘true liberty’, the freedom for individual development. She used the terms of ‘human dignity’ and ‘freedom rights’, differentiating between the ability to make one's own decisions and the freedom to act and to enter into relationships with others.\textsuperscript{34}

The distinction between ‘inner’ and ‘outer’ freedom can also be found in the deliberations of the Committee dealing with Basic Issues that was responsible for the phrasing of the fundamental rights catalogue. The records of the proceedings of this committee show that the already mentioned dictum on human dignity as a ‘non-interpreted thesis’ was not at all meant to be a carte blanche for any arbitrary interpretation. Theodor Heuss\textsuperscript{35} repeatedly criticized an early draft version of Article 1 (‘The dignity of man rests on eternal, inherent rights.’) for the very reason that he considered the reference to ‘eternal, inherent rights’ as too ambiguous.\textsuperscript{36} He recalled his proposal (‘The dignity of man is placed under the protection of the state order.’)\textsuperscript{37} and explained that the dignity of man was a ‘non-interpreted thesis’ in his proposal.\textsuperscript{38} He added that he wanted to choose the wording of this Article in a way ‘that one could comprehend theologically,
another philosophically, another ethically.\textsuperscript{39} Helene Weber, one of the four mothers of the Basic Law, agreed:

The individual is free to take religious, ethical or historical insights as his or her starting point. However, it is most significant that we, at this historical moment, begin our Constitution with the concept of human dignity.\textsuperscript{40}

Adolf Süsterhenn likewise declared:

One sees human dignity rooted in humanity, another in the Christian conviction that men and women are created in the image of God. However, we agree in the concept of human dignity as the highest value in our worldliness.\textsuperscript{41}

The members of the Committee dealing with Basic Issues agreed that the concept of human dignity has different roots and origins and that there are several good reasons for protecting human dignity constitutionally. With regard to its foundation, the human dignity article remained a ‘non-interpreted thesis’.

However, the records also show that the mothers and fathers of the Basic Law did their very best to clarify the substantive meaning of the legal term of human dignity. Carlo Schmid, one of the most influential social democratic members of the Parliamentary Council,\textsuperscript{42} demanded right at the beginning of the consultations: ‘Dignity of man – that should be defined!’\textsuperscript{43} The wording of Article 1 should be considered carefully, because ‘in its systematic relevance, it is the key to the whole.’\textsuperscript{44} Ludwig Bergsträsser contradicted immediately when Hermann von Mangoldt, the chairman of the Committee dealing with Basic Issues, complained that one could hardly get a concrete idea about the meaning of the legal term of human dignity:

Human dignity forbids any compulsion to act against one’s own conviction. For me, this seems to be one of the most important features of human dignity. Human

\textsuperscript{39} ibid 67, my translation.
\textsuperscript{40} ibid 69, my translation.
\textsuperscript{41} ibid 915, my translation.
\textsuperscript{43} Deutscher Bundestag and Bundesarchiv (eds) \textit{Der Parlamentarische Rat 1948–1949. Akten und Protokolle, Band 5, Ausschuss für Grundsatzfragen} 66, my translation.
\textsuperscript{44} ibid 64, my translation.
dignity forbids that someone is beaten. Human dignity is, in other words, the freedom from compulsion to act against one’s convictions.\textsuperscript{45}

Theodor Heuss insisted: ‘Human dignity must rest in itself: It must not be derived from any governmental position.’ \textsuperscript{46} Carlo Schmid called human dignity ‘a quality, an attribute that determines the human and that distinguishes humans from other creatures.’\textsuperscript{47} Schmid, well-versed in philosophy and theology, referred to Martin Luther’s concept of the ‘freedom of the Christian’\textsuperscript{48} and the inherent dignity that, according to the late stoic philosopher Epictetus, remains even to the galley slave forged to his bench:\textsuperscript{49} ‘For me’, Schmid explained, ‘the dignity of man recognizes this attribute of man as an honour.’\textsuperscript{50}

\textit{IV. Inner Freedom}

This ‘attribute’ or capability Carlo Schmid referred to can be described as ‘inner freedom’.\textsuperscript{51} Martin Luther protested vehemently, as the German peasants demanded in 1525 in their \textit{Twelve Articles} that they did not want to be serfs any longer because the scripture said that Christ had freed them. ‘That is’, declared Luther, ‘making Christian freedom a completely physical matter.’ ‘A slave can be a Christian’, Luther wrote in his famous \textit{Admonition to Peace}, ‘and have Christian freedom, in the same way that a

\begin{thebibliography}{99}
\bibitem{45} Deutscher Bundestag and Bundesarchiv (eds) \textit{Der Parlamentarische Rat 1948–1949. Akten und Protokolle, Band 5, Ausschuss für Grundsatzfragen} 607.
\bibitem{46} ibid 588, my translation.
\bibitem{47} ibid 72.
\bibitem{50} Deutscher Bundestag and Bundesarchiv (eds) \textit{Der Parlamentarische Rat 1948–1949. Akten und Protokolle, Band 14, Hauptausschuss} 1290, my translation.
\bibitem{51} See Goos \textit{Innere Freiheit} 95–157.
\end{thebibliography}
prisoner or a sick man is a Christian, and yet not free.’  52  Luther distinguished carefully between the ‘inner’ man and his liberty and the ‘outer’ man.  53  For the late-Stoic philosopher Epictetus, one’s outer, external, social and political freedom is also not essential: If a liberated slave – to quote one of the examples he uses in his Discourses – falls in love with the wrong girl or makes himself dependent on other people for the sake of his professional advancement, he might fall into a far more abject slavery than the one he has escaped: ‘Finally, when he crowns it off by becoming a senator, becoming a slave in fine company, then he experiences the poshest and most prestigious form of enslavement.’  54  For Epictetus, those are free who are able to distinguish between the things in their power and the things that are not in their power:  

I must die. But must I die bawling? I must be put in chains – but moaning and groaning too? I must be exiled; but is there anything to keep me from going with a smile, calm and self-composed?  55  

Liberal thinkers like Isaiah Berlin doubt that this inner freedom deserves the name of freedom at all because it is ‘compatible with a very high degree of political despotism.’  56  One might also ask if ‘inner freedom’ really needs to be protected by law.  57  Isn’t the galley slave, chained but free an-
yway, the best example that the ‘inner freedom’ of man is inviolable in the truest sense of the word? In fact, there is still a dispute in the literature as to whether the first sentence of Article 1 (‘The dignity of man is inviolable.’) is to be understood descriptively or prescriptively. It should be inviolable!’ declared Ludwig Bergsträsser, as this question arose in the debates of the Parliamentary Council. Hermann von Mangoldt said, and this was universally consented: ‘After the things we have witnessed during the Nazi era, the legal protection of human dignity must be one of our main concerns.’

The mothers and fathers of the Basic Law had experiences in mind like those transmitted by the later Hanoverian Bishop Hanns Lilje, the psychoanalyst Bruno Bettelheim and the psychiatrist and philosopher Viktor Frankl. Lilje, for instance, reports of a shocking encounter with the severely tortured Carl Friedrich Goerdeler: ‘The Gestapo had made a ruin out of him. He made his comments in a mechanical, soulless manner, as if he said nothing but the things they taught him. His eyes had lost their former brightness, and they gave away that, in addition to the usual torture, even drugs and other bad things had done their work.’ After having spent approximately one year in the concentration camps at Dachau and Buchenwald, Bettelheim described it as being one of the goals of the Gestapo ‘to break the prisoners as individuals’. The last vestiges of personality were erased there’, reported Viktor Frankl. In a nightmarish study, the German philosopher Reinhold Aschenberg characterizes the Nazi concentration camps as ‘institutions of de-subjectification’: ‘These laboratories emit large amounts, masses of human beings whose subjectivity slowly fades...
until they, while still alive, totally lose it.’ The Nazi system as a whole can be described as a major project of de-subjectifying man – in the concentration camps, the mass organizations, at school and in University, even at home, by a certain kind of infant education that caused avoidant personality disorders – with the well-known, devastating consequences.

Only a few could preserve and prove their inner freedom under such circumstances. It can be shown that the desire for ‘true intellectual freedom’ was one of the motivations, the ‘complete protection of freedom of spirit’ one of the goals of the conspirators, especially for the students and professors around Sophie and Hans Scholl and Helmut von Moltke and his Kreisau circle: ‘Delp, Gerstenmaier and I only thought,’ Moltke wrote to his wife a few days before he was executed. ‘And the Nazis fear the mere thought of these three lonely men so much that they want to cut off all that is infected with it.’ During the Nazi time, even freedom of thought, even inner freedom, had been threatened and proven to be fragile.

For the fathers and mothers of the Basic Law there was no question that it had to be protected by law in the future. Not yet the Jewish tragedy, as Samuel Moyn rightly points out, but this is the reason why they decided to begin with the sentence: ‘The dignity of man is inviolable.’

Nevertheless, this conception might seem to be inadequate because it only applies to the ‘inner’ freedom of man. However, the inseparable connection between inner and outer freedom was not only intensely discussed in the Parliamentary Council. It is stated right in the following paragraph of Article 1 Basic Law:

The dignity of man is inviolable. To respect it and to protect it is the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

65 See Goos Innere Freiheit 127–38.
66 ibid 116–27.
Human dignity and human rights can be distinguished and they must be distinguished, but they must not be separated. The basic rights are guaranteed for the sake of human dignity, ‘since’, according to Hermann von Mangoldt, ‘every single article protects a bit of the freedom that is necessary to guarantee human dignity.’ It was precisely in this sense that Carlo Schmid stated it at the Hamburg SPD party Congress in May 1950:

Epictetus once expressed that even the slave chained to his oar was free if he had the right attitude. But, comrades, we do not want to be satisfied with this freedom of the galley slave. We do not only want the opportunity to have this inner freedom. We also want to have the opportunity for a freedom that enables us to develop all human capacities in the outside world.

V. Dignity and the ‘Weak Subject’

However, one might ask if ‘inner freedom’ is not just another noble ideal that excludes many people, for example little children, the mentally disabled, people suffering from Alzheimer's disease, and, of course, the unborn and the deceased. It is completely inconceivable that the mothers and fathers of the Basic Law wanted Article 1 paragraph 1 to be interpreted like this. To me, it therefore seems appropriate to further develop their conception in a way that these problematic cases can also be covered. The records show clearly that the framers carefully chose the wording of

69  See Goos Innere Freiheit 205–09.
73  See Goos Innere Freiheit 142–57.
Article 1 Basic Law. They discussed and discarded the wordings dignity of human ‘existence’, ‘essence’, or ‘life’ and unanimously decided for the dignity of ‘man’. Helene Weber explained: ‘This term covers everything and highlights neither the purely biological nor the purely spiritual. In short, it is exhausting.’ On the other hand, the records also indicate that the framers did not use the term ‘Würde des Menschen’ as a not further substantiated value attribution to the motto ‘every human being is somehow valuable’. They used it to describe a very specific, vulnerable quality of man.

Considering this, it seems obvious to me that dignity as ‘inner freedom’ should be understood in the broadest possible sense. One should particularly avoid overemphasizing aspects like reason or rationality in positive definitions of the Basic Law's legal term of human dignity. The conception of the Italian Renaissance philosopher Giovanni Pico Della Mirandola, for instance, enthusiastically received by some German constitutionalists since the 1990s, would not be adequate in describing the meaning of the Basic Law's human dignity article. For Pico, the human is characterized by the ability to lead his life according to his own design, to interpret and assimilate culture: ‘its status was dignity, its nature was reason, and its consequence was autonomy.’ However, in practice, especially those people who are unable to think or do anything, not even to participate in culture, need to be protected.

Sometimes, though, depressed persons discovered ‘unexpected avenues of experience’ because of their depression:

75 See, most recently, R Gröschner, S Kirste and O Lembcke (eds), Des Menschen Würde – entdeckt und erfunden im Humanismus der italienischen Renaissance (Tübingen, Mohr Siebeck, 2008).
76 C Foster Human Dignity in Bioethics and Law 34. See also M Lebech, On the Problem of Human Dignity. A Hermeneutical and Phenomenological Investigation (Würzburg, Königshausen & Neumann, 2009) 87–90.
77 Compare also Foster ibid: ‘[N]eat formulations don't do well when confronted with the messiness of real humans’; Dupre Human Dignity in Bioethics and Law 193.
They may sense that what made that possible was a first-person perspective that others don’t know. … A deeper understanding of depression may help in developing a passion for the ‘weak subject’, that is, to discard the image of a person who is weighted down by the excessive demands of the post-modern conception of man as creator, designer and engineer of reality. Seeing a totally independent and isolated ego as questionable, the subject must not perish. It may come to understand itself as a creature that, as a natural ‘living being’, depends on many necessities, but still senses that it has personal value or – in the ancient way of speaking – a soul.  

Hell concludes: ‘Is it inconceivable that it is only the image of an ego perspective in another person that establishes the quality of humanness?’

One can probably go even one step further: Dignity as first-person perspective in the broadest possible sense can be understood as something that an embryo already ‘has’ and that even survives the death.  

Prenatal psychologists like Inge Krens and neurobiologists like Gerald Hüther emphasize that even the fertilized egg unites both physical and psychological components. A human organism is not created by cells initially forming a body and the soul later eventually joining this entity. Body and psyche differentiate simultaneously and undividedly.

The already mentioned Viennese philosopher and psychiatrist Viktor Frankl points out in one of his books that the first-person perspective of another person is in the realm beyond physicality and sensuality even during their lifetime: ‘We do not have it as we have an object, but we capture it because of sensory impressions.’ Frankl uses the example of a famous opera singer: It does not matter if we listen to him in concert, on the radio or even to a recording after his death. In each of these cases we do not only hear sound waves, but – conveyed by them – the singer himself. His uniqueness, his ‘magic’ endures. Not later than 1971, the German Federal Constitutional Court had ruled that it would be incompatible with the

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79  ibid.  
80  For further details, see Goos Innere Freiheit 148–57.  
guarantee of human dignity in Article 1 of the Basic Law if a person could be humiliated or degraded after his or her death. The duty of all state authority to respect and to protect human dignity does not end in death. In my view, this jurisdiction is entirely as intended by the framers.

VI. Conclusion

We tend to assume that Article 1 German Basic Law is a specific result of Catholic and Kantian thought. Indeed, the provision was interpreted like this very soon, especially and most influentially by the Catholic constitutionalist Günter Dürig in the 1950s. Decades later, Dürig admitted frankly and not without pride that he had successfully established a Christian-personalistic interpretation of the dignity article. However, in this regard, Article 1 differs significantly from the dignity-references that can be found in the post-war constitutions of some German federal states. Although some Christian Democrats and National Conservatives in the Parliamentary Council tried to establish their idea of genuine, God-given freedom, phrasings like ‘The dignity of man is founded on eternal, God-given rights’ were repeatedly rejected by the other delegates. Kant was not even mentioned during the framer’s debates on Article 1. The dignity debates were dominated by Carlo Schmid and Theodor Heuss, a secularist and a Protestant, both highly educated. The two could easily convince their colleagues that Article 1 should be formulated in a way ‘that one

83 BVerfGE 30, 173, 194.
lable”’.
86 See, in particular, the debate between the representatives Seebohm, Schmid, Heuss and Greve during the 42nd meeting of the Main Committee, Deutscher Bundestag and Bundesarchiv (eds) Der Parlamentarische Rat 1948–1949. Akten und Protokolle, Band 14, Hauptausschuss 1289–92. Compare also T Stein, Himmlische Quellen und irdisches Recht. Religiöse Voraussetzungen des frei-
heitlichen Verfassungsstaates (Frankfurt and New York, Campus, 2007) 308–
09.
87 Compare also Möllers ‘Democracy and Human Dignity’ 427: ‘When interpret-
ing a constitutional text, it is maybe best to do without a house philosopher.’
could comprehend theologically, another philosophically, another ethically’. In contrast to this, the meaning of the term ‘dignity of man’ did not remain undefined. The framers agreed that the ‘dignity of man’ was neither a more or less vague value assignment nor just the sum of the following basic rights but a real capacity of human beings that had been proven highly vulnerable during the Nazi regime: the inner freedom. Unlike other legal systems, the German Constitution thereby focuses particularly on the inner self and accents the interior component of the human personality. To me, the potential of this article in its original meaning has not been fully exploited yet.
