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**Responsibility of Nation States for Global  
Justice: The Case of Germany**

*Bachelor's Thesis*

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## **Abstract**

The thesis philosophically examines what moral responsibility Germany has towards non-nationals outside of its borders, based on the country's commitment to human dignity. International institutions are excluded. The focus of this work lies on the concept of human dignity as the basis for global justice. As the foundation, a political and legal background is provided in the form of a discourse analysis. Using the criteria of Dworkin's method of the "moral reading" of the constitution, the Kantian notion of human dignity is identified as the moral philosophical basis of the German concept of dignity – thereby contributing to definitional clarification of human dignity and the related concepts constituting the foundation of the German hierarchy of values. On this basis, Germany has a moral duty to respect the human dignity of every individual. To examine whether a positive duty can also be established, the philosophical foundations identified – especially Kant's theory of justice – are applied to the global level. Lastly, the concept of negative and positive duties is utilised to explore the limitations of assigning responsibility to nation states in the globalised world. As a result, this thesis establishes, for Germany, a negative duty for non-nationals and a weak positive duty manifested in the imperfect duty of beneficence. However, Germany has a clear (moral) responsibility for its actions and their effects. In a globalised world, the scope of this responsibility is broad. Based on these findings, the German conception of human dignity could serve as a model for Western countries promoting global justice.

## **Keywords**

Global Justice, International Assistance, Positive Duties, Negative Duties

## **Declaration of Authorship**

1. The author hereby declares that he compiled this thesis independently, using only the listed resources and literature.
2. The author hereby declares that all the sources and literature used have been properly cited.
3. The author hereby declares that the thesis has not been used to obtain a different or the same degree.

Prague, 03.05.2022

Nora Wrenger

A handwritten signature in black ink that reads "N. Wrenger". The signature is written in a cursive style with a large, looping 'N' and a long, sweeping tail on the 'g'.

## **Institute of Political Studies**

### **Bachelor's Thesis Proposal**

Proposed Topic: Responsibility of Nation States for Global Justice: The Case of Germany

Topic Characteristics / Research Question(s):

Global Justice explores justice between individual human beings. Thus, individuals are the ultimate units of concern. In an increasingly interconnected world, actions of one nation state can easily affect the lives of individuals of another nationality living in a different country. Consequently, the consideration of negative duties towards non-nationals is a plausible aspect of the national decision making process. With the signing of the Universal Declaration of Human Rights, however, many countries have committed to upholding and protecting universal human rights. As human rights are currently not respected in all countries in the world, the question about positive duties arises. Due to its national past, the Federal Republic of Germany has intensively committed itself to the respect for, protection and promotion of universal human rights.

My thesis is an attempt to explore the extent of the responsibility of the German national government for global justice. In particular, I want to explore the philosophical foundation and the boundaries of German responsibility within the currently existing framework of sovereign national states.

The German Basic Law, the German constitution, was ratified in 1949 laying the foundation for the current Germany. It is entrenched by a separate Constitutional court (unlike in the US, for example). Because of its historical responsibility, Germany had to balance out reluctance in international intervention with the duty to promote human rights. Because of this

strong commitment to values, above all human dignity, Germany serves as a very interesting precedent when exploring the responsibility of the nation state for global justice. Through the words, “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority”, article 1 of the Basic Law defines the central moral norm of Germany. Considering this norm in the international framework, human dignity seems to be not always protected in the world. Germany demonstrated its decidedly strong commitment to take in all refugees in need (“Wir schaffen das!”) as a response to the refugee crisis. This was an extremely controversial decision. However, it was one guided by principle and a sense of international responsibility. Recently, the country strengthened its commitment to the central value of human dignity with its work as a member of the UN Security Council promoting the *UN’s 2030 Agenda*. Germany implemented the list of 17 goals for sustainable development into its national framework in the Bundesministerium für Wirtschaftliche Zusammenarbeit und Entwicklung promoting global justice. In order to efficiently define and evaluate the German responsibility for global justice as part of this agenda, however, several questions need to be answered first. How do human dignity and human rights correlate? What is the purpose and task of the German national government? Do negative and positive duties override national sovereignty and national interest? Where are the boundaries of positive duties? Will the nation state collapse if too much emphasis is placed on positive duties? How are positive duties regarding global justice compatible with the current system of nation states?

Working Hypotheses:

1. The German National Government does have a responsibility for global justice valuing human dignity of non-nationals outside of its national borders.
2. Higher and more efficient investment in Humanitarian Aid is needed in order to guarantee respect for human rights and human dignity of all people in the world.



3. The German National Government has to consider negative and positive duties in their actions.
4. The fulfilment of positive duties in regard to global justice is limited given sovereign nation states.

#### Methodology:

In the first part of the thesis, I will discuss the purpose of the nation state itself. I will further analyse how it relates to the concept of human dignity as mentioned in the German Basic Law. For this, I am going to explore the philosophical foundation of these concepts. Further, I will look at the implementation of the concept of human dignity in national law, especially in the form of the Declaration of Human Rights.

Based on the first part, I intend to examine the compatibility of national interest and the German commitment to human dignity of all people in the world. In doing so, I will introduce the idea of negative and positive duties in regards to the national responsibility for global justice.

In the last step, I will investigate potential boundaries of German responsibility for non-nationals outside of their borders, especially considering the idea of positive duties. In doing so, I will use the Agenda 2030 in order to demonstrate a need for higher humanitarian aid in order to guarantee the respect and valuing of human dignity of all individuals on earth. Accordingly, I will explore a potential clash between the functioning of a nation state and a high emphasis on positive duties for global justice.

#### Outline:

Introduction

Subject Matter & Methodology

## Chapter 1: Philosophical Foundations of the Important Concepts

Global Justice Nation State

Human Dignity

Human Rights

## Chapter 2: German Responsibility for Global Justice

National Interest vs. Human Dignity

Negative and Positive Duties

## Chapter 3: Potential limits to a commitment to Global Justice

Positive Duties

Example from the Agenda 2030 Conclusions

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## 1. Introduction

Not all is rosy in the modern world. Although progress is evident in many places, with change come new problems and issues of concern. Economic inequality, extreme poverty, conflict, war and human rights violations are indicative of the negative side of the modern world. Natural catastrophes and global crises, such as the Covid-19 pandemic, have worsened this negative side and affected different parts of the world unequally. Often, the weak are affected worse than strong states (Gopalakrishnan, Wadhwa, Haddad and Blake. 2021). The effects of conflict and war, however, are also felt in affluent and stable countries in the West. Immanuel Kant ([1795] 1915) noted, “The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it” (142). In this way, Kant already expressed concerns about global justice two centuries ago. Questions of global responsibility are even more pressing today: Who is responsible for preventing such violations? What is considered to be an active violation? Who is responsible for compensation of victims? Who becomes responsible, if a certain agent is unable to fulfil an obligation assigned to him? Apart from Covid-19, other events where the need for an answer to such questions becomes especially apparent include the refugee crisis, inter-state conflicts, such as between Pakistan and India, or the war in Syria. The clarification of responsibility is complicated by ongoing issues, such as extreme poverty or hunger, pointing to systematic violations.

While injustices are being identified to a considerable extent, resolving them requires action by the responsible agents. Therefore, it is necessary to define instances where states bear responsibility, but also when they must not intervene. While doing so, it can be presumed that globalisation has led to a post-Westphalian order in many aspects, but did not end the

framework of sovereign nation states. Thus, one could argue that states are only responsible for their own citizens. But can they therefore abdicate responsibility for their actions? The question of how far a state's responsibility extends is a moral and legal question of justice. Its moral content is not necessarily about the outcome. Besides the outcome, there is consensus that, depending on the view, certain actions and conditions are unjust as such.

In the past, significant efforts towards global justice have been made: following the Second World War, the United Nations adopted the *Universal Declaration of Human Rights* in 1948 (United Nations, n.d.). The *European Convention on Human Rights* came into force in 1953 (European Court of Human Rights, n.d.). In 2015, the United Nations' *2030 Agenda for Sustainable Development* was enacted setting forth a plan of action (United Nations General Assembly 2015). The supranational body of the United Nations has specifically been founded to promote peace in the world. International juridical organisations like the International Criminal Court have been established. The International Criminal Court's purpose, for instance, is to fight and punish "genocide, war crimes, crimes against humanity and the crime of aggression" (International Criminal Court. n.d.). Although commendable improvement is apparent, a lot remains to be done to eliminate global injustices.

### *1.1. The Aims and the Outline of the Thesis*

The notion of global justice is derived from an idea of human dignity – the inherent worth of the human being, which has especially entered modern Western thought since Kant (Taraborrelli 2015, 1-3). Certain claims are drawn from human dignity. Currently, these claims are practically implemented through the assignment of civic and human rights. Human rights, however, bear different problems: the seemingly Christian foundation of human rights provides a target for states representing other religions. Moreover, the declaration primarily applies to the relationship of the states to their own citizens (O'Neill 2004, 243). The task of assigning

and grounding responsibility otherwise remains. Therefore, the question of a moral obligation of the individual states arises. Different solutions are prescribed by different theories of global justice. A state, however, cannot be coerced to adopt an idea of justice imposed from outside. Moral commitment, by its very nature, cannot be coerced. Only if these states recognize a duty from within, their moral engagement becomes viable.

Germany – due to its history – is a country that puts particular emphasis on human dignity. From this foundation the state derives a catalogue of Basic Rights (*Grundrechte*)<sup>1</sup> and a clear moral compass. One could consider Germany very “advanced” in this regard. Therefore, I will use German legislation and the notion of human dignity as the starting point of the argument presented in this thesis. My thesis is going to answer the following question: *What moral responsibility does Germany, as a nation state, have for non-nationals outside of its borders based on the country’s commitment to human dignity as part of the ongoing debate about global justice?*

Answering this question, the thesis contributes to the ongoing discourse by suggesting a close link between human dignity and global justice without presupposing human rights laid out by (international) law. While used to ground demands of global justice, the concept of human dignity lacks definition. This thesis will try to illuminate the meaning of the term as well as its implications for global justice. The aim is to map a vision of global justice, presenting a scheme of responsibilities.

Following this part, I will outline the methodology in part 1.2. In part 2, the legal and political significance of human dignity will be examined. In part 2.1, the legal and political uses of human dignity will be analysed. Part 2.2 is focused on the prevailing legal discourse in Germany, thereby demonstrating the concept’s significance and laying the foundation for

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<sup>1</sup>When using English terms, which have their origin in the German legal discourse, I will refer to the original German term in brackets and italics at the first occasion in order to avoid equivocation. Accordingly, German legal terminology will be written in italics and brackets throughout the whole thesis. These are legal phrases or terminology alluding to legal interpretation.

further investigation. In part 2.3, the German constitutional identity grounded in human dignity is outlined. Building on this, in part 3, I will establish the meaning and moral implications of the German conception of human dignity. Following Ronald Dworkin's methodology pointing to a deontological moral theory, in part 3.1, Kantian human dignity is tested for adherence to Dworkin's methodological criteria. In part 3.2, focusing on similarities and distinctions between Kantian ethics of duty or deontological ethics and the German practical realisation of dignity, a moral distinction between nationals and non-nationals is ruled out. Based on the interrelation of dignity, morality and justice, the closeness of the German understanding to Kant suggests the investigation of Kantian justice on a global level, as done in part 4. In part 4.1, problems of applying a theory of rights on a global level are outlined. The resulting moral obligations for Germany are established in part 4.2. In part 5, I will then explore the extent and limits of German responsibility. Part 5.1 focuses on negative duties, part 5.2 on non-assistance and part 5.3 on positive duties and the aspect of feasibility. Lastly, part 6 entails the conclusion in the form of a summary, limitations of the work and an outlook in the parts 6.1 to 6.3 accordingly.

## *1.2. Methodology*

The first aspect of the methodology was choosing a suitable country, which shows an interest and concern for justice and in particular human dignity. Due to the country's history, Germany serves as an interesting precedent when analysing a state's responsibility for global justice based on human dignity. In order to verify this choice, I established a strong commitment to human dignity through a written *discourse analysis*. Discourses "can frame the way people look at issues", thus, in this case, can help to analyse the prominence of human dignity in German society (Dowding 2016, 186). I chose important legal documents, court rulings and policy objectives for investigation. As part of this discourse analysis, I focused on



the currently persisting legal interpretation and uses of dignity in the national framework. Examining these materials “in search of particular terms and phrases”, definitional difficulties could be established (186). The overview gained through this analysis provides the foundation for the next step taken.

In the third part, using Dworkin’s method of the “moral reading” of the constitution, the philosophical meaning of human dignity is investigated. Dworkin’s “moral reading” combines a *semantic approach* with a *constructive interpretive* approach to reading the constitution (Dworkin 1986, 52). *Constructive interpretation* involves “imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong” (52). Dworkin’s method relies on the criteria of *fit*, *justification* and *consistency*: *justification* implies that an underlying moral theory must be able to justify the institutional framework and thus the “constitutional morality” (Dworkin 1975, 1100, 1104). To fulfil the criterion of *fit*, a moral theory and the consequent meaning of a clause of the constitution have to “fit with the constitutional scheme as a whole” and with other legal precedents (1069, 1084). Lastly, to fulfil *consistency* “in principle”, a moral theory must “express a single and comprehensive vision of justice” (Dworkin 1986, 134). Accordingly, applying Dworkin’s criteria of *fit*, *justification* and *consistency*, I will explore whether Kant’s notion of dignity can explain the meaning of human dignity in the German Basic Law (*Grundgesetz*). A moral theory explaining the core principle should also be consistent with the deducted norms in German law.

I will then use the findings of the previous part and apply them to a global context. As the Kantian moral theory generally fit the criteria of the “moral reading”, utilising his theory of justice to explore national responsibilities on the global level was a reasonable next step. Choosing another theory of global justice would lack legitimate justification, as it has to be proven first that the theory conforms to the German understanding of human dignity. Because

Kant developed his theory as a theory of domestic justice, this step happened in the form of a critical analysis evaluating the global applicability. The resultant findings suggest a distinction between reasoning for negative and reasoning for positive duties.

Lastly, by applying the concept of negative and positive duties to different moral cases, I will explore the applicability of this concept assigning obligations on a global level. Thereby, the lack of accuracy and distinctiveness of these negative and positive duties becomes apparent. Thus, the purpose of this part is to show potential difficulties and limitations when utilising the concept of negative and positive duties to assign responsibilities to nation states.

## **2. Legal and Political Expression of Germany's Commitment to Human Dignity**

In order to analyse the potential responsibility of Germany – as a (nation-) state – for global justice or, more specifically, for non-nationals outside of the German borders, it is necessary to explore the German commitment to human dignity in the legal and political debate. Accordingly, this chapter examines the use of the term of human dignity and related phrases. The following list is by no means complete, but it highlights some of the most relevant documents and statements that suggest a philosophical basis. By compiling legal documents and conducting a written discourse analysis, a strong German commitment to human dignity can be identified, playing a crucial role in the quest for global justice.

### *2.1. Examples of the Legal and Political Uses of the Concept of Human Dignity*

Most prominently, human dignity appears in the first article of the German Basic Law, which was ratified in its currently used version in 1949 (Deutscher Bundestag 2021). While philosophical accounts of human dignity have been present for a long time, the value took on a new legal and political importance after the Second World War (Bayertz 1995, 465, 478). Accordingly, the prominent role of human dignity can, in part, be understood as a reaction to

the events of the Third Reich setting forth the intention that such acts never happen again (Bayertz 1995, 471). Nonetheless, the continuing and seemingly increasing<sup>2</sup> use of and reference to human dignity in the context of human rights and of achieving justice in the world, suggests an ongoing, not only symbolic, relevance.

### 2.1.1. Constitution of the Federal Republic of Germany

Human dignity appears in the first article of the German Basic Law, the constitution of the Federal Republic of Germany:

#### **Article 1**

#### **[Human dignity – Human rights – Legally binding force of basic rights]**

**(1)** Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

**(2)** The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

(Deutscher Bundestag 2021)

The appearance of human dignity at the very beginning of the constitution stands out. Legal scholars, especially constitutionalists like Hasso Hofmann, refer to human dignity as the “essence of the German federal state” (“Sinn bundesrepublikanischer Staatlichkeit”) (Dreier 2014, 176 and Hofmann 1993, 375). In his analysis of German legal approaches to terror, Lukas Müller (2018) viewed the right to human dignity as the basic principle of “the new German humanism“ (119). Further, article seventy-nine, paragraph one, the “eternity clause”, prohibits amending the first article and does not allow any restrictions to it (Dreier 2014, 376-377). The protection of the first article by the “eternity clause” reinforces the understanding of human dignity as a “supreme constitutional value” (Barak 2015, 230). In such wise, human dignity becomes an eternal value characterising the purpose and intention of the German state.

While the prominence of the term in the constitution and the legal discourse is considerable, its implications remain controversial. Generally, the constitution is defined as “the set of political principles by which a state or organisation is governed, especially in relation

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<sup>2</sup> Dreier (2014) even describes the current use of human dignity as inflationary (378).

to the rights of the people it governs” (Cambridge Dictionary 2022). As Paul Sourlas (2016) argues, in opposition to the opinion of others, human dignity does have normative value in itself. The rights following in the Basic Law should be viewed as partially specifying human dignity (35). Hofmann (1993) adopted a similar view, assigning it “*überragende verfassungsrechtliche Bedeutung*” (paramount constitutional significance) (355). In this way, human dignity is made the “leading constitutional value” (Sourlas 2016, 39). Conflating these different accounts, human dignity has further implications beyond being the sum of all rights, while also grounding them – partially being manifested in the prominent role of the Federal Constitutional Court.

### 2.1.2. Aviation Security Act

The Federal Constitutional Court derives its legitimization and organisation from the Basic Law. One role of the court is to rule “on the interpretation of this Basic Law” (Deutscher Bundestag 2021). Cases concerning human dignity are decided on “through case-by-case determination” (Eberle 2012, 206). In general, the German law does not provide a distinct meaning for the term human dignity. Instead, it is the role of the Constitutional Court to interpret its meaning in reference to that particular case (Eberle 2012, 206). Thus, human dignity does not have a positive meaning, but rather is “ex negativo” defined depending on the case (Hofmann 1993, 374). As a result, the discussion about its significance is ongoing, from a legal, social and philosophical point of view.

One of the most prominent decisions was that of the §14 Aviation Security Act (*Luftverkehrsgesetz*) in 2006 following the 9/11 terrorist attack in the United States. Jürgen Habermas (2010) discussed this case in the context of human dignity and human rights. The bill was initially intended to enable the government to react to situations in which an aircraft had become a “living missile” (465). In cases of attack on public targets with a large number of potential victims, using armed forces to shoot down the aircraft could have saved the lives

of thousands. At the same time, innocent passengers on the plane would have been killed. According to the Constitutional Court's ruling, the negative right granting protection from violations by the state weighs higher than the positive right for protection endangered by a third party (Müller 2018, 128). In Germany, the court ruled this bill to be unconstitutional, particularly, because it involved the killing of innocent people by the order of a state authority, thus granting the negative right for freedom the highest value. Accordingly, human dignity weighs higher than national security interests.

### 2.1.3. Charter of the Fundamental Rights of the European Union

Transnationally, the term human dignity appears in the *Charter of Fundamental Rights of the European Union*. Given Germany's membership in the EU and the principle of *primacy* of EU law, it can be inferred that the term human dignity is used correspondingly (EUR-Lex n.d.). The values mentioned in the Charter define the EU's actions – internally and externally (European Commission n.d.):

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity...

*Article 1*

**Human dignity**

Human dignity is inviolable. It must be respected and protected.  
(EUR-Lex 2012)

The wording used for the first article describing human dignity is strongly reminiscent of that in the German Basic Law, once again outlining the relevance of the term as well as the importance of Germany representing Western values.

### 2.1.4. International Engagement: Agenda 2030

The German commitment to human dignity, however, extends beyond the level of the EU. The *2030 Agenda for Sustainable Development* by the UN is one of the latest supranational visions to achieve global justice. Germany has significantly contributed to and pushed for the agenda. It was adopted by the General Assembly of the UN on 25 September 2015 as “a plan

of action for people, planet and prosperity” (United Nations General Assembly 2015). Referring to people, the UN is “determined to end poverty and hunger . . . and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment” (United Nations General Assembly 2015). Germany has comprehensively adopted these goals and has itself defined a plan of action (Die Bundesregierung 2021). Thus, showing, again, commitment to the idea of global justice based on human dignity.

## 2.2. *Legal Significance of Human Dignity*

The term human dignity itself is used in the legal framework of the German constitution and German law. Accordingly, the assumption could arise that the legal approach to interpretation options of the first article of the Basic Law suffices to clarify its meaning and thus the implications for a German responsibility for justice in the world. However, different (legal) approaches to interpretation exist. Some declare human dignity relatively meaningless and cannot provide a substantial definition of the term. At the same time, the deficits of these accounts can serve as a starting point.

### 2.2.1. Savigny’s Canon of Interpretation

In order to present the core idea of a law or norm, Friedrich Carl von Savigny developed four different methods of interpretation, partly building on each other: the grammatical (*grammatisch*), the systematic (*systematisch*), the historical (*historisch*) and the teleological (*teleologisch*) method. Grammatical interpretation refers to the wording and therefore remains very broad, providing a useful, but not sufficient idea. Systemic interpretation deals with the position of the particular law within the entire system. For human dignity, its specific position at the beginning of the constitution as well as its position as an introduction to the fundamental rights or as the first fundamental right are to be incorporated here. In this way, human dignity becomes either a placeholder (or empty formula, *Leerformel*) or an individual Basic Right. The

position as a place holder or introduction to the following Basic Rights is justified by the “therefore” in the second part of the first article (Düwell 2010, 70, Epping 2021, 319-320 and Deutscher Bundestag 2021). For the historical interpretation, prehistory and, more importantly, genesis are relevant. In this context, the first article was primarily concerned with coming to terms with the past and avoiding the repetition of history.

The most important method is the teleological method. It follows from the others and explains the meaning and purpose of the regulation. The first article of the Basic Law is thus the central norm and provides the foundation for a worldview and the following norms (Deutscher Bundestag 2021 and Sauer 2017, 167-189). In order that the first article can do this, human dignity, the central point of the norm, must also be philosophically consistent.

### 2.2.2. Criticism of the Legal Interpretation

Hofmann (1993) critically summarises the prevailing interpretations of human dignity dividing the approaches into two categories according to their effects: the strategy of minimising the theoretical value (*Minimierung*) and of focusing solely on historization (*Historisierung*).

Minimising the theoretical value counteracts the increasingly inflationary use of human dignity in litigation. Secondly, it allows circumvention of discussions about human dignity in regards to modern technology, especially genetic engineering. Lastly, minimising the theoretical value from the outset makes all theoretical considerations and interpretations null and void. While this approach comes with many benefits in practical use, it leads to redundancy of the term (Hofmann 1993, 356-357). Human dignity, then, does not add any theoretical aspects in certain discussion or litigation, which are not already protected otherwise in the Basic Law.

Historization describes the meaning of human dignity solely implying the prevention of repetition of history. However, the Basic Rights likewise prohibited acts of violence and

cruelty in this manner making an appeal to the first article rather rare (Hofmann 1993, 356-357 and Epping 2021, 320). Thus, following this view, human dignity merely adds anything besides an acknowledgment of historical responsibility. Reappraisal of historical responsibility, however, can, must and has taken place in other ways.

### 2.3. *Constitutional Identity*

The Basic Law, as the constitution of the Federal Republic of Germany, is also understood as an objective hierarchy of values (*Werteordnung*). Based on this understanding, human dignity is the highest constitutional principle or *axiom* laying the moral foundation for rights and legitimising them (Baranzke 2010, 14-15 and Detjen 2009, 45). Here, moral and legal aspects are combined and human dignity becomes immensely important. *Human dignity* and the liberal democratic basic order (*freiheitliche demokratische Grundordnung*) form the two most important value complexes (Detjen 2009, 13). Together, these constitute what can be understood as the *constitutional identity*.

This constitutional identity represents the consensus of values (*Wertekonsens*) of society. Every legal norm serves the realisation of normatively established value standards. Anthropological conditions play a fundamental role in defining these values. The corresponding norms thus result from an assumed image of man. Self-determination, for example, corresponds directly with freedom. Freedom, then, necessitates equality before the law. Because individuals are not equal in their capabilities, social justice forms another value, guaranteeing the equal freedom of the individual (Detjen 2009, 40,45). Combining these aspects, the constitution depicts a certain image of humanity the society commits to and wants to preserve.

Part of such a vision is manifested in the normative core of the constitution, the five German state's fundamental norms (*Staatsfundamentalnormen*), also called the state's



principles of structure (*Staatsstrukturprinzipien*): the principle of republicanism (*Republikprinzip*), the principle of democracy (*Demokratieprinzip*), the principle of the rule of law (*Rechtsstaatsprinzip*), the principle of the social welfare state (*Sozialstaatsprinzip*) and the principle of federalism (*Bundesstaatsprinzip*) (Detjen 2009, 21 and Raap 2019, 23). The principle of republicanism rules out other forms of government, like monarchy. Germany's federal structure grants the individual states constitutional autonomy in line with federal law. As a democracy, the German people hold the power and practise it through the right to vote and other forms of political participation. All state power is bound by law allowing the individual to rely on legal security and the predictability of the exercise of state power. As a social welfare state, the state is obligated to ensure freedom from want, a dignified existence and an adequate share in the general prosperity (Raap 2019, 24-35). The principles described are thus based on an image of humanity and at the same time guarantee its realisation.

The image of man to be protected can be derived above all from the cases of application of the first article. Volker Epping (2021) divides these cases into six main categories: protection of bodily integrity (*Schutz der körperlichen Integrität*), protection of the elementary bases of life (*Schutz der elementaren Lebensgrundlagen*), protection of personal honour (*Schutz der persönlichen Ehre*), protection of an inviolable core area of private life (*Schutz eines unantastbaren Kernbereichs privater Lebensgestaltung*), protection of personal identity (*Schutz der personalen Identität*), protection of elementary legal equality (*Schutz elementarer Rechtsgleichheit*) (327-328). Conversely, lacking or violating these provisions is incompatible with the German idea of human dignity.

Here, the dual function of the constitution becomes clear: on one hand, the constitution forms the consensus of values and, on the other hand, protects it. If a value is to be protected, this implies its normative ethical content. As Joachim Detjen (2009) argues, every norm is founded on a value judgement (31). While most constitutions do not specifically outline their

formative and underlying values, compiling the “points”<sup>3</sup> of individual norms provides a coherent framework (7). Thus, the sum of all norms can be understood as what is viewed as “good” or valuable. Referring to Rüttes, Detjen (2009) concludes that norms combine ideological and metaphysical aspects (31). Because human dignity is viewed as the highest norm, it seems that the “point” of dignity resembles the cornerstone of German society, as such, the German vision of community and justice. What “the point” of dignity is, however, needs to be established in the following.

### **3. Interpretations of Human Dignity in the German Philosophical Tradition**

Due to the lack of agreement regarding a clear definition of human dignity, in law, but also as a philosophical conception, the goal of this section is to lay out a German vision or moral conception of human dignity using Dworkin’s method of the “moral reading” of the constitution. If there was a single reasonable definition, it would have likely been laid down by now. Therefore, by applying Dworkin’s method the goal is to outline a meaning of dignity, suggesting further implications for German responsibility and impelling the discussion about global justice.

Thereby, I will assume that the wording in the Basic Law has been chosen well-considered and entails implications beyond the written word. A purely textual approach is not sufficient as it lacks the moral element (Sourlas 2016, 33). Only through outlining the underlying moral theory, the moral aspect and its implications become apparent. The following part will be based on the previously outlined view of the German *constitutional identity* evolving around human dignity. This conception based on human dignity will then turn out to be incompatible with a distinction between nationals and non-nationals.

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<sup>3</sup> “Dworkin thinks the central point of law is that it provides the moral justification for state coercion” (Guest 2012, 73).

### 3.1. Human Dignity: “Moral Reading” of the Constitution

For Dworkin as for Savigny, considering the words chosen is the first step of interpretation (Dworkin 1986, 54). Examining the wording of the first article of the Basic Law and the *Charter of the Fundamental Rights of the European Union*, different aspects stand out.

#### 3.1.1. Semantic Reading

In the German Basic Law and the Preamble of the Charter of the Fundamental Rights of the EU, certain phrases repeatedly appear and establish a connection between dignity and other values. The concepts of *equality*, *freedom*, *solidarity* and *dignity* are *indivisible* and *universal* (EUR-Lex 2012). Moreover, the values of *community*, *peace* and *justice* are based on the conception of human dignity (Deutscher Bundestag 2021). Considering the second part of the first article, human dignity further grounds *universal human rights*, which are *inviolable* and *inalienable*. This deduction is clearly established through the word “therefore” connecting the first and the second part of the article. Thus, human dignity is the centre of the system of values (*Wertesystem*) on which a multitude of other concepts is based. Understood in this way, human dignity is also, in part, a placeholder for a viable moral theory. Such a theory must equally support a whole range of fundamental concepts.

When the first article of the Basic Law declares human dignity to be “unantastbar”, this is commonly translated as “inviolable”, which does not capture the full meaning. Inviolability, thus, implies that it is impossible to touch and to reach something, but also that it is not permissible (Barak 2015, 225, 227). Horst Dreier (2014) takes up this aspect, interpreting the meaning of *inviolability* as being rather prescriptive, than descriptive prescribing that it shall not be touched. This, however, seems to stem from a legal positivist, rather than a philosophical perspective (376). Simultaneously, inviolability generates the impression of human dignity as a value above all others, because no other norm can be weighted against or override human

dignity. Thus, a moral theory must establish human dignity as the highest value and also explain this unique position in order to fulfil Dworkin's criteria of *fit* and *justification*.

The imperatives to *respect* and to *protect* in the first article entail further considerations that must be taken into account. Respecting implies a negative concept of duty, as to abstain from “not-respecting” human dignity, thus *respecting* it. The duty to protect, on the other hand, equally means that something is worth protecting, but also implies the *need for protection*. The sentence in its entirety grounds the state's active *duty to protect* human dignity (Eberle 2012, 206). Consequently, both negative and positive duties are imperatively deduced from the German Basic Law. The semantic reading reveals the complexity of the conception and use of human dignity: Human dignity must be universal and confer meaning to the concepts of *equality*, *freedom* and *solidarity* as well as *peace* and *justice* as values of society. Human dignity itself must be so significant in its moral substance that it seems unattainable and necessitates protection at all costs. These characteristics provide the framework for a suitable moral theory.<sup>4</sup>

### 3.1.2. Kant's Notion of Human Dignity in the German Constitution

Conflating the findings of the established discourse, choosing Kant, the philosopher of human dignity, as the point of reference for the method of the “moral reading” is reasonable. The similarity of the established discourse to Kant's ideas becomes clear and supports this approach in the argumentation of the Federal Constitutional Court: they use the same language and underlying argument.

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<sup>4</sup> The only attribute of dignity, which I will not discuss in depth, is the attribute “human”. In the philosophical context and also in legal disputes about, for example, abortion, the definition of “human” becomes highly important. I will not go into such detailed questions of fundamental rights dogmatics and will leave them aside. My concern lies with outlining and establishing the state's duty and responsibility for global justice based on human dignity.

Linking legal implementation and philosophical meaning, court rulings reveal institutional orientation and history, thereby ruling out other moral theories. In contrast to the US legislature, the Constitutional Court ruled the wilful elimination of a hijacked aircraft to be unconstitutional – without exception – lest human dignity would be infringed upon:

37 The Aviation Security Act infringes the complainants' fundamental rights to human dignity and to life pursuant to Article 1.1 and Article 2.2 sentence 1 of the Basic Law. The Act makes them mere objects of state action. The value and the preservation of their lives are left to the discretion of the Federal Minister of Defence according to quantitative aspects and to the life span presumably remaining to them "under the circumstances". ...

38 The state may not protect a majority of its citizens by intentionally killing a minority – in this case, the crew and the passengers of a plane. A weighing up of lives against lives according to the standard of how many people are possibly affected on the one side and how many on the other side is impermissible.  
(BVerfG 2006)

The approach to the jurisdiction is congruent with the second version of the categorical imperative by Kant (Kant [1785] 1998, 38). The court derives from human dignity and equality before the law a prohibition of quantification of life (BVerfG 2006 and Deutscher Bundestag 2021). A consequentialist, in turn, would have deemed shooting down the aircraft the best solution. Thus, the court, in its interpretation of human dignity, follows Kant's categorical imperative very closely and rejects a consequentialist line of thinking.

Sourlas (2016) elaborates on the implications: Dignity represents the highest constitutional value and thus has to be understood rather as a status than as a value. Otherwise, because the concept of values is a comparative one, dignity could be weighed against other values and thus lose part of its unique status. As Sourlas argues, morality, by nature, refers to categorical duties. These guide action regardless of their consequences (36). Hence, if law is to be morally "right", it has to be supported by deontological reasoning.

Law, however, derives its value not only from governing actions, but also from the rights it grants. Only positively guaranteeing human dignity can meet the demands of the concept. Kant's theory of justice uses the principle of rights, but is grounded in a deontological approach. While, as Sourlas (2016) rightly points out, the element of human dignity as the principal constitutional value does not lead to fundamentally different rights, it does change

the moral content of such rights: the end the rights serve is not a concrete one (quality of life), but the abstract concept of human dignity as an intrinsically valuable status (43). Thus, a moral theory which aligns with the (assumed) popular consensus reflected in the German Constitution, must not only account for the concept of human dignity and its (prominent) rank. It must also justify the granting of particular rights by their relevance to human dignity.

I will build on Sourlas' rather theoretical approach, which focuses on institutionally enforceable mutual duties, but focus on the broader vision to work out implications for global justice. Trying to distil such a singular vision of justice, I will use the criteria of *fit*, *justification*, and *consistency* to examine in detail and compare the concept of dignity in Kant's work and in German law.

### 3.1.3. Fit

Both, Kant and the German constitutional jurisprudence, assign human dignity a central and supreme position. In the *Groundwork for the Metaphysics of Morals*, Kant ([1785] 1998), ascribes dignity of humanity intrinsic value and equates the two (42). As dignity has intrinsic value, it has no equivalent and lies "infinitely above all price" (43). This corresponds with human dignity as the "supreme value" in German Basic Law (Barak 2015, 227). The congruence of the present German understanding and the Kantian understanding of human dignity supports Sourlas' approach arguing for a Kantian foundation of the first article of the Basic Law. It does not, however, provide a sufficient explanation of the origin or "the point" and implications of dignity. Thus, a further analysis of the Kantian understanding of dignity and its compatibility with related concepts of the German hierarchy of values becomes necessary, while ensuring the fulfilment of Dworkin's criterion of consistency.

For Kant, "morality, and humanity insofar as it is capable of morality, is that which alone has dignity" (Kant [1785] 1998, 42). Thus, humanity without morality does not have dignity. The capacity for morality distinguishes humans from other species and enables the

rational being to give law to themselves and be an end in themselves (42). As Apaar Kumar (2021) outlined in his analysis of the ground of human dignity in Kant, views differ here. Reasoning varies from different human capacities (“the capacity to set ends, capacity for morality, capacity for freedom, the good will”) to “the moral law” as the source of dignity (449). Analysing these approaches, Kumar argues for humanity and their capacity to moral law. As a result, dignity is grounded in morality and reason, but also in humanity in the form of a systematic, reciprocal relationship (436-437, 449). Thus, humanity and morality have to be considered equally in the context of dignity. By virtue of being human, all human individuals are equal (Johnston 2011,162). Correspondingly, dignity implies (a certain kind of) *equality*, also being reflected in *equality of rights* and thus, in the protection of elementary legal equality.

Another term linked to rationality, freedom and consequently human dignity is autonomy. The categorical imperative, as the principal moral law, grounds these aspects: only a rational person, who is free from other influences can adhere to the categorical imperative (Demenchonok 2019, 194-200). Thus, freedom of will grants the human being their capacity for morality, because “autonomy of the will is a necessary condition of moral agency” (199). As established above, the capacity for morality grants humanity dignity. Morality, as prescribed by the highest moral law, is only possible if humans have free will, which enables them to think free from any influences (Demenchonok 2019, 193-200). Consequently, all human beings must be “presumed to have the capacities and predispositions of rational autonomy” (Hill 2014, 215). “*Autonomy* is therefore the ground of the dignity of human nature and of every rational nature” (Kant [1785] 1998, 43). Thus, rationality and morality necessitate freedom of will, autonomy.

Based on the reasoning presented herein, the following rationale can be deduced: Morality can only exist where there is freedom. Freedom and rationality build the foundation for morality (Johnston 2011, 149). As previously established, dignity arises from the human capacity for morality. Morality requires rationality and freedom, thus “human beings have

dignity by virtue of their rationality and freedom” (Hill 2014, 2017). Freedom, defined as the “subjection to no other laws than those, which a person gives to himself” is, thus, the basis of morality and justice and has to be protected (Johnston 2011, 162). This is reflected by the protection of an inviolable core area of private life, which is derived from the first article of the Basic Law (Epping 2021, 328). This protection grants the authority to make independent decisions in the private sphere without interference by the state, thus enabling one to act autonomously. The distinction between private and public life is supported by Kant’s distinction between private and public rights in his theory of justice (Johnston 2011, 155-156).

While the term *freedom* thus far has been used in the sense of internal freedom, there is also a physical component to it. Physical freedom is a prerequisite to psychological freedom. According to the argument against the proposal of the Aviation Security Act, dignity also seems to be violated in the case of (physical) dependency on others’ actions. Hence, physical determination by others goes against dignity. As humans are equal in their capacity for freedom, but can be subjected to another’s will, freedom has to be protected by the state. In Germany, for example, this is done through the state’s duty to guarantee the protection of bodily integrity. Here, the argumentation for the state’s duty is based on the first article of the Basic Law in combination with the second article of the Basic Law, which is closely related to human dignity (Epping 2021, 327 and Deutscher Bundestag 2021).

Further, freedom, for Kant, is not solely negatively defined. Onora O’Neill (2000) equates the capacity for positive freedom with Kantian autonomy (42). Kant’s image of human life is one in which agents with varying levels of capacity and vulnerability interact (138). This autonomy, however, is only possible if one has the resources to practically realise the negative freedom. Otherwise, one is bound through the subjugation by the economic actualities. Kant argues that certain needs have to be met in order to be able to fully exercise the freedom of will. In this way, Kant was one of the first to consider some aspects of “social justice” (Johnston



2011, 163-165). Thus, vulnerability and human potentiality are additional aspects of human dignity, which necessitate protection. This vision corresponds with the principle of the social welfare state and the protection of elementary bases of life (Deutscher Bundestag 2021, Epping 2021, 327 and Raab 2019, 23).

Kant, however, is not the first one stressing the notion of autonomy. As Kurt Bayertz (1995) and George Kateb (2014) argued, the Kantian idea of autonomy found its inspiration in the famous speech of Giovanni Pico della Mirandola (Bayertz, 467 and Kateb, 4). Addressing humanity, della Mirandola (2012) promulgated: “But you, constrained by no limits, may determine your nature for yourself, according to your own free will, in whose hands We have placed you” (117). Della Mirandola placed the human being between something heavenly and something earthly (117). This notion is congruent with the Christian tradition, which influenced the vision of the German constitution (Eberle 2012, 206). Here, autonomy, and thus human dignity are based on the human capacity for rationality, manifested in the human capacity to shape themselves. While put differently, Kant takes on this idea, because humans only gain the capacity to shape themselves through rationality. Similarly, this wording can also be found in the *2030 Agenda for Sustainable Development*.

Individual (positive) freedom and the capacity to develop one’s potential, however, solely become possible in a community. Only by entering into the civil condition, rights and thus individual freedom can be protected. Individuals have a duty to enter into the civil condition via the social contract, thereby giving law to themselves in accordance with the categorical imperative. This social contract, then, lays the foundation for obligations towards one another based on the principle of reciprocity. Kant argued, for example, since the wealthy benefitted from the order of the civil condition, they are obligated to care for their fellow citizens. In this way, Kant can be viewed as a moderate communitarian (Johnston 2011, 160-4 and Tan 1997, 56). The civil condition resembles a community of mutual collaboration and

solidarity (Eberle 2012, 206). Thus, Kant's understanding of human dignity also, as a consequence, entails *solidarity*. This fits with the *Charter of the Fundamental Rights of the European Union*, linking *solidarity* to *human dignity*.

If the German concept of human dignity is closely related to the Kantian maxims, then civil society is the necessary consequence of human dignity. Only through entering into the civil condition, every individual can be granted the necessary conditions to live to the full potential of human dignity. Then, based on the belief that everyone has equal dignity, a community serving the people can be established. As a consequence, a just society arises, which is able to secure justice and provide for its members while legitimately obtaining coercive power (Johnston 2011, 154-163). In this way, justice and human dignity are mutually dependent. More precisely, human dignity demands justice and just is what is consistent with human dignity. Thus, human dignity seems to come first, to which justice is then aligned.

#### 3.1.4. Justification

It is precisely because of the connection between morality and justice, and because Kant assigns immeasurable value to human dignity, that Kant's moral theory can fulfil the criterion of justification. An underlying moral theory must be able to justify the prominent position of human dignity in the constitution by the moral content it attaches to human dignity. In Kant as well as in the German hierarchy of values, human dignity stands at the beginning – in its content as well as in its meaning. Human dignity, thus, is of significant value.

#### 3.1.5. Consistency

Kant's moral theory as the foundation for human dignity in the first article of the Basic Law does not only seem to *fit*, but also fulfils the criterion of *consistency* of the constitution and equally the *Charter of the Fundamental Rights of the EU*. In this way, a single vision of justice is established. The components guaranteeing human dignity can be derived from the

Kantian conception and be equally found in the German vision. Kant's human dignity manages to ground the principles associated with it and to make them meaningful in the appropriate place. Thereby, a moral theory, that is to say a world view, evolving around human dignity is established.

### *3.2. Human Dignity and Ethics: Human Dignity as a Single Vision of Justice*

While the Kantian conception of human dignity does generally fulfil Dworkin's criteria, some divergences exist. However, these can be solved by theoretical additions and Kant's foundational idea remains. The comparison of Kantian deontological ethics as the practical implementation and the German realisation points to a broader and more practical definition of human dignity. For Kant, what is right, what is in accordance with human dignity, refers purely to actions. Making only actions or rather intentions decisive, Kant has developed a very radical deontological concept. In the German conception, however, external conditions and thus outcomes are also relevant. The guarantee of a minimum subsistence level, for example, does not refer to a human's capacity for morality or moral actions, but to a physical state (Epping 2021, 327). The Federal Constitutional Court explains, "The Constitution only requires the existential needs to be actually met; as a result, it must be possible to explain the amount of benefits based on sound reasons" (BVerfG 2014). By referring to the outcome here, the court clearly deviates from Kant's deontological ethics. The physical component of human existence plays a decisive role. The court thus holds that human dignity not only requires "good", i.e. moral actions, but also certain objective criteria must be met. The outcome matters.

By extending the meaning of human dignity beyond the capacity for morality, a broader definition of human dignity is applied. That moral action cannot be the only aspect of "the good" and valuable in man is shown in the assumption that every human being, including disabled and infants, today carries the status of human dignity. In contrast, according to Kant,

dignity is strictly bound to acting morally thereby excluding groups. Equating rationality and humanity, humanity is treated as an end in itself only through respecting the moral law. Hence, necessitated by the moral imperative as the highest moral law, the respect for an individual is inseparable from a person's capacity for morality (Kateb 2014, 13 and Kerstein 2014, 222-224). While morality thus gives humanity its inestimable value, the strict reliance on rational autonomy by Kant excludes certain groups.

Through additionally classifying human dignity as an existential value awarded to every being considered to be human, Kateb (2014) responds to this gap theoretically. In separating human dignity as a moral and as an existential value, he maintains a close reference to morality but does not reduce free agency to moral agency alone: "The existential values would be worthless without realized moral capacities" (18). Thus, while morality confers value, conversely, what has no capacity for moral action through rationality and autonomy, like infants or the disabled, cannot lose its status. This view corresponds with the current understanding of human dignity not being dependent on the actions and attitudes of the individual and being attributed to each individual equally.

Philosophically, building on Kant, Kateb (2014) primarily achieves this distinction through the separation of individual dignity and the dignity of humanity (3-17). Accordingly, the incentive to behave morally is preserved, but the concept of human dignity is broadened and comes closer to a conception of human dignity as status. While this approach goes beyond Kant, it seems to capture part of the notion of human dignity in German Basic Law. The close connection between morality and dignity remains, but human dignity as a status can never be lost. In this way, in practice, morality has no influence on the status of human dignity.

Disrespect for others' dignity, however, remains immoral at all times. Because dignity cannot exist without morality, respect for human dignity must, conversely, be paramount in a society. According to Kant, freedom grounds morality and justice. Thus, invading other

individual's freedom by imposing their will on them, one disrespects or restricts their autonomy, thus their capacity for morality. As stated in his *Metaphysics of Morals*, "Any action is right if it can coexist with everyone's freedom in accordance with a universal law" (Kant [1779] 1996, 24). By restricting the freedom of others, one breaks Kant's highest maxim, thereby acting immorally. Only through respect for the freedom of the individual, morality and justice can exist (Johnston 2011, 146-150). Because human dignity cannot exist without moral content, as outlined by Kateb, moral action has to remain the paramount requirement of community. Only in this way, human dignity is sufficiently respected.

Moral action and respect for dignity, however, do not only result from the negative freedom of the other, but also arise philosophically as a duty against oneself. In his *Metaphysics of Morals*, Kant establishes accordingly that dignity not only entitles a person to particular types of treatment from others, but it also obligates a person to act consistently "with the *dignity* of humanity in his person" (Bayefsky 2013, 817). If the citizens accept the outlined conception of dignity, they, in turn, also have the duty to act accordingly, out of respect for their own dignity. While human dignity as a status cannot be lost, the appeal to moral action remains to realise it. Only then society commonly values dignity.

If the state in a democracy is to be understood as rule in the interest of the people, it must adhere to the same principles as the individual. According to Rousseau, freedom, equality and popular sovereignty are the essential characteristics of a democracy (Kelsen 1955, 21). On the basis of popular sovereignty, democracy becomes a "government BY the people" (4). Then, the people also have constitutional power. In this sense, the constitution is an ethical consensus (Detjen 2009, 25, 33, 43, 148). As elaborated above, human dignity commands both that one respects the dignity of others, and that by acting morally also their own. The same applies to the state: the German system of values is only in accordance with human dignity if the state respects the freedom of the individual and at the same time commits itself to moral action.

Since human dignity is by definition afforded to all humans, the duty to act morally towards individuals cannot end at national borders. Consequently, Germany does have a clear moral obligation to respect the dignity of all, as no differentiation can be made between nationals and non-nationals.

Whether the state's actions in the interests of the people go beyond respect for the human dignity of every human being worldwide is of different concern: human dignity has not only moral but also existential value. Thereby, not only actions, but also physical condition and the corresponding needs, define human dignity, which must never be lost. Under certain circumstances, this can only be achieved through active help. Since human dignity is of such fundamental importance in the German hierarchy of values and is closely interwoven with a conception of man, it stands to reason that it is only consistent to represent this conception of the world to the outside as well. As Woodrow Wilson so fiercely established in his speech to the Congress to enter the war in 1917, a country has to react in accordance with its main principles and cannot disregard them and thus the “right” no matter the circumstances. Wilson (1917) affirmed, “we shall fight for the things which we have always carried nearest our hearts”. What Wilson’s statement implies is that a nation should represent the same values – its consensus of values – on the outside as it does on the inside. Thus, applied to Germany, the country should equally represent its vision of the human being, human needs and thus also its vision of a just world internationally.

#### **4. Moral Responsibility: Kantian Theory of Global Justice**

As Kant’s theory of human dignity largely aligns with the German conception, I want to explore in the following, whether (and how) the principles explained above are applicable at the global level. In the following paragraphs, I will first outline potential problems of a rights-based approach to global justice and in a next step, examine the applicability of Kant’s theory

of justice on a global level. While Kant does not establish an account for global justice, humanitarian aid and foreign support, according to his view, cannot be solely considered voluntary donations, but there exists a duty to do so rooted in the concept of human dignity – even if imperfect.

#### *4.1. Rights and Global Justice*

Kant defines justice in a domestic context. Building on the values of autonomy and freedom, justice is generated through the principle of rights. These rights establish positive and negative freedom. In the domestic context, the state represents the coercive mechanism to enforce rights. According to the second paragraph of the first article of the Basic Law, human rights follow from human dignity (Deutscher Bundestag 2021). Therefore, the assumption is evident – in parallel with Kant – that human rights generate justice. While human rights have theoretically been established all over the world, there are numerous ongoing violations of them. In 2018, 656 million people were living below the poverty line, even though human dignity, according to the philosophical understanding underlying German Basic Law, dictates an economic (subsistence) minimum (The World Bank n.d.). While many states commit to the idea of human dignity, not all feel obliged to adhere to the rights derived from the concept or actively promote the “status” of human dignity. Thus, the idea of human rights lacks enforceability in the form of a functioning coercive mechanism.

The lack of a coercive mechanism follows from another problem: the gap between rights and obligations. Choosing a rights-based approach to global justice runs the risk of leaving a gap between granting rights and assigning obligations to particular agents. The Western world assigns every individual human rights. In practice, these rights take the form of a negative duty not to violate human rights, thus, not to act against any individual’s human dignity. By default, individuals who live in conditions, which do not conform with the

previously outlined concept of human dignity, technically obtain a right, but cannot successfully claim the same. Unless individuals know whom to turn to – whether to their compatriots, to states or other organisations – their rights remain useless (O'Neill 2000, 126, 199). Accordingly, a comprehensive theory of global justice must include the aspect of assigning particular agents obligations to fulfil demands on the side of recipients. Rights without corresponding obligations do not function.

#### *4.2. Human Dignity and Global Justice*

As established above, in case of need, citizens of a state can rely on the state. Thus, domestically an obligation of the state is established following Kant's theory of justice. If one can barely survive, rationality and morality will not be the guiding principles. In such a case, one is "dominated" by basic desires and basic needs and cannot decide rationally – and thus, not act autonomously. Kant acknowledges this deficit assigning the state a duty to assist individuals as agents in need. Thus, the Kantian approach is also needs based. If, however, poverty stands in tension with autonomy, this conflict equally applies to those who are not a member of this particular society (O'Neill 2000, 140). As non-nationals have human dignity and thus a claim to autonomy, there are grounds for equal importance of their basic economic needs being met as those of nationals.

However, a difference between domestic and global justice arises from the framework of the state and the social contract. By entering into the civil condition, citizens accept certain obligations. These obligations then allow them to demand the duty of assistance from the state. The social contract one agreed to by entering into the civil condition grounded this duty of the state. The purpose of the state is thus, to allow all to live in autonomy. Entering into this civil condition presents the only way to achieve justice and is thus an absolute duty. According to Kant, redistribution can take place through coercively imposed taxation. This redistribution is



based on two aspects: the purpose of the state is to assist the individuals, and the wealthy have benefitted from entering into the civil condition (Johnston 2011, 160-163). Neither of these aspects applies to non-nationals, who are not part of the social contract. Thus, they do not have the same claims against the state as nationals do. While no distinction can be made in terms of need, positive obligations for an individual state – according to Kant – only follow in the case of nationals. As long as no world-state exists, no direct positive obligations will arise based on Kantian arguing and contractarianism. A world-state, however, does not seem to be established in the near future, thus not solving the problem of assigning responsibilities at present.

Entering into the civil condition, however, is only one part of the Kantian reasoning. For Kant, coercive measures were acceptable, because the wealthy have benefited from the organisational structure before. Considering an increasingly globalised world, wealth is largely derived from acting on a global stage. Thomas Pogge (2002) pointed this out and argued for a new institutional structure (43, 48). Based on the principle of reciprocity grounding Kantian justice, it can be argued that those who benefit should also give something back. Thus, a certain responsibility for non-nationals arises. The subsequent problem, again, is that of assigning obligations to particular states. It seems impossible to evaluate how much one state benefits and to whom they should have an obligation to give something back.

If, however, a clear violation of duties of justice can be pointed out, then a direct obligation to rectify exists. Thus, a perfect duty – in the sense of guaranteeing an identifiable minimum – could be established on a global scale. Kok-Chor Tan (1997) argued in this direction explaining how the imperfect duty of beneficence can become a perfect duty of justice considering a globalised world and the current socio-economic order. This does not apply to misery caused by natural misfortunes (70). Referring to Kant's *Lectures on Ethics*, Tan argues that already Kant acknowledged that most injustices are created by man. Accordingly, the corresponding duties to mend past injustices must exist. If men respected their duty of justice,

the majority of miseries in the world ceased to exist (60). In light of existing miseries like extreme poverty, violations of duties must have happened.

Establishing a historical and institutional account, for Tan, the poor's need for assistance is based on past injustices. Thus, the imperfect duty of charity becomes a perfect duty. In a next step, Tan (1997) combines this aspect with an appeal to the international framework. Given the countries' participation in the global economic system, which is largely characterised through international interdependencies, they have to pay a "debt of honour" to the less fortunate (60-64). Until there is agreement on who is responsible for past injustices, this argument is more of an appeal to morality than a binding one. Moreover, two questions arise: the question of collective responsibility and historical responsibility. Can the current citizens of a nation be held responsible for the country's past injustices? Thus, while morally appealing, further proof in support of Tan's argument is missing.

While Kant's theory of justice focused on domestic justice, he still considered cosmopolitan rights. Kant famously defined, "The rights of men, as citizens of the world, shall be limited to the conditions of universal hospitality" (Kant [1795] 1915, 137). According to O'Neill (2005), Kant assigns the duty of hospitality to a world that no longer exists (116, 186-187). At the time of Kant, hospitality was seen as one aspect towards perpetual peace, which can be deducted from the context of his writing (Kant [1795] 1915, 65). Today, a step towards peace could be eradicating poverty, as poverty is a source of conflict (Braithwaite et al. 2016, 60). The urgency of acting in this direction becomes clear from rising inequality (United Nations General Assembly 2015). While the duty of hospitality might not carry the significance of Kant's time today, the aim for peace is still fundamental. Besides granting the individual the means to autonomy and thus human dignity, reducing poverty has the potential to reduce violations of human dignity at the collective level by reducing conflict. Conflict, especially if violent, is typically associated with disregard for human dignity. As a very grand and general

positive imperative, this line of thought does not assign a distinct duty, but more of a “moral incentive” to act. Positive duties, as I have argued above, can only be assigned where there is a clear violation of human dignity, so that there is no uncertainty about the moral transgression. All else is a bonus.

A duty of justice, which can be defined and seems appropriate, is the duty of beneficence. While this is only an imperfect duty, turning it the other way, a duty never to assist anyone in need does not pass the categorical imperative (LeBar 1999, 227). Based on the distinction between perfect duties of justice and imperfect duties of virtue<sup>5</sup> the duty of beneficence does not entail any justification of coercion. An imperfect duty does neither specify what particular action has to be performed and cannot be actively demanded by another agent. Thus, the duty of beneficence cannot establish a positive duty on the side of Germany to assist the poor. As shown through the reversal of the categorical imperative, agents are demanded not to never practise beneficence (Tan 1997, 54-55). Referring to humanitarian assistance, Germany sometimes presents itself as a “generous donor” (Federal Foreign Office 2021). Considering beneficence as duty of virtue, the phrase of a “generous donor” does not seem adequate. Rather, morally leading by example as a virtuous country, assistance should be framed as a duty – even if imperfect.

In light of these considerations, a Kantian approach to justice in its original sense does not provide any substantial foundation to argue for a complete theory of global justice, which includes positive duties on the side of Germany. The necessity for the fulfilment of basic needs and the presence of inequality remain. Thus, these findings do not imply that the status quo depicts how it “ought” to be. As Kant pictured a very different world, it can be questioned whether his theory of justice goes far enough and is suitable to assess obligations for global justice. In terms of need, as a condition conflicting with human dignity, no distinction can be

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<sup>5</sup> Tan (1997) explains the distinction between perfect duties and imperfect duties (54-5).

made between nationals and non-nationals. Hence, a country like Germany, which heavily emphasises the inviolability of human dignity, should not simply disregard the divergence of “ought” from “is”, from a moral perspective.

## **5. Responsibility and Action: Negative and Positive Duties**

It has been established that positive duties on the side of Germany only exist in the form of a moral appeal, while “perfect” negative duties towards non-nationals are derived from the concept of human dignity. In the following, I will argue that obligations based on negative duties and positive duties do not properly reflect the implications in practice. To support this, I will discuss different cases by applying the concept of negative and positive duties. In the globalised world, the effects of one's own actions can be far-reaching. Therefore, the distinction between negative and positive duties is less convincing than a clear theory of responsibility for one's own actions based on certain principles.

### *5.1. Negative Duties*

The relevance of poverty, which I have justified argumentatively above, is highlighted by it being the first of the seventeen goals for sustainable development of the UN's *2030 Agenda for Sustainable Development*. This indicates a large consensus regarding the urgency of addressing this issue at a global level. Further, poverty and conflict are endogenous variables (Braithwaite et al. 2016, 60). In article twenty-six of the Basic Law, Germany lists “securing international peace” as a state objective (*Staatszielbestimmung*) (Deutscher Bundestag 2021). While the legal liability of state objectives is low, they express guidelines for government action (Detjen 2009, 24). Thus, Germany's commitment to promoting international peace can, in part, be understood as commitment to fighting poverty.

Traditionally, unless a state actively took away non-nationals goods, which, for example, happens during war, states do not violate their negative duty and thus no positive duty can be imposed on them. However, the modern globalised world forces a change of perspective. Because the act of ignoring or neglecting has, in the long run, similar effects as active destruction, both should entail the same responsibility and be set equal to a violation of negative duties. This has been recognized, in part, in the form of steps taken for the promotion of social responsibility in business practices, such as the German Supply Chain Law (*Lieferkettengesetz*). This legislation aims at the improvement of the protection of human rights in global supply chains (Bundesministerium für Wirtschaftliche Zusammenarbeit und Entwicklung. n.d.). Here, the negative duty to refrain from violations of human dignity, in this case from unethical business practices, has been linked to the notion of responsibility. The scope of responsibility for actions has been widened in an interdependent world. By recognizing more distant effects as consequences of one's action, the remedy of such effects can be defined as part of the negative duty mandated by human dignity.

Considering the interaction of states in an international economic and political sphere, the state should hold itself accountable in the same manner, which, for Erin Kelly (2007), makes for a moral and just state. Here, the distinction between negative and positive duties seems to become indistinct or rather, negative duties have greater implications regarding national interest than one might expect. In her paper, "Human Rights as Foreign Policy Imperatives", Kelly presents herself as a proponent of international accountability for (minimum) human rights. Kelly argues that obligations to fellow citizens cannot weigh higher than the basic needs of non-nationals (178). Combining a Rawlsian perspective with a high emphasis on morality, for Kelly (2007), "All decent states have a moral obligation not to profit from dealings with regimes that systematically violate human rights" (180). This demand is grounded in the assumption of mutual concern, which "is basic to any plausible conception of

morality and justice” (180). Thus, based on its reliance on a Kantian approach grounding justice in morality, Germany is urged to oblige to these proposed duties.

Demonstrating moral concern for an outsider's well being would entail giving up national interests on behalf of outsiders. The negative duty not to violate an outsider's human dignity – either directly or indirectly – can result in higher cost than the idea of negative duties might at first imply. Here, the duty to refrain from engaging (economically) with countries violating human rights – and thus human dignity – is grounded in the consideration of indirect consequences of one's behaviour. While one could argue against this conception in parallel with the *no rest problem* of utilitarianism<sup>6</sup>, the negative effects of strengthening a “villain” economically are obvious. Additionally, refraining from engagement with other governments violating human rights, provides an effective mechanism to promote change at a larger scale (Kelly 2004, 182). Thus, giving up national interest in the present potentially generates the prospect of a more equitable world with less unrest.

## 5.2. *Non-Assistance*

Another problem of the concept of negative and positive duties in light of states as primary agents for global justice is illustrated by Peter Singer's *shallow pond* argument and the problem of assigning responsibilities in the international sphere.

While Singer presents a consequentialist argument, it is grounded in an appeal to morality. Germany builds on Kant in many ways, but has a more practical approach to the realisation of human dignity, acknowledging the moral urgency of respect for human dignity. Thus, a deeper consideration of a consequentialist argument like Singer's to support the claim of moral responsibilities becomes relevant. Singer (1972) introduces the *shallow pond* example: a child is in danger of drowning in a relatively shallow pond and you are the only

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<sup>6</sup> An explanation of “The No-Rest Objection” can be found in Louis P. Pojman's and James Fieser's (2011) book chapter “Utilitarianism” (118).

person around, who could save it without major inconveniences besides getting wet (231). Singer argues, “if it is in our power to prevent something very bad from happening, without thereby sacrificing anything morally significant, we ought, morally, to do it” (231). In this example, the relationship of the two individuals to each other does not matter. Therefore, the argument is transferable to the level of the state and any individual, no matter their nationality. Accordingly, the same conclusion can be drawn with regard to global justice. If a state can prevent violations of human dignity or living situations incompatible with human dignity, it has a moral obligation to do so, regardless of the nationality of the individual.

The duty of assistance, clearly, is a positive duty, which has not been assigned previously. It is, though, restricted by the condition of ability thereby addressing the criticism of feasibility. However, turning this argument around, there also seems to be a point in the assumption that non-assistance, in some cases, results in a violation of respect for human dignity. Then, an agent, able to act upon the situation seems to be partially violating his own duties. Non-assistance would at least make an agent morally partially responsible, given that this agent held the capacity to act. The question of inactivity is particularly difficult in the context of global justice, as severe problems such as poverty are seldom monocausal, thus complicating the assignment of direct responsibility (Miller 2007, 233). As a consequence of these ambiguities, those living in a state neglecting respect for human dignity continue to suffer. Thus, negative and positive duties cannot sufficiently account for the dilemma considering nation states in a global context. The people in need will only be helped if everyone feels responsible because of the seriousness of their situation.

Put differently, a negative imperative thus hardly differs from the corresponding, reverse positive imperative. Hence, differentiating between strict negative and positive duties is not plausible. Marcus G. Singer (1965) argues that under certain circumstances negative requirements of morality can be just as restrictive as positive requirements. For Singer, positive

and negative duties can lead to equally demanding outcomes, especially if one finds themselves in a situation where they are qualified to help (97). Using the example of a dramatically ill person and a second individual owning a healing pill, the blurred distinction between negative and positive duties and the consequent obligations becomes obvious. Following the negative duty not to kill while being in possession of a life-saving pill, which is not needed otherwise, seems to morally come close to being in part responsible for killing (97-103). Thus, the transitions between negative and positive obligations and violations of these through failure to provide assistance are fluid. Moreover, the question remains as to when someone is in such a position and thus morally obligated to help.

In the national context, this problem is solved by assigning responsibilities to particular agents under certain circumstances. A similar solution on the global level can be imagined. In Germany, the criminal code sanctions omitted assistance, which follows an argument similar to Singer's:

**Section 323c**

**Failure to render assistance; obstruction of persons rendering assistance**

(1) Whoever does not render assistance in the case of an accident or a common danger or emergency although it is necessary and can reasonably be expected under the circumstances, in particular if it is possible without substantial danger to that person and without breaching other important duties, incurs a penalty of imprisonment for a term not exceeding one year or a fine.

(2) Whoever obstructs a person who is rendering or wishes to render assistance to another person in such a situation incurs the same penalty.

(Federal Ministry of Justice and Federal Office of Justice 2019)

According to the rationale of this legal norm, reasonable expectations condition responsibility. Here, "reasonable" is further defined as the absence of "substantial danger" and of "other important duties" (Federal Ministry of Justice and Federal Office of Justice 2019). This law applies in cases where there is a threat of significant personal injury or property damage, thus also when a person's life is at risk (Federal Ministry of Justice and Federal Office of Justice 2019). Transferring the implied considerations and the basic understanding to the consequences of severe poverty, the same conception is applicable. These components support



the essence of Singer's argument, which deems negative duties not sufficient from a moral perspective.

Applying this idea to a more practical example, an agent who shares these previously outlined moral concerns for human dignity cannot claim to do "enough" referring to the negative duty not to harm. Seeing someone in need and deliberately refusing to help arguably goes against moral intuition. Therefore, a (moral) conflict arises if a state commits itself to moral actions. During the refugee crisis, for example, people were stuck between different borders, as no nation felt responsible (Tondo and Mamo 2022). Not stepping in to help, even if it was possible, then led to arguably undignified living conditions for these refugees. Thus, if no one helps, but individual agents could, it can at least be questioned whether they (collectively) had a moral responsibility to do so.

### *5.3. Positive Duties: Feasibility*

The problem of assigning positive duties is that of feasibility. If positive duties are set equal to a general responsibility, individual states are not suitable as a primary agent of justice in a global framework. Only if agents possess the corresponding responsibilities can these agents be coerced to follow a certain principle of justice (O'Neill 2004, 250-251). Given the accumulation of human rights violations and the number of people living in conditions incompatible with dignity, it is impossible for one state alone to bear this burden (Human Rights Watch 2021). The costs resulting from positive duties exceed the states' capabilities and are immeasurable. Thus, the current institutional framework and the aspect of feasibility militate against positive obligations for individual states towards non-nationals.

In order to solve the problem of feasibility constraints, a weighing system, as David Miller (2007) developed, could be introduced. In Miller's system, negative duties outweigh positive duties, while positive duties for nationals are more important than for non-nationals

depending on severity. The precedence of national duties is owed to the intrinsic value of national affiliation. For Miller, “no good reason” to disregard special obligations towards nationals exists (43). Such a weighing system can provide guidance as to which duties of a state should be given priority, posing a practical solution considering the gap between demands and obligations of global justice (43-50). Miller characterises this divergence as the gap between identifying an issue as severe and assigning responsibility (232). Accordingly, from a rather practical perspective, a weighing system is plausible.

Human dignity as the highest value of the hierarchy of values, however, defines a world view. Thus, a conflict between a statist approach and human dignity as a fundamental value grounding the German system of values arises. Weighing systems like Miller’s are regularly supported by empirical facts. In order to meet the aspect of feasibility, a system, based on statism, thus, has to and can only give priority to the wellbeing of and duties towards national citizens (Miller 2007, 194, 267). However, the inviolability attributed to human dignity must be taken seriously. Therefore, feasibility is morally irrelevant in the core area of violations of human dignity. In the case of mere reference to human dignity, appropriate consideration and a careful assignment of responsibility are necessary. The scope of responsibility for action must be broader, due to the interdependencies of a globalised world. This scope ends where autonomy is preserved and therefore interference by outsiders would violate human dignity.

## **6. Conclusion**

In order to fully understand the connection between concern for global justice and the domestic hierarchy of values building on human dignity, the main findings of this work will be re-examined in the following. Subsequently, I will briefly outline the limitations of the work and, from these steps, present an outlook and suggestions for future research.

### *6.1. Summary*

In the first part, the significance of, and a comprehensive – national and international – commitment to human dignity by Germany could be displayed in laws, declarations and the political debate. Through the connection of human dignity to human rights, a widespread concern for global justice becomes apparent. Human dignity's significance in the legal discourse as the foundation of the system of values stands in contrast to a lack of definition and a negative interpretation that is both weak and shaped by practical considerations.

The method of the “moral reading” by Dworkin has made it possible to expand the teleological meaning referring to Kant and, thus, to elaborate the philosophical and moral significance of human dignity in Germany. Human dignity can only exist in a context of morality, rationality and freedom. In order to implement human dignity, a society must provide for the possibility of these aspects. When everyone is given this opportunity, a society can be considered just. Germany broadly adopts a Kantian notion of human dignity by associating and justifying the same concepts with human dignity. Attributing the value of human dignity to everyone without exception – according to the understanding of dignity as an existential value that assigns a status – the same needs of nationals and non-nationals must be recognized. Morally, therefore, there can be no distinction between nationals and non-nationals, and the same principles should be applied across borders to ensure justice. A perfect negative duty arises from this conception.

Having established a basis for the responsibility of states (human dignity and the aspects it entails), in the fourth part, the difficulties of applying these concepts to a global level were examined. While equal needs and thus rights can (and should) be assigned based on human equality, the coercive mechanism to assign and enforce the corresponding obligations going beyond a negative duty is missing. With reference to the imperfect duty of beneficence and the possible positive long-term consequences of aid, an appeal to morality can be formed.

However, a complete theory of global justice cannot be established, as no binding positive obligations can be assigned without a global social contract.

As part five indicates, the distinction between negative and positive duties leaves many questions unanswered in practice. Due to the numerous interconnections and interdependencies in the globalised world, actions' scope of impact increases and arguably one's own responsibility. Thus, the consequences of one's own actions must be given moral consideration – including the effects of indirectly supporting human rights violations or non-action. As long as a distinction between negative and positive obligations is upheld based on the domestic social contract, national obligations weigh higher. However, with globalisation and a greater scope of responsibility, their distinction becomes blurred. Moreover, the German recognition of the inviolability of human dignity, bears in itself a moral appeal to responsibility towards each and every human life.

Thus, after applying the methods chosen, the following answer to the question posed at the beginning is obtained: Germany does have a moral duty to respect the human dignity of non-nationals and must also discharge the imperfect duty of beneficence across borders. For lack of a global social contract, a perfect duty to assist cannot be established for non-nationals, unlike in the case of nationals. In this context, human dignity as a legal philosophical concept not only commands state action, but also guarantees a status by nature of being human. Due to increasingly complex interdependencies in the globalised world, the scope of the effects of actions has changed. As a result, the moral responsibility for one's own actions has become more and more far-reaching, which means that negative duties can, in particular cases, become positive ones. Based on the established meaning, human dignity – including its aspects of equality and autonomy – offers a suitable foundation for global justice.

## *6.2. Limitations*

This thesis has its own limitations resulting from its length and character. Considering the grand notion of human dignity and the little “hard” guidance given, the largest possible basis had to be established through reasoning. With moral rather than legal reasoning, however, lines of thought can differ. Also the idea of a world view is broad and leaves room for interpretation. Further limitations stem from the chosen framework. While the focus on the obligations of nation states does not establish them as the sole agents of justice, the – much more clearly defined – tasks and achievements of international organisations are left aside. Lastly, the broadness and the normative nature of the topic do not allow for the presentation of clear proposals for action within the scope of this work. Accordingly, questions about the appearance of possible aid, as well as problems that can arise from encroaching on the sovereign territory of other states, were left out.

## *6.3. Outlook*

This work draws a direction for future policymaking in the quest for global justice. While many international organisations strive for more global justice, they often fail to clearly allocate responsibility for action. Every state “rests” on the consensus of collective responsibility. However, if each individual state recognizes the moral appeal to represent its own values to the outside world, this will change. Then, the responsibility for global justice can no longer be seen only with other agents, such as international organisations. Rather, international organisations become means, making it easier to accept one's own moral responsibility and facilitate assistance. What such cooperation can look like and which countries share a parallel view requires further research. However, it can be assumed that at least Western states, or the states of the EU, share a largely congruent view of a just society.

Furthermore, the criticism of the concept of negative and positive duties gives impetus to rethink. The actions of the individual should be guided by clear principles. Only when every state bears full responsibility for their actions, within and beyond national borders, can the world become more just. The restriction of positive duties due to national interests should also be questioned here: a society as a community of values (*Wertegemeinschaft*) should ideally be built on principles consistent with a notion of justice. Deliberately building an unjust society is implausible. In a democratic state, the basic understanding of justice should, thus, also reflect the understanding of the individual. The question arises whether it is not (morally) in the national interest to live in a fairer world. The examination of what constitutes national interest should therefore be explored in further research. Beyond the moral aspect, practical self-interest can also be taken into account here. The negative effects of injustice or the benefits of receiving help when in need might become relevant. There is responsibility for one's actions across borders. Accordingly, principles and attitudes cannot end at national borders. The fact of human life is precisely the reason and starting point of all moral-philosophical considerations. Therefore, respect for the human as such is in a certain sense self-evident as a duty, since we, as "human beings thrown into the world", can at least be sure of this nature.

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