

Personhood and Recognition

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Introduction: The Ethical Dimension of Personhood

It is characteristic for the concept of a “person” that it is not only an ontological or descriptive concept, that is, a concept that describes a certain mode of being (*Seinsweise*), but at the same time a normative concept: If a living being is experienced or identified as a person, this experience or identification carries with itself a normative claim: the claim to recognize it as a subject of rights or at least as a being with regard to which we have duties. This is even true, if we do not yet know what exactly these rights or duties consist in or how our ethical theory is further specified.

Therefore the concept of a “person” is not just *some* concept of practical philosophy, but its very core concept. Every ethical theory, be it utilitarian, virtue ethical, deontological, contractarian or whatever must make two presuppositions: First, the anti-solipsistic assumption that there are other subjects at all; second, the assumption that these others—their lives, interests, needs, rights, freedoms—do somehow matter in a normative sense. Many ethical theories just presuppose these two assumptions without further justifying or addressing them (notable exceptions are, of course, Kant and Fichte, about whom I will speak later).

This means that many, if not most, ethical theories have a blind spot which can be articulated by asking: “What obliges me to respect the lives, interests, needs, etc. of other people?” The concept “person” tries to give an answer to this question: “It is the fact that they are persons that obliges me to this kind of respect.” Hence, “person” is one of those fundamental

concepts in practical philosophy that are meant to bridge the gap between “is” and “ought,” between normativity and descriptivity. Notwithstanding the notorious charge of an “is–ought” fallacy, this is not something specific to a certain ethical theory, but something necessary to *any* ethical theory. *Any* ethical theory needs a systematic place for such a “bridging concept”: For example in preference utilitarianism it is the concept of “interest”; in Kantianism, the concepts of “dignity” and “autonomy”; in virtue ethics, “eudaimonia”; and so on.

However, this observation still does not answer the question of how the claim that personhood is the foundation of duties and rights can be explained without falling into some philosophical obscurantism (as we find it, in my opinion, in Levinas) or just giving “dry assertions” (as Hegel called them). This is even more so, because the concept of a “person” has a paradoxical structure that Robert Spaemann has pointed out: On the one hand, the experience of someone as a person is the foundation of duties and obligations toward him. But, on the other hand, there is also already some kind of fundamental duty to recognize another human being or another subject as a person. Spaemann writes:

Duties of one to another are generated by the moment of recognition in which one person notices another. Prior to this moment there is no obligation. On the contrary, obligation follows from noticing the person, which is one and the same as recognizing another as “like myself.” Yet to recognize a person is not to posit one, as if we owed our personal existence to someone else’s recognition. I recognize, because recognition is due, yet I do not first know that it is due, then recognize. To know that it is due is no more and no less than to recognize.¹

If that is true, we must ask Spaemann, how is it supposed to be possible that something that is the very foundation of moral obligations is in itself a moral obligation. Since Johann Gottlieb Fichte’s “Foundations of Natural Right,” a specific type of theory, usually called a theory of “recognition” (the term Spaemann himself uses here), tries to answer this question. This type of theory has become quite influential especially with Hegel’s famous “Master–Slave” chapter of the *Phenomenology of Spirit*, and it has inspired a lot of contemporary thinkers as different as Jürgen Habermas, Axel

¹ Robert Spaemann, *Persons: The Difference between ‘Someone’ and ‘Something,’* trans. Oliver O’Donovan (New York: Oxford University Press, 2006), 184.

Honneth, Charles Taylor, Jean Piaget, Stephen Darwall, and Spaemann. Just recently psychologist Wolfgang Prinz has revisited and extended the approach from the perspective of his discipline.²

The Recognition-Theoretical Approach

The quintessential recognition-theoretical approach can be characterized by five basic features (which does, however, not mean that the works of all of the above mentioned authors contain all these features):

(1) The starting point is the assumption that intersubjectivity is the condition of the possibility of individual, finite subjectivity—that is, that intersubjectivity is prior to and constitutive for individual finite subjectivity. Or as Habermas sums it up: “Rather self-consciousness forms itself from outside to inside through a symbolically mediated relation with an interactor. In this sense it has an intersubjective core.”³

(2) The intersubjective process constitutive for individual subjectivity has the character of a reciprocal recognition of finite subjects *as* subjects. According to this, the very existence of finite individual subjects can only be explained as the result of an act of recognition by another, or many other, subjects. Therefore, every subject can only understand herself as a subject, if she understands herself as a part of a broader, intersubjective process of mutual recognition, which is prior to herself as a subject.

(3) Acts of recognition can only be performed in freedom by other subjects. In order to conceive of herself as free, a subject therefore must admit that there are other free subjects. Furthermore, she has to grant them the freedom that is necessary to perform an act of recognition at all. Hence, the freedom and subjectivity of others turns out to be the condition of my own freedom and subjectivity and vice versa: My own freedom and subjectivity turns out to be the condition of other subjects’s freedom and subjectivity.

(4) Points (2) and (3) taken together lead to a more specified act of recognition: the recognition of other subjects as beings characterized by freedom. Therefore, the recognition of other subjects as *subjects* implies their recognition as *free* subjects.

(5) The recognition of other subjects as free beings, combined with the insight that my own free subjectivity has as its condition the freedom of

² Wolfgang Prinz, *Open Minds: The Social Making of Agency and Intentionality*, trans. Joel Anderson (Cambridge, MA: MIT Press, 2012).

³ Jürgen Habermas, *Nachmetaphysisches Denken* (Frankfurt am Main: Suhrkamp, 1992), 217. (All quotes of which there is no English version available were translated by the author of the paper.)

other subjects, leads to a further specification of the act of recognition: If there is a plurality of interconnected free subjects, every single subject can only be free in a practical sense, if every subject limits its own sphere of freedom in a way that admits every other subject an indisposable sphere of freedom of its own. This means that recognition must be thought as the recognition of all other subjects as bearers of fundamental rights or at least as beings towards whom every other person has strong ethical duties.

Before I explain these five features in a more detailed way with regard to Fichte, I want to step back for a moment and take a brief look at the history and current use of the concept of "recognition." What I have described so far leads first of all to a philosophical foundation of law or rather of natural right. During the last two hundred years, however, the concept has made its career rather in *social philosophy* than in the philosophy of law. Today we mostly find it in authors like Axel Honneth, who turns it into an empirical concept derived from developmental psychology and social psychology. Or we find it in authors advocating a so-called "politics of recognition," that is, the claim that the identities of minority groups should be appreciated and honored in public and by the public.⁴ Both approaches, however, do not deal with what Fichte and Hegel mean by "recognition." In Hegel and Fichte, recognition is a transcendental concept, by which they try to reveal intersubjectivity as the condition of possibility of finite subjectivity. And this lays the ground of law and ethics as such.

Contrary to that, "recognition" in the sense of Honneth, Iris Marion Young, Judith Butler, Charles Taylor, and so on, is a politico-psychological concept, which is about the affirmation of self-esteem and group identities. Especially in the work of Honneth the crucial difference between the two meanings of "recognition" is almost systematically blurred. It does therefore not astonish that most of Honneth's contributions to the "structure of social recognition relations" amount to a discussion of the findings of empirical psychology on the formation of self-esteem and self-respect.⁵ Over this, he completely loses sight of the relevant normative question, that is, the question what *obliges* us to respect others as subjects of fundamental rights. Instead of this, he proposes a philosophical version of

⁴ This usually goes hand in hand with an effort to "deconstruct" the majority identity. In this sense it is rather a "politics of difference" than "identity politics," because what makes the minority identities valuable and even normatively preferable for the proponents of this politics is obviously the fact that they differ from identity of the majority.

⁵ Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press, 1996).

descriptive social psychology, which is underpinned by some more or less explicit normative premises. These premises, however, are never justified within the theory itself and probably cannot even be justified within such a theoretical framework.

The reason for these confusions is obviously an ambiguity in the expression “recognition.” On the one hand, “recognition” can mean an act of affirmation of the psychological self-esteem of a person by another person, for example if we say about an athlete: “This jump was an achievement that should be ungrudgingly acknowledged.” On the other hand, we talk about “recognition” in the sense of recognizing something *as* having a certain legal or normative status, as, for example, when we say that a new political entity has been recognized by the international community *as* a state. It is this latter sense of “recognition” that is prevalent in Fichte, Hegel, Spaemann, and implicitly even in Habermas.

Now I first want to further clarify the transcendental concept of “recognition” with reference to Fichte’s initial proposal in the “Foundations of Natural Right” of 1796. Then I am going to discuss some objections to the idea that intersubjectivity is prior to subjectivity. And against this background I will try to propose a “theory of recognition” that can be defended against these objections. Finally I want to outline some bioethical implications of my proposal.

The Circle of Self-Consciousness

Fichte’s starting point in the “Foundation of Natural Right” is a problem, which Dieter Henrich has described in a famous paper from 1967 as “Fichte’s initial insight.”⁶ According to this, any attempt to explain the existence of self-consciousness as an act of reflection by which an *already existing* subject somehow starts to observe itself, leads into a circle and therefore fails.

In order to understand this, we first have to clarify what it means to exist as a self-conscious subject. Existing as a “self” in this sense means for P to exist as a conscious reference to herself. Of course, one might object that a person P is not only a self-referring subject, but also has—or rather is—a body and does exist as a corporeal being. But this objection would miss the point, since P would not be a subject, if it were only a body. What makes P a self-conscious subject is her reference to herself. So, for a subject, being *is* self-reference. And more precisely: a kind of self-reference that “knows” that it is self-reference. This point is important, because there are

⁶ Dieter Henrich, *Fichtes ursprüngliche Einsicht* (Frankfurt am Main: Vittorio Klostermann, 1967).

many forms of unconscious self-reference. Many technical devices—like, for example, a temperature regulator—refer to themselves. Plants and animals refer to themselves, for example, when they incorporate nutrients. And even humans sometimes refer to themselves unconsciously, for example, when a person reads a text about herself, but does not understand that it *is* about herself. Therefore, self-reference is only self-consciousness, if the self-reference is a special kind of self-reference: self-reference that is aware of its being self-reference or in other words: conscious self-reference.

This whole structure, however, seems to make the existence of selves or subjects in this world mysterious, as Henrich has pointed out. It seems that any attempt to explain the coming-into-being of a self-conscious entity through an act of reflexive self-observation must presuppose that this entity already exists as a self-conscious entity. Since otherwise the reference to herself would not be the reference of a self-conscious entity to a self-conscious entity—and therefore not self-reference. Rather it would be that of a self-conscious entity to a non-self-conscious entity. Consciousness and self-consciousness would then be two distinct entities. But that means that the reference would not be self-reference and therefore there would not be any self-consciousness. Henrich describes the problem as follows:

I am supposed to be the one who refers to himself through an act of reflection. Therefore, he who starts the reflection must already be both at the same time: the one who knows and the one that is known. But then, the subject of reflection already satisfies the whole equation $I = I$ beforehand. Yet, this equation is supposed to come into being only *through* the act of reflection.⁷

For this very reason Fichte had tried to determine the character of subjectivity as a kind of a permanent *activity of self-positioning* (*Thathandlung*) rather than a fact (*Thatsache*):

Positing oneself is (reflection upon oneself) is an act of this activity. Let this reflection be called A. Through the act of such activity, the rational being posits itself. All reflection is directed to something as its object, B. What kind of something, then, must the *object* of the requisite reflection, A, be? The rational being is supposed to posit itself in this reflection, to have itself as an object. But the mark of the rational being is activity that reverts into itself. Therefore, final and

⁷ Henrich, *Fichtes ursprüngliche Einsicht*, 13.

highest substratum, B, of the rational being's reflection upon itself must also be an activity that reverts into itself and determines itself.⁸

This "solution," however, simply seems to beg the question. Specifically in his "Foundations of Natural Right," Fichte takes the problem a step further by introducing intersubjectivity into the picture. As already in the *Wissenschaftslehre*, he insists that the constitution of self-consciousness can only be explained via *practical* self-consciousness, because theoretical consciousness is in a certain way always consumed by the object it thinks. By setting, pursuing, and realizing aims and ends, however, the self is free from being determined by the objects it thinks. In a theoretical perspective knowing something *can* be turned into self-consciousness because I *can* always think of myself as of the one who thinks that object (that is, Kant's transcendental apperception). The practical perspective to the contrary *must* go along with self-consciousness, because I cannot think of an end that I have chosen and that I pursue without referring to myself. That is why freedom is crucial for the constitution of subjectivity: there is no self-consciousness without the very basic experience of being able to determine some objects freely instead of being determined by them. Yet, this kind of freedom seems to require that I *am* already conscious of myself, because otherwise there would be no self who could choose and pursue her ends. At this point the infamous "circle of self-consciousness" seems to return in a different, yet equally destructive way: Self-consciousness requires the *practical* experience of oneself as free. But being free requires an already existing *theoretical* self-consciousness.

Fichte's answer to this problem is to consider the freedom of one being, say Smith, as something that is initially "proposed" to Smith by another free being, say Jones. It is Jones who thinks *theoretically* of Smith as a free being. For Jones it is not circular to have Smith as an external object of her thoughts in a theoretical perspective *and* to think of her as a practically free and self-referring being. This would be impossible for Smith, because having herself theoretically, as an external, distinct object of her thoughts, brought to mind through an act of reflection, negates precisely the freedom and self-reference we want to explain. Therefore only Jones (or any other subject) can perform the speech act of "inviting" Smith to act freely upon some object. An example of this would be something like "You decide what we are going to do with that piece of wood." Even: "Do some-

⁸ Johann Gottlieb Fichte, *Foundations of Natural Right according to the Principles of the Wissenschaftslehre*, ed. Frederick Neuhouser, trans. Michael Baur (Cambridge and New York: Cambridge University Press, 2000), 18.

thing with that piece of wood or leave it.” This “invitation to freedom,” performed by Jones, negates the initial passive relation of Smith toward the object, on behalf of Smith. Smith must *react* to the invitation and does so by setting a goal of her own with regard to that object. By doing so, Smith experiences herself as a being that is able to freely decide what to do with some external object.

Here, it is important to keep in mind that Jones’s “invitation to freedom” addresses Smith not only as an entity that *has* goals and ends, but as someone who *posits* her goals freely. This is important because animals also have goals and pursue ends. They are, however, not able to *decide* about their ends or “to posit” them. But Jones addresses Smith as someone who could always do otherwise. On the side of Smith, being addressed as someone able to do otherwise, brings about an *explicit* self-reference, which Smith could not have brought about on her own.

On these grounds, Fichte reaches the following conclusion:

The human being becomes a human being only among other human beings; and since the human being can be nothing other than a human being, and would not exist at all if it were not this—it follows that, if there are to be human beings at all, there must be more than one. . . . Thus the concept of a human being is not the concept of an individual—for an individual human being is unthinkable—but the concept of a species.⁹

In the “Foundations of Natural Right” Fichte then builds up on this intersubjectivist theory in order to derive his concept of mutual recognition of persons as bearers of rights. This deduction goes more or less along the lines of thought, which I have already pointed out in my discussion of the five basic features of recognition theories: If one subject would claim an unlimited sphere of freedom, that is, claim all freedom for herself, she would negate the condition of possibility of her own existence as a free subject. Therefore every single subject must limit her sphere of freedom with regard to the freedom of all other subjects, just as the other subjects must limit their spheres of freedom for the same reason. This leads to a system of mutually limited spheres of freedom, in which every subject is endowed with her own legitimate, inviolable sphere of limited freedom. So, everybody’s sphere of freedom is limited, but inviolable and it can only be inviolable, because it is limited. This system of mutually limited freedom is called *the law* and the

⁹ Fichte, *Foundations of Natural Right*, 37–38.

normative claims implied in the idea of an own, yet limited sphere of freedom for every subject are called *rights*: the right to life, the right to property, the right to free speech, the freedom of religion, and so on. Fichte himself has a two-level theory of rights: on the first level, there is an “original right” (*Urrecht*) to freedom, life, and bodily integrity, from which all the other fundamental human rights can be derived on a second level.

Objections against an Intersubjectivist Theory of Subjectivity

Now, even this brief sketch of a paradigmatic theory of recognition raises some serious questions. I want to single out two of them: the first one, because I think that it might be interesting from a theological perspective; the second one, because it is a fundamental challenge to the whole theoretical framework.

The first objection mainly concerns Fichte. As some authors like Vittorio Hösle have suggested, Fichte’s approach would lead into another infinite regress.¹⁰ If there must always have been a subject or a person in order to “awaken” personhood or subjectivity in other beings with a disposition to subjectivity, there must have been one first being who did not need an “invitation to freedom” in order to exist as a subject. Of course, Fichte is aware of this problem and introduces God as this first, unconditioned subject that does not need other subjects to be what he is. This, however, literally seems like a *deus ex machina*, who is just introduced in order to save an otherwise problematic theory. Furthermore it is disastrous for Fichte’s claim that there can only be finite subjects, if there are *other* finite subjects, that is, that the concept of a human being is that of a species. As soon as God is introduced, it becomes thinkable that there is just God as an infinite subject and *one* more finite individual subject. This is, however, a problem I will not try to resolve in this article. Solving it would probably require stressing the reciprocity of acts of recognition more and in another way than Fichte does.

There is, however, another, even more fundamental objection: an objection to the very idea that intersubjectivity is prior to subjectivity. This objection was specifically put forward by Dieter Henrich and Manfred Frank against Habermas’s version of the argument. The main point of the objection is that recognition theories like the one of Habermas propose that finite subjectivity is the result of an adoption of the perspective of an interactor. The interactor thinks of myself as a subject or a “self” and by adopting *her* perspective, I come to develop a “self” and to think of myself

¹⁰ Vittorio Hösle, “Intersubjektivität und Willensfreiheit in Fichtes Sittenlehre,” in *Fichtes Lehre vom Rechtsverhältnis*, ed. Michael Kahlo, Ernst A. Wolff, and Rainer Zacyk (Frankfurt am Main: Vittorio Klostermann, 1992), 29–52.

as a subject. According to Henrich and Frank, however, such an “adoption” would not be possible if I *were* not already a self-conscious being: for I can only relate another person’s perspective on myself *to* myself, if I can already refer to myself at all. Henrich therefore writes: “If I had not already the possibility to relate to myself, I could by no means of studying self-relations in the world (and be my own self-relation in another person’s perspective) be prompted to draw the conclusion that I exist and that I am essentially in such a relation.”¹¹ And Frank points out that “Habermas gives a very instructive example of a circular explanation of self-consciousness when he writes that the self consists in a performative self-relation created by relating another person’s perspective to oneself.”¹²

A possible solution to this problem might be found in the recognition theories of Hegel and Spaemann. Both authors seem to think that self-consciousness *as such* is not constituted via intersubjectivity. Nonetheless they think that the realization (*Verwirklichung*) and stabilization of self-consciousness can only take place within the framework of an intersubjective world. Hegel, for example, makes an interesting distinction between “self-consciousness,” which is possible without recognition, and the “truth of self-consciousness,” which requires a process of intersubjective recognition. And Spaemann, in his critique of Descartes, says that another subject is required in order to guarantee that I am not a mere “thought,” but a being:

A solipsistic consciousness, encompassing the whole terrain of reality in itself, would not get so far as to understand itself as being. Its being, like everything else, would be no more than a thought. A solipsistic cogito would have to be expressed as “I think that I think that I think. . . .” For Descartes it takes the thought of another thinker, God or an evil demon (*genius malignus*), to bring this infinite series of reflections to an end. The Other cannot mistake my thought for his own, for I am not merely his thought. . . . So in relation to him my thought acquires the dignity of being. We stand in relation to one another as existents.¹³

Unfortunately Spaemann does not explain this idea further and Hegel’s

¹¹ Dieter Henrich, *Fluchtlinien: Philosophische Essays* (Frankfurt am Main: Suhrkamp, 1982), 148.

¹² Manfred Frank, *Ansichten der Subjektivität* (Frankfurt am Main: Suhrkamp, 2012), 166.

¹³ Spaemann, *Persons*, 67.

arguments in the *Phenomenology of Spirit* are notoriously obscure. Yet I think that they both address a problem that already Fichte has addressed: the problem of how we can at the same time be subject (“thought”) and object (“being”) within a complex process of conscious self-reference.

As we have seen, the “circle of self-consciousness” is caused by the fact that self-consciousness cannot come into being by referring to something that is not already conscious self-reference, because then the relation would not be a relation of *self*-reference. In other words: The object to which is referred must be the reference itself. But then it cannot come into being through an act of referring to something that existed without self-reference beforehand. Manfred Frank has tried to solve this problem by recurring to Sartre’s idea of a “prereflexive cogito.”¹⁴ According to Frank,¹⁵ the problem only exists because we usually try to understand conscious self-reference as the result of a posterior act of reflection by which a mind starts to observe its own thoughts and perceptions. The alternative to this approach is to think of self-consciousness as something that is *already* present in any act of conscious reference to an external object and therefore by no means the result of a posterior act of reflection. Schelling called this coincidence of consciousness and self-consciousness the “intellectual intuition” (*intellektuelle Anschauung*)—a term, by the way, which is borrowed from theology). What reflection then does is to make this implicit self-reference, already given in any act of referring to an object, explicit. I think that Schelling, Sartre, and Frank are simply right about this: The idea of a “prereflexive cogito,” no matter in which way we try to explain it further, seems to be the only viable solution to the problem of self-consciousness. And this is even truer when we take into account that any attempt to derive subjectivity directly from intersubjectivity fails, because it also leads into that “circle of self-consciousness” (as we have just seen).

On the other hand, I think that Frank, Schelling, and Sartre miss one extremely important point. If their description of the “prereflexive cogito” is right, this “prereflexive cogito” is purely instantaneous and presentist. It is nothing but the empty and formal, implicit self-relation of a subject referring to an object. Thus, it cannot provide a self-conscious, personal identity over time. For personal identity over time, it is therefore necessary to really *make* the implicit self-relation of the “prereflexive cogito” *explicit* through an act of posterior reflection. Only then, self-consciousness can be

¹⁴ Sartre first develops this idea in Jean-Paul Sartre, “La Transcendence de l’Ego: Esquisse d’une description phénoménologique,” in *Recherches philosophiques* 6 (1936–1937): 85–123.

¹⁵ Manfred Frank, *Präreflexives Selbstbewusstsein* (Stuttgart: Reclam, 2015), 53–94.

the basis of personal identity over time; only then we leave the grounds of pure presentism. Without an intersubjective framework, however, this act of reflection would only produce the “I think that I think that I think . . .” described in Spaemann’s critique of Descartes. Hence, it would fall victim to an infinite regress like the one of the “circle of self-consciousness.”

This, however, is not true from the perspective of another person: in her perspective, I (that is, my consciousness and self-consciousness) am not something that escapes into an infinite regress. *For her* I can exist as a *reflexive* self-reference without falling victim to any circle, while at the same time, I can relate her perspective to myself, because I am already a “prereflexive cogito.” The intersubjective process of recognition therefore has the following steps: A conceives B as a self-conscious being. By this and only by this, B can make her implicit self-reference explicit and *think* of herself as a self-conscious being in the world. This is possible, because A has B as a distinct object of her thoughts, existing in the world over time. Therefore by adopting A’s perspective, B can also think of herself as an object, existing in the world over time—which B could not if it would remain an instantaneous prereflexive self-reference. B can only relate the perspective of A to herself, because she already relates to herself as a “prereflexive cogito.” Thus, it is only through the perspective of A that B can be and think of herself as a corporeal being in the dimensions of past, present, and future, that is, can be and think of herself as a person with a certain personal identity.

If we understand the relationship between subjectivity and intersubjectivity in this way, I think it is quite possible to save the essential insights of Fichte’s, Hegel’s, and Habermas’s recognition theories, as well as the foundation of fundamental human rights following from it: I can only be a person and understand myself as a person, if there are other persons, who at the same time can only be persons and understand themselves as persons, if they understand me as a person. Understanding myself as a person with rights and duties therefore implies to recognize other persons as subjects of rights and duties—or to be more precise: to already have them recognized. And this bridges the gap between normativity and descriptivity that must be bridged by any ethical theory in some way.

Recognition, Species, and Nature

If this is correct, it is also evident that the process of recognition is not something that relies on “properties,” characteristics, or traits that might be empirically observed or perceived. Real processes of recognition, especially the recognition of a being as a person and hence endowed with funda-

mental human rights, do not work through a conclusion from properties or characteristics to a moral status. For if this would be true, the process of recognition would have the form of a syllogism of the following kind:

1. An entity with property x has a normative claim to be recognized as a subject of rights.
2. Entity P has property x.
3. Therefore entity P has a claim to be recognized as a subject of rights.

Most so-called “liberal” approaches in bioethics rely on such a syllogism, making the act of recognition dependent upon the existence of some externally observable properties. Real processes of recognition, however, do not ask for observable properties or characteristics of an entity, concluding from their existence or non-existence to the moral status of that entity.

Even in Kant, who explicitly grounds human dignity in autonomy and rationality, we do not find such a syllogism. Autonomy and rationality are the grounds of human dignity, but the recognition of other human beings as rational, autonomous beings must already have happened, before we can start to act morally (or immorally). For Kant, autonomy and rationality are not externally observable, empirical traits or properties that one human may have and another human not, but something that every human being is endowed with, insofar as she is—or rather, has to be considered—a non-empirical *homo noumenon*. Kant states this very clearly in the *Doctrine of Right*, where he says:

For the offspring is a person, and it is impossible to form a concept of the production of a being endowed with freedom through a physical operation. So from a practical point of view it is a quite correct and even necessary idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative. . . . They [the parents] cannot destroy their child as if he were something they had made (since a being endowed with freedom cannot be a product of this kind) or as if he were their property, nor can they even just abandon him to chance, since they have brought not merely a worldly being but a citizen of the world into a condition which cannot now be indifferent to them even just according to concepts of right.¹⁶

¹⁶ Immanuel Kant, *Metaphysics of Morals: The Doctrine of Right*, in Immanuel Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor, The Cambridge Edition of the

We find an argument that is similar, yet different in how it refers to nature—once again—in Spaemann, who insists that the ideas of human dignity and human rights entail a kind of unconditionality (*Unbedingtheit*), which makes it impossible to make them dependent on properties, traits, or characteristics. Any kind of “conditional recognition” would miss the very essence of recognition, because recognition in itself comes with the normative claim to be unconditional. Spaemann has expressed this thought as follows:

If there is to be anything like human rights, then they are only possible given the presupposition that no one is entitled to render judgment, whether someone *is* subject of such rights. For the logic of human rights entails that the human is not a member of the human society who is co-opted on the basis of certain properties, but that everyone enters it by virtue of his own right. “By virtue of his own right,” however, can only mean: by virtue of being a member of the biological species of *homo sapiens*.¹⁷

This argument, which has been extremely influential in the German debate on embryonic stem-cell research, has often been understood as an elaborate version of tutorialism, that is, as a plea to rely on the most general and most non-arbitrary criterion possible when it comes to determine the scope of human rights: the criterion of species membership. Walter Schweidler, for example, understands it like that, when he says:

If human dignity is the legal concept at the top of the legitimacy pyramid of the order of our living together, we do not commit ourselves to any material definition whence we could derive, which beings are endowed with dignity and which are not. Rather we commit ourselves to a limiting accomplishment or more precisely to a fundamental prohibition for all moral actors *not* to render judgment of other members of the community of rights, whether they are endowed with human dignity or not.¹⁸

Works of Immanuel Kant (Cambridge, UK: Cambridge University Press, 1997), 429–30.

¹⁷ Robert Spaemann, *Glück und Wohlwollen* (Stuttgart: Klett-Cotta, 1993), 220.

¹⁸ Walter Schweidler, “Ethische Neutralität und weltanschauliche Souveränität des Staates,” in *Begründung von Menschenwürde und Menschenrechten*, ed. Wilfried Härle and Bernhard Vogel (Freiburg im Breisgau: Alber, 2008), 177.

Yet, if this would be the point of Spaemann's argument, it would be circular. If we replace "human dignity" in the last part of the sentence in accordance with Schweidler's own view by the "moral status of a subject of rights," it would simply say that members of the community of rights may not exclude other members of the community of rights from it. But this only makes sense, if they already *have* a claim to be treated as members thereof. But that is exactly in question when it comes to unborn or severely demented humans.

That is why I think that Spaemann's argument must be understood in another way. The crucial point of his argument is the reference to nature, that is, the suggestion that everyone must enter the community of rights by virtue of his own right and *therefore* by virtue of his nature as homo sapiens, because otherwise the act of recognition would not be an act of "unconditional recognition." This means that Spaemann introduces species membership to operationalize an essential aspect of recognition that has already been pointed out: Because recognition is an intersubjective process, it transcends our finite, individual subjectivity. Therefore, the act of recognition is only an act of recognition if it is not the result of particularistic, subjectivist, and arbitrary decisions of a finite subject. Now, what is not made by us, but what forms itself and grows out of itself, is usually called "nature" or "life" or, to use a more technical term: "entelechy." Thus, the reference to "nature" results from the insight that the intersubjective character of recognition urges us to think of it as something independent from our subjective, arbitrary makings and suppositions. In this world, only "nature" and more specifically "life" and "entelechy" fulfill this requirement, because they are essentially that which is independent from our finite subjectivity. Unborn or severely demented human beings must be recognized as persons and as subjects of human dignity and human rights exactly because of this. If we would not recognize humans *as* persons by virtue of what they are by nature, we would not recognize them at all, because then our recognition would be conditioned by our finite subjectivity—and, as we have just seen, "conditioned recognition" is not recognition.

Hence, if we refer to characteristics like rationality or autonomy in debates on the so-called "moral status" of human embryos, and so on, we must always be aware that we are already on a reflexive level, on which we react to arguments that challenge or doubt what happens in the real processes of recognition. In this regard, philosophy probably has the famous "therapeutic function" the late Wittgenstein has assigned to it. This reflection is a reflection on the transcendental conditions of moral and legal recognition. And that is why it cannot have the character of an

assertion that the beings in question “have” the properties of rationality, autonomy, or personhood, despite not expressing them. Rather, we demonstrate that denying them recognition relies on a misguided understanding of our own life form: a life form which cannot be that of an isolated individual being, but only that of a species (as Fichte said) or a community of beings. Understood properly, we are bodily, social, and at the same time rational and free beings, into whose life form recognition is already inscribed and takes place in every moment in our daily life. 