Recht im Kontext

Wissenschaftskolleg zu Berlin
INSTITUTE FOR ADVANCED STUDY

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Dräger-Stiftung

Conference
19—21 Jun 2013
Wissenschaftskolleg zu Berlin

The Concept of Human Dignity in a Comparative Perspective. Cases and Developments

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Venue

Großer Kolloquienraum
Wissenschaftskolleg zu Berlin
Wallotstraße 19
14193 Berlin

Bios & Abstracts

Rehan A. Abeyratne

is an Assistant Professor of Law at the Jindal Global Law School, where he has taught since 2011. He also serves as Assistant Dean (Research and Global Initiatives) and as Executive Director at the Centre for Public Interest Law. He holds a B.A. in Political Science from Brown University and a J.D. from Harvard Law School.

Prior to joining JGLS, Rehan Abeyratne was a Holmes Public Service Fellow at the International Justice Network in New York City, where he assisted individuals detained at Bagram Air Base, Afghanistan in habeas corpus proceedings against the U.S. government. His previous experience includes work for the International Criminal Tribunal for the Former Yugoslavia, the Extraordinary Chambers in the Courts of Cambodia, and on human rights projects in Thailand and Burma. Rehan Abeyratne's research focuses on comparative constitutional law, human rights, and international criminal law. He is admitted to the Bar of the State of New York.

Rehan Abeyratne's recent publications include: 'Socioeconomic Rights in the Indian Constitution: Towards a Broader Conception of Legitimacy', in *Brooklyn Journal of International Law* (forthcoming 2013); 'Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality', in *American University Journal of Gender, Social Policy & the Law*, 21 (2013) (with Dipika Jain), 333—378; 'Superior Responsibility and the Principle of Legality at the ECCC', in *George Washington International Law Review*, 44 (2012), 39—78.

Socioeconomic Rights, Human Dignity, and Constitutional Legitimacy in India

Constitutions of new and emerging democracies often enshrine the concept of human dignity in socioeconomic rights. By giving social entitlements the status of "rights", these constitutions aim to satisfy basic material needs or wants of all citizens so that they may lead (at least) minimally dignified lives.

The Indian Constitution does not include socioeconomic *rights*; it sets forth instead "Directive Principles of State Policy" that require the state to pursue socioeconomic jus-

tice to the best of its ability. In theory, the judiciary has no role to play in enforcing these principles. Article 37 of the Indian Constitution unambiguously states that directive principles "shall not be enforceable by any court." Moreover, the framers of the Indian Constitution separated directive principles from justiciable rights in the Constitution's structure. While Part III of the Constitution enumerates "fundamental rights" that the courts may enforce, Part IV lists non-justiciable directive principles.

However, the Indian Supreme Court has gradually recognized various directive principles as justiciable rights. To overcome the plain meaning of the Constitution's text, the Court has interpreted the fundamental right to life under Article 21 to encompass a "right to live with dignity". Under this capacious interpretation, the Court has identified, *inter alia*, *rights* to food, shelter, and education that it enforces on behalf of citizens against the central and state governments. Recently, the Court has moved beyond the directive principles to enforce rights that do not appear at all in the Constitution, including a right to sleep. The Court noted that sleep is essential "to maintain the delicate balance of health necessary for… [human] existence and survival" and without it "the existence of life itself would be in peril." Thus, the scope of this "right to live with dignity" is potentially limitless.

While the Indian Supreme Court is often lauded for taking such an active role in protecting the human dignity of the poor and vulnerable, I will explore two objections to the Court's jurisprudence in this area. These objections are not substantive; they do not consider whether it is morally or politically desirable to confer constitutional status on socioeconomic rights. Rather, they are focused on the proper workings of political and legal institutions in a constitutional democracy.

The first objection, a "democratic" objection, contends that constitutional socioeconomic rights excessively constrain representative democracy. Elected officials cannot properly deliberate and legislate on any issue involving resource allocation if the Supreme Court can police their actions to ensure constitutional compliance. The second, "contractarian", objection posits that constitutional legitimacy might be threatened if citizens cannot understand a Constitution's terms and agree to be governed by them. Because socioeconomic rights require positive action by the government, the extent to which the government "complies" with these rights depends on an individual citizen's views of distributive justice. This sort of indeterminacy is potentially fatal for contractarian legitimacy.

I contend that only the second objection presents a serious threat in the Indian context. In particular, I argue that while the Indian Supreme Court has conferred greater dignity upon India's most vulnerable citizens, it has also undermined the legitimacy of the whole constitutional framework.

Marion Albers

is Professor of Public Law, Information and Communication Law, Health Law and Theory of Law at Universität Hamburg. She studied law, sociology, philosophy at the universities of Berlin and Bielefeld and received her Ph.D. in law with a thesis on crime prevention and provisions for prosecution. She was assistant at the Federal Constitutional Court in Karlsruhe. Afterwards she had a scholarship of the German Research Foundation (DFG) to finish her postdoctoral thesis (Habilitation) focussing on questions of informational self-determination. Previous to her appointment at Universität Hamburg she was Professor of Public Law, Economic Law, Information Law, Health Law and Environmental Law at University of Augsburg as well as Managing Director of the Institute of Bio Law, Health Law and Medical Law. From 2002—2005 she served as an expert in the Advisory Committee of the Bundestag (German Parliament) for Ethics and Law of Modern Health Care. In 2008/2009 she was Visiting Professor at Chicago-Kent College of Law. Her main areas of research include Fundamental Rights, Information and Internet Law, Data Protection, Health Law and Biolaw, Police Law and Law of Intelligence Services, Theory and Sociology of Law.

Selected Publications:

— *Informationelle Selbstbestimmung* (Baden-Baden: Nomos, 2005, 2. Aufl. in Vorb. für 2014) [*Informational Self-Determination* (Baden-Baden: Nomos, 1st ed. 2005, 2nd ed. 2014 (forthcoming)].

— 'Inter- und intradisziplinäre Bausteine einer gesetzlichen Regulierung von Patientenverfügungen', in Marion Albers (Hrsg.), *Patientenverfügungen* (Baden-Baden: Nomos, 2008), 9—32 ['Intra- and Interdisciplinary Aspects of Regulating Living Wills', in Albers (ed.), *Living Wills* (Baden-Baden: Nomos, 2008), 9—32].

— 'Risikoregulierung im Bio-, Gesundheits- und Medizinrecht', in Albers (Hrsg.), *Risikoregulierung im Bio-, Gesundheits- und Medizinrecht* (Baden-Baden: Nomos, 2011), 9—33 ['Risk Regulation in Biolaw, Health Law and Medicine Law', in Albers (ed.), *Risk Regulation in Biolaw, Health Law and Medicine Law*, (Baden-Baden: Nomos, 2011), 9—33].

— 'Höchstrichterliche Rechtsfindung und Auslegung gerichtlicher Entscheidungen', in *Grundsatzfragen der Rechtsetzung und Rechtsfindung, VVDStRL Bd. 71* (Berlin/Boston: de Gruyter, 2012), 257—295 ['Decision Making by the Highest Courts and Interpretation of their Decisions', in *Fundamental Questions of Law Making and Judicial Decision Making, VVDStRL Bd. 71* (Berlin/Boston: de Gruyter, 2012), 257—295].

— 'Privatheitsschutz als Grundrechtsproblem', in Halft/Krah (Hrsg.), *Privatheit. Strategien und Transformationen* (Passau: Stutz, 2013), 15—44. ['Privacy Protection as a Challenge to Fundamental Rights', in Halft/Krah (eds.), Pr*ivacy. Strategies and Transformations* (Passau: Stutz, 2013), 15—44].

— 'Bioethik, Biorecht, Biopolitik: Entwicklungslinien und Kontextualisierung', in Albers (Hrsg.), *Bioethik, Biorecht, Biopolitik: eine Kontextualisierung* (Baden-Baden: Nomos, i. Vorb. für 2013) [*Bioethics, Biolaw, Biopolitics: a Contextualization* (Baden-Baden: Nomos, 2013, forthcoming)].

— 'Enhancement and Human Rights', in Albers/Hoffmann/Reinhardt (eds.), *Human Rights and Human Nature* (Dordrecht/Heidelberg/London/New York: Springer, ius gentium, 2013, forthcoming).

Abstract

Biotechnologies range from assisted reproductive technologies, genetic diagnostics and interventions, cloning or research using human embryos to various forms of enhancement, the production of cyborgs or the creation of artificial life. Their effects can be distinguished from those of other technologies particularly with regard to questions of human dignity. They are not only object of fundamental controversies but also affect both the boundaries of the human and the concept of individual rights. Nevertheless, this does not lead to the result that the idea of human dignity loses its normative strength. It still makes sense as a normative standard which has to be understood and established in a reflexive way.

holds the Chair for Constitutional Law, International Law and Human Rights at the Eberhard Karls Universität Tübingen (since 2011).
Jochen von Bernstorff studied law at Philipps-Universität Marburg and University of Poitiers, received his Ph.D. from the University of Mannheim in 2000 and holds an LL.M. from the European University Institute (EUI) in Florence (2001). He was with the German Federal Foreign Office (diplomatic service 2002—2007) in the Multilateral Human Rights Policy Task Force of the UN-Department, a member of the German delegation at the UN Commission on Human Rights in 2004 and 2005 and the UN Human Rights Council in 2006, and a member of the German delegation at the UN General Assembly in 2003—2005. Furthermore, he served as chief negotiator of the German delegation at negotiations over the UN Convention on the Rights of Persons with Disabilities, New York (2003—2007). 2007 to 2011 he was a senior research fellow at the Max-Planck-Institute for Comparative Public Law and Public International Law in Heidelberg. His recent publications include *The Public International Law Theory of Hans Kelsen: Believing in Universal Law*" (Cambridge: CUP, 2010); 'Kerngehaltsschutz durch den UN-Menschenrechtsausschuss und den EGMR: vom Wert kategorialer Argumentationsformen', in: *Der Staat* 50 (2011), 165—190; 'Der Streit um die Menschenwürde im Grund- und Menschenrechtsschutz', in: *Juristenzeitung* 68 (2013) (forthcoming); 'Proportionality without Balancing', in: McCrudden et.al. (ed.), *Reasoning Rights, Comparative Judicial Engagement* (Oxford: Hart Publishing, 2013, forthcoming).

How Dignity and Human Rights met: the Vulnerability of the Human Being and the Quest for Ethical and Legal Absolutism

The presentation will reflect on the rise of the dignity term and attempt to shed light on how the human rights movement in the 1940s rediscovered the dignity of the human being. The combination of dignity and rights is a discursive phenomenon of the "age of extremes" (Hobsbawm) which both altered the understanding of human rights and of the dignity term significantly. This new semantic combination has far reaching implications for the understanding of human dignity as something that requires interpersonal respect and needs to be protected by the state as a constitutionally entrenched rule. Individual enjoyment of the most basic human rights thus in conceptual terms becomes

a precondition for a life in dignity (Tugendhat, Pollmann). This 20th-century understanding of human rights has been coined after the First World War and cannot be fully captured by both the imago dei and the Kantian (autonomy-) traditions of the dignity term. In its inception it can be interpreted as a reaction to the twentieth-century experiences with the vulnerability of the human being through the excesses of the dark side of European modernity. With Emmanuel Lévinas human rights therefore can be construed as finding their ethical basis in the (non-reciprocal) recognition of the irreducible uniqueness and vulnerability of the other, his helplessness and confrontation with death. According to Lévinas, this pre-societal event of sociality establishes a responsibility to the other person, which forms the foundation of human rights. Human rights, in their foundational sense, are the rights of the other understood as absolute ethical limits as to how we can treat one another and as an immediate and potentially infinite responsibility for the other. This specific ethical concept of human rights captures an element of the modern human rights discourse which can help to explain the new semantic combination of dignity and rights in the twentieth century as well as its repercussions in both constitutional and international law.

Matthildi Chatzipanagiotou

is currently a Ph.D. candidate at the Faculty of Law at Humboldt-Universität zu Berlin. Her doctoral thesis focuses on the emptiness of the law of human dignity as practiced in the jurisprudence of the Federal Constitutional Court of Germany. She is an Alumna of the Graduiertenkolleg "Multilevel Constitutionalism: European Experiences and Global Perspectives", a DFG Research Training Group at Humboldt-Universität (2012), and a scholar of merit of the Deutsche Forschungsgemeinschaft (DFG). Since 2010 she is member of the Athens Bar Association.

Matthildi Chatzipanagiotou holds an LL.M. from New York University School of Law (2009), served as NYU LL.M. Class Convocation Speaker, Madison Square Garden (May 2009), was scholar of merit of the Fulbright Foundation, the Alexander S. Onassis Foundation, and the Mitsotakis Foundation. She has a Bachelor of Laws (*ptychion*) from National and Kapodestrian University of Athens School of Law (2003) and was scholar of merit of the Papadakis Bequest. Furthermore she earned a Diploma (*apolyterion*) from Athens College, Hellenic American Educational Foundation (HAEF) and was awarded the First History Prize and Ancient Greek Honor (June 2003) and the Delta Prize Winner for Public Speaking in English (March 2003).

Her research focuses on American Constitutional Law, International Human Rights, Gender and Islamic Law, Law and Literature. She published for example 'Comment: *Oliver Bruestle v Greenpeace e.V.* in light of the Legal Concept of Human Dignity' (2011) 3 *To*Σ 725.

Abstract

Reference to the emptiness of the law of human dignity in German and Anglo-American legal scholarship and resistance to defining "God" in the Preamble to the *Grundgesetz* or the *Menschenbild* in German legal doctrine pose the question: how is the law of human dignity empty? Emptiness apropos the notion of the limit is explored through a hermeneutic and literary approach drawing on philosophical insights. Ontological, linguistic-analytical and phenomenological accounts of human dignity are discussed as lenses to look at the practice of the law of human dignity as autonomy/self-determination in seminal instances of *Bundesverfassungsgericht* jurisprudence.

Dieter Feddersen

is Member of the Board, Dräger Foundation in Lübeck, Germany. He was admitted to the Bar in 1964.

Dieter Feddersen studied at the Universities of Kiel and Berlin and received his doctoral degree (Dr. iur.) with a thesis on *The role of parliaments in the German Democratic Republic* in Kiel in1964. He was partner of the international law firm White & Case LLP, Frankfurt/Main (1974—2003) and is of counsel at Feddersen Heuer & Partner, Frankfurt/Main since 2003. His special areas of activity include Corporate Law, Tax Law, M&A and other transactions.

Dieter Feddersen has been member of various national and international arbitration panels. Furthermore he was a lecturer on Tax Law at Heidelberg (1986) and was Honorary Professor at the University of Heidelberg (1991—2005). His various supervisory/ advisory board activities include: Chairman of the Supervisory Board of Drägerwerk AG & Co. KGaA (former Drägerwerk AG), Lübeck (1979—2008); Chairman of Asklepios Kliniken Verwaltungsgesellschaft mbH, Königstein and Asklepios Kliniken Hamburg GmbH (since 2005); Chairman of Lindauer Dornier GmbH (since 1985). In addition Dieter Feddersen serves in various boards of non-profit organizations, inter alia: Member of the Board, Dräger-Stiftung, Lübeck, Member of the Board of Trustees, American Institute for Contemporary German Studies, Washington D.C. and Member of the Board, Förderkreis Freunde der Komischen Oper Berlin e.V., Berlin.

Morag Goodwin

is Associate Professor at Tilburg Law School, the Netherlands. Her fields of specialization include international law, notably law and development, international and European human rights law, non-discrimination law, and law and technology.
Notable publications are: *Law and the Technologies of the Twenty-First Century* (co-authored with Roger Brownsword, Cambridge: CUP, 2012); 'Bucking the (Kuznets) Curve: Designing Effective Environmental Regulation for Developing Countries' (co-authored with Michael Faure and Franziska Weber), in *Virginia Journal of International Law*, 51 (2010), 95—156; *'Multidimensional Exclusion: Viewing Romani Poverty through the nexus of Race and Poverty',* in D. Schiek (ed.), *European Union Discrimination Law: Comparative Perspectives on multidimensional Equality Law* (London: Routledge, 2008).

Architecture, Choice Architecture and Dignity

The legitimacy of code, techno-regulation or design-based regulation—however one wishes to term the employment of technology-based architecture for social purposes—has been the subject of fierce debate from a variety of standpoints, ranging from balance of power issues to good governance questions to human autonomy. The most common line of reasoning articulates a fear that the regulation of human behaviour in such a way that we have no choice but to comply with the regulator's wishes will result in a loss of moral responsibility. Roger Brownsword is a particularly strong exponent of this type of argument, suggesting that techno-regulation necessarily undermines the foundations of moral community. At the heart of the moral responsibility argument is the notion that the use of architecture to dictate behaviour signifies a failure to respect individual autonomy by severely limiting or preventing choice in how we act. However, it has been suggested that architecture or techno-regulation also fails to respect the autonomy of individuals by implying that people are incapable of responding appropriately to appeals to moral reason or of exercising the necessary self-control and restraint independently of the kind of big shove that architecture represents.
The sound and almost-fury of concerns about code-based architecture presently dwarfs the amount of such regulation currently imposed upon us. Instead, the current focus of much government is less upon the type of draconian measures represented by code-based regulatory architecture but on the possibilities of what Sunstein has called, in typical user-friendly language, 'choice architecture', or 'nudging'. There are clearly similarities

between the challenges that architecture is understood to represent to human dignity (where dignity is understood as autonomy) and the types of concerns that we should be articulating about the more friendly notion of being nudged into doing what is 'right' or 'good' in the sense of being socially valuable. What I wish to do in this paper is examine choice architecture through the lens of dignity-type autonomy concerns articulated in relation to architecture—particularly the idea that such appeals fail to respect autonomy by assuming that we lack self-control—and attempt to locate the point at which 'choice' architecture becomes plain architecture, where nudging tips into code.

Christoph Goos

has been an Assistant Professor at the Institute of Public Law at the University of Bonn since 2010.
He studied law at the University of Heidelberg (1st Legal State Examination, Heidelberg, 2000) and completed his legal clerkship at the Higher Regional Court of Bamberg (2nd Legal State Examination, Munich, 2002). Subsequently, he served as assistant to Professor Christian Hillgruber at the Universities of Erlangen and Bonn. In 2009, he received a doctoral degree in jurisprudence (summa cum laude) from the University of Bonn with an award-winning thesis on the genesis of the German Basic Law's human dignity article (President of the Italian Republic's Award 2010, Prize of Bonn's University Society 2010, shortlisted for the Volkswagen Foundation's "Opus Primum"-Award 2011). He is currently working on a book chapter on the dignity of critically ill and dying patients, a paper on current aspects of the freedom of conscience and his habilitation thesis on the disciplinary law in state and church.
Selected Publications: 'Würde des Menschen: Restoring Human Dignity in Post-Nazi Germany', in Christopher McCrudden (ed.), *Understanding Human Dignity* (Oxford: OUP, 2013), 79—93; *Innere Freiheit. Eine Rekonstruktion des grundgesetzlichen Würdebegriffs* (Göttingen: Vandenhoeck & Ruprecht, 2011); *Verfassungsprozessrecht* (together with Christian Hillgruber, C.F. Müller, Heidelberg, 1st edition 2004, 2nd edition 2006, 3rd edition 2011).

Grandma's Dignity: Technology and the "Elderly"

De Hogeweyk, opened in December 2009, is a gated village-style neighborhood in the Netherlands for older people with dementia. The 152 senior citizens share bungalows equipped with surveillance technology. Their carers, appearing as supermarket salespeople, housemates, domestic services staff or family members, aim to permit the residents to live an everyday life that appears as normal as possible. Similar projects are already in the planning stage in Germany and Switzerland. PARO, developed by a Japanese engineer, is a cute baby harp seal robot. It is used as an artificial companion even in German nursing homes. Equipped with a variety of different sensors, the costly therapeutic robot responds to petting, sounds and light by moving its head and legs, opening and closing its eyes and imitating the voice of a real baby harp seal. MINDME, finally, is a small and affordable GPS locator for people who wander because they have

dementia. It can be worn around the neck, clipped to the belt or attached to the house key. As reported recently, the Sussex Police was the first force in Britain to buy a number of these devices to reduce the number of call-outs to search for people who regularly go missing.

DE HOGEWEYK, PARO and MINDME are just three current examples of assistive technologies and surveillance technologies specifically designed for older people. It is hardly surprising that all three of them are being discussed controversially. Systematic literature reviews, as performed and published by the research group around the Dutch geriatric ethics specialist Cees Hertogh, rightly complain about the "frequent and contradictory use of the concept of dignity, by proponents and critics alike", in the relevant articles. This finding should be reason enough for constitutional lawyers specializing in human dignity to contribute to the necessary in-depth analysis of these issues. If it is the major duty of all state authority to respect and to protect the inviolable dignity of each and every human being (cf. Art. 1, § 1 German Basic Law), can it then be legally permissible and ethically sound to ghettoize, deceive and monitor older people with dementia? This question can neither be asked adequately nor answered appropriately without a critical review of our understanding of the legal concept of human dignity, profound knowledge of dementia and dementia care and a realistic idea of the challenge associated with the increasing number of people with dementia in our aging society.

Dieter Grimm

is Professor emeritus of Law at Humboldt-Universität zu Berlin, former judge of the German Federal Constitutional Court and former Rector of the Wissenschaftskolleg zu Berlin, where he is currently a Permanent Fellow.

He studied law and political science at the universities of Frankfurt, Freiburg, Berlin, Paris and at Harvard. He holds a Law degree and a doctoral degree from the University of Frankfurt, an LL.M. degree from Harvard, and honorary degrees from the University of Toronto and the University of Göttingen. From 1967 to 1979 he was Research Fellow at the Max Planck Institute for European Legal History in Frankfurt. From 1979 to 1999 he was Professor of Law at the University of Bielefeld and served for several years as Director of its Center for Interdisciplinary Research. In 1987 he was elected Justice of the German Federal Constitutional Court. After completion of the 12-year-term he became Professor of Law at Humboldt-Universität zu Berlin. In addition he served as Rector of the Wissenschaftskolleg zu Berlin (Institute for Advanced Study) from 2001 to 2007, where he continues to be a Permanent Fellow. He also teaches constitutional law at Yale Law School and he was the Henry L. Stimson Visiting Professor at Harvard Law School in 2008. Professor Grimm is a member of the Academia Europaea, of the American Academy of Arts and Sciences and of the Berlin-Brandenburg Academy of Sciences and Humanities.

Michaela Hailbronner

is a doctoral candidate at Yale and Humboldt-Universität zu Berlin and is currently teaching constitutional law at Humboldt-Universität.

In her JSD project she is researching the rise of the German Constitutional Court with a focus on the role of legal culture, understood against the backdrop of constitutionalism in states such as the United States, South Africa, India and Japan. Michaela Hailbronner earned her first state exam from the University of Freiburg, her second from the High Court of Berlin and a Masters (LL.M.) from Yale Law School. She has been a scholar of the German National Merit Foundation (Studienstiftung des deutschen Volkes) from 2000—2008 and again since 2009 and of the DAAD (2009/10). Her main areas of interest include Comparative Public Law, European Law as well as Legal Theory and Legal History.

She has published papers on European Law, Comparative Public Law and Political Science, such as most recently 'Wer hat Angst vorm Kollektiv? Deutsche Erscheinungen von Kollektivität im internationalen Vergleich', in Junge Wissenschaft im Öffentlichen Recht*, Kollektivität*—Öffentliches *Recht zwischen Gruppeninteressen und Gemeinwohl* (Baden-Baden: Nomos, 2012); together with James Fowkes 'Courts as the nation's conscience: Empirically testing the intuitions behind the ethicalization of law', in Vöneky et al., *Ethik und Recht—Die Ethnisierung des Rechts / Ethics and Law—The Ethicalization of Law* (Heidelberg: Springer, 2013), 395-419; and 'Zu viel Vertrauen, zu wenig Kritik? Das Bundesverfassungsgericht im parlamentarischen Diskurs', in Fritzemeyer/Jochum/Kau, forthcoming 2013.

Eric Hilgendorf

is Professor of Law at the Julius-Maximilians-Universität Würzburg and chairman of the Department of Criminal Law, Criminal Justice, Legal Theory, Information and Computer Science Law.

He holds a degree in philosophy, modern history, and law at the University of Tübingen (BA/MA equivalent), attained a PhD in philosophy for a work entitled *Argumentation in Jurisprudence* and a PhD iur. in law for a work entitled *Criminal Law Liability for Producers in the Society of Risk*, which was honored with a prize from the Reinhold und Maria-Teufel-Stiftung. In 1996 Hilgendorf habilitated in the fields of criminal law, criminal procedure, and legal philosophy with the publication *On the Distinction between Statements of Facts and Statements of Norms in Criminal Law*. He was made Professor of Criminal Law and related fields at the University of Constance in 1997 before becoming Dean of the Law Faculty in 1999. In 2001 he moved to the University of Würzburg and became the Chair of the Department of Criminal Law, Criminal Justice, Legal Theory, Information and Computer Science Law. Since 2010 he has served as the Dean of the Law Faculty there.

His fields of expertise and interest are medical and biological criminal law, bioethics, media-criminal law, especially computer- and internet-criminal law, the protection of personal honor in criminal law (commentary of §185 ff. StGB in the Leipzig Commentary, 12th ed., 2005), European criminal law, the history of law and legal philosophy. Further publications include the protection of life in criminal law, the problem of normative statements in law, questions of causality, and other basic issues in law.

Tatjana Hörnle

is Professor for Criminal Law, Comparative Criminal Law and Penal Philosophy, Humboldt-Universität zu Berlin.

1982—1988 Law School, Eberhard-Karls-Universität Tübingen. 1988 First State Exam (1. Juristische Staatsprüfung). 1991 Second State Exam (2. Juristische Staatsprüfung). 1991—1993 School of Criminal Justice, Rutgers State University of New Jersey, Scholarship from the German Academic Exchange Service (DAAD), Master of Arts in Criminal Justice. 1993—1999 Assistant, Institute for Philosophy of Law, Ludwig-Maximilians-Universität München. 2000—2003 Scholarship (DFG, German Research Foundation), Project: Offensive Behaviour and the Criminal Law. 2002 Visiting Fellow, Cambridge University. 2003—2009 Professor for Criminal Law and Penal Philosophy, University of Bochum. 2011 Adjunct Professor, Faculty of Law, University of Toronto.

Her main areas of research are punishment theories, criminalization, constitutional boundaries for the criminal law, human dignity, comparative criminal law, sentencing, sexual offences, and pornography.

Recent books: *Grob anstößiges Verhalten. Strafnormen zum Schutz von Moral, Gefühlen und Tabus* (Offensive Behavior. On Penal Norms Which Protect Morality, Emotions and Taboos), Frankfurt am Main; Klostermann, 2005; *Straftheorien* (Punishment Theories), Mohr Siebeck, 2011.

Articles relating to human dignity: 'Die Menschenwürde: Gefährdet durch eine „Dialektik der Säkularisierung" oder „Religion der Moderne"?', in Walter Schweidler (ed.), *Postsäkulare Gesellschaft. Perspektiven interdisziplinärer Forschung* (Freiburg/Munich: Karl Alber, 2007), 170—189; 'Töten, um viele Leben zu retten. Schwierige Notstandsfälle aus moralphilosophischer und strafrechtlicher Sicht', in Holm Putzke et al. (ed.), *Strafrecht zwischen System und Telos — Festschrift für Rolf Dietrich Herzberg zum 70. Geburtstag* (Tübingen: Mohr Siebeck, 2008), 555—574; 'Menschenwürde als Freiheit von Demütigungen', *Zeitschrift für Rechtsphilosophie* 2008, 41—61; 'Shooting Down a Hijacked Airplane—The German Discussion and Beyond', *Criminal Law and Philosophy* 3 (2009), 111—131; 'Menschenwürde und Ersatzmutterschaft', in: Jan C. Joerden, Eric Hilgendorf, Felix Thiele (eds.), *Menschenwürde und Medizin. Ein interdisziplinäres Handbuch* (Berlin: Duncker & Humblot, 2013), 743—754; 'Menschenwürde und reproduktives Klonen', in: *Menschenwürde und Medizin,* 765—780.

Human-Dignity-Arguments in Debates about Innovations in Science and New Technologies —Critical Remarks

The purpose of my contribution is to make some critical observations about human dignity-arguments in debates that concern innovations in science or new technologies. Within German discussions, human dignity tends to play a dominant role, which could be explained with the human dignity clause in the German Constitution, Art. 1 I Basic Law. However, it is doubtful whether interpretations of this norm should expand its scope away from the original historical context (a statement against cruel and severely humiliating treatment of individual human beings) to a means of defense against developments in biotechnology. I will use two examples (surrogate motherhood and reproductive cloning) to examine the use of human dignity arguments. There are several problems with this way of framing the issues: normative problems and practical problems. First, it is not convincing to claim that these techniques clash with subjective rights of individual persons (the child or surrogate mother; the clone or the cloned person). But invoking human dignity as an "objective value" raises the concern of ennobling diffuse fears, which are ultimately grounded in religious assumptions ("not to play God"). Second: it will hardly be possible to effectively block technologies which people seek to use once they are available (as can be shown for surrogate motherhood). However, under such circumstances, insisting on an absolute prohibition based on the objective value of human dignity worsens the situation. Problems which require attention (for instance: what are the appropriate regulations for surrogate motherhood) are not addressed properly.

Stefan Huster

is Professor of Public Law, Health Law, Social Law and Legal Philosophy at the Ruhr-Universität Bochum and is director of the Institute of Social Law and Health Law.
He studied Law and Philosophy at the universities of Bielefeld and Frankfurt. From 1990 to 2002 he was research assistant at the University of Heidelberg, where he received his Ph.D. and venia docendi in public law, European law, legal philosophy and social law. From 2002 to 2004 he was Professor of German and European Constitutional and Administrative Law at FernUniversität Hagen. He was a Fellow of the Wissenschaftskolleg zu Berlin in 2010/2011. His research areas are public law, health law and philosophy of law.
His publications include: *Rechte und Ziele: Zur Dogmatik des allgemeinen Gleichheitssatzes* (Berlin: Duncker & Humblot, 1993); *Die ethische Neutralität des Staates: Eine liberale Interpretation der Verfassung* (Tübingen: Mohr Siebeck, 2002); *Soziale Gesundheitsgerechtigkeit: Sparen, umverteilen, vorsorgen?* (Berlin: Wagenbach, 2011).

The Universality of Human Dignity and the Relativity of Social Rights

Human dignity can be seen—and is often seen—as the foundation of human rights. That everyone is bearer of fundamental rights protecting his basic interests is an expression and consequence of not treating him as an object but respecting him as a being with equal dignity. This connection is plausible and widely accepted for the liberal, "negative" basic rights. For two reasons, however, it is controversial whether this connection also applies to social, "positive" rights.
(1) Modern societies are widely market societies in which every citizen is responsible for generating the income for himself and his family. Social inequality can then be seen as the inevitable und legitimate consequence of personal and economic freedom, which is protected by the basic liberal rights. That the political community has an obligation to support its members, when they are not successful in the market, and to correct the economic results of their free decisions, is not generally accepted. Therefore, we need a concept of human dignity that also contains the obligations of the welfare state.
(2) The concept of human dignity is characterized by its universality: It describes the idea that all human beings have dignity and should be treated with respect for this dignity. The binding force and the content of human dignity and the relevant human rights

should be independent of political, social or cultural circumstances. In contrast, social rights are relative to the actual circumstances, when e.g. Art. 11 of the Social Covenant recognizes "the right of everyone to an adequate standard of living" and this "adequate standard" can only be determined by taking into account the specific circumstances of a concrete society. It follows that the concept of human dignity can only be useful for the justification of social rights when we understand it as a right to be a full member of a political and social community.

Hans Joas

is Permanent Fellow at the Freiburg Institute for Advanced Studies, and Professor of Sociology at the University of Chicago where he also belongs to the Committee on Social Thought.

He was Professor of Sociology at the University of Erlangen-Nuremberg (1987-90), Professor of Sociology and North American Studies at the Freie Universität Berlin (1990-2002), and Max Weber Professor and Director of the Max Weber Center at the University of Erfurt (2002—11). He was a Fellow at the Swedish Collegium for Advanced Study in Uppsala (1992, 1999/2000, 2004/05, 2010) and of the Wissenschaftskolleg zu Berlin (2005/06). He holds honorary doctorates from the University of Tübingen and the University of Uppsala and is recipient of the Niklas Luhmann Prize in 2010 and the Hans Kilian Prize in 2013.

His publications include: *The Genesis of Values* (University of Chicago Press, 2000); *Social Theory* (with Wolfgang Knoebl) (Cambridge: CUP, 2009); *Do We Need Religion? On the Experience of Self-Transcendence* (Paradigm 2009); *The Sacredness of the Person: A New Genealogy of Human Rights* (Georgetown University Press, 2013).

The Sacredness of the Person

Hans Joas's book *The Sacredness of the Person* offers an alternative to the two dominant narratives on the history of human rights: the mostly secularist view that traces human rights back to the French Revolution and its roots in Enlightenment thinking and the mostly Catholic view of human rights as an outgrowth of the personalist understanding of God. The alternative "genealogy" Joas proposes deals with human rights as the product of a profound cultural transformation for which he uses the term "sacralization of the person". The empirical cases studied in his book concern the abolition of torture and of slavery and the codification of human rights in the late eighteenth century and after the Second World War.

After a brief summary of the book the lecture will expand Joas's argument in connection with the study of slavery and torture in a global perspective. This will shed new light on the connection between the emergence of moral universalism in the Axial Age and the history of human rights in the last centuries.

Alexandra Kemmerer

is Academic Coordinator of Recht im Kontext and Co-Director of its program *Rechtskulturen: Confrontations beyond Comparison* at the Wissenschaftskolleg zu Berlin and Humboldt University Law School.

She is a member of the Frankfurt Bar and has been a researcher at the University of Würzburg, Faculty of Law, a law clerk with the European Commission's Delegation to the United Nations, New York, and a senior research fellow and head of the section "Law, Politics, Institutions" at the Simon Dubnow Institute for Jewish History and Culture at the University of Leipzig. She has been a research scholar at the EUI, Florence, and visits regularly at the University of Michigan Law School where she will be a Grotius Fellow in 2013-14. Her research interests include international law, European public law, constitutional theory, comparative constitutional law, context(s) of law, and the media theory and communicative praxis of law. Currently, her research concentrates on transnational citizenship in Europe and on the history of European and International Law as a history of ideas. As biographer of Eric Stein, she is particularly interested in interrelations between biography, doctrine and theory.

She is a contributing editor of the *German Law Journal, Zeitschrift für Ideengeschichte*, and *Verfassungsblog*. Her reviews, essays and other writings regularly appear, inter alia, in the *Frankfurter Allgemeine Zeitung*. Selected publications: 'Development as Event: Revisiting Concepts and Ideas of Twentieth Century International Law', *Transnational Legal Theory* 3 (2012), 87—94, 'Dignified Disciplinarity: Towards a Transdisciplinary Understanding of Human Dignity', in Christopher McCrudden (ed.), *Understanding Human Dignity* (Oxford: OUP, 2013, forthcoming); 'Hermeneutics of International Law', in Florian Hoffmann / Anne Orford (eds.), *Oxford Handbook of International Legal Theory* (Oxford: OUP, forthcoming).

Jeff King

is a Senior Lecturer at the UCL Faculty of Laws since 2011 and Co-Editor of *Current Legal Problems*.
Previously, he was a Fellow and Tutor in law at Balliol College, and CUF Lecturer for the Faculty of Law, University of Oxford (2008—2011), a Research Fellow at the Centre for Socio-Legal Studies, Oxford (2008—2010), and a Research Fellow and Tutor in public law at Keble College, Oxford (2007—08). He studied philosophy at the University of Ottawa (B.A.) and law at McGill University (LL.B./BCL) before working as an attorney at Sullivan & Cromwell LLP in New York City (2003—04). He then completed a doctorate on welfare rights adjudication at Keble College, University of Oxford.
His research interests include UK and comparative constitutional and administrative law, human rights (especially social rights), socio-legal studies, legal and political theory, administrative justice, comparative and international human rights law, and public international law. He is the author of *Judging Social Rights* (Cambridge: CUP, 2012).

Dignity, Human Rights, and the Social Minimum

Two hallmarks of human rights are their universalism and their minimalism (i.e. their distinctiveness from a comprehensive account of justice). Yet conceptions of social rights concerned with the satisfaction of basic needs present a peculiar problem. According to this conception, people are entitled to demand that the state secure to them a bundle of resources (or capabilities) that satisfies a basic social minimum. Yet the substance of the bundle required for a dignified life will vary radically from society to society. Some have found or argued that a basic social minimum entitles one to a university education. Yet in many countries, no such education is required even to attain high public office. How can such diversity be reconciled with the idea of a universal and minimal value? I will argue that the basic value of dignity requires diverging levels of resources in different contexts, and I will specify the abstract characteristics that help define the social minimum in a way that is compatible with such variation.

Nora Markard

is a post-doc research associate at the Collaborative Research Center 597 "Transformations of the State" at the University of Bremen, currently on leave as a Visiting Fellow at Columbia Law School. She studied law at Freie Universität Berlin and at the Sorbonne, and holds an MA in International Peace and Security from King's College London (2003). Before her transfer to Bremen, she worked at the Chair for Public Law and Gender Studies at Humboldt-Universität zu Berlin for her thesis supervisor Prof. Susanne Baer, now a Federal Constitutional Court Justice. During this time, she also completed her two-year clerkship for the German bar in Berlin and London (2010) and co-founded the first Humboldt Law Clinic on Fundamental and Human Rights (2010/11). A founding member of the Migration Law Network, Nora Markard received her PhD from Humboldt-Universität in 2011 for her interdisciplinary thesis on war refugees, for which she was awarded the Humboldt Prize in 2012. She taught Comparative Constitutionalism with Susanne Baer for several years and is currently pursuing a comparative project on health insurance, solidarity and fundamental rights at Columbia.
Recent publications include: *Kriegsflüchtlinge* (Tübingen: Mohr Siebeck, 2012); 'Asylrecht. Der Stand der Dinge', *Merkur* 2012, 28—37; and 'Private but Equal? Why the right to privacy will not bring full equality for same-sex couples', in: Günter Frankenberg, ed., *Order from Transfer. Projects and Problems of Comparative Constitutional Studies* (Cheltenham: Edward Elgar, July 2013), 87—119.

What's in a Label? Transatlantic Reflections on Dignity and Health Insurance

A common feature in Europe and hardly divisive in Germany, the introduction of a solidarity-based, mandatory health insurance system has generated intense political conflict in the United States. A narrow, last-minute majority of Supreme Court Justices carried the day over challenges to federal authority to compel the purchase of health insurance. But the opposition went beyond concerns over federal overreach, leveling foundational values of autonomy and liberty against paternalistic obligations of care. While neither constitution contains social rights, the German Constitutional Court was immediately confronted with appeals to translate the constitutional commitment to dignity and to the social state into minimum entitlements—appeals that it initially resisted, claiming that human dignity provided no protection against post-war material hardships. Today,

the American and German constitutional models can be cast as radically different: a minimalist, liberal model focused on autonomy and equality, and a more paternalistic, collectivist model that includes basic duties to protect the minimum conditions of a humane existence and emphasizes the social embeddedness of the individual.

Looking back at the New Deal era, Cass Sunstein reveals an alternative tradition, that of FDR's Second Bill of Rights. President Roosevelt, in his 1944 speech, sketched out a new, social constitutionalism based on the insight that "necessitous men are not free men." The Supreme Court's post-*Lochner* advances toward minimum entitlements, which began around that time, were based not on dignity but on equality and liberty. While they never fully bore fruit before being abandoned in the 1970s, they suggest that the different German and U.S. trajectories are not merely a function of the presence or absence of a social state principle. Over time, though, these trajectories have become intertwined with diverging constitutional understandings of dignity: as autonomy itself, or also as a guarantee of the material conditions of an autonomous existence. Hence, the U.S. constitutional model has come to conceive of social redistribution in stark opposition to liberty, whereas the German model has integrated it into its concept of liberty, charging the State with securing the minimum conditions for its exercise—two different conceptions that seem to reverberate with the different reactions to government-imposed solidarity systems.

However, this analysis does not reveal the full story. On the one hand, some U.S. state constitutions, easier to amend, have included social entitlements. On the other hand, social security, Medicare and Medicaid have become part of what *Eskridge* calls the "constitution of statutes", or "small 'c' constitution". Just as with the German health insurance system, which has vastly outgrown the minimal constitutional requirements, it is inconceivable of scrapping these entitlements altogether—and the same may soon become true for the ACA's reforms. Turning the gaze back onto Germany, this raises the question whether the obsession with the constitutional protection of everything that is dear to our values may underestimate the power of the political process; and whether a changed perspective might help reverse the shift from the German parliament toward Karlsruhe when it comes to tricky decisions.

Christopher McCrudden

is Professor of Human Rights and Equality Law at Queen's University Belfast, William W. Cook Global Law Professor at the University of Michigan Law School, and currently Visiting Professor at the University of Oxford.
He is a graduate of Queen's University Belfast (1974). In 1974 he was awarded a Harkness Fellowship and spent two years at Yale Law School (1974—76), and then at Oxford University as a doctoral student. He was elected as Fellow and Tutor in Law at Lincoln College, and CUF Lecturer in the Oxford Law Faculty in 1980, and became Professor of Human Rights Law at Oxford in 1998.
He is a practicing barrister at the English Bar and is a Non-Resident Tenant at Blackstone Chambers.
He is the author of *Courts and Consociations: Human Rights versus Power-Sharing* (Oxford: OUP, 2013, with Brendan O'Leary), and *Buying Social Justice* (Oxford: OUP, 2007), for which he was awarded a Certificate of Merit by the American Society of International Law in 2008. In 2013, the British Academy will publish a collection of chapters, under his editorial direction, of a set of papers on human dignity by historians, philosophers, theologians, and lawyers: *Understanding Human Dignity* (British Academy/OUP, in press).
In 2006, Queen's University, Belfast, awarded him an honorary LL.D. He was elected a Fellow of the British Academy in 2008. In 2011, he was awarded a three-year Leverhulme Major Research Fellowship. In 2013—14, he will be Fellow at the Institute for the Advanced Study of Law and Justice at New York University.

Dignity and Democracy

My paper considers three ways in which current discussions of the concept of human dignity relate to the concept of democracy, and how these interrelationships help us understand the current functions of human dignity in human rights discourse. First, some historians see human dignity as arising from and essentially protecting a particular form of European democracy, namely Christian Democracy, and as a result dignity is argued to be inappropriate as the basis for a concept of human rights that is more pluralistic and secular. Is this correct? Second, human dignity has become a central meta-principle in judicial interpretation and adjudication of constitutional and human rights. The flexibility of the meaning of human dignity increases judicial discretion and leads

to criticism that democracy, in the sense of popular decision-making, is undermined. Is this concern justified? Third, democracy and human dignity are related in so far as both engage with the idea of 'citizenship'. Rights have traditionally been accorded by the state to those with an especially close connection with the state, often a connection based on citizenship, and this has given rise to the idea of the 'dignity of the citizen' as a basis for rights protection. How far do modern understandings of human dignity now transcend citizenship as a basis for rights protection and, if so, what is the understanding of the importance of the person that human dignity proposes that constitutes an alternative to citizenship?

Christoph Möllers

is a Professor of Public Law and Jurisprudence at the Faculty of Law at Humboldt-Universität zu Berlin. He was a Fellow at the NYU School of Law and is Permanent Fellow of the Wissenschaftskolleg zu Berlin, and is a member of the Berlin-Brandenburg Academy of Sciences and Humanities. Christoph Möllers is a judge at the Superior Administrative Court in Berlin. His main interests include theory and comparison of the separation of powers, democratic theory in public law, theory of norms, and administrative regulation.

Conor O'Mahony

is a lecturer in Constitutional Law at University College Cork (UCC) in Ireland. He is a graduate of UCC (BCL 2001, LL.M. 2002, PGCTLHE 2009) and the University of Wales, Aberystwyth, where he earned his PhD in 2005. He is particularly interested in issues surrounding the interpretation and enforcement of constitutional rights and in comparative Constitutional Law. His research to date has explored issues such as the rights of children, educational rights, family rights and same-sex marriage, and within these areas, his publications have addressed issues such as human dignity, the "living constitution" and procedures for amending constitutions. His work has been published in journals such as the *Columbia Human Rights Law Review* and *Public Law*, and he recently featured in an "I.Con Debate" with Emily Kidd White in the 2012 *International Journal of Constitutional Law* based on his article, "There is No Such Thing as the Right to Dignity". He has spoken at conferences in a number of countries, including the US, the UK, Turkey, Canada and South Africa. His full research profile can be viewed at http://publish.ucc.ie/researchprofiles/B012/conoromahony.

Abstract

Human dignity has been the foundational principle of choice of both international human rights law and domestic constitutional rights provisions since the end of the Second World War. However, in spite of widespread international agreement on the importance of the principle, there is a significant degree of confusion regarding what it demands of law makers and adjudicators, and considerable inconsistency in its formulation and application in domestic constitutional law. This paper will argue that much of this confusion stems from loose usage of the term by judges and commentators. The discussion will focus particularly on a characterization of human dignity frequently seen in domestic constitutional law which cannot be logically reconciled with its role in international human rights law: the idea of a right to dignity. It will be argued that while dignity is ordinarily considered an inherent characteristic of human beings, on which their human rights are founded, the notion of a right to dignity reverses this order by portraying dignity as a state to be achieved through the enjoyment of rights rather than the very basis on which rights are founded. The effect of this is to confuse our understanding of the concept of dignity and generate inconsistency that restricts the opportunity for comparative analysis. A move away from the notion of a right to dignity would eliminate at least some of this confusion and inconsistency, thus rendering the principle a more workable and useful tool as a foundational principle of constitutional rights.

Kim Lane Scheppele

is the Laurance S. Rockefeller Professor of Sociology and International Affairs in the Woodrow Wilson School and the University Center for Human Values as well as Director of the Program in Law and Public Affairs, Princeton University. She joined the Princeton faculty in 2005 after nearly a decade on the faculty of the University of Pennsylvania School of Law, where she was the John J. O'Brien Professor of Comparative Law. From 1994—1998, Scheppele lived in Budapest, doing research at the Constitutional Court of Hungary and teaching at both the University of Budapest and at Central European University, where she was a founding director of the Program in Gender and Culture. She has also lived in Russia for extended periods, doing research on constitutionalism there. Substantively, Scheppele focuses on transformations of constitutional systems. After 1989, she studied the emergence of constitutional law in Hungary and Russia. After 9/11, Scheppele examined the effects of the international "war on terror" on constitutional protections around the world. In short, when the Berlin Wall fell, she studied the transition of countries from police states to constitutional rule-of-law states and after the Twin Towers fell, she studied the process in reverse. Her many publications on both post-1989 constitutional transitions and on post-9/11 constitutional challenges have appeared in law reviews, social science journals and in many languages. Her new book is called *The International State of Emergency: The Rise of Global Security Law.* It will appear in 2014 with Harvard University Press.

holds the Charles E. Floete Chair in Law at the University of Iowa. Before moving to the United States in 2003 he was an Associate Professor in the Faculty of Law of the University of Vienna, where he earned "habilitations" in both legal philosophy and constitutional law.

His research focuses on legal philosophy, European Union law and constitutional law. His latest works address transformations of constitutionalism and social solidarity. He was a Fellow of the Wissenschaftskolleg zu Berlin in 2007/2008 and is currently a LAPA Fellow at Princeton University.

More recent book publications include *Engineering Equality: An Essay on European Anti-discrimination Law* (Oxford: OUP, 2011), *Individualism*: *An Essay on the Authority of the European Union* (Oxford: OUP, 2008) and *Rechtliches Wissen* (Frankfurt/Main: Suhrkamp, 2006).

Discrimination and Dignity

Discrimination is wrong because it denies people, without any fault of their own, the social presence that is mediated by partaking of goods. Blacks are not allowed to sit with whites; Muslims are shunned because of stereotypes; they can't find jobs.

At any rate, this is what matters about discrimination if the topic is approached with a sensibility for how it affects human dignity. Arguably, the exclusion from the enjoyment of goods is itself bad enough to make discrimination wrong. Yet, its connection to not giving presence to certain others within a social space becomes obvious by taking a most elementary rationalization of discrimination into account. There ought to be freedom of religion. But not for Catholics. They are dangerous and should not be in the position to proselytize.

The link between discrimination and disappearance is possibly ever more clearly revealed when one turns from the face of exclusionary acts and practices to the efforts undertaken by victims in order to pass as members of the favoured group. What comes into focus, then, are strategies of "covering" or "ducking" and other forms of hiding one's self. While the exclusion from the enjoyment of goods may thus be effectively averted, the disappearing of the person continues in subtler from. The discrimination against gays, for example, does not abate simply because gays decide to get out of the closet.

Strategies of segregation affect freedom because they instill in people a sense that there is something wrong about them.

Living with the impression that there is something wrong about oneself is constraining. Invariably, people—at least as long as they have not given up on themselves—engage in efforts at self-repair; if this option is unavailable, their life is restricted to what is assessable to second-class people: sports, yes; professions, no (concededly, this example reflects a stereotype about stereotypes).

Having to put up with fewer and lesser opportunities than others also prevents one from being or becoming the person with whom one would gladly identify. Instead, one relates to one's social self as someone whose life has been designed by forces alien to what one could have made of oneself. There is a lingering sense of loss; that one has missed one's real life; that one has never made an appearance in one's own biography.

Overt acts of exclusion create unequal freedom not only in a quantitative sense (a narrow range of choices). The freedom is also *qualitatively* unequal. Freedom is not manifest in identification with what is perceived to be a calling but rather in repair-efforts or detaching oneself from the pursuit of limited opportunities. Freedom turns into the proverbial "inner freedom" of the galley slave.

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