HUMAN DIGNITY

STUDIES IN LAW, POLITICS, AND SOCIETY

Recent volumes:

Volumes 1–2:	Edited by Rita J. Simon
Volume 3:	Edited by Steven Spitzer
Volumes 4–9:	Edited by Steven Spitzer and Andrew S. Scull
Volumes 10–16:	Edited by Susan S. Sibey and Austin Sarat
Volumes 17–33:	Edited by Austin Sarat and Patricia Ewick
Volumes 34–77:	Edited by Austin Sarat
Volume 78:	Edited by Livia Holden and Austin Sarat
Volume 79:	Edited by Austin Sarat
Volume 80:	Edited by Austin Sarat
Volume 81:	Edited by Austin Sarat
Volume 82:	Edited by Austin Sarat
Volume 83:	Edited by Austin Sarat
Volume 84:	Edited by Austin Sarat
Volume 85:	Edited by Austin Sarat
Volume 86, Part A:	Edited by Austin Sarat
Volume 86, Part B:	Edited by Austin Sarat
Volume 87, Part A:	Edited by Austin Sarat
Volume 87, Part B:	Edited by Austin Sarat

STUDIES IN LAW, POLITICS, AND
SOCIETY VOLUME 88

HUMAN DIGNITY

Special Issue

EDITED BY

AUSTIN SARAT
Amherst College, USA

GUEST EDITED BY

ANTONIO PELE
PUC-Rio University, Brazil & EHESS Paris, France

STEPHEN RILEY
University of Leicester, UK

United Kingdom – North America – Japan
India – Malaysia – China

Emerald Publishing Limited
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2022

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN: 978-1-80382-390-4 (Print)
ISBN: 978-1-80382-389-8 (Online)
ISBN: 978-1-80382-391-1 (Epub)

ISSN: 1059-4337 (Series)

ISOQAR certified Management System, awarded to Emerald for adherence to Environmental standard ISO 14001:2004.

Certificate Number 1985
ISO 14001

INVESTOR IN PEOPLE

CONTENTS

This page intentionally left blank

LIST OF CONTRIBUTORS

Katharina Bauer	Assistant Professor, School of Philosophy, Erasmus University of Rotterdam
Sarah Cote Hampson	Associate Professor of Politics, Philosophy, and Public Affairs, University of Washington Tacoma
Jamie Huff	Associate Professor of Criminal Justice, Bridgewater State University
Szymon Mazurkiewicz	PhD Student, Faculty of Law and Administration/Department of Legal Theory, The Jagiellonian University of Cracow
Saulo Monteiro Martinho de Matos	Associate Professor, Law School, Federal University of Pará
Stephen Riley	Lecturer in Law School, Leicester University
Antonio Pele	Associate Professor, Law School, Pontifical Catholic University of Rio de Janeiro; Marie Curie Fellow (2021-23) at the Institut de Recherche Interdisciplinaire sur les Enjeux Sociaux (IRIS) of the Écoles des Hautes Études en Sciences Sociales (EHESS), Paris and The Columbia Center for Contemporary Critical Thought (CCCCT), New-York.
Olga Rosenkranzová	Assistant Professor, Faculty of Law/Department of Legal Theory and Legal History, Palacký University in Olomouc

EDITORIAL BOARD

HUMAN DIGNITY

This page intentionally left blank

CHAPTER 1

‘CARE OF THE SELF’ AND POLITICAL RESISTANCE IN KANT’S NOTION OF HUMAN DIGNITY: A ‘CRITICAL’ AND NOVEL EXPLANATION

Antonio Pele

> And if we were governed without the awareness of it?
> If what enables us to fight what governs us,
> would also put ourselves under an infinite governmentalization?
>
> Michel Foucault, *Qu’est-ce que la Critique?*[1]

> (…) throughout their history, men have never stopped forming themselves, that is, to continuously displace their subjectivity, to form themselves through an infinite and multiple series of different subjectivities that will never have an ending and will never have us standing in front of something that would be man.
>
> Michel Foucault, *Entretien avec Michel Foucault*[2]

ABSTRACT

This chapter shows that Kant’s notion of human dignity can be understood as a novel ‘care of the self’ and an ‘art of not being governed’. Drawing on a Foucauldian approach, it demonstrates that Kant intends to shape an ethical subject that strives for freedom and self-mastery. It also argues Kant’s idea of dignity embodies a political and spiritual form of resistance against dominant relations of power and subjectivities. Thanks to this novel perspective, this

Human Dignity
Studies in Law, Politics, and Society, Volume 88, 3–22

ISSN: 1059-4337/doi:10.1108/S1059-433720220000088001

chapter also offers novel insights on the political force of human dignity. With Kant, this notion becomes a 'government of the self by oneself'.

Keywords: Art of not being governed; care of the self; categorical imperative; counter-conduct; critique; culture of the self; Foucault; human dignity; Kant

INTRODUCTION

Kant's approach to dignity has long been appealed to in scholarly debates in order to set the modern and philosophical premises of this notion, understood nowadays as the inherent/absolute value of the human being (Pele, 2010), the cornerstone of human rights and a basic principle of social governance (Riley, 2017). Kant's notion of dignity has been seen as having led to the universal conception of human rights (Habermas, 2010; MacInnis, 2016), shaping a realm of respect and equality between rational agents (Kitcher, 2017; Korsgaard, 1996), and implying the recognition of the intrinsic/absolute worthiness of all individuals (Reath, 2003). Recent scholarly discussions have, on the one hand, highlighted aspects in Kant's notion of dignity that hardly make it compatible with our contemporary paradigm. While today's idea of human dignity draws on axiological dimensions that recognise the inherent worthiness of the human being from which individual rights stem, Kant's concept of dignity is said to be polysemic (Pfordten, 2009) and based on self-esteem and virtues from which duties come from (Rivera, 2006; Sensen, 2011). On the other hand, and taking into account these 'revisionist' perspectives, other discussions have relied precisely on the alleged traditional aspects of Kant's idea of dignity, in order to keep its current philosophical and political relevance. While some scholars have downplayed the relevance of 'archaic' dimensions (e.g. honour, virtue, obligations) in favour of a value-based conception of Kant's notion of dignity (Schönecker & Schmidt, 2018), others have reframed the traditional elements as conducive to respect for dignity (Bayesky, 2013), as practices of social redistribution of equal dignity (LaVaque-Manty, 2006), and as a purposive conception of human rights (MacInnis, 2016). This chapter is inserted in these discussions and provides new insights on Kant's idea of dignity drawing innovatively on Michel Foucault's critical approach. Recently, some scholars have already used some Foucauldian tools in order to grasp the notion of human dignity (Bennett, 2016; Riley, 2013; Robcis, 2016) and the idea of human rights (Golder, 2015; Lefebvre, 2018). This chapter is also inserted in these prescient academic debates that, despite their respective novelty, have not explored Kant's idea of human dignity through a critical/Foucauldian perspective. My main argument here consists in showing that Kant's concept of human dignity can be understood as a novel technique of the 'care of the self'. It intends to shape a new moral attitude towards oneself (and others) in order to resist subjectivities that modern forms of power tended to impose in the eighteenth century. In order to be

able to grasp this argument, I will subsequently explain the 'care of the self' and the concept of political resistance in Foucault.

When Foucault explores the history of Western subjectivity, he insists on the 'culture of the self' that was shaped in ancient Greece and Rome, and particularly in philosophy. The *culture de soi* refers to an eclectic set of practices through which Western individuals learnt to constitute themselves as moral subjects. It designated an attention for oneself and practices of working on and for oneself. This 'culture of the self' was driven by a fundamental principle, the 'care of the self' (*epimeleia heautou* in Greek and *cura sui* in Latin) through which different techniques were deployed. These 'techniques of the self', following Foucault,

> permit individuals to effect, by their own means or with the help of others, a certain number of operations on their own bodies and their souls, thoughts, conducts, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection or immortality. (Foucault, 1997b, p. 225)

The 'care of the self' has been a fundamental aspect of Western subjectivity and philosophical activity. However, as I will explain further, this tradition has been almost lost since modernity. It is also why Kant's notion of dignity is novel since it intends to reactivate ancient techniques of the 'care of the self' in a time period that seems to hamper the latter. Besides, I will argue Kant's idea of dignity is designed to resist dominant forms of power and subjectivities that were taking place in the eighteenth century. In order to express this political resistance, I will use Foucault's notion and observations on the so-called 'art of not being governed'.

Against and below the different modes of 'governmentalization' that have tended to dominate (since modernity) almost all the aspects of social and personal existence, Foucault notices different sorts of resistances he encapsulates under the 'arts of not being governed'. The latter refer not so much to a 'fundamental anarchism' (a will of not being governed at all), but an 'art of not being governed like this and at this price' (Foucault, 1997d, pp. 28, 72–73). The 'art of not being governed' implies different and autonomous modes of being governed, that are more 'diffuse' (*diffuses*) and 'subdued' (*douces*) than the notion of revolt (Foucault, 2007, p. 200). It entails individual and collective 'forms of resistance' that have first appeared in the religious field throughout the Middle Ages and have progressively penetrated almost all the secularised realms of civil society. Foucault mentions the so-called counter-conducts in order to define the different spiritual struggles against the 'Christian pastorate'. Asceticism, mysticism, and the Reformation are examples of these 'counter-conducts' that designed new modes of being conducted spiritually (Foucault, 2007, pp. 202–216). According to Foucault, these forms of resistance can be understood as political attempts and historical conditions to keep and update the autonomy of the 'culture of the self' and resist pastoral power (Foucault, 1997a, p. 278). In a previous article, I have shown the idea of *dignitas hominis* should be understood within these struggles that took place throughout the Middle Ages and the Renaissance (Pele, 2019). In the following centuries, Foucault suggests these 'arts of not being governed' resisted the growing power of the *raison d'Etat* (Foucault, 2007, p. 355), they

opposed the value of human life against biopower (Foucault, 1978, p. 145), and, in some cases, they took the shape of a 'political spirituality' (Foucault, 2005b, p. 209). In the case of the eighteenth century, Foucault draws on Kant's philosophy to sketch a novel form of the 'art of not being governed'. Drawing in particular on Kant's text on the *Aufklärung*, Foucault provides a novel interpretation of Kant's *Kritik*. Along with Kant's transcendental critique, Foucault (2015, pp. 34, 580) notices and upholds a 'critical attitude' in Kant's philosophy (and even throughout the history of Western philosophy). This 'critical attitude' relies on a 'basic distrust' (*réticence essentielle*) concerning the dominant forms of governing men.[3] Under the Foucauldian approach, Kant's philosophy is reframed as a 'political and moral attitude', namely, an attempt to design an 'art of not being governed thusly' (Foucault, 1997d, p. 29, 2015, pp. 34). Thus, Kant's critique is defined within the broader relations of subjectivity, power, and truth. A note in the original manuscript of Foucault's conference at the *Société Française de Philosophie* in 1978 (latter untitled *Qu'est-ce que la Critique?)* stipulates the following:

> In a word: critique is the attitude of questioning the government of men understood as the set of combined effects of truth and power (…), in the form of a struggle which, from an individual decision, aims at the salvation of the whole. (Foucault, 2015, p. 40)[4]

Along with his emphasis on Kant's philosophy as an 'attempt to desubjugate the subject in the context of power and truth' (Foucault, 1997d, p. 36), Foucault suggests *en passant* a seeming 'culture of the self' in the notion of the 'citizen of the world' in Kant's *Anthropology* (Ercolini, 2012; Foucault, 2008a, pp. 26–29; Vaccarino Bremner, 2020). Foucault also considers that his interest for the 'culture of the self' comes from Kant's 'critical ontology of ourselves' (Foucault, 2015, pp. 81–84). However, Foucault has not carried on an in-depth analysis of the entanglements between Kant's *Kritik* as an 'art of not being governed' and Kant's interest in the 'culture' and the 'care' of the self. In this chapter, I address this fundamental issue. I contend Kant's notion of human dignity comes from a novel form of subjectivity that is designed to resist prevailing relations of power. I argue that it can be understood as a reactivation of the 'care of the self' and a novel 'art of not being governed'. Thanks to this novel approach, I provide new insights on the political force of our contemporary notion of human dignity.

In a first part of this chapter, I explore Kant's notion of dignity in the history of Western subjectivity. I argue he introduced a novel 'culture of the self' in a time period that aimed to erase this culture. In a second part, I examine more particularly the 'care of self' that underpins Kant's idea of dignity. I unveil the procedures and techniques through which it is shaped. I argue that human dignity becomes a '*critical* care of the self'.

I. KANT'S ETHICAL SUBJECT IN THE HISTORY OF WESTERN SUBJECTIVITY

The purpose of this part is to locate Kant's ethical subject within Foucault's approach to the history of Western subjectivity. I show that Kant has designed

and introduced a new 'culture of the self' in our modern era. Against a modern (philosophical) age that tends to marginalise the ethical subject in favour of the subject of knowledge, Kant has established the prevalence of the former over the latter. I will first explore Foucault's basic accounts on morality and then examine Foucault's stance concerning the decisive role of Kant in this history.

The 'Care of the Self' and the Genealogy of Western Subjectivity

Following Foucault, morality can be defined through three complementary approaches. First, it refers to a 'set of values and rules of actions that are recommended to individuals'. Understood as a prescriptive ensemble, morality is a 'moral code'. Second, morality can also refer to the real behaviour of individuals in relation to these rules and values (e.g. compliance, obedience, resistance, and transgression). This second level refers to the 'morality of behaviours'. Third, and finally, morality also implies

> the manner in which one ought to 'conduct oneself' – that is, the manner in which one ought to form oneself as an ethical subject acting in reference to the prescriptive elements that make up the code. (Foucault, 1990, p. 26)

It is this third dimension that triggers Foucault's intellectual endeavour in his genealogy of Western subjectivity, paying attention to the ways, actions, and transformations individuals have carried out in order to develop ethical subjectivities. Morality in Foucault entails consequently a relationship with the self, self-activities, 'practices of the self' or, in the same vein, 'techniques of the self' (Foucault, 1990, p. 28).

Besides, it is possible to underline four traits that enable the understanding of the different dimensions of this ethical constitution of the self. First, Foucault refers to the 'determination of the ethical substance', namely, the part of oneself (e.g. desires, feelings, volition, reason, will) that is used as the 'prime material' of the moral conduct. Second, Foucault highlights the so-called *mode of subjection* (*mode d'assujettissement*), understood as the ways through which one recognises oneself obliged to put a moral rule into practice (e.g. spiritual tradition, belonging to a specific group, ideals of perfection). Third, Foucault refers to the 'elaboration of ethical work (travail éthique)' one performs on oneself to transform oneself into 'the ethical subject of one's behaviour' (e.g. lectures, memorisation, meditations). Fourth, Foucault highlights the different *telos* of the ethical subject. A moral action is moral not only in itself (tending towards its own accomplishment) but also because it conforms a 'mode of being', such as mastery of the self, one's inner-peace, or one's purification (Foucault, 1990, pp. 26–28).

According to Foucault, ancient philosophy was driven by a fundamental principle, the 'care of the self' from which different 'spiritual exercises' used to unfold. The 'care of the self' was a 'movement and practice' of self-knowledge and constituted 'the real support of the imperative "know yourself" ' (Foucault, 2005a, p. 462). In Greece – with Plato and Socrates in particular – the observation of the soul through its divine dimension and other works of purification intended to bring wisdom and autonomy to the self. Furthermore, it was only after reaching

a particular ideal ethical level, when one was able to enter the political field and 'govern others'. In Rome – with the Stoics in particular – other 'spiritual exercises' were deployed, such as voluntary asylum, self-writing, examination of one's conscience, and meditation on one's death. These techniques were developed in order to master one's emotions and gain inner freedom (the *telos*). Under this Stoic/Roman approach, self-control and self-mastery were the thresholds of an 'aesthetic of existence'. One's life became the space of an experience of the self, driven by the actuality of inner-peace, autonomy, and happiness (Foucault, 1997c). As we will see further, these Stoic elements play a crucial role in Kant's ethical subject and conception of human dignity. In early Christianity, the ancient 'care of the self' underwent relevant changes. It did not consist anymore in learning how to reach personal autonomy and self-mastery, but in examining oneself continually in order to grasp the movements of one's soul. With the practices of confession and penance, the Christian self was bound to decipher hidden thoughts and expose them verbally to others and to go through purification processes (Foucault, 1997b). Even if the ancient and early Christian practices of the self held different objectives, they did share a similar premise: one was able to access a truth (e.g. about oneself, about God, about the world and others) only after previous ethical/spiritual exercises on oneself. One could have access to knowledge if one could change (spiritually) one's mode of being (Foucault, 1997b, p. 224, 2005a, pp. 16–19). In a more basic way, the ethical subject was a precondition of the subject of knowledge, the former prevailing over the latter. However, since modernity, this relation between these two subjects has tended to be inverted. Modern subjectivity has evolved around two basic dimensions that have marginalised the Western traditions of the 'care of self': the prevalence of the subject of knowledge and the predominance of the 'subject of law'.

Modernity and the 'Little Room' of the Ethical Subject

Since modernity, the ancient practices of the 'care of self' have not entirely vanished but have lost their autonomy in favour of the (modern) subject of knowledge and heteronomous forms of religious practices. Foucault singles out four reasons. First, the ancient 'technologies of the self' were integrated into Christianity. The *epimeleia heautou* became *epimeleia ton allon*: the 'care of the self' became the 'care of others', with pastoral institutions working for the salvation of souls and imposing rigid moral conducts (Foucault, 1997a, p. 278). Second, as a consequence, the Western tradition of the 'culture of the self' has undergone a crisis since the Middle Ages. Ecclesiastic structures were challenged by different modes of the 'art of not being governed' that strived for the autonomy of the 'care of the self' against pastoral/State's power. Third, in the field of philosophy, the ethical practice of the self has no longer been the premise to acknowledge the truth about oneself and the world. Foucault considers the 'Cartesian moment' as the expression of this new modern ethos. With Descartes, the spiritual examination of oneself is not used anymore to grasp one's thoughts but brings out 'the evidence, the truth (…) which is valid even for the external world' (Foucault, 2016, pp. 105–106). Since then, Western philosophy would have tended to establish a