

Subjects Out of Compassion:
A Conscience-Based Justification of Subjectivity
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I. Introduction

“Autonomy is [...] the ground of the dignity”¹ – this insight of Kant continues to shape not only prevailing conceptions of dignity but also our understanding of subjectivity in philosophy and in law. Whether someone is recognized as a bearer of dignity and as a subject is thus largely determined by their capacity for autonomy. Kant’s view was

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¹ Kant, *Groundwork of the Metaphysics of Morals* (Cambridge, 1997) 43.



that humans – as *rational* beings rather than as *natural* beings – qualify as subjects. However, this autonomy-centred tradition has a blind spot. It struggles to protect precisely those beings whose dignity we most urgently wish to protect: the vulnerable, the dependent, and non-autonomous humans, like infants or people with severe disabilities. The focus on autonomy as the foundation of dignity and rights relies on auxiliary theoretical constructs – such as the potential capacity for autonomy – that grant a provisional subject-status to those who lack autonomy. Furthermore, this understanding not only excludes animals and nature, viewing them as mere “objects” and means to the ends of rational beings. It perpetuates a picture of the human being as master of nature, capable of shaping itself and the environment, but blind to the fact that both human freedom and human survival depend on social and ecological conditions.

This paper connects philosophical reflections with contemporary challenges: what does it mean when the concept of the subject is tailored primarily to the autonomous individual, while, in reality, those most at risk are the ones who depend on others? How can we construct a notion of subjectivity that does not neglect the structural vulnerability and dependence inherent in human freedom? To answer this, I argue for a conception of subjectivity grounded in vulnerability and in the recognition enabled by compassion-driven conscience. Conscience, as I use the term, is not understood religiously, but as an objective instance mediating between reason and nature. It performs a dual function: as a constitutive act, it grounds subjectivity of suffering beings through the compassionate recognition of vulnerability; as a critical filter, it corrects autonomy-based maxims through empathetic judgement.

The article first explains Kant’s conception of dignity – which is foundational for common concepts of the subject – in order to point out its structural deficiencies (II). It places the suffering subject, rather than the autonomous subject, at the starting point for a normative understanding of dignity. Therefore, the following section (III) undertakes to ground subjectivity in conscience and to reconceptualize it from a vulnerability-theoretical perspective. Kant is not only subjected to critique, but, in part, also further developed. After discussing the normative implications of the presented concept for the interpretation of Article 1 of the German Basic Law (IV) and for the justification of legal subjectivity of animals (V), the article concludes with a brief summary (VI).

II. Kant and the Dignity of the Autonomous Subject

Already in antiquity, we find the anthropocentric asymmetry between reason and nature. Cicero in particular understood *dignitas* as a quality that distinguishes humans



from animals based on their capacity for reason.² Thomas Aquinas likewise defined the human being, by virtue of their God-given rational nature, as a rational creature³ and as a “person”. Aquinas defined a person as “a subsistent individual of a rational nature,”⁴ who “is naturally free, and exists for himself.”⁵ In early modernity, Pico della Mirandola then described the human being as a “creature of indeterminate image,” placed by God “at the centre of the world,” who – unlike animals bound by divine laws – can shape their form freely.⁶ While he emphasizes human freedom of self-determination, only those who develop into an exalted “heavenly being” are considered truly worthy and admirable.⁷ Those who follow their senses in shaping their lives, or who are “crawling along the ground,” are not seen as humans – and thus not as subjects – but are devalued as “plant” or “animal”.⁸ Dignity and subjectivity thus appear to be reserved only for the strong, rational and independent beings.

Kant not only aligns himself with the anthropocentric and individualistic tradition of interpreting dignity; he perfects it through his concept of autonomy, which symbolizes strength and humanity’s superiority over nature. According to this view, reason separates human from nature. Human dignity and “being an end in itself” – which are essential for Kant’s idea of subjectivity in general – are attributed to the human being solely in virtue of reason. The human being, “as the subject of a morally practical reason” (*homo noumenon*), that is, “as a person,” is “exalted above any price” and must be treated as an end in itself rather than merely as means to other ends.⁹ This is, in essence, the requirement set out by the Categorical Imperative in its formula of humanity: “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.”¹⁰ Kant likewise grounds subjectivity in rationality and develops his concept

² Cicero, *De Officiis* (London, 1913) I 105.

³ Aquinas, *Summa Theologica* (London, 1947) I-I q29 a3 c2. For the derivation of human dignity from the concept of the *imago dei*, see Puffer, ‘Human Dignity after Augustine’s “Imago Dei”: On the Sources and Uses of Two Ethical Terms’ (2017) *JSCE* (65 ff).

⁴ Aquinas, *Summa Theologica* I-I q29 a3 b.

⁵ Aquinas, *Summa Theologica* II-II, q64 a2 c3.

⁶ Pico, *Oration on the Dignity of Man* (Cambridge, 2012) 117.

⁷ Pico, *Dignity* 117, 121.

⁸ Pico, *Dignity* 131.

⁹ Kant, *The Metaphysics of Morals* (Cambridge, 1991) 230 f.

¹⁰ Kant, *Groundwork* 38.

of dignity in contrast to merely relative values. Whereas “things” have a “price” and are therefore interchangeable, the human being – as a rational entity (*homo noumenon*) – possesses an inalienable dignity: an “absolute inner worth.”¹¹ This dignity does not arise from external attribution but from the reason-guided autonomy that makes the human being “an end in himself.”

The Categorical Imperative thus operates within a dualistic anthropology that divides the human being into two spheres: the transcendental world of reason and the empirical world of nature. As a *homo noumenon* (rational being), the autonomous human, governed by moral law, is a subject and therefore a bearer of dignity, who must be treated as an end in itself.¹² In their empirical form, as *homo phaenomenon* (natural or sensuous being), however, the human is governed by natural causality and may – like animals, which are viewed as mere “things”¹³ – be used as a means to external ends. As such a natural being, the human has only a relative, market-like value comparable to that of animals.¹⁴ This essential dualism reveals a fundamental problem in Kant’s approach: whereas the realm of reason is characterized by mutual respect, the empirical world of needs and vulnerability is excluded. This is precisely the point at which the critique developed in this contribution begins, by introducing conscience as a bridge between these two spheres, as will be elaborated in the next section.

By abstracting reason and autonomy from sensory inclinations and natural needs, Kant effectively severs the human being and their dignity from the empirical conditions of their existence and freedom. In this conception, reason emancipates the individual from subjective impulses and external control. At the same time, Kant radicalizes the notion of human self-empowerment over nature, not only subordinating non-human nature but also the human’s own sensuous side to reason. The separation of reason from empirical conditions obscures real needs, social contexts, and the ecological preconditions of human freedom. So, as a consequence of its two-worlds-logic, the Categorical Imperative relies on a one-dimensional image of a subject as the abstract autonomous individual.

The intent here is not to disregard Kant’s distinction between law and morality. However, the concept of the subject developed in his Doctrine of Virtue is not

¹¹ Kant, *Metaphysics* 230 f.

¹² Kant, *Metaphysics* 230 f.

¹³ Kant, *Anthropology from a Pragmatic Point of View* (Cambridge, 2006) 15.

¹⁴ Kant, *Metaphysics* 230 f.

fundamentally different from the construction of legal subjects in the Doctrine of Right. In the Doctrine of Right, legally relevant subjectivity is grounded in a being's capacity for imputation, which, by definition, is attributed only to rational beings. While "[a] person is a subject whose actions can be imputed to him," "that to which nothing can be imputed" is defined as a "thing" or an object of rights, not a subject.¹⁵

III. A Conscience-Based Reinterpretation: The Dignity of the Suffering Subject

Thus, in order to understand why we also recognize weak and non-autonomous human beings, we need a different foundation for dignity – one that starts not from strength, but from vulnerability; not from abstraction or separation, but from relationality. The foregoing critique shows why subjectivity and dignity must be rethought in light of the multiple political, ecological, and social crises of freedom today. This is especially important against the backdrop of resurgent authoritarian-libertarian forces misinterpreting empathy as a weakness or danger for the civilization rather than a guarantor of a progressive and civilized human coexistence.¹⁶ For a contemporary understanding, this contribution proposes to rehabilitate the role of conscience as an objective instance that mediates between reason and nature by incorporating suffering nature into moral reflection.

A. Conscience as a Mere Control Mechanism in Kant

Although Kant only occasionally refers to conscience in his works¹⁷ and it appears *prima facie* irrelevant to his concept of dignity, it nonetheless plays an important role in the question of reason-guided and dutiful action. For Kant, conscience denotes the capacity for internal examination of whether a judgment guiding one's action is "right or wrong."¹⁸ In the *Metaphysics of Morals*, it is characterized as the "innate judge" or "internal court",¹⁹ and in the *Religion within the Boundaries of Mere Reason*, "as the

¹⁵ Kant, *Metaphysics* 50.

¹⁶ See, for example, the statements by Elon Musk on this matter: [Wolf](#), 'Elon Musk wants to save Western civilization from empathy' (*CNN*, 5 March 2025) <https://edition.cnn.com/2025/03/05/politics/elon-musk-rogan-interview-empathy-doge> accessed 15 March 2026.

¹⁷ For a comprehensive analysis of the different functions Kant ascribes to conscience, see Kahn, *Kant's Theory of Conscience* (Cambridge, 2021) 2 ff.

¹⁸ Kant, *Religion within the Boundaries of Mere Reason* (Cambridge, 1998) 179.

¹⁹ Kant, *Metaphysics* 233.

moral faculty, passing judgement upon itself.”²⁰ Contrary to the intuitive interpretation that it is a feeling, conscience in Kant is an intellectual, reason-based predisposition: practical reason in its judicial function.²¹ In this sense, conscience acts as a kind of judicial instance that evaluates whether an action is lawful; it formally assesses whether a judgment formed by autonomous self-legislation can withstand the test of conscience.²² Here, conscience also has a preventive, warning function.²³ Nonetheless, even in this capacity, it is a formal control instance subordinate to autonomous self-legislation. It is not a source of substantive moral insight or of knowledge, but merely a knowledge-supporting²⁴ control mechanism that verifies whether our maxims conform to our duty, which is grounded only in autonomy. Autonomy remains the first and sole principle that matters for the principle of universality.²⁵

Accordingly, Kant’s conception of conscience remains below its theoretical potential. While conscience is also understood as the capacity “to recognize duties,”²⁶ it is blind for the content of those duties. It does not judge whether an action is morally right in substance,²⁷ but only whether the prior judgment of the action – made by autonomy – is (formally) correct.²⁸ So, according to Kant, conscience checks the duty, but not the moral content of that duty. Whereas conscience connects reason and sensibility in Schopenhauer’s *ethics of compassion*, Kant’s concept perpetuates the dualism between reason and nature. The systematic devaluation of the empirical is also evident in Kant’s treatment of social sentiments like compassion and care.²⁹ Although

²⁰ Kant, *Religion* 179.

²¹ Guyer, ‘Moral feelings in the Metaphysics of Morals’, in Denis (ed.), *Kant’s Metaphysics of Morals. A Critical Guide* (Cambridge 2010) 130 (143); Kahn, *Theory of Conscience* 5; Vujošević, ‘The Judge in the Mirror: Kant on Conscience’ (2014) *Kantian Review* 449 (453).

²² Kant, *Religion* 179.

²³ Kahn, *Theory of Conscience* 11.

²⁴ Schmidt, ‘Moralischer Realismus, Kant und das Gewissen’ in Waibel, Ruffing and Wagner (eds.), *Natur und Freiheit* (Berlin, Boston, 2019) 2149 (2153 f).

²⁵ See Hardwig, ‘Action from Duty But Not in Accord with Duty’ (1983) *Ethics* 283 (288).

²⁶ Kant, *Metaphysics* 202.

²⁷ Cf. Kant, *Religion* 179.

²⁸ Bacin, ‘Ein Bewußtsein, das selbst Pflicht ist’ (2017) *Fichte-Studien* 306 (310); for a comparison between Kants and Fichtes understanding of conscience, see Kahn, *Theory of Conscience* 20 f.

²⁹ Cf. Pauer-Studer, ‘Kant and Social Sentiments’, in Pauer-Studer (ed.), *Norms, Values, and Society* (Dordrecht, 1994) 279 (284 f). Pauer-Studer shows that Kant’s duties of kindness are based on “practical love”, which signifies a consciousness of obligation, but not a direct concern for the well-

he acknowledges them as a conditioned duty of humanity,³⁰ they cannot claim independent moral worth within his system, as they, being inclinations, always remain subordinate to reason-guided duty. Since conscience only urges the fulfilment of duty but does not determine its content, Kant does not incorporate it directly into the Categorical Imperative,³¹ even though such an integration would have been possible.

B. The Dual Function of Conscience as the Ground of Subjectivity

It is precisely here that the vulnerability-theoretical redefinition of subjectivity must begin. For, in reality, it is vulnerability, not autonomy, that connects humans to one another, to animals, and to the natural world on which freedom depends.

1. Conscience, Compassion and Empathy

Conscience is introduced as an instance of reason, which connects reason with suffering nature through emotional reflection. Only through this mediation can dignity be understood as the protection of vulnerability without falling into irrational relativism based on pure feeling. Conscience – as I define it here – is a faculty of reason that translates perceptions of other subjects’ suffering through compassion into empathetically-reflected judgments, thereby becoming normatively effective. It unites three elements: first, a perceptive component (the recognition of concrete suffering/neediness through compassion); second, a perspectival-cognitive component (empathy as perspective-taking); and third, a normative-reflexive component (the examination and formation of norms or maxims in light of the recognized suffering). Conscience is neither entirely autonomous nor permanently present; rather, it must be awakened and activated by an external appeal and stimulus. It is awakened through the perception (experience) of suffering, namely through empathetical compassion.

Compassion is an affective-motivational perception of the vulnerability of a sentient being, which gives rise to the readiness to end or to alleviate that suffering. Just as one intuitively and instinctively seeks to alleviate or prevent one’s own suffering, empathetic compassion awakens the concern to regard and treat the suffering of other sentient beings in the same way as one’s own. Through this action-guiding, motivational dimension, compassion can ground institutional duties of protection.

being of other persons. The specific structure of his ethical theory, she argues, does not allow him to theoretically account for the moral significance of feelings.

³⁰ Kant, *Metaphysics* 250.

³¹ Bacin, (2017) *Fichte-Studien* 306 (310).

Empathy is the capacity to take the perspective of another subject and to affectively participate in or reconstruct that subject's feelings and interests.³² Since it can thereby generate knowledge and insights for interacting with sentient beings (subjects), empathy is epistemically creative. This also makes clear that conscience is not an introverted instance, but one that essentially depends on the relation to the suffering Other and on the emotional openness to vulnerability enabled by compassion and empathy.

In this shift towards vulnerability theory, conscience assumes a dual function: it is both constitutive of subjectivity and corrective of judgment. While the former function is about the question who or what a subject is, the latter one asks: how shall we treat subjects? Both shall be developed a little closer in the upcoming subsections.

2. Constitutive Function

Conscience constitutes the status of a being as a subject and thus as a bearer of dignity by recognizing its vulnerability as worthy of protection. Humans possess dignity not because they are capable of reason, autonomy, conscience, or empathy, but because, like nature itself, they are vulnerable along with their freedom. Compassion-guided conscience is what perceives the vulnerability and affirms it. It recognizes vulnerability as relevant and thus creates the subjectivity of vulnerable beings. For instance, a newborn does not acquire dignity through a potential capacity for reason but through the conscientious care of the parents (or of other humans) who – functioning as personified conscience – recognize the infant's neediness as worthy of protection. Just like empathetic compassion is a social emotion, conscience is relational in nature, as it presupposes the existence of another being that can be pitied. Even according to Kant, conscience always refers to a subject, not to an object.³³ From this, it follows that the sensuous, natural being to which conscience relates beyond the rational being must itself be regarded as a subject. The being addressed by conscience possesses dignity as a vulnerable and sentient subject. To put it in Kantian terms, the “judge” is not only controlling but also recognizing. In this sense, conscience functions as a relational act of recognition: to see the Other as vulnerable is already to acknowledge their subjectivity. The verdict of conscience is: “You are a subject.”

³² For a differentiation between a cognitive and an affective empathy cf. Hoffman, ‘Empathy, Justice, and the Law’, in Coplan and Goldie (eds.), *Empathy: Philosophical and Psychological Perspectives* (Oxford, 2011) 230 f.

³³ Kant, *Metaphysics* 202.

One might object that the proposed constitution of subjectivity renders the existence of the subject dependent on the willingness of others to acknowledge it and is thus arbitrary. Yet the inherent and inviolable value of a being already resides in the very nature of its vulnerability and capacity for suffering. This value, which makes the being an end in itself, does not arise from recognition by others. However, it is precisely recognition as a relational act that constitutes the status of subjectivity. Accordingly, subject status is not left to the arbitrariness of an individual's subjective conscience or compassion. For in order to be a subject that can be the object of compassion, a being must be capable of suffering. Hence, it is not the subjectivity of the compassionate person but that of the being receiving compassion – the Other – that is constituted. In this respect, there are certain parallels to Levinas' ethics, in which the relation to the Other is fundamental.³⁴

This constitutive function makes possible a non-speciesist concept of subjectivity and explains why non-autonomous beings (whether human or non-human animals) can lay claim to the protection of dignity. Conscience defines who has to be recognized as a subject. While the ground of dignity lies in the vulnerability of a being, the recognition of dignity and subjectivity occurs through conscience. This renders perceived vulnerability morally relevant. From this recognition follows a moral claim of every vulnerable being to the legal attribution of the same quality, namely, to the recognition of its legal subjectivity.

3. Corrective Function

In addition to its constitutive role, conscience also serves to critically – i.e., judgment-correctively rather than merely judgment-controllingly – examine whether norms derived from autonomous self-legislation are compatible with concrete vulnerability. In terms of its epistemic form, this function of conscience amounts to a reason-guided empathetic capacity³⁵ for judgment, one that is both cognitive and emotional³⁶.

³⁴ Cf. Nooteboom, *Beyond Humanism. The Flourishing of Life, Self and Other* (London, 2012) 162 ff.

³⁵ Following Coplan, this empathy is to be understood as a complex process that unites three essential characteristics: (1) affective matching (the one feeling experiences a qualitatively identical affect in comparison to the other); (2) other-oriented perspective-taking (the perspective is not self-centred but is genuinely adopted from the other's standpoint); (3) self-other differentiation (a clear distinction between the self and the Other is maintained). Coplan argues for a "narrow conceptualization" of empathy that considers these three features as necessary; Coplan, 'Understanding Empathy: Its Features and Effects', in Coplan and Goldie (eds.), *Empathy: Philosophical and Psychological Perspectives* (Oxford, 2011) 4 ff.

³⁶ For a cognitive understanding of emotions see Nussbaum, *Gerechtigkeit oder: Das gute Leben* (Frankfurt a. M., 1999) 145 et passim.



Conscience corrects the judgments of pure autonomy by bringing empathy and compassion into moral reasoning, ensuring our principles are sensitive to real-world vulnerability. As Marijana Vujošević elaborates, for Kant, conscience is also a form of moral self-knowledge that judges our formation of maxims.³⁷ It is neither a merely subjective feeling nor a romantic virtue, but rather a reason-mediated and therefore universalizable, objective sensitivity to the suffering of natural beings. Whereas Kant's Imperative tests only the formal universalizability of maxims, conscience poses the materialistic question that links autonomy to the reality of vulnerable existence. It asks: can a maxim that ignores suffering truly be universal? So, conscience tests whether the maxims derived from autonomy are compatible with vulnerability. Empathy and compassion, as central elements of conscience, shape human connectedness not only with one another but also with nature and non-human animals.³⁸ While autonomy divides, vulnerability connects.

Although conscience – just as in Kant³⁹ – originates in reason, it necessarily relates to the sensible world. Without empathy and compassion, without the sensory perception of the suffering of others, conscience would be functionless. Kant himself acknowledges that a human being must be understood both as a rational being and “as an animal endowed with reason,” and therefore “sensible” and “shared feelings” such as compassion constitute a “conditional” duty of humanity.⁴⁰ It is an “indirect duty” to cultivate compassion for others within ourselves.⁴¹ In this way, the Categorical Imperative relates not only to the purely rational being, but also to the human as a sensuous being of nature.⁴² Nussbaum similarly argues that emotions possess cognitive dimensions and contribute to our capacity for judgment by helping us understand what occurs beyond pure reason in suffering nature.⁴³ Emotions thus have

³⁷ Vujošević, (2014) *Kantian Review* 449 (465).

³⁸ Nussbaum, *Gerechtigkeit* 54, 60 et passim.

³⁹ Kant, *Metaphysics* 202; Kant, *Religion* 179; on conscience as a function of (practical) reason according to Kant, see Akimoto, ‘Die kantische Aufklärung und das Problem des moralischen Irrtums’, in Waibel, Ruffing and Wagner (eds.), *Natur und Freiheit* (Berlin, Boston, 2019) 3761 (3763 f); Schmidt and Schönecker, ‘Kants Philosophie des Gewissens’, in Egger (ed.), *Philosophie nach Kant* (Berlin, 2014) 279 (281, 302).

⁴⁰ Kant, *Metaphysics* 250.

⁴¹ Kant, *Metaphysics* 250 f.

⁴² See also Bondeli, ‘Freiheit, Gewissen und Gesetz’, in Waibel, Ruffing and Wagner (eds.), *Natur und Freiheit* (Berlin, Boston, 2019) 529 (540 et passim).

⁴³ Nussbaum, *Gerechtigkeit* 145.

a cognitive side, so that recognizing what is right means, in a sense, thinking compassionately.

4. Conscience as a Bridge Between the Noumenal and Phaenomenal Sphere

Conscience pierces the *noumenal* sphere and opens a path to the *phaenomenal* world of dignity.⁴⁴ It functions as a bridge between these spheres by relating abstract principles of reason to the concrete, sentient nature of beings. Only when the human being recognizes itself not merely as a rational being but as a natural being in their full corporeal and sensuous vulnerability can he truly become a subject within nature. Conscience, which responds to the experience of actual suffering, thus becomes the key to a materialistic conception of dignity and subjectivity. Nussbaum's *capability approach* breaks through Kant's abstract notion of autonomy with a materialistic theory of the good life.⁴⁵ What matters, according to this view, is not formal criteria, but concrete opportunities for realization. Dignity, then, requires that basic capabilities (health, education, political participation) are genuinely achievable. In contrast to Kant's mind-body-dualism, Nussbaum emphasizes the manifestation of dignity in vulnerable corporeality. Empirical freedom is vulnerable freedom, because freedom refers to subjects, which are defined as vulnerable beings.

So, I interpret conscience as a faculty derived from reason, yet one that nevertheless functions as the critical corrective to autonomy. It transforms the destructive domination of nature by rational beings into a considerate form of freedom by anchoring dignity in compassion for other vulnerable beings of nature and tempering self-empowering reason with self-limiting reasonableness. In the human pursuit of new forms of freedom, progress must shift from domination over nature to mastery in harmony with nature. This occurs through self-restraint, which needs conscience, compassion and empathy. Vulnerable freedom demands its own containment through conscience, so that human autonomy does not become a risk to itself.

⁴⁴ For this understanding of compassion in Schopenhauer, see Ferber, *Zur Grundlegung der Moral durch A. Schopenhauers Lehre vom Mitleid* (Frankfurt a.M., 1989); Guyer interprets conscience in Kant as an "empirical phenomenon" or "empirical awareness of moral law" and not as a "noumenal determination of the will"; see Guyer, 'Moral feelings', 130 (143).

⁴⁵ Nussbaum, *Gerechtigkeit* 102 et passim. Pauer-Studer also argues for embedding conscience within a theory of the good. She contends that a complete moral theory must incorporate values and ideals that constitute the minimal conditions for a good life; Pauer-Studer, 'Social Sentiments', 279 (287): "If care for the well-being of others as well as sympathy and solidarity count as basic goods of a weak theory of the good, then we have a basis to ascribe moral worth to actions of direct altruism."

C. The Objectivity of Conscience

At first glance, conscience may appear to be a highly subjective faculty; it is one that depends on individual conditioning, cultural norms, or emotional states. Following Samuel Kahn's interpretation, Kant grants infallibility only to the subjective certainty of one's belief ("I believe that action A is X"), not to the objective moral status of the action itself ("Action A is X").⁴⁶ This confines conscience to a formal self-reflection on one's own conviction, while severing it from any empathetic engagement with the concrete vulnerability of the Other. The vulnerability-theoretical approach, in contrast, posits conscience precisely as the faculty that can err in its substantive judgments but is epistemically equipped to correct them through empathetic engagement with the suffering Other.

So, the supposed subjectivity of conscience dissolves once it is understood through the functions previously described. Empathy, as the core of conscience, is not a mere "gut feeling" but a cognitive-emotional competence that can be intersubjectively comprehended. It rests on the ability to adopt the perspective of a vulnerable being and to connect that perspective with rational principles by asking whether an action can be generalized in light of concrete suffering. Empathy, then, is not an irrational sentimentality or impulse, but rather a form of objective judgment that safeguards the universalizability of rational conclusions. For that reason, specific emotions or emotional phenomena should not be incorporated into empathetic judgment. Although the concrete emotions leading to conscience are important for the flourishing of social coexistence,⁴⁷ conscience itself is limited to general empathetic concern and compassion. And compassion – following Nussbaum – functions like a sense of justice.⁴⁸

Conscience is therefore an *objective* faculty of reason because it does not issue judgments based on subjective or arbitrary emotions. It rather issues judgements based on principle-guided reasoning regarding the compatibility of actions with the recognition of vulnerability. Its benchmark is the question: can a maxim that ignores suffering be a general law? This test resembles the Categorical Imperative but incorporates the empirical dimension of suffering. Conscience, therefore, does not judge arbitrarily but with contextual sensitivity, considering concrete forms of

⁴⁶ Also for Kant's denial of an erring conscience and the distinction between subjective certainty and objective rightness, see Kahn, *Theory of Conscience* 12 ff.

⁴⁷ On the growing importance of emotions for law, see Hoffman, 'Empathy', 230 ff.

⁴⁸ Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Massachusetts, 2006) 337.



suffering (e.g., pain and humiliation); it remains universalizable at the same time, as its judgment must always be comprehensible to other rational beings. In this process, conscience does not affectively respond to unreliable, self-centred, or overwhelming feelings.⁴⁹ It rather responds to a rationally informed form of empathy, and it becomes emotionally informed, relational reason.

Furthermore, recognition through conscience operates relationally. Unlike reciprocity-based concepts, where the idea of mutual recognition is central, the compassion-feeling being itself does not require recognition in return from the compassion-receiving being. Their relation is thus asymmetrical.⁵⁰ We do not, for example, recognize non-autonomous beings such as infants or persons with profound disabilities as subjects only on the condition that they reciprocate or offer us the same recognition in return. In this sense, compassion and empathy are unconditional.

The objectivity of conscience is also reflected in its institutional anchoring in law and society: human rights and norms such as the prohibition of torture or the protection of animals are institutionalized expressions of conscience. They reflect what a community has come to define as “intolerable”. The prohibition of torture, for instance, is less the result of individual sensitivity than of a collective realization and perception that no one can want a world where anyone is helplessly exposed to such suffering. This perception cannot be achieved by rules alone, as Herlinde Pauer-Studer rightly points out: “I can know all the rules and still not become aware that a certain situation is morally relevant.”⁵¹ What is necessary, she argues, are affective capacities like empathy. The fact that judgments of conscience vary historically (e.g., with regard to slavery) does not disprove their objectivity. Rather, it highlights the capacity of rational empathy to learn and evolve, similar to the way scientific knowledge progresses over time. Limiting the relevant emotional domain of conscience to empathy and compassion ensures, especially in pluralistic societies, that objective conscience does not become a projection surface for particular moral

⁴⁹ Cf. Coplan, ‘Understanding Empathy’, 4 (13). She explains that self-oriented perspective-taking (imagining oneself in the other’s situation) is much more likely to lead to personal distress, whereas other-oriented perspective-taking modulates affective arousal through regulatory mechanisms and maintains the focus on the other.

⁵⁰ Relationality in that sense is also crucial in Levinas’ philosophy of the “Other“, according to which the “self” is responsible for the “Other” without demanding for anything in return, because their relation is asymmetrical; cf. Nooteboom, *Beyond Humanism* 162.

⁵¹ Pauer-Studer, ‘Social Sentiments’, 279 (286). Pauer-Studer is here criticizing the Kantian solution attempted by Barbara Herman. Her own conclusion – that it is not rules but affective faculties like empathy and emotional sensitivity that alert us to the moral relevance of a situation – strengthens the thesis advanced here concerning the judgment-correcting function of an empathetic conscience.

ideologies. As an inexhaustible source of moral insight, conscience is dynamic and capable of learning. However, institutional safeguards for conscience and empathy are necessary to prevent moral regression in the society.

IV. Legal Implications for the Interpretation of the Norm of Human Dignity

This vulnerability-theoretical approach overcomes the deficits of autonomy-based concepts by synthesizing three insights: (1) the self-limitation element of Kantian autonomy is reactivated as a condition for the equal freedom of all; (2) the human being is taken seriously as a sensual natural being embedded in social and ecological interdependence; (3) the recognition of other sentient beings as subjects is freed from the speciesist reservation. This eliminates the need for circular arguments that make dignity a privilege of the “rational” and at the same time naturalize their definitional authority.

Although the approach developed here shares the fundamental aim of protecting the human being as an end in itself with the so-called “object formula” – which is based on Kants Categorical Imperative and is mainly used to solve dignity-relevant legal cases –, it departs from it in a decisive respect. As the German Federal Constitutional Court has held, no human being shall be treated merely as a means to societal ends and thus be denied the subject-quality. A human should always also be treated as an end in itself and as a subject with their own rights.⁵² However, although the object formula grounds the self-purposefulness to be protected in a being’s (at least potential) capacity for reason, autonomy, or self-determination, its foundation here is located in vulnerability.⁵³ Dignity refers to an intrinsic worth of every vulnerable being, detached from the reciprocity expectations of communication-theoretical and recognition-theoretical approaches; dignity signifies a subject-quality that is not constituted through the possession of an abstract rational capacity, but through the conscience-guided recognition of its vulnerability.

Accordingly, dignity is violated where empathetic care is withheld; where a sentient being is not perceived as a subject worthy of protection but is instead denied in its fundamental vulnerability. Subjects are then violated in their dignity when their “appeal” to the conscience of others is systematically ignored. To put it in a formula:

⁵² German BVerfG 15 February 2006, 1 BvR 357/05 para 121, 124; the decision can be accessed via https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2006/02/rs20060215_1bvr035705.html.

⁵³ For further elaboration on the legal implications of the concept presented in this contribution, see Bilgen, *Dialektik der Würde* (Berlin, 2026) 205 ff, 281 ff and 300 ff.



Dignity is violated when a person is treated in a manner that exploits or disregards their fundamental vulnerability, weakness, and need for protection in the gravest way. This is the case when an empathetic observer of a situation intuitively senses that no human being should be treated like this; when the conscience declares that no one may be subjected to such treatment. This empathy formula may therefore also be called a vulnerability formula; like a kind of objective test of conscience, it contains a cognitively and emotionally structured evaluative mechanism designed to highlight the vulnerability inherent in dignity. It captures not only physical or psychological impairments, but especially actions or conditions that expose and exploit a person's deepest vulnerability in an intolerable manner. This formula is not intended to replace the object formula described above, but to complement it. It likewise concerns cases in which the fundamental subject status of a being is denied, which also includes the paternalistic protection of a subject. Whereas the object formula reduces the issue to a binary logic of subject and object, the vulnerability-theoretical perspective operates with the objective conscience as an instance that connects reason and compassion. This conscience does not inquire abstractly into violations of autonomy. Rather, this conscience concretely inquires into the intolerability of a particular treatment in light of the bodily and psychological vulnerability of a natural being, especially in its individual striving for freedom. The empathy formula has the advantage of capturing human vulnerability as a central aspect of dignity. It includes the cases addressed by the object formula while also extending beyond them. Dignity is therefore also violated when an individual, precisely in their dependence on others, is exploited, oppressed, degraded, or otherwise arbitrarily treated by the political, economic, social, or ecological power of others, or when he is abandoned by the community in such circumstances.

A legal order oriented towards dignity must therefore understand conscience not only as a moral instance but also as a societal form of reflection. Where trust in empathy as the basis of solidarity and civilized coexistence becomes fragile, dignity itself is at stake. Conscience and empathy are not romantic virtues, but the essential elements of civilized coexistence in a social order of freedom grounded in dignity. By cultivating empathy and compassion in people, individuals can be strengthened in their sense of responsibility and sensitized to the vulnerability of their human and non-human fellow creatures.

This concept of subjectivity systematizes the insight into the vulnerability of the human being and of freedom. It points the way towards a more inclusive understanding of dignity; one that does justice to the vulnerability of life in freedom in all its forms. For legal thought in general, this means that circular reasoning or

unsatisfactory auxiliary constructions can be avoided. At the same time, the presented concept makes possible a dynamic or evolutionary interpretation of the constitutional guarantee of dignity, such that new insights into vulnerability (for example, in the context of ecological crises or dangers associated with digitalization) could expand its protective function. What is explicitly not meant by this, however, is that, on account of humanity's fundamental vulnerability, the state may protect individuals from every minor risk in a paternalistic manner and thereby subject them to constant tutelage. Vulnerable freedom is also protected precisely by granting individuals rights through which they can ward off interventions by other individuals or by the state into their sphere of freedom.

V. Legal Subjectivity of Animals

Since conscience does not distinguish between human and animal vulnerability and thus recognizes their suffering in the same way,⁵⁴ sentient parts of nature, especially animals, are to be regarded as dignity-bearing subjects. The consequence of this valuation is that animals should be granted legal subjectivity. A constitutional-law basis for this can be found in the state objective of animal protection under Article 20a of the Basic Law, which accords animals a – albeit only vaguely defined – intrinsic value. In concretizing this, the Animal Welfare Act, as stated in its Article 1, aims “to protect the lives and well-being of animals, based on the responsibility of human beings for their fellow creatures.” It therefore prohibits any person to “cause an animal pain, suffering or harm without good reason.” In this way, conscience as an element of reason manifests itself in human dealings with animals.

Legal subjectivity is generally understood to mean abstract legal capacity, i.e., the ability to hold rights and obligations. All human beings are currently regarded, by virtue of their dignity, as legal subjects possessing subjective rights.⁵⁵ In addition to natural persons, the legal order also recognizes juristic persons, which are granted legal capacity and thus legal subjectivity. Legal capacity is not a God-given or naturally given quality – however much it may be a moral claim with respect to dignity – but rather a status conferred solely by law.⁵⁶ Accordingly, the legislator could also grant

⁵⁴ Nussbaum distinguishes according to the *cause* of an animal's suffering – such as whether an animal suffers due to a natural illness or due to human treatment – which can evoke different duties of compassion; Nussbaum, *Frontiers of Justice* 336.

⁵⁵ Rehinder, *Einführung in die Rechtswissenschaft*, 7th edn. (Berlin, 1991) 95; affirming the species boundary as an argument, see Schmidt, *Das Tier – Ein Rechtssubjekt?* (Regensburg, 1996) 57 f.

⁵⁶ See Kersten, ‘Natur als Rechtssubjekt’ (2020) *APuZ* 27 (29).



sentient animals – or even other living beings – the status of subjects and thus their own rights by means of an ordinary statute, as this would be consistent with the legislator’s objective legal duties to protect animals and the environment.⁵⁷ Where non-living, non-sentient juristic persons or other constructs are granted rights, it runs counter to the idea of dignity not to confer them upon living, sentient animals; animals, as objects of objective conscience and empathetic compassion, are subjects.

For the constitutional-law justification of the legal subjectivity of animals, the most suitable route is via Article 20a in conjunction with Article 19(3) of the Basic Law (in analogy), which grants “basic rights [...] also [...] to domestic legal persons to the extent that the nature of such rights permits”.⁵⁸ As with juristic persons, it would then have to be determined on a case-by-case basis which fundamental rights are, by their nature, applicable to animals.⁵⁹ If one takes dignity-grounding vulnerability as the standard, this would first and foremost concern the right to life and physical integrity under Article 2(2), first sentence, of the Basic Law. It would also concern those fundamental rights that safeguard an (ecological) sphere of life and freedom, such as the general freedom right under Article 2(1) or Article 13. Accordingly, animals would have rights to develop freely and not to be disturbed in their natural habitat or in their “privacy”. Furthermore, Articles 90a and 903 of the Civil Code are also relevant. These Articles grant the owner of an object the right to deal with it at will. They would have to be interpreted in conformity with the constitution to mean that animals must not be treated legally as objects or inanimate matter. Rather, according to these Articles, animals must always be treated as vulnerable subjects with their own rights, as ends in themselves, not just as human extensions.

How these enumerated rights should be specified in detail cannot and need not be discussed further here. This paper is concerned solely with the justification of the dignity and the fundamental subject status of natural beings. So, animal dignity is violated when a treatment of the animal shows no empathy for its suffering, i.e., when an animal is subjected to treatment that exploits or disregards its fundamental vulnerability, weakness, and need for protection in the most severe manner. Such a violation is to be assumed when an animal is exploited, oppressed, or degraded through the economic or ecological strength of others. So, the empathy formula is also applicable for animals. Despite all distinctions between humans and animals,

⁵⁷ Kersten, *Die Notwendigkeit der Zuspitzung* (München, 2020) 77.

⁵⁸ This and the following thoughts have been developed by Fischer-Lescano, ‘Natur als Rechtsperson’ (2018) *ZUR* 205 (213); also see Kersten, *Zuspitzung* 77.

⁵⁹ So Kersten, *Zuspitzung* 32 (with some examples).

they share core aspects of dignity, such as the prohibition of torture, slavery, proscription, and degradation.⁶⁰ The use of animals for zoos or circuses thus constitutes dignity-violating slavery; animal experiments that do not exclusively serve the pursuit of animal interests, as well as factory farming or non-species-appropriate husbandry (e.g., tethering of cattle), constitute cruelty and torture; the legal treatment of animals as property-capable objects constitutes a denial of the subject-quality mediated by conscience; it is proscription and degradation.

It is evident that regarding all sentient natural beings as dignity-bearing subjects – and the corresponding demand to grant them their own rights – necessarily leads to conflicts with human interests. Despite existing differences between humans and animals, respect for the dignity of all beings requires that there is no blanket priority accorded to human interests.⁶¹ What all conscience-based dignity shares, therefore, is the self-purposefulness of all suffering natural beings in their vulnerable striving for a free life without pain caused by torture, degradation and humiliation. All such beings must always be respected as vulnerable subjects and never treated as inanimate matter or as objects for arbitrary purposes. Attributing dignity to animals does not mean equating them with humans or treating them as human-like; rather, it means respecting them as different kinds of beings with their own characteristics and needs, yet equally as ends in themselves.

VI. Summary

“Human dignity shall be inviolable” – this imperative becomes more inclusive only when we set it on the feet of vulnerability rather than on the head of autonomy. Dignity is not inviolable because we are autonomous, but because we are vulnerable and violable. Conscience as the foundation of dignity proves to be the key to a legal understanding of freedom that adequately safeguards its own condition: the vulnerable coexistence of all living beings. Only conscience, as a mediating instance between reason and suffering nature, makes possible a materialistic concept of the subject that protects non-autonomous beings, reflects social power relations, and recognizes nature as worthy of legal acknowledgment. Subjectivity, then, does not originate in the autonomy of pure rational beings, but in the vulnerability of natural beings, recognized and acknowledged through compassion-guided conscience. Thus,

⁶⁰ So Sitter-Liver, ‘Würde der Kreatur versus Menschenwürde?’ (2009) *JVL* 313 (317).

⁶¹ This contribution was concerned solely with providing a general justification for why sentient natural beings must be accorded dignity and, concomitantly, their own rights. For a more detailed elaboration, see Bilgen, *Dialektik der Würde* (Berlin, 2026) 307 ff.

the anthropocentric and rationalistic narrowness of classical conceptions of dignity can be overcome, paving the way for a more inclusive and ecologically sensitive concept of law that also encompasses non-autonomous beings.

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