What does it Mean to Harm a Person

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ABSTRACT

The central task of my reflections is to deal with the question what harming a person could mean. In the first part of the reflections, I will be critically concerned with current ways of dealing with the concept of human dignity, and why it is no longer plausible to uphold these regulations, whereby I will particularly focus on the legal dimension. It will come out that the person-object-dichotomy cannot simply be upheld in its traditional manner. Given the plausibility of these reflections, the legal implication that it ought to be legally prohibited to treat another person merely as a means becomes implausible, too, as it rests on the aforementioned distinction between persons and objects. As an alternative, it will be suggested that legally we ought to separate ontological insights clearly from normative ones. In the following part, I will focus on the moral status of personhood, and develop some philosophical reflections which could be upheld on the basis of a posthuman paradigm-shift. Thereby, I will develop a gradual concept of personhood which implies several levels of personhood depending on the corresponding capacity of suffering, which needs to be established empirically. Once, the direction of an alternative concept of personhood becomes clearer, which implies that some animals become person and which provides some reasons for holding that some sufficiently developed embodied AIs could also deserve personhood, the question can be reflected upon further what it could mean to harm a person. The issue of harming, however, is so complex that I merely plan to raise some questions which need to be confronted when clarifying the concept of harming. I do not attempt to propose a definite concept of harming, but stress that the concept is closely related to cultural circumstances, so that there is a permanent need to engage with the concept, redefine it, and adapt it to the current cultural situation. Not proposing a clear concept of harm is not a shortcoming, but rather a necessity.

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1. Human Dignity[1]

The concept of human dignity is central in many international constitutions. It plays a particularly central role in the German foundational law (Sorgner 2010, 23-29). Kant's concept of dignity is particularly influential in this context (Sorgner 2010, 82-108). There are two ethical aspects which German law inherited from Kant and both of which are highly problematic. Firstly, even though that it is acknowledged by the German constitution that animals are not objects, they are supposed to be treated like objects. Hence, the categorical dualistic separation of animals from human beings is implicitly contained in this judgment. Secondly, it is legally forbidden to treat a person merely as a means. This insight applies both to oneself as well as to other persons, which becomes clear in the following two regulations. Firstly, peep shows in Germany are legally forbidden, even if it is the case that it is the dancer's autonomous wish to earn money in that way (Welti 2005, 397). Secondly, it is legally forbidden in Germany to shoot down a hijacked airplane, even though it seems to fly directly into a nuclear power station, as long as there are innocent persons on board (BVerfG, 1 BvR357/05 from the 215.2.2006). In both cases, the regulation was justified by reference to the Kantian thought that it is morally false to treat a person solely as a means. In the following reflections of this section, firstly, I will question a basic assumption on which this regulation rests, secondly, I will consider which options follow from these reflections and thirdly I will analyse the challenges related to the options mentioned. Thereby, it is supposed to become clear that the German law needs to be altered concerning the moral prohibition of treating a person solely as a means.

2. Challenging Kant's Basic Assumptions

The Kantian moral prohibition of treating a person solely as a means rests on the distinction between persons and things. Persons participate in the world which is governed by the laws of nature and the laws of freedom. Things, however, participate solely in the world which is governed by the laws of nature. This distinction implies that only persons do not solely belong to the natural world (Kant 1902ff, vol. 4, 428-434). Kant did not affirm an anthropocentric conception of personhood, but a logocentric position of personhood, as it was

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[1] The following four sections include revised material from the following article of mine: Sorgner 2013.

not necessary for him that only human beings are persons. In the German legal context, however, the distinction between persons and things turns into an anthropocentric conception, as only human beings are seen and legally treated as persons. Is this a plausible anthropology today? Darwin, Nietzsche and contemporary posthuman thinkers might have reasons for doubting this conception (Badmington 2000, 9). Given recent biological research; given that human beings and great apes have common ancestors and given that a basically naturalist understanding of the world applies, it is more plausible to hold that there is merely a gradual difference between human beings, great apes, plants and maybe even stones. Nietzsche's anthropology provides a possible non-dualist anthropology, which attempts to grasp the related concepts philosophically. Thereby, all entities turn into constellations of power-quanta and organisms and human beings are seen as a specific type of animal, sometimes even a "sick animal" (KSA, GM, 5, 367). However, this sickness in Nietzsche is not necessarily a deprecation of human beings. The aspect of sickness has several implications. It means that they have developed a special capacity, namely the capacity of not immediately having to follow their instincts. This can have both beneficial as well as problematic consequences. It can be beneficial as it enables human beings to create culture, develop technologies and enable them to realize sublimation processes. It can be problematic, as it separates acts from the immediate realization of instincts whereby instincts in many cases are more reliable concerning one's own interest than intellectual reflections. (Sorgner 2010, 184-191)

3. Moving Beyond Kant's Basic Assumptions

As both philosophical and scientific reflections have lead many people today to doubt the Kantian anthropology on which the German foundational law rests, what can be done to take these insights into consideration? It needs to be stressed that it is problematic to refer to posthumanist insights as the ones who are generally accepted. This is not the case. In Germany there are many citizens who still uphold a traditional Christian understanding of the world, which rather affirms the basic assumptions of Kantian reflections. Still, it needs to be asked whether a social-liberal democracy ought to be based upon a premise that affirms a strong metaphysical anthropology, namely one which is most consistent with an anthropology that sees only human beings as being constituted out of a material body and an immaterial soul. Animals, plants and stones on the other

hand are regarded as objects and as not participating in any world outside the material naturalist one. This seems to go against the fundamental norm of negative freedom on which democracies rest. In the case of Germany it can be said that at least thirty per cent of citizens can be classified as naturalists, sceptics or atheists who are being treated paternalistically by this type of legal regulation. A problem related to this group of people is that that they are not politically organized enough to efficiently act against such regulations. Members of the Catholic and the Protestant churches on the other hand have strong institutions and hence have an enormous amount of power to influence political decision making processes. However, given that at least one third of the population is treated paternalistically in an aggressive manner by these types of regulations goes against the central value the norm of freedom ought to have within a democracy. Therefore, these regulations ought to be revised. What does it imply to revise the related premises of the foundational law? The current implications of the foundational law are such that it has strong metaphysical implications such that only human beings are seen as participating both in a material as well as in an immaterial world, but it is problematic that the foundational law of a liberal-democratic society has an ontological basis. It cannot be an appropriate way of reacting to these insights to simply replace this regulation by another one such that human beings and animals are seen as merely gradually different. In this case, one ontology would simply be replaced by another one. Instead of such a substitution, it would be more appropriate to stress the norm of negative freedom whenever the ontological implications of anthropology become relevant. However, the main question that I intended to address here was primarily the one concerning the prohibition of treating a person solely as a means. So far I described that the Kantian moral prohibition implies the ontological distinction between persons and things. Persons have autonomy and hence dignity, which implies that no finite value can be attributed to them. Things, on the one hand, can have a finite amount of value, which is also the reason why they can be treated solely as a means. Persons, on the other hand, cannot be identified with a finite amount of value, and consequently must not be treated merely as a means. Hence, the intellectual basis on which Kant's moral prohibition rests is a highly problematic ontological understanding, which currently is not shared by at least one third of German citizens. Still, they are forced to be judged on this basis, as this regulation is part of the German law. It has consequences such as the prohibition of peep shows as well the prohibition to shoot down hijacked airplanes with innocents on board.

If the prohibition to treat a person solely as a means rests on the aforementioned ontological basis, the question needs to be addressed as to consequences it has concerning this prohibition, given that one merely sees a gradual difference between human beings, animals and other entities. Two immediate options come to mind: Firstly, due to there being merely a gradual difference between human beings and other entities, there are no more things and hence, it will have to be morally prohibited to treat any entity merely as a means. Secondly, it can be argued that the prohibition of treating a person solely as a means does not even apply today as a universally valid regulation; for instance if someone has been an murderer, he can be sentenced to death in specific circumstance. This seems to imply that he gets treated merely as an object. Hence, treating a person solely as a means can be both morally legitimate as well as morally illegitimate (Hoerster 2013, 11-23). If this judgment applies to persons, then it applies also to all other entities, given that there is solely a gradual distinction between all entities in question.

4. Challenges related to these Moves Beyond Kant's Basic Assumptions

There were two major suggestions concerning these moves beyond Kant's basic assumptions. Firstly, the moral prohibition to treat persons solely as a means was reinterpreted such that all entities from stones to great apes and human beings turn into persons. Secondly, the moral prohibition mentioned was dissolved as the distinction between morally legitimate ways of treating a person merely as a means and morally illegitimate ways of treating persons merely as a means was introduced. The second case seems to imply that the prohibition in question no longer applies to any case such that the question has to be asked anew: What is moral and how can we conceptualize morality? The first reply, however, raises different questions, as then the questions come up what it means and which implications it has to treat someone solely as a means? Does it imply that I must no longer eat tuna? Is it morally problematic to walk on grass?

A further issue has to be considered in this context, too, which has been mentioned beforehand. If the moral prohibition was altered in one of these two ways, does this not imply that one ontology was simply replaced with another one within the legal context? Is it not problematic to have any ontology, which influences legal decisions, as a social-liberal democracy must imply openness to a great variety of ontologies and must not judge its citizens on the basis of any ontology due to the morally problematic implications involved? If this is indeed

the case, then it might be advisable to move beyond any ontological discourse when dealing with any legal discourse, as this is the only way of remaining ontologically neutral such that no morally problematic intrusion of the state into personal decisions of its citizens occurs.

In the above-mentioned reflections, several challenges of legally dominant regulations have become clearer, which have a particular relevance for the German legal context. Given the above reflections, it seems appropriate and necessary to move beyond the prohibition of treating other persons solely as a means and also beyond the tradition of allowing ontological positions within a constitution of a social-liberal democracy, as both judgments contradict the initial premises of such constitutions and hence are self-contradictory. In any case, given the paradigm-shifting changing alterations which have occurred concerning out anthropological self-understanding demands to reflect upon the concept of who should count as a person from a non-logo- as well as non-anthropocentric moral perspective and what constitutes harming a person need to be reflected on anew. Firstly, I will deal with the notion of personhood, then with the notion of harm. Legally, it might be most in tune with a liberal and democratic constitution to separate ontological and normative perspectives, which implies the need to come to pragmatic normative decisions concerning ethical challenges. Even the legal prohibition to treat another person solely as a means can no longer be plausibly justified, due to the implausible ontological connotations of this demand. Morally, this is a separate issue. Here, we can ask anew which concept of the moral status can still be upheld on the basis of an ontology of permanent becoming. Yet, it is no longer a foundationally justified concept of a moral status but merely a fictive one. For pragmatic purposes, we attempt to create plausible criteria, knowing that these criteria are contingent nodal-points. We agree upon them now, as they are widely shared, but they do not represent an ultimate foundation for a moral status. Given further information or a different Zeitgeist, our judgements concerning what should count as a moral status will change. Then, our ethical reflections need to be adapted. What we do currently chare, which can be seen as a result of the enlightenment process that it is morally wrong to directly inflict harm on another person. It is an open question who should count as a person, and what constitutes direct harm done to another person. Should indirect harm also be regarded as immoral? In how far can direct be distinguished from indirect harm? Can there be immoral acts which do not involve any harm being done to a person?

The questions just listed have arisen as a consequence of the latest technological innovations. If we have a sex robot, which acts as if it does not wish to be engaged in sexual acts, does this mean that you are raping the robot, if you try to and do have sex with the robot nevertheless? Does not rape presuppose consent? How can a robot consent at all? Does not consent demand a certain type of competence which robots do not possess? One argument claims that a fictively acting immorally, e.g. a make-belief rape of a robot, increases the likelihood of actually acting in a similar fashion. Yet, is this the case at all? Empirical studies on computer games seem to suggest that there is a difference between fictive killing in a game and the likelihood to actually kill another person.[2] It can still be argued that killing is different from having sex, as the latter is more directly connected to one's more important desires. Whether this is the case needs to be studied further empirically. So far, there is no clear evidence for making such a rigid distinction between make-belief killing and make-belief sex. In addition, there are further arguments which suggest that acts can be immoral even though they do not directly cause harm to anyone, it is sufficient for an act to being immoral, if the act normalizes a procedure which ought not to be normalized. Does the make-belief rape of a sex robot normalize the act of rape?

I think it is important to distinguish between significant and insignificant distinctions. In the case of a make-belief rape of a sex robot no direct harm is being done another person. However, it can be objected that acting thus is morally wrong because it normalizes an act which we do not wish to see as getting normalized, and that due to an altered social meaning of rape, the likelihood of rape occurring can be increased. The implicit logic is that a make-belief rape of a sex robot is morally wrong, because it indirectly harms other persons due to the normalization of rape which goes along with it or because it presents an immoral act, i.e. rape, as morally legitimate. However, neither of the reasons seems to correspond to the issue in question. Rape does not get normalized. Having sex with an entity which does not suffer, and which has neither consciousness nor self-consciousness gets normalized. If two competent people engage in a mutually agreed upon activity, no harm is involved. Parallels between types of events may only be drawn upon, if the events are structurally analogous in a morally significant manner. This is not the case,

when we compare sexual acts between a competent adult and a sex robot with the sexual act between two competent adults, whereby one of the adults does not consent to the act.

This is also the reason why incest between consenting adults is morally legitimate on the basis of a liberal ethics of autonomy. It is legal in Spain but illegal in Germany. In this context, the potential consequences are often being referred to, as the likelihood of having a child with a handicapped are being increased in the case of an incestuous sexual relationship. However, is this a solid argument? If you start from a liberal ethics of autonomy, which is the ethics I subscribe to, it is not, as no person gets harmed. Would it be different, if you held a utilitarian perspective? Even given a utilitarian perspective, it is not a straightforward argument. Bringing to life another human being, is usually in the interest of the human in question, no matter whether the child is handicapped or not. If you held that it is not worthy of being alive, in case one has a severe handicapped, one could argue that an incestuous relationship between consenting adults is immoral. However, the claim on which this argument rests upon is highly implausible, and not one I share.

Given the plausibility of what I just argued, it is implausible to claim that there can be immoral acts which do not directly harm another person. However, it still remains an open question as to how we should plausibly conceptualize a person, and what constitutes the direct harm being done to another person. Both tasks will be dealt with in the following sections.

5. Twisting the Person-Thing-Distinction

In the humanistic tradition, it used to be upheld that only humans count as persons. This is slightly exaggerated, as angels and god was often regarded as persons, too. The point is that the only living beings in the natural world who were regarded as persons were human beings. This is still the dominant outlook in monotheistic religions and also in most constitutions in all parts of the world. After Darwin, however, this view is no longer plausible. Respect for entities, i.e. personhood, should depend upon morally relevant capacities, and not upon the former speciesist position. Fertilized human eggs without a nervous system and without a brain should not have a higher moral status than adult chimpanzees who recognize themselves in the mirror, as entities which have the capacity to suffer seem to deserve special moral consideration. Yet, there are differences with respect to the capacity of suffering, depending on the qualities entities

possess. Peter Singer ranks entities which can suffer strongly, as they have self-consciousness (have a temporal awareness of past, present and future, i.e. the one's that pass the mirror test), over those which have only consciousness and sentience (and live merely in the present moment). In this case, too, AI's with sensors, i.e. embodied AIs, would necessarily be excluded from a moral status. Maybe, this alternative view is implausible, too. Is sentience necessary for personhood? There are humans which cannot feel physiological pain? Should they not count as persons? Cognition might not be dependent on consciousness either, as there are indications for the possibility of non-conscious cognition. Maybe, cognition can also lead to a type of cognitive suffering, which embodied AIs could also realize. How could we compare cognitive, emotional and physiological suffering? Is there the possibility of developing an empirical way of investigating the intensity of suffering and for comparing different types of suffering?

The Earth came into existence about 4,5 billion years ago. But whether life was established on earth or on another celestial body and it afterwards reached Earth is an open question. The problem is that there was only inanimate matter at first (water, stone, gas) and then suddenly a moment came when life arose together with entities capable of self-movement. Researchers believe that life came about 3,5 billion years ago in the sea. At first, everything was determined solely by causal processes. Suddenly, however, certain entities developed a principle of order by means of which they could develop. Scientists often speak of a primordial environment populated by water, gases, and electric lightning, which gave rise to the simplest forms of life. 6 million years ago, the apes living today and Homo sapiens sapiens still had common ancestors. Four hundred thousand years ago, Homo sapiens sapiens came about. It would be naïve to assume that Homo sapiens sapiens will still exist in 6 million years. Species must adapt in a constant way.

In Ancient philosophy, all living entities were described as animated. In Plato's work, the soul was not yet identified exclusively with the soul of reason; animals and plants were also given certain types of souls. Everything that could move by itself had a soul and was thus alive. However, how life could arise from (apparently) inanimate matter is astonishing – just as the fact that something is there and not nothing is confusing. Furthermore, the situation became more complicated, as these simple life forms have evolved and become more complex. Some of them even developed a special ability for emotions, perceptions, abstraction, spoken language, written language, artistic and numerical forms of

communication, reason, and creativity. How could such abilities develop from water, electricity, and gases? In addition, awareness has developed in the course of these processes, i.e. the ability to feel pain and to perceive and react to the environment. Finally, living beings have developed as beings who had an understanding of time, of the past and the future, and who recognized themselves in the mirror, i.e. possess self-consciousness. At present, in addition to humans, nine other animal species are known (great apes, dolphins, elephants...), of which selected members have passed the mirror test. How could this develop on the basis of water, gases, and electricity alone?

Something must have been added from the outside, such as a divine spark: the philosophers of western cultural history (decisively influenced by Plato and then developed further through the Stoics, Descartes, and Kant) predominantly argued that both the immaterial spirit and the gift of free will would be able to explain these abilities. They usually adhered to the primacy of a non-empirical understanding of reason. This idea is still anchored and valid in German law today. Animals are not things but should legally be treated as things. Only human beings possess dignity (Sorgner 2010).

These considerations have been shaping our thoughts, actions, and the culture of the Western world since Plato. However, some of these considerations exist only as relics and encrusted structures of traditional considerations. This tradition began to crumble several hundred years ago. When Darwin formulated the theory of evolution and Nietzsche proclaimed the death of God, the cultural movement away from dualistic ontological thinking gained enormous importance. Instead of assuming that something would be added from the outside in the processes described above, it is now assumed that all these developments have happened on their own as emergent processes without any magical connections between material and non-empirically accessible entities. Transhumanism also rose from the tradition of evolutionary and naturalistic thinking. This is an important reason why the conservative American political scientist and cultural critic Francis Fukuyama calls transhumanism the "most dangerous idea in the world" (Fukuyama 2004, 42-43). The term transhumanism was also coined in the context of the emergence of evolutionary thought. The term was described by Julian Huxley in an article published in 1951:

> Such a broad philosophy might perhaps best be called, not Humanism, because
> that has certain unsatisfactorily connotations, but Transhumanism. It is the idea

> of humanity attempting to overcome its limitations and to arrive at fuller fruition; it is the realization that both individual and social developments are processes of self-transformation. (Huxley 1951, 139)

I think this definition is still correct. Furthermore, Huxley also coined the term "Evolutionary Humanism." The relationship between evolutionary humanism and transhumanism represented today by the Giordano Bruno Foundation needs to get clarified further (Sorgner 2016). There are tensions between Julian Huxley's technical considerations represented in his numerous publications and those of his brother Aldous Huxley, the author of the technology-critical novel "Brave New World." He also shares the fundamental evolutionary thinking with his grandfather Thomas Henry Huxley, who stood out as Darwin's supporter, Darwin's "bulldog." Julian Huxley's half-brother, Andrew Fielding Huxley, was also active as a biologist. He was a university professor in London and even won the Nobel Prize, but is currently much less well known than the other family members already mentioned. Julian Huxley was a university professor in London too, while he was also the first UNESCO Secretary-General who made a significant contribution to the first Declaration of Human Rights, and the director of the British Eugenics Society.

The close connection between transhumanism and genetic engineering also exists in contemporary transhumanism. Furthermore, the focus on cyborg techniques and artificial intelligence has been added, because with the help of all these techniques the previous limits of our humanity can be transcended. This objective is relevant for many reasons. The central assumption is that the probability of leading a good life is increased, if we develop further through training, practice, but also with the help of other techniques. Furthermore, this approach is important, since all life is always threatened by the possibility of extinction. Life has evolved evolutionarily. Just as dinosaurs are extinct, so could human beings be. Extinction depends on how well we are adapted to our environment. However, as our environment is constantly changing, there is a perpetual need for change for us too. If we develop techniques which can help us, we can increase the probability of survival.

The two most promising techniques are genetic engineering and artificial intelligence (Sorgner 2018). With the help of different genetic techniques, especially CRISPR/Cas9, people could develop in a carbon-based way, i.e. people could become organic trans- or posthumans, whereby the posthuman either still belongs to the human species, but has at least one characteristic which

goes beyond the limits of current human capacities, or can become a representative of a new species. The possible alteration processes using cyborg techniques and AI are even more radical. They involve an intensified fusion of brain-computer interfaces until the development goes so far that mind uploading becomes an option and we can store our personality on a hard disk, which according to the Google futurist Ray Kurzweil should already possible in a few decades. (Kurzweil 2006; Kurzweil/Grossman 2011) In this case, the posthuman would no longer be a carbon-based being but a silicon-based one. The fact that a transmission of our personality is conceivable, at least in principle, becomes clear simply by the fact that all the cells of our body renew themselves every seven years. Nevertheless, we remain a continuous unit. However, whether what exists on a carbon basis can be transferred to a silicon basis is quite questionable. (Sorgner 2018) At present, we do not know of a silicon-based life form; or should self-replicating computer viruses already count as a kind of life? (Schrauwers/Poolman 2013, 1-54).

With this development into a silicon-based posthuman, we are facing new ethical challenges. The dominant way of assessing the moral status of entities (which is currently widespread in all parts of the world) is based on the cultural tradition which assumes that in the evolutionary development into human beings is connected to the rather decisive event of the incarnation, something that goes beyond the naturalistically-explainable evolutionary process. At this point, God's divine immaterial spark, our reason, entered into us and connected with us. [3] This process is responsible for the fact that only we humans possess something that goes beyond the purely natural world, which is why only humans have the subject status. All human beings are subjects, persons, and bearers of dignity. All other entities are objects, non-persons, and can therefore be traded, as they possess a finite value. This categorization is both morally and legally dominant. There are only a few legal exceptions, e.g. when a court in Argentina granted the status of a person to a great ape[4].

A particular legal situation appears in Germany. People have dignity; animals are not things, but should be legally treated as things. This assessment clarifies that the idea that only human beings were given the immaterial divine spark is

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[3] Pope Pius IX declared that animation begins with fertilization in 1869. He got rid of the distinction between a non-aniated and an animated fetus, which used ot be upheld by the Catholic Church until then.
[4]   https://www.scientificamerican.com/article/argentina-grants-an-orangutan-human-like-rights/. Accessed: March 15th, 2019.

still legally valid. Or at least this understanding is suggested by the legal assessment (Sorgner 2010).

This basic attitude is problematic in many respects. Every third German sees herself as a sceptic, naturalist, or atheist, which implies that the legally suggested understanding of animals is not shared by them. Legislation thus patronizes the majority of Germans in a morally problematic and paternalistic way. Such a situation is unacceptable in a liberal-democratic state. In my opinion, therefore, ontological implications should also be banished from the constitution and replaced by contingent-normative attitudes in order to ensure that a plurality of ontologies is lived out.

However, the question of the moral status of apes and other animals is yet to be adequately addressed. The strongest intellectual counterproposal comes from Peter Singer, who makes the following considerations regarding the concept of human dignity (Sinrger 2011, 76-77). He labels the traditional humanist ethical theory as speciesist. Human life is preferred in a morally illegitimate way, i.e. it is preferred even if it has no morally relevant qualities. In this context, a human embryo has human dignity, even if it does not even have a nervous system or brain and otherwise does not fulfil the prerequisites for perceiving pain. However, the property of perceiving pain should, in his view, be the basis for giving a being an elevated moral status, and the more intensively someone can feel pain, the higher the corresponding moral status should be.

The suggested ability to suffer seems to be a plausible criterion. It needs to be kept in mind that this criterion is not an essentialist and ultimate one, as was the case with the divine spark. It is a merely a widely shared judgement. The ability to suffer is a contingent criterion. However, many people find it convincing that the minimization of suffering is desirable. Hence, the posthumanist counterargument that by introducing the moral relevance of suffering, one affirms a new essentialism, does not imply. A second posthumanist counterargument also needs to be refuted, i.e. that by introducing suffering as a morally relevant criterion one affirms a new dualistic categorization of life, i.e. the good against the others, the bad, the monsters. This is not the case, as there are many different degrees of capacity for suffering. Perhaps these can even be determined empirically in the future. If we manage to establish different degrees of suffering, we would end up having a wide continuity of concepts of personhood. Furthermore, it needs to be pointed out that his suggestion is not an anthropocentric ethics. Many animals can suffer, but human embryos without brain and nervous system do not possess this ability.

Consequently, some humans beings would no longer be persons, but some animals would have to be regarded as persons, and further gradual distinctions of various degrees of personhood would have to be introduced, too. A final comment concerning posthumanist critiques of this suggestion concerns that the concept creates new hierarchies, but (at least some) critical posthumanists wish to develop a non-hierarchical ethics. Does the aforementioned suggestion lead to a new hierarchy? This is indeed the case, but a non-hierarchical world cannot even be conceptualized convincingly in theory. Every decision means that one action gets preferred over many other options for action. The demand of a non-hierarchical society is necessarily a performative self-contradiction. So, we have established that a posthumanist critique of a suffering-based ethics lacks a plausible line of argument. Yet, what are implications concerning personhood, if we regard suffering as morally relevant.

Out of these considerations Singer develops a counterproposal. Someone who only has consciousness lives exclusively in the present. But if a being has self-consciousness, then it perceives itself as a continuous entity, an entity that existed in the past, exists now, and will probably still exist in the future. If a being has sentience and self-consciousness,[5] then the ability to feel pain should be much higher than with beings who have consciousness only and live in the moment. At present, only a few members of nine animal species, apart from humans, have this ability[6]. It should also be noted here that only about 65% of 2-year-old human children have the ability to recognize themselves in the mirror, which is the most important test of self-consciousness. (Amsterdamm 1972, 297-305)

However, it may well be asked whether the mirror test is an appropriate test of self-consciousness. Dogs do not pass it. Could this be because the test is biased concerning the ability to see? Could it not be the case that for some living beings, the ability to hear or smell is more pronounced and linked to self-consciousness? (Cazzola Gatti 2015, 232-240) In any case, the consequences of Singer's ethics are enormous. If the choice was to save an elephant or a newborn with severe mental disability, then his theory would give a clear answer

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[5] In the following passages, I criticize that self-consciousness ought to be seen as necessary for personhood. In my book "Schöne neue Welt" (2018, 13), I explain why sentience is not necessary for personhood either.
[6] http://www.animalcognition.org/2015/04/15/list-of-animals-that-have-passed-the-mirror-test/ , 23.4.2020.

as to which is the morally-appropriate choice. His answer is not shared by many enlightened people, which is an important reason why I find his considerations problematic. However, his theoretical reflections are quite conclusive. So how can it be explained that the intuitive reactions to the consequences of his ethics are negative? One explanation could be that our emotions are strongly influenced by our cultural imprint, which is anthropocentric. It is also possible that our emotional response to his reflections will change, if our culture becomes less anthropocentric. If this was the case, then our emotional reaction to the above mentioned case, might correspond more closely to the consistent moral judgement Singer suggests or a similar even more plausible ethical non-anthropocentric suggestion.

The crucial point why I am addressing this issue is that Singer's ethics do not seem to provide us with a well thought-out assessment of the moral status of AI or, for instance, of the humanoid Data from Star Trek. Let us assume that it would be possible to download the personality onto a hard disk, and self-consciousness could remain. Nevertheless, this being would not meet Singer's requirements for personal status, since (most likely) sentience would be lacking. At least at present, it is difficult to imagine that AI and robots possess emotions and can feel physical pain, since there is no organic body that seems to be necessary for such sensations. Would a person uploaded to a hard disk lose their personal status through the process of mind uploading? It is highly speculative to reflect upon an uploaded posthuman, whom we may at best know from the film *Transcendence* starring Johnny Depp. But how should we generally deal morally with computers and AI? On the basis of anthropocentric human dignity ethics, these entities would clearly be things that can be owned, destroyed, and sold. If we look at the relationship between soldiers and combat robots and between old people and care robots, which already exist to an increasing extent in East Asia, then this assessment seems too short-sighted[7]. But on what philosophical basis could an assessment of the moral status take place? It could be argued that AIs can already pass the mirror test to some extent? Does this mean that robots with AI already have self-consciousness?

This example seems to indicate the limits of the mirror test. On the other hand, AI's with sensors only pass the test so far, if they are initially informed how they look like. Living animals do not need this initial information. However, what we understand by self-consciousness could be nothing more than a special

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[7] https://www.buzzfeednews.com/article/rosalindadams/aibo-robot-dogs-japan 23.4.2020

algorithm. In any case, it seems impossible to have physical pain without a carbon-based organism, and the ability to feel pain was decisive in giving a being a moral status based on previous considerations. But perhaps these considerations   are   not   sufficient. Avishai Margalit emphasizes the relevance of dignity in not humiliating others (Margalit 2012, 150). What situation arises in case of humiliation? It is the situation of a relation in which one being puts itself above another and expresses contempt for the other. However, the humiliated person does not necessarily feel the physical pain he feels when he breaks his ribs. Rather, humiliation is primarily associated with the cognitive realization of not being appreciated. The process is also painful, but without having to be associated with physical pain. Perhaps it can be described as cognitive pain, which only has to be linked to cognition, but not to consciousness, if we can uncouple consciousness and pain. The possibility of decoupling seems to exist because there are signs that fetuses can feel pain without having consciousness e.g. research indicates that from the 6th month onwards, foetuses have the physiological prerequisites for experiencing pain (Rollins/Rosen 2012, 466), but it is rather unlikely that we attribute consciousness to foetuses at this stage. Wakefulness is a post-birth phenomenon. Is pain without consciousness possible? The relationship of central nervous system, memory, brain, consciousness, and the ability to feel pain is extraordinarily exciting.

There is also evidence that cognition is possible without consciousness. One indication of this being the case are the results of a selective attention test, also known as the "Invisible Gorilla."[8] We are asked to count the number of passes of a basketball team and are then asked if we noticed anything special about the video. The kickboxing gorilla that walks through the playing field remains unnoticed by many. Nevertheless, it is in our cognitive field. Cognition and conscious perception are therefore two different phenomena. These considerations suggest that there is not only a conscious and an unconscious, but also that there may be a non-conscious cognition, as in the case of the invisible gorilla.

If both non-conscious cognition and the phenomenon of cognitive pain exist, as illustrated by the example of humiliation, then it may make sense to talk about the possibility of non-conscious cognitive pain of an AI with sensors, i.e. an embodied AI, as no non-embodied AI could have access to a cognitive input.

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[8] http://www.theinvisiblegorilla.com/gorilla_experiment.html , 23.4.2020

A further developed embodied AI may also cognitively realize that it is not appreciated, and in this case the cognitive pain associated with humiliation may be associated with this realization process. Data from Star Trek would have to be given a moral status against the background of these considerations. Whether Data ought to receive the person or the postperson status would have to depend, among other things, on the relationship between cognitive and organic pain. I think that an empirical means of analysing the intensity of various types of pain would be needed for being able to compare types of personhood.

The former reflections show that Singer's suggestion that self-consciousness as well as sentience are necessary for personhood are not necessarily plausible, as there can be pain without consciousness. An additional challenge for Singer's concept is that there are human beings who cannot experience physiological pain[9]. There are not many of them, but as they would not be regarded as sentient, it would follow that these human beings ought not to be regarded as persons, given Singer's reflections.

On the basis of Singer's approach, the hundred or so people worldwide, who cannot feel pain, would not even have the status of a person, as they lack sentience. However, they are also able to cognitively realize pain. They also often react analogously to all other people, although they cannot feel physical pain. With injuries they learn to show similar reactions as it is usual with most humans. They cognitively recognize the pain and act accordingly. It might be worthwhile to explore the relationship between cognitive, physical and emotional pain together with them. It cannot be ruled out that the findings may also be transferred to artificial intelligence. Given certain empirical data when experiencing cognitive pain, it might be possible to find a basis how to compare these finding with empirical data which could become available with embodied AIs. However, these further developed embodied AIs are not yet available so far.

In any case, we can conclude from the above reflections that neither sentience nor self-consciousness are necessary for being in pain. Hence, both elements which Singer regards as necessary for being a person fail as a plausible basis for personhood, even on th basis of his own suggestion that personhood ought to depend on the capacity of experiencing pain. Still, this most fundamental move of his applied. The concepts of personhood and being a human being get disentagled. There can be physiological, emotional but also cognitive pain, and consciousness is not necessary for being in a state of pain.

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[9] https://ghr.nlm.nih.gov/condition/congenital-insensitivity-to-pain , 23.4.2020.

How to compare the intensity of the various types of pain remains anopen question? I think that an experimental scientific basis would be needed to compare the various types of pain with one another. Yet, a separate article is needed to analyse this issues in more detail.

An additional question which could arise is whether the capacity of autonomy plays any role when it comes to the question concerning the moral status. If an increased autonomy is accompanied by an increased capacity for suffering, then we would be forced to answer this question in the affirmative. But is it the case that autonomy and the capacity for suffering are coupled?

Autonomy is linked to reason. Reason has to do with the use of language, forming sentences and judgements, and making inferences. We do get to know things by means of inferences, and by combining our cognitive input with the capacity of making inferences. These are are merely some initial reflections which hint at the possibility that an increased autonomy implies a higher degree of cognition which again implies the possibility of cognitive suffering. An increase in autonomy towards hyperautonomy could be accompanied by an overreason and therefore a significant increase in the cognitive abilities of the hyperautonomous entity. This in turn would suggest that the possibility of the aforementioned cognitive suffering is also present in these entities. Whether a hyperautonomous entity should have the status of a person, a post-person or no person at all depends on the relationship between cognitive pain and emotional pain. Is cognitive pain comparable to the ability of only conscious, self-conscious or perhaps even meta-self-conscious beings to suffer? The Android Data could be such a hyperautonomous posthuman. On the basis of empirical studies of humans which do not experience physiological pain as well as highly developed embodied AI, efforts could be made to find criteria for the comparability of cognitive, physiological as well as emotional pain. However, since we do not yet know of any digital entity capable of recognizing cognitive pain, further discussion of this question would be purely speculative. Further empicircal studies with human beings which cannot feel physiological pain seem to be a good starting point for finding a scientific way of studying the intensity of pain, and for finding an empirical basis for making judgements concerning personhood. These reflections are far from being conclusive concerning the tricky issue of personhood. However, I think that these traces are worth pursuing further on our path towards a posthuman existence. It also has paradigm-shifting implications concerning a widely shared moral wrong, namely

the the moral demand to prohibit a person to treat another person merely as a means.

6. Reduce violence and avoid damage

After briefly addressing the question of a revised understanding of the moral status, some considerations need to be made to reduce violence and prevent harm. What is violence and harm? This is a complex issue. My main task is to indicate some reflections which ought to be taken into consideration, rather than a definite on answer, as the cultural conditions for further specifying a convincing account of harm. Given the wide variety of thoughts which need to be taken into account, I suggest an "as-good-as-it-gets ethics". It is a contingent ethics, based upon the widely shared judgement that suffering is morally relevant. The higher an entity's capacity of suffering, the higher should be their moral status. The potentiality of an entity is not relevant, as it remains uncertain whether a potentially will ever unfold, and a capacity only becomes relevant, once it actually is morally relevant. A sperm does not possess morally relevant capacities. You and I do so.

Any person should have the right of acting freely as long as no other person gets harmed, as each person has idiosyncratic needs for realizing a fulfilled life. The right of acting freely includes many other rights such as morphological freedom, procreative freedom, or educative freedom. This judgement considers the relevance of acknowledging a permanently greater plurality of legitimate lifestyles while at the same time it takes seriously the goal of reducing violence done against people.

These reflections do not imply the idea of a perfect utopia. Utopias are dangerous, because they sacrifice the present for an uncertain future. The best we can do is to take into account the given structures and current developments in order to find the best possible response to the challenges we face. Any other attempt will lead to the re-totalisation of society, which must be avoided. The past has taught us that the effects of totalitarian regimes must be avoided. The greatest efforts must therefore be made to create structures that make our system as liveable as possible. The best minds of our generation are needed to participate in the reorganisation of society, so that the diversity of concepts of good can be further promoted, as can the consideration of the norm of negative freedom at a legal, social and moral level. The following sections highlight selected problems related to the concern to avoid harm done to people. They

also take into consideration some developments which are taking place at the moment, in particular the increase of digital surveillance, which I dealt with in detail elsewhere.

Firstly, I wish to mention an issue which deals with permanent digital surveillance and harm. It can be shown how full monitoring leads to a reduction in the violence caused by racial discrimination. People of colour often share the experience in the US and Europe that white customers look at them with suspicion in supermarkets. It seems they are being checked to see if they are stealing goods. One woman of colour recently reported her shopping experiences in Amazon Go markets that were recently established in some US cities. How she was being looked at was different from traditional supermarkets. She was not viewed with suspicion. In these markets, you have to register when you enter, which means you are now under permanent digital surveillance. Because every single item in the store has an RFID chip, it is linked to your Amazon account when you take it and put it in your own pocket. Once you have completed your purchase, you simply have to go and the amount of money from all the products you have put in your pocket will be debited from your bank account. The aforementioned woman of colour describes that no one looked at her with suspicion when she was shopping in an Amazon Go market. It is clear that once you are in such a market, you will be registered and you will pay for what you take with you. So their shopping experience was not discriminatory. If such a system was generally established, it is to be expected that such changed behaviours would become common public practice. By changing a public practice, you also change widespread stereotypes. This example is an indication that we have reasons to argue that certain types of racial discrimination can be resolved by total digital surveillance.

Moreover, it is clear that the higher the digital monitoring rate, the more likely it is that you can be punished for what you have done, if it went against the law. But what should you be punished for? This issue becomes particularly problematic when it comes to religious needs, social cohesion and the limits of autonomy. A striking example is male circumcision. It is a procedure in which part of the foreskin is removed, often for religious reasons. Experience shows that it also reduces the intensity of sexual stimulation of the circumcised [10]. However, in order to be a full member of Islam and Judaism, one must undergo this procedure. For the believer, this procedure is an enrichment, since it is a

[10] https://www.ncbi.nlm.nih.gov/pubmed/23374102 , 23.4.2020

necessary element for the initialization into a religious community. For a non-believer, it is unnecessary bodily harm directly done to a child. In Judaism, male circumcision should take place before the 9th day after birth. In Islam, on the other hand, it can occur up to the age of thirteen. This makes a difference because human sensitivities have increased during this developmental process. Only 50% of the children at the age of 2 years can recognize themselves in the mirror, which can be regarded as a sign of self-consciousness. From then on human children have an awareness of their own self, which exists in the past, present and future, in contrast to the time after birth, in which one exists mainly in the present. As a result of this changed self-perception, your ability to suffer increases. Therefore, the procedure is more severe for older children than for younger ones.

It has to be mentioned here that the meaning of restricting religious freedom also depends on the cultural circumstances of a country. The prohibition of male circumcision, as it is currently being considered in Iceland, has a different meaning there than in Germany with its history of the so-called "Third Reich". Legally undermining the possibility of Jewish religious practice in a country where the Holocaust took place has a different meaning than in a country like Iceland. The cultural aspect is therefore an aspect that must also be taken into account when reflecting on the question of morally illegitimate forms of harm.

A third issue concerns the issue of acts, a person ought to perform, and whether such legal duties could count as a morally illegitimate type of harm of a government against a person. In France, there was an interesting case of a woman who was married to a French man. She was supposed to become French during an official government ceremony, but for religious reasons she refused to shake the hand of the official who is responsible for granting French citizenship. As an immediate reaction, the official tore her paper to pieces, seeing a certain social cohesion as a necessary element of citizenship[11]. Should it be a legal obligation to shake the hand of a public official during such a ceremony, even if it violates a widespread religious duty? Should you legally enforce handshakes in certain situations? Should you enforce a handshake, if the person in such a situation has an infectious disease such as influenza? Is harm being done to a person by forcing them to shake hands with someone else, which they do not want to for religious reasons?

[11] https://www.bbc.com/news/world-europe-43839655 , 23.4.2020

A fourth but related issue concerns an obligation to refrain from dressing in a specific manner. How is the Austrian ban on face veiling to be assessed? In Austria it is forbidden to cover one's face. The full ban on veiling was introduced in Austria and in other European countries. This has consequences for people who wear costumes in public, but also for some female Muslims. Here, too, the question arises as to whether this ban is unnecessarily harmful by undermining the right of religious freedom. In this case, the question of personal identity also becomes relevant. If you drive a car, it must be possible to identify the driver; otherwise you cannot be punished for misconduct. This is usually done by taking a picture of your face if you drive too fast. If you can be identified by an implanted chip, then identification by wearing a veil is no longer an issue. If face recognition is needed for identification purposes, there is a good reason to prohibit a full face veil for car drivers.

These questions show the complexity of clarifying the issue of avoiding harm and reducing violence. Such considerations also apply to Christian groups who wish to prohibit abortion. In Germany, most abortions are still illegal[12], but if you follow a certain procedure you do not get punished for an abortion. This means that fundamentalist Christians force other members of a social-liberal democratic and pluralistic society to act according to their world view. This is clearly a case of unlawful harm, as in this case one ontology dominates another, which is not in tune with the basic pillars of a pluralistic democratic society. Such legal regulations can be explained by the effectiveness of encrusted paternalistic relics of our Judeo-Christian past, which are particularly strong in Germany. In Germany there are numerous morally problematic paternalistic structures that contradict the basic premises of a liberal-democratic society. Even though a large number of freedoms were established as a result of the Enlightenment, an enormous amount of paternalistic structures are still dominant in many enlightened countries. These are the delicate issues that lead to morally problematic implications, especially within a society which more and more embraces total digital surveillance, so that the Internet panopticon gets realized.

Further significant challenges arise with regard to the question of universal public health insurance. Does it harm taxpayers if they are forced to financially support a universal health insurance? This is not a stupid thought. If the norm of negative freedom is a central one, a good justification for such obligations

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[12] https://www.gesetze-im-internet.de/stgb/__218.html , 23.4.2020 Only if a woman got pregnant due to a rape, or if the life of a pregnant woman is threatened, an abortion is not illegal in Germany.

must be provided. In the case of universal health insurance, it is possible to refer to psychological studies that show that a high percentage of citizens associate a long health span with a better quality of life. If this is the case, then it can become a political commitment to promote the availability of universal public health insurance, even if a long health span is not recognized by everyone with an increase in quality of life. However, since most people identify health promotion as an improvement in quality of life, the introduction of universal health insurance can be justified.

The aforementioned cases of harm being done to a person are just a few concrete examples to illustrate selected challenges in reducing violence and harm being done directly to a person. There are many tricky cases, and each case must be carefully analysed to find an appropriate response. I also believe that cultural realities must be taken into account when dealing with such moral issues. Our cultural history has a relevance for the way we deal with things in this day and age.

7. Conclusion

Who is a person and what counts as harming a person are questions, ethicists, philosophers, and theologians have dealt with centuries. The latest cultural as well as technological developments imply new ethical challenges concerning this issue. At the same time, they also provide us with enormous amounts of benefits, which must never be forgotten. I particularly wish to stress hybridisation processes which currently occur. Chips are wandering into our bodies.

Human-machine interfaces, such as those developed by Elon Musk's Neuralink, are of particular current relevance. It is crucial that RFID chips, i.e. radio frequency identification chips, are implanted in our bodies. In this way, the already existing human hybridization will be further advanced. Interaction with the Internet of Things will be made possible in this way. At the same time, an Internet of Bodily Things will be created, which can be helpful in promoting central human concerns. A widely shared desire is the promotion of human health span. Rather than just talking about life span, it makes sense to emphasize the importance of health span, since for many people living in a state of constant suffering does not necessarily seem worth living. Psychological studies emphasize that many people identify the promotion of the health span with an

instrumental or even intrinsic increase in quality of life[13]. If it is now the case that ageing processes are also widely identified as disease, then the political importance of promoting the health span is obvious. Human upgrading by means of RFID chips is an exciting starting point for the realization of this concern.

Predictive maintenance of the human body could be realised in this way. This technology is already being used for machines. By using sensors, it is possible to detect in an aircraft engine that a certain part is likely to become dysfunctional in the next six months. It still works without problems. To prevent the dangers, the part in question is replaced immediately. An analogous procedure can be realized with the constant monitoring of the human body by means of RFID chips. The prolongation of the health span can probably be significantly promoted in this way, since dysfunctionality can already be remedied when it is not yet present, but only indications of it are present based on sensory measurements. At the same time, however, personalised health data on each person would have to be stored in a comprehensive manner, which poses numerous risks, depending on who has the right to access the respective data sets. After all, the data can be used against you, whether in the form of legal, institutional or even moral sanctions. At the same time, however, comprehensive monitoring also goes hand in hand with the possibility of minimising personal and social risks. The following examples illustrate this central insight explicitly.

In this way, an HIV infection could be detected promptly, so that appropriate medication can be prescribed immediately to minimise the physical viral load. At the same time, this means is of relevance for the containment of epidemics that can hardly be underestimated. Those infected with the coronavirus (Sars-CoV-2) could be immediately detected, isolated and treated if human beings upgraded by chips become the new norm. We are not that far off. The widely used smartphones would only have to be integrated into our bodies, instead of just carrying them around as external devices. But even in this way, comprehensive digital surveillance can already be used efficiently in the event of an epidemic. China is already doing this in the case of the coronavirus epidemic. There, the implementation of Smart Cities is already being further advanced. Citizens receive a traffic light on their smartphones that is supposed to indicate the probability of an infection. If the light is yellow, citizens are obliged to isolate

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[13] https://www.lifetimedaily.com/want-live-forever/ , 23.4.2020

themselves for 7 days; if it is red, the isolation should last 14 days. The assessment is based on the evaluation of Big Data. Which infected person has stayed where, when and for how long? Who was in the affected areas? Who interacted with whom, when, for how long? If one also takes into account the behavioural patterns of the digital data of those actually infected, the probability of an infection can be calculated solely on the basis of a person's interaction pattern. The associated possibilities to contain an epidemic are numerous.

We are constantly changing hybrid cyborgs. The latest technological innovations do not represent a breach in the dam as regards what we are allowed to do with our bodies. The latest upgrades are part of a long tradition that begins with the incarnation through language upgrades. A cyborg is a steered or upgraded organism. Κυβερνήτης means helmsman. In 2016, researchers from Canada and Israel convincingly demonstrated that our bodies contain numerous non-human cells, i.e. bacteria and unicellular microbes. (Sender/Fuchs/Milo 2016) They are even said to make up the majority of our body cells. In fact, human bodies are said to consist of more non-human cells than human cells. According to Ron Milo and Ron Sender of the Weizmann Institute in Rehovot, Israel, and their colleague Shai Fuchs of the Hospital for Sick Children in Toronto, for every 30 trillion human cells, that is, cells with our own DNA, there are 39 trillion non-human cells. So we are hybrids, crossbreeds.

All these developments raise further moral challenges. The aforementioned suggestions concerning how to revise the meaning of a person and what it means to harm a person are initial suggestions for a revised concept which takes into consideration the various events within the posthuman paradigm-shift. It is not meant to be final answer but a suggestion for further reflections and debates. Inventions, scientific insights, and technologies radically alter our lifeworld. We need to take them into consideration and carefully reflect upon these changes.

It is true that with every innovation there is an increase in correlating risks. But so far we have managed to minimize risks and increase the likelihood of living a good life. The latest technologies also offer enormous potential for this, which must be used in a politically appropriate manner. Smart Cities need upgraded people. I can hardly wait for our posthuman future to occur.

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