

Drafting Dignity

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1. Normative Implementation of Will and Experience

In Machiavelli's torn Italy, the observation of antagonistic competition instead of a God-given harmonious order was obvious. Economic rivalries met with political antagonisms as well as with social tensions¹, altogether within warlike conflicts of the *cinque principati*, even exacerbated by international covetousness for Italian spheres of influence. Between Milan and Florence in particular, the rivalry between the Visconti and Medici became stylized as an antithesis of despotic tyranny and republican freedom, whereby only their alliance could have countered the Venetian expansion into the *terra ferma*². Neither these seignorial (Milan) nor republican (Florence) classifications though seem adequate for the historical complexity of the Italian *quattrocento*. Even less appropriate is the common historiographical reading of the Renaissance civic autonomy as precursors of modern statehood, be it by

Jacob Burckhardt³ or by Hugo Preuß⁴, the author of the draft of the German Weimar Imperial Constitution.

Rather, the constitutionally novel impact of early modern Italian cities on European legal history is the normative implementation of will within a process of constituting societies. This kind of promised plurality framed the Italian Renaissance discourse about dignity, and dignity's consequent relatedness towards the other lies at the heart of this short contribution⁵. Italian urban statutes (*statuta*)⁶ of these times were legitimized by reference to the *res publica*, the 'matter for all citizens'. No transcendence is needed any more. The initial basis in the constituted will seems rather tangible in Michelangelo's David's casual composure before throwing the one stone: the voluntative justification explained municipal laws to put the diversity of citizens and their various interests into law⁷.

Just as man could comprehend the world, explain his knowledge with plausible (and thus necessarily only provisional)

evidence, and expand it into technical inventions (like da Vinci's flying machines), law became orientated towards the logically possible. Justice was no longer delivered according to *auctoritates*, ultimate truths or unchanging evidence. Backed by the spread of the learned *ius commune*, the flexibility of Roman contract law and the arbitration potential of canonical procedural law, the voluntative justification (like *volenti non fit iniuria*, Dig.47.10.1 § 5 a.E.) provided rational legitimation for the urban conjurations. Additionally, the economic dynamics of Upper Italy called for a secularised ethic of the will⁸. In civic 'Dignity to be Governed, not Mastered'⁹, rights of freedom may at the same time also limit freedom. It is the rope of consensus, emanating from the Concordia, that connects the Sieneese citizens in Amborgio Lorenzetti's allegory of a 'good [city] government' (1338-40)¹⁰, as they live in peace under the rule of willingly created laws. Thereby the ground is laid for the humanistic 'invention of human dignity' in its orientation towards one another. The humanist credo of self-creation made it clear that freedom is no longer ontologically predetermined (as it used to be in the scholastics), 'but conversely, freedom determines [human] being'¹¹. Man creates himself, or in the words of the Jewish philosopher, Renaissance specialist and Kant editor Ernst Cassirer: 'He is what he makes himself into'¹². The creative potential of the 'new inner-worldly' autonomy of man – as artistically realized by Michelangelo, da Vinci or Raphael – motivates the paper's title 'drafting'. The semantical ambiguity in regard to law and arts supports the plea for an innovative rereading of the humanist voices of the Italian *quattrocento*, whose arguments for human dignity did

never orbit around solipsistic isolation. Rather, their background experience was the social coexistence in the *res publicae* of the Italian urban economic centers of these times. 'Nostri sunt homines'¹³ is the culmination of Manetti's praise of human creativity, wherefrom he concludes the equal dignity of all, which needs the coming into practice as justice¹⁴.

Civic dignity could not be something ontologically given, but was dependent on man's creative powers. The social interrelations of civic productivity in the Italian urban centers godfathered the historic landmarks of human dignity. Such an accentuation of man being his microcosm of all possibilities corresponded with the relativisation of divine omnipotence as a juridified *potentia ordinaria*, how Étienne de Tournai has made clear by explaining the expulsion from paradise as *ordo iudiciarius*¹⁵. The innovative force of such an emancipation of curiosity from sin (via procedural juridification) will need further attention in research. For the moment, the first nucleus of modern pluralism seems to be moored: Putting different experiences 'into law' opens up the paths for thinking about politics beyond the Aristotelian (logical) priority of the whole over the parts¹⁶. Curiosity has advanced to the virtue of *l'uomo universale*, whose naturalness and nakedness¹⁷ allowed for a new artistic individual expressiveness.

In addition, the heuristic programme of human self-determination indicates the relatedness even for the divine will: For the first time in art history, God is painted on top of the Sistine Chapel in a horizontal position, not from high above, but almost at the same level as the first human being. The movement of the Creator's hand with

the index finger stretched towards Adam expresses not only the (allegedly Augustinian) actually Scottish 'I want you to be' (*volo ut sis*)¹⁸ and emancipation of the Christian creation story from any pre-determined necessity. Rather, Michelangelo's new horizontal arrangement of creator and creature seems to suppose the relatedness even for the Creator God's decision. The relatedness of human Self-Determination in Italian Renaissance Humanism had been the topic of the *lectio magistralis* in Macerata, 5 April 2022, and it is the aim of this brief note to make the sources in regard to the lecture accessible and to context them within the research desideratum of the relatedness of historic dignity notions.

2. The 'our'-Relatedness of Human Self-Formation

It was the Aristotle translator and Dante biographer Giannozzo Manetti (1396-1459) who formulated self-formation by means of *ingenium* even before (!) Pico¹⁹. *Ingenium* is one of the Renaissance key notions, used by Petrarch, later by Leon Battista Alberti, Giovanni Pico della Mirandola, Michelangelo Buonarroti, Albrecht Dürer, Giordano Bruno and finally by Giambattista Vico²⁰. *Ingenium* is the art of connecting, the capacity of being a creator through the drawing of relations, the construction or production of contexts. As engineer and builder, sculptor and creator (in the later (!) hendiadyoin *plastes et fctor* by Pico)²¹, man intervenes in the world, adopting the divine creation and transforming raw and wild nature into culture. For Manetti, man is thus the only living being that is not only co-creature, but

co-creator. With reference to Cicero (*On the Nature of the Gods*)²², Manetti attributes poets, painters and sculptors as 'acting and active gods in the recreation of other figures' (*deorum simulachra a similitudine*), and man himself then as the 'sole, true image of God' (*solum et verum dei simulachrum homo est*)²³. This creative competence, bundled in the *ingenium*, interlinks Manetti and Pico, whereby in Pico's wording the verbs 'effingit', 'fabricat' or 'transformat' are paramount²⁴. In contrast, freedom seems to be a secondary aspect of human dignity for both Manetti and Pico. Manetti's creator-anthropology results in his forceful 'nostri/nostre' anaphora²⁵, rhythmizing the praise of all cultural achievements and natural cultivations. According to Manetti's writing on the *dignity* and excellence of man (*De dignitate et excellentia hominis*, 1452)²⁶ individual creatorship manifests itself in constituted societies (cities), as it was plausible for the former member of the Florentin *Dieci di guerra*. Therefore, no creation is mine, yours or his, but ours.

The possessive pronouns plural 'Ours' are²⁷ for all cultural 'achievements' of human coexistence also include fellow human beings: 'Nostri sunt homines'. Thus, any self-formation happens in interaction. This met with the antique etymology of person, godfathered by the Greek *prósopon*, denominating the mask of actors. It is also in accordance with the Scotian differentiation between being (*essentia*, *quidditas*)²⁸ and existence (*haecceitas*), amounting to the possibility of the external view of God onto his son in the theological struggles over the trinity²⁹. Furthermore, Manetti's explanation of self-formation by means of *ingenium*³⁰ in the reciprocity of doing justice to one another fits with the ours-relat-

edness. Due to the synonymy of equality and justice Manetti concludes that all human beings, principally and by nature bound to equal respect, are naturally born for justice (*nihil est profecto prestabilius quam plane intelligere nos ad iustitiam esse natos*)³¹, – with reference both to the ‘pagan’ Cicero and the church father Lactanz. As justice (logically) presupposes any legally violated relations, Manetti’s enlargement of human dignity to a kind of societal dignity by justice seen to be done³² offers another indicator for the relatedness of his notion of human dignity and excellence.

3. *The will-based humanist arbitrium*

It was the neo-platonic argumentation of Manetti³³ and then especially of Marsilio Ficino (1433–99) that has ‘translated’ the Porphyrian/Plotinian reasoning about the soul’s immutability into an ‘essence without greatness’³⁴. Deviating from the Thomasian scholastic explanation of the soul as mere ‘co-principle’ to the body³⁵, such a thinking of Manetti and Ficino indicates a phenomenological plausibility of an innate human freedom, the natural freedom of choice. It will be a major task for further research to evaluate the Italian humanism’s impact on the European legal history, assessing the groundbreaking novelty to allow for experience (*experientia*) as basis of law, opening up legal paths of purpose rationality (*Zweckrationalität*) instead of (scholastic) textual rationality (*Textrationalität*)³⁶.

Their reasoning with the immutability of the soul initiated an understanding of the self-purposefulness of the human beings, turning away from the scholastic conclu-

sion of freedom only as a derivate from the metaphysical nature of man. In Marsilio Ficino’s wording (1433–99) man is explained as ‘deus in terris’³⁷, whose spirit ‘by its own power continually creates anew the face of things’³⁸. Even if this is not the occasion for a phenomenological discussion of the Kantian ethics, still needed³⁹, and Manetti/Ficino are centuries apart from Kant⁴⁰, the innovative power of Italian humanism becomes even more impressive seen from the ex post-perspective of the Kantian enlightenment of the 18th century: the Kantian ‘autonomy’ as the ground of dignity⁴¹ is backed by the human drafting competence ‘that man builds his phenomenal world himself’⁴². For Manetti man is an end in himself, as ‘by his nature born for recognition’⁴³.

Such a ‘divineness’ of self-formation according to one’s own individual judgement (*arbitrium*) seems to be the shortcut of Pico’s hendiadyoin *plastes et factor*⁴⁴; uniquely man is sculptor and creator of himself, while God has predetermined the nature of all other creatures (*natura definita*). This praise of man for being himself a microcosm of all possibilities⁴⁵ within the ‘Oratio’ of 1486 (only titled ‘De hominis dignitate’ by later editors) has not been at the foreground of the Macerata lecture, as the state of the art in regard to Pico is abundant⁴⁶, compared to his more overlooked contemporaries Marsilio Ficino, Giannozzo Manetti, Coluccio Salutati, and Lorenzo Valla, concordant in highlighting the ‘divinity’ of human freedom⁴⁷.

According to the sources Pico’s ‘Oratio’ to the forbidden and therefore cancelled ecumenical assembly needs a reassessment in the light of the here presented contemporary arguments. Traditionally, Pico is the

celebrated nestor for the European dynamic of reading dignity as liberty, but the sources suggest the conclusion, that his contemporaries' impact should be at the forefront (too)⁴⁸. Not only Pico's 'discovery' of the creative *ingenium* can be found to derive from Manetti, but also Pico's 'invention' of the freedom of will (*arbitrium*) should be attributed earlier to Salutati: 'The will alone, which is the possibility of the rational creature, also contained the freedom of decision, otherwise it would not be a will at all'⁴⁹. The focus on Pico's contemporaries is further motivated by their argumentation to free the human freedom of choice (*arbitrium*), how to create and shape oneself, from the Divine Providence. It might be this latter aspect that explains further the outrageous novelty of Michelangelo's naked youth David before the throwing of the stone.

4. *The Emancipation of the human arbitrium from the Divine Providence*

The early modern career of human dignity depends on the freedom of choice also including the decision against God⁵⁰. This amounts to the decisive humanist demarcation of human freedom (in Ficino's wording: *mens humana*) from divine providence (*divina providentia*)⁵¹. It was the clearly outspoken dialectic between human freedom of choice and divine omnipotence, that Valla's dialogue 'De libero arbitrio' (1437) dared, whereby his arguments contributed to emancipate human self-determination from any predetermination. Lorenzo Valla (1406/7-1457) differentiates God's omniscience (*sapientia Dei/praescientia Dei*), the

unlimited, never erring divine *intellectus*, together with the divine will (*voluntas*)⁵² and power (*potentia/potestas*)⁵³ from the human will and the free decision (*libertas arbitrii*), endowed with the (also) erring human reason (*ratio*)⁵⁴. Valla resolves this dialectically pioneered tension by explaining divine omniscience not as causative⁵⁵ and by accepting divine goodness (*bonitas Dei*) only together with the assumption of human freedom (*libertas arbitrii*): 'If freedom is good, God, as a good will, must also will freedom for man'⁵⁶. Such a guarantee of human freedom by divine goodness contradicts any challenge of human freedom by divine omnipotence (*potentia/potestas*). Valla seems to resolve 'the concurrence' between essential divine predicates by giving preference to the goodness, due to its coincidence with justice, or – as Westermann⁵⁷ puts it – 'by making the preference of *bonitas Dei* a humanistic one'. The underlying secularisation of the divine goodness and consequent emancipation of the human *arbitrium* becomes obvious in Manetti's probabilistic argumentation and the resulting gradual understanding of freedom as 'correlating with the goodness of God'⁵⁸. The secularising impact becomes even more clear in the humanist struggle for philological authenticity of the New Testament. Erasmus did nothing else than to apply Manetti's probabilistic proviso (*aliis probabiliora delegimus*) to the Word of God: 'Rationibus igitur niti et insistere volentes, pauca e multis in hunc modum tanquam aliis probabiliora delegimus'. (Since we want to rely and insist on our arguments, we have chosen in this way some of many that are more convincing than others)⁵⁹.

5. *Last, but not least: Dignity as Disposition to indepently deliver Justice*

For this probabilistic reasoning, God's goodness (*bonitas Dei*) and justice (including equity) are coincident⁶⁰. Thereby, they become compatible with the human *arbitrium*; indeed, they are 'necessarily connected with it ...'⁶¹. For Manetti therefore 'man is created for justice'⁶². This stands for the comprehensive 'secularization' of legal knowledge, the humanist enrichment of legal interpretation through the mobilisation of 'all knowledge', in line with the Renaissance approach of connecting everything⁶³. Their philological-historical curiosity for the *significatio verborum* deviated from any canonized Bartolustist deduction from a contradiction-free scholastic system of juridical norms⁶⁴. The humanist interest in the precise understanding of the legal sentences handed down in their historical context headed for 'the assured knowledge of the historical experience underlying it and meant by it'⁶⁵. Unsursprisingly, law teaching at Italian universities (*mos italicus jura docendi*) faced humanist criticism, notably by Lorenzo Valla (1407-1457)⁶⁶ and Cosma Raimóndi (1400-1435)⁶⁷. Such a stripping of legal knowledge from canonized standardization or systematic sacralization goes with the humanist interest in everybody's dignity (instead in the primacy of legal experts)⁶⁸.

Together with the humanist argumentation of human reasanableness and *ingenium* it is the rational comprehensability, that became the core idea of justice without any need for transcendence⁶⁹. Due to this inner-wordly intellecutal autonomy, emancipated from God's will, the lawyers' justice

is compatible with the rational *arbitrium*. Long before the Kantian 'Anthropologie in a pragmatic Way'⁷⁰ Manetti had therefore laid the ground for the 'judicial-constitutional' extension of human natural reasonableness: For him dignity culminates in the 'human disposition to the independent execution of iustitia'⁷¹.

- ¹ Inter alia between Ghibelines and Guelphs, family feuds like Romeo and Juliet; between nobles and the Curia or between nobles, merchants, burghers and the rural population of the *contado*.
- ² The *Serenissima*'s gains in Friuli and the Eastern Alps were recognised by the Emperor in 1437.
- ³ J. Burckhardt, *Die Kultur der Renaissance in Italien. Ein Versuch* (1860), Stuttgart, Alfred Kröner 1966, First Section (Der Staat als Kunstwerk), pp. 70 f.
- ⁴ H. Preuß, *Staat und Stadt*, in *Vorträge der Gehe-Stiftung* Vol. 1, Leipzig/Dresden, Teubner, 1909, pp. 39, 48 f.
- ⁵ This article is a follow-up of my lectio magistralis, Macerata, 5 April 2022; the IVR congress in Bukarest accepted an expertise on 7 July 2022 under the title «From the Greek *prosopon* to dignity's relatedness in Pico's time». All English paraphrasing of German, Latin quotes are mine.
- ⁶ For the fundamental significance in regard to the genesis of the historic Private International Law see U. Seif (now: Müßig), *Savigny und das Internationale Privatrecht des 19. Jahrhunderts*, in «*RabelsZ*», n. 65, 2001, pp. 492–512.
- ⁷ The preparatory drawings (e.g. Musée du Louvre) prove how much Michelangelo dealt with the position of the legs and their movement in order to translate body movements sculpturally. In his right hand David holds a stone, with his left the sling casually thrown over his shoulder to represent him before the action-throwing the stone. In doing so, David, who killed the giant warrior Goliath with only one stone throw (OT, 1 Sam 17, 41–51) was meant to express republican freedom (hence the dedication *exemplum salutatis publicae* and the positioning under the Loggia dei Lanzi at the Palazzo Vecchio). Buonarroti created the David for the Florentine *Arte della Lana*.
- ⁸ K. Bosl, *Europa im Mittelalter*:

Weltgeschichte eines Jahrtausends, Condrom, Bayreuth, 1975, p. 279: «The immovable wealth of the aristocracy was replaced by the liquid funds of a larger-scale economy, which intensified European relations in the 15th century». This is about the liberation of the ethics of the will from moral theology with the help of law.

- ⁹ U. Müßig, *Republicanism and its 'gentle wings' (Ode to Joy), The Republican Dignity to be Governed, not Mastered as Founding Rational Legitimacy*, in «*Giornale di Storia Costituzionale/Journal of Constitutional History*», n. 41/I, 2021 pp. 117–176.

¹⁰ Cf. Q. Skinner, *Power and Glory of the Republic in Lorenzetti's Frescoes*, in Q. Skinner (ed.), *Visionen des Politischen*, Frankfurt a.M., Suhrkamp, 2009, pp. 93–132; H. Hofmann, *Bilder des Friedens oder Die vergessene Gerechtigkeit*, München, Carl Friedrich von Siemens Stiftung, 2008, pp. 14 ff. The subsequent interpretation of Lorenzetti follows Hofmann, *ivi*, pp. 19 ff. For the conclusion of man as autonomous creator of political communities see Hofmann, *ivi*, p. 47.

¹¹ T. Kobusch, *Die Würde des Menschen*, in R. Gröschner/S. Kirste/O. Lembcke (eds.), *Des Menschen Würde - entdeckt und erfunden im Humanismus der italienischen Renaissance*, Tübingen, Mohr Siebeck, 2008, p. 242. Kobusch traces Pico's borrowings from late antique Christian philosophy. These include references to Origines, for whom cosmology freedom is the essence of being, already in the first century AD (J. Daniélou, *Origène*, Paris, La Table Ronde, 1948, p. 204). References to John Chrysostom (Daniélou, p. 247) contrast freedom with essence/nature. «The nature of man, that is not what is par excellence given, but what is shaped by the will».

¹² E. Cassirer, *On the Dignity of Man by Pico della Mirandola*, in «*Studia Humanitatis*», n. 12, 1959, pp.

48–61, 49; Cf. also Kobusch, *Die Würde des Menschen* cit., p. 237, who still refers to Eugenio Carin (*Der Italienische Humanismus*, Bern, Francke, 1947, p. 126) and his explanation of human dignity as creative power.

¹³ G. Manetti, *De dignitate et excellentia hominis*, Hamburg, Meiner, 1990, Third Book (26), p. 80=Padua edition 1975, p. 81. The Meiner edition refers to the German edition: *Über die Würde und Erhabenheit des Menschen. De dignitate et excellentia hominis*, translated by Hartmut Leppin, ed. and introduced by August Buck, Hamburg, Meiner, 1990. The Padua edition to the Latin one: G. Manetti, *De dignitate et excellentia hominis*, ed. Elizabeth R. Leonard, Padua, Antenore 1975.

¹⁴ G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Third Book (52), p. 94= G. Manetti, *De dignitate et excellentia hominis*, Padua cit., p. 95.

¹⁵ On the formulation of the expulsion from paradise as *ordo iudiciarius* by Étienne de Tournai cf. U. Müßig, *Reason and Fairness. Constituting Justice in Europe, from Medieval Canon Law to ECHR*, Leiden, Brill, 2016, p. 44). God himself was referred to the legal process of granting Adam a right to be heard (Cf. also K. Pennington, *Due Process, Community, and the Prince in the Evolution of the Ordo Iudiciarius*, in «*Rivista Internazionale di Diritto Comune*», n. 9, 1998, pp. 9–47, esp. pp. 11, 18 ff., 26).

¹⁶ H. Schulze, *Staat und Nation in der europäischen Geschichte*, Munich, C.H.Beck, 2004², pp. 47 f.

¹⁷ Both through the anatomy from different perspectives as well as the immediacy of mortality, such as dead Jesus on his knees of Michelangelo's Pietà.

¹⁸ Cf. also A. Hyman, J.J. Walsh, *Philosophy in the Middle Ages*, New York, Harper & Row, 1967, p. 597; W. Hoeres, *Der Wille als reine Vollkommenheit nach Duns Scotus*, Munich, Pustet, 1962, p. 121.

Hannah Arendt formulated the nothingness through a decision of the Creator God with reference to Scotus (H. Arendt, *Vom Leben des Geistes*, vol. II: Das Wollen, Munich/Zurich, Piper, 1979, pp. 129 f. fn. 69), and not to Augustinus, about whom she has written her dissertation. In April 2022 the Teatro Lauro Rossi in Macerata happened to perform Eichmann *Dove inizia la notte* of Stefano Massini, with Ottavia Piccolo and Paolo Pierobon under the regia of Mauro Avogadro. Manetti, on the contrary, references man as being an end in himself to Augustinus (G. Manetti, *De dignitate et excellentia hominis* Padua cit., Third book (53) p. 96): «sed potius hominis causa hominem fecisse putat».

¹⁹ G. Manetti, *De dignitate et excellentia hominis*, Padua cit., Third book (11 at the beginning), p. 71: «...ut hominem formosissimum, ingeniosissimum, sapientissimum, opulentissimum, ac denique potentissimum efficeret». Cf. also First Book (15), p. 12 «Eius prope divina mens...».

²⁰ This list is due to A. Thumfart, *Giannozzo Manetti: „Wir sind für die Gerechtigkeit geboren“* in *Des Menschen Würde* cit., 2008, p. 73 ff., 81. The following argumentation is inspired by his reasoning (pp. 73-92). The Manetti quote is to be found in the Third Book (20), Hamburg cit., p. 77 = G. Manetti, *De dignitate et excellentia hominis*, Padua cit., p. 78. Thumfart offers as translations the 'art of connection', the 'art of creating something new, through the drawing of relations, the construction and production of contexts.' I would rather suggest the translation as innate courage, intellect, mental agility, genius, talent, clever ingenuity, with innate, natural disposition and individual character being decisive. Cf. also H.-B. Gerl, *Einführung in die Philosophie der Renaissance*, Darmstadt, Wiss. Buchges., 1989, pp. 154 ff.

²¹ G. Pico della Mirandola, *De*

Hominis Dignitate 1486/Über die Würde des Menschen, Lateinisch-Deutsch. Übersetzt von Norbert Baumgarten, hrsg. und eingeleitet von August Buck, Hamburg, Meiner, 1990, p. 6.

²² M.T. Cicero, *De natura deorum*, ed. A. Pease, Cambridge Mass, Harvard Univ. Press, 1955, I 27, p. 77.

²³ G. Manetti, *De dignitate et excellentia hominis*, Padua cit., Third book (11), p. 72 with further reference to *ingenium* Third Buch (20) sowie (21). In regard to the god-likeness and the naming as 'theoid' – referring to Hermes Trimegistus and his receipt in Plato – cf. Second Book (17), p. 46, Padua cit.

²⁴ Pico della Mirandola, *De Homini Dignitate* 1486/Über die Würde des Menschen cit., p. 8: «in omnis creature ingenium effingit, fabricat et transformat».

²⁵ G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Third Book (25, 26, 27), pp. 80 f. = G. Manetti, *De dignitate et excellentia hominis*, Padua cit., pp. 80 ff. Cf. also G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Third Book (20), p. 77 = G. Manetti, *De dignitate et excellentia hominis*, Padua cit., p. 77.

²⁶ Replica to B. Fazio, *De excellentia et praestantia hominis* (1447). On the disputation character of Manetti's argumentation on dignity, see A. Thumfart, *Giannozzo Manetti: „Wir sind für die Gerechtigkeit geboren“* in *Des Menschen Würde* cit., 2008, pp. 76 ff, 90 ff. Likewise A. Buck in G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., p. XVII.

²⁷ Supra n. 24.

²⁸ The turn from substance to essence is explained by G. Manetti, *De dignitate et excellentia hominis*, Padua cit., Second Book (16), p. 45.

²⁹ Theophilus of Antioch, *Ad Autolyum* Second Book, chap. 18; Germ. tr. by Leitl, Josef, in *Bibliothek der Kirchenväter*, 1. Serie, Vol. 14: Frühchristliche Apologeten und Märtyrerak-

ten II, ed. by O. Bardenhewer/Th. Schermann/K. Weyman, Kempten/München 1913, p. 48). It seems to be another research desideratum to understand the impact of the philosophical-theological discussion about the Christian trinity and between the Athanasian God-likeness and the God-similarity of the son in the Arian faith, as solved at the 4th Ecumenical Council of Chalcedon in 451. From my point of view, the struggle of Christ's quality and essence has fostered the specific role of subjectivity in the European Constitutional History.

³⁰ G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Third Book (20), p. 77 = G. Manetti, *De dignitate et excellentia hominis*, Padua cit., pp. 77 f. German: *Über die Würde und Erhabenheit des Menschen. De dignitate et excellentia hominis*, translated by Hartmut Leppin, ed. and introduced by August Buck, Hamburg: Felix Meiner 1990. Latin: G. Manetti, *De dignitate et excellentia hominis*, Padua cit., p. 81.

³¹ G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Third Book (52), p. 94 = G. Manetti, *De dignitate et excellentia hominis*, Padua cit., p. 95.

³² Cf. R. v. Sussex Justices. Ex parte McCarthy, 9 Nov. 1923, [1924] 1 KB 256, 259, per Lord Hewart.

³³ The immortality of the soul is also found in Manetti (G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Second Book (18 a.E.), p. 47 = G. Manetti, *De dignitate et excellentia hominis*, Padua cit., pp. 46 f.).

³⁴ Porphyrios, *De occasionibus sive causis ad intelligibilia nos ducentibus*, XVII, Die Sentenzen des Porphyrios: handschriftliche Überlieferung, Transl by Marsilio Ficino, ed. by Carlos J. Larraín, Frankfurt a. M., Lang, 1987, p. 79: «Anima est essentia inextensa immaterialis immortalis in vita habente a seipsa vivere atque esse similiter possidente». Marsilio Ficino was familiar with Platonic

thought through his translation of Plato's works into Latin, and he is also considered to be the senior of the Neoplatonic circle in Florence.

³⁵ A. Lohner, *Die Begründung der Menschenwürde bei Marsilio Ficino*, in *Des Menschen Würde* cit., p. 98.

³⁶ Variation of Knut Wolfgang Nörr's title „Von der Textrationalität zur Zweckrationalität“ (»ZRG KA« n. 81, 1992, pp. 1–25 (15 f.)). Many other research questions may be added, esp. regarding the interrelation with the French and Spanish humanism. It is striking that the Spanish Early Modern Scholastics were tacit about their Italian inspiration and that the French successors of the 16th and 17th century belittle the Italian Humanists (L. Sozzi, *Rome n'est plus Rome, La polémique anti-italienne et autres essais sur la Renaissance suivis de La dignité de l'homme*, Paris, Classiques Garnier, 2002).

³⁷ M. Ficinus, *Theologia Platonica de immortalitate animorum*, XVIII libris comprehensa, ND edition Paris 1559, Hildesheim/New York, Georg Olms, 1975, lib. xvi, cap. 6 (Ratio sexta, ut mundus ornetur, colatur deus), fol. 301^r: The whole quotation reads: »Est utique deus in terris. Neque [eo] minus divinus putandus est hominis animus, quia corpore fragili circumdetur, sed ideo divinissimus, quoniam etiam in faece terrena, si modo terra sit vilis, contra tum loci naturam tum corporis sacram tam divina opera peragit, ut dum inferiora gubernat, a superioribus non discedat.« cf. also lib. XIII, cap. 3 (Quatuor hominis dotes in artibus), *ibid.*, fol. 222^r: »Ergo tot concipit mens in se Ipsa intelligendo quot deus intelligendo facit in mundo«. In Ficinus the chapters are literally called 'ratio/Grund'.

³⁸ M. Ficinus, *Theologia Platonica de immortalitate animorum* cit., lib. VIII, cap. 16 (Sexta decima ratio, Forma corporalis non habet vim infinitam : mens habet), 124^r

and'. Impressive is the argumentation at the end of the 16th ratio: »atque humanus animus tanta est dignitate donatus ut concessa sibi fuerit infinita quodammodo virtus intellegendi ac volendi, multo prius magisque concessa eidem fuisse debet virtus infinita vivendi«.

³⁹ This is still a research desideratum, in regard to the phenomenology founded by Husserl and further developed by Maurice Merleau-Ponty (M. Merleau-Ponty, *Phénoménologie de la perception*, Paris, Gallimard, 2003, p. XVI). Cf. instead of many S. Crowell, *Kantianismus und Phänomenologie*, in I. Römer (ed.), *Affektivität und Ethik bei Kant und in der Phänomenologie*, Berlin/New York, de Gruyter, 2014, pp. 19–51, esp. p. 41; J. Benoist, *Kant et les limites de la synthèse. Le sujet sensible*, Paris, PUF, 1996; D. Pradelle *Par-delà la révolution copernicienne. Sujet transcendantal et facultés chez Kant et Husserl*, Paris, PUF, 2012; D. Pradelle, *Généalogie de la raison. Essai sur l'historicité du sujet transcendantal de Kant à Heidegger*, Paris, PUF, 2013.

⁴⁰ I. Kant, *Die Metaphysik der Sitten*, 1797, Akademieausgabe (AA), Berlin, Georg Reimer, 1907, part I, chap. II § 11; part. II, chap. 1, sect. II, § 38, vol. VI, pp. 434, 462=I. Kant, *Die Metaphysik der Sitten* (1797); engl. tr. *The Metaphysics of Morals*, translated and edited by Mary Gregory, with an Introduction by Roger J. Sullivan, Cambridge, Cambridge University Press, 2009¹³, pp. 186, 209. Subsequently, cited as AA or Cambridge-edition.

⁴¹ I. Kant, *Die Metaphysik der Sitten* AA, vol. VI (cit.), p. 436; cf. also U. Müßig, *The Kantian Legal Turn of 'Republicanism': 'Rightfulness' by a Categorical Right to Justification*, in »Journal of Constitutional History / Giornale di Storia Costituzionale«, n. 42/II, 2021, pp. 183–202.

⁴² I. Kant, *Anthropologie in pragmatischer Hinsicht*, in W. Weischedel,

Werkausgabe, vol. VI, Frankfurt a.M., Suhrkamp, 1977, p. 431, cf. also pp. 433 ff. A. Lohner, *Die Begründung der Menschenwürde bei Marsilio Ficino*, in *Des Menschen Würde* cit., p. 105.

⁴³ »Nam homo suapte natura ad intelligendum natus est et institutus erat« (First Book (36), p. 26 Meiner (1990)-edition=p. 23 Padua-edition). Cf. also Third Book (48), p. 93 Padua-edition.

⁴⁴ G. Pico della Mirandola, *De Hominis Dignitate 1486/Über die Würde des Menschen* cit., p. 6.

⁴⁵ Already used by G. Manetti, *De dignitate et excellentia hominis*, Padua cit., First Book (49), p. 30: »unde hominem a Grecis microcosmum, quasi parvum mundum, appellatum esse putaverunt«.

⁴⁶ Cf. O. Lembke, *Die Würde des Menschen, frei zu sein. Zum Vermächtnis der 'Oratio de hominis dignitate' Picos della Mirandola*, in *Des Menschen Würde* cit., pp. 159 ff.; A. Buck Einleitung, in G. Pico della Mirandola, *De Hominis Dignitate 1486/Über die Würde des Menschen* cit., pp. XXIII–XXVI.

⁴⁷ M. Ficinus, *Theologia Platonica de immortalitate animorum*, XVIII libris comprehensa, Paris, 1559, ND, Hildesheim/New York, Georg Olms, 1975, lib. xvi, cap. 6 fol. 301^r; G. Manetti, *De dignitate et excellentia hominis*, Padua cit. ed. E.: In aedibus Antenoreis lib. III cap. 1–3), or balancing it (*libertas arbitrii; ingenium*) even with God's omniscience (C. Salutati, *De fato et fortuna* I 3, Firenze, Olschki, 1985, pp. 19 f.; L. Valla, *Über den Freien Willen. De libero arbitrio*. Lateinisch-deutsch, ed., transl. and introduced by Eckhard Keßler, facsimile reprint of the lat. edition by Maria Anfossi 1934, Wilhelm Fink, München, 1987, § 92, pp. 126 f.

⁴⁸ Instead of many M. Riva, P.C. Bori, F. Borghesi, M. Papio, S. Marchignoli, G. Melloni, and D. Buzzetti in their various contributions to the English/Latin-Cambridge edition of Pico, Pico della Mirandola, *Oration on*

the Dignity of Man, A New Translation and Commentary, Cambridge, CUP 2012.

- ⁴⁹ On freedom of the will already C. Salutati (1331-1406), *De Fato et Fortuna* (cit.), 1st book, chap. 3 (De necessitate ordinis causarum, quo cause suis effectibus coniunguntur), Florence, Leo S. Olschki, 1985), pp. 19 f.: «Sola voluntas, que rationalis creature potentia est, sic obtinuit arbitrii libertatem, quod omnino voluntas non sit, si sibi libertas (quod est tamen impossibile) subtrahatur...». Cf. then G. Pico della Mirandola, *De Homini Dignitate* 1486/*Über die Würde des Menschen* cit., p. 10: «...postquam hac nati sumus conditione, ut id simus quod esse volumus, .../ since we were born under the condition that we are what we want to be. / The will alone, which is the possibility of the rational creature, also contained the freedom of decision, otherwise it would not be a will at all...».
- ⁵⁰ Freedom of choice opens up the whole range of rebirth to the highest (*regenerari*) through closeness to God and degeneration to the lowest (*degenerare*) through remoteness from God.
- ⁵¹ Cf. also G. Manetti, *De dignitate et excellentia hominis*, Padua cit., First Book (17), p. 14: "divine providentie". According to Lauster, Ficino did not provide a stringent explanation of how the concordance of freedom (*liberum arbitrium*) and divine omniscience (*providentia*) could be thought of as the shaping principle of the soul (J. Lauster, *Die Erlösungslehre Marsilio Ficinos*, Berlin, de Gruyter, 1998, p. 200). This overlooks the fact that, even if Ficino's proof of free will has gaps, it is crucial for the ethical discourse that he emphasises free will as a moral fact (as Kant then did).
- ⁵² L. Valla, *Über den freien Willen/De libero arbitrio* cit., § 104, lat.-t. edition, ed., translated and introduced by Eckhard Kessler Mu-

nich: Wilhelm Fink Verlag 1987, p. 49, line 777: «The cause of the divine will is unknowable'/nec hominibus nec angelis cogitamus esse».

- ⁵³ L. Valla, *Über den freien Willen/De libero arbitrio* cit., § 82, p. 38 lines 577-582: «ut cum sapientia Dei separari non possit a voluntate illius ac potentia, .../since the wisdom of God cannot be separated from His will and power...» Considered the first Renaissance writing on the problem of the will. The core of the writing, which becomes clear in the selected quotation, is Valla's differentiation that it is not divine foreknowledge but divine will that opposes the freedom of human will. It is precisely the various places of printing north of the Alps (Cologne 1473, Louvain 1483, Vienna 1516, Basel 1518, Strasbourg 1522 and Basel 1526) that show the particular importance of the problem of the will in humanism's confrontations with the Reformation. However, it was on the Index of Banned Books from 1554 to 1900.
- ⁵⁴ Lorenzo Valla also wrote the treatise *De Elegantia Latinae Linguae*, which not only deciphers the Donation of Constantine as a forgery, but also establishes the predominance of Ciceronian Latin that began with Italian humanism.
- ⁵⁵ So it is not thought of as being predetermining (*praedeterminatio*). Cf. Valla: *Über den freien Willen/De libero arbitrio* cit., § 100, p. 47 line 741.
- ⁵⁶ «...quonam modo Deus bonus est, auferens arbitrii libertatem.» (Valla, *Über den freien Willen/De libero arbitrio* cit., § 92, p. 43, line 670 f.).
- ⁵⁷ Fundamental to this overall is H. Westermann, *Lorenzo Valla: „De libero arbitrio“*, in *Des Menschen Würde* cit., pp. 113 ff, 136 f.
- ⁵⁸ G. Manetti, *De dignitate et excellentia hominis*, Padua cit., Third Book (53) with reference to Augustinus, p. 96. For Manetti's non-categorical, non-ontological

understanding of freedom cf. also his wording in Second Book (47), Padua edition, p. 64 «liberum voluntatis imperium». Cf. also R. Enno, *Die Renaissance - Innovatio oder Renovatio?*, in A. von Müller./J. von Ungern-Sternberg (eds.), *Die Wahrnehmung des Neuen in Antike und Renaissance*, Leipzig, Saur, 2004, pp. 104 ff. Indicated by G. Manetti, *De dignitate et excellentia hominis*, Padua cit., First Book (54), p. 33.

- ⁵⁹ G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Second Book (20 a.E.), p. 48= G. Manetti, *De dignitate et excellentia hominis*, Padua cit., p. 47.
- ⁶⁰ «...nec ulla omnino iustitiae et bonitatis causa» § 92, p. 43 line 668.
- ⁶¹ «Nos porro hoc solum quaerimus, quonam modo Deus bonus est, auferens arbitrii libertatem./ But we ask this alone: How then is God good, if he deprives [us] of the freedom of the will». Valla, *Über den freien Willen/De libero arbitrio* cit., § 92, p. 126 f. Lines 669-671.
- ⁶² Third Book (52), p. 95 Padua-edition: «Unde intelligitur religionis atque iustitiae causa esse hominem figuratam».
- ⁶³ Cf. the definition of *Ingenium* as the art of connecting according to the reasoning of Thumfart in n. 19.
- ⁶⁴ Cf. e.g. the Bartholomist «if it does not approve the gloss, then it does not apply in court».
- ⁶⁵ E. Kessler, *Introduction*, in Valla, *Über den freien Willen/De libero arbitrio* cit., p. 25; E. Kessler, *De significatione verborum. Spätscholastische Sprachtheorie und humanistische Grammatik*, in «Res Publica Litterarum», n. 4, 1981, pp. 285-313.
- ⁶⁶ V.a. D. Mantovani, *L'elogio dei giuristi romani nel proemio al III libro delle Elegantiae di Lorenzo Valla. „Per quotidianam lectionem Digestorum semper incolumis et in honore fuit lingua Romana“*, in *Studi per Giovanni Nicosia*, Milano, Guiffre, 2007, vol. V, pp. 143-208

- [to be published in French in X. Prévost, L.-A. Sanchi (cur.), *L'humanisme juridique. Aspect d'un phénomène intellectuel européen*, Paris, Classiques Garnier, 2022]; G. Rossi, *Lecture umanistiche del Digesto lungo il XV secolo. Da Valla a Poliziano*, in D. Mantovani, A. Padoa Schioppa (cur.) *Interpretare il Digesto. Storia e metodi*, Pavia, IUSS Press, 2014, pp. 311-369; M. Regoliosi, *L'Epistola contra Bartolum del Valla*, in V. Fera, G. Ferrau (cur.), *Filologia umanistica. Per Gianvito Resta*, Padova, Antenore, 1997, vol. II, pp. 1501-1571; M. Speroni, *Lorenzo Valla a Pavia: Il libellus contro Bartolo*, in «Quellen und Forschungen aus italienischen Archiven und Bibliotheken», n. 59, 1979, pp. 452-467.
- ⁶⁷ Passionate scholar of ancient codices, deciphered the manuscript of Cicero's Orator. Author of philosophical writings that have not survived; in his letters that have survived, he professes his affiliation with Epicurean philosophy. P. Gilli, *Le conflit entre le juriste et l'orateur d'après une lettre de Cosma Raimondi, humaniste italien en Avignon (c. 1431-1432)*, in «Rhetorica», 16, 1998, pp. 259-286, ristampa in P. Gilli, *Droit, humanisme et culture politique dans l'Italie de la Renaissance* Montpellier, Presses Univ. de la Méditerranée, 2014, pp. 105-123.
- ⁶⁸ P. Gilli, *Humanisme Juridique et Science du Droit au XV^e Siècle. Tensions compétitives au sein des élites lettrées et réorganisation du champ politique*, in «Revue de Synthèse» n. 130, 2009, pp. 571, 573: «cette désacralisation de la scientia legalis, réduite aux yeux de ses détracteurs à un savoir-faire farineux, constitue le premier défi des humanistes à la science juridique».
- ⁶⁹ Müßig, *Reason and Fairness* cit., pp. 501 ff.
- ⁷⁰ I. Kant, *Anthropologie in pragmatischer Hinsicht*, Erstes Buch (Vom Erkenntnisvermögen), in W. Weischedel, *Werkausgabe* cit., vol. VI Erstes Buch (Vom Erkenntnisvermögen), p. 549: «1. thinking for oneself. 2. to think oneself (in communication with people) into the place of everyone else. 3. to think unanimously with oneself at all times».
- ⁷¹ G. Manetti, *De dignitate et excellentia hominis*, Hamburg cit., Third book (22), pp. 78 f: There is no «stronger expression of wisdom» than to observe a certain order in one's actions. Already Salutati had linked jurisprudence to reason, rationality and will (C. Salutati, *De nobilitate legum et medicinae*, lat.-dt., ed. by Peter Michael Schenkel, München, Fink, 1990, 10, p. 77), whereby positive law presents itself to him as an emanation of the divine will (de nobilitate 19, p. 161) and is based on the supreme principle of equality (for aequitas, De nobilitate 3, p. 19). Cf. also Manetti, *De dignitate et excellentia hominis*, Padua cit., Third Book (52), p. 95: «Unde intelligitur religionis atque iustitiae causa esse hominem figuratam».