HUMAN DIGNITY IN COMPARATIVE CONSTITUTIONAL CONTEXT: IN SEARCH OF AN OVERLAPPING CONSENSUS

Adeno Addis*

Abstract: The concept of human dignity plays an important role in ordinary conversations and legal and political theories. It also occupies a prominent place in numerous national constitutions and international conventions. Yet, it is not always clear what the concept means or entails. The author, in an earlier work, argued that in a world of plural values and ethical commitments a top-down approach, whether philosophical or religious, is unlikely to provide us with a common standard for deciding what it means to dignify humans or to subject them to indignities. Building on the earlier work, this article argues that the best way to understand the scope and content of human dignity is to engage in a bottom-up inquiry, carefully describing the choices communities make in the name of human dignity. The purpose of such inquiry is to see whether there are patterns in the usage that suggest that there is a convergence of, an overlapping consensus on, an understanding of the phrase that could be appropriated as a standard of measurement in intercultural and intersystem conversations and critiques. Focusing on references to human dignity in national constitutions, the article shows that there are in fact patterns of usage that suggest the existence of a consensus on specific understandings of dignity.

Keywords: human dignity; constitutions; equality; human rights; jurisprudence; physical integrity.

I. Introduction

The concept of human dignity plays an important role in ordinary conversations and an even more important and central role in many legal and political conversations and an even more important and central role in many legal and political
And some commentators have claimed that human dignity is the only absolute value in a world of plural values and commitments. The concept also occupies a prominent place in numerous national constitutions and international conventions as well as judicial decisions. Yet, it is not always clear what the concept means or actually entails. It is one of those phrases that “carry unspoken assumptions and connotations” that can powerfully influence the discourse they permeate while escaping critical scrutiny.

This much we know: human dignity is the dignity that humans supposedly have by virtue of the fact that they are humans, irrespective of who they are and where they come from. It is not the sort of respect we show people in virtue of their achievements or character. Rather, the object of respect that is demanded by

---

2 The most recent work of political theory that puts dignity as a central organizing principle is Ronald Dworkin, Justice for Hedgehogs (Harvard University Press, 2011). For another recent work of political theory which sets out “to defend the idea of human dignity” as an “existential” rather than a moral value see George Kateb, Human Dignity (Harvard University Press, 2011) “My aim is to defend the idea of human dignity”. 1; “Human dignity is an existential value”. 10.

3 Henk Botha, “Human Dignity in Comparative Perspective” (2009) 2 Stell L Rev 171 “Consider, for instance, the claim made by a German law professor that dignity is the only absolute value in a world of relative values — a fixed star which provides orientation amidst life’s uncertainties”. (Citation omitted).

4 See Section III below.

5 See, for example, the decision of the French Supreme Administrative Court which held that a municipal order prohibiting dwarf-throwing games (when the adult dwarfs have consented to and are paid for the game) was valid to the extent that it is grounded partly on the principle of human dignity. Public order was also invoked as a reason for the prohibition. As to human dignity, the idea seems to be that throwing people like balls for amusement purposes does not respect the dignity of the people tossed around even if they agree to be so tossed, Conseil d’Etat, Ass., 27 October 1995, Cne de Morsang-sur-Orge, Recueil Lebon., 372, available at http://www.conseil-etat.fr/fr/presentation-des-grands-arrets/27-october-1995-commune-de-morsand-sur-orge.html. The decision of the French court was affirmed by the ICCPR Committee in Wackenheim v France, Communication No 854/1999, U.N. Doc. CCPR/C/75/D/854/1999 (2002). See also Nahmani v Nahmani, CFH 2401/95. In that case, the Israeli Supreme Court held that a woman had a dignity interest in maintaining her pregnancy even if her former husband objects to keeping the pregnancy.

6 Nancy Fraser and Linda Gordon, “A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State” (1994) 19 Signs 309, 310 (citations omitted). As you see from the title, the word that was the focus of Fraser’s and Gordon’s study is “dependency” rather than “human dignity”. But the observation applies equally to human dignity. Ronald Dworkin has a less charitable account of how the notion of human dignity has been appropriated. Dworkin (n.2) 204: “The idea of dignity has been strained by overuse and misuse. It appears regularly in human rights conventions and political constitutions and, with even less discrimination, in political manifestos. It is used almost thoughtlessly either to provide a pseudo-argument or just to provide an emotional charge”. See also Kateb (n.2) ix: “The idea [human dignity] is difficult, even though it is rather casually used in many kinds of ceremonial or more substantial public speech, especially when such speech involves praising human rights”. The most charitable view about the clarity of the notion of dignity is that of Donna Hicks. See Donna Hicks, Dignity: the Essential Role it Plays in Resolving Conflict (University of Pennsylvania Press, 2011) 3: “Most of us have a gut feeling about the word dignity, but few of us have the language to describe it”.

7 Stephen L. Darwall, “Two Kinds of Respect” (1977) 88 Ethics 36. Appraisal respect could also be taken to refer to respect that individuals have by virtue of the fact that they occupy a particular institutional position. Thus, for example, under international law diplomats are supposed to have certain inviolable dignity that the host country is expected to respect. They have this dignity not because of individual merit
Human Dignity in Comparative Constitutional Context

human dignity is one that is non-evaluative. We respect people simply by virtue of the fact that they are humans, nothing more and nothing less. But what precisely are the things that people deserve to have in the name of human dignity? And how do we go about identifying them?

One familiar approach, to which I shall refer as the top-down approach, attempts to define human dignity in an abstract way, as a first principle, and then apply it as a regulatory norm both within and across communities and cultures. Two familiar and prominent examples of such an approach are philosophical and theological enquiries that attempt to define the scope and content of human dignity. Derived philosophically or theologically, human dignity becomes a universal principle applicable without geographic or cultural limits. It applies wherever and whenever humans are subjected to indignities.

The most famous and most influential philosophical approach to human dignity is that of Immanuel Kant’s. Here human dignity is thought of as a state of affairs in which individuals are able to act autonomously. That is, humans have dignity to the extent that they are recognized as having the capacity to make their own choices and to determine their destinies. Kant viewed morality as a system of categorical imperatives that we must fulfil whether we wish or not. A central part of that system is the Categorical Imperative that human beings should not act towards others (and even regarding themselves) in a way that treated them as means rather than as ends, for “man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will”. To think of humans as ends in themselves is, for Kant, to view them as having internal worthiness, an absolute and priceless virtue, in other words a dignity that is inviolable. As he put it: “In the kingdom of ends everything has either a price or a dignity. If it has a price, something else can be put in its place as an equivalent; if it is exalted above all price and so admits of no equivalent, then it has a dignity”. That entails that treating individuals as autonomous beings able to choose their destiny and capable of moral reflection is to acknowledge their dignity.

Another example of a top-down approach is a religiously based enquiry about the nature of human dignity. Here, dignity is explicitly tied to the idea that

but because they occupy certain positions. The Chinese Constitution takes it even further. Its preamble refers to “the duty [on citizens] to uphold the dignity of the Constitution and ensure its implementation”. The idea of dignity for a document stretches it even further from the idea that there is dignity to positions (ie presidency or monarchy).

8 See Immanuel Kant, *Groundwork of the Metaphysics of Morals* (HJ Paton trans. Harper & Row, 1964) 96: “Act so that you treat humanity, whether in our own person or in that of another, always as an end and never as a means only”.


11 *Ibid.*, 102. “[H]umanity so far as it is capable of morality is the only thing which has dignity”.

12 See Immanuel Kant, “Metaphysical Principles of the Doctrine of Right” in Mary Gregor (ed) *Practical Philosophy* 237. There is “only one original right”, which belongs “to every man by virtue of his humanity”. That right, for Kant, is the right to be “our own master”, 238.