The Dignity Rights Project
Dignity in Action
Widener University Delaware Law School

A DIGNITY RIGHTS SYNOPSIS*

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"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…"
-- Universal Declaration of Human Rights, 1948, Preamble

"The defense of the human person and respect for his dignity are the supreme purpose of the society and the State."
--Constitution of Peru 1993, Title I, Chapter I, Article I

"To preserve human dignity and to respect free development of the personality is the core value of the constitutional structure of free democracy."
--Constitutional Court of Taiwan, J.Y. Interpretation No. 603 (2005.9.28)

Dignity Rights

Human dignity refers to the inherent humanness of each person. It is not an attribute or an interest to be protected or advanced, like liberty or equality or a house or free speech. Rather, human dignity is the essence of our being, without which we would not be human. Human dignity recognizes and reflects the equal worth of each and every member of the human family, regardless of gender, race, social or political status, talents, merit, or any other differentiator.

As rendered in constitutions and enforced by constitutional courts, it is a *legal right* that can be and often is asserted against the state or others and enforced by a court. The right to dignity is recognized in more than 150 of the world's constitutions from all regions of the world: Asia, Africa, the Middle East, Europe, Latin America and North America, and the Pacific. Today, few constitutions are adopted or meaningfully amended without adding a reference to human dignity. The modern concept of dignity applies to *all* persons. It functions as an equalizer: if everyone has dignity, then everyone is subject to the same obligations and is entitled to the same benefits under the law.

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Constitutions protect human dignity in a variety of ways. Sometimes it is a stand-alone right (e.g., German Basic Law of 1949: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority"), sometimes it is associated with certain important values (see e.g. the Constitution of Italy 1948: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions" and see e.g. the 2011 Constitution of Morocco: "No one may inflict on others, under whatever pretext there may be, cruel, inhuman, [or] degrading treatments or infringements of human dignity"). Or it is associated with segments of the population (women, children, the elderly, prisoners). Sometimes it is recognized as a fundamental value on which the constitutional state, or rule of law rests (Constitution of South Africa 1996: " The Republic of South Africa is one, sovereign, democratic state founded on the following values: Human dignity, the achievement of equality and the advancement of human rights and freedoms..." and see e.g. the 1949 Constitution of India whose preamble asserts that one of its fundamental aims is to assure "the dignity of the individual."), or as in Tunisia, where it is an element of the republic's motto. Most often, it appears multiple times in a single constitution, as in South Africa, Kenya, Colombia, and elsewhere. As a right, it may look like most other constitutional rights: it is enforceable by a claimant who argues that his or her right has been violated and who seeks a judicial remedy.

This primer aims to provide an introduction to dignity rights, including what they are (or are not), how they are embodied constitutionally around the globe, and how courts interpret and apply them (or don't). It concludes with an appendix that lists common issues in vindicating dignity rights.

An Introduction to Human Dignity

Human dignity is the alpha and the omega of rights. It is the source of our rights, and also their purpose. It is because we have dignity that we have rights and are able to claim them. Dignity establishes not only the existence of each person, but his or her fundamental worth. As such, it entitles each person not only to life, to mere existence, or to the bare necessities, but also to a certain quality of life – a life of decency (protection from the elements, the chance to develop one's personality and to live according to one's design) and a life of order, where law controls over the arbitrary exercise power, to ensure that those other things can be secured. It represents the capacity for self-definition and self-development.

Dignity is shared in equal measure by every person; no one has any more or less, from birth through death (and in some views, before birth and after death). Thus, not only are humans endowed with dignity but each is endowed with an equal quantum of dignity, as if it were a special coin that is handed to each person at birth. This conception of dignity departs dramatically from the previous centuries' understanding of *dignitas*, which embodied a rigid system of hierarchies according to which persons holding certain offices or born into certain classes enjoyed a status that accorded them dignities and immunities that the vast mass of humanity did not enjoy. In the modern conception of dignity, each baby born has the same coin, which is carried throughout life and which can neither be traded nor lost through folly nor compounded through wise investment.

Recognizing the worth of each person demands that each person have equal access, and that no person can assert control over another to deprive him or her of dignity. It demands that each person can assert those rights on an equal footing, and it demands a system of law that recognizes the equal value of all constituencies. Dignity, then, is the *source* of rights.

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Dignity might also justify or even compel civil and political rights, obligating governments in constitutional democracies to establish appropriate procedures and institutions to vindicate claims to such procedures in order to satisfy the communal expression of human dignity. But the protection of human dignity may also be the very purpose of procedural rights associated with participatory democracy: that is, participatory democracy may be the means by which to promote human dignity understood as the ability to live a decent life, with sufficient access to nutrition and water, with a roof over one's head, a clean environment in which one can thrive and in which ones' children and their children can live, and an education to ensure the full development of the personality. Dignity then is both a means (participation itself promotes human dignity) and as an end (democratic participation produces results most likely to advance and enhance human dignity as a substantive matter of lived experience).

Constitutional Dignity

The modern law of dignity rights emerged out of the ashes of World War Two and the creation of the United Nations that aimed to end "the scourge of war." The United Nations Charter mentions dignity, but the 1948 Universal Declaration of Human Rights (UDHR) established its status as the font of human rights.

The Preamble and part of Article 1 take humanity as a species, without differentiating among individual specimens. Some of us are better reasoners than others, and some of us are more morally sensitive than others, but the UDHR is indiscriminate: each of us, just by virtue of having been born human, is endowed with human dignity.

The UDHR's blunt affirmation of the dignity of all has had enormous cultural influence in all regions of the world, even though it did not—because it has no binding effect—transform dignity into a right. In the subsequent decades, the two International Covenants took dignity several steps closer, both by adding content and specificity to the value of dignity and by binding signatory states to its provisions. Under both the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the state parties, considering the above-quoted language from the Universal Declaration, recognize that "the equal and inalienable rights of all members of the human family . . . derive from the inherent dignity of the human person."

National constitutionalism has gone much farther in bringing the value of dignity from the international sphere (where it may or may not be enforceable or culturally relevant) to the domestic realm by referencing dignity—repeatedly and emphatically—in constitutional texts and by vigorous judicial enforcement of these provisions. Presently, more than one hundred and fifty constitutions mention dignity at least once, and most of those refer to it multiple times, sometimes as a right, sometimes as a value, sometimes in ways that make it hard to distinguish between the two. One way or another, almost every constitution of the twenty-first century explicitly recognizes human dignity.

Dignity, like constitutions generally, reflects both rights and values; in any given constitution, dignity may be one or the other or both, or it may be impossible to discern which the drafters envisioned. Dignity's dual nature certainly contributes to its appeal. As a value, it may not be read narrowly or technically nor may it be ignored, and it should inform the interpretation of other incidents of constitutionalism. The value of dignity acknowledges the uniquely human qualities that distinguish us as a species from all others. It privileges our capacity to think and plan, and to care for one another. As a right, it uses these attributes to assert claims against the state. That is why it is viewed as a stand-in for

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all rights: whether in the context of discrimination or torture or social security, the recognition of human dignity means that the state must—in all its dealings with individuals—respect what is special about the human person. The rights may be thought of as the particular manifestations of the general principle or value. The values, conversely, can best be discerned from the cases defining the right.

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Dignity's Essential Features

Courts have repeatedly explained dignity rights as possessing three essential features: (1) that dignity is inherent or immanent in each person and in no way conditional; (2) that dignity marks both each person's uniqueness and our common humanity, as the building blocks of an understanding of the human experience that coalesces around each person's capacity to develop his or her personality; and (3) that each person has the same inherent right as every other to control the course of his or her own life. Hence, the Colombian court's shorthand for these cases as protecting the human desire "to live as one wishes." This includes some measure of control over both what a person becomes and does; although these are not the same, they are closely allied in reality and often conflated in the cases.

Dignity allows us to control not only how we live, but also how we present ourselves to the world. When the state or other individuals seek to control (usually to our detriment) how we would present ourselves, they violate our human dignity. Dignity is thus both inward-looking and outward-looking: it concerns how we are and how we act, how we think of ourselves and how we present ourselves to others. It is an essential part of a person's identity from both an individual and a social standpoint. These dual attributes distinguish dignity from liberty, which is entirely individual and indifferent to the social setting in which human beings live.

For many courts, objectification is dignity's foil. To objectify—to use a person as an object to achieve some other purpose—denies all that is important to dignity, turning the person into a plaything. It tends to treat everyone the same: to objectify is deny a person's uniqueness. By allowing one person to exert control over another, it negates the equality principle that is at the core of the modern understanding of human dignity. And by permitting one person to impose values or decisions on another, it denies each person's ability to chart his or her own course, as it suggests that the dignity one is born with can be lost or conditioned at the election of another.

Law is a practical enterprise: it deals with a real problem in real people's lives. It is not enough in law to recognize the inherent dignity of every human being. That only matters if each person is in fact living a life with dignity, where his or her individuality and autonomy are valued in conjunction with everyone else's. For most of the world's people, of course, the capacity to chart one's own life course is limited by circumstances. People who are poor, who are infirm, who are dependent on others for their well-being are restricted in how effectively they can write their own rules.

Dignity in Courts

Dignity is so amorphous, and potentially unbounded, and its application potentially so broad, that courts wishing to give effect to the constitutional text must work hard to find its true meaning. Nonetheless, courts have engaged in this project with enthusiasm. In thousands of cases, courts have shaped the meaning of human dignity and made it relevant to people around the globe. In the aggregate, these cases show convincingly that the idea of human dignity has, in the last seventy years, evolved into a legal right—or many legal rights—that courts will enforce and that governments are bound to respect. Alleged violations of a right to health or housing or to a clean environment often result in judicial demurrals, but allegations that the deprivation of health or housing or a clean environment violates the right to dignity often meet with greater success. It is as if the right to dignity implicitly converts a case involving social justice into one involving individual rights warranting primarily negative remedies, which is where many judicial traditions are more familiar and comfortable. In this way, courts use dignity to

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help define when a broader right has been violated: a right to housing becomes actionable when the denial of housing impairs the claimant's dignity.

If the right to dignity were simply window dressing, like so many preambles, courts would be inclined to ignore it, knowing that it could not determine the outcome of any particular case that demands decision. But dignity has turned out to be one of the *least* ignored provisions in modern constitutional law. It has been invoked, interpreted, and applied by courts around the world in thousands of cases in the last few decades. Where it is written amply into a constitutional text (as in Germany, South Africa, and Colombia), it is given full force; where it is written narrowly (as in Israel and India), it is often emphasized as a fundamental or general value; and where it is written not at all, it is often inferred (as in Canada and, increasingly, the United States). In Israel, where the Basic Law is a series of documents on different issues, the Supreme Court has called dignity a "mother right" which has given birth to and nurtured many "daughter rights."

Moreover, close analysis of the cases suggests that the judicial use of the concept of human dignity is strategic: courts are choosing to invoke human dignity to say something about deeper constitutional values and about the evolving nature of society. They are using the right to dignity to describe what human beings are entitled to just by virtue of being human; that is, the right to dignity is coming to describe what it means to be human in the modern world. And because courts are engaging in this discourse not in a philosophy classroom but in the context of real cases involving actual people asserting serious rights against the state, recourse to dignity is also describing the boundaries of state power: if the right to human dignity means that a person's bodily integrity must be protected, the state's power to torture or punish a person is to that extent limited. In the aggregate, this growing worldwide body of dignity jurisprudence is describing the relationship between the individual and the state in modern times, in a way that is simultaneously normative and descriptive: What are human beings entitled to? What must a state guarantee to the people? What must it refrain from imposing? The right to dignity is how we describe what legal claims people can assert to insist that their humanity be recognized.

Although some have suggested that dignity means different things to different jurists in different countries and has no substantive meaning the cases reveal that there are, in fact, motifs that cut across geographic boundaries, factual settings, and legal categories. This is not to say that there is uniformity or even cohesion across or even within jurisdictions. There is no agreed-on working definition of dignity that the courts invoke, nor are there customs and usages of the trade that cabin discretion or direct when a court should or should not invoke or vindicate dignity rights. There has not been time for those customs to develop, though perhaps dignity's meaning will coalesce in the years ahead. In the meantime, although some patterns are discernible, dignity rights remain multifarious and include interests associated with equality, expression, due process, privacy, health, environment, family, work, and virtually every other sphere of life.

While there is no single understanding of what dignity means in all circumstances, the cases reveal that courts interpreting the concept of dignity and applying it to concrete factual situations have developed a sense of the word that is coherent and substantive, and not merely a product of each judge's idiosyncratic moral standards. Dignity, it appears, is no more amorphous or subject to interpretive personal whim than any other constitutional provision: there are situations to which it applies and situations to which it does not. The cases demonstrate that the right to dignity has content and boundaries. It means *something*, but not everything. And what it does mean is important.

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It is clear that dignity is such an appealing concept that courts find dignity rights to be relevant even in cases where they are not necessary for the disposition of the case. This is evident from the number of cases that involve claims grounded in other provisions of a nation's constitution, such as the right to work or the right to life or the right to a healthy environment, but where a court nonetheless rules on the basis of or with emphatic reference to the right to dignity. This is true both where the right to dignity is itself actionable, as in Germany and many Latin American countries, and where it is not, as in India and Canada. It is also striking how often the dignity claim is vindicated: when dignity is raised, courts are very often sympathetic. And this is true even where courts might otherwise be reluctant to get involved: courts often desist from finding violations of the right to health, for instance, if they would have to order wide-ranging changes in health policy with broad financial implications, but where the claim is converted into a violation of the right to dignity, courts are likely to intervene on the claimant's behalf. And this becomes important as courts are increasingly asked to vindicate second, third, and fourth generation rights.

Dignity Jurisprudence

Humans as the subject

The German Constitutional Court has absorbed the Kantian maxim of anti-objectification as a general background fact: "the obligation to respect and protect human dignity generally precludes making a human being a mere object of the state."

When the Indian Supreme Court inveighs against treating a man as a mere plaything in the hands of the state or a privileged few, it is protecting the man from objectification. In the Hungarian name change case, the court noted that "the human being remains a subject, not amenable to transformation into an instrument or object," thereby limiting the ability of the state to control the full expression of the individual personality, even for the purpose of promoting nationalism. When the courts of Latin America speak against *cosificar*—literally, "to make into a thing"—they, too, are protecting against objectification. In Colombia, the Constitutional Court held that in cases of rape, "the woman's dignity is subjugated by the force necessary to convert her into an object of he who exercises power over her. Similarly, her dignity as a human being is denied when the legislator imposes on the woman, likewise against her will, the obligation to serve as an instrument effectively to procreate by penalizing abortion without any exception . . . . In these cases, [to prohibit abortion] would be to objectify the woman as only a womb, separated from her consciousness." The Malaysian High Court, too, has found that "Rape is an experience which shakes the foundations of the lives of the victims. The offence of rape must be dealt with as the gravest crime against the human dignity."

In the jurisprudence of the United States Supreme Court, human dignity has been recognized for decades as concerns the guarantee against cruel and unusual punishment. Only recently has the Court found its application to autonomy and personal choices that people have the right to make. As the plurality opinion in *Planned Parenthood v Casey* said in the context of the right to terminate a pregnancy: "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." And in *Obergefell,* the Court said that the liberties protected under the due process clauses "extend to certain personal choices

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central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."

Self-determination and civic engagement (participatory dignity)

The individual right to self-determination is a fundamental aspect of dignity jurisprudence. The Hungarian Constitutional Court after 1989 and before the 2011 Constitutional reformation led the way with decisions on access to information, the choice of names, and more. In recent years, the Taiwan Constitutional Court has followed suit with a series of cases about family, privacy, and children. In 2017, Taiwan became the first Asian nation to constitutionally recognize same sex marriage: "… the freedom to marry protected by the Constitution includes the freedom to decide 'whether to marry' and ' whom to marry.' "Such decisional autonomy is vital to the sound development of personality and safeguarding of human dignity, and therefore is a fundamental right to be protected by … the Constitution." On the basis of human dignity courts in Pakistan and Bangladesh have also recognized a third gender.

Dignity cases about gender and sexual identity are also becoming more common in Europe, Africa, North America, and Latin America, where the dignity right is also influenced by a right of access to information about personal and environmental information; several countries recognize a specific writ of *habeas data* which ensures that access to information is unobstructed by procedural hurdles.

Dignity of defendants and inmates

Where the state is alleged to have directly violated the individual's dignity. The most common situation is where the victim of the abuse of dignity is dependent on the state in some way, usually where he or she is in the custodial control of the state. This is simply because under most circumstances where an individual is *in*dependent, his dignity is not as much at risk: the state has little opportunity to diminish the dignity of self-sufficient and autonomous individuals. Dignity is threatened to the extent that the individual depends on others to fulfill his needs; this limits his equality and autonomy. The Constitution of the Maldives recognizes this, regardless of the reason for the detention: "Everyone deprived of liberty through arrest or detention as provided by law, pursuant to an order of the court, or being held in State care for social reasons, shall be treated with humanity and with respect for the inherent dignity of the human person."

Like many other constitutions, the Yemeni Constitution of 1991 makes this clear: "Any person whose freedom is restricted in any way must have his dignity protected." We are born with dignity, and we are not supposed to lose it. However, as states expand the control they exert on ordinary citizens, dignity interests are increasingly implicated even outside the custodial context.

In part, the Kantian lesson is that human beings must be treated as subjects of the law, not as objects of the state's will. In Peru, which has explicitly adopted the Kantian imperative, the Constitutional Tribunal said in one case about the equality rights of prisoners, the principle of the dignity of the person, "in its negative version, insists that human beings may not be treated like things or instruments (but rather as subjects of rights and obligations) . . . since each person, including criminals, should be considered as an end in and of himself." The Slovenian Constitutional Court has followed the same course, explaining that the constitutional protection of "the right to be present at his trial and to conduct his own defense or to be defended by a legal representative" exists to ensure "that the defendant is not just an object but a subject of the proceeding, that is, a person having at his disposal a wide range of possibilities for defense, which ensures full protection to his personality, his freedom and his dignity." In a later case, the

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same court found that the constitutional guarantee of personal dignity "guarantees to every individual that in proceedings in which decisions are made concerning his or her rights, obligations, or legal interests, he or she is treated as a person and not as an object."

Exigent circumstances, like perhaps the war on terror, may be said to justify techniques that would otherwise be held to violate a person's dignity, although here, too, most people would argue that dignity still has some claim. Neither is the right to dignity one-sided: torture may violate a terrorist's dignity, but a car bomb violates the dignity of the public, as courts in the United States and elsewhere have suggested. How should a state balance its obligations to maintain and protect the dignity of those it holds in custody against the dignity of the general public? The question is not whether the conditions of detention violate human dignity—because they almost always do—but whether such violations are unnecessary or excessive.

Some of the cases concerning treatment of detainees focus on the physical conditions of detention and thus recall the cases about the minimum core of comfort that is necessary to ensure that individuals live in dignity. It has been held that prisoners must be able to eat at a table rather than on the ground that they are entitled to a certain amount of space, and that prisoners must be allowed reading materials. The Peruvian Constitutional Tribunal has held that total withdrawal of prison benefits not only drains the resocialization aim of punishment of its vitality; it also drains the very dignity of the prisoners.

Some cases that raise questions about human dignity implicate the autonomy principle directly—that is, the idea that prisoners retain the right, within a limited sphere, to self-determination and to some degree of autonomous decision–making (such as the German life imprisonment case discussed in the previous chapter). In particular, the right against self-incrimination has been held to preserve human dignity. The Supreme Court of Hong Kong put it this way: "The consequences of a forced answer could be literally life-threatening. The privilege protects personal freedom and human dignity. It is 'deep rooted' in Hong Kong law. . . It protects 'the individual against the affront to dignity and privacy inherent in a practice which enables the prosecution to force the person charged to supply the evidence out of his or her own mouth.'"

Still other cases invoke the individuation aspect of dignity that would ensure that even detainees retain a limited right to control their identity for themselves and for others. In considering the constitutionality of police surveillance within prisons, the Constitutional Court of Poland wrote: "[all] constitutional rights and freedoms of the individual stem from their human dignity, protected by virtue of Article 30 of the Constitution. In the case of privacy, this relationship is of a specific nature. The protection of dignity requires the respect of the purely personal human sphere, where the person is not forced to 'be with others' or 'share with others' their experiences or intimate details." It is not the act of sharing that, on its own, violates human dignity; it is being *forced* to share. Thus, while prison authorities obviously have some power to keep prisoners under surveillance that power is not un-bounded and needs, at some point, to yield to the prisoner's retained interest in dignity.

In Germany, the Constitutional Court has twice held that a sentence of life imprisonment with no possibility of release (parole or pardon) would implicate not only the convicted person's right to liberty, but his or her right to dignity as well: "It would be incompatible with human dignity if the convicted person, regardless of the development of his or her personality, had to abandon all hope of ever regaining liberty," explained the court in a 2005 case. In both cases, the courts could have relied on more precise textual pro-visions (life in the death penalty case and liberty in the imprisonment case),

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but they chose to base their rulings on the fundamental right to dignity, as if hope were an intrinsic part of what it means to be human.

In an earlier case, from the 1970s, the German court elaborated on the importance of hope as an element of human dignity. Invoking the Kantian language against objectification, the Constitutional Court invalidated the punishment of life imprisonment without the possibility of parole. It held that "The command to respect human dignity means in particular that cruel, inhuman and degrading punishments are not permitted. The offender may not be turned into a mere object of [the state's] fight against crime under violation of his constitutionally protected right to social worth and respect." The court continued: "Within the community each individual must be recognized, as a matter of principle, as a member with equal rights and a value of his own. The sentence, 'the human being must always remain an "end in itself " ' has unlimited validity in all areas of the law; for the dignity of man as person, which can never be taken away from him, consists particularly therein, that he remains recognized as a person who bears responsibility for himself." Insisting that man must be the "end in itself," the court braids into its definition of human dignity the notions of equality and inalienability drawn from the Universal Declaration—and, on the other side, of the responsibility of the individual toward the state and fellow citizens. The court explained: "This is founded on the conception of man as a spiritual - moral being that has the potential to determine himself in freedom and develop from within."

Material well-being

Although each newborn baby may have an equal share of human dignity, many people struggle to live in conditions of dignity, to maintain their dignity throughout life. A reversal of fortune that renders a person homeless or a refugee, an arrest or detention, or inability to find work that is not exploitative may make it difficult for a person to maintain his or her dignity. This aspect of dignity may be lost or gained, perhaps many times during the course of a person's life. It is not enough to have dignity as a birthright; it is necessary, also, to *live* in dignity.

Governmental authorities, including courts, must be ever vigilant to foster and preserve the conditions in which dignity thrives.

Some constitutions explicitly protect the right to sufficient means to live in dignity. Finland's constitution provides that "Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care." Many similar provisions are said to derive from the Weimar Constitution of 1919, which established that "The organization of economic life must conform to the principles of justice to the end that all may be guaranteed a decent standard of living" or *Menschenwürdigen*, often translated as "dignity." The 2014 Constitution of Egypt says: "The state guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice." Where the constitutions are not so explicit, many courts have nonetheless developed a jurisprudence of the social welfare of human dignity. Tunisia's constitution guarantees dignity, along with health care and education, for children.

Where it is not explicit in the constitution, courts have been creative. The Supreme Court of Israel has observed: "Human dignity is violated if a person wishes to maintain his life as a human being within the society to which he belongs, but finds that his means are poor and his strength is too weak to do so." The Indian Supreme Court, too, has repeatedly insisted that the right to life includes the right to live with human dignity and "all that goes along with it namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in

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diverse forms, freely moving about and mixing and commingling with fellow human beings." More specifically, the Indian Supreme Court has said:

> It is the fundamental right of everyone in this country, assured under the interpretation given to art 21 . . . to live with human dignity, free from exploitation. This right to live with human dignity enshrined in art 21 derives its life breath from [certain] Directive Principles of State Policy . . . and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State—neither the central government nor any state government—has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

As such, the government has an obligation to protect not only the life but also the material dignity of every person within India, whether citizen or not.

Similarly, the Peruvian Constitutional Tribunal has recognized that the unjustified denial of social security benefits, including pensions, "indubitably deprives a person of his right to the minimum necessities of life for his subsistence, impeding his satisfaction of basic necessities, which is a direct threat to his dignity." In another case, the court explained that in a social state, respect for dignity refers essentially to the fulfillment of a better quality of life for people.

Increasingly, courts are recognizing the necessity of a relatively clean environment to assure that people can live with dignity. In one case from Nigeria, *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others,* the Court held that gas flaring violated the petitioners' constitutional "right to respect for their lives and dignity of their persons and to enjoy the best attainable state of physical and mental health as well as right to a general satisfactory environment favourable to their development" and that the gas flaring activities "a violation of their said fundamental rights to life and dignity of human person and to a healthy life in a healthy environment." Other cases, too, have recognized the dignity interests in substantive environmental rights, as well as procedural ones.

Another reason why dignity requires certain material minima is suggested by the Indian court's reference to freedom from "exploitation." A person who is materially deprived is more likely to be exploited, that is, more likely to be under the control of another (or of the state) and not in control of his or her own life. Exploitation is simply another way to think about objectification.

A certain level of material comfort makes one less vulnerable to the indignity of exploitation by which one can be objectified or by which one's autonomy may be reduced; material minima thus help to secure *in*dependence, which enhances dignity. In *Danial Latifi v. Union of India*, the Indian Supreme Court held that a Muslim woman had a right to a certain level of maintenance after a divorce to protect her against destitution. Insisting on maintenance as a constitutional mandate helps to protect divorced women from exploitation by their current or former husbands. Against the claim that the law providing for such maintenance was religious because it interpreted the Qur'an, the court insisted that the right to live in human dignity was a societal mandate, not a religious one. "Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity and decency of life and dictates of necessity in the pursuit of social justice should be invariably" decided on grounds other

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than religion or "national, sectarian, racial or communal constraints," the court said. Avoidance of destitution was so important to the woman's dignity that the state had an obligation to intervene.

Dignity Remedies

Reading the right to dignity so emphatically presents significant challenges. These are relevant to constitutional adjudication generally, but they have particular salience for socioeconomic (or positive) rights and especially for the right to dignity. First, what *level* of provision is necessary to ensure that dignity is protected? This definitional question slides quickly into a philosophical inquiry: what does it mean to live with dignity? But to ask this in the practical context of a legal case necessarily raises a policy question: how much money should a nation be expected to spend on housing, health care, environmental protection, education, and so on to ensure that each of its citizens lives a dignified life? And this, in turn, leads to a very practical problem for the court: should judges be the ones to decide the answers to these questions?

Courts around the world have responded to these challenges in a variety of ways. For some—notably the U.S. Supreme Court—the institutional obstacles to judicial definition and enforcement of the right to dignity are so profound that the courts avoid the problem altogether. Other courts, such as in Peru and Colombia, have embraced the challenge and placed themselves at the forefront of the sociopolitical conversation about dignity in their countries. Most other courts—such as South Africa's and India's—are walking a tightrope, trying to provide just enough moral suasion to push the political branches toward enhancing the lives of the poor majority, without being so obtrusive that they risk their own legitimacy.

One way to think about the right to dignity in its socioeconomic or material aspect is to determine the minimum core of health, shelter, food, water, environment, recreation, and so on that is necessary to assure a dignified life. According to the United Nations Committee on Economic, Social and Cultural Rights, which developed the concept, "A State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant." But this states the problem only in the negative: we know when we have a violation of the right, but we don't know what is necessary to assure there is no violation. Most courts are wary of treading too deeply in the waters of dignity. Courts have limited enforcement powers, and the absence of either "the sword or the purse" rests heavily on judges' minds as they fashion an order.

The compromise is this: while the state may be under a constitutional (and international) obligation to provide shelter, medical care, education, a healthy environment and the like sufficient to allow people to live with dignity, the right of any particular individual to demand any particular level or type of resources is much more limited. As the Japanese Supreme Court has explained in construing the welfare rights provision of the Japanese constitution, it "merely proclaims that it is the duty of the State to administer national policy in such a manner as to enable all the people to enjoy at least the minimum standards of wholesome and cultivated living; and it does not grant the people as individuals any concrete rights." In the South African *Treatment Action Campaign* case, the court put it in similar terms: while in a particular case a petitioner "may show that there is a minimum core of a particular service that should be taken into account in determining whether measures adopted by the state are reasonable, the socio-economic rights of the Constitution should not be construed as entitling everyone to demand that the minimum core be provided to them." It is thus a relevant consideration in determining whether the state has fulfilled its obligation, but it is not a "self-standing right conferred on everyone."

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Finding that the state *must* comply with the constitutional duties allows the courts to fulfill their obligations to give meaning to the constitution, but finding that they are not constitutionally enforceable by individuals mitigates the risk that the court will be perceived as having violated separation of powers, or that the government will ignore the court's orders. The order simply states that the government *must* provide the relevant services, to a *reasonable* extent. And what is "reasonable" is defined in the first instance by the legislature and reviewed with considerable deference by the court. In this way, dignity also helps to achieve the progressive realization of other rights.

Conclusion

More and more, litigants are arguing their cases from the standpoint of dignity instead of or in addition to asserting other rights, and courts are responding in surprising ways. The dignity cases are unique in constitutional law for several reasons.

- First, dignity is becoming a universally recognized constitutional value, transcending geographic, cultural, and political boundaries.
- Second, dignity is undeniably broader and more amorphous and appears in a wider variety of factual settings than any other constitutional right.
- Third, jurists are increasingly embracing the opportunity to give meaning to dignity, even in cases where it is not necessary for the resolution of the case; that is, they are *choosing* to discuss what human dignity means in their particular constitutional culture.

In these cases, we are seeing not only the development of a right, as we would see what the right to food or the right to vote means in various countries. These cases take us beyond where ordinary jurisprudence goes, and tell us something profoundly important about the relationship between the individual and the state in modern times. Simply, dignity rights are an essential and existential component of the human condition.

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Appendix: Common Issues in Vindicating Constitutionalized Dignity Rights

1. Text. What does the provision say?
    a. Placement (preamble; listing of rights; elsewhere)?
    b. Is it a right or a value?
    c. Does it apply to all persons, citizens, or to specific segments of the population?

2. Enforceability. Is it self-executing or does it require legislative action?

3. Plaintiff. Who may bring claims to enforce the right? Individuals? Associations? Omsbudsman? Is *locus standi* an issue, and if so, how?

4. Defendant. Who may be held accountable? Governmental agencies? Private parties? Corporations?

5. Jurisdiction. Which court has authority to hear the claim, and what about appeal? May the court appoint a special master?

6. Contravention. What constitutes a breach? If, e.g., the right is "inviolable," what does this mean?

7. Remedy. What relief can be afforded to redress a breach? Compliance order? Temporary restraining order (TRO)? Preliminary Injunction (PI)? Equitable (injunction), legal (damages), or declaratory relief? How does the remedy advance dignity (how much water, how clean the water or air, how much food, education, shelter, quietude? etc. What is the role of progressive realization?

8. Enforcement. Who bears the burden of enforcing a court order? Plaintiff? Special Master? Someone else?

9. Fees and costs. Who bears litigation fees, costs and expenses? Is there fee-shifting or sharing?

10. Other considerations. Is a political or other path likely to lead to a more suitable outcome?

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