

Dignity in Non-Constitutional American Jurisprudence

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Question Presented: How is human dignity understood and recognized in American law outside of the understanding established in the Supreme Court and in areas other than constitutional issues?

Brief Answer: The American understanding of human dignity is tied into American notions of self-reliance and self-sufficiency. While placing an importance on the dignity of every individual, special recognition of human dignity is only afforded to specific populations whose capacity for full autonomy is somehow diminished, with the caveat that they are vulnerable due to circumstances outside of their control. Therefore, in American law, human dignity is generally not a factor unless an individual is part of a class of people which has been deemed to have an acceptable reason for finding their dignity is at risk.

Introduction

Human dignity is unquestionably valued in American law.¹ It is recognized as inherent in everyone, however, it is not honored to the same extent for every person. American case law and statutes show that human dignity becomes a crucial factor for populations that are vulnerable in ways perceived to be beyond their control – either due to age, incapacity or infirmity. For American law, this includes primarily children, the elderly, the disabled and patients. The need for protection of these populations seems to be related to the fact that they are dependent upon others, to varying extent, for their care or decision-making, and as such, they are subject to the possibility of exploitation, abuse or humiliation. Laws are written, and cases are decided for these populations in acknowledgement of their disadvantaged position. These groups are viewed

¹ The term “American” herein refers to the United States.

as vulnerable and unable to protect their own dignity, and because of that, it is considered necessary to have the law step in and protect their dignity for them. On the other hand, the cases also reveal that despite the clear vulnerability of other disadvantaged Americans, they are not accorded the same recognition or protection of their dignity. In this way, the American notion of self-reliance and self-sufficiency is reflected in both the dearth and deficiency of the kinds of cases that address human dignity. Human dignity in America is ultimately filtered through this lens - the uniquely American pull-yourself-up-by-the-bootstraps mentality, and as such, there is a belief that under most circumstances one should be able to maintain dignity for one's self, unless factors outside of one's control make that either a challenge or impossible.

This report explores the various ways in which human dignity informs American law other than in constitutional contexts. It examines the ways in which dignity is conceptualized in American jurisprudence, and how the conceptualization of human dignity in this country grows from traditional American notions of self-reliance and independence. It has three parts. Part I explains the break down of three main concepts of dignity as presented by the Columbian Constitutional Court and briefly describes how each concept is manifested in American Jurisprudence. Part II examines the type of cases that address dignity as being free from humiliation, the concept of dignity that most comports to our American traditions. The majority of case law and statutes fall in line with this conception of dignity. Part III explores the rarer cases that fall under the concept of dignity as being related to material goods, like food and shelter. Recognition of human dignity in these cases is likewise triggered by the special circumstances and vulnerability of specific groups. The fact that these cases are so few and far between reinforce the idea that only specific populations are in special need of having their dignity recognized and respected.

The report concludes with a summation of how the American conceptualization of dignity falls short of fully realizing all that dignity entails. It also recognizes what American jurisprudence gets right about dignity and what more needs to happen to expand on this foundation.

Three Conceptions of Dignity as a Framework for Understanding American Dignity

To aid in understanding the American concept of human dignity, it is helpful to rely on three ways to conceptualize dignity as explained by the Columbian Constitutional Court. The first is “human dignity understood as autonomy or as the possibility of designing a life plan; living as one wishes;” the second is “human dignity understood as intangible goods, i.e. physical and moral integrity; living without humiliation;” and the third concept is “human dignity understood as certain material conditions [or] living well.”² American jurisprudence does recognize all three concepts to varying degrees, but unlike the more global understanding of dignity (as represented by the Columbian Court), which applies these concepts of dignity to *all* human beings generally, in America, there has to be some qualifying factor before human dignity becomes relevant under the law.

The first conception of dignity as autonomy and living as one wishes, is arguably the one that has become a constitutional concept in America and mostly aptly fits Justice Kennedy’s conception of dignity. This emphasizes the importance of certain issues that entail developing the personality, expressing one’s identity and making important life choices, such as whether or not to have children or being able to marry the person of your choosing. This understanding of dignity has not been fully embraced by a strongly divided court and how it will be treated in the future remains to be seen now that Justice Kennedy is no longer on the court. However, as a

² *Sentencia T-088/08 at 3.5.5 (Constitutional Court of Colombia)*

conception of dignity primarily in terms of constitutional issues, this treatment of dignity is not discussed in this paper; it is sufficient to name it as one way in which human dignity is recognized in American law.

The second concept, and the one that emerges from the majority of the cases surveyed, is the idea that dignity is understood as intangible goods and living without humiliation. In America, for particular groups, those intangible goods are bodily integrity, self-respect, self-esteem and independence. In some cases, the intangible good is the freedom from stigma and the ability to enjoy what is available to everyone else in the same manner as everyone else.

The third conceptualization, and the least utilized in American law, is a concept of dignity frequently embraced in foreign case law which recognizes that certain elements are necessary to living a quality life and keeping one's dignity intact. This concept of dignity is most often manifested in cases involving the right to basic necessities like food, water, and shelter, but also, the right to things that improve human life, like education and healthcare. This understanding of dignity recognizes that it is necessary for people to have access to these essential amenities and that in some cases they need to be provided, not just made available or affordable. Of the three conceptualizations of dignity, American jurisprudence seems to be the least comfortable with the understanding that basic necessities and certain material goods are necessary to support human dignity. In fact, in many ways this concept of dignity directly conflicts with an established American concept of dignity as discussed below. In America there is no right to a certain quality of life and it is generally believed that it is not the role of government to ensure or provide basic necessities. These necessities may be essential to maintaining dignity, but in American terms, it is up to individuals to acquire what they need

through hard work and effort. Being unable to provide the basics for reasons beyond one's control is considered an acceptable reason to have the government provide for basic needs.

All three conceptualizations of dignity overlap with one another and are represented in one way or another in the cases discussed in this paper. The dignitary interests of children are recognized because they are too young to be fully autonomous; the likelihood of the elderly being on a fixed income is often considered along with their ability to access health care, shelter and food. Likewise, when the dignitary interests of people outside one of the recognized groups is implicated, it is often due to the special situation of that person, or persons similarly situated, in terms of their vulnerability and disadvantages as compared to other members of society.

American Law and the Dignity of the Child

American law recognizes that children are vulnerable in a number of ways. One way is related to their relationship with their parents and the effect that relationship has in shaping them and in maintaining their mental and physical well being. Children are also susceptible to sexual abuse in ways that adults are not in part because of a child's inability to consent or comprehend sexual acts.

Children as a whole are fully dependent on their parents or other adults in charge of their care. They may depend on others for making certain decisions if they are under the age of consent. In child custody cases or support cases, there is concern for the child's dignity because of the nature of the parent-child relationship - arguably one of the most important human relationships. A child depends on a parent to provide material support, and to be a vital source of love, comfort and security. As such, when a parent's behavior is likely to damage the relationship, the impact to the child's dignity comes into play. A frequently cited termination of

parental rights case in Nebraska notes that parental neglect “adversely affect[s] the life and living conditions demanded by a child's personal dignity.”³

Other cases involving children and the parental relationship also revolve around the impact that either rejection or neglect of a parent will have upon a child’s dignity. In such cases, the courts are concerned with the message the child receives from the parent. For example, in one tort action a man sued for wrongful pregnancy after the facility storing his sperm allowed his former girlfriend to use it to conceive without his permission. The court did not allow him to recover mental anguish damages in connection with the child’s birth because, “[s]uch a message would demean [the son’s] dignity and value[.]”⁴

Likewise, in child support cases, when the non-custodial parent is not paying support, the impact to the child’s dignity results from a diminishment of the child’s self-esteem. One such case discusses the importance of the child’s need to feel valued by the parent and that not only would the relationship suffer without the financial support of the non-custodial parent, but the child himself “stands to lose that self-esteem and dignity which accompanies being supported by one's own family.”⁵

In all of these cases there is a concern about the message being sent to the child from the parent in terms of the affect on the child’s dignity. This concern could also be applied to segments of the American population when the actions of the government charged to provide for their general welfare, are neglectful or injurious. How people are treated by their government sends a message to them about their worth and importance as human beings. Again, there seems to be a belief in America that either adults are not as susceptible to this type of harm as children

³ *In re Interest of D.*, 352 N.W.2d 566, 570 (1984)

⁴ *Hardin v. Obstetrical & Gynecological Assocs. P.A.*, 527 S.W.3d 424, 440–41 (Tex. App. 2017), review denied (June 1, 2018) (citations omitted).

⁵ *Baldwin v. Ledbetter*, 647 F. Supp. 623, 38, 639 (N.D. Ga. 1986).

are, or if they are they should be capable of handling it. It would appear that, due to a child's complete state of dependency, the law is willing to step in to protect the dignity of children.

Given the courts' willingness to consider the dignity of the child in family law situations where the child is vulnerable to psychological harms, it is surprising that in the area of child sexual abuse cases, almost as a whole, there is no discussion of the child's dignity. It is the same for adult victims of rape, in that the act of rape is not classified as a crime against human dignity nor is the victim's dignity generally discussed in the cases. In fact, in the majority of child sexual abuse cases that do reference dignity it refers to the crime as being against the dignity of the state.

As an exception to the rule, the dignity of the child was a factor in a case where the defendant claimed that the sentence he received for the rape of his 11-year-old daughter was not in proportion to what he classified as the minor harm suffered by his daughter as the result of his actions. The discussion recognizes the traumatic effect of rape made even worse when perpetrated by a parent. The court disagreed with the father-defendant that the harm could ever be characterized as minor, finding that the incident was a "profound invasion of the child's personal dignity and privacy. Its inevitable effect is to deprive the child of any semblance of a normal, trusting relationship with the offending parent."⁶

American Tort Law, unlike Criminal Law, does recognize the impact upon human dignity, unique to children, that occurs with sexual assault. In *Pettit v. Erie Insurance*, the perpetrator filed an insurance claim to cover damages stemming from a civil case for the acts of child sex abuse that he committed. He claimed that because he did not intend to cause harm to his victims the policy exceptions for liability coverage for "injury or damage expected or

⁶ *Demus v. State*, No. A-1250, 1987 WL 1357148, at *3 (Alaska Ct. App. June 3, 1987)

intended” should not apply to his case.⁷ The court held that the exception did apply, that whether or not there is physical harm, child sexual abuse is, inevitably and at its core, a violation of human dignity, autonomy and bodily integrity and that those harms carry more weight than any physical harm that may occur:

Child sexual abuse is an affront to the dignity of the child—an invasion of the child's autonomy—because a child cannot appreciate or comprehend the full nature of the sexual acts. While it is undoubtedly worse to couple sexual molestation of a child with physical injury, such a distinction differs in degree, not in kind. The essence of child sexual abuse is the violation of the dignitary interest, whether there is physical injury or not.... Since the essence of the plaintiff's grievance consists in the *offense to the dignity* involved in the unpermitted and intentional invasion of the inviolability of his person and not in any physical harm done to his body, it is not necessary that the plaintiff's actual body be disturbed. (emphasis in original)⁸

This quote is partly from the Second Restatement of Torts and shows a profound understanding of dignity and dignitary harms. As mentioned before, there is almost no discussion of human dignity in criminal cases involving sexual assault. Almost nothing appears relating to the dignity of adult victims of sexual assault in either area of law. This is a perplexing example of even further limitations of our understanding of dignity given that sexual assault is a clear violation of human dignity regardless of who the victim is.

Child pornography, on the other hand, is viewed as a crime of dignity, if not officially classified as such. Courts recognize that adult pornography, no less than child pornography, results in a diminution of dignity, in that it turns a person into a sexual object. While it is considered allowable for an adult to consent to the diminution of her dignity, a child is not capable of consent. This is also why child pornography is not protected under the First Amendment. The law recognizes the child's vulnerability and the various psychological harms

⁷ *Pettit v. Erie Ins. Exch.*, 709 A.2d 1287, 1291 (1998)

⁸ *Id.* at 1291(citing Restatement (Second) of Torts § 18 cmt. c (1979), citations omitted).

associated with pornography as a crime against her dignity and autonomy and seeks to protect the child from those inevitable harms.⁹

In American law it is understood that, “human dignity is offended by the pornographer. American law does not protect all human dignity; legally, an adult can consent to its diminishment.”¹⁰ This statement is an interesting reflection of the American law’s relationship to human dignity in general. There is a recognition that human dignity is implicated in pornography but the law only steps in to protect a child’s dignity because adults are seen as being capable of maintaining their own dignity through their informed and willing participation. In much the same way, we recognize certain life conditions create vulnerability and, therefore, implicate dignity, but the force of law is only applied to protect the dignity of those viewed as incapable of protecting it for themselves. Much in the same way the law views adults choosing to engage in pornography, Americans seem to view other disadvantaged populations as being both responsible for their own situation *and* responsible for maintaining and preserving their own dignity.

Dignity as a Factor for Determining When to End Life Support

There are frequent references to the dignity of patients in American jurisprudence, but dignity becomes particularly relevant in cases deciding whether or not to terminate life support when the individual in question is unable to make that decision for himself. Generally, there would be a family member who could make this determination or the patient may have a health care directive expressing his wishes whether or not to be resuscitated or how long to continue life sustaining treatment. Occasionally, these end of life decisions have to be made by a judge and the cases provide a useful discussion about the impact to human dignity when someone is

⁹ *United States v. Wiegand*, 812 F.2d 1239, 1245 (9th Cir. 1987); see also, *New York v. Ferber* 458 U.S. 747 at 758, 775, 776, (1982).

¹⁰ *Id.* at 1245.

subjected to medical intervention to keep him just alive and that person is completely incapable of making the decision for himself.

In these types of cases, the court will specifically consider the amount of humiliation a person may suffer in terms of the impact to one's dignity. In California, for example, among the many factors a judge will consider in making such a determination is whether the treatment involved to sustain life "may violate patient dignity and cause unnecessary pain and suffering," and "[t]he degree of humiliation, dependence and loss of dignity probably resulting from the condition and treatment;"¹¹ This consideration arises from the fact that the person is unable to make decisions and is exposed to the possibility of humiliation and suffering over which they have no control.

In another case an infant in state's custody was being kept alive in an irreversible coma as a result of a car accident. The child's human dignity was recognized as inherent and constant, in that her dignity was susceptible to being harmed regardless of whether or not she was conscious of what was being done to her. In this case the child's breathing was controlled by a machine and she was fed through a tube that was kept inserted in her stomach. She had undergone surgery to reduce the number of times she had to be medically resuscitated, and it was determined that she would never recover consciousness. Despite all of this, her court appointed guardian ad litem appealed a judicial determination that the child should no longer be resuscitated.¹²

In response to the notion that all of the medical intervention necessary to keep the child alive was a violation of her dignity the guardian argued that "the child has no dignity interest in being free of bodily invasions," because she "has no cognitive ability and therefore will suffer no

¹¹ *In re Christopher I.*, 106 Cal. App. 4th 533, 550–51, 131 Cal. Rptr. 2d 122, 133–34 (2003), *as modified on denial of reh'g* (Mar. 10, 2003), (citations omitted)

¹² *Care & Prot. of Beth*, 587 N.E.2d 1377 (1992)

indignity that the medical care might be supposed to produce in a conscious person.”¹³

Recognizing human dignity as an inherent, constant quality that does not come and go based on an individual’s state of consciousness or competency, the court held, “Cognitive ability is not a prerequisite for enjoying basic liberties.... incompetent people are entitled to the same respect, dignity and freedom of choice as competent people.”¹⁴ Additionally, the court held that even if surgery reduced the frequency of bodily invasions in order to resuscitate the child, that “does not make any particular invasion less likely to offend the child's dignity.” Here, there is a recognition of the need to protect the vulnerable from unnecessary bodily indignities as well as recognition that her dignity should be respected no less than anyone else’s regardless of her mental state.

This case is interesting because here, the guardian as *liedum* was making the argument that the important factor was *how* one experiences a loss of dignity. The guardian’s argument is more in line with an American understanding of dignity which implies that not everyone needs to be treated the same in terms of their human dignity. What seems to matter in American law is how the loss of dignity is experienced – only the experience of some is considered valid. The court’s response, would seem to turn the American notion of human dignity on its head, stating clearly that everyone is entitled to dignity under any circumstance. Additionally, what matters is the offence against human dignity itself – not how it is experienced or how frequently or infrequently an offence may occur.

The Dignity of the Elderly, Disabled and Nursing Home Residents in American Law

For the elderly, the disabled and nursing home residents, the law expressly acknowledges their particular situations and the issues unique to each group which affect

¹³ *Id.* at 1382

¹⁴ *Id.*

their dignity. We recognize the dignity for these three groups generally because of their dependency on others and the loss of independence that comes with it. In effect, when speaking in terms of dignity and its treatment in American law, all three groups are interchangeable. They are reviewed separately for this paper to help further define the American understanding of human dignity through the pattern that emerges from their individual treatment in American law.

The Elderly

The fact that we view the elderly as vulnerable and in need of having their dignity protected is most evident in the laws enacted for their benefit. One court has recognized “[t]he elderly . . . as a disadvantaged and distressed group with definite needs calling for special attention[.]” As such, both state and federal laws have been written with an eye toward uplifting the elderly and allowing them to “lead more secure and independent lives.”¹⁵

Often, the recognition of access to essentials such as housing is established through recognition of the special needs of the elderly and disabled. As part of its housing plan for seniors, Orange County, California, listed consideration of the need for railings and ramps and lower countertops and cupboards. The plan mandated that “...every effort should be made to maintain the dignity, self-respect, and quality of life of mature residents in the County.”¹⁶ Here it was the not so much that the elderly deserve housing as a material necessity, but that they deserve housing that accounts for their limited mobility so that they can keep their dignity intact.

In New Jersey, findings that the elderly faced isolation, economic hardship and the inability “to cope with the change in family relationships,” lead to legislation that would “help

¹⁵ *Matter of Tax Appeal of Cent. Union Church--Arcadia Ret. Residence*, 624 P.2d 1346, 1350 (1981).

¹⁶ *Foothill Communities Coal. v. Cty. of Orange*, 166 Cal. Rptr. 3d 627, 638 (2014)

the elderly grow old with dignity and independence.”¹⁷ This included a law which demanded that social services and “assistance should be extended in a manner and environment which increase a person's importance, dignity and self-esteem.”¹⁸ This last statement indicates that there is something demeaning or humiliating about needing and receiving assistance, and so like other considerations for the elderly, the manner in which necessary assistance is delivered must also take their dignity into account.

The Declaration of Objectives and Definitions for the Programs for Older Americans section of the Public Health and Welfare code is a set of entitlements Congress has determined that the elderly deserve.¹⁹ It does not create any rights to these benefits but asserts that it is the responsibility of the government to assist in making them available to the elderly. The declaration claims as its purpose to be faithful to “the traditional American concept of the inherent dignity of the individual.”²⁰ As such it gives us a glimpse into how Congress views human dignity and the elements essential to maintaining it. Many of these entitlements are associated with all three concepts of dignity: a certain quality of life - physical and mental health, happiness, income, housing, employment, and full participation in one’s community as well as self-respect, autonomy and meaningful choices. This is demonstrated by the recognition of the elderly’s need for “suitable housing, independently selected.... long-term care services adequate to appropriately sustain older people in their communities and in their homes.... [p]articipating in and contributing to meaningful activity within the widest range of civic, cultural, education and training and recreational opportunities.... [f]reedom,

¹⁷ *Texter v. Dep't of Human Servs.*, 443 A.2d 178, 184 (1982)

¹⁸ *Id.*

¹⁹ 42 U.S.C.A. § 3001

²⁰ *Id.*

independence, and the free exercise of individual initiative in planning and managing their own lives....” The declaration also recognizes that elderly people deserve “[r]etirement in health, honor, [and] dignity...” with the caveat that it come after years of contributing economically to society – a reward for their years of self-sufficiency.²¹

The Disabled

Many of the laws enacted for disabled Americans, also have aspects of all three conceptions of dignity and, like the laws for the elderly, seek to protect their dignity through ensuring their independence and ability to maintain their self-respect. Sometimes this is accomplished through giving special notice of the need of the disabled to be treated like any other member of society. In reference to the Americans with Disabilities Act (ACA), one court notes that a purpose of the act is to protect the disabled from humiliation and the “effects of benign neglect resulting from the invisibility of the disabled[.]”²² This is to be accomplished by providing “services in a manner consistent with basic human dignity rather than a manner which shunts them aside, hides, and ignores them.”²³ This sentiment is similar to the concerns shown for children and the feelings of inferiority they may feel based on how they are treated. Again, the special consideration here is for the disabled, but, the statement shows generally that it matters how people are treated and that their treatment should comport with respect for their dignity.

The findings for the *Vocational Rehabilitation and Other Rehabilitation Services Act*, requires that programs under this act are to be carried out in such a way as to show, “respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers,

²¹ *Id.*

²² *Helen L. v. DiDario*, 46 F.3d 325, 335 (3d Cir. 1995).

²³ *Id.* at 335.

based on informed choice, of individuals with disabilities[.]”²⁴ The findings also recognize that “individuals with disabilities constitute one of the most disadvantaged groups in society....” that nonetheless have the right to “live independently; enjoy self-determination; make choices; contribute to society; pursue meaningful careers; and enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society[.]”²⁵ All of these quality of life issues are implicated in all three concepts of human dignity. The fact that they are listed here as rights, shows that American law does comprehend the essential elements of dignity, what is missing is an appreciation that it is not just the disabled that find it difficult to realize the full enjoyment of these rights.

Nursing Home Residents

Nursing home residents can be either elderly or disabled or both. They are afforded respect for their dignity, like the elderly and disabled, as individuals who are unable to care for themselves and are dependent upon others for their daily physical care. Nursing home residents are often viewed as having the added indignity of not being able to live in their own home. Many states have statutes with explicit rights for residents of nursing homes which frequently reference a person’s dignity. The following example from Louisiana is typical of many state statutes and lists among other rights, “The right to be treated courteously, fairly, and with the fullest measure of dignity.”²⁶ One nursing home facility seeks to provide “an alternative to the traditional nursing home which helps older people help themselves, thereby preserving the dignity and choice

²⁴ 29 U.S.C.A. § 701 (West).

²⁵ *Id.*

²⁶ La. Stat. Ann. § 40:2010.8.

during the remaining years of their lives.”²⁷ This is a clear statement of dignity understood as self-sufficiency and independence.

In a wrongful death case involving nursing home residents, the plaintiffs were contesting the mandatory arbitration provisions in the residential contracts. The court found that as a defined group of consumers, residents of nursing homes were invariably at a relatively inferior bargaining position compared to the homes’ management. In considering the relative bargaining power of either side of the contract, the court recognized the particular “global characteristics that every potential nursing home resident shares,” specifically, an inability “to continue to live in their homes due to ill health, advanced age, or both.” It noted that some state laws designed specifically to protect this group affirmed that nursing home residents “[h]ave the right to a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident[.]”²⁸ The nursing home residents were recognized as “a uniquely vulnerable group of consumers, entitled to special protection against economic abuse, personal privacy abuse....and an array of other abuses that speak to the core of human dignity.”²⁹ Although this case addressed the needs of nursing home residents, it exemplifies the elements necessary for making dignity a relevant factor in American jurisprudence. First, there must be a diminution of self-reliance beyond the control of the individual and second, the individual must be member of a recognized disadvantaged and vulnerable class. If the individual meets these two criteria, then he is worthy of special protection from the law against violations of his dignity.

The Recognition of Dignity in American Law for Other Disadvantaged Groups

²⁷ *Madrid Home for the Aging v. Story Cty., Iowa*, No. 1999-273, 1999 WL 1020720, at *2 (Iowa Ct. App. Nov. 10, 1999)

²⁸ N.J.S.A. 30:13-5 *Rights of Resident*

²⁹ *Estate of Ruszala ex rel. Mizerak v. Brookdale Living Communities, Inc.*, 1 A.3d 806, 820–21 (App. Div. 2010)

Very rarely does American case law officially recognize human dignity for groups other than ones discussed above. The few cases that do mostly fall under the third category of dignity conceived as being able to live well. These cases are the exception and a couple of them are based on laws that are no longer in effect. However, they do have some things in common with the other cases reviewed so far. They reference human dignity in terms of the disadvantaged situations of the people involved and their relative positions of vulnerability, either due to their financial situation, or due to some other quality that keeps them from fully participating in the broader society. The fact that all of the cases throughout this report share this commonality further emphasizes the general notion that vulnerable people are the most at risk of suffering dignitary harms. The fact that there are so few cases about human dignity that do not involve the groups discussed above, further emphasizes the perception that most Americans can manage to keep their dignity intact through their own personal resources and resolve, without needing any assistance from the law.

In a 1974 case, the District Court of New Jersey recognized the necessity of housing to human dignity and found support for its recognition in a now repealed federal statute - the United States Housing Act of 1937. The case involved a settlement agreement between the Department of Housing and Urban Development (HUD) and the New Jersey Housing Authority (NHA) resolving a four year rent strike on the part of the residents in response to substandard conditions. The court expressed sympathy for both sides and recognized that the strike created a further financial burden on the already cash strapped departments and exacerbated the problems for both the public housing authority and the residents. In effect, the government was “unable to fulfill the legislative commitment of the United States Housing Act of 1937 to *provide* to all that which

is basic to human dignity, ‘decent, safe, and sanitary dwellings. . .’³⁰ In referring to the intent of the legislature and the language of the statute, the court recognized the role that housing plays in maintaining dignity and the ability to live well.

The United States Housing Act of 1937 is no longer in effect and appears to have been replaced by *The Public Health and Welfare, Chapter 8, Low-Income Housing, Subchapter I. General Program of Assisted Housing*. This statute now states “that the Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens....” but recognizes a government responsibility to encourage private efforts that empower people to improve their own neighborhoods.³¹ This is in keeping with the apparent American preference for less government involvement and more self-reliance on the part of individuals in achieving what is necessary for a dignified life.

Although the federal mandate to provide housing is no longer in effect, many state and municipal statutes are modeled after the United States Housing Act of 1937 and recognize the need to assist low income residents in obtaining “safe, decent and sanitary” housing. The relationship of housing to human dignity is specifically recognized in the state of Illinois in its Economic Development Authority statutes for the various municipalities or regions. Many of the acts have the following statement in the section of findings: “That decent, affordable housing is a necessary ingredient of life affording each citizen basic human dignity, a sense of self worth, confidence and a firm foundation upon which to build a family and educate children...”³² This sentiment is primarily grounded in the second concept of dignity as realized through living well by referring the ability to “build a family and educate children.” The statute also reflects the third concept of dignity with its reference to self worth and confidence indicating that

³⁰ *McCray v. Beatty*, 64 F.R.D. 107, 111–12 (D.N.J. 1974), (citing 42 U.S.C.A. Sec. 1401, emphasis added).

³¹ 42 U.S.C.A. § 1437(2) (West) (effective July 29, 2016)

³² 70 Ill. Comp. Stat. Ann. 506/5, 518/10, 520/2, 525/2002, 530/2, 532/10, 540/5

homeownership and providing a home for one's family is also tied into the American concept of dignity and self-respect.

In a 1991 civil forfeiture case, a 52-year-old woman faced eviction from her public housing through an anti-drug forfeiture statute when one of her daughters was found to be selling drugs from her apartment. She was living in a three-bedroom apartment with two of her daughters and 15 of her grandchildren and great-grandchildren, over many of whom she had legal custody. In a surprisingly understanding assessment of the challenges faced by the poor, the court gave consideration to the unique and difficult situation of poverty and the types of human behaviors and choices that accompany it, stating; “[c]ompassion and graciousness are not attributes easily afforded where living conditions are barely above those necessary for survival.”³³ Through out the opinion, the court discussed the nearly insurmountable challenges faced by the poor in general and the plaintiff in particular. The court recognized the vulnerability of poor people and the importance of being able to keep their housing, not only to ensure they have shelter but to maintain their dignity.

Given the vital importance of the dignitary interest at stake, the court argued against what it saw as an unfair burden of proof which allowed the government to seize a property through forfeiture by a showing of less than a preponderance of the evidence that it was used illegally, while the property owner must establish her defense by a preponderance of the evidence. The justification for the higher burden to be on the government was evident, “in light of the important role of decent housing in maintaining human dignity and the strong likelihood that the loss of public housing will result in homelessness.”³⁴ For elderly and disabled citizens laws often work

³³ *United States v. Leasehold Interest in 121 Nostrand Ave., Apartment 1-C, Brooklyn, N.Y.*, 760 F. Supp. 1015, 1024 (E.D.N.Y. 1991).

³⁴ *United States v. Leasehold Interest in 121 Nostrand Ave., Apartment 1-C, Brooklyn, N.Y.*, 760 F. Supp. 1015, 1032 (E.D.N.Y. 1991).

to protect their dignity. In this case, the court is arguing that the dignity of the plaintiff needed to be protected from the law.

In the following case, the court's discussion involved consideration of the amount of money necessary to maintain human dignity as well as recognition that the purpose of money awarded for personal injury also involves human dignity. The Maryland Constitution mandates that the legislature pass laws to protect "a reasonable amount of the property" of a person filing for bankruptcy.³⁵ One such statute created an exemption for damages awarded for personal injury.³⁶ In a challenge to the statute, the creditor believed that it went beyond what was reasonable when it did not put a cap on the amount of damages that were to be withheld from the bankruptcy action.

The creditor agreed that the "[e]xemptions provide a bankrupt debtor with that property that is necessary to maintain human dignity," but believed that a reasonable amount to achieve this purpose would be limited to what was necessary for subsistence.³⁷ The judge discussed the purpose of the statute in preserving personal injury monies as an attempt to restore human capital and that the amount awarded was an amount determined by a jury to be necessary to make an injured person whole under the law.³⁸ The court also found that the exemption statute represents the legislature's recognition that "a debtor's body is sacrosanct and unreachable by creditors," and that "the value of things required to preserve or restore life and health is inherently reasonable."³⁹ As such, the court disagreed that personal injury exemptions should be limited to subsistence and held that, "[a]t the most basic level, preservation of monetary restoration for

³⁵ Md. Const. art. III, § 44.

³⁶ Md. Code Ann., Cts. & Jud. Proc. § 11-504 (West).

³⁷ *In re Butcher*, 189 B.R. 357, 367 (Bankr. D. Md. 1995), subsequently aff'd, 125 F.3d 238 (4th Cir. 1997)

³⁸ *Id* at 365.

³⁹ *Id* at 367

bodily loss accomplishes the maintenance of human dignity.”⁴⁰ Arguably, this case does not stray very far from the traditional understanding of dignity in American law. This case is not so much about the amount of money necessary to maintain human dignity as it is an understanding that money for personal injury is distinctly related to American notions of human dignity and the special recognition afforded to those who have experienced a diminishment of physical capacity not of their own doing.

In a very recent California case the doctrine of unconscionability was found to function, in part, to protect human dignity in cases where the parties are in unequal bargaining positions and there is a lack of meaningful choice for the disadvantaged party. In this case, the California Supreme Court addressed the specific question of whether an interest rate on a consumer loan could render the loan unconscionable.⁴¹ The Court emphasized the flexibility of the unconscionability doctrine and the need to review the contract terms in question in context, taking into account “all relevant circumstances.”⁴² Here, it was relevant that under California law there was a cap on interest rates for loans in the amount of \$2,500.00 or less and that the signature loan that defendant CashCall provided was for \$2,600.00 with interest rates ranging from 96 percent to 135 percent.⁴³ The Court also considered that the people taking these loans were “consumers with low credit scores....living under financial distress,” and that in its television advertising CashCall specifically “capitalized on the viewer’s need to get money quickly.”⁴⁴ The Court explained that the justification for the unconscionability doctrine throughout history “was to protect social welfare,” and that it was “meant to ensure that in circumstances indicating an absence of meaningful choice, contracts do not specify terms that are overly

⁴⁰ *Id*

⁴¹ *De La Torre v. CashCall, Inc.*, 422 P.3d 1004 (2018)

⁴² *Id.* at 1009-1010

⁴³ *Id.* at 1008

⁴⁴ *Id.*

harsh[.]”⁴⁵ Emphasizing the flexibility of the unconscionability doctrine, the court determined that the legislature was “entitled to subject loan transactions, like other contracts, to the unconscionability doctrine’s nuanced blend of tractability and protection of human dignity.”⁴⁶ This is similar to the nursing home contract case that recognized the residents as being in an unequal bargaining position. By taking into account the situation and status of the borrowers in this case, the court found that the doctrine of unconscionability was designed to protect human dignity by protecting vulnerable people from exploitation – especially from a company seeking to benefit by exploiting the borrowers’ financial need.

A case recognizing the dignity of migrant workers arose when an employer/landowner attempted to bar an attorney and another migrant from visiting the workers on his land. The purpose of the visit was to provide legal advice and assist the workers in obtaining the social services available to them. The visitors were twice convicted under a trespass statute before coming before the New Jersey Supreme Court.⁴⁷ The reasoning in this case, like the public housing rent strike case, relied on federal statutes and the intent of the legislature to support its finding that the dignitary interests of migrant workers outweighed the property interests of the landowner. The statute on which the court relied was the Economic Opportunity Act of 1964, established for the protection and support of migrant workers; it has since been repealed. The purpose of the act was to assist migrant workers and their families in “improv[ing] their living conditions and develop[ing] skills necessary for a productive and self-sufficient life,” and to provide for programs “to meet the immediate needs of migrant and seasonal farmworkers and

⁴⁵ *Id.* at 1010, 1013, 1014.

⁴⁶ *Id.*

⁴⁷ *State v. Shack*, 277 A.2d 369 (1971).

their families, such as day care for children, education, health services, improved housing and sanitation legal advice and representation, and consumer training and counseling.”⁴⁸

The court recognized that migrant workers are challenged in their ability to thrive and that the elements supporting human dignity are not readily available to them due to their language barriers and transient lifestyles. The workers were found to be a vulnerable minority, a “highly disadvantaged segment of our society.... rootless and isolated. Although the need for their labors is evident, they are unorganized and without economic or political power.”⁴⁹ The court focused on the necessity of access to the broader community, and also recognized “a dire need to provide the workers with basic educational and informational material in a language and style that can be readily understood by the migrant”⁵⁰

Again, the court recognized that the precarious position of the migrant workers made protecting their rights to access to information and participation in the broader community all the more important, and that “the employer may not deny the worker his privacy or interfere with his opportunity to live with dignity and to enjoy associations customary among our citizens.”⁵¹ Because of the rights at issue, the information and assistance that were being provided to the workers were considered fundamental to the ability of the workers to live a full and dignified life and as such took priority over the employer’s interest in his real property.

Much of the language and reasoning in this case is nearly identical to treatment and recognition afforded to the elderly, the disabled and nursing home residents. The court recognized that the migrant workers had a diminished capacity to be independent and able to

⁴⁸ *Id.* at 372.

⁴⁹ *Id.*

⁵⁰ *Id.* at 372-73.

⁵¹ *Id.* at 374-75.

fully participate in society – to live well. The purpose of the Economic Opportunity Act of 1964, buttressed the argument that the issues causing the migrant workers’ disadvantage in American society - the language differences and their transient lifestyles – were beyond their control. Both the law and the court recognized migrant workers as a distinct and vulnerable class of people worthy of special protection against violations of their dignity.

If anything, this case shows that the American understanding of dignity can easily apply to any number of disadvantage groups or individuals. However, the case is nearly 50 years old and the statute relied upon was repealed a few years after the case was heard. For a number of reasons, we have chosen over the years to severely limit who qualifies to have their dignity recognized and protected.

Conclusion

American jurisprudence recognizes that everyone has inherent dignity and that human dignity can be impacted and affected by a person’s status or situation. American law rightly acknowledges that vulnerable people are especially deserving of having their dignity respected and protected. How dignity is understood and recognized in America is tied to our traditional notions of self-reliance and self-sufficiency. The relationship between the two results in an incomplete conceptualization of dignity, that even in its watered down state is not expected to apply to everyone.

Generally, we do not see human dignity as something that is at risk unless someone is in a diminished capacity to fully care for themselves. Even when that is the case, our recognition of vulnerability is limited to specific populations who are in a situation of diminished autonomy for reasons beyond their control. To further compound this issue, there is a limited set of criteria for conditions considered to be beyond the control of an individual. This sets up a dynamic where

only some people find themselves in situations considered acceptable for triggering recognition of their dignity. All the other people are on their own – it is believed they should be able to take care of themselves and maintain their own dignity.

In the end, what is important is that we do recognize when dignity matters and we understand that how people are treated affects their dignity and their sense of self-worth. The American conception of human dignity needs to expand from this foundation to have the law recognize that dignity is something to be equally protected and respected in a way that affirms the intrinsic worth of every human being above all other factors.