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Logi Gunnarsson | Ulrike Mürbe | Norman Weiß (eds.)

# The Human Right to a Dignified Existence in an International Context

Legal and Philosophical Perspectives



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# Human Dignity and the Human Right to an Existence Worthy of Human Dignity

*Lögi Gunnarsson / Norman Weiß*

The international human rights discourse has been linked to human dignity since the adoption of the Universal Declaration on Human Rights on 10 December 1948.<sup>1</sup> At that time, invoking human dignity was clearly a reaction to the recent atrocities and a statement underlining the value of each and every individual human being. But the concrete implications on human rights law and law in general were not quite clear and foreseeable.

Our conference brought together speakers and participants from different countries and various disciplines to discuss the human right to a dignified existence in an international context. Although the theme of the conference indicates that we have moved far beyond the mere invocation of human dignity, the topics of the papers that were presented show that some fundamental questions are still awaiting answers.

In this introduction, we do not attempt to provide a comprehensive overview of the topic. Rather, we aim to propose a basic framework for locating some of the basic questions in the area from a philosophical and legal perspective. Thus we hope to provide a useful background against which the papers in the volume can be read.

## *1. General remarks on the role of human dignity*

The concept of human dignity appears to play a *foundational* role in important human rights documents, for example in the International Covenant on Civil and Political Rights (CCPR)<sup>2</sup> and the German Basic Law (GG)<sup>3</sup> (emphasis added by LG/NW):

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1 UN Doc A/RES/810, 71.

2 International Covenant on Civil and Political Rights, 16 December 1966, UNTS vol. 999.

3 BGBl. 1949 I 1ff. The English quotes are taken from [https://www.gesetze-im-internet.de/englisch\\_gg/](https://www.gesetze-im-internet.de/englisch_gg/) [retrieved on 12 December 2018].

- “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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, Recognizing that these rights *derive from the inherent dignity* of the human person,” (Preamble of CCPR).
- “(1) *Human dignity* shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people *therefore* acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.” (Art. 1 GG)

Such passages suggest that human dignity is somehow the *justificatory foundation of all human rights*. It is a subject of controversy how this foundational role is to be understood and whether it is even a cogent idea to assume that human dignity plays such a foundational role. Here we just want to point out that anybody who thinks that human dignity does or should play such a foundational role must answer certain questions in articulating this role. First: Is there a fundamental *right* to human dignity founding all other rights *or* is human dignity something that plays a foundational role with respect to all other rights but *not* in terms of a *right* to human dignity?

Second: Irrespective of which answer one gives, a further issue arises in each case. For each option, one must answer the further question as to how human beings come to have human dignity (or the right to human dignity). There are, roughly speaking, two different answers to this further question. According to an answer often called “the moral approach,” humans somehow simply have human dignity (or the right to human dignity) and their human dignity gives humans a special moral status (or human dignity is a special moral status humans simply have). The natural law tradition offers one way of fleshing out this approach, a Wittgensteinian or quietist position another one. According to an answer often termed “the political approach,” human dignity (or the right to human dignity) is not something human beings simply have. Rather it is a status that is instituted or assigned. Nevertheless, this instituted status plays a foundational role with respect to all other human rights. This approach must then say something about the reasons for instituting such a status to all humans: Are they of historical, subjective, objective or inter-subjective validity? Are they moral, political or pragmatic reasons?

The notions of dignity and human dignity also appear in other contexts in human rights documents. In these cases, it appears that human dignity does not play the role of a foundation of all human rights. Thus, we call



this the *non-foundational* role of human dignity. Here are some examples of these different contexts (emphasis added by LG/NW):

- Chapter 1 of the Charter of Fundamental Rights of the European Union<sup>4</sup> (encompassing Articles 1-5) is entitled “dignity”.
- “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his *dignity* and the free development of his personality.” (Art. 22 UDHR)
- “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an *existence worthy of human dignity*, and supplemented, if necessary, by other means of social protection.” (Art. 23 UDHR)
- “[E]ducation shall be directed to the full development of the human personality and the *sense of its dignity*.” (Art. 13 CESCR<sup>5</sup>)
- “All persons deprived of their liberty shall be treated with humanity and with respect for the *inherent dignity of the human person*.” (Art. 10 CCPR)

In these contexts, the notions of dignity and human dignity play a role on the level of specific human rights and do not figure explicitly as concepts on which all human rights are based. The question is how to interpret this role. One possibility would be that there is a specific human right to an “existence worthy of human dignity” and that this right is one right among other particular human rights. The right formulated in Art. 23 UDHR, for example, would then be justified by this specific right to an “existence worthy of human dignity”. If the role of the concept of human dignity is understood in this way, then one must explain what it means to have this specific right in addition to others.

Another possible interpretation of the role of dignity in such contexts would be that human dignity does not amount to a separate and specific human right, but rather plays another role with respect to various specific human rights. If one favors this second interpretation, one must further explain the role of human dignity for these various specific rights (possibly in different ways for different rights).

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4 Charter of Fundamental Rights of the European Union, 18 December 2000, Official Journal of the European Union 2000/C 361/1.

5 International Covenant on Economic, Social and Cultural Rights 16 December 1966, UNTS vol. 993, 3.

There are many different possibilities of fleshing out the second interpretation. Here are only some: Human dignity might articulate the *overarching point* or *rationale* of some rights. For example, the right not to live in poverty might be understood as being a concrete articulation of the right to lead a dignified life. Poverty makes it impossible to lead such a life. Or human dignity might point to a *threshold* helping to interpret certain rights: The right not to live in poverty would be violated if the level of income is too low to be able to lead a dignified life. Or human dignity could be a *background principle* of how to act within the limits of human rights. For example, if detention or deportation is as such not ruled out by human rights, at least it must be carried out in a way compatible with the human dignity of all parties. Poverty, detention and deportation are discussed in some of the papers in this volume (see below).

We conclude that a case can be made for saying that human dignity plays a foundational role and for saying that it plays a non-foundational role. This does not mean that human dignity cannot play *both* roles in human rights. However, if it does or should play both roles, important and interesting questions arise: What is the relationship between the role of the concept a human dignity in its foundational function and its non-foundational role? Is it possible that the concept does not have the same meaning in these two different functional roles? One might even say that there is a paradox to be solved if one supposes that human dignity plays these two roles: Put simply, how can human dignity be the X that founds Y and the Y founded by X?

## 2. *The role of human dignity in specific contexts*

In order to answer the general questions of the role human dignity, it is necessary to consider its role in particular contexts. One of the main purposes of this collection of papers, is to examine the various specific functions of the concept of human dignity and the idea of an existence worthy of human dignity. Here we just want to make a few preliminary remarks.

According to the general rules of interpretation laid out in art. 31(1) of the Vienna Convention on the Law of Treaties, the meaning of provisions within human rights treaties must be understood “in light of the object[s] and purpose[s]” of the relevant treaty. The ICCPR, the ICESCR, and other major international human rights treaties are human rights instruments that create legally binding obligations on states parties to respect human rights. Both the ICCPR and the ICESCR, following their preambles, are dedicated to particular values: dignity, equality, freedom, justice, and

peace. Both preambles also indicate that respect for human rights is believed to establish “freedom, justice and peace” and will lead to the enjoyment of political and civil freedom.

The phrase “human dignity” must, therefore, be understood in light of these objects and purposes. This means understanding human dignity in a way that will give meaning and operation to the rights set out in the relevant treaties. Such interpretation must be in line with the values that underpin the treaties, including the professed purposes of “freedom, justice and peace.” Taking this into account, one may assume that “the interpretation of human dignity should be expansive, in line with the rights enumerated in the relevant treaties, and accord with a vision of a peaceful, just, and free world”<sup>6</sup>

Taking a rather rough view at the decisions of major human rights treaty bodies, we can say that the committees do not provide a clear definition of the term human dignity. Their approach is rather to identify acts and behaviors that constitute a violation of human dignity. Here, the Human Rights Committee focuses on art. 10 (detention) and 7 (torture) CCPR. Humiliating and unnecessary methods as well as poor conditions of detention can amount to a violation of human dignity.<sup>7</sup> Inhumane treatment attaining “a minimum level of severity” is regularly understood to violate human dignity.<sup>8</sup> The CESCR-Committee, however, noted that “social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.”<sup>9</sup>

These were just some cursory remarks. The papers in this volume explore in depth the role of the concept of human dignity and the notion of an existence worthy of human dignity in various contexts. We do not want

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6 Jane Kotzmann and Cassandra Seery, *Dignity in International Human Rights Law: Potential Applicability in Relation to International Recognition of Animal Rights*, in: *Michigan State International Law Review* 26/1 /2917), 1-41 at 20.

7 *See* Human Rights Comm., Views: Communication No. 1020/2001, 2.5– 2.11, U.N. Doc. CCPR/C/78/D/1020/2001 (Sept. 19, 2003) [hereinafter *Cabal v. Australia*]; *see also* Human Rights Comm., Views: Communications Nos. 1209, 1231/2003, & 1241/2004, 6.3, U.N. Doc. CCPR/C/92/D/1209,1231/2003&1241/2004 (Apr. 24, 2008) [hereinafter *Sharifova v. Tajikistan*].

8 *See* Human Rights Comm., Views: Communication No. 899/1999, 2.1, 5.6, U.N. Doc. CCPR/C/75/D/899/1999 (July 25, 2002) [*Francis v. Trinidad*]. *See also* Human Rights Comm., Views: Communication No. 1530/2006, 7.3, U.N. Doc. CCPR/C/100/D/1530/2006 (Nov. 3, 2010) [*Bozbey v. Turkmenistan*].

9 *Comm. on Econ., Soc. & Cultural Rights*, Communication No. 1/2013, 10.1, U.N. Doc. E/C.12/57/D/1/2013 (Apr. 20, 2016). *Lopez Rodriguez v. Spain*.

to attempt to summarize the different contributions and guide the readers to the abstracts of the chapters. Here is a list of some of the concrete issues the authors relate to human dignity and existence worthy of human dignity (names of authors in parentheses): socio-economic rights (Van Bueren), basic needs (Pierik, Lohmann), adequate standards of living (Cornelisse, Lohmann), poverty (Neuhäuser, Pierik, Van Bueren), asylum seekers, refugees, cross-border mobility (Cornelisse), refoulement, expulsion, extradition, detention (Cornelisse), torture, inhuman or degrading treatment (Cornelisse), integrity of the person (Cornelisse), corporate responsibility, shared responsibility, nation state responsibility (Pierik). Of course, this list of topics and authors is not exhaustive and many of the issues mentioned overlap.

We have distinguished between the foundational and the non-foundational role of human dignity and raised questions that need to be discussed in addressing the issues whether human dignity does and should play either or both of these roles and how these roles should be understood. In order to answer these questions, these issues need to be addressed both in general terms and with respect to concrete human rights topics. This is what the papers in this volume do.