Dignity Jurisprudence in Regional Human Rights Systems: Identifiable Trends in the Practical Application of a Contested Notion

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ABSTRACT

Human dignity is a widely contested notion for the many problems that its open-textured nature leads to in its legal application. Nevertheless, it remains foundational in the theory and philosophy of international human rights law, resulting in an abundance of scholarly literature covering the many facets of the notion in the field. This paper explores a less beaten path in the dignity debate, that is, its practical use in regional human rights jurisprudence and the common ground regarding its meaning as demonstrated by identifiable overlaps in the interpretation of the notion across the globe. It offers an inquiry into dignity jurisprudence in the three regional human rights systems – Council of Europe, Organization of American States and African Union – by looking at notable decisions delivered by the respective judicial and quasi-judicial bodies, namely, the European Court of Human Rights, the Inter-American Court on Human Rights and the African Commission on Human and Peoples' Rights. The output of such a research indicates explicit trends in dignity jurisprudence, whereby human dignity is translated into claims of bodily integrity, autonomy and equality of human persons. These findings effectively point to the vulnerability of dignity scepticism, by which human dignity as a legal concept is rendered as vague, indeterminant and essentially open to doubt.

The research undertaken for this paper served as a basis for designing a syllabus for an advanced graduate course on regional dignity jurisprudence. The full syllabus and the substantive report on the course contents can be found in the appendix.

Contents

DIGNITY JURISPRUDENCE IN REGIONAL HUMAN RIGHTS SYSTEMS: IDENTIFIABLE TRENDS IN THE PRACTICAL APPLICATION OF A CONTESTED NOTION

Despite the embeddedness of the notion of human dignity in the human rights discourse, as a legal concept it remains largely open-textured, for there is no authoritative definition to be found in any of the key international human rights instruments regarding its content and scope. Inquiry into regional dignity jurisprudence has the potential of illuminating important trends in the practical application of the notion, which could serve as the basis for some form of shared understanding of what the legal concept of human dignity in international human rights law means in practice. The focus on regional systems is especially welcome for two reasons: firstly, given the lack of an international human rights court, it is in the work of regional judicial/quasi-judicial bodies that the contents of international human rights instruments are elaborated on and clarified; secondly, regional systems serve as the platform for creating and shaping regional legal culture, as their jurisprudence directly develops a common interpretation of important human rights norms, human dignity among them. Therefore, this paper revisits the established debate on the problematics of human dignity as a legal concept to later demonstrate that based on the identified trends in regional dignity jurisprudence the nature of the notion is not as vague as notoriously assumed.

The research undertaken for this paper served as the basis for designing a syllabus for an advanced graduate course on regional dignity jurisprudence, presented as the practical component to the Capstone Project. The syllabus and the technical report on the course contents can be found as appendices. The paper is structured in six chapters, reflecting the progression of the course from its very beginning to end. Each chapter represents one class in the course.

1. Placing the notion of human dignity in the IHRL and discourse

The brutal disrespect for human life evidenced in WWII spurred the emergence of a new ideology, centred upon the individual worth of the human being. It is often claimed that human dignity is one of the concepts most associated with this shift as it embodies the antithesis and rejection to the brutality of war and everything the vast human rights violations represented.[1] Today, references to human dignity are found in all the most important human rights instruments at international level. Indeed, it has been so central to the idea of human rights law that in 1986, upon adopting guidelines for drafting any future human rights documents, it was stressed by the United Nation's (the UN) that any new instruments in the field of human rights will have to "derive from the inherent dignity and worth of the human person"[2]. Therefore, UN Conventions adopted ever since often refer to dignity as a value with a central role in the context of human rights.[3]

The so-called International Bill of Rights clearly accentuates the value of human dignity. The Preambles of both Covenants underline human dignity as inherent for "all members of the human family", reaffirm it as the "foundation of freedom, justice and peace in the world", and proclaim the rights enshrined therein to "derive from the inherent dignity of the human person".[4] Likewise, the Universal Declaration of Human Rights (UDHR)[5] also mentions the notion of human dignity repeatedly - five times. Its preamble almost word for word matches the references to dignity as found in the preambles of the aforementioned Covenants. Furthermore, Article 1 of the UDHR underlines that all human beings are born equal in their dignity, implying that dignity as such does not vary in quantity or quality between individuals thus emphasizing its universality.

It is therefore clear that there is an undeniable link between the notion of human dignity and the idea of human rights. However, there certainly are more ways than just one of

[1] Doron Shultziner and Guy E. Carmi, "Human Dignity in National Constitutions", American Journal of Comparative Law Vol. 62, p.464.
[2] UNGA, Resolution 41/120, Setting international standards in the field of human rights, A/RES/41/120 (4 December 1986).
[3] See for example: Supplementary Convention to Slavery Convention (UN Treaty Series vol.266, 7 September 1956), p.3; Convention on the Rights of the Child (UN Treaty Series vol.1577, 20 November 1989),p.3; Convention on the Rights of Migrant Workers (UN Treaty Series vol.2220, 18 December 1990), p.3.
[4] UN, International Covenant on Civil and Political Rights, UN Treaty Series vol.999, p.171 (16 December 1966); International Covenant on Economic, Social and Cultural Rights, UN Treaty Series vol.993, p.3 (16 December 1966).
[5] UNGA, Universal Declaration of Human Rights, A/RES/217(III) (10 December 1948).

perceiving this relationship in theory of human rights law. Most commonly, the idea of human dignity is invoked as the reason for necessity to protect individual's human rights as such. Accordingly, individual human beings are holders of human rights simply because of their inherent dignity. Human rights are therefore considered as derived from the inherent dignity of human persons. This is the approach that the preambles of the ICCPR and the ICESCR seem to suggest. Alternatively, dignity can be argued to simply frame human rights as being of a distinctive normative kind. Here, following the universalist humanism logic, the reference to human dignity is used to bolster the idea of the unique, special role of human rights law on international stage: by representing norms that respond to every human being's dignity, human rights can be essentially read as humanist norms containing universal and inherent rights.[6] In short, through this approach dignity serves as an instrument for illuminating the specific characteristics that distinguish human rights norms from other norms. Furthermore, human dignity as a concept can be said to help in explaining the correlative negative and positive duties that pertain to human rights practice.[7] Thus, human dignity helps to understand why it is so that human rights practice dictates not only for the individual not to be harmed, but also that the individual's access to her rights is practically furthered.

Main problems of human dignity as a legal concept

The notion of human dignity is widely contested. By far the most frequent criticism draws upon the indeterminacy of the concept and claims that the concept of human dignity is devoid of an actual meaning.[8] Its rethorical powers aside, the concept is argued as "vacuous and hopelessly vague"[9]. In response, as Gilabert notes, it should be kept in mind that every core normative idea can be characterized as somewhat unclear, vague and indeterminate, as is the case with such ideas like freedom, equality or solidarity.[10] The open interpretation of the notion of dignity should therefore be "best seen as an invitation to substantive debate about how to tighten its content"[11].

[6] Pablo Gilabert, *Human Dignity and Human Rights* (Oxford: Oxford University Press: 2018), p.119.
[7] *Ibid*, p.120.
[8] Steven Pinker, "The Stupidity of Dignity", *The New Republic* (May 28, 2008), available on: https://newrepublic.com/article/64674/the-stupidity-dignity.
[9] Gilabert, p.141.
[10] *Ibid*, p.142.
[11] *Ibid*.

Likewise, it can be argued that human dignity claim is incoherent or invoked in incoherent ways. For example, human dignity is commonly contended as inviolable, while at the same time it is understood as violated by certain acts, such as slavery. Consequently, it seems that one can at the same time have and not have dignity. In this regard, Gilabert offers to draw distinction between the so-called status-dignity and condition-dignity: when one speaks about the normative standing of a human being that requires specific treatment due to the mere being of human, the status-dignity is concerned; whereas when one refers to what the human being enjoys when such a treatment is provided (when the human rights norms are fulfilled), reference is made to condition-dignity.[12] Thus, for instance, when enslaved, individual is at loss of his condition-dignity, but not his status-dignity, which, as such cannot be lost.

Yet another strand of criticism purports human dignity as a concept open to misuse and manipulation. Because it is construed as playing such an important role for the human rights project while being undetermined as to its contents, it can be very appealing instrument for manipulation. To this end, human dignity defenders will argue that the very worry about the potential manipulation is at odds with the worry about its indeterminacy: for the notion to be useful means of manipulation, it necessarily cannot be an empty idea.[13] By extension, if it were indeed an empty idea, its use for moral or political agenda could not bear any fruits.

Last but not least, it can be argued that human dignity as a concept could be eliminated altogether and substituted by a list of other, more precise terms. Here, human dignity is often argued as amounting to nothing more than respect for the autonomy of individuals. It could thus be very well substituted by reference to, for example, the notion of 'autonomy'.[14]

[12] *Ibid.*
[13] Gilabert, p.144.
[14] Ruth Macklin, "Dignity is a Useless Concept", *British Medical Journal* 327 (2003), pp.1419-20.

2. Conceptions of human dignity

Even where the concept of dignity – the idea that there is some quality of human beings that merits respect for the plain being of human – is clear, the conceptions of dignity, that is, the answer to question *what* is this quality and *why* it deserved the said respect can be very different. Broadly speaking, there are three major paths of explaining why human beings are deserving of dignity. Firstly, dignity can be subjected to theological explanation. Accordingly, human dignity is perceived through the prism of religion, by link to the supernatural: human beings are special, because they are created by God. Secondly, one can explain the notion through philosophical perspective dwelling on the differentness of the human being. Most commonly associated with the teaching of Immanuel Kant, this approach refers to dignity not by reference to the creation of man by the supernatural, but rather by underlining the unique characteristic of human beings – the ability to reason and to take autonomous decisions. This ability, it is argued, is possessed only by humans, thus they are unique compared to any other species. Finally, the idea of dignity can be explained from the historical perspective, by considering the human history and the evidence of what effective human rights protection offers to the humankind. Essentially, this approach emphasizes the historical evidence of outright disrespect for human dignity as the justification for the necessity to ensure general respect for human beings. Here, answers to questions of what dignity is and why humans have dignity are answered "by seeing what particular types of actions have taken place that we consider to constitute a violation of human dignity"[15]. In other words, we consider not the source of dignity as such, but rather what respect and protection of dignity can do for individuals: we learn about the content and effects of human dignity by considering historical evidences of clear violations of human dignity and by examining how such violations have affected the humankind. This strand does not provide explanation for the theoretical foundations of human dignity; in fact, it avoids altogether the discussion on the source of dignity. However, thanks to that, it provides a platform for a universally applicable formulation of human dignity that does not depend on the cultural of religious values of societies around the globe. It is therefore a more flexible reading of theoretical foundations of human dignity than the two mentioned previously. Being based on

[15] Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights", *The European Journal of International Law* Vol. 19, No.4 (2008), p.658.

strictly historical evidence, it offers an outlook much more objective than those grounded on religious or metaphysical considerations.

Core claims of human dignity: ontological, relational, limited-state claim

No matter the specific conception of human dignity, several core claims can be identified as associated with the idea of human dignity. Those claims are: the ontological claim – the idea that human beings are unique by the mere being of human; relational claim – dictating the relationship between individual human dignity and the interests of the broader society; and, finally, the limited-state claim, which as an extension to the relational claim foresees dignity as a restricting, limiting force on the powers of state authority. These claims are prioritized and proportionally applied in a different manner depending on the specific conception in use. In fact, the differences between the various conceptions of human dignity lie in the proportion in which the importance of each of these claims is found: a particular reading of human dignity can put more weight on the relational claim, while another conception would emphasize the ontological claim, for example. Examination of these three claims further attests that the variances in the interpretations of dignity are rooted not in a disagreement about the concept itself, but rather in details as to how the concept can be reasoned and explained.

Ontological claim

Whether through religious prism or metaphysics, the ontological aspect of human dignity underlines the intrinsic worth of the individual, the "totality of the uniqueness of a human being's nature"[16]. The ontological claim is found in all the conceptions of human dignity in one way or another and is therefore sympathetic to the diversity of cultures. To put it simply, ontological aspect of human dignity submits that it is "as a member of the human genre"[17] that individual benefits from the respect for human dignity.[18] Further explanations as to what specific characteristics of the human genre are the ones to merit dignity are already foundation to the different conceptions of the same concept.

[16] A. C. Steinmann, "The Core Meaning of Human Dignity", *Potchefstroom Electronic Law Journal* Vol.1 (2016), p.11.
[17] Jean-Guy Belley, "The Protection of Human Dignity in Contemporary Legal Pluralism", in *Dialogues on Human Rights and Legal Pluralism* (Springer: 2013), p.105.
[18] *Supra* n.17.

By underlining the inherent aspect of human dignity, the ontological claim is the antithesis to the ancient interpretation of dignity as corollary to person's status and rank in society. The ontology of inherent dignity is rooted in the idea of universal, egalitarian and secular character of humanity.[19]

Relational claim

This aspect of the notion of human dignity underlines the social dimension of dignity, that is, the relationship between an individual's dignity and the broader society. It holds that the society at large must recognize and respect the individual human dignity of a person for it to be effectively exercised. To some extent, here dignity is understood as somewhat socially constructed or, better said, socially realized quality that cannot be fulfilled and enjoyed fully without an appropriate respect towards it by others. The enjoyment of one's dignity, thus, can also be a constraint on other's liberty and autonomy to a certain extent. From this angle, relational claim of human dignity entails balancing between the interests of the individual and society as a whole. It accommodates wide spectrum of possible dynamics, stretching from an extreme form of communitarianism prioritizing collective interests at all times to "radical, abstract individualism".[20] Consequently, whatever the claim of human dignity is understood to entail for the individual, the contents are limited by the values and interests of the specific society in a given context.

Effectively, the relational claim can be thought of as 'dignity as constraint'. For its implementation, state policies are required to weaken individual liberties and autonomies so as to ensure respect for the dignity of others.

Limited-state claim

Shortly put, this aspect of dignity claim emphasizes the effects of individuals' human dignity and respect for it on state powers. The institution of state and the powers of state authorities flowing thereof are to be used so as to realize peoples' human dignity. It underscores the state's role in actualizing the dignity of its people through effective provision and protection of their human rights. For example, in the context of socio-economic rights, the limited state-claim foresees that the state has to not only recognize human dignity of its

[19] *Supra* n.17, p.10.
[20] Henk Botha, "Human Dignity in Comparative Perspective", in *Stellenbosch Law Review* Vol.20 (2009), p.219.

people, but also accordingly realize their dignified living conditions, through effective provision of social and economic rights.

3. Dignity jurisprudence in the ECtHR

In a manner not typical for an international instrument in the field of human rights protection, there is no mention of the notion of human dignity in the text of the European Convention on Human Rights (the Convention). The preparatory works of the Convention do not suggest any clear explanation to this curious absence of reference to dignity;[21] however, some scholars have submitted that it could be explained by the Convention being "more practical, pragmatic, and mechanism – oriented text that that of the Declaration"[22]. In any case, it would not be accurate to claim that the text of the document as adopted signals irrelevance of the notion of human dignity in the Convention regime. In fact, quite the opposite has been proven through the case-law of the European Court of Human Rights (the ECtHR or the European Court). It has clarfied that human dignity is not only an important value, but actually placed at the very foundation of the ideology of the Convention regime. It first pointed out that "the very essence of the Convention is respect for human dignity"[23] in the well-known case *Pretty v. United Kingdom.* Ever since, this statement has become frequent in this Court's jurisprudence.[24] Similarly, the European Court has underlined that "any interference with human dignity strikes at the very essence of the Convention"[25]. Evidently, even though there is no mention of human dignity in the actual text of the document, the notion is part and parcel of the broader ideology of the Convention regime as it represents the core rationale of the instrument. Today, the notion is mostly applied in cases under Articles 3 and 8 – (prohibition on torture and right to respect for private and family life), however its use can also be seen in the European Court's work under Articles 2, 4 and 5 (right to life, prohibition of slavery and forced labour and right to liberty and security).

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[21] Jean-Paul Costa, "Human Dignity in the Jurisprudence of the ECtHR", in Christopher McCrudden (ed.) *Understanding Human Dignity* (Oxford University Press: 2014), p.394.
[22] *Ibid*.
[23] ECtHR, *Pretty v United Kingdom* (Application No. 2346/02), Judgment of 29 April 2002, para.65.
[24] See for example: *Svinarenko and Slyadnev v Russia* (Application No.32541/08), Judgment of 17 July 2014, para.118; *I v. United Kingdom* (Application No.25680/94), Judgment of 11 July 2002, para.70; *Bouyid v. Belgium* (Application No. 23380/09), Judgment of 28 September 2015, para.89.
[25] *Bouyid v. Belgium*, para.101.

As regards Article 3 of the Convention, jurisprudence shows that the notion of human dignity is paramount to the absolute character of the prohibition of torture and other degrading, inhuman treatment. Already on the very first instance of introducing the notion in its jurisprudence in *Tyrer v. United Kingdom*[26], the European Court pointed out that degrading treatment constitutes an assault on that which is "one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity"[27]. Later jurisprudence demonstrates a further affirmation of the "particularly strong link between the concepts of "degrading" treatment or punishment within the meaning of Article 3 of the Convention and respect for dignity"[28]. Thus, the ECtHR has time and again stressed that the prohibition under Article 3 "is a value of civilisation closely bound up with respect for human dignity"[29] the same as "a fundamental value in democratic societies"[30]. Therefore, it can be easily observed that the ECtHR reads human dignity as tightly linked with the idea of physical and moral integrity of a person.

Moreover, among the most noticeable uses of the notion of human dignity under Article 3 relate to findings of certain conditions of imprisonment or detention facilities as not in line with provisions therein. To this end, the ECtHR has established a standard whereby "the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity"[31]. Similarly, with regards to the standard of health care in imprisonment, it should generally be compatible with human dignity of the detainee, although the ECtHR "reserves sufficient flexibility in defining the required standard [..] on a case-by-case basis"[32].

The notion of human dignity is also often applied in the context of Article 8 of the Convention, which sets out the right to privacy, and private and family life. Jurisprudence on this article is nothing short of extensive, not least because the guarantees of that article consist of three separate limbs. However, dignity jurisprudence under Article 8 is neither well-

[26] ECtHR, *Tyrer v. United Kingdom* (Application No. 5856/72), Judgment of 25 April 1978.
[27] *Tyrer v. United Kingdom*, para.33.
[28] *Bouyid v. Belgium*, para.90.
[29] *Ibid*, para.81; *Muršic v. Croatia* (Application No. 7334/13), Judgment of 20 October 2016, para.98; *Khlaifia v Italy* (Application No.16483/12), Judgment of 15 December 2016, para.158.
[30] *Khlaifia v Italy*, para.158.
[31] *Svinarenko v Russia*, para.116; *Khlaifia v Italy*, para.184; *Muršic v Croatia*, para.99.
[32] *Martzaklis and Others v. Greece* (Application No. 20378/13), Judgment of 9 July 2015, para.65; *Blokhin v Russia* (Application No. 47152/06), Judgment of 23 March 2016, para.138.

established, nor voluminous. The European Court's use of the concept under Article 8 claims could rather be characterized as "recent, but highly relevant"[33].

The language of Article 8 is entrenched in the ideas of one's freedom and right to self-determination over their life and the specific choices as regards how to lead that life, or in short – in the idea of personal autonomy. As previously discussed, autonomy is one of the main notions associated with the concept of human dignity and is an established feature in the debate of the legal contents of the latter. Therefore, presence of the notion of dignity within jurisprudence of matters falling under the idea of autonomy is beyond doubt.

Overall, one does not have to look deep into the ECtHR case-law to notice the centrality of the concepts of autonomy and dignity under Article 8 provisions. It suffices to remember the very well-known case of *Christin Goodwin v the United Kingdom*[34], where it was held that living in dignity and worth requires individuals to be able to live in accordance with the sexual identity chosen by them. There, the European Court stated that:

> ¨Under Article 8 of the Convention [..] the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection [being] given to the personal sphere of each individual¨[35].

Furthermore, in *Goodwin,* as in other well-known cases regarding claims based on right to autonomy (such as *Pretty v. the United Kingdom,* where the subject matter was end-of-life decisions) the ECtHR repeatedly refers to human dignity together with human freedom as the cornerstones of Convention regime in general, but protections under Article 8 in particular.[36] Both notions should certainly not be conflated, but neither should their affinity be neglected. It is therefore submitted here that an important aspect of the Court´s dignity jurisprudence translates dignity as claims of autonomy of a human person.

Lastly, an aspect of dignity jurisprudence by the ECtHR to be highlighted is its use of the notion in relation to principle of non-discrimination and equality of human beings. Jurisprudence involving Article 14 - prohibition of discrimination – is far reaching as the article is applied in conjunction with numerous articles from the Convention. One of the many

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[33] *Supra* n.22, p.399.
[34] ECtHR, *Goodwin v United Kingdom* (Application No. 28957/95), Judgment of 1 December 1997.
[35] *Ibid*, para. 90
[36] See for example *Pretty v. United Kindom*, para.65 or *Goodwin v. United Kingdom*, para.90.

examples telling of the relationship between dignity and equality as interpreted by the ECtHR concerns discrimination on racial grounds. This important aspect of dignity was already underlined by the European Commission on Human Rights as far back as in 1973 in the case *East African Asians v. United Kingdom*[37], where it established that:

> ¨to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity¨[38].

It should be reminded that the European Commission on Human Rights was a body different to the ECtHR, however the European Court has ever since repeated many a time the very same logic in its own work.[39]

Brief examination of dignity jurisprudence of the ECtHR demonstrates that it is keen on underlining the importance of human dignity as a foundational value of the Convention regime but fails to give the concept a more detailed meaning through the necessary debate on the legal contents of the notion. Certainly, a more thorough and in-depth research and analysis of the European Court's work exceeding the limits of this paper would provide more comprehensive insights into the European understanding of the scope and limits of the notion. Nevertheless, few notable remarks on the ECtHR's reading of the notion can be made. Firstly, the notion is tightly linked to and thus necessitates effective protection of the physical integrity of a person. Human dignity is therefore central to the idea of absolute prohibition of torture and other inhuman, degrading treatment. Secondly, human dignity is understood as translating into claims of autonomy of a human person. Here, the ability and the right to decide for one's own life choices is key to the reading of the notion of human dignity. Lastly, the Court has translated the notion of human dignity in relation to the equality of human beings. All in all, not rejecting the idea that the relevant dignity jurisprudence might prove to be broader than these conclusions suggest, at least these three aspects of the interpretation of the notion of dignity by the ECtHR are assured.

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[37] European Commission on Human Rights, *East African Asians v United Kingdom* (Application No. 4403-70), Report of 14 December 1973, Decisions and Reports 78-A, p.62
[38] *Ibid*, para.207.
[39] See, for example, *Cobzaru v Romania* (Application No. 48254.99), Judgment of 26 July 2007, para.88; *Bekos and Koutropoulus v Greece* (Application No. 15250/02), Judgment of 13 December 2005, para.63; *Virabyan v Armenia* (Application No. 40094/05), Judgment of 2 October 2012, para.199; *Nachova and Others v Bulgaria* (Application No. 43577/98), Judgment of 6 July 2005, para.145.

4. Dignity jurisprudence in the IACtHR

In the substantive part of the American Convention on Human Rights[40] (the American Convention) reference to dignity is found in three articles and is therefore linked with three different human rights. There is, however, silence on the notion in the document's Preamble and that is surprising given the regularity of such reference in the preambles of most human rights instruments. It should be noted, however, that the Preamble does mention "attributes of the human personality" as the very basis for essential human rights. That remark clearly echoes the sentiment of relationship between human dignity and human rights, so the apparent lack of reference to 'dignity' should not be overestimated.

The first direct mention of human dignity is made in Article 5 of the American Convention (Right to humane treatment). Immediately after spelling out the prohibition of torture or cruel, inhuman or degrading punishment or treatment, the text notes "the inherent dignity of the human person", which shall be respected in the case of deprivation of liberty. It is curious that the only actual reference to dignity under this article is made in relation to persons deprived of liberty. However, the respective paragraph of the article is clearly aimed at establishing a strong prohibition of torture and other degrading treatment. It can therefore be concluded that the remark made with regard to persons deprived of liberty is meant to underline the unconditionality of the prohibition and does not in any way limit the scope of protection of the inherent dignity of persons as foreseen by that article.

The second explicit reference to dignity is found in Article 6 (Freedom from slavery). The article generally prohibits any form of slavery or forced labor, except for labor imposed as a punishment. But even in that exceptional case, Article 6 reminds that such forced labor "shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner".

The final explicit mention of human dignity is made in Article 11 of the Convention (Right to privacy). Here, the text states that every individual "has the right to have his honor respected and his dignity recognized". The article further establishes that this right includes freedom from interference with one's private life, family life, home and correspondence, in a manner similar to its analogue in the ECHR – Article 8. Of special significance is the fact that the original text of the American Convention titles Article 11 "Protección de la Honra y de la

[40] OAS, American Convention on Human Rights, adopted 22 November 1969, UNTS 1144, p.123.

Dignidad", which literally translates to "Protection of honor and dignity". The obvious change of the meaning of the title in the two languages is remarkable and rather telling as regards the reading of the meaning of the notion of human dignity as suggested by that instrument.

All in all, the text of the American Convention is straightforward in that it clearly delineates the three major paths available for dignity jurisprudence under that instrument. The provisions of the three articles were dignity is explicitly mentioned – prohibition from torture and other degrading treatment (Article 5), prohibition of slavery and forced labor (Article 6), and the right to privacy (Article 8) – echo the subject matters of the most common areas of dignity jurisprudence by the ECtHR as demonstrated previously. The text of the American Convention alone indicates that human dignity as especially intertwined with the notions of physical and mental integrity of persons (Articles 5 and 6) and autonomy (Articles 6 and 11).

As regards the idea of human dignity as the physical and moral integrity of a person, similarly to dignity jurisprudence in the ECtHR, also the Inter-American Court of Human Rights (the Inter-American Court) markedly underscores the potential negative effects of the conditions of detention facilities on persons deprived of liberty. The Inter-American Court emphasises that "any person deprived of liberty has the right to live in detention conditions that are compatible with his personal dignity"[41]. This is of course not a surprise, since Article 5.2 of the American Convention is unequivocal on this point. Nevertheless, it shows that this relationship is also recognized in the practical application of the American Convention by the Inter-American Court. A more alluring aspect of the American Court's reading of the notion in that context lies in its frequent insistence that "any use of force that is not strictly necessary owing to the conduct of the person detained constitutes an attack on human dignity"[42]. Like already noted previously, the same idea is regularly expressed by the ECtHR in cases concerning persons in detention and the prohibition of torture and other degrading treatment under Article 3 of the ECHR.

As explained above, the notion of dignity is visibly related to the protection of individual's private life under Article 11 of the American Convention. The Court has held that the article comprises guarantees of protection for individuals' "various spheres of the intimate

[41] IACtHR, *Yvon Neptune v. Haiti*, Judgment of 6 May 2008, Series C No. 180, para.130.
[42] IACtHR, *Rodriguez Vera et al v Colombia*, Judgment of 14 November 2014, Series C No. 287, para.419.

realm as well as the private lives of their families"[43]. Accordingly, the concept of privacy as foreseen under Article 11 of the American Convention is an ample one and is not subject to exhaustive list of definitions. The Court has noted that it includes "the way in which the individual views himself and to what extent and how he decides to project this view to others"[44]. Following the logic of argument presented in the previous chapter, therefore, it can be said that another point of convergence of dignity jurisprudence between the ECtHR and the American Convention is the evident reading of human dignity as the autonomy of a person.

The Inter-American Court has explicitly pointed out the linkage between the notion of human dignity and the principle of equality between human beings. Thus, the Inter-American Court has affirmed that "the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual"[45]. On that note, it further noted that the principle of equality between human beings "cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority"[46] and, consequently, that it is irreconcileable with the notion of equality based in dignity to characterize a certain group as inferior and to "treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified"[47]. The Inter-American Court has further - and rather boldly – implied that in the current stage of development on international law the principle of non-discrimination flowing from the principle of equality has become a norm of *jus cogens*.[48]

In conclusion, a brief inquiry into the dignity jurisprudence by the Inter-American Court shows that it bears resemblance to dignity jurisprudence by the ECtHR on all three its main points as reviewed in the previous chapter. Namely, the legal concept of human dignity is interpreted and applied in the jurisprudence of those two regional courts as: bodily integrity of a person, autonomy of every individual, and equality of human beings in general. It is yet to be seen if all these points can also be identified as present in the dignity jurisprudence by the African Commission on Human and Peoples' Rights.

[43] IACtHR, *Atala Riffo and Daughters v Chile*, Judgment of 24 February 2012, Series C No. 239, para.161.
[44] *Ibid*, para.162.
[45] IACtHR, *Advisory Opinion OC-4/84* (Proposed Amendment to the Political Constitution of Costa Rica related to Naturalization), 19 January 1984, Series A No. 4, para.53.
[46] *Ibid.*
[47] *Ibid*.
[48] *Atala Riffo v. Chile*, para. 79.

5. Dignity jurisprudence in the ACmHPR

The principal instrument of human rights protection within the regional system – the African Charter on Human and Peoples' Rights (the Africa Charter)[49] - contains references to human dignity both in its substantial provisions and its Preamble. The Preamble mentions human dignity twice: once in relation to the Charter of the Organization of African Unity, which in its text listed dignity as one of the "essential objectives for the achievement of the aspirations of the African peoples'", and another time by reference to the liberation of the people of Africa, who "are still struggling for their dignity and genuine independence" in their commitment to eliminate all kinds of exploitation and discrimination. Given the role of preambles in the context of general rules on treaty interpretation, it can be reasonably assumed that human dignity is a value that instructs the broader interpretation of the rights and guarantees under the African Charter.

As regards the substantive provisions of the African Charter, an explicit right "to the respect of the dignity inherent in a human being" is enshrined in its Article 5. Under that article, all forms of slavery, torture and other inhuman or degrading treatment are prohibited. However, the jurisprudence of the African Commission on Human and Peoples' Rights (the African Commission) shows that the notion is often applied in claims under Article 4 (Right to life). Although the overall dignity jurisprudence before this judicial body is not very developed, a few remarks can be made in the regional interpretation of the notion nevertheless.

To begin with, the African Commission has emphasized in its work the importance of the value of human dignity in the broader context of the regional identity. In a bold statement in *Open Society Justice Initiative*[50] the African Commission stated:

> "Dignity is… the soul of the African human rights system and which it shares with both the other systems and all civilized human societies. Dignity is consubstantial, intrinsic and inherent to the human person [..] when the individual loses his dignity, it is his human nature itself which is called into

[49] OAU, African Charter on Human and Peoples' Rights, adopted 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
[50] ACmHPR, *Open Society Justice Initiative v. Côte d'Ivoire*, Communication 318/06, 27 May 2016.

> question, to the extent that it is likely to interrogate the validity of continuing to belong to human society…when dignity is lost, everything is lost."[51]

The definition of human dignity used by the African Commission describes dignity as an "inherent basic right to which all human beings [..] are entitled to without discrimination"[52]. More curiously, however, it notes dignity as a right "which every human being is obliged to respect by all means possible and on the other hand it confers a duty on every human being to respect this right"[53].

Secondly, the notion of dignity is evidently present in the debate on the different forms of capital punishment and is therefore linked with the idea of prohibition of cruel inhuman and degrading treatment (echoing the analogue reading by the European Court and the Inter-American Court). In *Spilg and Mack*[54] the African Commission noted that capital punishment by hanging is *likely* incompatible with the notion of human dignity, as it causes unnecessary suffering that goes beyond what is strictly necessary - and thus is not in line with the principle of respect for human dignity.[55]

Thirdly, the respect for human dignity is also understood to be part and parcel of the protection of life under Article 4 of the African Charter, although dignity is not explicitly mentioned in the text of that provision. Thus, in *Kazeem Aminu*[56] the African Commission noted that the proper interpretation of Article 4 provides that:

> "It would be a narrow interpretation to this right to think that it can only be violated when one is deprived of it. It cannot be said that the right to respect for one's life and the dignity of his person, which this article guarantees, would be protected in a state of constant fear and/or threats [..]."[57]

It is therefore evident that the African Commission sees respect for dignity as an important underlying aspect of the right to life.

Fourthly, also in the jurisprudence of the African Commission one can evidence the inter-relatedness of the claims of human dignity and claims of equality: unequal treatment of

[51] *Ibid*, para.139.
[52] ACmHPR, *Purohit and Moore v. Gambia*, Communication 241/01, 29 May 2003, para.57
[53] *Ibid*.
[54] ACmHPR, *Spilg and Mack v. Botswana*, Communication 277/03, 12 October 2013.
[55] *Ibid*, paras.167-169.
[56] ACmHPR, *Kazeem Aminu v. Nigeria*, Communication 205/97, 11 May 2000.
[57] *Ibid*, para.18.

persons is understood to be a direct attack on the dignity of those discriminated against. The African Commission has pointed out that discrimination against a group based, for example, on its religious or ethnic affiliation, demeans the humanity and dignity inherent in that group.[58] Consequently, it can be concluded that the notion of human dignity plays a central role in interpreting Article 2 (Right to freedom from discrimination) of African Charter.

All in all, while dignity jurisprudence is still in development in the jurisprudence of the African Commission, it is nevertheless visible that the African Commission interprets human dignity as notion interlinked with the ideas of personal integrity of human beings and the principle of equality. Having said that, it is submitted here that as dignity jurisprudence slowly develops in the region, the African Commission can be expected to draw inspiration for further articulation of the notion from the more developed examples of dignity jurisprudence by some of the higher national courts in the region. Such trend would be in line with Articles 60 and 61 of the African Charter, which envision the African Commission as taking note of "African practices consistent with international norms on human and peoples' rights" in its work. On that note, South Africa has noteworthy dignity jurisprudence, and it is therefore not unreasonable to assume that if the African Commission were to draw inspiration from national jurisprudence in relation to dignity, it would likely be that of South Africa.

The African Commission's doctrine on human dignity as physical integrity is not as firmly established as in the work of the ECtHR and the Inter-American Court. This is one area where the African Commission might be influenced by South African dignity jurisprudence, which is rooted in the reading of human dignity as a claim for physical integrity of a person and therefore could provide a useful example of how the threshold of the prohibited attack on bodily integrity of a person can be set onwards. Noteworthy in this regard is, for instance, the case *S v Williams and Others*[59], where the Constitutional Court of South Africa ruled corporal punishment on juveniles in the form of whipping as not in line with the constitutional values of the country, of which human dignity is of paramount importance. Opening up the bodily integrity protection beyond torture in this way represents a similar take on the reading of human dignity as seen in the ECtHR jurisprudence, more specifically, the well-known case of *Tyrer*. South African dignity jurisprudence could also lend the African Commission a helping hand in further developing its doctrine on human dignity as respect for life as the

[58] ACmHPR, *Nubian Community v Kenya*, Communication 317/06, 23 May 2006, para 131.
[59] CCSA, *S v Williams and Others* (CCT20/94), Judgment of 9 June 1995.

Constitutional Court of South Africa has ruled capital punishment as contradicting the constitutional value of human dignity and the corollary prohibition of cruel, inhuman or degrading treatment and punishment.[60]

However, respect for inherent dignity in South African dignity jurisprudence has also been ruled to be impaired in less obvious contexts. For instance, in the controversial case *Le Roux and Others*[61] the Constitutional Court of South Africa found pupils' drawings depicting the principal of the school and his colleague naked in a sexually suggestive position as an outright impairment of their dignity. Such a reading of dignity claim warrants some difficulty for its stretch. Nevertheless, it opens the door for a dialogue between this progressive reading of dignity claim and the still developing doctrine on human dignity in the hands of the African Commission.

As regards the third major avenue of dignity jurisprudence as evidenced previously in the context of the ECtHR and the Inter-American Court – dignity as autonomy – as of right now it does not appear to be an established aspects of the notion of human dignity in the jurisprudence of the African Commission. It is in this context, therefore, that drawing on the existent jurisprudence in other jurisdictions, such as that of South Africa, would be useful in order to harmonize dignity jurisprudence of the three regional human rights judicial bodies. To that end, the case *Stransham-Ford*[62] is a notable example as it discusses in detail the issue of assisted suicide in the context dignity as right to autonomy and self-determination. It is therefore meaningful to consider it through comparison with *Pretty* as decided by the ECtHR. Another curious example of interpreting dignity as autonomy is seen in *DE v RH*[63], which offers a debate on infringement of one's personality rights (and thus dignity) by extra-marital affair of their spouse. Once more it could be argued as rather far-fetching reading of dignity claim, but nevertheless could be used to engage in dialogue as to the scope and contents of the concept of human dignity in the jurisprudence of the African Commission. Such a dialogue could fill the existent empty space in the dignity jurisprudence by the African Commission where human dignity is interpreted as the autonomy of an individual, and thus help to align

[60] CCSA, *S v Makwanyane and Another* (CCT3/94), Judgment of 6 June 1995.
[61] CCSA, *Le Roux and Others v Dey* (CCT 45/10), Judgment of 8 March 2011.
[62] CCSA, *Stransham-Ford v Minister of Justice and Correctional Services and Others* (27401/15), Judgment of 4 May 2015.
[63] CCSA, *DE v RH* (CCT 182/14), Judgment of 19 June 2015.

the relevant dignity jurisprudence to that of the African Commission's counterparts – the ECtHR and the Inter-American Court.

6. Dignity fatigue and the way forward

Dignity fatigue revisited

The idea that international human rights discourse is experiencing a dignity fatigue is based not only on the somewhat questionable and uncertain uses of the notion, but also on its undeniable pervasive presence in legal, political and philosophical debates alike. Be it as it may, the omnipresence of dignity in international human rights law cannot be neglected. By now the idea is too firmly entrenched in human rights thought to suggest that "any serious political initiative aiming to reform international human rights law by removing references to human dignity would have any chance of success"[64]. Thus, while some scepticism over the legal value of the notion is warranted, instead of asking *if* human dignity is a workable legal concept at all, the main question should be *how* to turn dignity into such a concept. The dignity fatigue begs for concretization of the notion - for its further articulation on international level - so that international human rights law could safely rely on an understanding of the notion the contents of which are endorsed by the practice of human rights systems around the globe.

However, it is important to note that to a large extent, the contradiction on dignity is no different than the one on human rights as such. Conceptually, the idea of human rights is also not a single coherent idea, but rather an intersection of a myriad of perceptions, which often happen to be incompatible. It is important to bear in mind that the whole positivization of human rights standards was from the very beginning grounded on a "deliberate abstention from strong agreement about foundational principles"[65] of the human rights project. The drafters' consensus on the document and its substance was not an agreement upon global world ethics, but rather a compromise "to reach a practical consensus on the articulation of human rights while setting aside the goal of attaining any thicker consensus about where those

[64] Mathias Mahlmann, "The Good Sense of Dignity: Six Antidotes to Dignity Fatigue in Ethics and Law", in Christopher McCrudden (ed.) *Understanding Human Dignity* (Oxford: Oxford University Press, 2013), p.593.
[65] Paolo G. Carozza, "Human Rights, Human Dignity, and Human Experience", in *Understanding Human Dignity,* p.621.

rights come from and why we should regard them as pertaining to human persons"[66]. As Jacques Maritain, noted: "Yes, we agree about the rights, but on a condition that no one asks us why"[67].

In that regard, the problematics of the concept of dignity are part and parcel of the same unfinished business regarding the agreement on the foundations of human rights, which remain at the heart of the whole human rights project. Does that mean that one should approach the lack of strong agreement on the idea of human dignity along the same lines as the drafters of the UDHR did? In other words, should a shift be made away from seeking consensus on the theoretical foundations of the notion altogether and should an evidence on the practical agreement on the notion be sought instead? It has been suggested previously that this indeed should be the chosen path for the future discussions on the notion of dignity. Whatever agreement can be identified on the practical aspects of the dignity claim is much more valuable than any attempts on establishing theoretical foundations for the concept could possibly offer. After all, what truly matters for any legal concept is its practical relevance and potential, and even more so in the field of human rights, where the only value of success is the one with consequences in practice.

On the other hand, scholars point out that positive law on its own, that is, without any deeper ethical roots in societies are not enough to "sustain the relationships of justice and solidarity and commitments to the common good to which we aspire"[68]. This absence of a *thicker* agreement on the foundation of human rights, it is argued, leaves an enduring gap for varying degrees of non-compliance with the catalogue of human rights.[69] Admittedly, the practical agreement alone only manages to cover up the persistent and deep differences between the varying conceptions. Therefore, the focus on the practical aspects of the human dignity claim should not be conceived as the *end point* of the journey into consolidation of the notion, but rather a necessary (but nevertheless only an initial step) towards a "sustained and critical method of reasoning"[70] about which specific conceptions of human dignity among the many existent ones correspond and respond most completely and universally to the complexities of human life.

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[66] *Ibid.*
[67] Jacques Maritain, "Introduction", *Human Rights Comments and Interpretations,* symposium edited by UNESCO (Westport, CT, Greenwood Press, 1973), p.9.
[68] *Supra* n.67, p.623.
[69] *Ibid.*
[70] *Supra* n. 67, p.624.

Conclusion: indentifiable trends in the application of a contested notion

The task of defining the substance and limits of the notion of dignity is as a rule characterized by divergent moral and intellectual premises. It has been suggested here that the key for the sustainability of the dignity claim in this context is to look for a workable legal concept within the jurisprudence of regional human rights systems. True, even where judicial, every interpretation of the notion is based on some premises about its foundations which, as underlined time and again before, are many and diverse. However, by shifting the focus away from the debate on the controversial nature of the source of human dignity (which, moreover, remains largely theoretical) the application of the notion in jurisprudence illuminates the points of convergence between the possibly very different regional understandings of human dignity. The evidence of similarities and overlaps in the interpretation of the notion in specific areas of human rights is the material with which the formulation of the common understanding – the consensus – can be legitimately built.

As the regional jurisprudence shows, there is enough convergence of trends of dignity jurisprudence between regional human rights systems to comfortably assert the existence of some form of a consensus. Evidently, all three systems apply the notion of human dignity in relation to the idea of integrity of a person, which is translated into prohibition of torture and degrading, inhuman treatment. By far not a novel conclusion, it nevertheless illustrates an important aspect of the common understanding, which relates dignity to the physical, but also moral integrity of a human person. Furthermore, the notion of human dignity is applied vis-à-vis the idea of equality of human beings. In this sense, unequal treatment, unjustified discrimination is understood as contrary to the fundamental claim of human dignity of every person. Lastly, to a varying degree, but nevertheless it is possible, to identify an aspect of interpretation of the notion reading dignity as autonomy of the individual. This aspect of dignity claim is strong in the jurisprudence of ECtHR and the Inter-American Court, while relatively undeveloped in the work of the African Commission. So, dignity as autonomy is still an unfolding doctrine and yet to be concretized with precision.

Consequently, the core understanding of human dignity, the consensus between the three regional systems (or better said the first building block of this consensus) is somewhat clear-cut. It is unlikely that the interpretation of human dignity could ever be absolutely uniform, but the evidence of a certain consensus is a fortunate breakthrough for the dignity discourse as it flags that the vagueness of the notion is not as inescapable as frequently

asserted. Yes, it is a flexible concept and, yes, there is no single authoritative definition available that could be applied for human dignity as a legal concept. However, the practice of dignity jurisprudence demonstrates that despite the contestability and indeterminacy of the notion, it is nevertheless applied with some foreseeability as to its core substantive content.

APPENDICES

APPENDIX A: SUBSTANTIVE REPORT OF THE COURSE

Contextualization of the course

This graduate course consists of six sessions 100 minutes in length and is intended as an advanced course for students with prior knowledge in public international and human rights law. To participate in the course, students are expected to be familiar with the basics of the functioning of regional human rights systems within the frameworks of Europe, the Americas and Africa. The course offers a unique approach to the study of the notion of human dignity through inquiry into dignity jurisprudence in the three regions, thus looking into the meaning of the notion beyond what is offered by the more common debate on human dignity based in the theory and philosophy of human rights alone.

Rationale of the course

This advanced course is motivated by the necessity for further delineation of the legal concept of human dignity given its prominence throughout the international human rights discourse. Since there is no authoritative definition of 'human dignity' found in any of the key international human rights instruments, the contents of the notion are not fixed, thus reference to human dignity can be meant to express varying conceptions of the same concept. In pursuing more precise definition of the notion the focus on regional systems is welcome for two reasons. Firstly, for the lack of an international human rights court and at the background of the frequent vagueness of the dignity language, it is in the work of the regional human rights systems that the guarantees of international human rights instruments are elaborated on and clarified. Secondly, regional systems serve as the platform for creating and shaping regional legal culture, as their jurisprudence directly develops a common interpretation of important human rights norms, human dignity among them. Therefore, inquiry into regional dignity jurisprudence is relevant, as it has the potential to deliver important findings regarding the notoriously vague meaning of the legal concept of human dignity.

Course outline

The course, firstly, offers students a comprehensive study into the theoretical aspects of the concept of human dignity, including examination of the contentious points in the application of the notion as a legal concept. The first two classes are therefore devoted to establishing the theoretical framework of the dignity debate. The remaining classes are

devoted to analysis of dignity jurisprudence by three regional human rights judicial bodies - the European Court of Human Rights, the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights. These classes are structured around three main strands of dignity jurisprudence: dignity as personal integrity, dignity as personal autonomy, and dignity as equality of human beings. The very last class once more reflects on the problematics of the legal concept of dignity, but this time by taking note of the conclusions drawn in the previous classes regarding the similarities in the dignity jurisprudence in the regional systems.

APPENDIX B: COURSE SYLLABUS

Department of Legal Studies
CENTRAL EUROPEAN UNIVERSITY

Dignity Jurisprudence in Regional Human Rights Systems:

Identifiable Trends in the Practical Application of a Contested Notion

LL.M. level course (advanced)
1 US Credit / 2 ECTS Credits
Pre-requisite knowledge of IHRL

Brief introduction:

The notion of human dignity is a standard ingredient in human rights discourse. However, there is no authoritative definition of its meaning in any of the major international human rights instruments. The contents of the notion are therefore not fixed - reference to human dignity can be meant to express varying conceptions of the same concept. This apparent vagueness and indeterminacy have led to growing dignity scepticism and the so-called *dignity fatigue* present in the current international human rights discourse. This course offers to students a paradigm shift from inquiry into the theoretical consensus on the source, content and function of human dignity, to an inquiry into the practical application of the notion as evidenced in regional human rights jurisprudence by ECtHR, IACtHR and ACmHPR. In this course students will learn about the theoretical underpinnings of the notion of human dignity, while also getting familiar with regional understandings of this internationally significant but notoriously imprecise notion based on its practical application in jurisprudence of the three regional human rights systems. The focus on regional systems is relevant for it is in their work that the guarantees of international human rights instruments are realized and materialized, but also elaborated and clarified. Furthermore, regional systems are of special interest for they serve as the platform for creating and shaping regional legal culture, as their jurisprudence directly develops a common interpretation of important human rights norms, human dignity among them.

Learning outcomes:

Ability to think critically about the notion of human dignity, its problematics and potential as a legal concept;
Ability to assess the role of the notion in the structure of IHRL both in theory and in practice;
Ability to understand and describe the major trends of dignity jurisprudence in the regional human rights systems.

Assessment:

The final grade is based on class participation [30%] and a final paper [70%]. Final paper is to be written in essay format (2000w max, Times New Roman 12 point, 1.5 spaced) on a topic assigned during the course.

Class 1 – Placing human dignity in IHRL and discourse

This class sets the stage for the all the upcoming classes by discussing the place and importance of the notion of human dignity in the international human rights law and discourse. In this class, the students will, firstly, look into how the notion of human dignity has become to be one of the most referenced notions in the human rights discourse after the WWII and explore the mentions of the notion in the International Bill of Human Rights. Secondly, the class will introduce the different functions that the notion can be argued to have in the context of the international human rights project. Lastly, the class will provide an overview of the most common criticisms voiced by dignity sceptics partially due to the ambitious nature of the notion and partially due to the omnipresence of the notion in the current human rights discourse - which is sometimes referred to as *dignity fatigue*.

Key questions:

> *Why is it that the notion of human dignity gained most prominence in the international human rights law and discourse in the aftermath of the WWII? What does the notion of human dignity epitomize in this context?*
>
> *Where is the notion of human dignity located in positive international human rights law? How is the notion described/used in these instruments?*
>
> *How can the theoretical relationship between the notion of human dignity and the broader idea of international human rights law be conceptualized?*

Readings:

Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights", *The European Journal of International Law* Vol. 19, Issue 4 (2008): pp. 664-673.

Michael Rosen, "Dignity: The Case Against" in Chr. McCrudden (ed) *Understanding Human Dignity* (Oxford University Press: 2013): pp. 143-154.

Pablo Gilabert, *Human Dignity and Human Rights* (Oxford: Oxford University Press, 2018), pp. 141-149.

Oral assignment:

Consider which points of criticism you believe the notion of human dignity to be most vulnerable to and be prepared to discuss your conclusions in class.

Class 2 – Conceptions of human dignity

The concept of dignity – the idea that there is some quality of human beings that merits respect for the plain being of human – is clear. However, the conceptions of dignity – an answer to the question of *what* this quality is and *why* it deserves the said respect – can be very different. This class will explore the different ways of theorizing human dignity at the background of no explicit definition of the notion in any of the key international human rights instruments. In this class the students will learn about and discuss the core claims of the notion, that is, the ontological claim, the relational claim and the limited-state claim of human dignity.

Key questions:

What is the difference between the concept of human dignity and a conception of human dignity? Does it matter that there is more than one conception of human dignity, if the concept remains largely the same?

What are the core claims of the notion of human dignity? How does the proportion between those core claims in a given conception of human dignity affect the specific human rights that would be readily associated with that particular conception of human dignity?

What are the pros and cons of the flexibility of the notion of human dignity?

Readings:

Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights", *The European Journal of International Law* Vol. 19, Issue 4 (2008): pp. 655 - 663.

Rinie Steinmann, "The Core Meaning of Human Dignity", *Potchefstroom Electronic Law Journal* Vol. 19 (2016): pp. 5 - 24.

Class 3 – Dignity Jurisprudence by the ECtHR

In this class the students will start exploring the dignity jurisprudence of regional human rights systems, beginning with the dignity jurisprudence by the European Court of Human Rights. Here, dignity jurisprudence is especially interesting: while there is absolute silence on the notion of human dignity in the text of the European Convention on Human Rights, the relevant jurisprudence shows that the Court has recognized human dignity as a foundational value of the Convention system. During this class, the students will get familiar with landmark case-law under Articles 3 and 8 of the Convention considered significant for the dignity debate, and will learn about three most obvious aspects of the Court's reading of the notion of human dignity, which are dignity as the integrity of person, dignity as autonomy, and dignity as equality of human beings.

Key questions:

Why is the lack of a mention of human dignity in the text of the ECHR so curious? What could be the reason for that absence?

How could the European conception of human dignity be described? To what human rights is the notion most commonly applied to?

How do the three identified aspects of the Court's reading of human dignity relate to the three core claims of dignity as discussed in the previous class?

Readings:

Jean-Paul Costa, "Human Dignity in the Jurisprudence of the ECtHR", in Chr. McCrudden (ed.) *Understanding Human Dignity* (Oxford University Press: 2013): pp. 393 – 402.

Tyrer v. United Kingdom (Application No. 5856/72), ECtHR Judgment of 25 April 1978, paras. 9-10; 33-35.

Goodwin v United Kingdom (Application No. 28957/95), ECtHR Judgment of 1 December 1997, paras. 12-19; 90-91.

Pretty v United Kingdom (Application No. 2346/02), ECtHR Judgment of 29 April 2002, paras. 7-13; 35; 65; 68-78.

(*) Recommended: Robert Spano, "Deprivation of Liberty and Human Dignity in the Case-Law of the ECtHR", *Bergen Journal of Criminal Law and Criminal Justice* Vol. 4, Issue 2 (2016): pp. 150 – 166.

Class 4 – Dignity Jurisprudence by the Inter-American Court on Human Rights

This class continues the examination of regional dignity jurisprudence by turning to the Inter-American human rights protection system. Interestingly, in contrast to its European counterpart, the American Convention on Human Rights explicitly mentions the notion of human dignity in three separate articles, thus linking the notion to three different human rights. The jurisprudence of the IACtHR further confirms that the regional understanding of the notion reads human dignity as related to the right to humane treatment, freedom from slavery and forced labour, and the right to privacy and private life. Moreover, the IACtHR has expressly recognized the linkage between the notion of human dignity and the principle of equality between human beings. The relevant case-law looked at in this class will therefore show that the interpretation of the notion in this region shares similarities with that of its European counterpart's by translating the notion into claims of physical and moral integrity of a person, autonomy of the individual, and the equality between human beings.

Key questions:

How can the Inter-American reading of the notion of human dignity be described? To what human rights is it readily applied to?

What are its obvious similarities to the European dignity jurisprudence, what are some of the aspects that stand out?

Readings:

Viviana Bohórquez Monsalve and Javier Aguirre Román, "Tensions of Human Dignity: Conceptualization and Application to International Human Rights Law", *Sur – International Journal of Human Rights* Vol. 6, No. 11 (2009), **only** pp. 48-54.

Yvon Neptune v. Haiti, Judgment of 6 May 2008, Series C No. 180, paras. 130-133.

Rodriguez Vera et al v Colombia, Judgment of 14 November 2014, Series C No. 287, para. 419-420.

*Atala Riffo and Daughters v Chile***,** Judgment of 24 February 2012, Series C No. 239, paras. 79; 161-163.

Advisory Opinion OC-4/84 (Proposed Amendment to the Political Constitution of Costa Rica related to Naturalization), 19 January 1984, Series A No. 4, para. 53.

Class 5 – Dignity Jurisprudence by the African Commission on Human and Peoples' Rights

This class ends the examination of the regional dignity jurisprudence by delving into dignity jurisprudence in the human rights protection system in Africa. African dignity discourse is relevant for it demonstrates a distinct reading of the notion heavily influenced by societal values based in the idea of community. The ACmHPR has recognized the value of dignity to be no less than the very soul of the whole African human rights system. Dignity jurisprudence in the region also stands out for the African Charter of Human and Peoples' Rights - contains an explicit right to respect for the inherent dignity of human person. Having said that, the relevant case-law concurs with that of the other two regions on at least two major points: also here the notion of dignity is translated into claims of physical and moral integrity of person, and into claims of equality of human beings. Having analysed the relevant case-law on these points, the students will consider the ways how African dignity jurisprudence could be further developed to align with the equivalent in the other regions. To that end, students will briefly look into relevant dignity jurisprudence in South Africa, which could be of great use if the ACmHPR decides to enter judicial dialogue on the matter.

Key questions:

What characterizes the African reading of the notion of human dignity? To what human rights can it be readily applied to?

How could judicial dialogue between the ACmHPR/ACtHPR and some higher courts of the states in the region with developed dignity jurisprudence advance the regional interpretation of the notion of human dignity?

What conclusions can be drawn as regards the African dignity jurisprudence?

Readings:

Thaddeus Metz, "African Conceptions of Human Dignity: Vitality and Community as the Ground of Human Rights", *Human Rights Review* Vol. 13, No. 1 (March 2012): pp. 19-39.

Open Society Justice Initiative v. Côte d'Ivoire, Communication 318/06, 27 May 2016, para. 139.

Purohit and Moore v. Gambia, Communication 241/01, 29 May 2003, para. 57.

Spilg and Mack v. Botswana, Communication 277/03, 12 October 2013, paras. 167-169.

Nubian Community v Kenya, Communication 317/06, 23 May 2006, para. 131.

Class 6 – Dignity fatigue and the way forward

The aim of this final class is to contextualize the conclusions drawn in the previous three classes as regards the main characteristics of dignity jurisprudence in the regional human rights systems at the background of the currently experienced so-called *dignity fatigue* in the international human rights discourse. Students will reflect on the initial in-class discussion in the very first two classes about the main criticisms towards the legal notion of human dignity and review the anticipated vagueness and indeterminacy of the notion, but this time taking note of the clear similarities in dignity jurisprudence and the practical application of the notion in the case-law of the three regions. This class urges students to rethink their approach towards dignity debate by shifting away from the question *if* human dignity is a workable legal concept at all to the more meaningful question of *how* to further develop dignity into such a concept. By shifting the focus away from the debate on the controversial nature of the source of human dignity (which, moreover, remains largely theoretical) students will find the practical application of the notion in jurisprudence to illuminate points of convergence between regional interpretations of an undoubtedly flexible and multifaceted concept. The evidence of similarities and overlaps in the interpretation of the notion in specific areas of human rights is the material with which the formulation of the common understanding – the consensus – can be legitimately built on international plane.

Readings:

Mathias Malhmann, "The Good Sense of Dignity: Six Antidotes to Dignity Fatigue in Ethics and Law", in Chr. McCrudden (ed.) *Understanding Human Dignity* (Oxford: Oxford University Press, 2013): pp.593-614.

Bernhard Schlink, "The Concept of Human Dignity: Current Usages, Future Discourses", in Chr. McCrudden (ed.) *Understanding Human Dignity* (Oxford: Oxford University Press, 2013): pp.631-636.

Oral assignment:

> Be prepared to reflect on the conclusions drawn in the classes covering regional dignity jurisprudence in the context of the previously discussed *dignity fatigue.* What observations pertinent to dignity scepticism can you gather? How has the inquiry into regional dignity jurisprudence changed your perception of the notion of human dignity and its potential as legal concept?

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