Toward a Transregional Concept of Human Dignity:

Tracing the Contours of a Contested Concept in Regional Jurisprudence

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Submitted to

Department of Legal Studies

Central European University

In partial fulfilment of the requirements for the degree of Doctor of Juridical Science

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Vienna, Austria

2025

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Portions of earlier drafts of Chapters 1, 3, and 4 of this dissertation have been used in the development of an article, currently under review with the *Nordic Journal of Human Rights*, titled "More Than a Placeholder: The Two Dimensions of the Shared Concept of Human Dignity Across the Three Regional Human Rights Systems".

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Vienna, 21 August 2025

Abstract

The concept of human dignity occupies a central place in international human rights law (IHRL), yet remains contested in meaning. Despite its prominence in legal texts and its status as foundational to the concept of human rights, scholarship has largely examined it within single jurisdictions or through philosophical inquiry, leaving limited engagement with its meaning as a transnational legal concept bridging diverse legal interpretations. Strikingly, the European, Inter-American, and African regional human rights systems remain underexplored in this regard, despite their potential to develop coherent, authoritative regional conceptions that reflect both IHRL and domestic practice. Whether a transregional concept of human dignity exists, one with a shared substantive meaning across the three regional systems, remains uncertain. This uncertainty forms the impetus for this dissertation.

Building on prior attempts to conceptualize a transnational legal concept of human dignity, this study adopts three dimensions identified in dignity scholarship as central to such a concept—bodily integrity, equality, and personal autonomy—as its analytical framework for examining regional jurisprudence. It asks to what extent a shared, transregional concept of human dignity can be discerned through judgments of the European Court of Human Rights, Inter-American Court of Human Rights, and African Court on Human and Peoples' Rights, as well as decisions of the European Committee of Social Rights, Inter-American Commission on Human Rights, and African Commission on Human and Peoples' Rights. The study covers judgments and decisions delivered up to 30 April 2024, in which dignity was explicitly invoked in relation to any of these dimensions.

The dissertation employs a doctrinal, comparative, and interpretative methodology to trace transregional convergence along doctrinal, conceptual, and normative axes. In doing so, it identifies the normative and functional roles the concept of human dignity plays in

connection with the three dimensions and assesses whether the observed shared patterns support the existence of a thin, yet coherent, transregional concept of human dignity.

The findings reveal strong doctrinal, conceptual, and normative convergence across all three systems in understanding human dignity as intertwined with bodily integrity, which acquires legal meaning through the absolute prohibition of ill-treatment. In relation to equality, there is substantive conceptual and normative convergence expressed through the principle of non-discrimination, though doctrinal approaches differ: the European system articulates it cautiously through case-specific invocations of dignity, while the Inter-American and African systems articulate it more explicitly as a basis for rights claims. The third dimension—personal autonomy—converges only bi-regionally, since African regional dignity jurisprudence lacks this interpretative strand. The identified transregional concept of human dignity thus encompasses two of the three dimensions, excluding personal autonomy.

The findings of this dissertation contribute to the broader inquiry into human dignity as a transnational concept by addressing the lack of comparative clarity in existing scholarship and illuminating the concept's shared substantive components across regional systems. They further demonstrate how interpretative coherence in regional adjudication can promote a unified yet pluralistic understanding of this foundational concept, and how normative and conceptual stability can be revealed through a bottom-up analysis of judicial practice, thereby offering a replicable methodological approach for examining other contested concepts in IHRL.

Acknowledgments

I am indebted to my community at Central European University, the Legal Studies Department and its administrative staff, for hosting my academic journey. Most importantly, I thank my supervisor, Markus Böckenförde, for his support in the process, and for his early advice to trust my instincts—a line that has stayed with me ever since.

To my fellow SJDs, past and present, I am grateful for company during office hours in A604, countless coffee breaks, and our decompression sessions at *Suzanne*. On this, I thank Jingming for providing us with space to gather weekly. Special thanks go to Carol and Rohit, my very first lab mates and the most reliable friends to lean on, and to Sagar for never refusing feedback on my drafts. Getting to know you, my dear friends, has been a highlight.

Beyond the CEU, I want to thank my previous academic supervisors, Katarzyna Gracz, the first person to inspire me to pursue a PhD years ago, and Prof. Ineta Ziemele, who sparked my interest in the concept of human dignity in international law.

Crucially, I thank my parents, my brother, and close ones back in Riga for always knowing which questions to ask and when, and which ones are better left unasked. The distance between us has never kept me from feeling their support, and for that, I am forever grateful. To my Oma and Opis, I owe the very fact that I am writing these lines, as their support over the years has been indispensable. I could not have asked for more inspiring role models.

Lastly, the most heartfelt thanks go to Juan, my partner through highs and lows, who has always had such unwavering faith in me that it would rub off on me at the most crucial times. I do not know where I would be without his support—but I doubt I would be here.

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List of Abbreviations

ACHPR - African Charter on Human and Peoples' Rights

ACmHPR - African Commission on Human and Peoples' Rights

ACHR - American Convention on Human Rights

ACtHPR - African Court on Human and Peoples' Rights

AU - African Union

CHRL – Comparative Human Rights Law

CoE – Council of Europe

ECC – Essentially Contested Concept

ECSR - European Committee of Social Rights

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

IACmHR - Inter-American Commission on Human Rights

IACtHR - Inter-American Court of Human Rights

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social, and Cultural Rights

IHRL – International Human Rights Law

OAS - Organization of American States

UN – United Nations

UDHR - Universal Declaration of Human Rights

WWII - Second World War

Introduction

"Adata maza, bet dara lielu darbu."
Latvian proverb
(The needle is small, but the work it does is great.)

The Latvian proverb reminds us that something small in form can carry immense functional responsibility. In international human rights law (IHRL), the concept of human dignity plays a role much like the needle—not as visible or defined as the fabric itself, but crucial for stitching it together. This binding function, of threading through and holding the fabric in place, has been nowhere more visible than in the role the concept played during the drafting of the Universal Declaration of Human Rights (UDHR).[1] Amidst the daunting task of settling on a concept of human rights that would hold the seams of the project together, it was precisely the concept of human dignity, a signifier for a humanistic, nonpartisan point of departure, that proved to be the needle that could do the work, appealing to all those present at the drafting table, irrespective of their cultural, political, or religious backgrounds.[2]

Eighteen years later, the concept of human rights, rooted in the notion of human dignity, was solidified with the adoption of the two legally binding Covenants: the International Covenant on Civil and Political Rights (ICCPR)[3] and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[4], both of which affirm in their shared preamble that the

[1] United Nations General Assembly (UNGA), *Universal Declaration of Human Rights*, Resolution 217 A (III), adopted December 10, 1948.

[2] This is evident from the drafting history of the UDHR (explored in nuance in Section 1.1., pp. 13-21) and discussed as such widely in dignity scholarship. See, for instance, Pawel Lukow, "A Difficult Legacy: Human Dignity as the Founding Value of Human Rights," *Human Rights Review* Vol. 19 (2018), 313–329.

[3] UNGA, *International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171.

[4] UNGA, *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966, entered into force 3 January 1976, 993 U.N.T.S. 3.

rights therein "derive from the inherent dignity of the human person." Thus, the *source thesis*, prescribing human dignity as the foundation of human rights, was firmly settled in IHRL.

As such, it is hard to overstate the importance of the concept of human dignity in the modern discourse on human rights. Yet for all the benefits that the concept's plasticity yielded in the early stages of shaping the framework of IHRL, its open texture carries downsides as well. There is no authoritative definition of what the concept means, beyond the acknowledgment that it is foundational, the source, of human rights. It has no clear boundaries, and yet an unmistakable gravity.

If human dignity does the work of a needle in holding the fabric of IHRL together, the question of what it is understood to mean, substantively and in the language of human rights, is a compelling one. Does it do more than simply fill the necessary role of a justification for human rights? Might it carry its own substantive meaning, one that informs what is normatively expected from its invocation in practice? Certain human rights might transpire as conceptually inseparable from this foundational idea, particularly in the application of international human rights instruments. Understanding how the concept is doctrinally applied in adjudication and identifying the rights where it consistently appears can help reveal what human dignity means in legal terms. In short, what is the transnational meaning of the legal concept of human dignity, that is, its meaning across state and non-state jurisdictions, beyond the national?

Guided by these questions, scholarship is rich in attempts to pin down human dignity as a legal concept. Edited volumes have been devoted to its uses and meanings across a multitude of contexts, both in different jurisdictions and in various areas of law,[5] including international

[5] Among others, see Christopher McCrudden, ed., *Understanding Human Dignity* (Oxford: Oxford University Press, 2013); Marcus Düwell et al., eds., *The Cambridge Handbook on Human Dignity: Interdisciplinary Perspectives* (Cambridge: Cambridge University Press, 2014); Dieter Grimm et al., eds., *Human Dignity in Context: Explorations of a Contested Concept* (BadenBaden: Nomos, 2018); Brett G. Scharffs et al., eds., *Human Dignity, Judicial Reasoning and the Law: Comparative Perspectives on a Key Constitutional Concept* (Routledge, 2024).

law specifically.[6] This substantial body of literature, though shedding light on the different dimensions of the concept in practice, does not directly contribute to delineating dignity as a transnational concept. It does, however, show that such a task is a challenge precisely because of the concept's versatility in legal function and substantive content. Thus, while this strand of literature maps the conceptual terrain of human dignity, it also reveals the difficulty of locating a stable account of it at the transnational level.

A strand of dignity literature explores the meaning of human dignity specifically as a transnational legal concept, attempting to delineate a shared core meaning among the concept's various conceptions across jurisdictions. Most notably, Christopher McCrudden, Luís Barroso, and Adeno Addis have examined the concept from this perspective.[7] Their analyses reveal that certain themes consistently appear in dignity jurisprudence, namely, the invocation of human dignity in relation to the notions of bodily integrity, equality, and personal autonomy.

McCrudden's study finds these dimensions present across various jurisdictions, but still leads to a "normatively disappointing" conclusion of "no common substantive conception of dignity" transnationally.[8] However, he cautions that his expectations of consensus may have been too high, and that his divergence thesis has drawn on a limited scope of jurisdictions.[9] Barroso likewise includes all three in an "open-ended, plastic, and plural notion of human

[6] See, for instance, Ginevra Le Moli, *Human Dignity in International Law* (Cambridge University Press, 2021); Andrea Gattini, Rosana Garciandia, and Philippa Webb, eds., *Human Dignity and International Law* (Brill Nijhoff, 2021); Viviana Bohórquez Monsalve, 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), 39-61. On Europe specifically, see Daniel Bedford et al., eds., *Human Dignity and Democracy in Europe* (Edward Elgar, 2022).

[7] Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* Vol. 19, No. 4 (2008), 655-724; Luís Roberto Barroso, "Here, There and Everywhere: Human Dignity in Contemporary Law and in the Transnational Discourse," *Boston College International & Comparative Law Review* Vol. 35 (2012), 331-393; Adeno Addis, "Human Dignity in Comparative Constitutional Context: In Search of an Overlapping Consensus," *Journal of International and Comparative Law* Vol. 2, Issue 1 (2015), 1-28; Adeno Addis, "The Role of Human Dignity in a World of Plural Values and Ethical Commitments," *The Netherlands Quarterly of Human Rights* Vol. 31, Issue 4 (2013), 403-444.

[8] McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," 712.

[9] Ibid, 711.

dignity"[10] as the source of a transnational concept, but grounds this more in inferred links between human dignity and the three dimensions than in explicit judicial reasoning. Addis, while engaging with all three, questions equality as conceptually unhelpful for "one can hardly make [human dignity] clearer by invoking another, more elusive, concept"[11] and argues autonomy to be insufficiently connected to the relational nature of the human person. Taken together, these accounts point to the three dimensions as relevant analytical categories while underscoring the need for closer jurisdiction-specific analysis of their practical invocation. It is precisely this gap between theoretical accounts and detailed jurisdictional evidence that this dissertation seeks to address.

Building on the accounts of McCrudden, Barroso, and Addis, this dissertation examines bodily integrity, equality, and personal autonomy as likely dimensions of a transregional concept of human dignity. In referring to this concept as *transregional*, I highlight the interpretative space shared by the three regional human rights systems, situated between the national and the international (global). This narrower focus contrasts with the broader label *transnational,* which refers to any space of consensus beyond the national level. As such, my inquiry adopts a comparative, doctrinal, and interpretative approach, analyzing regional dignity jurisprudence to trace the contours of a transregional concept of human dignity.

The scope of my inquiry spans the three regional human rights systems: the Council of Europe (CoE), the Organization of American States (OAS), and the African Union (AU). The reason for such a choice is twofold. One reason lies in the current gap in scholarly attention to the regional human rights systems as sites for the articulation and emergence of human dignity as a transnational legal concept. Although scholarly interest in regional dignity jurisprudence

[10] Roberto Barroso, "Here, There and Everywhere," 360.

[11] Addis, "Human Dignity in Comparative Constitutional Context," 13.

has recently increased, it remains in its nascent stages.[12] Moreover, as of yet, no study has explicitly compared the three sets of dignity jurisprudence, for scholars have primarily focused on each regional system individually. As a result, this body of literature does not contribute to identifying the substantive content of the concept as shared among the three systems. What it lacks, and what this dissertation offers, is a jurisprudence-led inquiry into whether shared patterns emerge among the uses of the concept of human dignity in the practice of the three regional human rights systems—patterns that can substantiate a claim on the existence of a shared, transregional concept of human dignity.

Another reason for this jurisprudential focus relates to the very nature of regional human rights protection mechanisms, which is highly relevant to the discussion on the emergence and delineation of a transnational concept of human dignity and thus presents an overdue site for studying the invocation of this concept in their rights adjudication. As aptly noted by Başak Çalı et al., regional systems are the "manifestations of a global phenomenon"[13] of IHRL. Their work in articulating and institutionalizing IHRL within their respective regions makes them hubs of translation and expansion of often underexplained ideas and norms, while

[12] On the European system, see Veronika Fikfak and Lora Izvorova, "Language and Persuasion: Human Dignity at the European Court of Human Rights," *Human Rights Law Review* Vol. 22 (2022), 1-24; Jean-Paul Costa, "Human Dignity in the Jurisprudence of the European Court of Human Rights," in *Understanding Human Dignity*, ed. Christopher McCrudden (Oxford University Press, 2013), 393-402; Corina Heri, "Deference, Dignity and 'Theoretical Crisis': Justifying ECtHR Rights Between Prudence and Protection," *Human Rights Law Review* Vol. 24 (2024), 1-19; Jakub Czepek, "Dignity in the Jurisprudence of European Court of Human Rights," *International and Comparative Law Review* Vol. 24, No. 1 (2024), 107–119.

On the Inter-American system, see Anderson Orestes Cavalcante Lobato and Brigitte Feuillet-Liger, "Human Dignity in the Case Law of Inter-American Court of Human Rights," in *The Reality of Human Dignity in Law and Bioethics*, eds. Feuillet-Liger and Kristina Orfali (Springer, 2018), 219-226; Florencia Ratti Mendaña, "Ususal Formulas and Hermeneutic Criteria about Dignity of Prisoners in the Inter-American Court of Human Rights," *Estudios Constitucionales* Vol. 19, No. 2 (2021), 3-37; Jesus Ignacio Delgado Rojas, "Kant and Human Dignity in the Inter-American Court of Human Rights," *Derechos y Libertades* No. 43 (June 2020), 241-271.

On the African system, see Tsega Andualem Gelaye, "The role of human dignity in the jurisprudence of the African Commission on Human and Peoples' Rights," *African Human Rights Yearbook* (AHRY), Vol. 5 (2021), 116-133; Motsamai Molefe and Christopher Allsobrook, *Human Dignity in African Context* (Palgrave Macmillan, 2023).

[13] Başak Çalı, Mikael Rask Madsen, Frans Viljoen, "Comparative regional human rights regimes: Defining a research agenda," *International Journal of Constitutional Law*, Vol. 16, No. 1 (2018), 130.

simultaneously drawing on the distinct contexts of separate constitutional settings. As such, these systems are, as noted by Samanta Besson, "intermediary plateaux of transnational consensus"[14], a position that makes them especially fitting for the present inquiry.

This framing leads to the core objective of this study, that is, to examine whether a functionally stable, transregional concept of human dignity can be identified through comparative analysis of regional dignity jurisprudence. Drawing on dignity jurisprudence relating to bodily integrity, equality, and personal autonomy, the study aims to assess how the concept is invoked, what it reveals about its legal meaning, and whether shared patterns support the identification of a transregional concept. The identification of such a concept is more than an exercise for conceptual clarity. It also holds normative significance for the coherence and legitimacy of IHRL: shared interpretative practices across regions can signal a stable foundation for dignity-based rights adjudication in an increasingly plural legal landscape. In advancing this argument, I propose that identifying such a transregional concept is significant not only for the interpretative coherence of the notion of human dignity, but also for resisting fragmentation in human rights reasoning, a concern present in the face of legal pluralism.

Accordingly, the key research question that this study aims to answer is: **To what extent can a transregional concept of human dignity be discerned through regional dignity jurisprudence on bodily integrity, equality, and personal autonomy?** This inquiry is supported by three sub-questions that shape the research trajectory of the dissertation:

(i) What does the invocation of human dignity in relation to the three dimensions in regional dignity jurisprudence reveal about the concept's substantive legal meaning?

(ii) Does regional dignity jurisprudence reveal shared patterns in how dignity is invoked across the three dimensions—conceptually, normatively, and doctrinally?

[14] Samantha Besson, "Comparative Law and Human Rights," in *The Oxford Handbook of Comparative Law*, 2nd edition, eds. Mathias Reimann, Reinhard Zimmermann (Oxford University Press, 2019), 1245.

(iii) Can those shared patterns support the identification of a thin, transregional concept of human dignity?

The unit of analysis in the comparative methodology of this dissertation is the conceptual and functional relationship between the concept of human dignity and the notions of bodily integrity, equality, and personal autonomy. Throughout the study, I refer to these as *dignity as bodily integrity, dignity as equality,* and *dignity as personal autonomy.* These labels reflect my understanding of what a conceptual relationship between these ideas entails, that is, the extent to which human dignity is understood to incorporate concerns for the three dimensions, and vice versa.

The setting of this inquiry is the regional dignity jurisprudence of the CoE, the OAS, and the AU. The umbrella term *dignity jurisprudence* encompasses all case law from the three regional courts—the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR), and the African Court on Human and Peoples' Rights (ACtHPR)—which includes the term "dignity" or "dignidad" in connection with any of the three dimensions. Regional dignity jurisprudence, in the sense advanced in this study, also includes all decisions of the three regional quasi-judicial bodies—the European Committee of Social Rights (ECSR), the Inter-American Commission on Human Rights (IACmHR), and the African Commission on Human and Peoples' Rights (ACmHPR)—that likewise refer to the concept in relation to bodily integrity, equality, or personal autonomy. The cut-off date for the selected jurisprudence is 30 April 2024.

My inquiry is guided by three conceptual and theoretical premises. First, it is committed to the lens of "dignity pragmatism," whereby the meaning of the concept is sought not in abstract theorizing, but in its use and function within the practice of human rights

adjudication.[15] Second, it is grounded in the idea of *thin universalism*, the view that a transregional concept does not need to exhibit full, uniform doctrinal, conceptual, and normative convergence across the three dimensions and the three regional systems, but can instead emerge through a convergence in recurring patterns on some parts of the concept, even in the presence of divergence on others.[16] Accordingly, consistent uses of the concept of dignity to support claims to bodily integrity, equality, and personal autonomy across the three systems may indicate the presence of a transregional concept, even if the nuances of that relationship differ. Third, the study maintains a crucial analytical distinction between the *concept* of human dignity, on the one hand, and its *conceptions*, on the other.[17] This distinction allows for a meaningful separation between those components of human dignity that appear shared across the systems, signaling the content of the concept, and those that remain system-specific, reflecting distinct conceptions.

With these premises in mind, this study does not seek to offer a theory of human dignity, but to illuminate the shared content of the concept as it emerges across the three regional systems, both descriptively and interpretatively. The structure of this dissertation reflects the progression of the inquiry: from conceptual foundations to comparative analysis to synthesis. Chapter 1 addresses the paradox of human dignity as a foundational yet elusive concept within the framework of IHRL. Chapter 2 sets out the methodological and conceptual scaffolding for

[15] The term "dignity pragmatism" draws on David Luban's broader account of human rights pragmatism and its recent application to the concept of human dignity by Adeno Addis. This idea is explored in greater depth below, in Section 2.1.1., pp. 55-57. See David Luban, "Human Rights Pragmatism and Human Dignity," in *Philosophical Foundations of Human Rights*, eds. Rowan Cruft, S. Matthew Liao and Massimo Renzo (Oxford University Press, 2015), 20; and Adeno Addis, "Dignity, Integrity, and the Concept of a Person," *ICLT Journal* Vol. 13 No. 4 (2019), 323-372.

[16] The notion of "thin universalism*"* as developed in this dissertation draws on Federico Lenzerini's three-tiered model of universality in human rights. This model is taken up more fully below, in Section 2.1.2., pp. 58-62. See Federico Lenzerini, *The Culturalization of Human Rights Law* (Oxford: Oxford University Press, 2014), 31-32.

[17] This distinction draws on Walter Bryce Gallie's classic account of "essentially contested concepts," which explains why certain social concepts are inherently subject to ongoing dispute. Its relevance is further addressed below, in Section 2.1.3., pp. 62-68. See Walter Bryce Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* Vol. 56 (1956), 167-198.

the inquiry into the existence of a thin, transregional concept of human dignity. Chapters 3 through 5 form the empirical core of the study, examining the three dimensions of the concept through a close reading of dignity jurisprudence across the three regional systems: *dignity as bodily integrity* (Chapter 3), *dignity as equality* (Chapter 4), and *dignity as personal autonomy* (Chapter 5). Together, these chapters lead to the synthesis presented in Chapter 6, where I revisit and answer the central question posed in this dissertation, delineating a thin, transregional concept of human dignity.

Chapter 1.
Human Dignity in International Human Rights Law: Ubiquitous Yet Undefined

Few concepts are as central to the normative architecture of IHRL as that of human dignity. Yet the picture that emerges of the concept in contemporary IHRL is a puzzling one. On the one hand, it appears in virtually all major instruments of IHRL. On the other, it remains substantively undefined: none of the instruments that refer to human dignity in a prominent way clarify what the concept entails precisely, whether concrete human rights claims flow directly from it, and what such claims might be. This tension between the omnipresence and vagueness of the concept of human dignity makes its role in IHRL foundational but elusive.

As a normative concept, the dignity of the human being has served as a unifying reference point, helping to bridge political divides in the process of codifying human rights in the aftermath of the Second World War (WWII). The drafting of the UDHR is the prime example of this function, as the flexibility of the notion of human dignity paved the way for a political consensus on the concept of human rights endorsed therein.[18] This instrumental function of the concept in the drafting of the UDHR has led to it being labelled a placeholder, a concept that facilitates practical consensus without requiring its precise definition.[19]

Beyond its symbolic value in the drafting of the UDHR, the concept has taken on a central role in the further codification of IHRL, as the subsequent international instruments echo a dignitarian framework by showcasing "a nearly exceptional canonical inclusion of references

[18] United Nations General Assembly (UNGA), *Universal Declaration of Human Rights*, A/RES/217A(III), 10 December 1948.

[19] See McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," 655-724, where the author coins the idea of the concept of dignity being a placeholder in the process of drafting the UDHR.

to dignity".[20] Nowhere is this clearer than in the shared preamble of the ICCPR[21] and the ICESCR,[22] where the inherent dignity of the human person is articulated as the source of human rights. This *source thesis*, framing human rights as derived from human dignity, creates a complex relationship: the more conceptual weight is placed on the concept of human dignity in IHRL, the more pressing the question of what it means within this field that it is said to ground. This gives rise to the paradox of the *source thesis*: a notion of human dignity that symbolizes international consensus yet lacks a defined content ultimately exposes the very absence of such consensus.

The centrality of the concept of human dignity in human rights discourse in the post-WWII world was so palpable that already by the mid-1980s standards set by the United Nations (the UN) for drafting human rights instruments called for any future developments in the field to "derive from the inherent dignity and worth of the human person".[23] Consequently, in the present catalogue of codified IHRL, it is difficult to find a legal instrument that does not contain a reference to the concept of human dignity in one way or another. It is most often invoked as part of the broader principles underlying the UN system, as originally articulated in the Charter of the United Nations, which reaffirms the "faith in fundamental human rights, [and] in the dignity and worth of the human person"[24].[25] Additionally, the core UN human rights treaties

[20] Paolo G. Carozza, "Human Dignity," in *The Oxford Handbook of International Human Rights Law,* ed. Dinah Shelton (Oxford University Press, 2013), 350.

[21] UNGA, *International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171.

[22] UNGA, *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966, entered into force 3 January 1976, 993 UNTS 3.

[23] UNGA, *Setting International Standards in the Field of Human Rights*, A/RES/ 41/120, 4 December 1986.

[24] *Charter of the United Nations*, signed 26 June 1945, entered into force 24 October 1945, 1 UNTS 16.

[25] For references to dignity in the preambles see International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted 7 March 1966, entered into force 4 January 1969, A/RES/2106, 660 UNTS 195; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979, entered into force 3 September 1981, A/RES/34/180, 1249 UNTS 13; Convention on the Rights of the Child (CRC), adopted 20 November 1989, entered into force 2 September 1990, A/RES/44/25, 1577 UNTS. 3; Convention on the Rights of Persons with Disabilities (CRPD), adopted 13 December 2006, entered into force 3 May 2008, A/RES/61/106, 2515 UNTS 3.

emphasize that human beings are born free and equal in their dignity,[26] and stress dignity as inherent to the human person.[27] Similarly, it serves a prominent role in constitutional law, where a reference to human dignity has become a standard component of constitutional instruments around the globe, a characteristic of post-WWII constitutional developments, where mentions of dignity have increased from just five before WWII to 162 by 2014.[28]

Against this backdrop of the concept's simultaneous ubiquity and vagueness, attempts to clarify its substantive meaning as a legal concept have multiplied. A substantial body of dignity literature maps the various functions and meanings of the concept across legal systems. More relevant to the *source thesis* paradox, though, is a distinct strand of dignity literature that attempts to extract a common meaning from the concept's diverse legal conceptions, with the aim of delineating a shared transnational understanding of human dignity.[29] Here, certain themes emerge consistently from within these scholarly attempts: human dignity in relation to bodily integrity, equality, and personal autonomy.

In this chapter, I trace the trajectory of the concept of human dignity across key moments in its development as central to the normative architecture of IHRL in the post-WWII world. I begin by examining its foundational role in the drafting of the UDHR, followed by a look at its conceptual elevation as the source of human rights in the two Covenants. I then turn to its normative consolidation in the subsequent catalogue of IHRL, and its parallel growing

[26] See the Preamble of ICERD or CEDAW.

[27] See the Preamble of: CRC; CRPD; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted 10 December 1984, entered into force 26 June 1987, A/RES/39/46, 1465 UNTS 85; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), adopted 19 December 1990, entered into force 1 July 2003, A/RES/45/158, 2220 UNTS 3.

[28] Doron Shulztiner and Guy E. Carmi, "Human Dignity in National Constitutions: Functions, Promises and Dangers," *The American Journal of Comparative* Law Vol. 62, No. 2 (2014), 465.

[29] On the distinction used in this dissertation between the terms "transnational" and "transregional": the former refers to the interpretative space beyond individual jurisdictions, where legal meanings emerge across both state and non-state actors; the latter denotes the shared legal space between the three regional human rights systems of Europe, the Americas, and Africa, in specific.

constitutional prominence. Finally, I take stock of the scholarly attempts where the substantive meaning of the legal concept of human dignity is pinned down based on its various conceptions in the practice of human rights adjudication, setting the stage for my own inquiry that follows.

1.1. The Foundational Moment: Drafting of the UDHR

The instrumental role played by the concept of human dignity in the process of drafting the text of the UDHR as a symbol of "a shared foundational commitment"[30] has been widely discussed in the scholarship.[31] A review of the drafting history of the UDHR reveals that its drafters strongly endorsed the centrality of the concept in the context of the UDHR, and for laying the groundwork for an international framework for human rights protection more broadly.

For instance, Pen Chun Chang, one of the key drafters, insisted that the Preamble of the UDHR should set forth the philosophy that the document is founded upon by establishing a standard "with a view to elevating the concept of man's dignity and emphasizing the respect of man".[32] Similarly, already in the early stages of the drafting process, while discussing the reference to dignity in the text of the UDHR, Charles Malik, another leading drafter, urged to "give greater meaning to this expression"[33] as if sensing the opportune moment to specify the substance of this powerful yet indeterminate idea. Likewise, when discussing the very purpose of the UDHR, he underlined that "the Commission was called upon to finish the work initiated by the Charter, in giving content and meaning to the phrase 'the dignity and worth of the human person'".[34]

[30] Carozza, "Human Dignity," 348.

[31] See, among others: McCrudden, "Human Dignity and Judicial Interpretation," 675-678; Carozza, "Human Dignity," 348-351; Lukow, "A Difficult Legacy," 313–329.

[32] UN Commission on Human Rights (UNCHR), "Summary Record of the Seventh Meeting*"* (31 January 1947), E/CN.4/SR.7, 4.

[33] UNCHR, "Summary Record of the Fourteenth Meeting" (5 February 1947), E/CN.4/SR.50, 6.

[34] UNCHR, "Summary Record of the Fiftieth Meetings" (4 June 1948), E/CN.4/SR.50, 4.

As such, the concept of dignity transpires as central to the spirit of the drafting of the UDHR from its early stages, and there appears to have been an incentive to distill the meaning of this concept through its articulation in the UDHR. It is thus both striking and somewhat underwhelming that neither the records of the drafting history of the UDHR, nor its adopted text, offers more nuanced indications of the meaning of this concept. Even more, the drafting history of the UDHR does not show a single discussion on the meaning of the concept of dignity: there are a few explicit mentions of dignity during the debates on the draft text, but one does not find any indications on the more precise meaning of the concept as a concern of the drafters as a whole in any of those few mentions.[35]

It is apparent, then, that the reference to dignity in the drafting of the UDHR carried out an important, indeed, crucial function—it served as a placeholder. It facilitated "a practical agreement between representatives of opposing ideologies"[36] because it "could appeal to people of various ideological backgrounds without forcing them to compromise basic principles".[37] Thus, the absence of a more concrete definition of dignity in the UDHR was in no way a shortcoming, but rather an advantage: it was precisely the "under-theorization and imprecision of the concept of human dignity"[38] that was conducive to the adoption of the UDHR as a whole. As Christopher McCrudden notes:

> "A theory of human rights was a necessary starting point for the enterprise that was being embarked upon. Dignity was included in that part of any discussion or text where the

[35] For example, the chair of the UN Commission on the Status of Women, Bodil Begtrup, emphasized "the dignity of the wife" in the context of civil marriage and the equal right to its dissolution (see UN Commission on the Status of Women, "Report to the Economic and Social Council" (25 February 1947), E/281/Rev.1, 12). The draft article on the right to property submitted by Chile stressed the "maintenance of the dignity of the human person" in relation to a minimum standard of property ownership (see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 1999), 140). The connection between *dignity* and fair renumeration for work was raised by the Cuban delegation and became a broader point of discussion (see UNGA, "Report of Sub-Committee 3 of the Third Committee" (22 November 1948), A/C.3/363). The USSR delegation, in turn, emphasized the link between dignity and the right to housing (see UNCHR, "Summary Record of the Seventy-first Meeting" (28 June 1948), E/CN.4/SR.71, 5, 8).

[36] Shulztiner and Carmi, "Human Dignity in National Constitutions," 472.

[37] Ibid, 471-472.

[38] Lukow, "A Difficult Legacy," 319.

> absence of a theory of human rights would have been embarrassing. Its utility was to enable those participating in the debate to insert their own theory. Everyone could agree that human dignity was central, but not why or how."[39]

In short, then, dignity functioned as a flexible linguistic symbol, enabling a political agreement based on an apparent consensus where in reality worldviews might have differed sharply. Those participating in the drafting process could regard the concept as accommodating their particular set of values, thus allowing the drafters, as a whole, to arrive at an agreement on a concept of human rights without having to resolve their deeper philosophical differences on the nature of the human person as such. Importantly, unlike a typical placeholder, which is often devoid of substantive content, the concept of dignity "carried an enormous amount of content, but different content for different people".[40] Therefore, it was its richness in meaning that made its function so uniquely effective.

The placeholder function of the concept is reflected in the adopted text of the UDHR. Altogether, there are five mentions of dignity in the text, providing a "unifying key"[41] to the concept of human rights endorsed by this instrument: twice in the Preamble, and once in each of Articles 1, 22, and 23. Taken together, the five textual mentions of dignity reveal little about the concept's substantive meaning. Based on the adopted text alone, one finds that dignity is framed as secular and egalitarian, relevant to the economic, social, cultural rights, and deeply tied to the economic survival and security of the human person.

The two references to the concept of dignity in the Preamble of the UDHR state that:

> "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
>
> [...]

[39] McCrudden, "Human Dignity and Judicial Interpretation," 678.

[40] Ibid.

[41] Carozza, "Human Dignity," 347.

> Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom [...]".

Thus, based on the adopted text alone, the key takeaway from the Preamble of the UDHR is that dignity is intrinsic to the human person: it can neither be earned nor achieved, as it is a permanent, natural characteristic of all human beings. But with this important exception of the first paragraph marking it as inherent, neither of these two mentions provides much insight into the substantive meaning of the concept of human dignity.

The references to dignity in Article 22 and Article 23 of the UDHR invoke the concept in relation to specific human rights entitlements. Article 22 UDHR states that:

> "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."

Accordingly, one learns that dignity is tied to economic, social and cultural rights. Similarly, in Article 23.3 UDHR, dignity appears situated in the context of labor rights:

> "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."

From the mention of dignity in this article two key observations can be made. Firstly, the concept as endorsed by the UDHR is directly linked to working conditions and economic security. Secondly, the phrasing suggests that there is a threshold of living standards that are compatible with human dignity. By extension, conditions falling below this threshold could be understood as violations of dignity. Similarly to the reference made in Article 22 UDHR, then, dignity is conceptualized as a condition that requires maintenance.

While Articles 22 and 23 of the UDHR refer to specific human rights, Article 1 UDHR serves as a general, overarching statement setting the tone for the rest of the document:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

This phrasing clearly endorses human dignity, once again, as intrinsic to the human person, noted as something human beings are born with, thus reiterating the previously highlighted observation from the text of the Preamble of the UDHR. More importantly, however, the phrasing ascertains equal dignity of human persons, meaning that dignity is equally shared by all people. Consequently, the concept that transpires through the wording here frames dignity as not only a secular, but also an egalitarian idea.

Because of the strong egalitarian ethos of the text of Article 1 UDHR, it has been labelled "a trumpet call of victory after battle" for the tone it sets for the rest of the document in asserting the "deep truths rediscovered in the midst of the Holocaust."[42] In a similar vein, amidst the drafting process, Renee Cassin underlined that the article alludes to "the three fundamental questions of liberty, equality, and fraternity because, during the war, these great fundamental principles of mankind had been forgotten".[43] As such, Article 1 UDHR was to signal the general ethos of the instrument as a whole. Still, despite the evident impetus to frame it in egalitarian terms, the text of Article 1 UDHR remains textually open-ended.

The scope of the task of Article 1 UDHR in providing the interpretative ground for the UDHR explains why the process of its drafting was lengthy and tedious. Mary Ann Glendon notes that the already much debated and revised draft text of Article 1 UDHR took no less than six days to get through once the discussions switched from general debate to the specific provisions of the UDHR.[44] Amidst this process, the South African representative C.T. Te Water suggested to replace "dignity and rights" in the text with "fundamental rights and freedoms,"

[42] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press, 1999), 38.

[43] UNCHR, "Summary Record of the Eight Meeting" (17 June 1947), T/AC.1/SR.8, 2.

[44] Mary Ann Glendon, *A World Made New* (Random House: New York, 2001), 143.

insisting that only some rights can create entitlements equal among all.[45] Crucially, he pointed out the lack of a universal standard of human dignity in this context.[46] This suggestion "electrified the meeting"[47] prompting Te Water's further elaboration on the feasibility of the reference to human dignity as questionable, arguing that dignity as such was not a right.[48] In response, Eleanor Roosevelt noted that the wording had been chosen very carefully "in order to emphasize that every human being is worthy of respect".[49] Although ultimately dismissed, this proposal exemplifies the concerns on the inclusion of the concept in such a prominent manner in the text of Article 1 UDHR due to its ambiguous meaning.

As observed above, the final text of Article 1 UDHR was left distinctly secular, however different stages of its drafting saw proposals urging to phrase it with evidently religious undertones. For instance, the Brazilian delegation suggested the second sentence of the article to start with the phrase "Created in the image and likeness of God,"[50] while the Dutch delegation sought to amend the first paragraph of the Preamble to read:

> "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, *based on man's divine origin and immortal destiny,* is the foundation of freedom, justice and peace in the world [emphasis added]".[51]

Notably, neither of the two proposals ever reached the stage of voting. Despite the Brazilian delegation arguing that a reference to God "would be welcomed by an overwhelming majority of peoples of the world,"[52] neither of the proposals was advanced any further as soon as "the

[45] Glendon, *A World Made New*, 144.

[46] Ibid.

[47] John P. Humphrey, *Human Rights & the United Nations: A Great Adventure* (Transnational Publishers, 1984), 71.

[48] Glendon*, A World Made* New, 146.

[49] UNGA, "Records of the Ninety-eight Meeting" (9 October 1948), A/C.3/SR.98, 110.

[50] UNGA, "Draft International Declaration of Human Rights: Amendments to Article 1" (11 October 1948), A/C.3/254.

[51] UNGA, "Draft International Declaration of Human Rights: Amendment to the 1st Paragraph of the Preamble" (4 October 1948), A/C.3/219.

[52] UNGA, "Records of the Ninety-first Meeting" (2 October 1948), A/C.3/SR.91.

depth of the opposition became apparent to [the amendments'] respective sponsors".[53] Furthermore, Pen-Chun Chang urged for the withdrawal of the Brazilian proposal to "spare the members of the Committee the task of deciding by vote on a principle which was in fact beyond the capacity of human judgment"[54] thus highlighting the stakes of the inclusion of metaphysical connotations in the definition of the human person.[55] Additionally, he argued that even absent a reference to God, the text of Article 1 UDHR could accommodate the specific metaphysical undertones by those who regard them as significant, while "others with different concepts would be able to accept the text"[56] too.

In a nutshell, the final wording of Article 1 UDHR can be seen as a neutral ground between the varying cultural backgrounds represented at the drafting table. It is estimated that the drafting process brought together 37 nations of Judeo-Christian tradition, 11 of Islamic, 6 of Marxist and 4 of Buddhist.[57] In such a setting, the overarching objective was to secure the broadest possible participation in what was widely regarded as a momentous historical event.[58] As Mary Ann Glendon has noted, each country sought a "sense of ownership"[59] of the document and, as recalled by Eleanor Roosevelt, those present were determined to contest "every single word of that draft declaration over and over again".[60] To achieve consensus, the text had to be framed in a way sufficiently flexible to appeal to all the different worldviews while still supplying it with enough precision "to improve its chances of reception among many

[53] Morsink, *The Universal Declaration of Human Rights*, 285.

[54] UNGA, "Records of the Ninety-eight Meeting," 110.

[55] On this, Pen-Chun Chang added that the Chinese tradition - representing a large group of the humanity - also had "ideals and traditions different from that of the Christian West" but that the Chinese representative would not propose their mentioning in the UDHR, and "hoped that his colleagues would show equal consideration and withdraw some of the amendments to Article 1 which raised metaphysical problems" (UNGA, "Records of the Ninety-eight Meeting").

[56] UNGA, "Records of the Hundred and Fourteenth Meeting" (27 October 1948), A/C.3/SR.114.

[57] Morsink, *The Universal Declaration of Human Rights*, 21.

[58] Glendon, *A World Made* New, 144.

[59] Ibid, 143.

[60] Eleanor Roosevelt, *On my Own* (New York: Harper, 1958), 85.

cultures in the long run."[61] As René Cassin later recalled, the final formulation of the text of Article 1 UDHR secured precisely that, as it allowed the Committee:

> "to take no position on the nature of man and of society and to avoid metaphysical controversies, notably the conflicting doctrines of spiritualists, rationalists, and materialists regarding the origin of the rights of man".[62]

As a result, the contested meaning of the concept of human dignity emerges as its strongest suit in the context of its genesis as a foundational notion in IHRL. Because of its potential to accommodate a wide spectrum of philosophies of life, the endorsement of it as a foundational element in the structure of IHRL has been argued as "one of the most important, innovative elements introduced into International Law".[63] Indeed, embodying a "convergence point for what is perceived to be non-ideological humanistic point of departure,"[64] human dignity balances the difficult relationship between morality geared towards an ever-growing recognition of individualism on the one hand, and the social dimensions of humanity on the other, combining commitments to both individual autonomy and human solidarity.

From the aforementioned discussion, one can gather that the UDHR set the stage for the prominence of dignity in IHRL by embedding it as a foundational concept but without providing a concrete definition on its meaning. While the UDHR served as a declaration of aspirations, the subsequently adopted two Covenants embodied legally binding commitments that not only reaffirmed the centrality of dignity but also further entrenched its role as

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[61] Roosevelt, *On my Own*, 85.

[62] This is a translation by Morsink, for the original see René Cassin, "Historique de la Declaration Universelle de 1948," *La Pensee et l'action* (Lalou, 1972), 108.

[63] Klaus Dicke, "The Founding Function of Human Dignity in the Universal Declaration of Human Rights," in *The Concept of Human Dignity in Human Rights Discourse*, eds. David Kretzmer and Eckart Klein (Kluwer Law International, 2002), 111.

[64] David N. Weisstub, "Honor, Dignity, and the Framing of Multiculturalist Values," in *The Concept of Human Dignity in Human Rights Discourse*, eds. David Kretzmer and Eckart Klein (Kluwer Law International, 2002), 263.

foundational to the concept of human rights. Thus, looking at how dignity is articulated in the two Covenants provides a deeper insight into its evolving function in IHRL.

1.2. The Conceptual Shift: *Source Thesis* in the Two Covenants

The ICCPR and the ICESCR form the backbone of the UN human rights protection framework. As the two legally binding instruments of the International Bill of Rights, they symbolize the international commitment to codify international human rights standards. Most importantly, the two Covenants are also where the conceptual trail of human dignity as a foundational concept in IHRL begins, because their shared preamble recognizes that "the equal and inalienable rights of all members of the human family […] *derive* from the inherent dignity of the human person [emphasis added]".[65] As such, the Covenants clearly endorse dignity as the source of human rights, entrenching the *source thesis.*

The *source thesis*, which highlights the key contradiction between the simultaneous functional stability (as the source of human rights) and normative instability (as an undefined concept) of dignity within IHRL, serves as a central impetus for this dissertation. The pivotal role of the concept of human dignity as a placeholder in the drafting of the UDHR, owing to its plasticity in meaning, has been highlighted above as the main upside of the *source thesis*. However, that very same plasticity embodies the key vulnerability of the *source thesis*: despite its utility during the early developments of IHRL, the absence of an authoritative, clarified meaning on the substantive content of this concept weakens the normative strength of this conceptual relationship between human dignity and human rights.

[65] The two instruments also refer to the concept of dignity in their operative provisions. Article 10 ICCPR provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person," while Article 13 ICESCR states that education shall be directed to the "full development of the human personality and the sense of its dignity."

The *source thesis* has a connection to a certain conception of human rights. It is commonly read as an endorsement of the orthodox (foundational) account of human rights,[66] whereby the uniqueness of the human person grounds human rights as birthrights of every human being.[67] In this view, human rights are not contingent on the existence of political and legal institutions (for they exist even in their absence) but "international human rights law and practice *realize* these moral rights"[68] through such institutions. As such, the codification of IHRL reflects a shared, universal notion of moral human rights, one that supplies the legal human rights movement with "both conceptual coherence and normative force".[69] In this sense, the claim to individual human rights is a derivative of a certain conception of the nature of the human person whereby "the truth is on the side of human rights".[70]

Through its reliance on the inherent worth of the human person and human dignity as the source for legal human rights, the orthodox conception intensifies the problematics arising from the dual nature of the concept of human dignity as both foundational and indeterminate within IHRL. If human dignity is the very foundation of not only moral, but also legal human rights, it must be conceptually sharp and function effectively as a legal concept. If, on the other hand, it persists as ambiguous and indeterminate, it loses much of its credibility and power in its application as the foundation of human rights in the practice of the IHRL.

[66] Also sometimes referred to as the moral account of human rights.

[67] See, for example, John Tasioulas, "On the Nature of Human Rights," in *The Philosophy of Human Rights: Contemporary Controversies,* eds. Gerhard Ernst and Jean-Christoph Heilinger (Walter de Gruyter, 2012), 17–59; Peter Schaber, "Human Rights Without Foundations?" in *The Philosophy of Human Rights: Contemporary Controversies,* eds. Gerhard Ernst and Jan-Christoph Heilinger (Walter de Gruyter, 2012), 61-72; John Simmons, "Human Rights, Natural Rights, and Human Dignity," in *Philosophical Foundations of Human Rights*, eds. Rowan Cruft, S. Matthew Liao and Massimo Renzo (Oxford University Press, 2015), 138-152.

[68] Violetta Igneski, "A sufficiently political orthodox conception of human rights," *Journal of Global Ethics* Vol. 10, No. 2 (2014), 167.

[69] John Tasioulas, "Human Rights, legitimacy and international law," *American Journal of Jurisprudence* Vol. 58, Issue 1 (2013), 2.

[70] Vittorio Bufacchi, "Theoretical foundations for human rights," *Political Studies* Vol. 66, Issue 3 (2017), 7.

In response to this puzzle, the orthodox conceptions of human rights are often juxtaposed with political (also called functionalist or practical) conceptions of human rights. These alternative renderings characteristically shift the focus away from the philosophical discussion on the nature of human beings to the function of human rights in international practice.[71] Typically, this translates into framing human rights as standards of legitimacy and limits to state governments to measure the justifiability of intervention with states' internal autonomy once they fail to prevent, or commit, human rights violations. As such, human rights in these views are understood as normative requirements that are informed by international political practice. By extension, no prior concept of human rights to the one that took root in the aftermath of WWII is recognized under these accounts: human rights are "empirically rather than morally grounded"[72] and their empirical beginning starts with the inauguration of the international legal framework for human rights protection in the UDHR.

That said, not all variants of political conceptions of human rights necessarily negate the special moral significance of human rights.[73] In fact, the idea of a strict division between the two camps is often challenged as inflated.[74] Still, commonly, the reliance on moral ideals embodied by orthodox conception is seen as impractical by political accounts for it "tend[s] to

[71] See, for example, Charles Beitz, *The Idea of Human Rights* (Oxford University Press, 2009); Joseph Raz, "Human Rights Without Foundations," in *The Philosophy of International Law*, eds. Samantha Besson and John Tasioulas (Oxford University Press, 2010), 321-337.

[72] Andre Santos Campos, "The Political Conception of Human Rights and Its Rule(s) of Recognition," *Canadian Journal of Law and Jurisprudence* Vol. 35, Issue 1 (2022), 97.

[73] Likewise, this is not to suggest that traditional conceptions of human rights disregard their function entirely, but rather that their primary concern lies elsewhere, typically with moral grounding. For an example of an orthodox conceptions that nonetheless assigns a functional role to human rights, see James Griffin, *On Human Rights* (Oxford University Press, 2008), which blurs the line between moral and functionalist accounts.

[74] See, for example, Adam Etinson, ed., *Human Rights: Moral or Political?* (Oxford: Oxford University Press, 2018); Vittorio Bufacchi, *Theoretical Foundations for Human Rights*; Matthew S. Liao and Adam Etinson, "Political and Naturalistic Conceptions of Human Rights: A False Polemic?" in *Journal of Moral Philosophy* Vol. 9 (2012), 327-352; Erasmus Mayr, "The Political and Moral Conceptions of Human Rights," in *The Philosophy of Human Rights: Contemporary Controversies,* eds. Gerhard Ernst and Jean-Christoph Heilinger (Walter de Gruyter, 2012), 73-104.

distort rather than illuminate international human rights practice"[75] and the aspiration of reorganizing the global arena so as to follow certain philosophical assumptions is argued as "at best, a long term strategy, and at worse an intellectual pastime with no political impact".[76] This manifests in a rejection of the concept of dignity as foundational to the concept of human rights, arguing that a reference to inherent dignity is unhelpful "since it pushes the debate on human rights into deep metaphysical waters and distracts from their political function: placing constraints on the conduct of powerful actors".[77]

Contrary to the orthodox account, political conceptions tend to advocate for metaphysical agnosticism as necessary for an effective conception of human rights to bypass the question of *why* the human person is by nature entitled to human rights. By shifting away from the metaphysical connotations of the idea of the inherent human worth, they base the concept of human rights on the relational status of the human person vis-à-vis the sovereign state as the duty-bearer, underlining the "*sui generis* moral relationships between agents with *sovereign authority* and their *subjects*"[78] instead. As such, human rights are framed as entitlements that subjects hold by virtue of their relationship to the sovereign, conceived as an inherent component of what it means to be a sovereign authority in the first place.

Though such a shift somewhat relieves the tension of metaphysical controversies, it is not entirely devoid of them. Political conceptions claim to bypass the question of the uniqueness of the human person and human rights as birthrights by explaining the normative standards embodied through human rights by virtue of their relational properties. That said, an account of the moral relationship between the human person and the sovereign authority is

[75] Charles Beitz, "Human Rights and the Law of Peoples," in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Deen Chatterjee (Cambridge University Press, 2004), 198.

[76] Bufacchi, "Theoretical Foundations for Human Rights," 4.

[77] For an illustrative example, see Laura Valentini, "Dignity and Human Rights: A Reconceptualization," *Oxford Journal of Legal Studies* Vol. 37, No. 4 (2017), 863.

[78] Valentini, "Dignity and Human Rights: A Reconceptualization," 873.

necessarily laden with assumptions of a moral kind, too. The question of *why* these relational properties entail human rights claims against the sovereign entities remains open. To that extent, both orthodox and political conceptions exhibit the same vulnerability, and it is not clear why a focus on the relational properties of the human person is any less "an intellectual pastime"[79] than the focus on their natural, inherent properties.

Irrespective of which conception—orthodox or political—one chooses to follow, the *source thesis* prevails as the key paradigm in the current architecture of the IHRL. For supporters of the orthodox conception, human dignity provides the moral foundation on which human rights rest. For political conceptions, even though they may reject metaphysical commitments, the relevance of dignity cannot be dismissed either: given their emphasis on the legal and institutional practice of human rights, the fact that the two Covenants explicitly establish dignity as the source of human rights solidifies the concept within the operative framework that political conceptions argue to prioritize. From this perspective, the *source thesis* in the two Covenants marks not only a decisive conceptual shift in grounding human rights in the concept of human dignity in legally binding instruments, but also the beginning of the normative consolidation of the concept within the broader architecture of IHRL.

1.3. The Normative Consolidation in Subsequent IHRL

Following the adoption of the Covenants in 1966, the concept of human dignity gained further normative traction and began to appear regularly across international and regional human rights instruments both as a moral foundation to the catalogue of human rights listed therein and as a concept central to the protection of specific human rights. Thus, building on the *source thesis* articulated in the two Covenants, subsequent international treaties have consistently reaffirmed the inherent and equal dignity of all human beings. While some earlier

[79] Bufacchi, "Theoretical Foundations for Human Rights," 4.

instruments had already invoked the concept of dignity in their texts, the post-1966 period saw a noticeable increase in its use across the UN and regional human rights frameworks.[80]

Among the seven treaties that are typically grouped with the two Covenants as the core UN human rights instruments, five mention dignity in their preambles explicitly.[81] The Preamble of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) reiterates the *source thesis* from the two Covenants verbatim, while the preambles of the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD) reiterate the two Covenants' recognition of "the inherent dignity … of all members of the human family". The Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mention dignity in connection with the principle of non-discrimination, noting in their preambles that all human beings are born "equal in dignity".[82]

Beyond preambular references, dignity also appears in most of the core UN instruments' operative provisions.[83] The CRC, one of the most widely ratified human rights treaties, invokes

[80] Referring here to the four Geneva Conventions (*Geneva Conventions of 12 August 1949*, 75 UNTS 31, 85, 135, 287) which mention "dignity" in their common Article 3, where "outrages upon personal dignity, in particular humiliating and degrading treatment" are prohibited.

[81] The core UN human rights treaties are: International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entered into force 3 January 1976, 993 UNTS 3; International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, entered into force 4 January 1969, 660 UNTS 195; Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 December 1979, entered into force 3 September 1981, 1249 UNTS 13; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984, entered into force 26 June 1987, 1465 UNTS 85; Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3; Convention on the Rights of Persons with Disabilities, adopted 13 December 2006, entered into force 3 May 2008, 2515 UNTS 3; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted 18 December 1990, entered into force 1 July 2003, 2220 UNTS 3; and the International Convention for the Protection of All Persons from Enforced Disappearance, adopted 20 December 2006, entered into force 23 December 2010, UNGA Res 61/177, 2716 UNTS 3.

All but the latter two mention "dignity" in their preambles.

[82] Notably, the ICERD was adopted a year before the two Covenants, on 21 December 1965.

[83] The exceptions here are the CAT, the CEDAW, and the ICERD.

dignity in five of its articles, covering the rights of children with disabilities with regard to their living conditions (Art. 23), school discipline (Art. 28.2), the physical and psychological recovery of child victims (Art. 39), and the treatment of children deprived of liberty (Art. 37c), as well as those accused of infringement of law (Art. 40). Respect for dignity in the context of deprivation of liberty of migrant workers, as well as their working and living conditions, is established by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), in Article 17.1 and Article 70 respectively. Next, the CRPD not only frames respect for dignity as one of its core purposes (Art. 1) and principles informing the instrument (Art. 3), but also weaves it through its various provisions, marking respect for dignity as central for the recovery and reintegration of persons with disabilities who have been victims of exploitation or abuse (Art. 16), in developing frameworks for inclusive education (Art. 24), and in raising awareness of the rights and dignity of persons with disabilities in both public and private sectors of health care (Art. 25). Lastly, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) frames the respect for dignity as a requirement central to the administration of the personal information of the disappeared person (Art. 19).

Beyond the UN framework of the protection of human rights, also the regional human rights instruments have mirrored the trend, with references to dignity in both their preambles and operative provisions. A notable exception in this regard is the oldest of the regional human rights instruments, the ECHR adopted in 1950, which did not contain a reference to dignity in its original text. Only with the adoption of the Additional Protocol No. 13 has a reference to dignity emerged in the wording of the ECHR, as its Preamble declares the abolition of the death penalty essential "for the full recognition of the inherent dignity of all human beings".[84] By

[84] Council of Europe, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, adopted 3 May 2002, entered into force 1 July 2003, ETS No. 187.

contrast, both the Inter-American and African regional human rights systems have embedded dignity more directly into the operative texts of their primary human rights instruments.

The ACHR, adopted in 1969, lacks a mention of dignity in its Preamble, but mentions it in the context of three of its provisions: in the context of prohibition of ill-treatment under its Article 5, which prescribes that the treatment of persons deprived of liberty must respect the inherent dignity of the human person; in relation to freedom from slavery under Article 6, whereby forced labor of prisoners "shall not adversely affect the dignity"; and under Article 11, where the individual's right "to have his honor respected and his dignity recognized" is stipulated.

The most recent of the three regionally enforceable human rights instruments—the ACHPR, adopted in 1981—refers to dignity twice in its Preamble and once in its operative provisions.[85] In the Preamble, it is listed among the essential objectives of the African peoples (the others being freedom, equality and justice) as well as that what the peoples of Africa "are still struggling for," marking its role as a collective aspiration. More importantly, however, Article 5 of the ACHPR, establishes that every individual has a right "to the respect of the dignity inherent in a human being," emphasizing its role as a legal entitlement.

Outside the three major regional human rights systems, there are two more recent regional human rights instruments that also invoke the concept of human dignity in their texts in a prominent manner. The Arab Charter on Human Rights, a legally binding, but not judicially enforceable instrument before a regional human rights court, contains multiple references to dignity in provisions on equality between men and women (Art. 3.3), rights of the child charged with an offence (Art. 17), treatment of persons deprived of liberty (Art. 20.1), rights of the

[85] I use the term "enforceable" here to refer to regional human rights instruments situated within a framework that includes some form of adjudicative mechanism allowing for the legal interpretation and application of rights provisions. While the ACHPR predated the operationalization of the regional court—the ACtHPR was established by protocol entering into force only in 2004—the quasi-judicial mandate of the ACmHPR, which includes the consideration of individual communications, has long been exercised as a core enforcement mechanism within the system.

child (Art. 33.3), and the rights of persons with mental or physical disabilities (Art. 40).[86] The ASEAN Human Rights Declaration, a soft law instrument, echoes Article 1 UDHR in affirming that all persons are equal in dignity as a general principle guiding the instrument.[87] It also refers to dignity in connection with education, which "shall be directed to the full development of the human personality and the sense of his or her dignity" in its General Principle 31(3).

Consequently, in the post-1966 landscape of IHRL, the concept of dignity has emerged not only as a symbolic reference in the preambular texts of human rights instruments, but also as a standard embedded in their operative provisions. This has led to the consolidation of the concept as a normative anchor within the IHRL. The narrative of its foundational status for the idea of human rights, inaugurated by the UDHR, and then further entrenched through the subsequent codification of IHRL, can be read as an "ongoing story"[88] about the dual character of the concept as both ubiquitous and undefined at once. This story frames human dignity as "the generic foundation of human rights across the pluralistic landscape of human family"[89] but also illuminates the paradox whereby it embodies a diversity of meanings—the very same diversity—that its use in the past has sought to overcome. This diffusion has not been confined to the sphere of IHRL alone. As the next section shows, a conceptually open notion of human dignity has also become a key ingredient of constitutional texts across the world.

1.4. A Constitutional Element: Growing Use and Variation

Although this dissertation focuses on the concept of human dignity as a component of IHRL, its constitutional entrenchment across legal systems is significant as well, as constitutional practice helps shape regional human rights adjudication. Empirical research

[86] League of Arab States, Arab Charter on Human Rights, adopted 22 May 2004, entered into force 15 March 2008.

[87] Association of Southeast Asian Nations, ASEAN Human Rights Declaration, 18 November 2012.

[88] Carozza, "Human Dignity," 350.

[89] Ibid.

shows that international human rights treaties and constitutional provisions operate in a complementary way, with constitutional incorporation both reflecting and reinforcing treaty norms, thereby increasing their practical effect.[90] This section therefore surveys the broader constitutional landscape to illustrate how the legal concept of human dignity has been shaped and reinforced beyond the boundaries of international instruments.

Today, a reference to human dignity is a typical ingredient of constitutional texts across the globe, however, it was not always so. Prior to WWII, the concept did not appear in constitutional texts very often: only a few national constitutions referred to it at the time, namely, those of Mexico (1917), Weimar Germany (1919), Finland (1919), Ireland (1922) and Cuba (1940).[91] In comparison, Shulztiner and Carmi have shown that by 2014 as many as 162 national constitutions (or their equivalent basic laws) contained an explicit mention of the concept of human dignity, marking such a reference as a nearly universal feature.[92] This sharp rise in constitutional references to human dignity aligns with its growing prominence in IHRL, particularly after the establishment of the concept as foundational in the UDHR.[93]

The seminal study by Shulztiner and Carmi in 2014 found that among constitutions enacted after 1980, only 14 lacked a reference to human dignity. Notably, eleven of these were adopted before 2000, while all 49 constitutions adopted after 2003 included a reference to human dignity without an exception.[94] Furthermore, there is an evident correlation between the

[90] Zachary Elkins, Tom Ginsburg, and Beth Simmons, "Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice," *Harvard International Law Journal* Vol. 54, No. 1 (2013), 61-92.

[91] Article 3.1(c) of the Constitution of Mexico of 5 February 1917; Article 151 of the Constitution of Weimar Germany of 1919; Section 1(1) of the Constitution of Finland of 1919; Preamble of the Constitution of Ireland of 1922; Article 20 of the Constitution of Cuba of 1940.

[92] Shulztiner and Carmi, "Human Dignity in National Constitutions," 465.

[93] This is not to suggest that the UDHR was the sole catalyst for the growing inclusion of the concept in constitutional texts. Other key influences should not be disregarded, for instance, the reference to human dignity in the German Basic Law, or the precedent set by post-colonial powers in their use of such a reference in their constitutions, which in turn would shape how formed colonies included (or omitted) dignity in their own constitutional texts. For more on this point, see Shulztiner and Carmi, "Human Dignity in National Constitutions," 468-471.

[94] Shulztiner and Carmi, "Human Dignity in National Constitutions," 465.

number or references to dignity in the constitutional text and the year of enactment of that instrument: the newer the constitution, the more likely it is to have more than one reference to human dignity.[95] To that end, only 23 percent (37 cases) of all the 162 national constituent documents that refer to human dignity do so only once, while the majority mention it two or three times (34 percent, or 55 cases), four to seven times (33 percent, or 53 cases), or even eight to 15 times (10 percent, or 17 cases—the maximum of 15 in the Constitution of Papua New Guinea of 1975).[96] These numbers vouch for the esteemed place that the notion has gained in both the legal and political thought of nowadays nation-states.

In terms of the ways in which the concept appears in constitutional texts, its function can be described as similar to the one already identified in the context of codified IHRL: largely, it serves as a foundational value or a justification for rights and operative clauses. Shulztiner and Carmi show that 97 constitutions, or 60 percent of the constitutional texts that refer to dignity in total, mention it either in their preamble or as part of the instrument's fundamental principles, or both. Given the nature of preambular texts as laying out the "*a priori* bedrock-truth justifications for the entire constitution"[97] and the function of fundamental principles as highlighting the values that serve as central to the hierarchy of norms within the particular constitutional setting, the references to dignity in these parts of constitutions are typically declarative and open-ended.[98]

[95] The collected data show that the average year of enactment for constitutions without any reference to human dignity is 1972. For those that mention dignity once, the average is 1986, and for those that mention it twice, 1993. Constitutions referring to human dignity three times average 1994, while those with four to seven mentions average 1997. Constitutions with eight to fifteen mentions average 1999. See Chart 1 in Shulztiner and Carmi, 466.

[96] Shulztiner and Carmi, "Human Dignity in National Constitutions," 465-466.

[97] Ibid, 473.

[98] Ibid, 474.

Additionally, 87 percent of constitutions that refer to dignity do so in the operative provisions of the instrument.[99] Of those, 52 constitutions refer to the concept only in specific articles, without a previous mention in the preamble or as part of the fundamental constitutional principles. In the rest of these cases, the mentions of dignity in specific rights provisions can be seen as supplying further expression to the role of dignity as central to the constitutional setting, which has been indicated earlier as such either in the constitutions' preambles or as part of their fundamental principles. Three specific issues emerge most frequently for invoking dignity: restriction of individual freedom, labor-related issues, and matters related to welfare.[100]

Lastly, the study of Shulztiner and Carmi notes that by 2014 there were 26 constitutional instruments that had enacted a right to dignity, thus marking the concept of dignity as having a separate operative legal function.[101] This latter employment of the concept raises important questions regarding its actual function in constitutional settings: the dual use of dignity as both an operative clause and a justification for operational clauses taken as a whole raises concerns about practical application of the concept, potentially making it "an omnipotent right without clear limits".[102]

All things considered, the growing entrenchment of dignity in constitutional texts worldwide not only reflects its expanding role in IHRL statistically but also reinforces its dual nature as both a foundational principle and an operative legal concept. As such, its appearance in constitutional texts exhibits the same duality that has been previously marked to characterize

[99] Shulztiner and Carmi, "Human Dignity in National Constitutions," 480.

[100] Ibid, 476-480.

[101] Constitutions that have an explicit right to human dignity alone or intwined with another right are: Albania, 1998 (Art. 28(5)); Azerbaijan, 2002 (Art. 46(1)); Belgium, 1994 (Art. 23(1)); Colombia, 1991 (Art. 21); Ivory Coast, 2000 (Art. 2); Eritrea, 1996 (Art. 16); Ethiopia, 1994 (Art. 21(1) and Art. 24(1)); Hungary, 2011 (Art. 2); Kazakhstan, 2007 (Art. 18(1)); Kenya, 2010 (Art. 28); Kyrgyzstan, 2010 (Art. 22(2) and Art. 29(1)); Macedonia, 1992 (Art. 11(1)); Montenegro, 2007 (Art. 25); Nepal, 2007 (Art. 12(1)); Nigeria, 1999 (Art. 34(1)); Philippines, 1987 (Art. VIII); Seychelles, 1996 (Art. 16); Slovakia, 1992 (Art. 19(1)); Slovenia, 1991 (Art. 34); Suriname, 1987 (Art. 16(13)); Tanzania, 1995, (Art. 12(2)); Togo, 1992 (Art. 28); Ukraine, 1996, (Art. 28); Uzbekistan, 1992 (Art. 27).

[102] Shulztiner and Carmi, "Human Dignity in National Constitutions," 481.

its presence in the International Bill of Human Rights, where dignity functions largely as a guiding principle but at times also as a substantive reference in some specific provisions. These patterns have naturally drawn the interest of dignity scholars, prompting efforts to both document the diverse meanings and applications of the concept across legal systems and to probe whether common threads of interpretation can be discerned.

1.5. Pinning Down the Concept in Scholarly Literature

In pursuing a delineation of human dignity as an international concept, two major strands of scholarly literature are of particular interest. Firstly, important is the scholarly work that has tracked and recorded the uses of the legal concept of human dignity in its many variations in legal settings across the globe. This vast body of work sketches out the many faces that the concept exhibits and, essentially, showcases both its commonplace and its versatility in practice. Secondly, particularly relevant to the primary interest of this dissertation on the possibility of a shared transregional concept of human dignity is the strand of literature that examines points of convergence across diverse legal interpretations of this concept. Such comparative work directly contributes to the overarching interest of this dissertation.

1.5.1. On the Versatility of the Concept of Dignity

The body of scholarly literature exploring the functional and substantive versatility of the legal concept of human dignity across various jurisdictions and legal systems is extensive and continuously expanding. Over the past decade, there has been a marked increase in academic interest in, firstly, exploring the various functions through which the concept operates in law and, secondly, in mapping out the various aspects of the concept's substantive content that transpire in its application in practice. The two strands of literature are certainly interrelated, yet analytically distinct. In studying the function of the concept of human dignity in law, we primarily seek to understand what human dignity *does* in law—whether it functions as a value,

a principle, a right, or something else entirely. In contrast, when the substantive content of the concept is tracked in legal reasoning and judicial practice, we seek to map the versatility of what human dignity *is*—its meaning as a legal concept.

Numerous edited volumes addressing the role of dignity in law reflect a combination of these research directions, examining how the concept is applied and understood across a range of legal systems and fields of law.[103] Of those, some focus more narrowly on international law, exploring how dignity features within its specific subfields.[104] Studies that examine the function of dignity as a legal concept in particular, illuminate the different faces the concept has depending on its status as a foundational constitutional principle, a value, or a right in specific constitutional contexts.[105] Distinct uses of dignity in, for instance, elucidating duties to future generations, is then discussed in further detail.[106]

While this expansive scholarship offers valuable insights into the concept's various dimensions in practice, it does not directly engage with the task of illuminating human dignity as a transnational legal concept. What it does reveal, however, is that the challenge of doing so stems from the concept's versatility and adaptability, both in terms of its legal function and substantive meaning. Accordingly, this body of literature sketches the conceptual landscape of human dignity and in doing so, it highlights the difficulty of delineating a stable, unified account of dignity transnationally.

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[103] For instance, McCrudden, ed., *Understanding Human Dignity*; Düwell et al., eds., *The Cambridge Handbook on Human Dignity: interdisciplinary perspectives*; Grimm et al., eds., *Human Dignity in Context: Explorations of a Contested Concept*; Scharffs et al., eds., *Human Dignity, Judicial Reasoning and the Law: Comparative Perspectives on a Key Constitutional Concept*.

[104] See, for instance, Le Moli, *Human Dignity in International Law*; Gattini et al., eds., *Human Dignity and International Law*; Monsalve and Román, "Tensions of Human Dignity: Conceptualization and Application to International Human Rights Law". On Europe specifically, see: Bedford et al., eds., *Human Dignity and Democracy in Europe*.

[105] On this, see Filip Horák, "Human Dignity in Legal Argumentation: A Functional Perspective," *European Constitutional Law Review* Vol. 18, Issue 2 (June 2022), 241-259; Giorgio Resta, "The Comparative Law of Dignity: An Introduction," *Roma Tre Law Review* (May 2019), 85-90.

[106] Stephen Riley, "Architectures of intergenerational justice: Human dignity, international law, and duties to future generations," *Journal of Human Rights* Vol. 15, No. 2 (2016), 272-290.

Within the body of literature on the versatility of the concept of dignity, a strand more relevant for this dissertation is that which examines regional dignity jurisprudence. This is so because the work of regional judicial bodies, by design, draws upon and synthesizes a variety of domestic constitutional readings of the concept. Thus, regional dignity jurisprudence serves as a bridge between the national and international readings of the concept: it builds on the multiple national conceptions while being bound to the regional human rights instruments that form part of IHRL. As such, it may offer the closest approximation to a shared transnational legal concept of human dignity.

Although scholarship on regional dignity jurisprudence has grown in recent years, the field remains in an early stage of development. Scholars examining the concept in the work of the ECtHR have primarily underlined the appearance of the concept in the case law under Article 3 (prohibition of torture), Article 8 (right to respect for private and family life), and Article 10 (freedom of expression) of the ECHR.[107] Additionally, the concept has been discussed as a pedagogical tool used by the ECtHR "to signal to the respondent state the seriousness of its violation and to elucidate for the benefit of all states the scope of Convention compliant behaviour"[108] as well as a tool for judicial activism.[109] In the context of the Inter-American human rights system, human dignity within case law under Article 5 (right to human treatment), Article 6 (freedom from slavery), and Article 11 (right to privacy) of the ACHR is underlined.[110] Additionally, case law on the conditions of imprisonment and the rights of

[107] Among others, see Fikfak and Izvorova, "Language and Persuasion: Human Dignity at the European Court of Human Rights"; Costa, "Human Dignity in the Jurisprudence of the European Court of Human Rights"; Heri, "Deference, Dignity and 'Theoretical Crisis': Justifying ECtHR Rights Between Prudence and Protection"; and Czepek, "Dignity in the Jurisprudence of European Court of Human Rights."

[108] Fikfak and Izvorova, "Language and Persuasion," 24.

[109] On the concept in the context of judicial activism, see Costa, "Human Dignity in the Jurisprudence of the European Court of Human Rights," 400-402; Heri, "Deference, Dignity and 'Theoretical Crisis'," 12-16.

[110] Among others, see Orestes Cavalcante Lobato and Feuillet-Liger, "Human Dignity in the Case Law of Inter-American Court of Human Rights"; Ratti Mendaña, "Ususal Formulas and Hermeneutic Criteria about Dignity of Prisoners in the Inter-American Court of Human Rights"; and Delgado Rojas, "Kant and Human Dignity in the Inter-American Court of Human Rights."

prisoners is highlighted in the context of the Inter-American system.[111] The third of the regional systems—the African human rights system—is the least explored through explicit studies on the use of the concept of human dignity in its jurisprudence. Here, the concept is shown to be present in jurisprudence of Article 2 (principle of non-discrimination), Article 4 (right to life), and Article 5 (freedom from cruel, inhuman or degrading treatment or punishment) of the ACHPR.[112]

Despite this growing scholarly attention on regional dignity jurisprudence, engagement with the idea of human dignity as a transnational concept drawing on its separate regional conceptions is yet to be addressed. While the literature offers valuable descriptive insights, its system-specific focus prevents it from identifying conceptual dimensions that might support a transnational account of dignity. In other words, the functional and substantive versatility of the concept of human dignity is a fact, and so is the lack of a defined outline of its substantive content as a concept with a transnational scope. While mapping this versatility is indeed a vital first step, it is not, in itself, sufficient for delineating a transnational concept of human dignity. If the aim is to sketch out the contours of dignity as a concept that serves IHRL based on a consensus between its existing conceptions, it is important "not to stay stuck in descriptive accounts of variety"[113] as aptly noted by Matthias Mahlmann.

This dissertation proceeds from the assumption that the jurisprudential practice of the concept of human dignity in regional human rights systems offers a promising foundation for identifying an implicit, if still emerging, consensus on the meaning of the concept vis-à-vis the

[111] On the concept in the context of detention conditions, see Helga M. Lell, "What Does "Dignity" Mean? Different Meanings in a Jurisprudential Analysis from a Distant Reading," *The International Journal of Law, Language & Discourse* Vol. 10, Issue 2 (December 2022), 55-76; Ratti Mendaña, 'Ususal Formulas and Hermeneutic Criteria about Dignity of Prisoners.'

[112] For instance, see Gelaye, "The role of human dignity in the jurisprudence of the African Commission on Human and Peoples' Rights"; and Molefe and Allsobrook, *Human Dignity in African Context*.

[113] Matthias Mahlmann, "The Good Sense of Dignity: Six Antidotes to Dignity Fatigue in Ethics and Law," in *Understanding Human Dignity*, ed. Christopher McCrudden (Oxford University Press, 2013), 602.

existing catalogue of international human rights. Thus, rather than tracing the differences for their own sake, the aim of this study is to assess whether the recurring invocations of dignity in regional jurisprudence point toward some shared normative functions or meanings of this concept. Establishing such a transregional convergence is a necessary step before one can meaningfully speak of human dignity as a transnational legal concept within IHRL, that is, a concept with a global normative core that supports the universalist claims of IHRL.

1.5.2. On the Overlapping Consensus of the Concept of Dignity

The most relevant branch of dignity literature for the purposes of the present inquiry is the one on the substantive content of human dignity as a transnational legal concept. This body of work examines whether a shared normative core of the concept can be identified across its diverse legal articulations in different jurisdictions and legal systems. This section reviews three such accounts—by Christopher McCrudden, Luís Barroso, and Adeno Addis—each of which offers a distinct, yet in some respects overlapping, perspective on the feasibility and content of a transnational concept of human dignity.

McCrudden labels the basic elements that a transnational concept of human dignity consists of as "minimum content", while Barroso calls it the "minimum core" of human dignity. Addis offers a more skeptical account, whereby some of the components identified by McCrudden and Barroso are rejected. Taken together, these accounts point to the notions of bodily integrity, equality, and personal autonomy as relevant for the discussion on the substantive content of a transnational concept of human dignity in one way or another. These three dimensions of human dignity form the analytical framework adopted in this dissertation.

Pluralism and Practice: McCrudden's "Minimum Content" Approach

The best known inquiry into the existence of a transnational concept of human dignity in the current dignity scholarship is the seminal study by Christopher McCrudden on the judicial interpretation of human dignity across various jurisdictions.[114] First, drawing on the historical and philosophical uses of the concept in human rights discourse, he identifies some resemblances between the multitude of accounts, outlining a minimum content of the concept "that all who use the term historically and all those who include it in human rights texts appear to agree is the core, whether they approve of it or disapprove of it".[115] This minimum core, he argues, has three elements: the ontological, the relational, and the limited-state claim.

The ontological claim denotes the idea that human dignity embodies an intrinsic and unconditional worth of every human being. The relational claim stands for the recognition and respect that human dignity entails, and the corollary idea that certain forms of treatment are necessarily incompatible with the kind of respect that human dignity requires. Lastly, the limited-state claim addresses the relationship between the individual and the state in terms of the recognition and respect that the former's inherent dignity calls for. McCrudden admits that these three prongs delineate the contours of the concept of human dignity only very generally. As he notes, even if accepted, this triad "holds within it the seeds for much debate," because "there appears to be no consensus politically or philosophically on how any of the three claims that make up the core of the concept are best understood".[116]

McCrudden's study shows that the high level of generality of the minimum core is reflected in the judicial interpretation of human dignity as a legal concept. While his review of dignity jurisprudence confirms that "when judges use the concept of human dignity, they too

[114] McCrudden, "Human Dignity and Judicial Interpretation."

[115] Ibid, 679.

[116] Ibid, 679-680.

appear to adopt the minimum core,"[117] the analysis also shows that judicial interpretation in this regard "has contributed little to developing a consensus on the implications of any of the three basic elements of the minimum core."[118] From this, McCrudden asserts that no common conception of the concept can be identified as of yet. Accordingly, the crux of his argument is that the three-fold minimum core does delineate the contours of a concept of human dignity that is generally endorsed in dignity jurisprudence across the globe, but since the specific contents of the three claims differ in practice, the concept is splintered into a multitude of conceptions.

In illustrating this point further, McCrudden examines the uses of a reference to human dignity in substantive areas of human rights protection that typically exhibit the use of the concept in practice: prohibition of inhuman treatment, humiliation, and degradation; individual choice, self-fulfillment, and autonomy; issues of group identity and culture; and matters related to the essential needs of a human being.[119] An examination of judicial reasoning in these substantive areas is then shown to exhibit significant divergence in how the concept functions in practice. These variations are discussed as contingent on a variety of issues surrounding the status and nature of dignity as a legal concept, e.g. the interplay between dignity as an individual and community value, and the interplay between its rights-supporting and rights-restraining dimensions.[120]

With all this in mind, McCrudden's study concludes that:

> "We are left, then, with an apparently descriptively more accurate, but normatively disappointing, conclusion that in the judicial interpretation of human rights there is no common substantive *conception* of dignity."[121]

[117] McCrudden, "Human Dignity and Judicial Interpretation," 697.

[118] Ibid, 712.

[119] Ibid, 697.

[120] Ibid, 698-710.

[121] Ibid, 712.

Thus, McCrudden's seminal study highlights the paradox of the concept of human dignity in judicial practice: while courts across jurisdictions acknowledge the concept's relevance and its tripartite minimum content, there is no discernible convergence on an understanding of the precise contents of the three claims that form this minimum content.

That said, McCrudden warns "to be cautious about drawing a conclusion that there is a lack of consensus"[122] given that his divergence thesis draws on a limited number of jurisdictions. Additionally, he notes that his expectations in evaluating the existence of a judicial consensus beyond the minimum content might be unrealistic. Both these points merit consideration, particularly in the context of a transnational concept of human dignity as a point of consensus within IHRL. Delineating the contours of what dignity means under IHRL through the lens of judicial interpretation of the concept within IHRL is a different task than defining the concept based on its various constitutional interpretations. Even if there was a case to be made for an existing consensus on the concept across constitutional frameworks, this would not necessarily imply that the concept would carry the same meaning within IHRL.

Consequently, a more narrowly focused jurisdictional approach might yield different insights regarding the extent of an existing judicial consensus on the concept. With that in mind, McCrudden's study ultimately invites further research of dignity jurisprudence.

Dignity as Essence: Barroso's "Minimum Core"

In a similar vein to McCrudden's account, the proposal by Luís Barroso also proposes three components for a transnational concept of human dignity.[123] As a baseline premise, Barroso states that a transnational concept of human dignity must consider diverse political, historical, as well as religious contexts, and thus reflect an "open-ended, plastic, and plural

[122] McCrudden, "Human Dignity and Judicial Interpretation," 711.

[123] Barroso, "Here, There and Everywhere," 331-393.

notion of human dignity".[124] Accordingly, he analyzes the three components of his minimalist account from a secular, neutral, and universalist perspective.

In Barroso's conception, the minimum core of a transnational concept of human dignity consists, firstly, of dignity as an intrinsic value, that is, "the ontological element of human dignity linked to the nature of being,"[125] mirroring the first element from McCrudden's account. Barroso identifies this reading of human dignity as the source of various fundamental rights. For instance, he mentions the right to life and notes human dignity as fulfilling "almost entirely the content of the right to life, leaving space for only a few specific controversial situations".[126] Next, he notes the right to equality before and under the law for "all individuals are of equal value and, therefore, deserve equal respect and concern".[127] In practice, he argues, this translates into the principle of non-discrimination. However, here Barroso notes that "human dignity fulfills only part of the content of the idea of equality, and in many situations it may be acceptable to differentiate among people".[128] Lastly, he notes human dignity as an intrinsic value to also be the source of the right to physical and mental integrity.

In support for dignity serving as the foundation for these rights, Barroso mentions case law on abortion, assisted suicide and capital punishment (in relation to the right to life), affirmative action (the right to equality before and under the law), and ill-treatment (the right to integrity). That said, he does not substantiate this selection with specific judicial decisions where the concept of dignity has been invoked explicitly. For instance, when discussing capital punishment, he notes that "it is difficult to argue that the death penalty is compatible with

[124] Barroso, "Here, There and Everywhere," 360.

[125] Ibid, 362.

[126] Ibid, 363.

[127] Ibid, 364.

[128] Ibid.

respect for human dignity"[129] but does not provide concrete examples of the use of the concept in judicial work. Thus, while McCrudden systematically grounds his analysis in judicial practice, Barroso's approach is more conceptual.

As a second component of the minimum core of the transnational concept of human dignity Barroso identifies individual autonomy. This reading of the concept does not appear as a distinct component in McCrudden's account but is shown to be recognized as part of the minimum core of dignity in judicial interpretation nevertheless.[130] Barroso describes this component as the ethical element of the concept of human dignity and the foundation of the individual's free will entitling them "to pursue the ideals of living well and having a good life in their own ways".[131] He advances a notion of personal autonomy, which "although at the origin of freedom, only corresponds with its core content"[132] and therefore encompasses fundamental personal decisions that cannot be externally suppressed, e.g. religion, inter-personal relationships, or political beliefs.[133]

Regarding the practical implications of personal autonomy as a dimension of the concept of human dignity in human rights adjudication, Barroso lists the notions of private and public autonomy, and the existential minimum, giving examples of jurisprudence on a variety of issues pertaining to these areas from different jurisdictions. However, again, while he references case law, e.g. prisoners' right to vote as an expression of their public autonomy in the case law of the ECtHR, he does not clarify how, if at all, the concept of human dignity appears as a central element in the judicial reasoning in these cases on the question of personal autonomy. As such, the examples he brings up are illustrative of the different dimensions of

[129] Barroso, "Here, There and Everywhere," 366.

[130] McCrudden, "Human Dignity and Judicial Interpretation," 688-689.

[131] Barroso, "Here, There and Everywhere," 367-368.

[132] Ibid, 368.

[133] Jeremy Waldron, "Moral Autonomy and Personal Autonomy," in *Autonomy and the Challenges to Liberalism*, eds. Joel Anderson and John Christman (Cambridge University Press, 2005), 307-329.

the notion of autonomy in human rights jurisprudence, but they do not demonstrate the notion of autonomy as an expression of the concept of human dignity in jurisprudence, or vice versa.

As the third element of a transnational concept of human dignity, Barroso identifies the limits placed on personal autonomy through legitimate constraints in the name of social values and state interests. He describes this component as dignity as a community value, or dignity as a constraint, highlighting the concept's social dimension that is "shaped by the relationship of the individual with others, as well as with the world around him".[134] In this reading of dignity, the role of the state and the community becomes central, as both contribute to the establishment of collective societal goals by imposing restrictions on individual rights and freedoms. In legal practice, Barroso argues, this reading surfaces in judicial reasoning "inspired by paternalistic or moralistic motivations".[135] This he exemplifies with the French "dwarf-tossing" case,[136] and the German "peep show" case,[137] illustrating how judicial reasoning strikes balance between the respect for dignity through the protection of personal autonomy on the one hand, and dignity as a community value, on the other. These examples ultimately show how this third component of Barroso's transnational concept, dignity as a community value, overlaps with the combined scope of McCrudden's second and third components, namely, the relational and limited state claim.

All in all, Barroso's account offers a structured and theoretically rich conceptualization of a transnational concept of human dignity. However, his overarching claim that each of the three components—dignity as intrinsic worth, autonomy, and community value—reflects a shared normative core rests largely on inferred links between the concept and rights such as

[134] Barroso, "Here, There and Everywhere," 373.

[135] Ibid, 376.

[136] UNHRC, *Manuel Wackenheim v. France,* Communication No. 854/1999, CCPR/C/75/D/854/1999, 15 July 2002.

[137] Bundesverwaltungsgericht [BVerwG], 64 BVerwGE 274, 15 December 1981.

life, bodily integrity, equality, and personal autonomy. While he references relevant areas of case law, he does not ground his proposal in judicial reasoning that explicitly invokes the concept of human dignity as the basis of, or in connection with, these rights. That is, his account begins with the assumption that the concept of dignity underpins, for example, the right to bodily integrity, but this suggestion is not supported by case law where this connection is, in fact, articulated. Consequently, his proposal raises the question regarding the extent to which the transnational concept of human dignity he envisions emerges not only as a theoretical construct, but as a product of courts actively engaging with human dignity as a legal concept with specific substantive dimensions. Thus, also Barroso's account invites a more jurisdictionally focused and empirically grounded approach for delineating the conceptual contours of a transnational concept of human dignity.

Competing Values: Addis's Account of Dignity

The third example of an explicit inquiry into the substantive content of a transnational concept of human dignity is that by Adeno Addis. While some of his work examines the appearance of the concept of human dignity across national constitutions and IHRL "to see if there are patterns or commonalities on a set of understandings,"[138] it largely concerns a theoretical-conceptual inquiry into the feasibility of some of the more common expressions of the concept of dignity as the potential dimensions of the transnational concept of human dignity directly.[139]

Based on a review of the uses of dignity as a constitutional component and a concept prevalent in IHRL, Addis singles out one dimension as representing a consensus —dignity as personal integrity—but he discards a string of other meanings often attached to the concept.

[138] Addis, "Human Dignity in Comparative Constitutional Context," 5.

[139] Ibid; Addis, "The Role of Human Dignity in a World of Plural Values and Ethical Commitments," 403-444.

Among the latter are dignity linked to the notions of autonomy and equality. Thus, Addis's argument diverges significantly from that of the other two scholars.

On personal integrity, Addis states that the connection between the concept of human dignity and that of personal integrity represents the beginning of an overlapping consensus between the multitude of readings of dignity across jurisdictions. He supports this claim with the evidence of textual references to human dignity in the constitutional provisions that protect the physical integrity of the person, as well as examples of case law on the prohibition of ill-treatment around the world.[140] Additionally, he cites key instruments of regional human rights systems and international customary law as reinforcing this constitutional consensus on dignity through a prohibition of ill-treatment, to conclude that:

> "there seems to be an overlapping consensus that personal integrity […] has become an important part of what it means to dignify humans."[141]

Within the scope of personal integrity, Addis also looks at the questions of medical experimentation and minimum level of sustenance.[142] However, he substantiates his inquiry here with only a few examples of constitutional practices and thus does not show them as forming a part of the consensus of a transnational concept of human dignity.

On the right to equal treatment, in contrast to Barroso's account, Addis is doubtful regarding the reading of the concept of human dignity as its manifestation in law. He admits that there is "a general consensus among people across cultures and systems (at least in principle) that equality is a fundamental principle"[143] but argues that ultimately to think of dignity in terms of the notion of equality is an unhelpful construction for a number of reasons. For one, he argues against the inclusion of the concept of dignity within the conceptual scope

[140] Addis, "Human Dignity in Comparative Constitutional Context," 16-18.

[141] Ibid, 20.

[142] Ibid, 21-23.

[143] Ibid, 12.

of equality, noting that given the existing difficulties in defining equality, "one can hardly make [human dignity] clearer by invoking another, more elusive, concept".[144] Additionally, framing human dignity through the lens of the notion of equality "seems to contemplate the rather counterintuitive idea that a government that debases and humiliates its subjects equally will be acting consistently with the demands of dignity".[145]

Both these arguments appear to be fueled by Addis's theoretical-conceptual concerns on the concept of human dignity as a transnational ordering concept as such rather than a lack of empirical evidence that the concept of human dignity is invoked in judicial reasoning as an expression of equality. Consequently, his account invites an inquiry into the actual practice, or lack thereof, of the concept as an expression of the right to equal treatment. On that, Addis notes that many constitutions around the world entrench the concept of dignity as different from equality, listing the two side by side as independent concepts.[146] However, though this is empirically true, it can be argued that it does not mean that the two concepts are not bound by a conceptual link. The fact that dignity and equality are established as separate concepts in constitutional texts does not preclude their use as mutually reinforcing in judicial reasoning. Furthermore, such textual separation does not rule out that the notion of equality might play a meaningful role in delineating the conceptual contours of human dignity.

On dignity as an expression of autonomy, Addis notes that it is perhaps the most popular reading of the concept of human dignity, namely:

> "as a state-of-affairs in which individuals are able to act autonomously – humans have dignity to the extent that they are recognized as having the capacity to make their own choices and to determine their destinies and to have the conditions in which they could make those choices".[147]

[144] Addis, "Human Dignity in Comparative Constitutional Context," 13.

[145] Ibid.

[146] Ibid, 13-14.

[147] Addis, "The Role of Human Dignity in a World of Plural Values," 419.

Essentially, he links this reading of dignity to the Kantian view of dignity as intertwined with the notion of reason and individual self-determination, and admits that it is a useful starting point for seeking to give content to the concept of dignity as found in many international and national legal texts.[148] However, he argues that such a reading is not clear in explaining the relationship between the concept of dignity and the various rights that give expression to that construction, e.g. how to determine if a certain right is required by the reading of human dignity as an embodiment of a right to autonomy. Even more, he is skeptical of this reading altogether, for it primarily emphasizes the negative constraints on human behavior, thus not capturing the nature of the human being as a social creature whose flourishing depends on their surrounding community and network of persons. As such, "there is insufficient emphasis on the relationship dimension"[149] of human dignity.

Although Addis's take on dignity as an expression of autonomy contrasts sharply with Barroso's minimum core, where autonomy is distinguished as a separate dimension of the concept of human dignity, this divide may not be as deep as it initially appears. Both authors approach the link between dignity and autonomy from a theoretical-conceptual perspective and acknowledge its wide recognition in legal discourse. However, while Barroso defends the concept of autonomy as a normative pillar of human dignity, Addis expresses doubts about the conceptual coherence of such a relationship, especially when considered in isolation from the relational-communal aspects of human life. In that sense, Addis's doubts regarding the link between dignity and autonomy does not have to be read as a complete rejection of the concept of autonomy as a relevant dimension of dignity, but rather as an invitation for a more holistic account of the concept of autonomy, one that recognizes the nature of human beings as social and inter-related beings.

[148] Addis, "The Role of Human Dignity in a World of Plural Values," 422.

[149] Ibid, 423.

Summarizing Addis's account, and in contrast to the proposals of McCrudden and Barroso, he does not advance a distinct and structured conceptual framework for a transnational concept of human dignity through which the contours of that concept, based on existent judicial reasoning, could be tested. This makes his approach less suited for direct doctrinal application. Still, his critique is highly relevant, given that both McCrudden and Barroso identify equal treatment and autonomy as dimensions of human dignity. From that perspective, Addis's skepticism challenges what may otherwise appear as emerging areas of consensus on the transnational concept of human dignity. As such, it invites further empirical examination into how, and if, international judicial bodies invoke the concept of dignity in connection with the concepts of equality and autonomy.

Taken together, the accounts offered by McCrudden, Barroso, and Addis provide a strong foundation for further research into the use of dignity as a legal concept with greater attention to jurisdictional specificity. While the ambition of identifying a single transnational concept of human dignity is unattainable, an inquiry with a narrower scope, such as one limited to regional human rights systems as pursued in this dissertation, is promising.

1.6. Taking Stock of the Dignity Picture: The Path Forward

In this chapter, I have drawn attention to the central paradox of the legal concept of human dignity in IHRL: its omnipresence across legal texts coupled with a persistent lack of precise and internationally accepted definition. I have traced the evolution of the concept from its instrumental role in the drafting of the UDHR, to its establishment as the normative source in the two Covenants—what is referred to throughout this dissertation as the *source thesis*—and into its consolidation across subsequent human rights instruments and constitutional settings. Taken together, the concept of human dignity has been shown to function as both a foundational value and a placeholder, capable of bridging ideological divides precisely because of its semantic openness.

Yet, this very ambiguity, and the tension created by this paradox, fuels the narrative of dignity critics. The concept has been dismissed as "the shibboleth of all the perplexed and empty-headed moralists"[150], a Potemkin village,[151] a deceptive façade that "diverts our attention from the vacuum behind it,"[152] "a squishy, subjective notion, hardly up to the heavyweight moral demands assigned to it"[153] to mention just a few illustrative examples of dignity criticism. Still, as Michael Rosen notes, "dignity is surprisingly deeply entrenched in our moral discourse: it is not going anywhere any time soon."[154] Its endurance in legal texts and reasoning signals that its flexibility in meaning may be a positive feature, not a flaw.

The following chapters mark a shift from descriptive mapping to analytical inquiry. Building on the assumption that the lack of a fixed definition does not mean the absence of normative substance, I argue that human dignity may operate as a transregional legal concept, one whose content is shaped through judicial interpretation and practice rather than philosophical consensus. More specifically, I inquire whether a shared understanding of dignity can be observed in the jurisprudence of the three regional human rights systems of Europe, the Americas, and Africa.

Drawing on scholarship by McCrudden, Addis, and Barroso, I focus on three recurring dimensions that appear both in case law and theory as likely components of a transnational concept of human dignity: bodily integrity, equality, and personal autonomy. While the three authors differ in their conclusions, these dimensions emerge as relevant throughout the three accounts, thus offering a meaningful entry point for comparative analysis. I use this tripartite framework as an analytical tool for assessing whether a shared understanding of dignity is

[150] Arthur Schopenhauer, *On the Basis of Morality* (Bobbs Merrill, 1965), 100.

[151] Michael Rosen, "Dignity: The Case Against," in *Understanding Human Dignity,* ed. Christopher McCrudden (Oxford University Press, 2013), 144.

[152] Ibid, 143.

[153] Steven Pinker, "The Stupidity of Dignity," *The New Republic* Vol. 238 (2008), 28.

[154] Rosen, "Dignity: The Case Against," 153.

present across the three regional human rights systems. Accordingly, in this dissertation, I examine whether these three dimensions of the concept of human dignity are invoked in regional jurisprudence as such, and if so, whether they signal a transregional consensus on the substantive meaning of the concept of human dignity.

In embarking on such a research agenda, I do not seek to provide a single, universal definition of human dignity. Rather, I aim to explore whether a functionally stable legal concept of dignity is taking shape across regional human rights systems. As such, I argue that examining the recurring associations of dignity with bodily integrity, equality, and autonomy in human rights adjudication can contribute to a delineation of the contours of a transregional concept that can withstand analytical and practical scrutiny.

In doing so, I challenge the assumption that a lack of philosophical consensus undermines the legal coherence of human dignity as a concept in IHRL, by asking: to what extent can a transregional concept of human dignity be discerned through regional dignity jurisprudence, particularly drawn from the ways in which the concept is invoked in relation to the notions of bodily integrity, equality, and personal autonomy? Having now established the theoretical and conceptual stakes of this inquiry, the following chapter sets out the comparative and methodological framework through which I approach this challenge.

Chapter 2.
Methodological Framing for a Transregional Concept of Human Dignity

My first objective in this dissertation is to investigate how the concept of human dignity is invoked in regional dignity jurisprudence in relation to the notions of bodily integrity, equality, and personal autonomy. Then, I aim to identify whether and to what extent there is a transregional convergence in the conceptualization of human dignity as necessarily connected to these three dimensions across the three regions. Building on that, my primary objective is to delineate the content of the transregional concept of human dignity as it emerges through regional dignity jurisprudence. In this chapter, I lay out the comparative and methodological framework that guides the comparative analysis that follows in Chapters 3 to 5.

The decision to focus on these three dimensions—bodily integrity, equality, and personal autonomy—as the analytical categories guiding this inquiry rests on both theoretical and methodological considerations. The set of these three dimensions is not drawn from a single, unified framework, but rather reflects a convergence of emphasis in previous studies by dignity scholars—most notably, McCrudden, Barroso, and Addis—who have examined the concept as shared among various jurisdictions.[155] While each of them approaches the concept from a distinct angle, all note the three dimensions as relevant in jurisprudential interpretations and applications of human dignity. Their conclusions on the feasibility of a transnational concept encompassing these dimensions diverge, but the recurrence of all three in their accounts suggests that the set provides a meaningful structure for comparative analysis.

At the same time, this tripartite framework does not aim to be exhaustive or definitive. Rather, it serves as a diagnostic lens through which the inquiry tests whether regional dignity

[155] See above in Section 1.5.2., at pp. 37-48.

jurisprudence exhibits signs of convergence around a shared understanding of dignity as a legal concept. If such patterns do emerge, they would offer support for the claim that human dignity can be seen to function as a normatively stable legal concept within IHRL, one capable of withstanding both interpretative variation and critical scrutiny. The overarching inquiry of this dissertation, then, is not only descriptive, but also highly evaluative, as it asks whether the invocations of the concept across regional jurisprudence support the presence of a transregional concept of human dignity, one that would strengthen the normative legitimacy and conceptual coherence of IHRL as a whole.

For this inquiry into the contents of a transregional concept of human dignity to be "heuristically and normatively valuable,"[156] the self-reflexivity and transparency of the methodological choices guiding this research are crucial for "any method is someone's method".[157] Rather than proposing a blueprint for others, my aim is to make explicit the logic that guides the comparative method adopted here. As such, in what follows in this chapter, I lay out the comparative methodology that underpins the ensuing analysis, as well as the specific methods taken to operationalize my methodological approach toward regional dignity jurisprudence.

First and foremost, I approach the concept of human dignity from a perspective grounded in three theoretical and conceptual premises. The first premise is based on the belief that the legal meaning of the concept of human dignity is to be delineated from the concept's usage in judicial practice rather than abstract theorizing. I refer to this premise as "dignity pragmatism," a label I borrow from the broader idea of human rights pragmatism advanced by David Luban and recently adopted in regard to the concept of human dignity by Adeno Addis. The second

[156] Micheal Riegner, "Comparative human rights law," in *Research Methods in Human Rights: A Handbook*, 2nd edition, eds. Bård A. Andreassen, Claire Methven O'Brien, Hans-Otto Sano (Edward Elgar Publishing, 2024), 40.

[157] Simone Glanert, "Method as Deception," in *Rethinking Comparative Law*, eds. Simone Glanert, Alexandra Mercescu, Geoffrey Samuel (Edward Elgar Publishing, 2021), 99.

premise is what I refer to throughout the dissertation as *thin universalism*, drawn from the work on the notion of different degrees of universality of human rights introduced by Federico Lenzerini. *Thin universalism* denotes the normative stance adopted in this dissertation, whereby certain convergence on the meaning of the concept of human dignity is anticipated, while simultaneously recognizing the likely divergence on its meaning beyond this thin universal convergence. The third premise informing my comparative methodology is an analytical distinction between the concept of human dignity and its conceptions, following a differentiation between concepts and conceptions in general, originally introduced by W. B. Gallie. This distinction and *thin universalism* are mutually reinforcing: a separation between the concept of human dignity and its conceptions explains the assumed thin universality of the content of the concept of a transregional concept of human dignity.

These three premises comprise the backbone of the methodological approach of this dissertation and are explained in detail below. Following that explanation, I turn to the specific methods taken to implement this methodological approach: I explain the process for selecting case law to be included under the label "dignity jurisprudence," the contexts and units of comparison, as well as the labels *dignity as bodily integrity*, *dignity as equality*, and *dignity as personal autonomy*, which are used throughout the dissertation.

2.1. Theoretical and Conceptual Premises

Any inquiry into the concept of human dignity within IHRL inevitably carries theoretical and interpretative biases, and this dissertation is no exception. Making these premises explicit ensures methodological transparency and clarifies that the conclusions of this study arise from a particular interpretative standpoint. As Pierre Schlag observes, legal reasoning is often governed by a "rule of reason"—the belief that rational justification is the backbone of legal

argument, sustained by a continuous quest for coherence and consistency.[158] IHRL reflects this same tendency, evident in its codification, systematization, and theoretical exposition. The same phenomenon characterizes dignity scholarship, where the impulse for a more methodized account of the notion's legal role and function fuels persistent work on delineating this concept. This dissertation is one such effort, an operationalization of the rule of reason.

Schlag identifies two methodological responses to the pitfalls of the rule of reason, namely, its circularity and dogmatic assertion: critical reflexivity and rational frame construction. While critical reflexivity interrogates the very foundations of legal reasoning, it risks an infinite regress of justification. This dissertation does not take up this radical form of critique but instead adopts rational frame construction, which involves curating the premises and boundaries of the analysis. Here, these boundaries enable the identification and evaluation of commonalities in dignity jurisprudence across the three regional human rights systems, while acknowledging the inherent subjectivity of the chosen premises. In Schlag's terms, they bring out the "latent rationality and mak[e] it explicit".[159]

The conceptual and theoretical framework developed in this dissertation is not a straightforward application of existing ideas but a synthesis of diverse approaches. It draws on Federico Lenzerini's notion of a thin conception of universality and Walter Bryce Gallie's theory of essentially contested concepts, combining these with pragmatist foundations and a thin normative universalism. The result is a structured yet flexible approach to comparative legal analysis that avoids both strong relativist tendencies and foundationalist rigidities, offering a sturdy base for examining the shared content of human dignity across regional systems.

[158] Pierre Schlag, *The Enchantment of Reason* (Duke University Press, 1999), 19-30.

[159] Ibid, 24.

2.1.1. Dignity Pragmatism

The first of the premises guiding my inquiry into the contents of the transregional concept of human dignity is dignity pragmatism, an epistemological premise concerning how the meaning of the concept of human dignity is accessed. This label is adapted from the broader school of human rights pragmatism, which endorses a practice-oriented approach to constructing the meaning of human rights—that is, deriving their content from manifestations in adjudication rather than from moral or philosophical abstractions.[160] Within this broader orientation, I draw on the label "human dignity pragmatism" introduced by Adeno Addis to refer to:

> "the process of developing the idea of dignity from human rights practices, from the choices and decisions people make in the name of dignity rather than trying to rely on a contested epistemological understanding of what it means to dignify humans".[161]

The overarching idea of dignity pragmatism is that human dignity can be better understood if approached "from the bottom up rather than from the top down"[162]: its practice in jurisprudence offers more insight into its meaning than abstract philosophical theorizing. As David Luban has noted, this approach "reverses the order of explanation, defining "human dignity" by its inferential commitments".[163]

Adopting this methodological stance does not mean that in this dissertation a foundationalist view of human rights is rejected, nor that it regards the meaning of the concept of human dignity as entirely politically constructed. As explained previously, this study takes the *source thesis* as a grounding paradigm, one that not only informs the broader architecture

[160] See, for instance, Jack Snyder, "Human Rights Pragmatism: Problems of Structure and Agency," *Political Science Quarterly* Vol. 139, No. 1 (2024), 21-34; James Souter, "Humanity, Suffering and Victimhood: A Defence of Human Rights Pragmatism," *Politics* Vol. 29, No. 1 (2019), 45-52.

[161] Addis, "Dignity, Integrity, and the Concept of a Person," 326.

[162] Ibid, 327.

[163] Luban, "Human Rights Pragmatism and Human Dignity," 20.

of IHRL but also underscores the foundational role that the concept of human dignity carries in that field. Accordingly, this dissertation does not align with schools of thought that endorse forms of foundationalism of human rights detached from human dignity as a distinctly relevant component in that schema.[164] In fact, quite the opposite: I maintain that the concept of human dignity *is* the conceptual link between IHRL, as the body of codified international legal human rights, and moral human rights.

Jeremy Waldron has suggested that, from a pragmatic point of view, the amorphous nature of human dignity may make dignitarian foundationalism of human rights "more trouble than it is worth".[165] However, as he rightly notes, the very idea of foundations for human rights can be understood in various ways. For one, it might mean that human rights, in terms of their history and genealogy, "grew out of a pre-existing discourse about human dignity".[166] Alternatively, human dignity might be understood as the norm that legitimizes human rights claims, as a sort of Kelsenian "grundnorm" of human rights norms.[167] Yet another way of understanding this relationship is that the concept of human rights can be logically derived from the concept of human dignity. Under this reading, understanding what human dignity means "would enable us to generate and derive human rights claims"[168] and, by extension, the legitimacy of claiming that a certain right is a human right could be evaluated by checking whether the content of that right can be derived from the concept of dignity. Lastly, dignitarian foundationalism might also mean that human dignity "throws some indispensable light"[169] on human rights as a specific kind of rights and helps in their interpretation.

[164] See, for example, John Tasioulas, "On the Foundations of Human Rights," in *Philosophical Foundations of Human Rights*, eds. Rowan Cruft, S. Matthew Liao and Massimo Renzo (Oxford University Press, 2015), 45-70.

[165] Jeremy Waldron, "Is Dignity the Foundation of Human Rights?" in *Philosophical Foundations of Human Rights*, eds. Rowan Cruft, S. Matthew Liao and Massimo Renzo (Oxford University Press, 2015), 123.

[166] Ibid, 126.

[167] On this, see Dicke, "The Founding Function of Human Dignity," 111-120.

[168] Waldron, "Is Dignity the Foundation of Human Rights?" 128.

[169] Ibid, 125.

If an explicit endorsement of any of the above readings of dignitarian foundationalism is needed, I side with the latter interpretation of the *source thesis*, whereby the concept of human dignity is understood to capture the distinct character of international human rights as a special set of rights. I regard this perspective as the most defensible in a world of plural values, where human dignity is inherently amorphous, for it allows the concept to perform a crucial "definitional work"[170] in distinguishing human rights from all other rights as "closely tied to something basic about humanity as such".[171]

While a potential contradiction may appear to arise from the simultaneous endorsement of both a foundationalist account of human rights and dignity pragmatism as a methodological approach, this need not be so. The two are not only compatible but can be mutually reinforcing. Foundationalism, through the *source thesis,* asserts that human dignity has a normative force that distinguishes human rights as a special category of legal rights. Dignity pragmatism, as adopted here, does not deny this foundational role but offers a method for mapping how this normatively loaded concept is articulated in the jurisprudence. In this way, dignity pragmatism supports and clarifies the foundationalism reflected in the three systems' dignity jurisprudence.

In this sense, dignity pragmatism is embedded in the comparative human rights methodology of this dissertation, as invocations of the concept of human dignity in regional dignity jurisprudence are taken to reveal its meaning in its various regional conceptions. Thus, dignity pragmatism is not merely a methodological preference, but rather a necessity and a logical consequence of the core thesis of this dissertation. Human dignity is understood to acquire its transregional content when approached through a dignity-pragmatist lens, by observing the overlap between its conceptual readings in the three regional systems.

[170] Luban, "Human Rights Pragmatism and Human Dignity," 10.

[171] Ibid, 11.

2.1.2. *Thin Universalism*

The second grounding premise of this dissertation concerns the position it takes in the debate on universalism and cultural relativism in human rights. The primary aim of this dissertation—the delineation of a transregional concept of human dignity—rests on certain assumptions regarding this debate. More specifically, it aligns with temperate approaches to this debate, which seek to strike a balance between its two ends of the spectrum.[172] Following the notions of "minimum core" and "minimum content" of human dignity as advanced by McCrudden and Barroso,[173] this dissertation essentially acknowledges that human dignity does have some shared content that manifests across the three regional systems' dignity jurisprudence. As such, it proceeds from a working premise that the concept is, to some extent, universal. At the same time, the open nature of the concept, its versatility in both function and its substantive content as a legal concept, is also acknowledged. Therefore, the concept is understood as neither categorically universal nor unconditionally relative.

This approach aligns with the previously discussed premise of dignity pragmatism, whereby the concept of dignity is treated not as a *priori* moral truth but as a normatively loaded legal concept whose meaning can be extracted from its practical application in human rights adjudication**.** Accordingly, this dissertation adopts a theoretical lens that acknowledges the variability of the concept's substantive content across regional jurisprudence, while holding, as a working hypothesis, that certain dimensions of the concept exhibit transregional convergence. In this sense, it endorses a temperate approach to the universalism-relativism debate, positioned midway between the two ends of the spectrum yet with a marked emphasis on some form of universality. This stance is labeled here as *thin universalism*: an acceptance

[172] Among others, see Eva Brems, *Human Rights: Universality and Diversity* (Martin Nijhoff Publishers, 2001); Federico Lenzerini, *The Culturalization of Human Rights Law*; Fuad Al-Daraweesh and Snauwaert, Dale T, *Human Rights Education Beyond Universalism and Relativism: A Relational Hermeneutic for Global Justice* (Palgrave Macmillan, 2015).

[173] See above in Section 1.5.2., pp. 38-44.

of partial convergence across regional dignity jurisprudence without claiming or anticipating full uniformity. Such an assumption reflects a key methodological necessity, as the objective of delineating the contents of the shared transregional concept of dignity cannot proceed without a working hypothesis of at least partial convergence across the three regional systems.

The broader argument on universality advanced in this dissertation rejects a monolithic view of the concept, as it risks reinforcing the limitations of a binary universalism-relativism framework. In response, *thin universalism* embraces the idea of gradience of universality as an analytical tool. Universality does not have to be read as implying full conceptual uniformity but can instead describe transregional convergence on certain dimensions of the concept's substantive content while allowing others to remain context specific. This understanding of universality as a gradient descriptor is not merely metaphorical but is applied in this study through a structured theoretical framework. Specifically, it draws on the three-level model of universality of human rights proposed by Lenzerini, which is here adapted to the concept of human dignity.[174] Applying this gradient model, I argue, makes it possible to explore how dignity may exhibit different levels of convergence across legal systems.

Lenzerini's three-level model proposes degrees of foundational, conceptual and structural universality. Although developed for a nuanced understanding of the concept of human rights, I argue that it is equally applicable to the concept of human dignity. Since human dignity functions as the conceptual foundation for the concept of human rights, any inquiry into the universality of human rights must logically extend to the concept of dignity itself. In this sense, Lenzerini's framework is not only suitable but perhaps even more analytically coherent when applied to the concept of dignity, as it addresses the very concept that legitimizes the human rights discourse his model seeks to explain.

[174] Federico Lenzerini, *The Culturalization of Human Rights Law* (Oxford: Oxford University Press, 2014).

The first level of the gradient framework of universality is *foundational universalism,* which, as Lenzerini explains:

> "[...] does not refer to the content or substance of rights, but simply to the fundamental premise of whether *all* human beings are per se (i.e. due to their very nature as 'human beings') entitled to human rights".[175]

Foundational universalism, then, concerns the very idea of entitlement of human rights as universal, irrespective of the shape and content that these rights may take. When applied to the concept of dignity, I argue that *foundational universalism* corresponds to the general premise of the inherent dignity of every human being. As such, *foundational universalism* of human dignity is, first and foremost, reflected in the *source thesis* being the key paradigm within IHRL. Accordingly, if *foundational universalism* of such a transregional concept of dignity is true, the *source thesis* is expected to be reflected in regional dignity jurisprudence as well. Importantly, this level of universality enables the identification of a transregional concept of dignity without requiring full conceptual uniformity: the *foundational universality* of human dignity serves as the root, so to speak, from which regional conceptions of dignity might emerge, exhibiting some but not complete substantive convergence.

The next sub-level in Lenzerini's framework is *conceptual universalism*, which refers to the concept of human rights in terms of their catalogue, content, differentiation in 'generations', and the necessary level of protection afforded to different kinds of human rights. According to Lenzerini, only rights derived from *jus cogens* norms qualify as conceptually universal, because only those rights are absolute and uncontested. Consequently, one might argue that the concept of dignity could only qualify as *conceptually universal* if it is embedded within, or reinforces, such peremptory norms. This dissertation departs from Lenzerini's claim at this level.

[175] Lenzerini, *The Culturalization of Human Rights Law*, 31.

Rather than conditioning the transregional conceptual universality of dignity on its connection with *jus cogens*, this dissertation maintains that such a connection—though not rejected—is not essential to the analysis.[176] As such, the conceptual universality of the transregional concept of dignity will be evaluated by examining whether shared dimensions of the concept (bodily integrity, equality, personal autonomy) appear consistently across regional jurisprudence. Accordingly, this level of universality is treated in this dissertation not as a moral claim about the inherent value of the human person, but as a hypothesis about observable patterns in legal reasoning regarding the concept in regional jurisprudence.

The third and final level, *structural universality*, refers to the concrete structure and content of a given individual human right:

> "Once it is assumed that a given human rights standard is 'universally' applicable … the following step consists in ascertaining whether its content, i.e. the (often myriads of) concrete prerogatives arising from it, are the same for all the world's different communities [...]".[177]

This dissertation holds that *structural universality*, both in the case of the concepts of human rights generally and human dignity specifically, cannot be presumed. The significant variation in the function and substance of the concept, as revealed by studies on dignity jurisprudence, makes it indefensible to argue that the concept is *structurally universal*.

It is in this context that *thin universalism* as endorsed in this dissertation finds its clearest methodological justification. It is not merely a middle ground between the theoretical extremes of universalism and relativism. Rather, it is a principled stance grounded in a notion of universality as a gradient descriptor, which presumes *foundational* and *conceptual universality* of a transregional concept of human dignity without presupposing uniformity or moral

[176] For a discussion on the concept of human dignity as underlying *jus cogens* norms in international law, see Kate Karklina, "Human Dignity as a Foundational Value of Peremptory Norms in International Law," *RGSL Research Papers* No. 22 (2020).

[177] Lenzerini, *The Culturalization of Human Rights Law*, 32.

absolutes in terms of the substantive content of the concept of dignity as being fully fixed across the three systems. In summary, I do not aim to delineate the concept of human dignity as *structurally universal* in this dissertation, but rather to investigate whether the dimensions of the concept—bodily integrity, equality, autonomy—can be seen as parts of the *conceptually universal* transregional concept of human dignity.

2.1.3. Concept vs. Conceptions

The third grounding premise of this dissertation is the distinction between the concept of human dignity and its various conceptions. The lens of *thin universalism* assumes a shared conceptual core of the concept of human dignity across the three regional human rights systems, despite the likely variations in the specific applications of that core in dignity jurisprudence. To analytically navigate this crucial tension, I adopt a grounding analytical premise distinguishing between the concept of human dignity on the one hand, and its conceptions on the other. Such a distinction is not just of semantic value, but a necessary starting point for any serious attempt to understand how the concept of dignity functions in the practice of IHRL. Accordingly, by referring to the *concept* of human dignity in this dissertation, I refer to the shared reading of the outlines of the substantive content of the concept that is part of its *conceptual universality*. In referring to the *conception* of human dignity, I address that core of the concept together with the additional elements of the particular reading of human dignity in the regional systems individually. This separation between the concept of human dignity and its conceptions is not novel. McCrudden's "minimum core", notably, openly builds upon this distinction as well.[178]

[178] McCrudden, "Human Dignity and Judicial Interpretation," 679-680.

The distinction between a concept and its conceptions was originally introduced by Walter Bryce Gallie as part of his theory of essentially contested concepts (ECC) in 1955.[179] The theory seeks to explain continuous disagreements about the substantive meaning of a certain kind of social concepts, which due to their unique conceptual nature resist a fixed definition, and has been since then examined and applied in a wide diversity of contexts.[180] Although I do not claim that human dignity is an ECC in the full sense of Gallie's definition, I argue that the concept-conception distinction at the core of his theory offers a useful framework for understanding the complexities of defining dignity as a transregional legal concept and for explaining how it manifests thin universality across the three regions. As such, the main tenets of Gallie's theory are outlined only briefly here.

Gallie's theory on concepts "the proper use of which inevitably involves endless disputes about their proper uses on the part of their users"[181] was originally modeled by reference to the concepts of art and democracy. He suggested that it is common to disagree about the proper use of both because there is no one use that is the correct one and:

> "Each party continues to maintain that the special functions which the term (..) fulfills on *its* behalf or on *its* interpretation, is the correct or proper or primary, or the only important, function which the term in question can plainly be said to fulfill."[182]

[179] Gallie, "Essentially Contested Concepts".

[180] For some examples, see David Collier et al., "Essentially contested concepts: Debates and Applications," *Journal of Political Ideologies* Vol. 11, No. 3 (2006), 211-246; John N. Gray, "On the Contestability of Social and Political Concepts," *Political Theory* Vol. 5, No. 3 (1977), 331-348, John N. Gray, "On Liberty, Liberalism and Essential Contestability," *British Journal of Political Science* Vol. 8 (1978), 385-402; Christine Swanton, "On the "Essential Contestedness" of Political Concepts," *Ethics* Vol. 95, No. 4 (1985), 811-827; Kenneth M. Ehrenberg, "Law is Not (Best Considered) an Essentially Contested Concept," *International Journal of Law in Context* Vol. 7, Issue 2 (2011), 209-232; Jeremy Waldron, "Is the Rule of Law and Essentially Contested Concept (In Florida)?" *Law and Philosophy* Vol. 21 (2002), 137-164; Adaeze Okoye, "Theorising Corporate Social Responsibility as an Essentially Contested Concept: Is a Definition Necessary?" *Journal of Business Ethics* Vol. 89 (2009), 613-627; Jouni Korhonen et al., "Circular economy as an essentially contested concept," *Journal of Cleaner Production* Vol. 175 (2018), 544-552; Jed Meers, "'Home' as an essentially contested concept and why this matters," *Housing Studies* (2021), 1-18.

[181] Gallie, "Essentially Contested Concepts," 169.

[182] Ibid.

Accordingly, the different uses generate an endless dispute over the meaning of the concept, as each party persists on its use with "perfectly respectable arguments and evidence".[183] Gallie presented five conditions for a concept to qualify as ECC: (1) the concept designates a positive achievement of some sort and thus possesses strong normative and appraisive value (appraisiveness); (2) the said achievement is internally complex and consists of various components that have no set relative order between themselves (internal complexity); (3) because of the several components at hand, which can be ranked diversely, the concept can be described variously (diverse describability); (4) the valued achievement is open to revision over time (openness); (5) the particular uses of the concept are employed aggressively and defensively.

The first of the conditions—appraisiveness—elucidates an ECC as referring to concepts normative in nature. As far as the concept of human dignity goes, this condition is satisfied. Conditions (2) and (3) can be read together as they are necessarily interrelated: to be internally complex, the concept must encompass a variety of components, while "its worth is attributed to it as a whole"; and it is precisely because of the variety of features that comprise the total worth of the concept that such a concept can be diversly described, for "there is nothing absurd or contradictory in any one of a number of possible rival descriptions of [the concept's] total worth, one such description setting its component parts or features in one order of importance, a second setting them in a second order, and so on".[184] Since under Gallie's account the criteria for the application of the various components can be said to be "multiple, evaluative and in no settled relation of priority with one another,"[185] the diverse describability of an ECC is obvious.

[183] Gallie, "Essentially Contested Concepts," 169.

[184] Ibid, 172.

[185] Gray, "Liberty, Liberalism and Essential Contestability," 389.

It is within the combined result of conditions (2) and (3) that the crux of the idea of different conceptions of the same concept emerges: each of the uses of an ECC, that is, its particular conception, is a specification of the concept at play. The rival conceptions retain the link to the concept as they necessarily refer to a common content of the concept, but not to a specific "correct" original structure, because—importantly—there is none. The link that ties the differing conceptions to each other and to the concept itself is that "the "common element" is described in a manner sufficiently broad to be susceptible of a number of interpretations".[186] Notably, the simultaneous internal complexity and diverse describability only make sense if the rival conceptions are indeed variations of the same concept. In other words, it is imperative that "a genuine case of polysemy is at issue rather than an uninteresting case of homonymy."[187] In terms of human dignity satisfying these conditions, no apparent objections arise.

On what it means for a concept to be open (4), Gallie noted that it entails an innate permission of "considerable modification in the light of changing circumstances,"[188] whereby such modifications can neither be predicted nor prescribed ahead of time for the specific meaning of an ECC is subject to periodic, contextual revision.[189] For the concept of human dignity, the revision of its meaning through time is obvious. One only needs to remember the twists and turns that the concept has travelled through to arrive at its egalitarian rendition.

On aggressive and defensive use (5), Gallie argued that those involved in the dispute over an ECC are, firstly, aware of the concept's meaning being contested and, secondly, recognize the fact the concept can be read in a multiplicity of ways by their adversaries:

[186] Swanton, "On the "Essential Contestedness" of Political Concepts," 812.

[187] Barry Clarke, "Eccentrically Contested Concepts," *British Journal of Political Science* Vol. 9, No. 1 (1979), 123.

[188] Gallie, "Essentially Contested Concepts," 172.

[189] An important question that can be raised here is whether the conceptual openness of an ECC can be reduced over time, that is, whether a temporary, practical solidification of its meaning is possible, and if so, what that would imply for the concept's reading as an ECC in the first place. For a further reflection on this point, see Norman S. Care, "On Fixing Social Concepts," *Ethics* Vol. 84 No. 1 (1973), 10-21.

> "[…] each party recognizes the fact that its own use of it is contested by those of other parties, and that each party must have at least some appreciation of the different criteria in the light of which the other parties claim to be applying the concept in question. More simply, to use an essentially contested concept means to use it against other uses and to recognize that one's own use of it has to be maintained against these other uses. Still more simply, to use an essentially contested concept means to use it both aggressively and defensively."[190]

As such, an ECC has an "irreducible agonistic character".[191]

Gallie noted that the set of five criteria fails "to distinguish the essentially contested concept from the kind of concept which can be shown, as a result of analysis or experiment, to be radically confused,"[192] referring to situations where the different conceptions employed are not readings of the same concept but denote different concepts instead. In response, he suggests two additional conditions: "the derivation of any [essentially contested] concept from an original exemplar whose authority is acknowledged by all the contestant users of the concept"(6); and the probability that "the continuous competition for acknowledgement as between the contestant users of the concept, enables the original exemplar's achievement to be sustained and/or developed in optimum fashion"(7).[193]

These additional conditions raise questions about the theory's inherent coherence: while the original exemplar is meant to strengthen the link between the conceptions thus securing an ECC against being mixed up with aggregated concepts, an agreement on such an ideal of a concept seems contrary to the very idea of incurable contestability.[194] Similarly, the prospects of narrowing down the competition to one conception speak against the very core assumption of the nature of essential contestability. Thus, some commentators claim that these conditions

[190] Gallie, "Essentially Contested Concepts," 172.

[191] Tullio Viola, "From Vague Symbols to Contested Concepts: Peirce, W.B. Gallie, and History," *History and Theory* Vol. 58, Issue 2, (2019), 247.

[192] Gallie, "Essentially Contested Concepts," 180.

[193] Ibid.

[194] Collier et al., "Essentially Contested Concepts: Debates and Applications," 219.

are "inimical to the very notion of essential contestability"[195] and that in doing so Gallie "commits a version of genetic fallacy"[196] thus "implicitly, betraying his own idea".[197]

Notably, Gallie's theory on ECC has attracted great attention in scholarly literature yet it "has been theorized about more than used, and appealed to more often than thought about."[198] With a few notable exceptions, the theory is often referred to either to reinforce the argument of a difficulty defining a given concept without any further analysis into Gallie's framework or, quite the opposite, to dissect Gallie's framework by inspecting particular criteria purely theoretically, without applying the theory to a specific concept. The appeal is clear: the logic of an incurably vague concept due to its exceptional characteristics is tempting as it relieves the concept, and the researcher, of the demands of legal certainty in the shape of a definition. I argue that it is problematic to endorse such a conclusive view of the contestability of legal concepts without a further questioning of its practical application as an analytical tool.

In the context of the concept of human dignity, I identify as problematic the inherent assumption of the label ECC regarding the possible de-contestation of the concept, which was neither endorsed nor directly rejected by Gallie. More to the point, the condition of *progressive competition* (7) does not merely imply but actively presumes an ever-improving debate over the *"*best" conception of the concept. It goes hand in hand with the condition of an *original exemplar* (6), for: "the continuous competition for acknowledgment as between the contestant users of the concept enables the original exemplar's achievement to be sustained and/or developed in optimum fashion".[199] Gallie did not clarify what such optimum fashion means.

[195] Michael Freeden, *Ideologies and Political Theory: A Conceptual Approach* (Oxford: Clarendon Press, 1988), 60.

[196] Gray, "On Liberty, Liberalism and Essential Contestability," 390.

[197] Ernest Gellner, "The Concept of a Story," *Ratio* Vol. 9 (1967), 53.

[198] Eugene Garver, "Essentially Contested Concepts: The Ethics and Tactics of Argument," *Philosophy and Rhetoric* Vol. 23 (1990), 251.

[199] Gallie, "Essentially Contested Concepts," 180.

While one can only speculate if it entails narrowing the concept down to one specific conception, it is clear that some form of resolution over the meaning of the concept, however general or specific, is implicit. This significantly undermines the whole idea of essential contestability: once we accept that there is a correct conception of any given ECC, it can no longer be considered as essentially contested in the Gallian sense of the notion as "a final answer is now available".[200] In other words, the view that behind every ECC there is an agreeable, uncontested concept contradicts the core of Gallie's main thesis.[201]

Because of these theoretical conundrums on de-contestation of ECC, in this dissertation the theory of ECC is not used to explain the divergence of the regional conceptions of human dignity in practice. The adopted lenses of *thin universalism* not only imply a certain level of de-contestation of the concept of human dignity to be possible, but to have, in fact, already happened. In light of that, I adopt Gallie's crucial distinction between a concept and its conceptions as a key analytical tool from here onwards, but do not commit to the framework of ECC as a defining feature of the concept of human dignity as such.

2.2. Comparative Legal Human Rights Methodology and Design

Before outlining the specific comparative approach informing this dissertation, it is important to address a common misconception: comparative human rights law (CHRL) should not be conflated with methodological orientations of normative (moral and legal) universalism, the celebration of diversity through differentialism, the common core approach of factualism, or functionalism.[202] As Samantha Besson notes, while CHRL begins from the premise that "there could and should be some commonality" and thus contributes to identifying "common transnational ground," that ground is not assumed to pre-exist the comparison as something

[200] Garver, "Essentially Contested Concepts: The Ethics and Tactics of Argument," 252.

[201] Gray, "On Liberty, Liberalism and Essential Contestability," 390-391.

[202] Besson, "Comparative Law and Human Rights," 1232.

"awaiting to be discovered or recognized".[203] Rather, it is constructed and evaluated through the process of comparison, and remains open to consolidation—or not—in future human rights practice. On this view, the methodology adopted here is not a universalist project. At the same time, in acknowledging that human rights law is "a common enterprise we share universally"[204] and in assuming that commonalities can be identified through comparison, it equally rejects a purely differentialist stance. Moreover, in treating international human rights adjudication as a dynamic process of "constant negotiation between the universal and the particular,"[205] it also departs from traditional functionalist and factualist accounts of comparative method.

That said, the methodological design here does incorporate an element of the functionalist approach, as this study is interested in the work that the concept of human dignity does when invoked in relation to claims to bodily integrity, equality, and personal autonomy. Moreover, it is openly motivated by a possible convergence between the regional conceptions on human dignity in these respects. However, mindful that a strong endorsement of either functionalism or a normative universalist outlook risks flattening the richness of human rights adjudication, I assume neither a complete functional equivalence nor a thick conceptual core of the concept of human dignity to emerge from regional dignity jurisprudence. Instead, I aim to assess whether partial—and thus limited—convergence can be observed in how the concept is invoked in regional systems in connection to the three dimensions through the lens of *thin universalism*.[206]

The overarching purpose of the ensuing comparative analysis is to examine whether the three regional systems of Europe, the Americas, and Africa, concur in invoking the concept of human dignity in relation to bodily integrity, equality, and personal autonomy in their dignity

[203] Besson, "Comparative Law and Human Rights," 1233.

[204] Ibid, 1234.

[205] Ibid, 1233.

[206] See above in Section 2.1.2., pp. 58-62.

jurisprudence. As explained above, these three dimensions have been identified in dignity scholarship as likely components of a transnational concept of human dignity.[207] As such, the research trajectory of this dissertation is motivated by the idea that the convergence between the regional conceptions of human dignity around these themes can help articulate (some of) the content of a transregional concept of human dignity. Therefore, the object of comparison of this study is the concept of human dignity as it is invoked in regional dignity jurisprudence in connection with the concepts of bodily integrity, equality, and personal autonomy.

2.2.1. Functionalist Elements

The research agenda of this study can be understood as "a programme adopting a functional approach"[208] insofar as it examines whether the concept of human dignity performs similar functions in human rights adjudication in relation to the concepts of bodily integrity, equality, and personal autonomy. Thus, the methodological lens of this dissertation incorporates an element of this "dominant method of comparative analysis,"[209] as it investigates the practical uses and effects of the concept of human dignity in jurisprudence.

Taken on its own, the assumption of similarity in the results of a comparative law exercise is consistent with the moderate universalist commitments endorsed in this dissertation. In this sense, the functionalist element of the methodology adopted is reflected in an underlying assumption of some degree of convergence between regional conceptions of dignity. This convergence thesis serves as a working hypothesis of the dissertation broadly: that invocations of the concept of dignity, in relation to bodily integrity, equality, and personal autonomy, will

[207] See above in Section 1.5.2., pp. 37-48.

[208] Geoffrey Samuel, "Methodology and Comparative Law: Programme Orientations," in *Rethinking Comparative Law,* eds. Simone Glanert, Alexandra Mercescu, Geoffrey Samuel (Edward Elgar Publishing, 2021), 73.

[209] Vicki Jackson, "Comparative Constitutional Law: Methodologies," in *The Oxford Handbook of Comparative Constitutional Law*, eds. Michel Rosenfeld and András Sajó (Oxford University Press, 2012), 62.

exhibit areas of shared conceptual content. This premise aligns with *thin universalism,* the theoretical framework of the dissertation.

The seminal statement by Zweigert and Kötz, central to the functionalist approach in comparative law, asserts that:

> "One can almost speak of a basic rule of comparative law: different legal systems give the same or very similar solutions, even as to detail, to the same problems of life, despite great differences in their historical development, conceptual structure, and style of operation."[210]

Though not denying cultural and historical variation, traditional functionalist logic focuses on the end result of comparative law as revealing inherent similarities, because:

> "If law is seen functionally as a regulator of social facts, the legal problems of all countries are similar. Every legal system in the world is open to the same questions and subject to the same standards, even countries of different social structures or different stages of development."[211]

This emphasis on functional commonality has been broadly critiqued for underestimating contextual significance.[212] In line with such critiques, this dissertation adopts a cautious approach to functionalism, one that resists flattening the dynamic nature of human rights adjudication in practice. Beyond its interest in the practical convergence of understandings of the concept across regional systems, its methodological framework does not align with the foundational premises of functionalism. In particular, the traditional functionalist lens does not fit the conceptual scaffolding constructed here, because of the presumed likelihood of

[210] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd edition, translation by Tony Weir (Oxford University Press, 1998), 39.

[211] Ibid, 46.

[212] Traditional functionalist approaches in comparative law have been criticized for their tendency to oversimplify by underestimating context, culture, and distinct institutional evolution. On this, see Jackson, "Comparative Constitutional Law: Methodologies" (discussing such critiques in constitutional law). For an overview of contemporary critiques, see Gerhard Dannemann, "Comparative Law: Study of Similarities or Differences?" in *The Oxford Handbook of Comparative* Law, eds. Mathias Reimann and Reinhard Zimmermann (Oxford University Press, 2006), 396-403. For a functionalist response to these critiques, see Ralf Michaels, "The Functional Method of Comparative Law," in *The Oxford Handbook of Comparative Law*, eds. Mathias Reimann and Reinhard Zimmermann (Oxford University Press, 2006), 339-382.

divergence between regional conceptions of human dignity, even within the tripartite framework of bodily integrity, equality, and personal autonomy. This echoes the logic of *thin universalism* and moderates the traditional functionalist ambition of strong equivalence.

In sum, the assumption of only partial convergence between regional conceptions of human dignity implies a rejection of the strong functionalist lens: I do not proceed from the assumption that the concept of dignity, ultimately, performs identical functions across the regional systems. Nor do I assume that the three dimensions exhaust the functions of the concept in any of the systems examined.

2.2.2. Normative Orientation

Comparative legal inquiry is rarely a purely descriptive exercise. As Vicki Jackson has noted, even approaches that are typically considered neutral or empirical often carry deeper normative motivations:

> "much comparative work—even work that is 'classificatory', 'historical', or 'functionalist'—is motivated by a search, implicit or explicit, for transcendent principles".[213]

While the primary methodological orientation in this dissertation is CHRL through a moderate functionalist lens, it also contains an important normative dimension. This is evident in the underlying presumption of partial transregional convergence in how the concept of human dignity is interpreted and applied. Thus, the mapping of regional dignity jurisprudence along the three identified dimensions does not stop at a descriptive account of similarities. Instead, I treat the observed convergence as normatively significant, providing a basis for claiming the presence of a transregional concept of human dignity.

[213] Jackson, "Comparative Constitutional Law: Methodologies," 60.

The convergence will be assessed in light of the *source thesis* and the current status of the concept of human dignity—foundational in IHRL yet internationally divorced from a settled definition of its substantive content. The moderate functionalist lens adopted will help identify recurring functional patterns in how the concept operates across regional jurisprudence, while the normative orientation provides the basis for interpreting the conceptual and normative implications of those patterns.

2.2.3. The Contexts of Comparison

The contexts within which the units of comparison are analyzed are the sets of dignity jurisprudence of the European, Inter-American, and African regional human rights systems. The umbrella label "dignity jurisprudence" comprises judgments of the three regional human rights courts—the ECtHR, the IACtHR, and the ACtHPR—as well as the decisions of the three quasi-judicial regional bodies—the ECSR, the IACmHR, and the ACmHPR—that mention the term "dignity" in the operative parts of the judgment or decision.

The rationale for selecting the three regional human rights systems as the contexts of comparison is threefold. First, since this dissertation is interested in the concept of human dignity as a foundational element of the architecture of IHRL, the distinct role and function that the regional systems hold as sites of norm consolidation and creation, located between the global and national levels of protection of IHRL, yield significant benefits. That is, representing an in-between layer for the translation of international norms into domestic contexts and vice versa, these systems are understood as the "manifestations of a global phenomenon"[214] of IHRL. As noted by Başak Çalı et al., the very rationale of regional regimes is "to articulate and institutionalize human rights in ways that are more responsive to and legitimate in a certain

[214] Çalı et al., "Comparative regional human rights regimes: Defining a research agenda," 130.

region and its particular cultural, legal, and political contexts".[215] Therefore, regional systems can be thought of as a "semi-autonomous layer of law"[216] located between IHRL and constitutional law.

Due to this distinct nature of regional systems, the conceptions of human dignity that emerge from their jurisprudence represent a unique reading of the concept, one that blends both the bottom-up constitutional conceptions of dignity and the top-down demands implied by the broader architecture of IHRL. In this sense, Besson describes comparison between regional systems as "an intermediary stage in universal CHRL"[217] where the identification of a transregional consensus that reflects "intermediary plateaux of transnational consensus"[218] can be taken to hint at a universal consensus in the process of consolidation. This generative potential of regional systems in articulating the indeterminate conceptual content of human dignity in IHRL is a central impetus for this dissertation's broader claim regarding the existence of a transregional concept of human dignity.

Second, the dignity jurisprudence of the regional human rights systems of Europe, the Americas, and Africa offers a valuable basis for comparison because of their developed institutional structures, especially when compared to other regional formations for the promotion of human rights, such as the League of Arab States, or the Association of Southeast Asian Nations. The Council of Europe, the Organization of American States, and the African Union are the only fully operational regional frameworks of human rights protection with functioning human rights courts, which operate in parallel to three regional quasi-judicial bodies that also contribute significantly to the development of dignity jurisprudence. Together,

[215] Çalı et al., "Comparative regional human rights regimes: Defining a research agenda," 130.

[216] Ibid, 131.

[217] Besson, "Comparative Law and Human Rights," 1245.

[218] Ibid.

these six (quasi-) judicial bodies constitute a rich and diverse legal landscape for a comparative analysis of the concept of human dignity in practice.

Third, in the field of CHRL, especially in terms of micro-comparison, the regional human rights systems remain relatively understudied, with the main contexts of comparative analysis still being individual constitutional regimes. Accordingly, by choosing the regional human rights systems as the contexts of comparison, this dissertation contributes to an emerging field of study in CHRL. More importantly, however, as of spring 2025, no study has yet conducted a comparative analysis of the legal concept of human dignity with an explicit focus on these three regional systems. This dissertation, therefore, fills a significant gap in dignity scholarship.

2.3. Methods. Practical Research Design

In this section, I outline the techniques used to operationalize the specific research design of this study, namely the concrete tools for translating the methodology into the actual research process.

2.3.1. Units of Analysis and Comparison

In line with the research objectives,[219] the unit of comparative analysis in this dissertation is the concept of human dignity as invoked in regional dignity jurisprudence in relation to the concepts of bodily integrity, equality, and personal autonomy. As such, the unit of comparison is neither the concept of human dignity in the abstract nor dignity jurisprudence in general. Since I am interested in mapping out the ways in which the relationship between the concept of dignity and the three dimensions emerges within and converges across the three regional systems, the focus is placed on the role that the concept of dignity plays within jurisprudence with regard to these three dimensions—doctrinally, conceptually, and normatively. Therefore,

[219] See above in Introduction, pp. 6-7.

the unit of comparison is the relationship between the concept of dignity on the one hand, and bodily integrity, equality, and personal autonomy on the other.

For the purposes of simplification, throughout the dissertation, I refer to these three dimensions of the concept as *dignity as bodily integrity*, *dignity as equality*, and *dignity as personal autonomy*. This labeling strategy serves the broader aim of the dissertation: to test whether and how a transregional concept of human dignity emerges from regional invocations of the concept in connection with these three dimensions. Accordingly, the construction of "*dignity as…*" denotes my understanding of the unit of analysis: when the relation between the concept of dignity and any of the three dimensions in jurisprudence is identified, the extent to which the concept of dignity is understood to entail concerns related to bodily integrity, equality, and personal autonomy is illuminated.

Thus, by using "*dignity as*…" labels, I am referring to the idea that parts of the conceptual content of human dignity are understood to encompass a person's right to bodily integrity, equality, or personal autonomy. At the same time, the label "*dignity as…*" denotes the reverse conceptual relationship—that one's right to bodily integrity, or equality, or personal autonomy ultimately illuminates concerns regarding the concept of human dignity as well. This is what I mean by "conceptual relationship" between dignity and any of the three dimensions. In turn, when referring to the functional relationship between dignity and any of the three dimensions, I refer to the ways in which dignity is employed in (quasi-) judicial reasoning to reinforce or justify claims related to bodily integrity, equality, and personal autonomy. In this sense, the concept is not merely associated conceptually with these rights but also serves as a normative anchor that strengthens their legal protection, framing them as rooted in, or expressive of, the inherent worth of the individual.

2.3.2. Selecting Jurisprudence

As a first step, I filtered the entire available corpus of regional jurisprudence to locate judgments and decisions by the (quasi-) judicial regional human rights bodies that include a mention of the word "dignity". For the Inter-American jurisprudence, I also searched for "dignidad" in judgments and decisions not translated to English. I deliberately did not limit the search to the phrase "human dignity" so as not to exclude judgments and decisions where the concept appears as "dignity", "dignity of the human person", "dignity of the individual", or other similar formulations. Conversely, I did not search for derivative forms, such as the adjectives "dignified" in English or "digna" in Spanish. This choice was made to narrow the filtered corpus to judgments and decisions that refer to dignity as an attribute of the human person, that is, a noun. Additionally, only judgments and decisions delivered at the merits stage were included. The cut-off date was April 30, 2024.

The databases of the ECtHR and ECSR in the European system, and of IACtHR in the Inter-American system, allow full-text searches across their jurisprudence. Accordingly, a simple search for "dignity" in these databases yielded all cases in which the term has appeared. In contrast, the databases for the African system and the decisions of the IACmHPR in the Inter-American system, do not allow full-text searching. Thus, as regards these bodies' jurisprudence, each judgment and decision had to be reviewed manually, with an in-text search conducted individually.

As a second step, I filtered the identified body of jurisprudence by discarding those judgments and decisions in which "dignity" appeared only in submissions of the parties or exclusively as part of a quotation from a legal instrument, without any further reference in the (quasi-) judicial body's own reasoning. I also excluded cases in which "dignity" referred to a non-human attribute (e.g. "dignity of the office"). This two-stage process produced a final corpus of judgments and decisions in which the (quasi-) judicial bodies referred to dignity as a

human attribute beyond mere citation of a legal text, and did so in the operative, merits part of the decision. This resulting corpus of regional jurisprudence is what I refer throughout the dissertation as "dignity jurisprudence". Quantitatively, it comprised 262 judgments by the ECtHR and 34 decisions by the ECSR in the European system;[220] 95 judgments by the IACtHR and 31 decisions by the IACmHR in the Inter-American system; and 21 judgments by the ACtHPR and 37 decisions by the ACmHPR in the African system.

Further narrowing of the relevant jurisprudence was purposive and hypothesis-driven, focusing on judgments and decisions where the concept of dignity is invoked in relation to bodily integrity, equality or personal autonomy. Many cases were therefore excluded despite containing significant references to dignity, because the concept was not linked to any of the three dimensions. This step was central to testing the core hypothesis of the dissertation—that dignity contains shared conceptual dimensions related to bodily integrity, equality, and personal autonomy across the three regional human rights systems.

The remaining cases were categorized under the three analytical labels of *dignity as bodily integrity*, *dignity as equality* and *dignity as personal autonomy*. These labels reflect both the specific method of case selection and the methodological approach to conceptualizing human dignity as engaging concerns of these three notions as part of its substantive content as a legal concept. For instance, *dignity as bodily integrity* refers to the conceptual relationship between human dignity and bodily integrity, where the two function as mutually reinforcing ideas: respect for human dignity encompasses respect for bodily integrity, and vice versa. That is, claims to bodily integrity derive from the recognition of a person's human dignity. The same logic applies to *dignity as equality* and *dignity as personal autonomy*.

[220] The 262 judgments by the ECtHR encompass all types of cases - key cases, Grade 1, Grade 2 and Grade 3 cases.

Although the general meaning of these labels is straightforward, it is essential to clarify what is meant in this dissertation by the terms "bodily integrity," "equality," and "personal autonomy". This clarification is necessary to ensure the precision of these labels both as a tool for case selection and as part of the methodological approach to constructing the content of the transregional concept of human dignity.

Dignity as Bodily Integrity

In general, the label *dignity as bodily integrity* denotes the close conceptual relationship between the concepts of human dignity and bodily integrity. In dignity jurisprudence, it stands for the use of the concept of dignity as an expression of the commitment to protecting an individual's bodily integrity. It suggests that acknowledgment of, and respect for, human dignity necessarily entail a commitment to the protection of bodily integrity: the preservation of bodily integrity is a requirement that flows from respect for human dignity.

The "body" in *dignity as bodily integrity* first refers to the common use of the word, denoting the strictly physiological dimensions of the human body—"a physical, individuated entity with distinct boundaries – an inside and outside – that occupies a bounded space [...] delimited and enclosed by skin and composed of fleshy parts, external and internal, to this outer boundary".[221] Additionally, *the body* encompasses the psychological dimension of the human experience of embodiment, which means that psychological integrity—the cognitive and emotional layers of the human bodily experience—form part of what is meant by "bodily integrity" as well. Accordingly, *the body* here stands for the physiological system "that responds to the world in a linear and causal way" and can be harmed physically, but equally for the purely subjective experience of the body as the medium for "translating [one's]

[221] A. M. Viens, "The Right to Bodily Integrity: Cutting Away Rhetoric in Favour of Substance," in *The Cambridge Handbook of New Human Rights*, eds. Andreas von Arnauld, Kerstin von der Decken and Mart Susi (Cambridge University Press, 2020), 367.

understanding of the world into [their] conscious engagement with it."[222] Thus, transgressions of bodily integrity are understood as potentially harming more than the purely physical parameters of the human person: they also include bodily transgressions that result in effects imperceptible to the outside world, such as psychological harm through humiliation.[223]

As for integrity, the Cambridge Dictionary defines it as "the quality of being whole and complete,"[224] while the Oxford Dictionary defines it as "the condition of having no part or element taken away or wanting; undivided or unbroken state; material wholeness, completeness, entirety".[225] Both definitions refer to a state of something as an undivided whole. Consequently, "bodily integrity" stands for the unity, wholeness, and completeness of the body. Importantly, the concept of bodily integrity engaged here emphasizes the externality of the action constituting the transgression. In other words, it is not concerned with the natural internal processes of the human body that inevitably leave marks on one's bodily integrity in a biological sense.

Crucially, *dignity as bodily integrity* in this work epitomizes the negative consideration of the body as a site of protection not to be externally interfered with. It embodies a claim against unwanted invasion of the body, engaging the negative obligation not to interfere with an individual's bodily integrity. By contrast, scholarly literature often treats bodily integrity as also embodying a positive consideration—namely, "providing a sphere of freedom or choice about what a person can do to their own body".[226] From that perspective, external

[222] Jonathan Herring and Jesse Wall, "The nature and significance of the right to bodily integrity," *The Cambridge Law Journal* Vol. 76, No. 3 (2017), 576.

[223] In further stressing the inclusion of mental integrity within the notion of "bodily integrity", some authors suggest that "personal integrity" may be a more appropriate term. See, for example, Thomas Douglas, "From Bodily Rights to Personal Rights," in *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, eds. Andreas von Arnauld, Kerstin von der Decken, and Mart Susi (Cambridge University Press, 2020), 378-384). In such accounts, the label "bodily integrity" is seen as implying the body as a purely physical entity, overlooking the role of the mind as integral to bodily experience.

[224] "Integrity," *Cambridge Dictionary*, accessed July 27, 2025.

[225] "Integrity," *Oxford English Dictionary*, accessed July 27, 2025.

[226] Viens, "The Right to Bodily Integrity: Cutting Away Rhetoric in Favour of Substance," 370.

transgressions of bodily integrity are perceived as interferences with the person's autonomy, as they diminish the degree to which the person is in control of the integrity of their body.[227]

Framed this way, the distinction between "bodily integrity" and "bodily autonomy" is softened, as such a positive dimension of the scope of bodily integrity entails a claim for decision-making over one's own body.[228] Under *dignity as bodily integrity* as used here, however, this positive dimension is excluded. The self-determination and autonomy over one's body in the physical sense, and the exercise of individual mental self-determination in the sense of mental integrity, are not included under the scope of "bodily integrity" within *dignity as bodily integrity*.[229] Instead, these positive dimensions—autonomy over one's body and mind—fall under the scope of *dignity as personal autonomy*, the subject of Chapter 5.

By addressing the nexus between dignity, bodily integrity, and bodily autonomy under the concept of personal autonomy, a deliberate distinction is drawn in this study between bodily integrity and bodily autonomy as two separate ideas related to the human experience of a body. The two are fundamentally different in terms of the dimensions of the interactions that the body undergoes in relation to the outside world: both have to do with the body as a site of protection, but each emphasizes a different element of that experience in terms of the individual as the subject of that experience. "Bodily integrity" stresses the completeness and unity of the individual body, and underlines "a person's exclusive use [...] over his or her body,"[230] enabling the body to be "whole and intact and free from physical interference".[231] "Bodily autonomy",

[227] Douglas, "From Bodily Rights to Personal Rights," 383.

[228] For a discussion on the tension between the uses of "bodily integrity" and "bodily autonomy" in both case law and academic literature, see Herring and Wall, "The Nature and Significance of the Right to Bodily Integrity".

[229] For a discussion of how these questions fit within a broader understanding of "bodily integrity" beyond the "dignity as bodily integrity" account developed in this work, see Jan-Christoph Bublitz, "The Right to Mental Integrity," in *The Cambridge Handbok of New Human Rights: Recognition, Novelty, Rhetoric*, eds. Andreas von Arnauld, Kerstin von der Decken, and Mart Susi (Cambridge University Press, 2020): 387-403; Jan Christoph Bublitz and Reinhard Merkel, "Crimes Against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination," *Criminal Law and Philosophy* Vol. 8 (2014), 51-77.

[230] Herring and Wall, "The Nature and Significance of the Right to Bodily Integrity," 576.

[231] Ibid, 581.

conversely, emphasizes the exclusive license to make decisions in relation to the body—a corollary to the experience of bodily integrity in the first place.

It follows that both "bodily integrity" and "bodily autonomy" embody claims for guarantees against unwelcome external transgressions of the boundaries of the human body, but they are not synonyms. The former is concerned with the negative dimension of the experience of a transgression of bodily integrity in general—namely, external intervention in the exclusive use of a human body in its physical and mental parameters—whereas the latter covers the individual capacity for self-determination and decision-making on questions regarding bodily integrity in particular. Consequently, in "bodily integrity", the key interest lies in the very fact of transgression of the bodily integrity of the body as the site of protection, while in "personal autonomy" the element of personal choice as an expression of the individual's exercise of bodily autonomy is addressed specifically, thus marking autonomous decision-making as the site of protection instead.[232]

In terms of *dignity as bodily integrity* as a method for case law selection, the above-noted conception of "bodily integrity" led to a selection of judgments and decisions that invoke the concept of human dignity in relation to the wholeness, and the protection against external transgression of, both the physical and the psychological layers of the human body. In practical terms, for a case to be categorized under *dignity as bodily integrity*, it needed to contain a reference to human dignity in the context of the (quasi-) judicial bodies' consideration of interferences with an individual's bodily integrity, either through physical, palpable bodily harm, or through non-physical means of transgressing one's bodily integrity, such as psychological ill-treatment or degradation.

[232] For an argument on the need to read the right to mental integrity as necessarily encompassing the right to mental self-determination, see Bublitz, "The Right to Mental Integrity," 387-403.

Dignity as Equality

As with *dignity as bodily integrity*, the label *dignity as equality* denotes an intertwined relationship between the concepts of human dignity and equality. In the context of dignity jurisprudence, it refers to the use of the concept of dignity as an expression of the commitment to equality between human beings, serving as a normative basis for affirming the equal moral status of the individual.

This label frames the acknowledgment of, and respect for, one's human dignity as entailing a commitment to recognizing every human person as equal in worth to others. Upholding that equal value is, in turn, understood as rooted in the recognition of the equal human dignity of all human beings. Accordingly, the rejection of treatment that degrades or marginalizes an individual is a normative implication of recognizing human dignity under *dignity as equality*. In this way, the concept of dignity serves to reinforce, for example, the principle of non-discrimination, which itself is a legal expression of the idea of equal moral worth.

That said, this label deliberately avoids fixation on a single concept of equality, as it is meant to capture the variety of ways in which dignity reinforces the idea that human beings are entitled to equal moral concern in dignity jurisprudence. Therefore, in selecting the relevant case law, I sought judgments and decisions where the concept of dignity is used to articulate the idea of equal inherent worth of all human individuals. This includes all judgments by the three regional human rights courts and cases before the three (quasi-) judicial bodies in which dignity appears alongside the term "equality". It also includes references to dignity made in the context of equality-based reasoning more generally, such as non-discrimination, equal protection in law, or equal moral standing as such. In practical terms, judgments and decisions under the label *dignity as equality* need not only explicitly engage with the concept of equality

but also invoke dignity in a way that signals the impermissibility of discrimination or any broader "lowering" of an individual's moral status.

Although *dignity as equality* is deliberately detached from any single theory of equality, it resonates with the idea of equality as a foundational premise rather than as an outcome. Equality as an outcome focuses on concrete distributive or corrective remedies to inequality, whereas reading equality as a base premise refers to the foundational moral status from which such claims to equality as an outcome arise in the first place. In this sense, *dignity as equality* articulates the very fact of possessing dignity as a necessarily universal and equally held attribute of human individuals, rather than treating equality as the end goal of recognizing this equal human dignity. The notion of equality at play here thus draws on the abstract metaphysical claim that human beings are, as a matter of fact, one another's equals.[233] Consequently, even if there may be "differences of merit relevant to the application of certain principles" among individuals, "there are no differences that affect the fundamental worth" that is equal between persons.[234]

Because of its focus on equal worth as a foundational premise, *dignity as equality* echoes Jeremy Waldron's reading of dignity as a shared status—a rank—that each human being possesses individually.[235] Waldron's account of dignity as status is a useful framework for explaining *dignity as equality* insofar as it emphasizes the equal rank of all persons without prescribing any particular legal or policy outcome. However, beyond affirming that dignity is equal among human beings and denotes their equal moral standing, *dignity as equality* does not carry further normative assumptions about how this status should be addressed in law. From this perspective, it aligns with what the literature refers to as "basic equality" or "abstract

[233] Jeremy Waldron, "Basic and Relational Equality," in *How Can We Be Equals*? eds. Giacomo Floris and Nikolas Kirby (Oxford University Press, 2024), 67.

[234] Ibid, 68-69.

[235] See on this Jeremy Waldron, *Dignity, Rank, and Rights*, ed. Meir Dan-Cohen (Oxford University Press, 2012); and *One Another's Equals: The Basis of Human Equality* (Harvard University Press, 2017).

equality".[236] In this sense, the notion of equality within *dignity as equality* "is constituted by some valuable characteristic that persons share equally – a characteristic whose value arises prior to any equality principle," and it carries "premoral significance".[237]

That said, the label *dignity as equality* remains deliberately detached from any one particular understanding of the concept of equality: it neither fixes the relationship between dignity and formal or substantive equality, nor proceeds with an exclusively relational or basic account in mind.[238] This is not to say that it rejects substantive or relational accounts of equality, or that it denies the normative implications of upholding *dignity as equality*.[239] Rather, as a methodological caution, it leaves room to observe different conceptions of equality that might emerge in dignity jurisprudence as conceptually related to dignity. This broad rendering reflects a deliberate methodological choice, made precisely because of the likely depth and breadth of the notion of equality in dignity jurisprudence. Narrowing the definition at the outset would have been counterproductive in selecting case law that captures the conceptual relationship between the concept of dignity and the broad idea of equality.

[236] For a focused discussion on this interpretation of equality, see Agnieszka Jaworska and Julie Tannenbaum, "Equality and Moral Status," in *How Can We Be Equals*? eds. Giacomo Floris and Nikolas Kirby (Oxford University Press, 2024), 199-220. See also, in the same volume, Eva Feder Kittay, "Basic Human Moral Equality." For a critical engagement, see Richard Arneson, "Basic Equality: Neither Acceptable nor Rejectable," in *Do All Persons Have Equal Moral Worth? On 'Basic Equality' and Equal Respect and Concern*, ed. Uwe Steinhoff (Oxford University Press, 2015), 30-52.

[237] Christopher Nathan, "What is Basic Equality," in *Do All Persons Have Equal Moral Worth? On 'Basic Equality' and Equal Respect and Concern*, ed. Uwe Steinhoff (Oxford University Press, 2015), 10.

[238] In particular, see Sandra Fredman, "Substantive equality revisited," *International Journal of Constitutional Law*, Vol. 14, Issue 3 (2016): 712–738, for a discussion of the concept of dignity in relation to both substantive and formal equality.

[239] See Waldron, "Basic and Relational Equality," for an argument that "basic equality" can also be understood as a strong normative position.

Dignity as Personal Autonomy

As with the other two labels, *dignity as personal autonomy* reflects a deep-seated conceptual relation between the concepts of human dignity and autonomy. In short, safeguarding personal autonomy is understood here as a vital expression of respect for human dignity. Recognition of, and respect for, one's autonomy is part and parcel of recognizing and respecting them as a being with dignity. Conversely, acknowledging someone as a being with dignity means affirming their right to exercise personal autonomy, emphasizing their ability to author their own life choices and shape their life experiences. Thus, *dignity as personal autonomy* positions self-authorship as both a manifestation of, and a claim arising from, the inherent dignity of the human person.

An articulation of the understanding of autonomy that underpins this label is essential. A good place to start is by distinguishing between naturalistic and non-naturalistic accounts of this concept. In essence, naturalistic concepts view autonomy as an empirical, natural property of human beings, one that can be identified on the basis of natural facts. That is, an evaluation of one's autonomy based on a naturalistic account is an evaluation of "how that person is in the world".[240] It is an empirical fact that the human individual is "socially situated amid complex relations with other people"[241]—it is, so to speak, a natural property of the human person. As such, autonomy is constituted not only by the psychological, and cognitive capacities for self-determination, but also by the social context in which the person exists. Because of this social reality, autonomy is, at least in part, a function of conditions extrinsic to those psychological and cognitive capacities. Under naturalistic accounts, therefore, the concept of autonomy draws on both the natural capacities for self-determination and the ways in which social status and relations can enable or constrain the exercise of these capacities.

[240] Marina Oshana, *Personal Autonomy in Society* (Routledge, 2006), 4.

[241] Ibid, 5.

Non-naturalistic accounts of autonomy, by contrast, ground it in properties of the human person that cannot be empirically demonstrated—namely, moral and metaphysical dimensions of human nature. A classic example is the Kantian rendering of autonomy, in which it denotes the metaphysical freedom and ability to self-legislate moral laws.[242] Non-naturalistic accounts thus treat autonomy as a transcendental property of the human person, focusing on the human capacity for reason and rationality in themselves. External conditions and constraints on the exercise of self-determination are not central to these accounts. By extension, such approaches tend to be based on a narrow conception of rationality,[243] as opposed to the broader conception found in naturalistic accounts, where rationality encompasses the full range of human evaluative capacities, including relational and social contexts.

Dignity as personal autonomy follows the logic of naturalistic approaches to conceptualizing autonomy. Here, autonomy encompasses more than mere acknowledgment of a person's capacity for self-determination. It requires distinguishing between the capacity for autonomy and the actual exercise of that capacity. Autonomy is more than the combination of an individual's psychological state and reasoning skills in the abstract. This distinction shifts

[242] In the Kantian reading, autonomy denotes the individual's capacity of the will to be self-legislating in accordance with the "categorical imperative"—to act only on those maxims that one could will to be universal laws. See Immanuel Kant, *Groundwork of the Metaphysics of Morals*, translated by Mary Gregor (Cambridge: Cambridge University Press, 1997), 4:421–424. This reflects a non-naturalistic reading of autonomy insofar as it grounds autonomy in the moral law and the faculty of pure practical reason, features that cannot be empirically verified. However, the laws that the individual is to self-legislate in the Kantian reading are not self-determined strictly speaking but drawn from universal morality, which exists independently of the individual's autonomy. In this respect, the Kantian account can be said to blur the line between naturalistic and non-naturalistic readings of autonomy, as it combines a metaphysical foundation with an objective moral structure external to the individual's will. See on this Andrews Reath, "Kant's conception of autonomy of the will," in *Kant on Moral Autonomy*, ed. Oliver Sensen (Cambridge: Cambridge University Press, 2012), 32-52; and Susan Meld Shell, "Kant and the paradox of autonomy," in *Kant on Moral Autonomy*, ed. Oliver Sensen (Cambridge: Cambridge University Press, 2012), 107-128.

[243] The concept of rationality under a non-naturalistic rendering of autonomy necessarily emphasizes formal reasoning abilities used to adhere to moral principles alone. This renders the concept of rationality rather narrow. Since intellectual and cognitive capacities are prioritized as properties of individuals identified as capable of rational self-governance, the adherence to self-imposed (but moral and universal) laws is treated as evidence of the individual acting autonomously. Such an account fails to explain the exercise of autonomy in relation to decision-making based on personal preferences and desires not necessarily motivated by the will to act in accordance with universal moral law. A fitting example of such a context is end-of-life decision making, see Leen Van Brussel, "Autonomy and Dignity: A Discussion on Contingency and Dominance," *Health Care Analysis* Vol. 22 (2014), 176-177.

the discussion from theoretical capacity to practical experience. Such a framing is especially relevant for cases in dignity jurisprudence, where "one can have the readiness for autonomy while lacking the opportunity to exercise this readiness".[244]

That said, personal autonomy in this context extends beyond a narrow notion of self-determination tied "to the manner in which a person conducts herself in particular situations".[245] It is not concerned with individual self-determination in the sense of specifying their actions and behavior in any specific given time and space. Instead, it is framed as "a global or dispositional phenomenon,"[246] one that stands for the enduring ability of the human person to engage in "steering the course of one's life".[247] As a result, the concept is intertwined with the idea of individual independence, insofar as it requires "agential power in the form of psychological freedom – mastery of one's own will".[248]

As noted previously, certain positive dimensions of "bodily integrity," specifically, self-determination over one's body, fall under the scope of *dignity as personal autonomy* in this study.[249] This decision is based on the idea that self-authorship includes the power and authority to construct meaning around bodily decisions. It is also directly related to the earlier distinction between the dual nature of *the body* as a site of protection (physical parameters shielded from external transgression under "bodily integrity") and as the site of exclusive and autonomous decision-making ("personal autonomy"). This dual account distinguishes between the protective and empowering aspects of human dignity in relation to bodily integrity and personal autonomy.

[244] Oshana, *Personal Autonomy in Society*, 6.

[245] Ibid, 2.

[246] Ibid.

[247] Lars Øystein Ursin, "Personal autonomy and informed consent," *Medical Health Care and Philosophy* Vol. 12 (2009), 19.

[248] Oshana, *Personal Autonomy in Society*, 4.

[249] See above in Section 2.3.2., pp. 80-82.

In categorizing regional dignity jurisprudence under the label *dignity as personal autonomy*, this conception means that the category includes, first and foremost, judgments and decisions that invoke the concept of dignity explicitly in relation to the term 'autonomy'. However, most of the examples in this category involve references to human dignity in connection with the broader notion of self-determination, even where the term "autonomy" is not used explicitly.

2.3.3. Limitations of the Methods Used

There are three main limitations to the methods applied in operationalizing the methodology of this dissertation.

Firstly, the cut-off date for case law selection being 30 April 2024 means that no judgments and decisions issued after that date have been incorporated into the corpus of dignity jurisprudence examined here. Strictly speaking, therefore, the final body of dignity jurisprudence on which this dissertation relies is more than a year out of date.

Secondly, my choice to search only for the terms "dignity" and "dignidad" may have limited the potential corpus of case law. It could be argued that searching for the equivalent term in languages other than English and Spanish, such as "dignité" in the European and African systems, or "dignidade" in the Inter-American system, might have produced more comprehensive results.

Thirdly, and most importantly, the method's primary limitation lies in the interpretative bias inherent in filtering regional dignity jurisprudence along the three dimensions of "*dignity as…*". Since regional (quasi-) judicial bodies rarely refer to the concept of human dignity explicitly as an expression of bodily integrity, equality, and personal autonomy, a dose of interpretative license on my part as the researcher was necessary in order to delineate the corpus of dignity case law. This involved identifying instances where the phrasing of the regional (quasi-) judicial bodies implied a close conceptual relationship between dignity and the three

dimensions. As explained above, I looked not only for references to "dignity" in direct proximity to "bodily integrity", "equality", and "personal autonomy", but also for references connected to related ideas such as protection from bodily ill-treatment, the principle of non-discrimination, and the right to individual self-determination. Consequently, the final corpus of case law inevitably reflects my own understanding of these broader ideas and of what constitutes a reference made in relation to them.

2.4. From Framework to Mapping

In this chapter, I have laid out the conceptual and methodological scaffolding necessary for the analysis of regional dignity jurisprudence that follows. The framework for examining human dignity as a transregional legal concept—one that derives its meaning not from abstract definitions, but from the ways in which it is invoked in regional dignity jurisprudence—has been constructed. Drawing on a pragmatist reading of the concept and the role of its interpretative practice, I have argued that the concept's coherence lies not in the conceptual precision with which it is articulated, but in the regularity of its function in relation to three dimensions: bodily integrity, equality, and personal autonomy. In this view, the meaning of dignity is expected to emerge through patterns of its use in judicial reasoning and doctrinal construction, as they unfold in the jurisprudence of regional human rights systems. With this scaffold in place, the comparative analysis can begin.

The next three chapters apply the methodological framework outlined here to examine how dignity functions in relation to the selected dimensions: bodily integrity (Chapter 3), equality (Chapter 4), and personal autonomy (Chapter 5). Each is treated as a site in which the meaning of the legal concept of human dignity takes shape. Together, Chapters 3 to 5 form the empirical core of the dissertation and provide the basis for the final assessment of whether a transregional concept of human dignity can be delineated (Chapter 6).

Chapter 3.
Dignity as Bodily Integrity in Regional Jurisprudence

Having outlined the conceptual and methodological framework in the previous chapter, I now turn to the first of the three dimensions through which this dissertation examines the concept of human dignity in regional dignity jurisprudence: *dignity as bodily integrity.* Compared to the other two dimensions, *dignity as bodily integrity* is by far the most prominent expression of the concept across the three regional systems, judging by the frequency with which it appears in their jurisprudence.

As clarified in Chapter 2,[250] the label *dignity as bodily integrity* frames bodily integrity as a key conceptual component of human dignity—a condition for which respect is implicitly demanded by the very recognition of human dignity. Under this label, the notion of bodily integrity encompasses both physical and psychological dimensions of the body, underlining the inviolability of the human body in its corporeal, fleshly form as well as in the cognitive and emotional dimensions of the human experience of embodiment. Importantly, it does not encompass the notion of self-determination and thus does not engage with questions about an individual's decision-making regarding their body. This issue is instead addressed under *dignity as personal autonomy* in Chapter 5.

In this chapter, I begin by mapping how *dignity as bodily integrity* appears in the jurisprudence of the regional systems broadly, identifying the rights provisions in the three key regional human rights instruments under which this dimension is invoked. I then trace its application across the spectrum of prohibited ill-treatment, from degrading treatment to torture. Finally, I examine two specific contexts in which this reading of dignity arises: the imposition

[250] See above in Section 2.3.2., pp. 79-82.

of the death penalty, and the standards governing the treatment of persons in detention, the latter of which host most of the regional dignity jurisprudence across the three systems.

3.1. Locating *Dignity as Bodily Integrity*

First and foremost, *dignity as bodily integrity* appears in the judgments and decisions of the regional (quasi-) judicial bodies in relation to those articles of the principal regional human rights instruments that set out the absolute prohibition of ill-treatment: Article 3 ECHR (prohibition of torture), Article 5 ACHR (right to humane treatment), and Article 5 ACHPR (respect for dignity). It also appears in regional jurisprudence on the prohibition of slavery and forced labour under Article 4 ECHR (prohibition of slavery and forced labour), Article 6 ACHR (freedom from slavery), and Article 5 ACHPR. However, in none of the three systems' existing jurisprudence on these provisions is an elaboration offered on the relationship between the notions of dignity, bodily integrity, and slavery.[251] Additionally, African regional jurisprudence shows prominent use of the concept in interpreting Article 4 ACHPR (right to life and personal integrity), where the relationship between dignity, bodily integrity, and the

[251] In the European system, a handful of cases under Article 4 ECHR reference human dignity in relation to trafficking in human beings and coerced prostitution. See, for example, *Rantsev v. Cyprus and Russia*, App. No. 25965/04, 10 May 2010, para. 282; *Chowdury and Others v. Greece*, App. No. 21884/15, 30 June 2017, para. 93; *S.M. v. Croatia*, App. No. 60561/14, 25 June 2020, para. 54; *Zoletic and Others v. Azerbaijan*, App. No. 20116/12, 7 January 2022, para. 153.

In the Inter-American system, Article 6.2 ACHR refers to dignity in the context of forced labour in detention, stating that such labour shall not adversely affect the prisoners' dignity, nor their physical and intellectual capacities. However, as of January 2024, there is no case in which this would be examined in detail. Similarly, the broader prohibition of slavery under Article 6.1. ACHR in relation to human dignity had not been addressed in depth until 2016. In that year, the IACtHR, in its first substantive judgment on Article 6.1. ACHR, held that "slavery represents one of the most fundamental violations of an individual's dignity." See *Hacienda Brasil Verde Workers v. Brazil,* Series C No. 318, 20 October 2016, para. 317.

In the African system, the inclusion of slavery and forced labour alongside forms of ill-treatment in Article 5 ACHPR is unique among the regional systems. These practices are explicitly linked to human dignity, reflecting the continent's "cruel history as the source of slaves." See Malcolm Evans and Rachel Murray, eds., *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (Cambridge University Press, 2008), 195.

prohibition of ill-treatment is particularly evident in cases concerning the death penalty as a form of punishment in tension with the prohibition of ill-treatment under Article 5 ACHPR.

A textual comparison of the ECHR, ACHR, and ACHPR reveals that in the Inter-American and African systems the significance of the concept of human dignity in relation to the prohibition of ill-treatment can be inferred from the text of the relevant provisions themselves. In the Inter-American system, Article 5.2. of the ACHR refers to dignity in the context of the treatment of persons deprived of liberty:

> "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

In the African system, similarly, dignity is referred to in Article 5 ACHPR, which guarantees both respect for dignity and grounds the absolute prohibition of ill-treatment:

> "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

The fact that both these provisions include references to the concept of dignity is noteworthy and certainly suggests a conceptual relationship between dignity and bodily integrity. That said, these references must be emphasized carefully. Neither provision links human dignity to the prohibition of ill-treatment explicitly: in the ACHR, dignity is mentioned only in relation to the treatment of persons deprived of liberty, and in the ACHPR, the reference to dignity precedes—but is not included within—the list of prohibited forms of ill-treatment. As such, neither provision identifies human dignity as central to the rationale of the prohibition of ill-treatment directly, and neither, purely textually, reveals *dignity as bodily integrity* as a dimension of the regional conception of dignity at play.

This point is especially important, given that both the ACHR and the ACHPR protect bodily integrity explicitly elsewhere in their text, yet notably without mentioning dignity in

those provisions. In the Inter-American system, Article 5.1. ACHR refers to bodily integrity separately, stating that:

> "Every person has the right to have his physical, mental, and moral integrity respected".

In the African system, Article 4 ACHPR guarantees the inviolability of a person, their integrity, and the right to life, establishing that:

> "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

Consequently, while the texts of Article 5 ACHR and Article 5 ACHPR do suggest a degree of conceptual proximity between human dignity and bodily integrity, this connection is implicit at best, for it can only be inferred, not directly observed through a routine reading of the wording of those articles. The provisions refer to either dignity or bodily integrity, but not to both simultaneously, and not in a way that clearly defines one in terms of the other. That said, this conceptual relationship is articulated in the two systems' jurisprudence under Article 5.2 ACHR and Article 5 ACHPR (both of which refer to dignity, but not to bodily integrity), as well as under Article 5.1 ACHR and Article 4 ACHPR (both of which refer to bodily integrity, but not to dignity).

In the Inter-American system, the IACmHR has emphasized the broader objective of Article 5 ACHR, stating that it "incorporates and prescribes specific protections for the fundamental respect for individual human dignity and integrity that informs the American Convention and its rights and protections as a whole," and that the goal of "securing respect for the basic human integrity of all individuals in the Americas […] is a central purpose […] of Article 5 in particular".[252] In other words, both bodily integrity and human dignity are understood as core interests underlying this provision. A clear doctrinal signal of *dignity as bodily integrity* in this context appears in the established interpretative rule that a violation of

[252] IACmHR, *Damion Thomas v. Jamaica*, Report No. 50/01, Case 12.069, 4 April 2001, para. 36.

Article 5.2. ACHR is automatically a violation of Article 5.1. ACHR as well.[253] This means that violations of the prohibition of ill-treatment are understood to inherently constitute violations of bodily integrity as well.

As such, the prohibition of ill-treatment under Article 5.2. ACHR can be understood as a specific manifestation of the broader protection of bodily integrity established in Article 5.1. ACHR. Additionally, the IACtHR has emphasized that Article 5.1. ACHR expresses "in general terms the right to personal integrity,"[254] encompassing its physical, moral and mental dimensions alike. The prohibition of ill-treatment, then, is a manifestation of the guarantees necessary for the protection of bodily integrity and dignity, the two elements at the very core of the overarching aim and objective of the right to humane treatment under Article 5 ACHR. Alluding to *dignity as bodily integrity* in such a way is consistent with broader international jurisprudence, which commonly identifies the protection of bodily integrity as the normative basis of the prohibition of ill-treatment.[255]

In the African system, *dignity as bodily integrity* features prominently in dignity jurisprudence not only under Article 5 ACHPR, which explicitly guarantees respect for dignity, but, as noted above, also under Article 4 ACHPR, which protects the right to life. The frequency with which human dignity appears in the context of the latter is especially noteworthy, as the text of that article itself does not mention dignity but instead affirms that every human being is entitled to respect for the integrity of the person. In contrast, Article 5 ACHPR does invoke dignity explicitly, though in a separate sentence from the provision prohibiting ill-treatment. However, as noted earlier, that reference is not textually linked to the prohibition of ill-

[253] IACtHR, *Yvon Neptune v. Haiti*, Series C No. 180, 6 May 2008, para. 129.

[254] Ibid.

[255] For instance, consider the UN Human Rights Committee's General Comment No. 20 on Article 7 ICCPR (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), where the Committee states that the aim of the absolute prohibition is "to protect both the dignity and the physical and mental integrity of the individual." See UNHRC, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992.

treatment, thus calling for caution in drawing conclusions regarding the presence of *dignity as bodily integrity* there. That said, in a notable statement, the ACmHPR provided an explicit bridge between the concepts of dignity and bodily integrity, noting that Article 5 ACHPR "is aimed at the protection of both the dignity of the human person, and the physical and mental integrity of the individual".[256] Through this reading, both dignity and bodily integrity emerge as conceptually central to the protection against ill-treatment under Article 5 ACHPR, thus signaling *dignity as bodily integrity* within its scope.

Furthermore, despite the textual absence of human dignity in Article 4 ACHPR, the notion of *dignity as bodily integrity* has been incorporated into its interpretation through case law. In the landmark case *Kazeem Aminu v. Nigeria*[257], the ACmHPR held that the right to life comprises protection from a "state of constant fear and/or threats" and that, where such condition exists, "the right to respect for one's life and the dignity of his person, which this article guarantees" cannot be said to be fulfilled.[258] Through this reasoning, the ACmHPR highlighted the notion of dignity as part of the broader rationale of Article 4 ACHPR. In underlining fear, mental suffering, and threats to life as a violation of dignity, bodily integrity—both physical and psychological—is delineated as a core component of human dignity. Such interpretation supports *dignity as bodily integrity* as not only compatible with, but also integral to, the jurisprudence under Article 4 ACHPR.

Accordingly, the appearance of *dignity as bodily integrity* in African regional jurisprudence can be roughly grouped in two strands: in relation to the prohibition of ill-treatment under Article 5 ACHPR, and as part of the right to life under Article 4 ACHPR. In practice, however, these strands often overlap, as in many key cases both provisions are

[256] ACmHPR, *Gabriel Shumba v. Zimbabwe*, Communication No. 288/04, 2 May 2012, para. 138.

[257] ACmHPR, *Kazeem Aminu v. Nigeria*, Communication No. 205/97, 11 May 2000.

[258] Ibid, para. 18.

engaged simultaneously, especially when certain forms of the death penalty (Art. 4 ACHPR) are discussed as incompatible with the prohibition of ill-treatment (Art. 5 ACHPR). This connection has been explicitly recognized by the ACtHPR, noting that "unlike other human rights instruments, the [African] Charter establishes a relationship between the right to life and the inviolability and integrity of the human person."[259] On this basis, the ACtHPR has concluded that the two provisions "are inextricably related,"[260] and the ACmHPR has further described the integrity of the person as a "dignity-related right"[261] under Article 4 ACHPR. For this reason, the distinction between dignity jurisprudence under Articles 4 and 5 of the ACHPR might occasionally appear blurred. Ultimately, however, this connection further supports *dignity as bodily integrity* being present in the scope of both articles.

Unlike in the African and Inter-American systems, where a cautionary approach is advised for inferring *dignity as bodily integrity* from the wording of provisions on ill-treatment themselves, no such textual ambiguity arises in the European system, as the text of the ECHR is notoriously silent on the concept of human dignity altogether. As such, there is no built-in textual linkage between human dignity and specific human rights in the ECHR. Still, this textual silence has not prevented the concept from becoming a standard element of jurisprudence on Article 3 ECHR (prohibition of torture).

Notably, the first time the ECtHR referenced the concept of human dignity in its case law, in *Tyrer v. the UK*, it immediately articulated its connection to bodily integrity.[262] On that occasion, the ECtHR held that the absolute prohibition of ill-treatment under Article 3 ECHR

[259] ACtHPR, *Ajavon v. Republic of Benin*, App. No. 062/2019, 4 December 2020, para 163.

[260] Ibid, para. 166.

[261] ACmHPR, *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia*, Communication No. 341/2007, 16 November 2015, para. 120.

[262] The first reference to "dignity" in the case law ECHR, in general, appeared in the judgment of the European Commission on Human Rights in *East African Asians v. United Kingdom*, App. No. 4403-70, Report of 14 December 1973, Decisions and Reports 78-A, 62. On that occasion, the Commission observed that "to prevent interferences with the dignity of man of a particularly serious nature" (para. 189) is the overarching purpose of Article 3 ECHR.

protects "precisely that which it is one of the main purposes of Article 3 [...] to protect, namely a person's dignity and physical integrity"[263].[264] Since then, the logic of *dignity as bodily integrity* has been consistently reflected in the ECtHR's jurisprudence on Article 3 ECHR, describing the prohibition of ill-treatment as encapsulating "one of the most fundamental values of democratic societies,"[265] as "closely bound up with respect for human dignity,"[266] and as forming "part of the very essence of the Convention".[267]

3.2. *Dignity as Bodily Integrity* Throughout the Scope of Ill-Treatment

In line with distinctions found in key international legal instruments,[268] all three regional systems approach the prohibition of ill-treatment as a spectrum, ranging from degrading treatment at one end to torture at the other. This gradient approach is reflected in the texts of the provisions of the ECHR, ACHR, and ACHPR that establish the prohibition of ill-treatment.

In the European system, Article 3 ECHR lists torture, inhuman treatment, and degrading treatment, and jurisprudence across all these categories invokes *dignity as bodily integrity* as central to the rationale behind the prohibition. In contrast, in the Inter-American and African systems, Article 5 ACHR and Article 5 ACHPR include a fourth category—cruel treatment—

[263] ECtHR, *Tyrer v. United Kingdom*, App. No. 5856/72, 25 April 1978, para. 33.

[264] This echoes the previously underlined note by the IACmHR on the purpose of Article 5 ACHR. See above, pp. 95-96.

[265] ECtHR, *Bouyid v. Belgium*, App. No. 23380/09, 28 September 2015, para. 81; *Muršic v. Croatia*, App. No. 7334/13, 20 October 2016, para. 98; *M.F. v. Hungary*, App. No. 45855/12, 5 March 2018, para. 42; *Z.A. and Others v. Russia,* App. No. 61411/15, 21 November 2019, para. 188; *Korban v. Ukraine*, App. No. 26744/16, 9 December 2019, para. 118; *MK and Others v. Poland*, App. Nos. 40503/17, 42902/17 and 43643/17, 14 December 2020, para. 166; *Khachaturov v. Armenia*, App. No. 59687/17, 24 September 2021, para. 81; *Schmidt and 'Smigol v. Estonia*, App No. 3501/20, 28 November 2023, para. 120.

[266] *Bouyid v. Belgium*, para. 81; *Muršic v. Croatia*, para. 98; *M.F. v. Hungary*, para. 42; *V.C. v. Italy*, App. No. 54227/14, 1 May 2018, para. 88; *Z.A. and Others v. Russia*, para. 188; *Korban v. Ukraine*, App. No. 26744/16, 9 December 2019, para. 118; *Cantaragiu v. Moldova*, App. No. 13013/11, 24 July 2020, para. 42; *Ćwik v. Poland*, App. No. 31454/10, 5 February 2021, para. 60; *Schmidt and 'Smigol v. Estonia*, para. 120.

[267] Some examples of where this formulation appears include *Z.A. and Others v. Russia*, para. 188; *N.H. and Others v. France,* App. No. 28820/13, 2 December 2020, para. 156; *MK and Others v. Poland*, para. 166.

[268] See the text of UDHR (Art. 5); ICCPR (Art. 7); and UNCAT (Art. 16), all of which delineate the scope of prohibited ill-treatment along a spectrum ranging from degrading treatment to torture.

which, in terms of severity, is situated between inhuman treatment and torture. However, compared to the European system, African and Inter-American jurisprudence on ill-treatment less frequently distinguish ill-treatment that does not reach the severity of torture as either cruel, inhuman, or degrading treatment separately.

Although Article 3 ECHR, Article 5 ACHR, and Article 5 ACHPR all distinguish between the different categories of ill-treatment, none of the provisions defines those categories precisely. In general terms, the distinction lies "in the intensity of the suffering inflicted".[269] These loosely defined parameters make it difficult to delineate the specific characteristics of each category in general, and in relation to *dignity as bodily integrity* in particular. In the European system, this challenge is further amplified by the "living instrument"[270] doctrine applied to Article 3 ECHR, whereby the distinctions between the categories of ill-treatment evolve over time. The ECtHR maintains that "certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in the future" [271] thus underscoring the dynamic and contextual nature of these categories. [272] Moreover, the ECtHR evaluates "all the circumstances of the case"[273] such as the treatment's duration and, where relevant, the victim's age, sex, or state of health, to assess whether the alleged treatment meets the minimum threshold of severity under Article 3 ECHR.

[269] ECtHR, *Ireland v. the UK*, App. No. 5310/71, 18 January 1978, para. 167.

[270] For a discussion of the evolutive interpretation of the term "torture", see Ergün Cakal, "Torture and Progress, Past and Promised: Problematising Torture's Evolving Interpretation," *International Journal of Law in Context* Vol. 19, Issue 2 (2023), 236-254. For a focus on the "living instrument" doctrine and changing human rights demands under the ECHR, see Steven Wheatley, "Interpreting the ECHR in Light of the Increasingly High Standards Being Required by Human Rights: Insights from Social Ontology," *Human Rights Law Review* Vol. 24, Issue 1 (2024), 1-23.

[271] ECtHR, *Selmouni v. France*, App. No. 25803/94, 28 July 1999, para. 101.

[272] The ECtHR has observed that its evolutive interpretation of Article 3 ECHR is guided by the continually advancing human rights standards in the region, which "inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies." See *Selmouni v. France*, para. 101.

[273] *Ireland v. the UK*, para. 162.

While the other two regional systems do not explicitly frame the categories as subject to temporal reinterpretation in the same way, they too rely on a case-by-case, relative assessment of circumstances.[274] In the Inter-American system, the IACtHR assesses violations in light of "physical and psychological effects caused by endogenous and exogenous factors".[275] These include the duration of the prohibited treatment, the age and sex of the victim, their health conditions, specific vulnerabilities, and the broader circumstances of the case, all of which affect whether the ill-treatment in question qualifies as cruel, inhuman, degrading, or torture.[276] Likewise, in the African system, a relative assessment is followed, for as noted by the ACmHPR, "personal suffering and indignity can take many forms, and [depend] on the particular circumstances".[277]

The prohibition of ill-treatment is absolute across all three regional systems, with no derogations permitted at any point along the spectrum of the severity of ill-treatment. This is stated explicitly in Article 15 ECHR and Article 27 ACHR in the European and Inter-American systems, respectively. Additionally, in the Inter-American system, the IACtHR routinely emphasizes the "international juridical regime of absolute prohibition of all forms of torture"[278]

[274] Commentators note that an analogous flexible approach to evolving classifications of ill-treatment is emerging within the Inter-American system; see Thomas M. Antkowiak and Alejandra Gonza, *The American Convention on Human Rights: Essential Rights* (Oxford University Press, 2019), 22. However, in dignity jurisprudence, references to such reasoning are rare. One notable example is *Cantoral-Benavides v. Peru*, Series C No. 69, 18 August 2000, where the IACtHR refers to the "living instrument" doctrine with reference to ECHR jurisprudence (para. 99).

[275] IACtHR, *Loayza-Tamayo v. Peru*, Series C No. 33, 17 September 1997, para. 57; *Cabrera García and Montiel Flores v. Mexico, Series C No. 220,* 26 November 2010, para 133; *Lysias Fleury et al. v. Haiti, Series C No. 236,* 23 November 2011, para. 73.

[276] *Cabrera García and Montiel Flores v. Mexico*, para 133; *Lysias Fleury et al. v. Haiti*, para. 73; *García Rodríguez et al. v. Mexico*, Series C No. 482, 25 January 2023, para. 193.

[277] ACmHPR, *Purohit and Moore v. Gambia*, Communication No. 241/01, 29 May 2003, para. 58; also similar in *Egyptian Initiative for Personal Rights and INTERIGHT v. Egypt*, Communication No. 323/06, 3 March 2011, para. 188.

[278] See, for example, IACtHR, *Maritza Urrutia v. Guatemala*, Series C No. 103, 27 November 2003, para. 92; *Gómez-Paquiyauri Brothers v. Peru*, Series C No. 110, 8 July 2004, para. 112.

and repeatedly underlines the *jus cogens* character of the prohibition.[279] In the African system, while the ACHPR does not contain a provision stating Article 5 ACHPR as non-derogable, both the ACtHPR and the ACmHPR have affirmed its absolute nature.[280] For instance, the ACmHPR has stated that the "listed acts [in Article 5] outright constitute violations of the dignity of a human being and are prohibited without reserve".[281]

As a final point in laying out the general trends of regional *dignity as bodily integrity* jurisprudence, across all three regional systems, the protection of bodily integrity through the absolute prohibition of ill-treatment encompasses both physical and psychological dimensions. To recall, this dual aspect is explicit in the text of Article 5 ACHR in the Inter-American system, where the protection of bodily integrity is expressly extended beyond purely physical harm. In contrast, Article 5 ACHPR in the African system refers to the integrity of the person without specifying its components, and Article 3 ECHR in the European system is silent on the notion of bodily integrity altogether. Still, these two regions' jurisprudence also affirms the prohibition as covering psychological abuse. The ECtHR has emphasized that the scope of Article 3 ECHR "cannot be limited to acts of physical ill-treatment"[282] because "abuse other than physical violence may also constitute ill-treatment because of the psychological harm they

[279] See, for example, *García Rodríguez et al. v. Mexico,* para. 193; *Lysias Fleury et al. v. Haiti*, para. 70; *Valencia Campos et al. v. Bolivia*, Series C No. 469, 18 October 2022, para. 171.

References to the *jus cogens* status of the prohibition are uncommon in European and African jurisprudence. Some isolated instances exist, for instance, in ECtHR, *Al-Adsani v. the United Kingdom*, App. No. 35763/97, 21 November 2001.

[280] See, for example, ACmHPR, *Huri Laws v. Nigeria*, Communication No. 225/98, 6 November 2000, para. 41; *Gabriel Shumba v. Zimbabwe*, para. 138; *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia*, para. 119; ACtHPR, *Armand Guehi v. Tanzania*, App. No. 001/2015, 7 December 2018, para. 131.

[281] *Equality Now and Ethiopian Women Lawyers Association v. Federal Republic of Ethiopia*, para. 119.

[282] ECtHR, *Burlya and Others v. Ukraine*, App. No. 3289/10, 6 February 2019, para. 121; *Aghdgomelashvili and Japaridze v. Georgia*, App. No. 7224/11, 8 January 2021, para. 42; *D. v. Latvia*, App. No. 76680/17, 11 April 2024, para. 46.

cause to human dignity".[283] Similarly, the ACmHPR has defined Article 5 ACHPR as providing "the widest possible protection against abuses, whether physical or mental".[284]

With the broad patterns of regional jurisprudence on the prohibition of ill-treatment now outlined, the specific ways in which *dignity as bodily integrity* is articulated can now be examined. By way of a general remark, it should be noted that it is not the jurisprudence on torture that offers the most insight into the understanding of the relationship between the concepts of dignity and bodily integrity. Rather, it is the jurisprudence on abuses identified as cruel, inhuman or degrading treatment that is most instructive in delineating how respect for human dignity relates to the protection of bodily integrity. In what follows, I review the role of dignity across each of these categories, in turn.

3.2.1. Torture

The gravest form of ill-treatment prohibited under Article 3 ECHR, Article 5 ACHR, and Article 5 ACHPR—torture—is clearly distinguished as such in the jurisprudence of all three regional systems.

In the European system, when referring to torture, the ECtHR often notes that the ECHR was intended to "attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering"[285]. However, apart from this rather general commentary, there are no references to human dignity in the ECtHR's elaboration on torture, whether in the shape of general statements or in relation to precise dimensions of ill-treatment falling within this

[283] ECtHR, *S.P. and Others v. Russia*, App. No. 36463/11, August 2023, para. 92; *D v. Latvia*, para. 46.

[284] ACmHPR, *Media Rights v. Nigeria,* Communication No. 224/98*,* 6 November 2000, para. 71*; Egyptian Initiative for Personal Rights and INTERIGHT v. Egypt*, para. 189; ACtHPR, *Mugesera v. Rwanda*, App. No. 012/2017, 27 November 2020, para. 80.

[285] *Selmouni v. France*, para. 96; *Ilaşcu and Others v. Moldova and Russia*, App. No. 48787/99, 8 July 2004, para. 426.

category. As such, the case of *Myumyun v. Bulgaria*[286] is particularly notable, where the ECtHR observed that:

> "one of the distinguishing characteristics of torture is that it not only – and not always – seriously damages the physical health of the person subjected to it but also affects *in a very serious way that person's dignity* and psychological well-being [emphasis added]."[287]

This statement represents a rare case—indeed an isolated instance—of an elaboration on the conceptual affinity of the notion of torture and the concept of dignity in the jurisprudence of Article 3 ECHR.

In the African system, the ACmHPR has described torture as "one of the most egregious and morally reprehensible human rights abuses".[288] Yet, as in the European system, there are no explicit statements tying the concept of dignity with ill-treatment falling within this category that can be singled out as explicit demonstrations of *dignity as bodily integrity*. By contrast, Inter-American jurisprudence demonstrates some general statements that do invoke dignity in connection with torture. For instance, the IACtHR has underlined that "torture constitutes a particularly grave and reprehensible attack on human dignity" [289] while the IACmHR emphasizes the non-derogability of the prohibition by noting that torture "constitutes an offense against human dignity".[290] These statements affirm *dignity as bodily integrity* as part of the prevalent perception of torture as an especially heinous form of ill-treatment. Nevertheless, beyond such general statements, one finds no notable references to the concept of human dignity in the context of the notion of ill-treatment amounting to torture.

[286] ECtHR, *Myumyun v. Bulgaria*, App. No. 67258/13*,* 3 November 2015.

[287] Ibid, para. 74.

[288] ACmHPR, *Abdel Hadi & Others v. Republic of Sudan*, Communication No. 368/09, 5 November 2013, para. 69.

[289] The original text reads: "[l]a tortura constituye un ataque a la dignidad humana particularmente grave y reprochable." IACtHR, *Cortez Espinoza v. Ecuador*, Series C No. 468, 18 October 2022, para. 156.

[290] IACmHR, *Carmelo Soria Espinoza v. Chile,* Report No. 133/99, Case 11.725, 19 November 1999, para. 118.

Both European and African dignity jurisprudence on torture often rely on the definition found in Article 1 UNCAT, which emphasizes intentionality, coercion, and the systematic infliction of severe physical and mental pain and suffering.[291] In contrast, the Inter-American system more frequently draws on Article 2 of the Inter-American Convention to Prevent and Punish Torture (IACPTT)[292], which articulates similar elements.[293] Thus, the fact that different legal instruments are referred to is of little importance. The only notable nuance in this regard concerns the Preamble of the IACPTT, which states that "all acts of torture or any other cruel, inhuman, or degrading treatment or punishment constitute an offense against human dignity," thus clearly signaling the presence of *dignity as bodily integrity* as part of the interpretative scope of that instrument.

Importantly, both UNCAT and IACPTT recognize psychological suffering as a defining component of torture, aligning with a conception of dignity that includes not only physical but also emotional and mental integrity. This is further reinforced by regional jurisprudence which affirms that even "the threat or real danger of subjecting a person to physical harm"[294], where that threat is "sufficiently real and imminent,"[295] may fall under the prohibition due to "the fear of violence it instils in the victim and the mental suffering it entails".[296]

In sum, none of the three regional systems invoke the concept of human dignity to define or elaborate on the legal parameters of what constitutes torture in a substantive manner, though general remarks on its presence within the normative concerns of the prohibition of torture can

[291] See UNCAT, Article 1. For references to this definition in dignity jurisprudence, see ACmHPR, *Sudan HR Organisation & Centre on Housing Rights and Evictions v. Sudan*, Communication No. 279/03-296/05, 27 May 2009, para. 156; ECtHR, *Selmouni v. France*, para. 97; *Ilaşcu and Others v. Moldova and Russia*, para. 426.

[292] Organization of American States (OAS), Inter-American Convention to Prevent and Punish Torture, adopted 9 December 1985, OAS Treaty Series No. 67.

[293] *García Rodríguez et al. v. Mexico*, para. 194; *Lysias Fleury et al. v. Haiti*, para. 72.

[294] *Maritza Urrutia v. Guatemala*, para. 92.

[295] IACtHR, *"Juvenile Reeducation Institute" v. Paraguay*, Series C No. 112, 2 September 2004, para. 167.

[296] *S.P. and Others v. Russia*, para. 92; D v. Latvia, para. 46.

be found. This relative silence suggests that *dignity as bodily integrity* plays a limited role in the doctrinal elaboration of torture and that its interpretative significance may be more strongly felt in relation to the other categories of ill-treatment.

3.2.2. Cruel, Inhuman, Degrading Treatment

As noted above, the African and Inter-American regional jurisprudence shows considerable ambiguity in distinguishing between cruel, inhuman, and degrading treatment. Both systems rarely treat the categories separately but instead often refer to combinations such as "cruel, degrading and inhuman treatment" or "degrading and inhuman" treatment, without identifying one specific form as the basis of a violation.[297] Commentators note that this blending of categories appears "ad hoc" and does not "reflect an overall desire to treat them separately".[298] Some suggest that this makes the doctrine more adaptive to the changing circumstances, analogous to the "living instrument" doctrine in the European system.[299] Yet, from an analytical standpoint, this fluidity makes it difficult to assess how the concept of dignity relates to each form of ill-treatment individually.

Consequently, in practice, there is no example of dignity jurisprudence in the Inter-American or African systems in which a violation of the prohibition of ill-treatment was found on the basis of cruel treatment alone.[300] Likewise, there are no examples in either the Inter-American or African dignity jurisprudence where the prohibition of ill-treatment was found to

[297] For an example on this, see IACmHR, *Victor Rosario Congo v. Ecuador*, Report 63/99, Case 11.427, 13 April 1999, para. 58; or ACmHPR, *Abdel Hadi & Others v. Republic of Sudan*, para. 74.

[298] Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford University Press, 2019), 143.

[299] Antkowiak and Gonza, *The American Convention on Human Rights*, 22.

[300] The term "cruel treatment" does not appear in African regional dignity jurisprudence. In the Inter-American system, it appears only twice in dignity-related judgments of the IACtHR. The first is in *Neira-Alegría et al. v. Peru*, Series C. No. 20, 19 January 1995, where the IACtHR stated: "it has not been demonstrated that the three persons to whom this matter refers had been subjected to cruel treatment" (para. 86). The second is *Hernández v. Argentina*, Series C No. 395, 22 November 2019, where the IACtHR noted "the injuries, sufferings, damage to health or harm suffered by a person while he is deprived of liberty may ultimately constitute a form of cruel punishment" (para. 60).

be violated because of inhuman treatment specifically.[301] Nor are there findings of such violations under Article 5 ACHPR in African dignity jurisprudence. The pattern is similar when it comes to the two systems' dignity jurisprudence on degrading treatment. In the African system, the label "degrading treatment" is rarely used in isolation,[302] while in the Inter-American system, only one example can be found where it has been used on its own.[303] More commonly, Inter-American dignity jurisprudence refers to "cruel and inhuman"[304] or "inhuman and degrading" [305] or "cruel, inhuman and degrading treatment". [306] These compound formulations dominate the language of African dignity jurisprudence on ill-treatment as well.[307]

[301] References to inhuman treatment as a distinct classification are rare in Inter-American dignity jurisprudence. One such instance appears in *Victor Rosario Congo v. Ecuador*, where the IACmHR stated that "isolation can in itself constitute inhumane treatment" (para. 58) in the context of detention conditions. Similarly, in *Loayza Tamayo v. Peru*, the IACtHR noted that the psychological suffering endured during questioning "may be deemed inhuman treatment" (para. 57), but concluded that the facts amounted to cruel, inhuman and degrading treatment.

[302] For a rare exception, see ACmHPR, *Open Society Justice Initiative v. Côte d'Ivoire*, Communication 318/06, 27 May 2016, where the ACmHPR noted that "to be an "undocumented migrant" is perceived as the most degrading form of legal, political and social identification" (para. 141). See also *George Iyanyori Kajikabi v. Egypt,* Communication 344/07, 7 August 2020, where the ACmHPR referred to ECtHR case law in *Cambell and Cosans v. the UK*, App. Nos. 7511/76 and 7743/76, 25 February 1982, to draw limits of "degrading treatment," stating: "treatment itself will not be "degrading" unless the person concerned has undergone - either in the eyes of others or in his own eyes - humiliation or debasement" (para. 204).

[303] See IACtHR, *Girón et al. v. Guatemala*, Series C No. 390, 15 October 2019, where the IACtHR notes that "the television coverage of the execution [...] was incompatible with human dignity. It constituted degrading treatment because the alleged victims in this case were treated as objects" (para. 87).

[304] See, for instance, IACtHR, *Velásquez-Rodríguez v. Honduras*, Series C No. 4, 29 July 1988, where the IACtHR established that "prolonged isolation and compulsory incommunicado are, in themselves, cruel and inhuman treatment" (para. 154). This formulation has been later reiterated in IACtHR, *Lori Berenson Lori Berenson-Mejía v. Peru*, Series C No. 119, 25 November 2004, para. 103; IACmHR, *Juventino Cruz Soza v. Guatemala*, Case 10.897, Report No. 30/96, 16 October 1996, para. 48; *Victor Hernández Vásquez,* Report No. 65/99, Case 10.228, 13 April 1999, para. 54; *Nelson Iván Serrano Sáenz v. Ecuador*, Report No. 84/09, Case 12.525, 6 August 2009, para. 53.

[305] See, for instance, IACtHR, *Boyce et al. v. Barbados*, Series C No. 169, 20 November 2007, para. 102; IACmHR, *Victor Rosario Congo v. Ecuador*, para. 59.

[306] See, for instance, IACtHR, *Suárez-Rosero v. Ecuador*, Series C No. 35, 12 November 1997, para. 91; *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, Series C No. 94, 21 June 2002, para. 169; *Montero-Aranguren et al (Detention Center of Catia) v. Venezuela*, Series C No. 150, 5 July 2006, para. 91; *Bámaca-Velásquez v. Guatemala*, Series C No. 91, 22 February 2002, para. 165.

[307] See, for instance, ACmHPR, *Abdel Hadi & Others v. Republic of Sudan*, para. 74; *Spilg and Mack & DITSHWANELO v. Botswana*, Communication 277/2003, 16 December 2011, para. 177.

In the European system, as noted earlier, the text of Article 3 ECHR only lists degrading and inhuman treatment, omitting the category "cruel" altogether. As a result, there is less variety in the available terminology than in the other two regions. A common classification used in dignity jurisprudence under Article 3 ECHR is "inhuman and degrading treatment", while "inhuman treatment" alone remains rather rare, echoing the pattern in the African and Inter-American systems.[308] This use of compound formulations instead of precise distinctions across the three regions further complicates the effort to trace how *dignity as bodily integrity* functions with respect to each category of prohibited treatment.

Degrading Treatment

Among the various categories of prohibited ill-treatment, degrading treatment appears most frequently in the European system, but comparatively much less frequently so in the African and Inter-American dignity jurisprudence. The dignity case law of the ECtHR hosts references to degrading treatment with striking regularity, making European jurisprudence on degrading treatment especially relevant for illuminating the notion of *dignity as bodily integrity* at play in this context.

The ECtHR has explicitly pointed out the centrality of the concept of dignity within the notion of degrading treatment in *Bouyid v. Belgium*[309], where it noted that "there is a particularly strong link between the concepts of 'degrading' treatment or punishment within the meaning of Article 3 of the Convention and respect for 'dignity'".[310] Importantly, this conceptual affinity was already acknowledged in *East African Asians v. the UK*[311], where the

[308] The only example of the use of the label "inhuman treatment" found in ECtHR dignity case law is in *Burlya and Others v. Ukraine*, para. 121, where the ECtHR Court held that a mere threat of torture can constitute "inhuman treatment".

[309] ECtHR, *Bouyid v. Belgium*, App. No. 23380/09, 28 September 2015.

[310] Ibid, para. 90.

[311] ECmHR, *East African Asians v. United Kingdom*, App. No. 4403-70, Report of 14 December 1973, Decisions and Reports 78-A, p. 62.

European Commission of Human Rights—the judicial body of the CoE preceding the ECtHR—stated that the term "degrading treatment" in Article 3 ECHR implies that the article's overarching purpose is "to prevent interferences with the dignity of man of a particularly serious nature".[312] It follows that the notion of degrading treatment under Article 3 ECHR is tightly related to the concept of human dignity. Indeed, one could even describe the two as inseparable, for the phrasing used by the ECtHR in identifying ill-treatment as degrading often refers to the concept of human dignity as that which the ill-treatment has harmed. Thus, for instance, ill-treatment is found to be degrading, when it shows "a lack of respect for [...] dignity,"[313] is "offensive"[314] or "detrimental"[315] to human dignity, constitutes "an affront to human dignity"[316] or is such as to "diminish the victims' human dignity".[317]

As such, the case law on Article 3 ECHR leaves little doubt about the centrality of the concept of human dignity in the assessment of ill-treatment as "precisely that which it is one of the main purposes of Article 3 (art. 3) to protect"[318] and as a key concept in assessing degrading treatment specifically. However, no further elaboration on the conceptual content of human dignity as an expression of bodily integrity can be extracted from this body of case law, as the ECtHR has not alluded to the substantive content of human dignity when identifying ill-treatment as offensive, detrimental or an affront to it. That said, the typical formulation of degrading treatment within the meaning of Article 3 ECHR defines it as one that:

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[312] *East African Asians v. United Kingdom*, para. 189.

[313] ECtHR, *M.S.S. v. Belgium and Greece*, App. No. 30696/09, 21 January 2011, para. 220*; Svinarenko and Slyadnev v. Russia,* App. Nos. 32541/08 and 43441/08, 17 July 2014, para. 115; *V.M. and Others v. Belgium*, App. No. 60125/11, 17 November 2016, para. 133; *Goriunov v. the Republic of Moldova*, App. No. 14466/12, 29 August 2018, para. 30*; N.H. and Others v. France*, para. 159.

[314] ECtHR, *Fyodorov and Fyodorova v. Ukraine*, App. No. 39229/03, 7 July 2011, para. 60.

[315] *Goriunov v. the Republic of Moldova*, para. 41.

[316] ECtHR, *Sabalić v. Croatia*, App. No. 50231/13, 14 April 2021, para. 65.

[317] ECtHR, *Yankov v. Bulgaria*, App. No. 39084/97, 11 December 2003, para. 104.

[318] *Tyrer v. United Kingdom*, para. 33.

> "humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance".[319]

This passage is the standard formula used by the ECtHR for identifying degrading treatment in dignity jurisprudence.

While neither Inter-American nor African dignity jurisprudence demonstrates a similar use of a specific formula that could be taken as an approximation of a definition of degrading treatment, both systems refer to the ECtHR's jurisprudence in delineating degrading treatment in their own contexts. For instance, in *Loayza-Tamayo v. Peru*[320], the IACtHR echoed the ECtHR's understanding by noting that:

> "the degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance."[321]

Similarly, the ACmHPR, through a reference to the ECtHR's case law, has stated that treatment is not degrading, unless "the person concerned has undergone - either in the eyes of others or in his own eyes - humiliation or debasement."[322] Taken together, these statements highlight two recurring elements in the definition of degrading treatment: (i) humiliation and debasement,

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[319] ECtHR, *M.S.S. v. Belgium and Greece*, para. 220*; Svinarenko and Slyadnev v. Russia,* para. 115; *V.M. and Others v. Belgium*, para. 133; *Goriunov v. the Republic of Moldova*, para.30*; N.H. and Others v. France*, para. 159.

A closely similar formulation is found in *Idalov v. Russia*, App. No. 5826/03, 22 May 2012, para. 92; *Fetisov and Others v. Russia*, App. No. 43710/07, 4 June 2012, para. 127; *Koryak v. Russia*, App. No. 24677/10, 13 February 2013, para. 98; *Reshetnyak v. Russia*, App. No. 56027/10, 8 April 2013, para. 82; *Gorelov v. Russia*, App. No. 49072/11, 9 April 2014, para. 61; *Gorbulya v. Russia*, App. No. 31535/09, 6 June 2014, para. 60; *Neshkov and Others v. Bulgaria*, App. No. 36925/10, 1 June 2015, para. 227; *Nogin v. Russia*, App. No. 58530/08, 1 June 2015, para. 82; *Varga and Others v. Hungary*, App. No. 14097/12, 10 June 2015, para. 70; *Bouyid v. Belgium*, para. 87; *Ivko v. Russia*, App. No. 30575/08, 2 May 2016, para. 92; *Nicolae Virgiliu v. Romania*, App. No. 41720/13, 25 June 2019, para. 118; *Korban v. Ukraine*, para. 119; *Ananyev and Others v. Russia*, App. No. 42732/12, 10 December 2020, para. 140; *Ćwik v. Poland*, para. 62; *Sabalić v. Croatia*, para. 64.

[320] IACtHR, *Loayza-Tamayo v. Peru*, Series C No. 33, 17 September 1997.

[321] *Loayza-Tamayo v. Peru* (para. 57), referring to ECtHR, *Ribitsch v. Austria,* App. No. 18896/91, 4 December 1995.

[322] ACmHPR*, George Iyanyori Kajikabi v. Egypt,* Communication 344/07, 7 August 2020, para. 204, referring to ECtHR, *Campbell and Cosans v. UK*, para. 28.

and (ii) the feelings of fear, anxiety, and inferiority. Thus, the crux of degrading treatment lies in its consequences being profoundly intertwined with the victim's internal, subjective experience, undergoing the above noted feelings.

(i) Humiliation and Debasement

Across the three systems, degrading treatment is associated with the victim's experience of humiliation and debasement. In the absence of precise legal definitions in regional dignity jurisprudence, recourse to the common use of these words helps illuminate these concepts. According to the Cambridge Dictionary, "humiliation" is defined as "the feeling of being ashamed or losing respect for yourself," while "to humiliate" means "to make someone feel ashamed or lose respect for himself or herself".[323] Related terms include "to demean" and "to mortify". Meanwhile, "debasement" is defined as "the action of reducing the quality or value of something".[324] Taken together, these definitions reflect a subjective experience of being treated in a way that undermines one's perceived self-worth.

Because the markers of humiliation and debasement denote highly subjective experiences, as parameters they are naturally difficult to fix to a specific standard of measure. Unsurprisingly, then, one does not find examples in regional dignity jurisprudence that elaborate on what is understood by these terms as regards their exact conceptual content. Moreover, as noted earlier, both Inter-American and African dignity jurisprudence make scarce use of the category of degrading treatment distinguished from other types of ill-treatment and even when it does, it is occasionally done by expressly citing European jurisprudence. As such, the case law of the ECtHR provides the clearest insight into how humiliation and debasement function as elements of degrading treatment.

[323] "Humiliation," *Cambridge Dictionary*, accessed 28 July 2025.

[324] "Debasement," *Cambridge Dictionary*, accessed 28 July 2025.

In *Elberte v. Latvia*[325]*,* the ECtHR echoed its typical formula of degrading treatment, when it stated that treatment may be degrading "when, inter alia, it humiliates an individual, showing a lack of respect for human dignity,"[326] effectively equating humiliation with disrespect for human dignity. Recalling the above definition of the verb "debasement" as reducing the quality or value of something, human dignity appears here to be precisely that *something* which is diminished through degrading treatment. This framing resonates with the notion of *dignity as bodily integrity,* by articulating dignity as vulnerable to being undermined through acts that target an individual's moral and psychological wholeness.

Furthermore, dignity jurisprudence shows that there need not be an intention to humiliate or debase the person for treatment to be found degrading. Though "a factor to be taken into account,"[327] absence of an intent to humiliate or debase the victim does not exclude a finding that the ill-treatment was degrading. Instead, again, the victim's internal, subjective experience of humiliation and debasement has the primary role in the assessment of whether treatment is degrading. This transpires clearly from another oft-cited statement by the ECtHR, whereby "it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others."[328] Ultimately, then, what matters is the victim's self-perception of having been diminished in worth—feeling "lesser than"—as if their inherent worth has been called into question.

[325] ECtHR, *Elberte v. Latvia*, App. No. 61243/08, 13 April 2015.

[326] Ibid, para. 142.

[327] ECtHR, *Kalashnikov v. Russia*, App. No 47095/99, 15 October 2002, para. 101; *Poltoratskiy v. Ukraine*, App. No. 38812/97, 29 April 2003, para. 146; *Nazarenko v. Ukraine*, App. No. 39483/98, 29 July 2003, para. 142; *Dankevich v. Ukraine*, App. No. 40679/98, 29 July 2003, para. 142; *Aliev v. Ukraine,* App. No. 41220/98, 29 July 2003*,* para. 149.

[328] *M.S.S. v. Belgium* para. 220; *Bouyid v. Belgium*, para. 87; *Nicolae Virgiliu v. Romania*, para. 118; *Korban v. Ukraine,* para. 119; *Gremina v. Russia*, App. No. 17054/08, 26 August 2020, para. 83; *R.R. and R.D. v. Slovakia*, App. No. 20649/18, 1 September 2020, para. 146; *Ćwik v. Poland*, para. 62; *Sabalić v. Croatia*, para. 64.

Two cases by the ECtHR exemplify this point clearly. In *Basenko v. Ukraine*[329], the applicant was found to have experienced humiliation because of feeling helpless after having to rely on bystanders' help to walk because of a bodily assault against him. Here, it was not the bodily assault as such that caused humiliation and debasement, but instead the feelings the victim underwent as a result of the assault, leaving him dependent on the help of others, eroding his dignity as a self-sufficient, sovereign being. In another case, *Yankov v. Bulgaria*[330], the applicant's hair was shaved by prison authorities while in detention. The ECtHR found this to constitute degrading treatment because of the inherent "punitive element […] likely to appear *in his eyes* to be aimed at debasing and/or subduing him [emphasis added]".[331] In both these cases, it was the internal, subjective estimation of harm to one's inherent worth and dignity—not external observation of such consequences—that proved decisive. Consequently, the self-perceived depreciation of one's inherent worth is a key indicator of ill-treatment amounting to degrading treatment.

(ii) Feelings of Fear, Anguish, Inferiority

The other set of parameters distinguished in regional dignity jurisprudence as essential components of degrading treatment are the feelings of fear, anxiety (anguish), and inferiority. While it is difficult to define them with precision, these subjective psychological experiences are consistently emphasized in dignity jurisprudence as central to the notion of degrading

[329] ECtHR, *Basenko v. Ukraine*, App. No. 24213/08, 26 February 2016.

[330] ECtHR, *Yankov v. Bulgaria*, App. No. 39084/97, 11 December 2003.

[331] Ibid, para. 117.

treatment. Notably, the formulations change between "fear, anguish or inferiority"[332] and "fear, anguish *and* inferiority [emphasis added]"[333] thus indicating that not all these feelings must be present in every case for ill-treatment to qualify as degrading.

Much like humiliation and debasement, these feelings are primarily internal to the victim and as such pertain to the emotional and psychological dimensions of the human experience of embodiment. As an illustration, in *D v. Latvia*[334], separation of a group of prisoners in the usage of public spaces, such as dining areas and toilets, was found to amount to degrading treatment because of "the effect of sending a potent message of inferiority"[335] to the victims, regardless of the rationale behind it. Similarly, in *S.P. and Others v. Russia,* [336] a group-based categorization of prisoners was found to constitute degrading treatment because of the implicit debasement of the victims "instilling in them a sense of inferiority".[337] Both examples illustrate how the experience of being treated as "lesser than" is seen to erode the individual's sense of dignity.

The bundle of psychological components of experiencing degrading treatment that emerge from regional dignity jurisprudence—humiliation, debasement, fear, anguish, and inferiority—draws on the individual self-perception as an autonomous and equal being, one whose bodily and mental integrity must remain free from unwelcome external interferences. It

[332] *M.S.S. v. Belgium*, para. 220; *Idalov v. Russia*, para. 92; *Fetisov and Others v. Russia*, para. 127; *Koryak v. Russia*, para. 98; *Reshetnyak v. Russia*, para. 82; *Semikhvostov v. Russia*, App. No. 2689/12, 6 February 2014, para. 70; *Gorelov v. Russia*, para. 61; *Gorbulya v. Russia*, para. 60; *Neshkov and Others v. Bulgaria*, para. 227; *Nogin v. Russia*, para. 82; *Varga and Others v. Hungary*, para. 70; *Bouyid v. Belgium*, para. 87; *Ivko v. Russia*, para. 92; *Khlaifia v. Italy*, App. No.16483/12, 15 December 2016, para. 169; *Amirov v. Russia*, App. No. 56220/15, 17 October 2017, para. 83; *Nicolae Virgiliu v. Romania*, para. 118; *Korban v. Ukraine*, para. 119; *Ananyev and Others v. Russia*, para. 140; *Svinarenko and Slyadnev v. Russia*, para. 115; *V.M. and Others v. Belgium*, para. 133; *Goriunov v. the Republic of Moldova*, para. 30; *N.H. and Others v. France*, para. 159; *Ćwik v. Poland*, para. 62; *Sabalić v. Croatia*, para. 64.

[333] *Yankov v. Bulgaria*, para. 104; *Gremina v. Russia*, para. 90; Aghdgomelashvili and Japaridze v. Georgia, para. 42.

[334] ECtHR, *D. v. Latvia*, App. No. 76680/17, 11 April 2024.

[335] Ibid, para. 49.

[336] ECtHR, *S.P. and Others v. Russia*, App. No. 36463/11, 2 August 2023.

[337] Ibid, para. 92.

is not the physical, bodily harm that defines ill-treatment as degrading, but rather the victim's internal experience of being devalued as a human being with inherent worth. Degrading treatment, then, is treatment that regards a person as "lesser than", denying the individual the standard of treatment owed to them as a person with dignity. In this sense, the prohibition of such treatment signals an implicit concern with equality between human beings, but not in the sense of the notion of equality as it appears under Article 14 ECHR, which prohibits discrimination, either direct or indirect. The notion of equality at play in this context is one that concerns the treatment of the victim relative to the standard treatment of a human being as such: it speaks to a universal standard of treatment owed to every person, irrespective of comparisons to others.

In other words, the notion of equal treatment that is implicit in the prohibition of degrading treatment does not refer to a transgression of the principle of equality through differences in treatment as compared to others "in analogous, or relevantly similar situations"[338]—one that is "based on an identifiable characteristic, or "status""[339] of the victims—as in direct discrimination under Article 14 ECHR. Neither does it relate to "prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group"[340], as in indirect discrimination under Article 14 ECHR.

Instead, the violation of the notion of equality between human beings that appears to inform the logic of the prohibition of degrading treatment under Article 3 ECHR lies in treating a person as less than fully human, so to speak, that is, as less than someone whose dignity and bodily integrity demand respect. The essence of degrading treatment lies in the suggestive lowering of the victim's status as an individual endowed with equal human dignity, a status

[338] ECtHR, *Carson and Others v. the United Kingdom*, App. No. 42184/05, 16 March 2010, para. 61.

[339] Ibid.

[340] ECtHR, *D.H. and Others v. the Czech Republic*, App. No 57325/00, 13 November 2007, para. 184.

that this human dignity implicitly entails. Here, the reference point for measuring such transgression of dignity is not the treatment of someone else, but rather an abstract notion of adequate treatment of someone with human dignity in general. Degrading treatment, then, entails an act of signaling a "lessened" humanity of the victim as compared to the "full" humanity of others.

As a result, the connection between the concepts of dignity and bodily integrity in the context of degrading treatment is twofold. First, both human dignity and bodily integrity signify the content of what the prohibition of ill-treatment, ultimately, protects. Second, they signify the reason for the very same protection: ill-treatment is prohibited for it is incompatible with the idea of an individual human being as a holder of human dignity, a status which presupposes respect for, and recognition of, individual bodily integrity, both physical and psychological.

3.2.3. Ill-Treatment in Detention

Across all three systems, the contexts of ill-treatment of persons deprived of liberty are by far the most common settings in which the concept of dignity is invoked, both generally and with regard to *dignity as bodily integrity* specifically. Although only the ACHR in the Inter-American system explicitly affirms the importance of respecting the dignity of persons deprived of liberty, European and African dignity jurisprudence also convincingly shows that respect for it is paramount in jurisprudence on the conditions of detention.

Detention Conditions and Human Dignity

Inter-American jurisprudence on detention conditions is grounded in the explicit textual reference to persons deprived of liberty in Article 5.2. ACHR, whereby they "shall be treated with respect for the inherent dignity of the human person". This emphasis reflects one of the fundamental precepts of Article 5 ACHR, namely, "securing respect for the basic human

integrity of all individuals in the Americas, regardless of their personal circumstances".[341] On this basis, the Inter-American jurisprudence has consistently affirmed that "every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity".[342] This overarching principle obliges the State to "undertake a number of special responsibilities and initiatives"[343] to provide everyone deprived of liberty "with the minimum conditions befitting their dignity as human beings, for as long as they are interned in a detention facility".[344] Accordingly, the IACtHR has endorsed human dignity as "one of the most fundamental values of the individual in the development of every prison policy".[345]

Furthermore, the minimum conditions of detention required under Article 5.2. ACHR are read not only as a prerequisite to ensuring the due respect for detainees' human dignity, but also "to 'protect and ensure' their life and integrity,"[346] that is, "their fundamental rights and a decent life".[347] The failure to meet these minimum conditions can amount to a violation of both Article 5.2. ACHR and the broader right to personal integrity under Article 5.1. ACHR.[348]

In African dignity jurisprudence, similarly, the issue of adequate detention conditions arises not only in relation to the absolute prohibition of ill-treatment under Article 5 ACHPR, but also under Article 4 ACHPR, which protects the inviolability of human beings, the right to life, and the right to personal integrity. The ACmHPR has specifically emphasized that:

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[341] *Damion Thomas v. Jamaica*, para 36.

[342] IACtHR, *Castillo Petruzzi et al. v. Peru*, Series C No. 52, 30 May 1999, para. 195; *Hernández v. Argentina*, para. 60; *López Sosa vs. Paraguay*, Series C No. 489, 17 May 2023, para. 93.

[343] *"Juvenile Reeducation Institute" v. Paraguay*, para 153; similar in IACtHR, *López et al. v. Argentina*, Series C No. 396, Judement of 25 November 2019, para. 91.

[344] "*Juvenile Reeducation Institute*" *v. Paraguay*, para. 159.

[345] IACtHR, *Advisory Opinion OC-29/22*, "Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty", 30 May 2022, para. 37.

[346] IACtHR, *Pacheco Teruel et al. v. Honduras*, Seres C No. 241; 27 April 2012, para. 67; *Mota Abarullo et al. v. Venezuela*, Series C No. 417, 18 November 2020, para. 89.

[347] *Lori Berenson-Mejía v. Peru*, para. 102.

[348] See *Lysias Fleury et al. v. Haiti*, para. 68; *Valencia Campos et al. v. Bolivia*, para. 171.

> "in terms of Article 4 of the African Charter, every person deprived of his or her liberty has the right to live in detention conditions compatible with his or her personal dignity, and the state must guarantee to that person the right to life and to humane treatment."[349]

One can therefore observe that both African and Inter-American regional jurisprudence links the standard of detention conditions with the general protection of personal integrity in the context of the right to life, alongside the more specific protection of bodily integrity through the absolute prohibition of ill-treatment.

In the European system, likewise, it is well established that "the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity".[350] Same as in the African context, the absence of an explicit textual reference to this logic in the text of the ECHR has not impeded human dignity from becoming a standard component of jurisprudence on detention conditions under Article 3 ECHR. However, in contrast to the other two systems, European dignity case law does not explicitly link respect for human dignity in detention to the right to life or personal integrity. This divergence can be explained with the lack of a reference to bodily integrity in the ECHR, as well as the fact that case law on detention conditions is typically read under Article 3 ECHR, not Article 2 ECHR (the right to life).

[349] *Gabriel Shumba v. Zimbabwe*, para. 131.

[350] *Kalashnikov v. Russia*, para. 95; *Poltoratskiy v. Ukraine*, para. 132; *Van der Ven v. the Netherlands*, App. No. 50901/99, 4 May 2003, para. 50; *Nazarenko v. Ukraine*, para. 126; *McGlinchey and Others v. the UK*, App. No. 50390/99, f 29 July 2003, para. 46; *Dankevich v. Ukraine*, para. 123; *Aliev v. Ukraine,* para. 131; *Yankov v. Bulgaria*, para. 107; *Ilaşcu and Others v. Moldova and Russia*, para. 428; *Frerot v. France*, App. No. 70204/01, 12 September 2007, para. 37; *Testa v. Croatia*, App. No. 20877/04, 30 January 2008, para. 44; *Kafkaris v. Cyprus*, App. No. 21906/04, February 2008, para. 96; *Enea v. Italy*, App. No. 74912/01, 17 September 2009, para. 57; *Kaprykowski v. Poland*, App. No. 23052/05, 3 May 2009, para. 69; *Orchowski v. Poland*, App. No. 17885/04, 22 January 2010, para. 120; *Bazjaks v. Latvia*, App. No 71572/01, 19 January 2011, para. 106; *M.S.S. v. Belgium and Greece*, para. 221; *Gladkiy v. Russia*, App. No. 3242/03, 20 June 2011, para. 83; *Stanev v. Bulgaria*, App. No. 36760/06, 17 January 2012, para. 204; *Idalov v. Russia*, para. 93; *Fetisov and Others v. Russia*, para. 128; *X v. Turkey*, App. No. 24626/09, 9 October 2012, para. 33; *Koryak v. Russia*, para. 99; *Reshetnyak v. Russia*, para. 83; *Neshkov and Others v. Bulgaria*, para. 228; *Muršic v. Croatia*, para. 99; *Khlaifia v. Italy*, para. 160; *Amirov v. Russia*, para. 84; *Provenzano v. Italy*, App. No. 55080/13, 25 January 2019, para. 127; *Z.A. and Others v. Russia,* para. 182; *Korban v. Ukraine*, para. 120; *Sukachov v. Ukraine*, App. No. 14057/17, 30 May 2020, para. 85; *N.T. v. Russia*, App. No. 14727/11, 16 November 2020, para. 39; *Schmidt and 'Smigol v. Estonia*, para. 122; *D. v. Latvia*, para. 38.

That said, jurisprudence on Article 3 ECHR provides what is necessary for invoking *dignity as bodily integrity* in the case law on detention conditions, for, as noted previously, it establishes that Article 3 ECHR protects both the dignity and the integrity of the person.[351] Thus, the requirement that detention conditions must be compatible with respect for dignity is repeated in a wide spectrum of cases, ranging from questions on the material conditions of prison facilities, to conditions of detention not necessarily related to imprisonment, such as those in reception centers for migrants,[352] the transit area of an airport,[353] transportation to and from a courthouse,[354] confinement in the courthouse itself,[355] and even broader contexts of law enforcement in general.[356]

Still, the overwhelming majority of dignity-related case law in this context concerns the material conditions of detention facilities. The standard formula applied by the ECtHR establishes that:

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[351] See *Tyrer v. the UK*, where the ECtHR stressed that the absolute prohibition of ill-treatment under Article 3 ECHR safeguards "precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity" (para. 33).

[352] For instance, in *Khlaifia v. Italy*, the ECtHR assessed the conditions of a migrant reception center in line with that general standard (para. 160) and held that the absolute nature of the obligations under Article 3 ECHR mean that even a humanitarian emergency, such as the large-scale influx of migrants during the 2011 migration crisis, could not relieve the State of its duties under that article (para. 184).

[353] See *Z.A. and Others v. Russia*, where the ECtHR held that the applicants' prolonged stay in an airport transit zone while awaiting decisions on their asylum applications amounted to a deprivation of liberty under Article 5 ECHR. This was based on "the excessive duration of such stay … the characteristics of the area in which the applicants were held and the control to which they were subjected … and the fact that the applicants had no practical possibility of leaving the zone" (para. 156). As a result, the ECtHR applied the standard rule under Article 3 ECHR (para. 182) to find that "to sleep for months at a stretch on the floor in a constantly lit, crowded and noisy airport transit zone without unimpeded access to shower or cooking facilities and without outdoor exercise … [fell] short of the minimum standards of respect for human dignity" (para. 191).

[354] See ECtHR, *Lutsenko v. Ukraine (No. 2)*, App. No. 29334/11, 11 September 2011, para. 155-161; also, *Sukachov v. Ukraine*, para. 87.

[355] See *Ramishvili and Kokhreidze v. Georgia*, App. No. 1704/06, 27 April 2009, paras. 99-102, where the ECtHR found that the applicant's confinement in the court room in "a barred dock, which looked very much like a metal cage, separated from the rest of the court room and having a barred ceiling" was incompatible with respect for human dignity under Article 3 ECHR.

[356] For instance, in relation to police conduct more broadly, the ECtHR has stated that "it is the duty of police officers to act with … due respect to the dignity of the person in their charge" (*Galotskin v. Greece*, App. No. 2945/07, 14 April 2010, para. 38). in this context, the ECtHR refers to Recommendation Rec(2001)10 on the European Code of Police Ethics adopted on 19 September 2001 by the Committee of Ministers of the Council of Europe, whereby "public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity". See on this *Bouyid v. Belgium*, para. 50.

> "the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured"[357].[358]

A strikingly similar formulation appears in African jurisprudence, where the ACmHPR holds that:

> "[...] the state must ensure that a person is detained […] under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured, with the provision of the requisite medical assistance and treatment".[359]

Taken together, these guidelines delineate that the manner and method of deprivation of liberty must not exceed "the inherent and inevitable,"[360] "unavoidable level,"[361] of humiliation and suffering entailed by the experience of being deprived of liberty.[362]

[357] For a list of cases citing this formulation, see note 350 above.

[358] Quoted also in IACtHR, *López-Álvarez v. Honduras*, Series C No. 141, 1 February 2006, para. 105.

[359] *Gabriel Shumba v. Zimbabwe*, para. 139.

[360] *Hernández v. Argentina*, para. 56.

[361] *Gabriel Shumba v. Zimbabwe*, para. 139.

[362] For instance, in *Armand Guehi v. Tanzania,* the ACtHPR found that being provided food and water only twice over a span of ten days constituted a violation of the applicant's human dignity. However, it did not find a violation regarding the applicant's allegation of having to sleep on the floor without a blanket, holding that this fell within the limits of the inherent and unavoidable level of suffering entailed by deprivation of liberty (paras. 129-136). In contrast, the ACmHPR in *George Iyanyori Kajikabi v. Egypt* considered the allegation that detainees had to wait between twelve and fourteen hours for food after arrest to hold that "while this is a long time … this treatment does not meet the severity threshold under Article 5" (para. 199). By comparison, the ACmHPR has found violations where conditions were notably more severe. For instance, detention in a facility, where lights were kept on for ten months with no access to bathroom facilities (See ACmHPR, *John D Ouko v. Kenya,* Communication No. 232/99, 6 November 2000), or where detainees were held in spaces lacking walls and roof (See ACmHPR, *Institute for Human Rights and Development in Africa v. Angola*).

In conducting assessments of the detention conditions, the Inter-American and African (quasi-) judicial bodies refer to various UN instruments,[363] whereas the ECtHR tends to draw on reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the European Prison Rules.[364] Since none of these instruments provide precise benchmarks for assessing the material conditions of detention, regional jurisprudence necessarily adopts a contextual and cumulative approach in this regard. Although the overarching duty of states to ensure that detention does not exceed the unavoidable level of suffering is broadly framed, there is a set of core concerns that typically surface in dignity-related jurisprudence across the three systems.

One such concern is overcrowding, which is frequently found incompatible with the respect for detainees' human dignity across all three systems. The IACtHR has stated that "[o]vercrowding is, in itself, a violation of personal integrity"[365] thus implicitly invoking the logic of *dignity as bodily integrity* in its interpretation of Article 5 ACHR. The ECtHR has taken an even more explicit stance, finding that overcrowded prison cells "failed to respect basic human dignity"[366] or were "diminishing [the detainees'] human dignity"[367] thus affirming *dignity as bodily integrity* as a core precept of Article 3 ECHR.[368] In the African

[363] For instance: United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), adopted by UNGA Res. 70/175, 17 December 2015; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNGA Res. 43/173, 9 December 1988; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, UNGA Res. 45/113, 14 December 1990.

[364] Council of Europe Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, Rec (2006) 2, 11 January 2006.

[365] IACtHR, *Pacheco Teruel et al. v. Honduras,* 27 April 2012, para. 67.

[366] ECtHR, *István Gábor Kovács v. Hungary*, App. No. 15707/10, 17 April 2012, para. 26; *Savenkovas v. Lithuania*, App. No. 871/02, 18 February 2009, para. 82.

[367] ECtHR, *Sergey Vasilyev v. Russia*, App. No. 33023/07, 17 January 2014, para. 64.

[368] See *István Gábor Kovács v. Hungary*, para. 26-27; *Savenkovas v. Lithuania*, paras. 81-82; *Sergey Vasilyev v. Russia*, para. 62-66.

system, the ACmHPR has similarly found that overcrowded detention conditions amount to inhuman and degrading treatment in violation of Article 5 ACHPR.[369]

Despite the widespread recognition of overcrowding as a dignity violation, none of the systems have defined a specific number of square meters per detainee as a threshold for compatibility with their human dignity. Given the case-by-case and cumulative nature of the assessments, the determination of what constitutes adequate space depends on broader contextual factors. For instance, the IACtHR has found that the confinement of 16 prisoners in a 15-square-meter cell amounted to cruel, inhuman and degrading treatment,[370] particularly when combined with other poor conditions. More explicitly, it has held that the available space of about 30-square-centimeters per inmate is, in itself, "absolutely unacceptable and involves per se cruel, inhuman and degrading treatment, contrary to the dignity inherent to human being".[371] In the European context, the ECtHR often refers to the European Prison Rules,[372] which indicate that although there is no established formal standard, 9 to 10 square meters is a "desirable size for a cell for one prisoner". Accordingly, the ECtHR has found violations of Article 3 ECHR in cases where detainees were confined to cells of less than 4 square meters of floor space per person.[373]

Poor sanitary conditions represent another oft-cited basis for findings of ill-treatment in detention. In the Inter-American system, jurisprudence has emphasized that detainees must have access to water for personal hygiene,[374] and that the toilet facilities must be both hygienic

[369] See *Institute for Human Rights and Development in Africa v. Angola*, para. 52, citing ACmHPR, *Media Rights Agenda v. Nigeria*.

[370] *Suárez-Rosero v. Ecuador*, para. 91.

[371] *Montero-Aranguren et al (Detention Center of Catia) v. Venezuela*, para. 91.

[372] See for an example of such a use *Ananyev and Others v. Russia*, para. 156; *Story and Others v. Malta*, App. Nos. 56854/13, 57005/13 and 57043/13, 29 January 2016, para. 119.

[373] See, for instance, *István Gábor Kovács v. Hungary*, para. 26-27; *Savenkovas v. Lithuania*, paras. 81-82; *Sergey Vasilyev v. Russia*, paras. 62-66.

[374] See, for instance, *Pacheco Teruel et al. v. Honduras*, para. 67.

and offer sufficient privacy.[375] In the European system, the ECtHR has addressed these concerns with more nuance in relation to *dignity as bodily integrity* by holding that the "access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity".[376] Although the ECtHR has not defined, what such proper equipment entails, it has stressed that "access to decent toilets when required"[377] is an essential aspect of respect for inmates' dignity, as is access to sanitary products, for "the lack of personal hygiene products in detention … is incompatible with respect for human dignity".[378] In the African system, the ACmHPR has similarly marked the link between sanitation and dignity, noting that the denial of access to adequate toilet facilities amounts to "detention under conditions that are not in keeping with [the detainee's] dignity"[379].[380]

Further, access to medical care emerges across regional case law as another crucial requirement of detention conditions that respect the dignity of detainees. In the Inter-American system, adequate medical care appears as one of the most essential material guarantees in detention, closely related to both the personal integrity and human dignity. The IACtHR has emphasized that regular medical examinations and access to adequate treatment are integral to fulfilling the obligations of respect for the dignity of persons under Article 5.2. ACHR, and

[375] See, for instance, *Pacheco Teruel et al. v. Honduras*, paras. 40, 65; *Boyce et al. v. Barbados*, para. 92-94; *López Álvarez v. Honduras*, para. 209; *Miguel Castro-Castro Prison v. Peru*, Series C No. 160, 25 November 2006, para. 319.

[376] *Ananyev and Others v. Russia*, para 56; *Story and Others v. Malta*, 119; *Shirkhanyan v. Armenia*, App. No. 54547/16, 22 May 2022, para. 166.

[377] ECtHR, *Clasens v. Belgium*, App. No. 26564/16, 28 May 2015, para. 34.

[378] ECtHR, *Melnītis v. Latvia*, App. No. 30779/05, 9 July 2012, para. 75.

[379] *Abdel Hadi & Others v. Republic of Sudan*, para. 74.

[380] In a more specific example, the ACmHPR has stated that prison conditions where "bathroom facilities consisted solely of two buckets for over 500 detainees … [were] clearly a violation of Article 5 […] since such a treatment cannot be called anything but degrading and inhuman". See ACmHPR, *Abdel Hadi & Others v. Republic of Sudan*, para. 74.

that their lack may amount to cruel, inhuman, degrading treatment.[381] In the African system, the ACmHPR has similarly underlined that "denial of medical attention … [does] not fall into the province of 'the respect of the dignity inherent in a human being'"[382] thus emphasizing the link between medical care and dignity.

As for the European system, the ECtHR "reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis"[383] but that standard must in either case be compatible with the detainees' human dignity. The ECtHR recognizes that the adequacy of medical care "remains the most difficult element to determine"[384] but nonetheless sets out some key requirements, including prompt and accurate diagnosis, regular and systematic supervision, and a therapeutic strategy aimed at curing and preventing aggravation of the health condition.[385] Importantly, the mere deterioration of a detainee's health does not automatically amount to a violation of Article 3 ECHR, as long as it can be shown that the authorities "in a timely fashion provided all reasonably available medical care in a conscientious effort to hinder development of the disease".[386] That said, a violation may arise

[381] See for examples on this IACtHR, *Tibi v. Ecuador*, Series C No. 114, 7 September 2004, para. 156; *Hernández v. Argentina*, para. 59.

[382] *Huri Laws v. Nigeria*, para. 41.

[383] *Gladkiy v. Russia*, para. 85; *Korneykova and Korneykov v. Ukraine,* App. No. 56660/12, 24 June 2016, para. 150; *Amirov v. Russia*, para. 86; *Akimenkov v. Russia*, App. Nos. 2613/13 and 50041/14, 6 May 2018, para. 83; *Shirkhanyan v. Armenia*, para. 150. Similarly construed (reserving "a fair degree of flexibility in defining the required standard of health care") in a string of cases against Russia, see *Koryak*, para. 101; *Reshetnyak,* para. 85; *Gorelov*, para. 65; *Gorbulya*, para. 63; *Nogin*, para. 85; *Ivko*, para. 95.

[384] *Koryak v. Russia*, para. 100.

[385] Ibid.

[386] ECtHR, *Verdeş v. Romania*, App. No. 6215/14, 24 February 2016, para. 52.

if the detainee's suffering "is, or risks being, exacerbated by conditions of detention for which the authorities can be held responsible"[387].[388]

Lastly, an important shared expression of *dignity as bodily integrity* in regional dignity jurisprudence on detention conditions emerges in the context of strip searches. While all three systems recognize the relevance of dignity in this context, the doctrinal pathways in expressing it differ. In the European system, strip searches are examined under Article 3 ECHR as part of the absolute prohibition of ill-treatment. In the African system, they are addressed as violations of personal integrity under Article 4 ACHPR, rather than in relation to the prohibition of ill-treatment under Article 5 ACHPR. In the Inter-American system, they are examined under Article 11 ACHR, which guarantees the right to dignity, honor, and private life. This divergence in legal framing highlights the multi-faceted nature of *dignity as bodily integrity* as an expression of the nexus between dignity, bodily integrity, and the prohibition of ill-treatment.

More specifically, the IACtHR holds that, in general, "a body search may have an impact on, and constitute a violation of, the protection of honor and dignity"[389] and in its reasoning occasionally draws on the jurisprudence of the ECtHR. [390] Similarly, the IACmHR acknowledges that while detainees' personal liberties are necessarily restricted, corporeal searches and probing may be justifiable, provided that they are conducted "using methods compatible with their human dignity".[391] The ECtHR takes a similar stance, holding that "a search carried out in an appropriate manner with due respect for human dignity and for a

[387] ECtHR, *Dorneanu v. Romania*, App. No. 55089/13, 28 November 2018, para. 76.

[388] In case of a grave deterioration of the detainee's health, the ECtHR emphasizes that the obligation to respect human dignity under Article 3 ECHR does not imply a general obligation "to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat". See *Kaprykowski v. Poland*, para. 69; *Semikhvostov v Russia*, para. 71; also similar in *Bragadireanu v. Romania,* App. No. 22088/04, 6 March 2008, para. 84.

[389] IACtHR, *Fernández Prieto and Tumbeiro v. Argentina*, Series C No. 411, 1 September 2020, para. 104.

[390] Ibid.

[391] IACmHR, *Ms. X v. Argentina*, Report No. 38/96, Case 10.506, 15 October 1996, para. 76.

legitimate purpose"[392] is compatible with Article 3 ECHR, since strip searches may be "necessary on occasion to ensure prison security or to prevent disorder"[393].[394] However, if the search entails "debasing elements which significantly aggravate the inevitable humiliation of the procedure,"[395] it falls foul of Article 3 ECHR.[396] Besides, the practice of strip searches does not have to be systematic: even a single instance of a strip search incompatible with respect for human dignity can be found to violate Article 3 ECHR. However, where it is part of a systematic or routine practice, the ECtHR is especially stringent in its considerations of its compatibility with human dignity. Thus, it has found that daily strip searches "diminished [the detainee's] human dignity and caused him feelings of inferiority, anguish and accumulated distress which went beyond the unavoidable suffering and humiliation involved in the imposition of detention".[397]

Similar to the ECtHR, the ACtHPR also recognizes that strip searches may be justified in certain circumstances. It has acknowledged that "the objective of preventing the introduction of items such as drugs, money or weapons into prisons is legitimate, as it ensures the safety of

[392] ECtHR, *Wainwright v. the UK*, App. No. 12350/04, 26 December 2006, para. 42; *Wiktorko v. Poland*, App. No. 14612/02, 31 March 2009, para. 53; *Lindstrom and Masseli v. Finland*, App. No. 24630/10, 14 April 2014, para. 43; *Dejnek v. Poland*, App. No. 9635/13, 1 September 2017, para. 60; *Roth v. Germany*, App. Nos. 6780/18 and 30776/18, 22 January 2021, para. 65.

[393] ECtHR, *Valašinas v. Lithuania*, App. No. 44558/98, 24 October 2001, para. 117; *Wiktorko v. Poland***,** para. 53; *Horych v. Poland*, App. No. 13621/08, 17 July 2012, para. 101**;** *Dejnek v. Poland*, para. 60; *Roth v. Germany*, para. 65.

[394] Importantly, the ECtHR has established that where the manner and method of the search falls short of Article 3 ECHR "minimum level of severity", it may fall within the scope of Article 8 ECHR (protection of private life) instead. See, for example, *Wainwright v. the UK*, para. 43.

[395] *Wainwright v. the UK*, para. 42; *Lindstrom and Masseli v. Finland*, para 43.

[396] Various examples can be found where the ECtHR has held that certain body search practices are incompatible with respect for human dignity. In *Valašinas v. Lithuania*, it found that a strip search conducted on a male detainee in the presence of a female officer, during which his sexual organs were touched with bare hands "diminished in effect his human dignity" and "left him with feelings of anguish and inferiority capable of humiliating and debasing him" thereby amounting to degrading treatment (para. 117). Similarly, in *Iwańczuk v. Poland*, App. No. 25196/94, 15 February 2002, the ECtHR held that prison guards' verbal abuse and ridicule duringa strip search breached Article 3 ECHR because it "intended to cause in the applicant feelings of humiliation and inferiority ... [and] showed a lack of respect for the applicant's human dignity" (para. 59).

[397] ECtHR, *Piechowicz v. Poland,* App. No. 20071/07, 17 July 2012, para. 176; similar in *Horych v. Poland* (para. 101); and in *Van der Ven v. the Netherlands*, App. No. 50901/99, 4 May 2003 (para. 193).

those in custody" but emphasizes that "searching accused persons for such items [...] should never be to the extent of breaching dignity."[398] On that note, the ACtHPR has, for instance, held that an anal search violated the right to dignity of a detainee, as "there surely exist[ed] a wide range of alternative means of effectively achieving the same result"[399] that would not have added to the applicant's anguish and humiliation in light of the already degrading nature of being strip-searched.

Death Penalty and Death Row

An important strand of dignity jurisprudence concerning inhuman and degrading treatment relates to the compatibility of the death penalty and death row conditions with respect for the inherent human dignity of those sentenced. In this context, the connection between the right to life, bodily integrity, and dignity becomes especially evident.

This expression of *dignity as bodily integrity* is most clearly reflected in African regional jurisprudence, where the protections of Article 4 ACHPR (right to life and personal integrity) and Article 5 ACHPR (prohibition of ill-treatment) are often applied together. Thus, in *Spilg and Mack v. Botswana*[400], the ACmHPR stressed the need to avoid unnecessary suffering in executions, warning that "if the suffering caused in execution of the sentence is excessive and goes beyond what is strictly necessary,"[401] the method used may amount to cruel, inhuman or degrading treatment.[402] Just four years later, in *Interights & Ditshwanelo v. Botswana*[403], the

[398] ACtHPR, *Lucien Rashidi v. Tanzania,* App. No. 009/2015, f 28 March 2019, para. 94.

[399] Ibid.

[400] ACmHPR, *Spilg and Mack v. Botswana,* Communication No. 277/2003, 16 December 2011.

[401] Ibid, para. 167.

[402] In reaching this conclusion, the ACmHPR relied on the jurisprudence of the UNHRC, specifically *Charles Chitat Ng v. Canada* (CCPR/C/49/D/469/1991, 7 January 1994), in which the method of gas asphyxiation was found to amount to cruel, inhuman and degrading treatment. Thus, in *Spilg and Mack v. Botswana* the ACmHPR noted that sufficient regard must be made to the weight of the individual subject to the sentence, for a lack of such an assessment may be incompatible with "the duty to minimize unnecessary suffering" for it may result in "slow and painful strangulation" in breach of the prohibition on bodily integrity under Article 5 ACHPR (para. 169).

[403] ACmHPR, *Interights & Ditshwanelo v. Botswana,* Communication No. 319/06, 18 November 2015.

ACmHPR went further, declaring that death by hanging, "to say the least, is inhuman and degrading,"[404] referring to the reports from judges who witnessed such executions. Subsequent African jurisprudence has confirmed that death by hanging is "inherently degrading".[405] Furthermore, in *Interights & Ditshwanelo,* the ACmHPR questioned whether the mandatory imposition of the death penalty can ever be compatible with the ACHPR, given its irreversible nature.[406] It concluded that:

> "[it is] increasingly difficult to envisage a case in which the death penalty can be found to have been applied in a way that is not in some way arbitrary. As a result it is difficult to conceive that, if called upon in future to do so, that the Commission will find that the death penalty, however it is executed, is any longer compatible with the African Charter".[407]

A related strand of jurisprudence drawing on both Article 4 ACHPR and Article 5 ACHPR concerns the mental suffering entailed by death row. In *Christian Msuguri v. Tanzania,*[408] the ACtHPR held that delays in proceedings that entail a well-founded fear of a death sentence "are likely to cause anxiety and psychological distress, and constitute inhuman and degrading treatment".[409] In reaching that conclusion, the ACtHPR observed that "the

[404] *Interights & Ditshwanelo v. Botswana*, para 87.

[405] See *Ally Rajabu and Others v. Tanzania*, App. No. 007/2015, 28 November 2019, para 119. Also reiterated in *Amini Juma v. Tanzania*, App. No. 024/2016, 30 September 2021, para. 136.

[406] The ACtHPR has addressed the question of arbitrariness in the imposition of the death penalty in *Ally Rajabu and Others v. Tanzania*, where it affirmed that "the death sentence is permissible as an exception to the right to life under Article 4 as long as it is not imposed arbitrarily" (para. 98). To guard against arbitrariness, it articulated three minimum criteria to be fulfilled: the sentence must be provided by law, imposed by a competent court, and comply with due process. Most importantly, the respective tribunal must have full discretion to consider the specific circumstances of the individual case, particularly, when the death penalty is mandatory. This is increasingly important when considerations on Article 5 ACHPR are engaged, given its road scope and subjective nature of suffering that it is designed to prevent. This was further clarified in *Gozbert Henerico v. Tanzania*, App. No. 056/2016, 10 January 2022, where the ACtHPR was asked to consider whether executing a person with mental illness violates the right to dignity under Article 5 ACHPR. While the ACtHPR did not explicitly rule on the compatibility of executing mentally ill persons with Article 5 ACHPR, it did note the critical role of the tribunal in reviewing such personal circumstances. It held that the failure to consider the applicant' s mental health when imposing the sentence constituted "a grave procedural irregularity that resulted in a violation of the Applicant's right to a fair trial" (para. 160).

[407] *Interights & Ditshwanelo v. Botswana*, para. 66.

[408] ACtHPR, *Christian Msuguri v. Tanzania*, App. No. 052/2016, 1 December 2022.

[409] Ibid, para. 107.

average person would suffer anxiety and depression as they deal with the uncertainty inherent in the waiting".[410] Additionally, on the very same day, in *Ghati Mwita v. Tanzania,*[411] the ACtHPR held that "detention on death row is inherently inhuman and encroaches upon human dignity,"[412] suggesting that the mere fact of being held on death row, regardless of delay, may in itself violate Article 5 ACHPR. This leaves open an important question of whether the ACtHPR finds death row to be inherently incompatible with respect for human dignity or only under conditions involving undue delay and procedural uncertainty.

Similarly, in the Inter-American system, mandatory capital punishment is regarded as an arbitrary deprivation of life and thus incompatible with the right to life under Article 4 ACHR.[413] However, there is a notable difference of opinion between the IACtHR and IACmHR in how the death penalty relates to human dignity. The IACmHR views it as a violation of both Article 5.1. and Article 5.2. ACHR, for it "contravenes the inherent human dignity of the human being".[414] By contrast, the IACtHR frames it primarily as a violation of the right to life under Article 4 ACHR, without invoking the concept of dignity directly. Even more, the IACtHR has expressly held that deprivation of life is not to be understood as a violation of personal integrity.[415] This position reflects a broader structural feature of Inter-American jurisprudence, whereby the right to life under Article 4 ACHR is not read as encompassing guarantees of personal integrity, which are separately protected under Article 5 ACHR.[416] Since personal integrity emerges as conceptually inseparable from the concept of

[410] *Christian Msuguri v. Tanzania*, para. 109.

[411] ACtHPR, *Ghati Mwita v. Tanzania*, App. No. 012/2019, 1 December 2022.

[412] Ibid, para. 87.

[413] See, for example *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 108.

[414] Ibid, para. 88.

[415] *Neira-Alegría et al. v. Peru*, para. 86; also in IACtHR, *Durand and Ugarte v. Peru,* 16 August 2000, para. 78.

[416] This is in stark contrast to African regional dignity case law on death penalty, which has explicitly noted the "relationship between the right to life and the inviolability and integrity of the human person" (*Ajavon v. Republic of Benin*, para. 163), connecting Articles 4 ACHPR (right to life) and 5 ACHPR (right to human treatment and dignity).

human dignity under the jurisprudence of Article 5 ACHR, the IACtHR's reluctance to frame death penalty as a dignity issue is consistent with its doctrinal approach and thus unsurprising. Yet, in *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, the IACtHR alluded to the notion of human dignity when it observed that the mandatory death penalty treats those convicted "not as uniquely individual human beings, but as members of a faceless, undifferentiated mass".[417]

On the specific issue of death row, Inter-American dignity jurisprudence does not show a direct and explicit reference to the connection between the concept of human dignity on the one hand, and the inherent suffering of being detained on death row, on the other. The IACtHR has, however, in case-specific contexts found that death row conditions violated the victim's physical and psychological integrity, thus breaching Article 5 ACHR.[418] This suggests that in Inter-American jurisprudence, the compatibility of death row with the right to human dignity under Article 5 ACHR remains contextual.[419]

As for the European system, there are no examples where the connection between the concept of dignity and the death penalty as a form of punishment has been articulated. This is so, primarily, because the legal space of the ECHR has been death penalty-free since Protocol No. 13 to the ECHR[420] entered into force and thus death penalty, in all circumstances, was abolished. Consequently, the incompatibility of capital punishment with human rights standards in the region has been settled. On that note, noteworthy is the Preamble of Protocol No. 13 to the ECHR, which declares that "the abolition of the death penalty is essential … for

[417] *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 105.

[418] Ibid, paras. 168–169.

[419] This has been since then confirmed in IACtHR, *Dial et al. v. Trinidad and Tobago*, Series C No. 476, 21 November 2022, para. 66.

[420] Council of Europe, Protocol No. 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances, ETS 187, adopted 3 May 2002.

the full recognition of the inherent dignity of all human beings," affirming a conceptual link between dignity and the abolition of the death penalty.

Similarly, with regard to the death row phenomenon, European dignity jurisprudence does not frame the issue explicitly in terms of human dignity. Given the abolition of the death penalty, the only context in which death row suffering arises under ECHR is through extraterritorial obligations in cases involving extradition of individuals to jurisdictions where the death penalty is still practiced. Since *Soering v. the UK*[421], also this question is settled in European jurisprudence, having found the experience of death row as incompatible with the absolute prohibition of ill-treatment under Article 3 ECHR for the "ever present and mounting anguish of awaiting execution of the death penalty."[422] Exposing the detainee to the possibility of being sentenced to the death penalty abroad, that is, "to a real risk of treatment going beyond the threshold set by Article 3,"[423] would result in a breach of the extraditing state's obligations under Article 3 ECHR.

In summary, while regional (quasi-) judicial bodies differ in how directly they frame the death penalty and the death row phenomenon in terms of human dignity, the jurisprudence across the three systems reflects a shared concern with the protection of both physical and psychological integrity of a person, an interest that is conceptually intertwined with the concept of human dignity and reflects the logic of *dignity as bodily integrity*. Despite doctrinal variations in the regional approaches, all three systems treat the suffering entailed—whether through the method of execution, mandatory imposition, or prolonged detention—as incompatible with the respect owed to the human person. This points to a common evaluative logic.

[421] ECtHR, *Soering v. the UK,* App. No. 14038/88, 7 July 1989.

[422] Ibid, para. 111.

[423] Ibid.

3.3. Interim Conclusions

Dignity jurisprudence across the three regional human rights systems demonstrates that *dignity as bodily integrity* is a recurring and well-established dimension of the concept of human dignity in the context of the absolute prohibition of ill-treatment. As such, the close relationship between the concepts of human dignity and bodily integrity is consistently confirmed across all three regions.

In the Inter-American system, Article 5 ACHR (right to humane treatment) is explicitly described as comprising "specific protections for the fundamental respect for individual human dignity and integrity".[424] Similarly, in the African system, one notes a similar remark on Article 5 ACHPR (right to dignity and prohibition of ill-treatment), whereby it "is aimed at the protection of both the dignity of the human person, and the physical and mental integrity of the individual".[425] Likewise, the ECtHR has affirmed that in the European context, too, the absolute prohibition of ill-treatment safeguards a "person's dignity and physical integrity".[426] Together, these formulations confirm that the absolute prohibition of ill-treatment is fundamentally grounded in respect for human dignity across the three regions.

Furthermore, the concept of dignity is often referred to by regional (quasi-) judicial bodies in their more nuanced assessments of specific types of ill-treatment. Here, regional jurisprudence on degrading treatment underlines *dignity as bodily integrity* most noticeably. That said, much of what can be discerned on this dimension of the concept in the jurisprudence of the Inter-American and African systems comes through a reference to European case law on degrading treatment. Thus, European dignity case law is especially relevant here, for it

[424] *Damion Thomas v. Jamaica*, para. 36.

[425] *Gabriel Shumba v. Zimbabwe*, para. 138.

[426] *Tyrer v. United Kingdom*, para. 33.

routinely characterizes this form of ill-treatment as offensive, detrimental, or diminishing to human dignity.[427]

Across the three systems, transgressions of bodily integrity are described as violations of human dignity, often noting that ill-treatment "encroaches upon"[428] or "contravenes the inherent human dignity,"[429] is such as to "diminish the victims' human dignity,"[430] or is "detrimental,"[431] "an attack on,"[432] "an offense against,"[433] or "an affront to human dignity".[434] This language shows that human dignity is understood as the object protected by bodily integrity within the absolute prohibition of ill-treatment. However, there are no clear indications in regional dignity jurisprudence that the concept of human dignity is understood as the source of the absolute prohibition of transgressions of bodily integrity.

Importantly, in all three regional systems the notion of bodily integrity is constructed as encompassing the physical and mental dimensions of the human body alike. Consequently, the body is not treated as a purely anatomical object, but as the site of integration between the individual's subjectivity—their emotional experiences—and the objective world around them, encompassing the position of their body in the world in a purely physical sense. This understanding echoes the similar construction under *dignity as bodily integrity* outlined previously.[435] Again, it is particularly evident in the jurisprudence on degrading treatment,

[427] See, for examples *Fyodorov and Fyodorova v. Ukraine*, para. 60; *Goriunov v. the Republic of Moldova*, para. 41; *Yankov v. Bulgaria*, para. 104.

[428] *Ghati Mwita v. Tanzania*, para. 87.

[429] *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 88.

[430] *Yankov v. Bulgaria*, para. 104.

[431] *Goriunov v. the Republic of Moldova*, para. 41.

[432] *Cortez Espinoza v. Ecuador*, para. 156.

[433] *Carmelo Soria Espinoza v. Chile*, para. 118.

[434] *Sabalić v. Croatia*, para. 65.

[435] See above Section 2.3.2., pp. 79-82.

where regional (quasi-) judicial bodies repeatedly underline victims' internal, subjective experiences, such as fear, humiliation, or feelings of inferiority, alongside references to dignity.

Having identified *dignity as bodily integrity* as a consistently recognized and jurisprudentially embedded dimension of the concept of human dignity across the three regional systems, the next chapter turns to the second dimension explored in this dissertation: dignity's relationship with the notion of equality. While less doctrinally entrenched, *dignity as equality* offers further insight into how regional (quasi-) judicial bodies conceptualize human dignity, revealing notable variation in how the relationship between the two concepts is framed and operationalized in practice.

Chapter 4.
Dignity as Equality in Regional Jurisprudence

The second dimension of the concept of human dignity examined in this dissertation is its relationship with the notion of equality. In this chapter, I explore how regional human rights jurisprudence invokes the concept of human dignity in relation to claims of equality—a relationship referred to here as *dignity as equality*.

As explained in Chapter 2, the label *dignity as equality* refers to a conceptual link between human dignity and equality, whereby the recognition of a person's inherent dignity is understood to necessarily entail the acknowledgment of their equal status with other human beings. Importantly, this label does not rely on any single conception of equality, but it does treat equality as a foundational premise, one which suggests that all human beings possess a basic, inherent, equal dignity, that, in turn, underpins their equal moral standing.[436]

This chapter is structured as follows: it begins by identifying where the construction of *dignity as equality* emerges in the jurisprudence of the three regional human rights systems, highlighting those articles of the ECHR, ACHR, and ACHPR in whose jurisprudence this dynamic emerges in practice. This initial mapping reveals two distinct yet interrelated layers of the relationship between dignity and equality: one connected to the principle of non-discrimination broadly, and another linked to a more specific interpretation of this principle in the context of recognizing the individual as an equal subject of rights under the law. A third layer of *dignity as equality* is then introduced, drawing on the previously discussed dimension of *dignity as bodily integrity* in Chapter 3 and demonstrating how jurisprudence on degrading treatment as a form of ill-treatment that is incompatible with respect for human dignity can also be read as echoing a reading of *dignity as equality*.

[436] See above in Section 2.3.2., pp. 83-85.

4.1. Locating *Dignity as Equality*

Despite the intuitive connection between the notions of dignity and equality, regional dignity jurisprudence in which the two concepts are explicitly invoked side by side remains relatively rare. A notable exception in this regard is found in the Inter-American system, where the regional (quasi-) judicial bodies frequently observe that:

> "the notion of equality springs directly from the oneness of the human species and is linked to the essential dignity of the individual".[437]

This idea is frequently echoed across Inter-American dignity jurisprudence. The IACtHR, for instance, has stated that "the notion of equality [...] is inseparable from the essential dignity of the person,"[438] while the IACmHR affirms that equality is "inherent in the idea of the oneness in dignity and worth of all human beings".[439] Thus, the conceptual relationship between dignity and equality is clearly established in Inter-American dignity jurisprudence through recurrent, general reflections on the notion of equality articulated by both the IACtHR and the IACmHR. As such, even a cursory review of the dignity jurisprudence of the Inter-American system reveals the presence of *dignity as equality* as part of the conception of dignity in use.

The same pattern is not immediately evident in the dignity jurisprudence of the other two systems, as neither the African nor European system presents equally direct articulations of an inseparable relationship between dignity and equality on the surface of their jurisprudence. In the African system, the only instance where the two concepts are directly described as

[437] IACtHR, *Norín Catrimán et al. v. Chile*, Series C No. 279, 29 May 2014, para. 197; *Espinoza Gonzáles v. Peru*, Series C No. 289, 20 November 2014, para. 216; *Velásquez Paiz et al. v. Guatemala*, Series C No. 307, 19 November 2015, para. 173; *Guevara Díaz v. Costa Rica*, Series C No. 453, 22 June 2022, para. 46; also in IACmHR in *Jorge Odir Miranda Cortez et al. v. El Salvador*, Report No. 27/09, 20 March 2009, para. 69.

[438] IACtHR, *Duque v. Colombia*, Series C No. 310, 26 February 2016, para. 91; *Flor Freire v. Ecuador*, Series C No. 315, 31 August 2016, para. 109; *Angulo Losada v. Bolivia*, Series C No. 475, 18 November 2022, para. 157*; Olivera Fuentes v. Peru*, Series C No. 484, 4 February 2023, para. 26.

[439] *Jorge Odir Miranda Cortez et al. v. El Salvador*, para. 69.

inseparable in a similar vein appears in *Open Society Justice Initiative v. Cote d'Ivoire,*[440] where the ACmHPR, citing a decision by the IACmHR in *Barbería v. Chile,*[441] observed that:

> "The notion of equality derives directly from the unity of the human family and is linked to the essential dignity of the individual".[442]

Meanwhile, in the European system, there are no examples in the dignity jurisprudence of the ECtHR that directly address the conceptual connection between dignity and equality. That said, the work of the European Committee of Social Rights (ECSR) stands out in this regard, as the ECSR frequently lists in its decisions both dignity and equality—alongside autonomy and solidarity—as foundational values that both inspired the European Social Charter and continue to guide its interpretation.[443] Beyond this general endorsement of the concurrent application of the two notions, however, the ECSR's decisions offer no further, more detailed elaboration on the conceptual relationship between dignity and equality.

Direct references aside, across all three regional human rights systems, the interrelation between the two concepts surfaces in jurisprudence on the principle of non-discrimination and prohibition of unjustified, unfair treatment. Thus, *dignity as equality* most commonly appears in dignity jurisprudence involving Article 14 ECHR[444] (prohibition of discrimination), Article

[440] ACmHPR, *Open Society Justice Initiative v. Côte d'Ivoire*, Communication 318/06, 27 May 2016.

[441] IACmHR, *Barbería v. Chile*, Report No. 56/10, 18 March 2010.

[442] *Open Society Justice Initiative v. Côte d'Ivoire*, para. 152 (referring to *Barbería v. Chile*, para. 34).

[443] See ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, 3 November 2004, para. 27; *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, 27 October 2009, para 34; *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 114/2015, 26 September 2018, para. 53; *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, 24 January 2018, para 30.

[444] Article 14 ECHR: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1.1. ACHR[445] (obligation to respect rights) and Article 2 ACHPR[446] (principle of non-discrimination). Notably, none of these provisions contain a textual reference to the concept of dignity, which underscores the relevance of the regional (quasi-) judicial bodies' assertions of the conceptual connection between dignity and equality in their jurisprudence.

In both the European and Inter-American systems, the general prohibition of discrimination under Article 14 ECHR and Article 1.1. ACHR is typically invoked in conjunction with other substantive provisions of the ECHR and ACHR, for neither of the articles functions as a stand-alone guarantee. In the context of *dignity as equality*, the most common combination in the European system is Article 14 ECHR together with Article 3 ECHR[447] (prohibition of ill-treatment), while in the Inter-American system it is Article 1.1. ACHR in conjunction with Article 24 ACHR[448] (right to equal protection of law). Generally speaking, the prohibition of non-discrimination is not treated as a stand-alone right in the African system either. However, commentators point out that the ACmHPR's approach to treating the article as non-autonomous is inconsistent, as there are decisions in which violations of Article 2 ACHPR are found separately, even though "the analysis with respect to this particular provision is rather limited"[449] still.[450] This ambiguity is noticeable in African regional dignity jurisprudence: at times, Article 2 ACHPR appears to ground a distinct

[445] Article 1.1. ACHR: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

[446] Article 2 ACHPR: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."

[447] Article 3 ECHR: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

[448] Art. 24 ACHR (Right to Equal Protection): All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal judicial Protection protection of the law."

[449] Evans and Murray, *The African Charter on Human and Peoples' Rights*, 52.

[450] Ibid, 48-53.

violation,[451] while in other instances, it is explicitly invoked in connection with another right.[452] Yet more prominently, the principle of non-discrimination is often referred to in relation to the broader notion of the right to equality, which underpins Article 3 ACHPR[453] (right to equality before the law). This occurs both when Article 3 ACHPR is explicitly invoked,[454] and when it is not,[455] thus signaling a conceptual connection between the principle of non-discrimination and the concept of equality in African regional jurisprudence.

Importantly, none of these provisions with which the principle of non-discrimination under Article 14 ECHR, Article 1.1. ACHR, and Article 2 ACHPR is typically invoked contain a textual reference to the concept of dignity either. It can thus be concluded that this first layer of *dignity as equality* has been developed primarily through judicial interpretation, rather than being anchored in the texts of the ECHR, ACHR, and ACHPR themselves.

Additionally, *dignity as equality* emerges in a related, yet distinct, context where the principles of equality and non-discrimination intersect with the idea of legal recognition of the individual as an equal subject of law and of rights. Regional jurisprudence on the legal recognition of the individual as a derivative of respect for their human dignity thus represents the second layer of *dignity as equality* explored in this chapter. In this context, the notion of dignity is invoked to support the legal recognition and acknowledgment of an individual or a group as worthy of equal legal status.

[451] See, for instance, *Open Society Justice Initiative v. Côte d'Ivoire*, para. 151.

[452] See, for instance, in connection to Article 13 ACHPR, ACmHPR, *MIDH v. Côte d'Ivoire*, Communication No. 262/02, 22 May 2008, paras. 71-88; *Legal Resources Foundation v. Zambia*, Communication No. 211/98, 7 May 2001, paras. 71-73.

[453] Article 3 ACHPR: "1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law."

[454] For instance, in *Nubian Community in Kenya v. Kenya*, Communication No. 317/2006, 28 February 2015, paras. 121-135.

[455] For instance, in *Legal Resources Foundation v. Zambia*, para. 63.

In the Inter-American system, this idea appears in dignity jurisprudence under Article 3 ACHR[456] (right to juridical personality), a provision that does not mention the concept of dignity in its text. In the African system, it arises in the jurisprudence under Article 5 ACHPR (right to dignity and legal recognition), which, as previously noted, mentions dignity explicitly in its first sentence.[457] The wording of Article 5 ACHPR, then, already implies a conceptual link between one's legal recognition and the respect owed to their dignity. By contrast, in the European system, this layer of *dignity as equality* has so far been identified in only one specific context, namely, dignity jurisprudence under Article 14 ECHR in conjunction with Article 8 ECHR (right to respect for private and family life) in relation to the legal recognition of same-sex couples. Taken together, then, regional dignity jurisprudence on *dignity as equality* in relation to the legal recognition of an individual's status as a dignity-based requirement appears fragmented across the three systems: on the surface, it does not reveal a uniform understanding of how this dimension of the concept of dignity operates within regional human rights practice.

With this overview of the broader patterns of *dignity as equality* laid out, the following section examines the separate layers of this dimension of the concept of human dignity in turn.

4.2. The Layers of *Dignity as Equality*

The first layer of *dignity as equality* across regional dignity jurisprudence relates to the provisions that enshrine the general principle of non-discrimination and equality before the law. This layer connects dignity to the notion of equality as equal treatment for persons in similar or compatible situations, grounded in the prohibition of discrimination. It represents the commonplace, most familiar understanding of the notion of equality, namely, equality relative to the treatment of others. The second layer emerges from a more technical interpretation of

[456] Article 3 ACHR: "Every person has the right to recognition as a person before the law."

[457] The relevant part of Article 5 ACHPR reads: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status."

the principle of equality, focusing on the recognition of individuals as legal subjects entitled to equal status. This is especially prominent in dignity jurisprudence concerning legal personality and the acknowledgment of the individual as a rights-bearing subject. This layer of *dignity as equality* will from here on be referred to as "equal legal recognition".

Beyond the jurisprudence on non-discrimination and equal legal recognition, a third and less conventional layer of *dignity as equality* can be identified, one which transpires through the previously examined regional readings of *dignity as bodily integrity* in the context of jurisprudence on degrading treatment. As discussed in Chapter 3, degrading treatment is repeatedly characterized as a violation of human dignity not merely because it causes harm, but because it signifies a denial of the victim's worth as a being with dignity. I previously noted that this idea appears to imply a specific concern for equality among human beings, whereby all individuals, by virtue of their inherent and equal human dignity, are entitled to a baseline of respectful treatment that affirms their moral worth.[458] This way, the prohibition of degrading treatment can be read as an implicit acknowledgment of the fundamental equality of all human beings, a principle rooted in the idea that degrading a human person denies their equal moral standing within the human community. As such, this layer of *dignity as equality* transcends relative and formal notions of equality and engages with an even deeper commitment to the equal value of all human beings.

Notably, this third layer of *dignity as equality* does not emerge from regional jurisprudence on the principle of equality in the strict sense. That is, it does not arise from the case law interpreting the provisions of the three key regional human rights instruments that explicitly enshrine the principles of equality or non-discrimination. Nevertheless, I argue that this layer should be included under the construction of *dignity as equality* due to its clear expression of human dignity as a concept that underpins a claim to the equal moral worth of

[458] See above in Section 3.2.2., pp. 113-115.

all human beings. Consequently, regional dignity jurisprudence, as examined in this dissertation, reveals three layers of *dignity as equality* at play.

4.2.1. Equality Through the Principle of Non-Discrimination

To effectively sketch out how *dignity as equality* appears in regional dignity jurisprudence through the principle of non-discrimination, it is first necessary to consider how this principle is enacted in the relevant regional provisions.

Firstly, the prohibited grounds for discrimination, as established in Article 14 ECHR, Article 1.1. ACHR, and Article 2 ACHPR, are nearly identical. All three provisions list race, sex, color, language, religion, political or other opinion, national or social origin, birth, and other status (the latter phrased as "any other social condition" under Article 1.1. ACHR in the Inter-American system). As such, these lists closely parallel the list of the grounds for discrimination prohibited under Article 2 of the ICCPR. Only one of the grounds listed in the ICCPR—"property"—is not present across all three regional provisions: while in the European system "property" is on the list, in the Inter-American system it is substituted with "economic status" and in the African system with "fortune".[459]

As for the concept of dignity in relation to these specific grounds of discrimination, the ACmHPR has directly addressed its relevance in the context of the African system, explaining that:

> "the reason for singling out these grounds is because they have historically been misused to oppress and marginalise peoples with these attributes, thereby demeaning the humanity and dignity inherent in them."[460]

[459] Additionally, Article 14 ECHR mentions "association with a national minority," and Article 2 ACHPR mentions "ethnic group".

[460] *The Nubian Community v. Kenya*, para. 131.

In the Inter-American system, the IACtHR echoes this understanding through its notion of equality as inseparable from the dignity of the person, as seen in the oft-cited statements highlighted above.[461] The IACtHR further elaborates that:

> "*on this basis* any situation is unacceptable which, considering a certain group superior, accords it privileges; or, conversely, considering it inferior, treats it with hostility or in any way discriminates against it in the enjoyment of rights that are recognized to those who do not form part of that group [emphasis added]".[462]

Thus, while the IACtHR does not reference the specific grounds for discrimination, it nevertheless identifies the concept of dignity as the basis for rejecting any form of unjust discrimination. In contrast, the European system offers no comparable general statements regarding the relationship between the concept of dignity and the full list of prohibited grounds for discrimination. However, the ECtHR does repeatedly underline race-based discrimination in dignity jurisprudence, noting that racism and racial violence constitute "a particular affront to human dignity".[463]

Secondly, none of the respective provisions—Article 14 ECHR, Article 1.1. ACHR, or Article 2 ACHPR—is a stand-alone right. Their application is contingent upon being invoked in conjunction with other substantive rights established by their respective instruments. This means that the principle of non-discrimination under these provisions "radiates throughout each conventional legal regime,"[464] but does not extend beyond it: it underpins the general

[461] See above in Section 4.1., p. 135.

[462] *Duque v. Colombia*, para. 91.

[463] ECtHR, *Zelilof v. Greece*, App. No. 17060/03, 24 August 2007, para. 72; *Cobzaru v. Romania*, App. No. 48254/99, 26 October 2007, para. 88; *Stoica v. Romania,* App. No. 42722/02, 4 June 2008, para. 117; *M. and Others v. Italy and Bulgaria*, App. No. 40020/03, 17 December 2012, para. 175; *Makhashevy v. Russia*, App. No. 20546/07, 17 December 2012, 153; *Virabyan v. Armenia*, App. No. 40094/05, 2 January 2013, para. 199; *M.F. v. Hungary*, para. 65; *Lakatošova and Lakatoš v. Slovakia*, App. No. 655/16, 11 March 2019, para. 94; *R.R. and R.D. v. Slovakia*, para. 200; *M.B. and Others v. Slovakia*, App. No. 45322/17, 1 July 2021, para. 103.

[464] Ludovic Hennebel and Hélène Tigroudja, *The American Convention on Human Rights: A Commentary* (Oxford University Press, 2022), 51.

obligation to respect and ensure the rights guaranteed by the three key regional instruments but does not apply to domestic legislation in a general sense.

Thirdly, in addition to the convention-bound principles of non-discrimination, all three systems also have entrenched a broader commitment to the principle that extends its scope of protection to any right established by law, thus covering domestic legal frameworks. This broader approach is reflected in the jurisprudence on the already mentioned Article 24 ACHR (right to equal protection) in the Inter-American system and Article 3 ACHPR (equality before the law) in the African system. In the European system, although the ECHR originally lacked such a general clause, the adoption of Protocol 12 to the ECHR[465] introduced a broader prohibition of discrimination, mirroring the list of prohibited grounds in Article 14 ECHR. However, as of January 2025, no case under this protocol has explicitly invoked the concept of dignity, nor addressed its conceptual link to non-discrimination or equality.

Given this dual structure of the principle of non-discrimination in the three systems, the ways in which the construction of *dignity as equality* unfolds in regional dignity jurisprudence are fragmented. In both the Inter-American and African systems, dignity jurisprudence clearly affirms a conceptual relationship between dignity, equality, and non-discrimination through the stand-alone rights to equality before the law under Article 24 ACHR and Article 3 ACHPR, respectively. However, the basis of this relationship differs. Article 24 ACHR expressly ties equality before the law to the principle of non-discrimination, stating that all persons are "entitled, without discrimination, to equal judicial protection of the law". In contrast, Article 3 ACHPR in the African system contains no explicit reference to non-discrimination, leaving its link to dignity and equality to be articulated through judicial interpretation. As such, both versions of this dynamic merit closer examination.

[465] Council of Europe, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 177, adopted 4 November 2000.

In Inter-American dignity jurisprudence, significant emphasis is placed on the complementary nature of Article 1.1. ACHR and Article 24 ACHR, although, as noted above, their scopes are conceptually distinct. While Article 1.1. ACHR confines the principle of non-discrimination to rights enshrined in the ACHR, Article 24 ACHR extends the prohibition of discrimination, whether by law or de facto, to all laws enacted and applied domestically.[466] Because discriminatory domestic legislation often implicates rights protected under the ACHR, both provisions frequently appear side by side in dignity jurisprudence, with Article 24 ACHR invoked in relation to Article 1.1. ACHR. This overlap can make it difficult to distinguish how each provision is interpreted individually, prompting commentators to observe that the interpretation of the two provisions, both separately and in tandem, has been "inconsistent and, at times, problematic."[467]

However, the way in which the Inter-American (quasi-) judicial bodies highlight the concept of dignity in the context of both provisions is consistent: it is typically framed in relation to the notion of equality, which both the IACtHR and the IACmHR consistently assert as underpinning the guarantees enshrined in both provisions. For instance, in *Olivera Fuentes v. Peru,*[468] the IACtHR explicitly affirmed this foundational role of equality, stating that it is "established" in Article 1.1. ACHR and Article 24 ACHR, before reminding that the notion "stems directly from the unique nature of the human being and is inseparable from the essential dignity of the individual".[469] This reasoning is consistently echoed throughout the Inter-American dignity jurisprudence.

[466] See on this IACtHR, *Atala Riffo and daughters v. Chile*, Series C No. 239, 24 February 2012, para. 82; *Norín Catrimán v. Chile*, para. 199; *Duque v. Colombia*, para. 94.

[467] Antkowiak and Gonza, *The American Convention on Human Rights*, 36.

[468] IACtHR, *Olivera Fuentes v. Peru*, Series C No. 484, 4 February 2023.

[469] Ibid, para. 85.

For instance, the Inter-American (quasi-) judicial bodies tend to describe the combined scope of protection under Article 1.1. ACHR and Article 24 ACHR as "the principle of equality before the law and non-discrimination"[470] or, more occasionally, simply as "the principle of nondiscrimination".[471] In elaborating on this principle, the notion of equality is regularly emphasized by the IACtHR with reference to its connection with human dignity, by observing that the notion of equality stems "directly from the oneness of mankind and is inseparable from the essential dignity of the person,"[472] that it springs from "the oneness of the human family, and is linked to the essential dignity of the individual"[473] or that it arises "from the natural unity of humankind and is inseparable from the essential dignity of the individual".[474] These formulations are also endorsed by the IACmHR, as it notes that "equality and nondiscrimination are inherent in the idea of the oneness in dignity and worth of all human beings".[475]

There are several nuances in these statements found in the Inter-American dignity jurisprudence that are relevant to the construction of *dignity as equality*. For one, it is beyond doubt that dignity, in its Inter-American conception, is understood as deeply interrelated with the concept of equality. More than merely related, the two are consistently framed as inseparable. Additionally, because the notion of equality is described in all versions of this oft-cited formulation as emanating from the essential dignity of the person, evidently, the Inter-American conception of dignity is understood as the foundation for the principle of equality.

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[470] *Norín Catrimán* v. Chile, paras. 196-197; *Duque v. Colombia*, paras. 91-94; *Velásquez Paiz et al. v. Guatemala*, para. 173; *Angulo Losada v. Bolivia*, para. 157.

[471] *Jorge Odir Miranda Cortez et al. v. El Salvador*, para. 69.

[472] *Duque v. Colombia*, para. 91.

[473] *Norín Catrimán v. Chile*, para. 197; *Atala Riffo and daughters v. Chile*, para. 79; *Miskito divers (Lemoth Morris et al.) v. Honduras,* Series C No. 432, 31 August 2021, para. 98. Also phrased similarly as "from the oneness of the human species" in *Velásquez Paiz et al. v. Guatemala*, para. 173.

[474] *Angulo Losada v. Bolivia*, para. 157.

[475] *Jorge Odir Miranda Cortez et al. v. El Salvador*, para. 69.

That is, individual human dignity is framed as the underlying justification for the principle of non-discrimination and the right to equality before the law. This interconnection between dignity, the principle of non-discrimination, and equality is further elucidated by the IACmHR in *Jorge Odir Miranda Cortez et al. v. El Salvador*, where it explains that:

> "It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character. Precisely because equality and nondiscrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in treatment are in themselves offensive to human dignity."[476]

In this passage, the IACmHR underlines that the principles of non-discrimination and equality do not require absolute uniformity but do demand that differences in treatment not undermine the dignity of the individual. As such, the concept of dignity can be seen as a standard by which the adherence to these principles is measured. As the IACmHR clarifies, not all distinctions are offensive to dignity: differential treatment may be legitimate and reasonable under the principle of non-discrimination, but respect for human dignity is a key criterion. By extension, differential treatment that impairs dignity is incompatible with the principle of non-discrimination and equality.

Furthermore, such an account of the inseparable relationship between the concepts of dignity and equality is also reflected in the IACtHR's repeated statements on the *jus cogens* nature of the principle of non-discrimination and equality. In *Duque v. Colombia, Atala Riffo v. Chile,* and *Norín Catrimán v. Chile,* immediately following the aforementioned description of equality as deriving from the essential dignity of the person, the IACtHR asserted that "the fundamental principle of equality and non-discrimination has entered the realm of jus

[476] *Jorge Odir Miranda Cortez et al. v. El Salvador*, para. 69.

cogens"[477] because "the juridical structure of national and international public order rests upon it and it permeates the entire legal system".[478]

This recurring assertion builds on the IACtHR's Advisory Opinion OC-18/03,[479] where the principle of non-discrimination and equality was, for the first time, defined as part of the domain of peremptory norms in international law. There, the IACtHR considered the principle of non-discrimination and equality in the broader context of states' general obligations to respect and guarantee human rights under international instruments, including those enshrined in Article 1.1. ACHR. In its discussion, the IACtHR noted that "all persons have attributes inherent to their human dignity that may not be harmed" and that these attributes "make them possessors of fundamental rights that may not be disregarded,"[480] thereby emphasizing human dignity as the source of human rights.

After establishing this general obligation, the IACtHR turned to the principle of non-discrimination and equality before the law, identifying them as "elements of a general basic principle related to the protection of human rights".[481] Consequently, in reference to the general obligations to protect and ensure human rights, the IACtHR emphasized that:

> "all States, as members of the international community, must comply with these obligations without any discrimination […] this is intrinsically related to the right to equal protection before the law, which, in turn, derives 'directly from the oneness of the human family and is linked to the essential dignity of the individual',"

[477] *Duque v. Colombia*, para. 91; *Atala Riffo and daughters v. Chile*, para. 79; *Norín Catrimán v. Chile*, para. 197. Also phrased similarly as "has become part of" in *Velásquez Paiz et al. v. Guatemala*, para. 173; and as "has entered the domain of" in *Flor Freire v. Ecuador*, para. 109.

[478] *Duque v. Colombia*, para. 91. Similar phrasing also found in *Atala Riffo and Daughters v. Chile*, para. 79; *Norín Catrimán* v. Chile, para. 197.

[479] IACtHR, *Juridical Condition and Rights of Undocumented Migrants,* Advisory Opinion OC-18/03, Series A No. 18, 17 September 2003.

[480] Ibid, para. 73.

[481] IACtHR, Advisory Opinion OC-18/03, para. 83.

describing the principle of equality and non-discrimination as one that "permeates every act of the powers of the State, in all their manifestations, related to respecting and ensuring human rights".[482] This, ultimately, led the IACtHR to conclude that:

> "the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws"[483].[484]

Consequently, the idea of *dignity as equality* is palpable in the Inter-American interpretation of the principle of non-discrimination and equality as a *jus cogens* norm: the very category of *jus cogens* is articulated as deeply tied to the concept of human dignity. This is confirmed in the *Advisory Opinion No. 26*[485]*,* where the IACtHR describes *jus cogens* as representing "the essential core of human rights that ensure universal protection for human dignity". [486] Furthermore, the principle of non-discrimination and equality is explicitly established in Inter-American jurisprudence as an example of *jus cogens.* This, in itself, signals that the principle bears directly on the concept of dignity. Most importantly, however, the principle of non-discrimination and equality before the law in its Inter-American articulation is, in and of itself, inseparable from the idea of human dignity: respect for dignity is both the catalyst for the elevation of the principle of non-discrimination and equality, and also that which is realized through its implementation in practice. In this way, human dignity serves

[482] IACtHR, Advisory Opinion OC-18/03, para. 100.

[483] Ibid, para. 101.

[484] This formulation has been similarly phrased elsewhere as "the fundamental principle of equality before the law and freedom from discrimination has now entered the realm of jus cogens. The whole legal scaffolding of national and international public order rests on it, and it is woven through the entire legal system". See IACtHR, *Advisory Opinion OC-27/21*, Series A No. 27, 5 May 2021, para. 152.

[485] IACtHR, *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States*, Advisory Opinion OC-26/20, Series A No. 26, 9 November 2020.

[486] Ibid, para. 155.

both as the source and the result of the principle of non-discrimination and equality. This is a definite expression of *dignity as equality*.

In summarizing the Inter-American rendering of *dignity as equality* in relation to the principle of non-discrimination, it can be confidently said that the concept of dignity is consistently placed at the heart of this principle. Its central role in shaping the meaning of the notion of equality—and, conversely, how equality reinforces the recognition of dignity—is evident in both the convention-bound principle under Article 1.1. ACHR and the general principle of non-discrimination and equality before the law under Article 24 ACHR. This conceptual connection is most evident in the Inter-American practice of describing equality as stemming from the inherent dignity of the human person. Since this account of equality appears consistently in the jurisprudence of both provisions, the concept of dignity can be seen as foundational to both formulations.

This explicit intertwining of dignity, equality, and non-discrimination is not mirrored in the African system. Unlike Article 24 ACHR in the Inter-American context, Article 3 ACHPR does not explicitly reference the principle of non-discrimination. Therefore, textually, non-discrimination under Article 2 ACHPR and equality before the law under Article 3 ACHPR are treated as separate guarantees, suggesting that they refer to distinct principles. In practice, however, "they are often conflated,"[487] posing a challenge in clearly distinguishing the two conceptually. In fact, the right to equality is at times noted as underpinning both Article 2 ACHPR and Article 3 ACHPR, as if the two provisions collectively elaborate a single guarantee. For example, in *Legal Resources Foundation v. Zambia,*[488] the ACmHPR discusses Article 2 ACHPR and the principle of non-discrimination by stating that:

[487] Evans and Murray, *The African Charter on Human and Peoples' Rights*, 45.

[488] ACmHPR, *Legal Resources Foundation v. Zambia*, Communication No. 211/98, 7 May 2001.

> "The right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens."[489]

This excerpt clearly shows how the essence of Article 2 ACHPR is interpreted in a way that reflects the language and substance of Article 3 ACHPR.

The ACmHPR further blurs the distinction between the two provisions, and also links them to the concept of dignity, when it states that:

> "[...] one who bears the burden of disadvantage because of one's place of birth or social origin suffers indignity as a human being and as an equal and proud citizen."[490]

This quote singles out two specific prohibited grounds under Article 2 ACHPR, thus informing that the ACmHPR here draws on this provision specifically. At the same time, the excerpt connects such discrimination to the individual's dignity both as a human being and as an equal citizen. Since equality between citizens lies at the heart of Article 3 ACHPR, this statement implicitly links the concept of dignity to both provisions. The individual's dignity is thus invoked in two ways: first, as an inherent attribute of the human person, and second, in relation to the right to equality before the law.[491] Importantly, however, both expressions appear under the scope of Article 2 ACHPR. This suggests a degree of overlap and a shared sphere of protection between Article 2 and Article 3 ACHPR.

This overlap is unmistakable in African dignity jurisprudence. The decision by the ACmHPR in *Nubian Community v. Kenya*[492] is an excellent case in point. There, the ACmHPR addressed the discriminatory vetting process imposed on the Nubian community, who, due to

[489] *Legal Resources Foundation v. Zambia*, para. 63. Similar phrasing found in *MIDH v. Côte d'Ivoire*, paras. 86-87.

[490] *Legal Resources Foundation v. Zambia,* para. 87.

[491] This idea is reinforced in *Open Society Justice Initiative v. Côte d'Ivoire*, where the ACmHPR notes that: "Through equality before the law, the Charter recognizes and confers upon the human person, the right to, in much the same way as all other persons, belong to the big family of the human person" (para. 152).

[492] ACmHPR, *The Nubian Community in Kenya v. Kenya*, Communication No. 317/2006, 28 February 2015.

their ethnic and religious background, were subjected to a lengthy and burdensome procedure to obtain identity documents. In its reasoning, the ACmHPR referred to both Article 2 and Article 3 ACHPR together:

> "Articles 2 and 3 of the Charter establish what is generally known as the right to equality and non-discrimination. While the right to equality and equal protection of the law is a substantive right, non-discrimination is a general principle which permeates the enjoyment of all rights guaranteed in the Charter."[493]

Here, the ACmHPR presents the two provisions as complementary in establishing a broad, general right. At the same time, it draws a conceptual distinction between them: Article 3 ACHPR is treated as a substantive right, while Article 2 ACHPR functions as an overarching principle that pervades the entire legal framework of the ACHPR.[494] This distinction, however, is later blurred again, when the two are jointly referred to as "the principle of equality and non-discrimination".

Importantly, the ACmHPR has also underlined the relationship between this general principle and the concept of human dignity by stating that:

> "[the principle] permits the different treatment of people similarly placed if such treatment is meant to achieve a rational and legitimate purpose *that does not impair the fundamental dignity of the affected persons* or unjustifiably infringe on their enjoyments of the rights and freedoms guaranteed in the Charter [emphasis added]."[495]

Additionally, the ACmHPR notes that:

> "significant burdens are placed [on the Nubians] merely on account of their ethnic and religious background… This certainly is an affront to their dignity as human beings

[493] *The Nubian Community in Kenya v. Kenya*, para. 123.

[494] In *Open Society Initiative v. Côte d'Ivoire,* the ACmHPR goes a step further to reinforce the link between the two provisions: "[...] the Commission considers that in reality, the right to «non-discrimination» which is protected by Article 2 of the Charter constitutes a legal guarantee to ensure the enjoyment of the rights to equality before the law and equal protection of the law under Article 3. In other words, where discrimination occurs, equality and equal protection of the law are automatically undermined. It follows that whenever a violation of Article 2 of the Charter is established, the rights under Article 3 have necessarily been violated." See *Open Society Initiative v. Côte d'Ivoire*, para. 155.

[495] *The Nubian Community in Kenya v. Kenya*, para. 126.

> deserving of equality with other Kenyans and equal protection of the laws governing Kenyan citizenship".[496]

In this latter passage, discriminatory treatment is explicitly linked to a violation of dignity, which is described as being fundamentally impaired by discrimination on the basis of ethnic and religious identity. This mirrors the previous excerpt and further clarifies the conceptual connection between Article 2 ACHPR and the concept of dignity. Simultaneously, dignity is also framed as the basis for recognizing individuals as deserving of equal protection of the law, thus underlining its conceptual interrelation with Article 3 ACHPR.

The dynamic between Article 2 ACHPR, Article 3 ACHPR, and the concept of dignity is further consolidated in *Nubian Community v. Kenya*, when the ACmHPR declares that such unfair discrimination in acquiring ID documents "assails their dignity as human beings who are inherently equal in dignity".[497] It is therefore evident that the notion of equal dignity underpins the protections established under both Article 2 ACHPR and Article 3 ACHPR when considered individually, as well as the broader right to equality and non-discrimination when the two provisions are considered together. As such, this conclusion anchors *dignity as equality* as a dimension of the conception of human dignity in the African regional system, demonstrating that the concept of dignity serves both as the foundation and as the justification for the protections enacted in Article 2 ACHPR and Article 3 ACHPR. In the African conception, then, the notion of equality is clearly rooted in respect for human dignity and in the recognition of the equal dignity of all human beings.

In comparison to its Inter-American and African counterparts, European dignity jurisprudence on *dignity as equality* in relation to the principle of non-discrimination is notably limited. As noted earlier in this chapter, in the European system there are no examples that

[496] *The Nubian Community in Kenya v. Kenya*, para. 132.

[497] Ibid, para. 134.

directly articulate a conceptual relationship between dignity and equality, and even indirect references to *dignity as equality* are rare.[498] As such, European dignity jurisprudence does not explicitly articulate the link between these two concepts in this context. While a similar absence of direct references was noted in the African system, its jurisprudence under Article 2 ACHPR and Article 3 ACHPR was demonstrated to include invocations of dignity to reinforce claims of equality, exemplifying *dignity as equality* in action. By contrast, the European regional approach is recognizably distinct in this regard.

A tacit recognition—one inferred rather than explicitly stated—of *dignity as equality* appears in the ECtHR's jurisprudence under Article 14 ECHR (prohibition of discrimination) in conjunction with Article 3 ECHR (prohibition of ill-treatment). More specifically, the expression of the concept of dignity as a signifier for equality among human beings finds expression in the notion of degradation through discrimination. This constitutes a particularly distinctive aspect of *dignity as equality* jurisprudence. Thus, in *Sabalić v. Croatia,*[499] the ECtHR outlined this logic when it stated that:

> "Discriminatory treatment can in principle amount to degrading treatment within the meaning of Article 3 where it attains a level of severity such as to constitute an affront to human dignity".[500]

This excerpt illuminates two key points. First, it reinforces the central role of the concept of human dignity within the notion of degrading treatment. Second, it implicitly supports the core premise of *dignity as equality*, namely, that discriminatory treatment can constitute an affront to human dignity. Admittedly, this excerpt, and European *dignity as equality* jurisprudence more broadly, indicates that this logic applies specifically in the context of the notion of

[498] See above in Section 4.1., p. 136.

[499] ECtHR, *Sabalić v. Croatia*, App. No. 50231/13, 14 April 2021.

[500] *Sabalić v. Croatia*, para. 65. Also similar phrasing found in *Begheluri and Others v. Georgia*, App. No. 28490/02, 7 January 2015, para. 101; *Dzerkorashvili and Others v. Georgia,* App. No. 70572/16, 2 June 2023, para. 62.

degrading treatment, since the present European dignity jurisprudence frames discrimination as violating human dignity only when it reaches the threshold of degrading treatment. Therefore, it remains an open question whether all discriminatory treatment, regardless of severity, can be regarded as an affront to human dignity.

Moreover, with respect to the specific grounds of discrimination prohibited under Article 14 ECHR, only one has been directly and consistently linked to the concept of human dignity, namely, race. In fact, the very first time the concept of human dignity appeared in the jurisprudence of the ECHR—in *East African Asians v. United Kingdom*[501]—it was in the context of race-based discrimination:

> "discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention. ...[P]ublicly 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".[502]

This statement has since been echoed in subsequent case law where the ECtHR has examined degrading treatment through the lens of racial discrimination.[503] Furthermore, in *Cyprus v. Turkey,*[504] the ECtHR refers back to *East African Asians v. United Kingdom* reminding that:

> "In the Commission's opinion, differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment *when differential treatment on some other ground would raise no such question* [emphasis added]."[505]

Interestingly, here the ECtHR asserts the unique nature of race-based discrimination as potentially the only ground capable of engaging the notion of degrading treatment, even though the statement in *East African Asians v. United Kingdom* does not appear to indicate such a

[501] ECmHR, *East African Asians v. United Kingdom*, App. No. 4403-70, Report of 14 December 1973, Decisions and Reports 78-A.

[502] Ibid, para. 207.

[503] *Begheluri and Others v. Georgia*, para. 101; *Burlya and Others v. Ukraine*, para. 121; *Dzerkorashvili and Others v. Georgia*, para. 62.

[504] ECtHR, *Cyprus v. Turkey*, App. No. 25781/94, 10 May 2001.

[505] Ibid, para. 306.

distinction. What both these statements do suggest, however, is that not all race-based discrimination necessarily rises to the level of an affront to human dignity and, by extension, to degrading treatment. Put differently, European dignity jurisprudence does not indicate that racial discrimination, by definition, constitutes an affront to human dignity.

That said, it is also clear from the statements by the ECtHR above that while not all forms of discrimination reach the threshold of degrading treatment and thus of a violation of human dignity, certain types of discriminatory treatment might, especially discrimination on the basis of race. As such, the ECtHR has stated that "a special importance should be attached to discrimination based on race"[506] and frequently reiterates that "racial violence is a particular affront to human dignity".[507]

In a similar vein, the ECtHR has emphasized that:

> "Discriminatory remarks and racist insults *must in any event* be considered as an aggravating factor when considering a given instance of ill-treatment in the light of Article 3 [emphasis added]".[508]

It follows that, by framing racial discrimination as an aggravating factor, the ECtHR assigns particular weight to it in the context of human dignity, the respect for which, as discussed previously, is a core concern of Article 3 ECHR.[509] Racial discrimination, then, not only contravenes the principle of non-discrimination but may also rise to the level of active degradation of the individual. Nonetheless, European dignity jurisprudence treats this as a context-specific finding: it is recognized as an affront to human dignity only where the severity of the conduct justifies the application of Article 3 ECHR.

[506] *Cyprus v. Turkey*, para. 306.

[507] ECtHR, *Bekos and Koutropoulus v. Greece*, App. No. 15250/02, 13 March 2006, para. 63; *Zelilof v. Greece*, para. 72; *Cobzaru v. Romania*, para. 88; *Stoica v. Romania*, para. 117; *M. and Others v. Italy and Bulgaria*, para. 175; *Makhashevy v. Russia*, para. 153; *Virabyan v. Armenia*, para. 199; M.*F. v. Hungary*, para. 65; *Lakatošova and Lakatoš v. Slovakia*, para. 94; *R.R. and R.D. v. Slovakia*, para. 200; *M.B. and Others v. Slovakia*, para. 103.

[508] *Sabalić v. Croatia*, para. 65. Similar phrasing in *R.B. v. Hungary*, App. No. 64602/12, 12 September 2016, para. 45.

[509] See above in Section 3.1., pp. 97-98.

This context-specific approach marks a key distinction between European *dignity as equality* jurisprudence and that of the Inter-American and African systems. While the latter two explicitly intertwine the concepts of dignity and equality across a broad range of legal contexts, the European system, to date, limits this connection to cases where discrimination rises to the level of degrading treatment. As such, the European articulation of *dignity as equality* in relation to the principle of non-discrimination appears less robust than its regional counterparts. This reflects a divergence in regional approaches: the Inter-American and African systems adopt a more expansive and explicit account of *dignity as equality* through their interpretations of the principle of non-discrimination and equality before the law, whereas the European system demonstrates a more restrained, context-dependent engagement with this conceptual relationship.

Equality as Equal Legal Recognition

A distinct yet closely related aspect of *dignity as equality* in relation to the principle of non-discrimination arises in regional dignity jurisprudence through the idea that legal recognition of the individual as an equal subject of law and bearer of rights is a dignity-based requirement. This idea that equality among human beings is secured through their equal legal recognition is an extension of the previously discussed principle of equality before the law. As the following will show, dignity jurisprudence on equal legal recognition often addresses cases where individuals or groups are denied a specific legal status, resulting in their exclusion from certain rights on grounds prohibited by the principle of non-discrimination. In this way, it remains closely intertwined with that principle. Accordingly, the jurisprudence reviewed in this section can be seen as constituting a subset of *dignity as equality* through non-discrimination.

While this idea of equality remains rooted in the broader principle of non-discrimination, it is more technically oriented in nature. It carries an autonomous dimension, as it relates not only to the absence of discriminatory exclusion, but also to the affirmative act of inclusion

within legal frameworks. At its core, this reading of equality highlights the power of legal recognition itself: it underscores the enabling role that legal status plays in accessing and exercising individual rights, benefiting from legal protections, and enjoying the symbolic social inclusion that such recognition entails. In other words, the formal recognition of one's legal status as a rights-bearing subject is a necessary condition for respecting human dignity.

In both the African and Inter-American systems, the idea of legal recognition as a dignity-based requirement appears in jurisprudence concerning the right to recognition of one's juridical personality. As noted earlier, the Inter-American system enshrines this right in Article 3 ACHR, although that provision itself contains no explicit mention of human dignity.[510] By contrast, in the African system, the ACHPR addresses both legal recognition and dignity directly in the first sentence of Article 5 ACHPR.[511] As such, the phrasing of Article 5 ACHPR can be said to imply a connection between human dignity and the recognition of juridical personality. In dignity jurisprudence, both regional systems make this connection explicit by invoking human dignity in support of the enabling power of legal status as a rights-holder, an idea embedded in the very notion of juridical personality.

For instance, in *Girls Yean and Bosico v. Dominican Republic,*[512] the IACtHR found that racially discriminatory practices governing the access to nationality had left the applicants "in a legal limbo in which, even though the children existed ... their existence was not recognized juridically".[513] Addressing the implications of statelessness, the IACtHR further observed that:

[510] Article 3 ACHR: "Right to Juridical Personality Every person has the right to recognition as a person before the law."

[511] Article 5 ACHPR: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status."

[512] IACtHR, *Girls Yean and Bosico v. Dominican Republic*, Series C No. 130, 8 September 2005.

[513] Ibid, para. 180.

> "the failure to recognize juridical personality harms human dignity, because it denies absolutely an individual's condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals".[514]

This statement is, first and foremost, significant for its explicit articulation of the conceptual relationship between legal recognition and respect for human dignity, and for its framing of the status of a rights-holder as derivative of human dignity. Additionally, it is remarkable for it has been subsequently reiterated through a direct reference in African regional dignity jurisprudence by the ACmHPR in its own elaboration on the right to juridical personality, as it likewise endorsed respect for human dignity as central to the rationale for guaranteeing an individual's legal status.[515] Thus, echoing *Girls Yean and Bosico v. Dominican Republic*, the ACmHPR has recognized the right to nationality as "intricately linked to an individual's juridical personality".[516] Similarly, the ACtHPR has described the right to nationality as "an intrinsic component" and "the legal and socio-political manifestation" of the right to recognition of one's legal status under Article 5 ACHPR, as well as "a fundamental aspect of the dignity of the human person" the arbitrary denial of which "is incompatible with the right to human dignity".[517]

Beyond that, African dignity jurisprudence offers further insights into the relationship between the concept of human dignity and the notion of juridical personality in *Open Society Justice Initiative v. Côte d'Ivoire,* where the ACmHPR explicitly identified the two as fundamentally interlinked. This case addressed the effects of discriminatory nationality laws that prevented a large minority group in Côte d'Ivoire from accessing the status of nationals. The ACmHPR began by observing that certain rights guaranteed under the ACHPR "have a

[514] *Girls Yean and Bosico v. Dominican Republic*, para. 178.

[515] See, for instance, *The Nubian Community in Kenya v. Kenya*, para, 139; *Open Society Justice Initiative v. Côte d'Ivoire*, para. 140.

[516] *The Nubian Community in Kenya v. Kenya*, para. 140.

[517] ACtHPR, *Robert John Penessis v. Tanzania*, App. No. 013/2015, 28 November 2019, paras. 87-89.

supreme and dependent relationship with the right to dignity," noting that "the same can be said of the right to legal status," ultimately concluding that "dignity and legal status are fundamentally interdependent".[518] Building on this, and again in reference to the above-quoted reasoning by the IACtHR in *Girls Yean and Bosico v. Dominican Republic,* the ACmHPR stated that:

> "[b]y agreeing with these conceptions of the crucial importance of the recognition of legal status to the enjoyment of the right to dignity, the Commission considers that failure to grant nationality as a legal recognition is an injurious infringement of human dignity […] With regard to the intentional denial or otherwise of nationality, dignity is doubly violated because the person no longer fully fits into the fundamental characteristics associated with the status of a subject of law. Indeed, since he is not recognized as a national of any State, and is treated as such, the victim is also treated by the community as a kind of second rate member. In the African context, where social recognition and belonging to the community are vital, denial or doubt of nationality can constitute the highest form of violation of dignity."[519]

In this passage, not only is the recognition of one's legal status intimately tied to the right to respect for one's dignity, but also the more specific right to nationality is directly connected to that dignity. In addition, the passage reveals an implicit concern with the idea of equality: the denial of nationality is said to reduce the affected person to the status of a second-rate citizen. In doing so, *Open Society Justice Initiative v. Côte d'Ivoire* stands as a prime example of the African articulation of *dignity as equality* through the lens of equal legal recognition. It compellingly frames the right to nationality as "a right which represents a strong symbol: that of both the legal and social recognition and also that of dignity".[520]

In the European system, dignity jurisprudence reflecting *dignity as equality* in relation to equal legal recognition is, once again, visibly narrower than in the other two systems. The only

[518] *Open Society Justice Initiative v. Côte d'Ivoire*, para. 140.

[519] Ibid, para. 141.

[520] Ibid, para. 201.

context in which some form of legal recognition has been framed as a dignity-based requirement of equality concerns the legal recognition of same-sex couples. Although this narrower articulation differs significantly from the noticeably broader African and Inter-American approaches, it nevertheless echoes the same underlying premise of *dignity as equality*: respect for an individual's dignity necessitates their inclusion in the legal framework as an equal subject of law and rights.

This connection is articulated by the ECtHR in *Fedotova and Others v. Russia*[521] and later reaffirmed in *Maymulakhin and Markiv v. Ukraine*[522]. In both cases, the ECtHR first emphasized the general spirit of the ECHR as promoting "the ideals and values of a democratic society" and then stated that the legal recognition of same-sex couples:

> "undeniably serves these ideals and values in that recognition and protection of that kind confers legitimacy on such couples and promotes their inclusion in society, regardless of sexual orientation".[523]

Here, the recognition of same-sex couples within the legal framework is articulated as a means of legal empowerment: an inclusion that places them on equal legal footing with opposite-sex couples. Furthermore, the ECtHR noted that a democratic society, as envisioned by the ECHR, "rejects any stigmatisation based on sexual orientation … [and] is built on the equal dignity of individuals and sustained by diversity".[524] In this way, the principle of non-discrimination is grounded in the acknowledgment of dignity as an attribute equally possessed by all individuals. Through this construction, legal recognition of same-sex couples emerges as a dignity-based requirement for equality: it operates as both a gateway to the practical realization of the

[521] ECtHR, *Fedotova and Others v. Russia,* App. Nos. 40792/10, 30538/14, 43439/14, 17 January 2023.

[522] ECtHR, *Maymulakhin and Markiv v. Ukraine*, App. No. 75135/14, 1 September 2023.

[523] *Fedotova and Others v. Russia*, para. 180; *Maymulakhin and Markiv v. Ukraine*, para. 64.

[524] Ibid.

guarantees of equality in law and as an expression of the respect owed to individuals as bearers of human dignity.

Admittedly, considering all three regional systems together, the basis for asserting that the concept of human dignity functions as a foundation for claims to equality through formal recognition in law is limited. With only three relevant examples in the African system, one in the Inter-American, and two in the European system, it could be argued that there is insufficient evidence in regional dignity jurisprudence to claim that *dignity as equality* consistently serves to strengthen the idea of equal legal recognition. This impression is reinforced not only by the low number of cases but also by the divergent nature of the examples: while the African and Inter-American examples concern foundational legal status, that is, basic recognition of the individual's existence in law, the European examples focus on a specific form of recognition, namely, the legal recognition of certain family units.

In instances where foundational legal recognition is denied—such as the refusal to acknowledge juridical personality or nationality illustrated by the Inter-American and African examples above—the affected individual is excluded from basic participation in legal and social life as a subject of rights and protections available to others who enjoy that legal status. In such cases, individuals are rendered effectively legally invisible. By contrast, in the European example, individuals affected by the lack of recognition of same-sex family units are not excluded from the legal system *per se*. Nonetheless, the lack of recognition of their family relationships does, in a comparable way, put them at disadvantage compared to those for whom such legal recognition is readily accessible.

Therefore, the denial of equal legal recognition can be said to be framed across the three regional systems as incompatible with respect for human dignity. Despite regional variations in how the idea is articulated doctrinally, they all reflect a shared understanding at their core: the concept of dignity requires the formal inclusion of individuals within the legal framework,

through recognition of their status as equal subjects of law and rights. This recognition is not a gesture, but a necessity expressed as a dignity-based requirement. Its denial has a symbolic effect, namely, social exclusion, and also a material one—the loss of access to legal rights and protections.

4.2.2. Equality as Equal Moral Worth

Besides the above-examined two layers of *dignity as equality* through the principle of non-discrimination and equal recognition in law, regional dignity jurisprudence suggests the presence of a third, distinct layer. This layer moves beyond the idea of relative equality embodied in the principle of non-discrimination, and beyond the notion of formal equality that underpins the idea of equal legal recognition. In this section, I show that it concerns a more abstract conception of equality: the equal moral worth of all human beings.

This expression of dignity as a claim to equal moral worth surfaces in regional jurisprudence on degrading treatment, where this type of ill-treatment is defined as a violation of human dignity. In this sense, this layer of *dignity as equality* builds upon the analysis of *dignity as bodily integrity* developed previously. Specifically, in Chapter 3, I suggested that the prohibition of degrading treatment, beyond its connection to bodily integrity, also reflects an implicit commitment to the idea that all individuals possess inherent and equal moral worth and that such treatment, as a result, may be read as an implicit denial of this equal worth.

Importantly, regional dignity jurisprudence on degrading treatment does not articulate a concern with the notion of equality explicitly. That is, unlike the previous two layers of *dignity as equality*, references to equal moral worth are not textually present in the reasoning of regional (quasi-) judicial bodies in cases concerning degrading treatment. However, a notion of equality in this sense can nevertheless be discerned from the underlying logic of their reasoning. While these bodies do not define degrading treatment as a violation of the principle

of equality in itself, the acts that are deemed degrading are, in essence, such that they deny the victim's inherent and equal value as a human being.

To note this implicit connection, one needs to look back at the typical descriptions of what constitutes degrading treatment in dignity jurisprudence. The formula used to identify degrading treatment highlights feelings of humiliation, debasement, and inferiority as its defining consequences.[525] As discussed in Chapter 3, and by referring to the common meanings of these terms, the experience of degrading treatment essentially denotes exposure to conditions that cause the victim to question their own self-worth. In other words, the notion of equality at play in the context of degrading treatment is rooted in the idea that the inherent moral worth of a human being is incompatible with subjecting them to treatment that makes them feel "lesser" than others.

A necessary disclaimer, noted previously, is that dignity jurisprudence on degrading treatment is most prevalent in the European region, since African and Inter-American dignity jurisprudence more often refers to ill-treatment using compound labels such as 'inhuman and degrading treatment', or 'cruel, inhuman and degrading'.[526] This poses a challenge in delineating the conceptual contours of degrading treatment in those systems more broadly, and particularly in relation to the concept of human dignity. Accordingly, support for the claim advanced here—that regional dignity jurisprudence on degrading treatment reflects a concern with equal moral worth—may be read as limited in practice.

On the one hand, European dignity jurisprudence clearly recognizes, and consistently affirms, human dignity as that which degrading treatment violates. That is, it operates on the premise that there is "a particularly strong link between the concepts of "degrading" treatment

[525] See the discussion above in Section 3.2.2., pp. 108-110.

[526] See above in Section 3.2.2., pp. 98-99; 105-106.

or punishment [...] and respect for "dignity"."[527] On the other hand, only a handful of instances invoking the specific label of "degrading treatment" appear in currently available African and Inter-American dignity jurisprudence.[528] Still, since both the African and Inter-American bodies routinely cite the dignity jurisprudence of the ECHR in such cases,[529] there is a strong case to be made that this reading is supported, at least implicitly, in those systems as well.

The feelings identified as characteristic of being a victim of degrading treatment—debasement and inferiority—point toward the victim's subjective experience of being treated as "lesser than". As discussed in Chapter 3, dignity jurisprudence often describes degrading treatment as having the effect of "sending a potent message on inferiority,"[530] "likely to appear in [the victim's] eyes to be aimed at debasing and/or subduing him"[531] and "instilling in [the victims] a sense of inferiority".[532] These are clear indicators of an underlying logic whereby degrading treatment is prominently understood as a symbolic denial, or lowering, of the victim's worth as a human being.

The previously mentioned cases of *S.P. and Others v. Russia* and *D. v. Latvia* are especially illustrative of this point.[533] Both involved prison practices that entrenched informal hierarchies among inmates, leading to the segregation and mistreatment of those deemed to hold a subordinate status and in both the applicants were considered to be at the lowest level of the informal prison hierarchy.[534] Additionally, both cases exemplify a reading of degrading

[527] *Bouyid v. Belgium*, para. 90.

[528] For rare exceptions, see *Open Society Justice Initiative v. Côte d'Ivoire*, para. 141; *George Iyanyori Kajikabi v. Egypt*, para. 204; IACtHR, *Girón et al. v. Guatemala*, para. 87.

[529] See, for instance, *Loayza-Tamayo v. Peru* (para. 57), referring to *Ribitsch v. Austria*; *George Iyanyori Kajikabi v. Egypt* (para. 204), referring to *Campbell and Cosans v. UK*.

[530] *D. v. Latvia*, para. 49.

[531] *Yankov v. Bulgaria*, para. 117.

[532] *S.P. and Others v. Russia*, para. 92.

[533] See above in Section 3.2.2., p. 113.

[534] See *S.P. and Others v. Russia*, paras. 5-20; *D. v. Latvia*, paras. 6-7.

treatment as not only a violation of bodily and psychological integrity but also as an affront to the equal moral worth of the individuals concerned.

In *S.P. and Others v. Russia,* the applicants were found to have endured separation from other inmates "on physical and symbolic levels" as they were:

> "allotted the least comfortable places in the dormitory and canteen and prohibited from using any other areas under threat of punishment. Their access to prison resources, including showers and medical care, was limited or excluded; they could only use what was left over from the other groups of inmates. They were also forbidden to come into proximity with, let alone touch, other prisoners because of the risk that that person would become "contaminated"."[535]

The latter restriction—limits on human contact between the lowest caste and the rest of the inmates—was highlighted by the ECtHR as "a dehumanising practice that reinforces the idea that certain people are inferior and not worthy of equal treatment and respect".[536] Such language explicitly links the degrading nature of the ill-treatment to a denial of the applicant's equal moral worth. It highlights how such treatment implies the existence of a hierarchy in human value, thereby implicitly legitimizing the idea that a subclass of persons exists who are unworthy of equal respect.

The ECtHR emphasized this connection further, noting that "acts of abuse other than physical violence may also constitute ill-treatment because of the psychological harm they cause to human dignity".[537] This was particularly evident in its conclusion when it held that:

> "living in a state of mental anguish and fear of ill-treatment was an integral part of the applicants' experience as "outcast" prisoners, which was in turn a consequence of the hierarchical categorisation of the prisoners' population. It undermined human dignity of the applicants by debasing them and instilling in them a sense of inferiority *vis-à-vis* other inmates."[538]

[535] *S.P. and Others v. Russia*, para. 93.

[536] Ibid.

[537] Ibid, para. 92.

[538] Ibid.

This language confirms that the concept of dignity operates here as a marker of equal moral worth. The reference to a sense of inferiority illustrates how the applicants were positioned as "lesser human beings" within the informal social order of the prison. In essence, then, the ECtHR's reasoning shows that degrading treatment is conceptualized as undermining the equal moral status of the human being.

While in *S.P. and Others v. Russia* the applicants suffered physical and sexual violence, thus leading the ECtHR to classify the treatment as both inhuman and degrading, the case of *D. v. Latvia*, by contrast, raised the question of whether the mere existence of a segregated hierarchy, without physical violence, could in itself constitute degrading treatment.[539] In that case, the ECtHR found that systemic exclusion and symbolic subjugation alone could violate a group of prisoners' human dignity, even in the absence of physical harm.

First, the ECtHR noted that the applicant's account of the separation typically experienced by lower caste prisoners "bears relevant similarity"[540] to the circumstances examined in *S.P. and Others v. Russia*. Prisoners deemed to belong to the lowest rank were subjected to social exclusion as they:

> "had separate benches, toilets, and dining areas and were not allowed to queue with other prisoners for the shop or medical care. They were also banned from joining in sports or using common showers. Their beds were less comfortable and located towards the periphery of shared spaces. In addition, they were tasked with performing menial jobs, such as cleaning and doing laundry for the other inmates."[541]

Despite the absence of direct physical harm, the ECtHR found a violation of Article 3 ECHR. It explicitly framed the degrading nature of the treatment in terms of symbolic exclusion and the denial of equal moral worth, holding that: "such physical and symbolic separation has had the effect of sending a potent message of inferiority, thereby undermining the human

[539] *D. v. Latvia*, paras. 44-45.

[540] Ibid, para. 49.

[541] Ibid.

dignity".[542] This statement is highly significant, for it supports the claim that degrading treatment can function as a moral and social devaluation of the individual's equal moral worth. Evidently, the essence of the harm lies in the implicit message that the victim is of lesser worth. Thus, the ECtHR's reasoning here confirms that degrading treatment is not necessarily about physical suffering or pain, but an act that denies the victim's moral worth within the human community.

Taken together, *S.P. and Others v. Russia* and *D. v. Latvia* illustrate that ill-treatment amounting to degrading treatment violates human dignity both in terms of bodily integrity and equal moral worth. By emphasizing the social message of inferiority that such treatment conveys, these cases support my claim that *dignity as equality* entails an abstract, universal baseline of human worth. Moreover, although both cases deal with systemic exclusion that induces a sense of inferiority, degrading treatment does not require a structurally embedded system of social exclusion to constitute a denial of human dignity. Two other previously mentioned cases—*Basenko v. Ukraine* and *Yankov v. Bulgaria*—were shown to confirm that even isolated acts that induce humiliation can serve as a potent denial of human dignity through a symbolic lowering of the individual's equal moral worth.[543]

This is particularly evident in *Yankov v. Bulgaria*, where the applicant was subjected to the forced shaving of his head in prison as a form of disciplinary punishment.[544] The ECtHR observed that a person undergoing such a forced alteration of their physical appearance "is very likely to experience a feeling of inferiority"[545] due to the physical mark of the treatment being visible to prison staff, other detainees, and visitors. As such, the person affected "is very likely

[542] *D. v. Latvia*, para. 49.

[543] See above in Section 3.2.2., p. 112.

[544] *Yankov v. Bulgaria*, paras. 65-70.

[545] Ibid, para. 112.

to feel hurt in his dignity by the fact that he carries a visible physical mark".[546] Although the ECtHR did not explicitly state it, this visible mark may be interpreted not only as a sign of the treatment endured, setting the individual apart, but also as reinforcing a perception of diminished status in relation to others. Taking this into account, the ECtHR concluded that the forced shaving of a prisoner's head:

> "is in principle an act which may have the effect of diminishing their human dignity or may arouse in them feelings of inferiority capable of humiliating and debasing them".[547]

Additionally, in examining the particular circumstances of the case, the ECtHR observed that:

> "even if it was not intended to humiliate, the removal of the applicant's hair without specific justification contained in itself an arbitrary punitive element and was therefore likely to appear in his eyes to be aimed at debasing and/or subduing him".[548]

Given that the punishment followed the applicant's offensive remarks about prison authorities, the ECtHR noted that "the applicant must have had reasons to believe that the aim had been to humiliate him".[549] On that basis, the ECtHR found that the punishment amounted to degrading treatment in violation of Article 3 ECHR.

The case of *Yankov v. Bulgaria,* then, illustrates degrading treatment as a denial of *dignity as equality* in relation to equal moral worth. The forced shaving singled the applicant out, sending a message—both to himself and to others—that he was of inferior status. As such, like the hierarchical prison regimes in the previously mentioned cases of *S.P. and Others v. Russia* and *D. v. Latvia*, this act conveyed subordination and suggested that the applicant was not entitled to the same level of respect as others.

Lastly, *Basenko v. Ukraine* addresses another angle of the notion of equality in this sense by demonstrating how degrading treatment can erode an individual's self-perception as a being

[546] *Yankov v. Bulgaria*, para. 113.

[547] Ibid*,* para. 114.

[548] Ibid*,* para. 117.

[549] Ibid, para. 118.

of equal moral worth. Unlike *Yankov v. Bulgaria*, where the applicant's humiliation stemmed from a visible mark of punishment, *Basenko v. Ukraine* shows how physical helplessness in a public setting can itself amount to degrading treatment. In the facts of the case, following a disagreement over the validity of the applicant's public transportation ticket, he was physically assaulted by ticket inspectors, resulting in a knee fracture.[550] Unable to stand or walk, he had to rely on assistance from bystanders. Ultimately, the ECtHR found that both the physical and the psychological consequences of the incident constituted a violation of Article 3 ECHR. That said, in assessing the circumstances, the ECtHR emphasized the latter, by drawing attention to the public nature of the assault, which "was bound to arouse in him the feelings of humiliation and helplessness, diminishing his dignity".[551] Given the seriousness of the physical injuries suffered, such emphasis on the psychological impact of the assault further underlines degrading treatment as closely tied to the victim's subjective experience and sense of equal self-worth.

In summary, these four cases before the ECtHR demonstrate how acts of degrading treatment reflect *dignity as equality* in relation to equal moral worth. In each, degrading treatment was found to induce in the victims a sense of being of lesser worth than others, either through systemic social exclusion in *S.P. v Russia* and *D. v. Latvia*, or through isolated, targeted acts of humiliation in *Yankov v. Bulgaria* and *Basenko v. Ukraine.* The common thread across the four judgments, however, is that the applicants were not only physically harmed but also symbolically positioned, in their own perception, as beings of diminished worth. This captures the very core of the third layer of *dignity as equality*.

As illuminated by this jurisprudence, and unlike the two previous layers of *dignity as equality*, this one is not concerned with discriminatory treatment as such or with legal recognition as an equal subject of rights, but instead addresses a deeper, more abstract form of

[550] *Basenko v. Ukraine*, para. 5.

[551] Ibid, para. 60.

equality. In this way, it transcends the earlier dimensions of *dignity as bodily integrity* and *dignity as equality* in relation to the principle of non-discrimination, while building upon each. It extends *dignity as bodily integrity* by highlighting how degrading treatment implicitly affirms a hierarchy among persons. At the same time, it departs from the traditional notions of equality implicit in *dignity as equality* jurisprudence reviewed previously by drawing not on the treatment of another person as the comparator, but instead by basing the standard of treatment on an abstract, universal human being—representing the shared moral worth that defines each person's equal status within the human community.

As such, the violation of equality within this sense of *dignity as equality* lies in breaching the baseline standard of respect owed to every individual by virtue of their inherent dignity. Accordingly, degrading treatment transgresses this standard by treating the victim as if their moral worth—which is equal by definition—were somehow lesser. It signals that the victim is not deserving of the baseline respect that affirms the equal moral worth of all human beings, and effectively denies their inherent equality by reducing them to a status beneath the moral baseline owed to every person.

4.3. Interim Conclusions

Three layers of the use of the concept of human dignity as an expression of the notion of equality can be observed in regional dignity jurisprudence, supporting the claim that a shared understanding of the concept of dignity exists across the three regional human rights systems in relation to the notion of equality. Each of these layers reveals a practice in which the concept of human dignity is invoked as the basis for a particular concern with equality among human beings.

First and foremost, dignity jurisprudence across the three regional systems consistently links human dignity with the principle of non-discrimination. This first layer of *dignity as equality* engages with the common understanding of equality in human rights law, namely, the

equal treatment of persons in similar or comparable situations. In practice, it appears in jurisprudence under Article 14 ECHR, Articles 1.1. and 24 of the ACHR, and Articles 2 and 3 of the ACHPR.

In the Inter-American and African systems, this connection is evident in how the regional (quasi-) judicial bodies construct the broader right to equality before the law and the principle of non-discrimination, drawing on the combined scopes of Articles 1.1. and 24 of the ACHR, and Articles 2 and 3 of the ACHPR respectively. In both systems, dignity is placed at the heart of the concept of equality: Inter-American jurisprudence repeatedly asserts that the notion of equality derives from dignity,[552] while African dignity jurisprudence emphasizes that the burdens caused by discriminatory treatment impair the individual's dignity.[553] By contrast, in the European system, this relationship is expressed far more subtly. In its current dignity jurisprudence, the ECtHR explicitly links the two concepts only in cases of discrimination that reach the threshold of degrading treatment, and only discrimination on the basis of race has been expressly framed as an affront to human dignity. Taken together, these features of European dignity jurisprudence weaken the broader argument that human dignity underlies its conception of the principle of non-discrimination. As such, the shared practice of *dignity as equality* across the three systems in this first layer does not appear to extend beyond race-based discriminatory treatment.

The second layer of *dignity as equality*, referred to here as "equality through legal recognition", builds on the first. While still engaging with the principle of non-discrimination, it moves toward a more specific expression of the principle of non-discrimination: legal recognition as an act of affirmative inclusion. The core idea here is that recognizing an

[552] Among notable examples are *Norín Catrimán et al. v. Chile*, para. 197; *Espinoza Gonzáles v. Peru*, para. 216; *Velásquez Paiz et al. v. Guatemala*, para. 173; *Guevara Díaz v. Costa Rica*, para. 46; IACmHR, *Jorge Odir Miranda Cortez et al. v. El Salvador*, para. 69.

[553] See, for instance, *Legal Resources Foundation v. Zambia*, para. 63; also, *MIDH v. Côte d'Ivoire*, para. 87.

individual in law as a rights-bearing subject is a dignity-based requirement. In this sense, formal legal recognition is constructed as a requirement that flows from the obligation to respect human dignity.

In the Inter-American and African systems, this appears in dignity jurisprudence on the right to juridical personality under Article 3 ACHR and Article 5 ACHPR, respectively. In both systems, the importance of juridical personality is tied to its practical effects, that is, being a legal subject, able to enjoy and claim rights.[554] This legal status is framed as deriving from human dignity: the right to juridical personality is treated as one of the concrete manifestations of the legal concept of human dignity.[555]In the European context, the only comparable example is the ECtHR's jurisprudence on the legal recognition of same-sex couples. As such, again, European dignity jurisprudence on this point demonstrates a much more reserved approach than that of the other two systems. Still, the ECtHR frames the act of recognizing same-sex couples as a form of legal empowerment necessary to uphold the equal dignity of individuals.[556] Thus, the idea that the concept of dignity functions as an expression of the importance of legal recognition of an individual's status as a subject of rights also holds in the European context.

It follows that in all three regional systems the concept of human dignity is interpreted as demanding the inclusion of the individual within the legal framework through their recognition as a subject of rights. By extension, the denial of such legal recognition is, across the regions, understood as an affront to human dignity. This construction represents a clear manifestation of *dignity as equality*. That said, it is important not to overstate the practical evidence for this claim, since only a limited number of cases across the three systems support this idea that dignity serves as a marker for equality through equal legal recognition.

[554] See *Girls Yean and Bosico v. Dominican Republic*, para. 178; *The Nubian Community in Kenya v. Kenya*, para, 139; *Open Society Justice Initiative v. Côte d'Ivoire*, para. 140.

[555] In African context, this is evident in the jurisprudence on the right to nationality. See *Open Society Justice Initiative v. Côte d'Ivoire,* para. 141.

[556] See *Fedotova and Others v. Russia*, para. 180; *Maymulakhin and Markiv v. Ukraine*, para. 64.

Finally, a third layer of *dignity as equality* proposed in this chapter draws on the regional jurisprudence on the prohibition of degrading treatment, where such treatment is repeatedly described in terms of humiliation and debasement, which evoke in the victims a sense of inferiority. As shown in Chapter 3, regional dignity jurisprudence links degrading treatment as inseparable from the concept of human dignity, treating it as absolutely prohibited because it undermines that inherent dignity. Since degrading treatment is defined by its effects in symbolically lowering an individual's worth, it follows that its prohibition is fundamentally connected to a specific notion of equality between human beings.

The key to understanding this third layer of *dignity as equality* lies in clarifying the kind of equality it engages with. The standard of treatment that emerges through dignity jurisprudence on degrading treatment as a dignity-based requirement is not relative to how others in similar situations are treated but rather refers to a baseline of respect owed universally to all human beings by virtue of their inherent dignity. Therefore, degrading treatment can be read as a form of ill-treatment that violates the abstract equality of human worth, conveying a denial of the victim's equal moral standing in the human community. Although jurisprudence supporting this understanding comes primarily from the European system, both African and Inter-American (quasi-) judicial bodies have been shown to reference ECtHR case law on degrading treatment, thus suggesting a degree of conceptual convergence on this point across the three systems. Whether these references reflect isolated borrowings or deeper integration of the principle of equal moral worth into African and Inter-American dignity jurisprudence on ill-treatment, however, remains an open question.

With the invocations of *dignity as equality* across the three regional systems now laid out, the next chapter turns to the third and final dimension of the concept explored in this dissertation: *dignity as personal autonomy*. While dignity's relationship with bodily integrity and equality has been explored through a parallel, three-system comparison, its link to personal

autonomy follows a different trajectory. Notably, there is no jurisprudence on *dignity as personal autonomy* in the African regional system. As such, Chapter 5 examines the bi-regional pattern between the European and Inter-American systems on the one hand, and the asymmetry posed by the African regional system—an absence that becomes analytically significant in its own right—on the other.

Chapter 5.
Dignity as Personal Autonomy in Regional Jurisprudence

The final dimension of the concept of human dignity examined in this dissertation concerns the relationship between the concepts of human dignity and personal autonomy. As noted previously, the label *dignity as personal autonomy* refers to the use of the concept of human dignity as a marker for the recognition and protection of an individual's autonomy in decisions pertaining to their life choices: it denotes the idea that respect for an individual's self-authorship is derived from the acknowledgment and protection of their individual dignity.[557]

The concept of autonomy under this label is understood as stretching beyond a narrow reading of rationality, where a human being is seen as autonomous merely by virtue of possessing the necessary cognitive and psychological capacities to make decisions. Instead, *dignity as personal autonomy* implies that personal autonomy is a dispositional phenomenon of the human person, a combination of their cognitive and psychological capacities together with the social and relational aspects of their lives, which are understood to actively shape the individual's ability to exercise autonomy effectively. Thus, this label refers to the individual's self-authorship in navigating relational and situational contexts in line with their personal values and aspirations over the course of their life.

Unlike the discussion of *dignity as bodily integrity* and *dignity as equality* in the previous two chapters, which adopted a fully horizontal, parallel structure across the three regional systems, this chapter is structured differently. Here, the European and Inter-American systems are reviewed together, while the African system is treated separately. This is not a choice made in anticipation of the findings from the comparison between regional dignity jurisprudence, but rather one that emerged as a result of an initial survey of African dignity jurisprudence itself:

[557] See above in Section 2.3.2., pp. 86-89.

while the European and Inter-American systems offer a considerable body of dignity jurisprudence relating to the concept of autonomy, the African system provides no examples of dignity jurisprudence where the concepts of dignity and personal autonomy have been invoked in proximity or as relating to each other conceptually.

This unmistakable divergence will be addressed in greater depth in Chapter 6, where I reflect on the broader patterns of convergence and divergence between the three systems across all three dimensions of the concept of dignity. For now, however, it should be noted that the absence of *dignity as personal autonomy* in African dignity jurisprudence is not at all surprising. Notably, the text of the ACHPR differs significantly from those of the ECHR and the ACHR: it emphasizes the community, individual duties toward that community, and social harmony, rather than emphasizing personal autonomy as a definitive right of the individual human being. In fact, the instrument lacks an explicit provision on privacy or private life comparable to Article 8 ECHR (right to respect for private and family life) in the European system or Article 11 ACHR (right to privacy) in the Inter-American system. Instead, the ACHPR contains a catalogue of individual duties and establishes collective rights that frame the person as fundamentally embedded within a social context.[558]

To preserve the analytical coherence established in the previous two chapters while also acknowledging this important divergence, this chapter proceeds in two parts. It begins by locating the appearance of *dignity as personal autonomy* in the dignity jurisprudence of the European and Inter-American systems, providing an overview of the specific rights provisions under which this dimension of the concept of human dignity emerges. It then turns to a detailed examination of how *dignity as personal autonomy* manifests throughout the scope of protection of an individual's private life and self-determination in these two systems. As such, this first part of the chapter mirrors the structure adopted in Chapters 3 and 4. In the second part of this

[558] Chapter II (Duties) of the ACHPR.

chapter, I briefly turn to the African system which, as noted, does not reflect the construction of *dignity as personal autonomy*. In this part, the stage is set for the more detailed reflection on the regional divergence on *dignity as personal autonomy* that follows in Chapter 6, where I explore the compatibility between the core premise of *dignity as personal autonomy*—that an individual's dignity requires the recognition and protection of their personal autonomy—and African moral accounts of personhood and dignity. This chapter, then, ultimately, contributes to outlining the limits of transregional convergence on the concept of human dignity as examined in this study.

5.1. Locating *Dignity as Personal Autonomy* in the Inter-American and European Jurisprudence

In both the European and Inter-American systems' dignity jurisprudence, *dignity as personal autonomy* primarily appears in connection with those articles of the ECHR and the ACHR that protect the individual's private life.

In the European context, this is Article 8 ECHR (right to respect for private and family life), a provision known for its broad scope, covering several distinct but interrelated aspects: private life, family life, home, and correspondence.[559] While the text of Article 8 ECHR does not mention either dignity or autonomy, both concepts have become commonplace in the ECtHR's interpretation and application of the article's guarantees concerning private life.

In the Inter-American context, *dignity as personal autonomy* is found in jurisprudence under Article 11 ACHR (right to privacy). Similar to its analogue in the European system, Article 11 ACHR is also known for its broad scope, as it encompasses not only private and

[559] Article 8 ECHR: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

family life, home, and correspondence, but also respect for one's honor and reputation. Although Article 11 ACHR does not refer to autonomy in its text, it does explicitly mention dignity.[560] In this sense, the frequent invocation of the concept of dignity in its jurisprudence is expected. However, the strong presence of the concept of autonomy in dignity jurisprudence under Article 11 ACHR is a notable, and perhaps unexpected, indicator of the close conceptual relationship between dignity and autonomy in the Inter-American system's conception of human dignity.

In addition, a further layer of *dignity as personal autonomy* in both systems appears in jurisprudence concerning patients' consent to medical treatment. In European dignity jurisprudence, this issue is primarily addressed under the protection of physical integrity in Article 3 ECHR, though its case law also engages Article 8 ECHR. In the Inter-American system, this question falls under Article 26 ACHR (progressive development),[561] which the IACtHR has interpreted to include the protection of the right to health.[562] Since this issue is not examined under Article 11 ACHR in the Inter-American jurisprudence, but rather under Article 26 ACHR, this particular aspect of *dignity as personal autonomy* will be discussed separately under the heading of "bodily autonomy," marking it as a distinct facet of individual decision-making.

As underlined previously, the text of the ECHR contains no direct references to the concept of human dignity. Accordingly, one does not find any textual indication of its conceptual relevance within the protections offered under Article 8 ECHR. Likewise absent

[560] Article 11 ACHR: "1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks."

[561] Article 26 ACHR: "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States [...]"

[562] See IACtHR, *Poblete Vilches v. Chile*, Series C No. 349, 8 March 2018, para. 110.

from the text of the ECHR is the concept of autonomy. Consequently, there are no textual clues regarding the construction of *dignity as personal autonomy* as a dimension of private life based solely on the textual formulation of the rights in the ECHR. This makes it all the more remarkable that the ECtHR has established the significance of both the concept of dignity and autonomy in its interpretation of the notion of private life, by stating that the interplay between them is essential to grasping the essence of the protection of private life. As an illustration, in outlining the conceptual relationship between these three notions, the ECtHR has observed that:

> "In construing the scope of private life, it is important to have in mind the notion of personal autonomy and human dignity".[563]

Here, the concepts of autonomy and dignity are not merely acknowledged but presented together as essential markers for delineating the reach of the protection of private life, aligning closely with the central premise of *dignity as personal autonomy*.

That said, the ECtHR has also emphasized the centrality of dignity and autonomy within the context of the notion of private life separately, highlighting their distinct yet interrelated roles in safeguarding individual rights. On dignity, the ECtHR has described private life as a broad term without an exhaustive definition that "extends to [...] dignity,"[564] suggesting that the protection of private life inherently comprises the concern for upholding individual dignity. [565] Additionally, the ECtHR has further stressed this interconnectedness by emphasizing states' positive obligations to ensure respect for private life under Article 8 ECHR as "including respect for human dignity".[566] Framing the scope of these obligations in this way

[563] ECtHR, *Avram and Others v. Moldova*, App. No. 2886/05, 9 December 2008, para. 36.

[564] ECtHR, *F.O. v. Croatia*, App. No. 29555/13, 6 September 2021, para. 57; *Špadijer v. Montenegro*, App. No. 31549/18, 9 February 2022, para. 80.

[565] Furthermore, in relation to privacy—a concept fundamental to all aspects of the guarantees under Article 8 ECHR—the ECtHR has highlighted "the values to which it relates…[including] among others, well-being and dignity". See *N.Š. v. Croatia*, App. No. 36908/13, 10 December 2020, para. 95.

[566] ECtHR, *H. v. Finland*, App. No. 37359/09, 16 July 2014, para. 37.

reinforces the idea that human dignity is not merely ancillary to private life protections, but instead a fundamental component that states are required to uphold. As such, this construction highlights the central role of dignity in the broader framework of protecting an individual's private life.

On the concept of autonomy, the ECtHR has established that "the notion of personal autonomy is an important principle underlying the interpretation of Article 8," as the article guarantees individuals "a sphere within which they can freely pursue the development and fulfilment of their personality".[567] As such, individual self-realization and autonomy have been clearly endorsed as central interests underlying the protections guaranteed by Article 8 ECHR. The presence of *dignity as personal autonomy* therefore emerges as part and parcel of the European conception of human dignity, despite the absence of any reference to either dignity or autonomy in the text of Article 8 ECHR.

Turning to the Inter-America system, it is important to recall that the text of Article 11 ACHR explicitly refers to the concept of dignity: the first paragraph of Article 11 establishes that everyone has the right to have their honor respected and their dignity recognized.[568] The following paragraph of Article 11 ACHR protects one's private and family life, home, correspondence, honor, and reputation. The concept of autonomy is not mentioned in the text of Article 11 ACHR, nor is it referenced anywhere else in the ACHR. Thus, there is no textual basis for a direct connection between the concepts of dignity and the broad notion of private life in Article 11 ACHR, let alone an explicit endorsement of *dignity as personal autonomy*. In this sense, the Inter-American reading of *dignity as personal autonomy* differs from its reading

[567] ECtHR, *G.T.B. v. Spain*, App. No. 3041/19, 16 February 2024, para. 112.

[568] Some commentators note that the textual distinction in Article 11.1. ACHR between the "right to have his honor respected" and "his dignity recognized" could be misleading. Specifically, it might be read as implying that honor is inherent and simply demands respect, whereas dignity, requiring "recognition", is not inherent but instead dependent on a positive act by the state (see Hennebel and Tigroudja, *The American Convention on Human Rights: A Commentary*, 398). However, this interpretation is counterbalanced by the Preamble of the American Declaration of the Rights and Duties of Man (referenced in the Preamble of the ACHR) which affirms the inherent nature of human dignity within the Inter-American system.

of *dignity as bodily integrity* examined earlier, where a link between dignity and bodily integrity could be at least partially inferred from the wording of Article 5 ACHR (right to humane treatment).[569]

Given that Article 11.1. ACHR refers to dignity explicitly, its widespread use in the jurisprudence under that article is unsurprising. That said, the concept features prominently not only in relation to Article 11.1. ACHR but across the jurisprudence on Article 11 ACHR more broadly. In fact, the IACtHR has stated that Article 11 ACHR, as a whole:

> "protects one of the most fundamental values of the human being, understood as a rational being; and this is recognition of his or her dignity".[570]

This statement makes it clear that human dignity is construed as the principal value underpinning the aim and purpose of Article 11 ACHR in general. On that note, a striking finding follows from a comparison between the original Spanish title of the article and its English translation: while the English version is titled "Right to Privacy," the Spanish title reads "Protección de la Honra y de la Dignidad," which translates literally to "Protection of Honor and Dignity". Thus, the English title emphasizes the guarantees expressed in Article 11.2. ACHR, while the Spanish title reflects the focus of Article 11.1. ACHR and, importantly, underscores dignity as highly relevant to the guarantees under that provision as a whole. Taken together, the two versions of the title not only illustrate the breadth of the scope of Article 11 ACHR but also indicate the central role that the concept of human dignity plays in the regional understanding of the right to private life more broadly.

Despite the text of Article 11 ACHR not mentioning the concept of autonomy directly, thus precluding an inferred reading of *dignity as personal autonomy* therein, one finds expressions of this construction in broader elaborations by the IACtHR on the content of the

[569] See above in Section 3.1., pp. 93-94.

[570] IACtHR, *I.V. v. Bolivia*, Series C No. 329, 30 November 2016, para. 149.

guarantees under that article. Expanding on the article's distinct paragraphs, the IACtHR has stated that the first paragraph, which contains the article's only explicit reference to dignity, encompasses:

> "a universal clause of protection of dignity, which is based on both the principle of the autonomy of the individual, and the idea that all individuals should be treated equally, as ends in themselves in accordance with their intentions, will and the decisions they take about their life".[571]

This statement by the IACtHR provides unmistakable support for a close conceptual relationship between dignity and autonomy. Moreover, its framing of individual autonomy as integral to the protection of dignity signals *dignity as personal autonomy* in use. Further validation of this can be found in the IACtHR's observation that:

> "a crucial aspect of the recognition of dignity is every human being's possibility of self-determination and free choice of the options and circumstances that give a meaning to his or her existence in keeping with their own choices and beliefs. In this context, the principle of the autonomy of the individual plays an essential role [...]".[572]

Taken together, these statements show that, despite the absence of a textual link between dignity and autonomy in Article 11 ACHR, the general presence of *dignity as personal autonomy* in the Inter-American system is firmly established in the IACtHR's interpretation of that provision. This remains, for now, a general observation. A closer look at the jurisprudence under the separate limbs of Article 11 ACHR in the sections that follow will elucidate this construction of the concept of human dignity in more detail.

[571] *I.V. v. Bolivia*, para. 149.

[572] Ibid, para. 150.

5.2. *Dignity as Personal Autonomy* in Private Life

Both Article 8 ECHR in the European system and Article 11 ACHR in the Inter-American system spell out private and family life, home, and correspondence as distinct limbs of their respective scopes of protection. However, there are no examples in either European or Inter-American dignity jurisprudence where *dignity as personal autonomy* can be located in relation to correspondence. With respect to home, no such cases exist in Inter-American dignity jurisprudence, and only one appears in the European system.[573] Consequently, dignity jurisprudence in both regions engages with *dignity as personal autonomy* primarily in the context of private and family life.

In addition to the four limbs mentioned above, Article 11.2. ACHR extends protection by prohibiting unlawful attacks on one's honor and reputation. This brings the total number of references to the notion of honor in Article 11 ACHR to two, as Article 11.1. ACHR establishes the right to have one's honor respected and dignity recognized. Because of this, Inter-American dignity jurisprudence offers substantial material for examining the concept in connection with the notion of honor under both paragraphs of Article 11 ACHR. By contrast, European dignity jurisprudence is considerably more modest in this regard. Although there are some indications of a conceptual relationship between dignity and reputation—even though "reputation" is not explicitly mentioned in Article 8 ECHR—no cases demonstrate a similar connection between dignity and honor.

With this in mind, three specific facets of *dignity as personal autonomy* are distinguished and explored in the sections below: (1) its connection to individual self-esteem and reputation;

[573] See ECtHR, *Khadija Ismayilova v. Azerbaijan*, App. Nos. 65286/13 and 57270/14, 10 April 2019, para. 116, where the ECtHR held that the unauthorized entry into applicant's home and the installation of wires and hidden video cameras constituted a "serious, flagrant and extraordinarily intense invasion of her private life […] in the sanctity of her home" and amounted to "an affront to human dignity".

(2) its role as an expression of an individual's right to make life choices free from external interference; and (3) its function as an assertion of the right to bodily autonomy.

As the first layer, *dignity as personal autonomy* is articulated in both regional systems as a strongly relational attribute of the human being, shaped by how one views oneself as a bearer of dignity—through honor, self-worth, and self-esteem—in relation to how one is perceived by others, that is, through reputation and honor. At first glance, the connection between dignity and autonomy may seem obscure in this context. However, a closer look at the interplay between self-esteem and reputation reveals a link with personal autonomy in relation to one's social identity. Individual self-esteem is closely tied to reputation: how one perceives oneself is influenced by how one believes others perceive them. In this way, a positive reputation reinforces a stable sense of self-worth, whereas attacks on one's reputation can diminish it. Maintaining some degree of control over one's public image, then, is vital to preserving one's sense of self-esteem. Feelings of self-worth and esteem are undoubtedly components of an individual's self-respect as a person with dignity. It follows that, *dignity as personal autonomy* implies respect and recognition of an individual's autonomy over their social identity and public self-representation.

The second layer of *dignity as personal autonomy* in European and Inter-American dignity jurisprudence relates to an individual's right to make life choices free from external interference—their right to self-determination in matters of private life in the strict sense. It draws on an individual's capacity to make autonomous decisions in personal affairs, such as relationships and lifestyle choices, and supports individual decision-making on private life matters as integral to one's self-expression and personal development.

The third layer of *dignity as personal autonomy* appears in both systems' dignity jurisprudence in relation to the notion of bodily autonomy, grounded in the idea that the body is a site of an individual's autonomous decision-making. Specifically, the concept of dignity in

this context grounds the principle of patients' informed consent in medical matters. As discussed in Chapter 2, this understanding rests on a distinction between bodily integrity and bodily autonomy, whereby the former refers to the protection from bodily harm caused by external interference with the body, while the latter addresses an individual's control over decisions concerning their own body specifically.[574] It is the latter—autonomy over bodily decisions—that is discussed under the label of *dignity as personal autonomy*.

5.2.1. Honor, Reputation, and Self-Esteem

In the Inter-American system, Article 11 ACHR explicitly includes reputation within its scope of protection. By contrast, Article 8 ECHR in the European system does not list reputation among the protected elements, though as the following will show, the ECtHR has established a link between dignity and reputation through its jurisprudence. Unlike Article 11 ACHR, Article 8 ECHR also omits any reference to honor. However, because Inter-American dignity jurisprudence closely connects the concepts of reputation and honor, its case law on honor will also be examined below. In both systems, jurisprudence on the interrelation between dignity and reputation implicitly suggests that individual self-esteem is part of this equation. For that reason, the layer of *dignity as personal autonomy* examined in this section is framed to encompass honor, reputation, and self-esteem collectively.

Starting with the European jurisprudence, the ECtHR has held that:

> "the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life [...] which covers also the psychological well-being and dignity of a person."[575]

[574] See above in Section 2.3.2., pp. 80-82.

[575] ECtHR, *Miljevič v. Croatia*, App. No. 68317/13, 25 September 2020, para. 49; *Wojczuk v. Poland*, App. No. 52969/13, 9 March 2022, para. 69.

For one, this statement reflects the ECtHR's well-established interpretation of the scope of private life protections as extending to dignity.[576] Particularly relevant, however, is its articulation of reputation as part of the broader protection of private life in general, and as encompassing psychological well-being and dignity as integral parts of that protection, in specific. Furthermore, in a string of case law addressing the tension between freedom of expression under Article 10 ECHR and the right to protection of reputation under Article 8 ECHR, the ECtHR has explicitly noted that:

> "the reputation of an individual concerning his or her social status […] might have repercussions on one's dignity".[577]

Similar language to this remark appears elsewhere in European jurisprudence, when the ECtHR refers to "the reputation of an individual as a member of society"[578] as likely having implications for their human dignity.

It follows that the connection between the concepts of dignity and reputation is clearly articulated in European jurisprudence. That said, the precise nature of the threshold at which an attack on reputation may be deemed to infringe on individual dignity remains opaque: it is unclear what specific features of reputational harm qualify it as a violation of dignity. When discussing the threshold for engaging Article 8 ECHR, the ECtHR consistently emphasizes that an interference with reputation must:

> "attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life".[579]

[576] See *F.O. v. Croatia*, para. 57; and *Špadijer v. Montenegro*, para. 80.

[577] ECtHR, *UJ v. Hungary*, App. No. 23954/10, 19 October 2011, para. 22; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, App. No. 22947/13, 2 May 2016, para. 66; similar in *Wojczuk v. Poland*, para. 71.

[578] ECtHR, *Margulev v. Russia*, App. No. 15449/09, 8 January 2020, para. 45; *Freitas Rangel v. Portugal,* App. No. 78873/13, 11 April 2022, para 53.

[579] *Miljevič v. Croatia*, para. 49.

However, no clear benchmarks have been set regarding the level of seriousness required for an attack on one's reputation to trigger Article 8 ECHR protections related to an individual's well-being and dignity.

According to the Cambridge Dictionary, reputation is "the opinion that people in general have about someone or something, or how much respect or admiration someone or something receives, based on past behaviours or character."[580] In the common usage of the word, reputation refers to one's public image in the eyes of others. By contrast, the two above-mentioned statements by the ECtHR emphasize that the individual's reputation as a member of society—that is, their image in the eyes of others as a member of a society—is linked to their dignity. Although not explicitly stated as such, it can be inferred that what is at stake in the face of reputational harm is the level of respect and value others place on the individual. Damage to reputation may weaken a person's sense of belonging and validation within the community, and social standing, in turn, influences one's self-worth. Consequently, harm to reputation can undermine an individual's self-esteem by eroding both their self-respect and the regard they receive from others.

So far, the review of *dignity as personal autonomy* in relation to honor, reputation, and self-esteem in European dignity jurisprudence has focused on matters of reputation alone. This is because the conceptual relationship between dignity and honor has not been addressed in European dignity jurisprudence so far—there is no case in which the two are expressly linked. This is not to say that such a relationship is negated, but only to note that, currently, there is no textual evidence of its recognition. There is, however, a notable recognition of the connection between dignity and self-worth found in cases concerning statements that demean an individual's core identity and thus erode their self-worth. The ECtHR has observed that

[580] "Reputation," *Cambridge Dictionary*, accessed July 29, 2025.

expressions having a "significant impact on the feelings of self-worth and self-confidence"[581] fall within the scope of Article 8 ECHR, indicating that dignity within private life includes protection from language capable of "humiliating and belittling [them] in the eyes of others"[582]. In this way, the protection of dignity is concerned not only with how individuals are perceived socially but also with safeguarding their intrinsic worth, ensuring they are shielded from expressions that erode their self-respect.

Turning to the Inter-American system, the IACtHR has stated that reputation "refers to the opinion that the others have of a person"[583] and that reputational harm occurs "as a result of false or erroneous information that is disseminated without justification and that distorts the public opinion of an individual".[584] On the link between reputation and dignity, the IACtHR has further stressed that reputation is:

> "closely related to human dignity insofar as it protects the individual against attacks that restrict the individual's status in the public or collective sphere".[585]

As such, little interpretive work is needed to establish the conceptual relationship between dignity and reputation in the Inter-American context, as that connection is affirmed explicitly. The IACtHR's emphasis on reputational harm as affecting an individual's status in the public sphere echoes the above-noted similar construction in European dignity jurisprudence: it highlights the significance of a person's external image in shaping their social standing and, by extension, their relations with others.

As a result, both the European and the Inter-American dignity jurisprudence emphasize reputation as a deeply relational notion, one that affects an individual's dignity due to its

[581] ECtHR, *Nepomnyaschiy and Others v. Russia*, App. Nos. 39954/09 and 3465/17, 30 August 2023, para. 60.

[582] *F.O. v. Croatia*, para. 60.

[583] IACtHR, *Mémoli v. Argentina*, Series C No. 265, 22 August 2013, para. 124.

[584] *Flor Freire v. Ecuador*, para. 155.

[585] Ibid.

consequences for their status in society and the public sphere. However, this harm is, first and foremost, connected to one's public image and therefore contingent on how others perceive the individual, rather than how the individual sees themselves. Accordingly, the construction of the relationship between reputation and dignity in both regional systems highlights the external aspects of one's dignity as something whose perception can shape the individual's social relations and public standing.

This leads to an important finding: human beings, as possessors of dignity, deserve to be seen for who they truly are, or more precisely, they deserve not to be seen as who they are not. This understanding of reputation in both European and Inter-American dignity jurisprudence thus relates to the idea of truthfulness and authenticity in one's public image. It underscores that respect for human dignity entails protecting individuals from distortions in how they are perceived by others, that is, distortions that could obscure or misrepresent who they are.

Turning to the notion of honor, it is important to recall that Article 11 ACHR in the Inter-American system refers to it twice: once in Article 11.1. ACHR[586] and again in Article 11.2. ACHR.[587] Moreover, the right to have one's honor respected under Article 11.1.ACHR is interpreted by the IACtHR as relating to:

> "the esteem or deference with which each person should be treated by [those] who know him and interact with him, based on his human dignity".[588]

Evidently, in this excerpt as well, honor is construed as a relational concept, for it concerns the treatment of an individual by others. As pointed out by the IACtHR, the esteem and deference owed to individuals by others derives from their inherent dignity. This framing of honor, understood as inherent in dignity and guiding how people treat one another, is a compelling

[586] Article 11.1. ACHR: "Everyone has the right to have his honor respected and his dignity recognize."

[587] Article 11.2. ACHR: "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."

[588] *Flor Freire V. Ecuador*, para. 154.

expression of the Inter-American conception of dignity and one that, despite its simplicity and clarity, is rarely articulated so directly in dignity jurisprudence.

In addition to these strong relational implications of the notion of honor, the IACtHR also describes it as having a significant internal dimension, given its impact on an individual's "self-esteem and self-worth".[589] Thus, honor in the Inter-American reading has a dual, external-internal structure: it draws on the human person as a relational being and their dignity as a justification for respectful treatment by others, while also emphasizing how that treatment influences their sense of personal worth. Read this way, the protection of honor affirms both the social and inner dimensions of dignity, linking one's public identity with the foundational sense of self-respect and personal identity. Honor, as endorsed in Inter-American dignity jurisprudence, thus serves as a bridge between public perception and a person's internal self-conception. This duality echoes some aspects of how both regional systems treat the relationship between dignity and reputation. In both systems' approaches, these relationships are ultimately concerned with an individual's self-worth: it is the individual's self-assessment—the way they perceive and feel their own worth within the broader social fabric—that motivates protections against reputational harm and instructs how others are expected to treat them based on their image as, first and foremost, bearers of dignity. As such, dignity jurisprudence in both systems illuminates a holistic understanding of dignity, anchored in both individual self-respect and recognition by others.

In sum, regional jurisprudence on *dignity as personal autonomy* in relation to honor, reputation, and self-worth shows that the notions of reputation and honor are avenues through which individuals retain control over how they are represented in society. This framing is directly tied to the concept of autonomy, which posits an individual as capable of shaping how they are perceived by others, an essential aspect of their self-determination. Thus, reputational

[589] *Mémoli v. Argentina*, para 124.

harm and attacks on honor undermine an individual's autonomy by stripping them of the ability to represent themselves truthfully. Living autonomously, therefore, requires the assurance that one's social image will not be distorted by false or damaging claims. Such harm affects not only a person's external status but also their internal self-esteem, both of which are necessary for an autonomous life. As such, a comprehensive concept of autonomy characterizes both the European and the Inter-American systems—one that includes not only an individual's freedom of choice but also their right to preserve their public identity, self-worth, and social standing.

5.2.2. Self-Determination in Private Life

To begin mapping the European and Inter-American use of *dignity as personal autonomy* in relation to the notion of self-determination in matters of private and family life, some previously introduced statements by the ECtHR and the IACtHR merit reiteration.

As noted above, the ECtHR has established that states' positive obligations under Article 8 ECHR in relation to the right to respect for private life include "respect for human dignity,"[590] and has underlined that the notions of personal autonomy and dignity are "important to have in mind"[591] in construing the scope of private life. Additionally, the ECtHR has explicitly affirmed that "the notion of personal autonomy is an important principle underlying the interpretation"[592] of the guarantees under Article 8 ECHR. Taken together, these statements reveal an obvious conceptual relationship between dignity, personal autonomy, and private life in the context of Article 8 ECHR. However, the ECtHR also frequently affirms a broader endorsement of dignity and autonomy as foundational values of the ECHR system as a whole. For instance, it has noted that "the very essence of the Convention is respect for human dignity

[590] *H. v. Finland*, para. 37.

[591] *Avram and Others v. Moldova*, para. 36.

[592] ECtHR, *Christine Goodwin v. the UK*, App. No. 28957/95, 11 July 2002, para. 90; *I. v. the UK*, App. No. 35680/94, 11 July 2002, para. 70; *Van Kück v. Germany*, App. No. 35968/97, 12 June 2003, para. 69.

and human freedom,"[593] which "necessarily includes a person's freedom to make his or her own choices".[594] While this broader framing underscores the role of dignity and autonomy as central to the ECHR regime as a whole, it is precisely under Article 8 ECHR that references to dignity appear most often in European dignity jurisprudence, second only to Article 3 ECHR.

In the Inter-American system, the IACtHR echoes a similar conceptual linkage between dignity and autonomy. As previously noted, the IACtHR has defined the universal clause protecting dignity under Article 11.1. ACHR to be:

> "based on both the principle of the autonomy of the individual, and the idea that all individuals should be treated equally [...] in accordance with their intentions, will and the decisions they take about their life".[595]

Through this comment, the IACtHR presents a conception of human dignity that is tightly intertwined with the notion of personal autonomy. The right to recognition of one's dignity, as guaranteed under Article 11.1. ACHR, is framed as a right to have one's autonomous decision-making respected. For the IACtHR, then, recognition of one's dignity is tantamount to recognizing them as capable and competent decision-makers. This view is further consolidated in the following statement by the IACtHR:

> "a central aspect of the recognition of dignity is constituted by the possibility of all human beings for self-determination and [the possibility] to freely choose the options and circumstances that give a meaning to their existence, based on their own choices and convictions."[596]

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[593] ECtHR, *Pretty v. the UK*, App. No. 2346/02, 29 July 2002, para. 65; *El-Masri v. Macedonia*, App. No. 39630/09, 13 December 2012, para. 248; *Husayn (Abu Zubaydah) v. Poland*, App. No. 7511/13, 16 February 2015, para. 532; *Al Nashiri v. Poland,* App. No. 7511/13, 16 February 2015, para. 538; *Enver Şahin v. Turkey*, App. No. 23065/12, 2 July 2018, para. 70; *Abu Zubayda v. Lithuania,* App. No. 46454/11, 8 October 2018, para. 664; *Al-Hawsawi v. Lithuania*, App. No. 6383/17, 16 April 2024, para. 235.

[594] *Enver Sahin v. Turkey*, para. 70.

[595] *I.V. v. Bolivia*, para. 149. Similar in IACtHR, *Pavez Pavez v. Chile*, Series C No. 449, 4 February 2022, para. 57.

[596] *Poblete Vilches et al. v. Chile*, para. 168. Similar in *I.V. v. Bolivia*, para. 150.

This passage leaves little ambiguity: personal autonomy—understood as self-determination in life choices—is not merely a component of the regional conception of human dignity, but nothing less than central to it. Reinforcing this, the IACtHR has elsewhere repeated this reading of *dignity as personal autonomy* when asserting that "everyone is free and autonomous to live in a way that accords with their values, beliefs, convictions and interests".[597]

Turning to the more specific elaborations of *dignity as personal autonomy* in both regional systems, the concept of private life must first be unpacked in its respective regional renderings. Again, neither Article 8 ECHR nor Article 11.2. ACHR, which establish the general protection of private life, refer to the concept of dignity. Nonetheless, jurisprudence under both provisions demonstrates frequent reliance on it.

In European dignity jurisprudence, the ECtHR construes the concept of private life as "a broad term not susceptible to exhaustive definition,"[598] and in relation to the concept of dignity, in particular, observes that private life:

> "includes a person's physical and psychological integrity [...] and extends to other values such as well-being and dignity, personality development and relations with other human beings".[599]

Another frequently cited formulation by the ECtHR describes Article 8 ECHR as protecting "a right to personal development, and the right to establish and develop relationships with other human beings and the outside world".[600]

Similarly, in the Inter-American system, the IACtHR reads the concept of private life as comprising "a series of factors associated with the dignity of the individual,"[601] including "the

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[597] *Pavez Pavez v. Chile*, para. 59.

[598] *F.O. v. Croatia*, para. 57, *Špadijer v. Montenegro*, para. 80; *Miljevič v. Croatia*, para. 49; *Van Kück v. Germany*, para. 69.

[599] *F.O. v. Croatia*, para. 57, *Špadijer v. Montenegro*, para. 80.

[600] *Van Kück v. Germany*, para. 69; *Abu Zubayda v. Lithuania*, para. 664; *Al-Hawsawi v. Lithuania*, para. 235; *Husayn v. Poland*, para. 532; *Al Nashiri v. Poland*, para. 538.

[601] IACtHR, *Artavia Murillo et al. v. Costa Rica*, Series C No. 257, 28 November 2012, para. 143. Similar in *López et al. v. Argentina*, para. 97; and *Pavez Pavez v. Chile*, para. 58.

capacity to develop one's own personality and aspirations, determine one's own identity, and define one's own personal relationships".[602] On the development of personality in particular, the IACtHR has explained that it encompasses "the way in which individuals see themselves and how they decide to project themselves towards others".[603] This construction renders the right to the development of one's personality as comprising an internal dimension, namely, the way in which one sees themselves, as well as an external dimension, that is, how they decide to project themselves to the outside world. As such, the notion of the development of one's personality here is necessarily relational, and these internal and external dimensions are described by the IACtHR as an "essential condition for the free development of the personality".[604] Regarding the facet of defining one's relationships with others, the IACtHR uses wording nearly identical to that of the ECtHR, describing it as "the right to establish and develop relationships with other human beings and with the outside world".[605] Taken together, then, the concept of private life in both regional systems encompasses the right to define one's life path, to develop personally, and to establish and maintain social bonds with others free from undue interference.

On the development of individual identity, the IACtHR has clarified that in its Inter-American reading, identity is "closely related to human dignity, the right to privacy and the principle of personal autonomy".[606] In the European system, the ECtHR has similarly highlighted the centrality of autonomy in the protection of individual identity, stating that:

> "[u]nder Article 8 ECHR of the Convention in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees,

[602] *López et al. v. Argentina*, para. 97. Similar in *Artavia Murillo et al. v. Costa Rica*, para. 143; and *Pavez Pavez v. Chile*, para. 58.

[603] *Pavez Pavez v. Chile*, para. 58. Similar in *Artavia Murillo et al. v. Costa Rica*, para. 143.

[604] *Pavez Pavez v. Chile,* para. 58.

[605] *Artavia Murillo et al v. Costa Rica*, para. 143; *López et al. v. Argentina*, para. 97; *Pavez Pavez v. Chile*, para. 58.

[606] *Pavez Pavez v. Chile*, para. 61.

> protection is given to the personal sphere of each individual, including the right to establish details of their identity *as individual human beings* [emphasis added]".[607]

Additionally, the IACtHR has expanded on its definition of identity as encompassing "a series of attributes and characteristics that *individualize a person in society* [emphasis added],"[608] noting that the right to exercise one's individuality in this sense implies "[a] legitimate authority to establish the exteriorization of [one's own] persona according to their most intimate convictions".[609] The added emphases on "as individual human beings" in the words of the ECtHR and "individualize a person in society" in the phrasing of the IACtHR underscore that protection is afforded to the uniqueness and distinctiveness of each individual, a quality that deems the individual to be more than a generic member of society at large. It follows that in both systems the broad protection of private life entails a recognition of, and respect for, individuals' distinct narratives, values, and characteristics, which are to be safeguarded through the protection of one's personal autonomy.

Furthermore, the references to "details of their identity" by the ECtHR and "most intimate convictions" by the IACtHR in the above-quoted excerpts imply that *dignity as personal autonomy* under Article 8 ECHR and Article 11 ACHR involves the freedom to cultivate one's identity and relationships in ways that reflect the person's personality, experiences, and choices. In this light, there is a case to be made that the protection of private life under both regional conceptions extends beyond mere shielding of the individual from state intrusion, to resisting homogenization that might dilute or suppress individual self-expression.

That said, despite the ample body of jurisprudence on the protection of an individual's life choices under Article 8 ECHR and Article 11 ACHR, examples where *dignity as personal autonomy* is directly and explicitly invoked remain scarce. While both the European and Inter-

[607] *Christine Goodwin v. the UK*, para 90; *I. v. the UK*, para. 70.

[608] *Pavez Pavez v. Chile*, para. 61.

[609] *Pavez Pavez v. Chile*, para. 62.

American regional (quasi-) judicial bodies frequently reference dignity and autonomy in outlining the broader aims of private life protections, they rarely engage with these concepts in detailed analyses of specific legal issues. As a result, explicit articulations linking dignity, autonomy, and a particular facet of private life in concrete contexts are difficult to find. Whether this is due to the already well-established conceptual link between these notions in general terms or whether it suggests that certain aspects of private life are more closely tied to dignity than others, remains speculative. Currently, the dignity jurisprudence of both systems offers no clear indication of either explanation.

One notable exception where dignity and autonomy have been explicitly linked to a specific aspect of private life in both regions is in relation to sexual and gender identity. In *I. v. the UK,*[610] after finding that no demonstrable harm to public interest would result from changes to the legal status of transsexual persons, the ECtHR held that:

> "society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them".[611]

By framing such societal accommodation as a reasonable expectation, the ECtHR construes the protection of *dignity as personal autonomy* in relation to gender and sexual identity as a value worth preserving even when it challenges prevailing social norms. This reinforces the broader view that dignity is "inherent in the spirit of the Convention,"[612] and that dignity and autonomy, taken together, are central to defining the scope of Article 8 ECHR.

Another illustrative example from the European system on this point is *Van Kuck v. Germany,*[613] where the ECtHR held:

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[610] ECtHR, *I. v. the UK*, App. No. 35680/94, 11 July 2002.

[611] Ibid*,* para. 71.

[612] ECtHR, *Lacatus v. Switzerland*, App. No. 14065/15, 19 April 2021, para. 57.

[613] ECtHR, *Van Kück v. Germany*, App. No. 35968/97, 12 June 2003.

> "the very essence of the Convention being respect for human dignity and human freedom, protection is given to the right of transsexuals to personal development".[614]

Here, the link between dignity and the right of transsexuals to personal development is made explicit. Moreover, the ECtHR highlights this protection as rooted in the foundational principles of the ECHR itself—human dignity and freedom—thereby echoing the core premise of *dignity as personal autonomy*: that dignity entails a commitment to personal self-determination and serves as a normative anchor for protecting individual autonomy.

In a similar vein to the above statement by the ECtHR in *I. v. the UK*, the IACtHR has affirmed that in the Inter-American context:

> "the State and society must respect and ensure the individuality of each person, as well as the right to be treated in keeping with the essential aspects of their personality, with no limitations other than those imposed by the rights of other persons […] one of the essential components of any life plan and of the individualization of the person is precisely their gender and sexual identity".[615]

This endorsement by the IACtHR echoes the position taken by the ECtHR, showing that both systems regard gender and sexual identity as essential components of personal identity, deserving of protection in connection with dignity, so long as the rights of others are not violated.

Another notable exception to the overall lack of explicit invocations of *dignity as personal autonomy* across the two systems relates to the interplay between the effective enjoyment of the right to life and personal autonomy on the one hand, and access to a minimum level of subsistence on the other. In *Lacatus v. Switzerland,*[616] the ECtHR examined the imposition of a fine on a poor and vulnerable Roma woman for begging in the street. In its reasoning, the ECtHR first stated that:

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[614] *Van Kück v. Germany*, para. 69.

[615] *Pavez Pavez v. Chile*, para. 62.

[616] ECtHR, *Lacatus v. Switzerland*, App. No. 14065/15, 19 April 2021.

> "The Court takes the view that a person's dignity is severely compromised if he or she does not have sufficient means of subsistence".[617]

Importantly, this remark stands out as a rare instance of the ECtHR explicitly addressing dignity in the context of material resources required for survival, making it a noteworthy addition to European dignity jurisprudence more broadly. In essence, the ECtHR here delineates dignity as deeply connected to material well-being, affirming that it is compromised when individuals lack the basic resources necessary for life.

After establishing this connection, the ECtHR observed that through the act of begging "the person concerned is *adopting a particular way of life* with the aim of rising above an inhumane and precarious situation [emphasis added]" and ultimately concluded that, given the applicant's vulnerability she "had the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs through begging."[618] Describing begging as an effort to rise above an inhumane and precarious existence underscores the role of personal autonomy in navigating conditions of vulnerability. In this sense, *Lacatus v. Switzerland* affirms *dignity as personal autonomy* by recognizing the applicant's choice to beg as a legitimate expression of her self-determination, explicitly grounded in her human dignity.

Though *Lacatus v. Switzerland* remains exceptional in the jurisprudence of the ECHR for its endorsement of access to basic subsistence as a dignity-based requirement, this acknowledgment has been a recurring theme in the decisions of the ECSR. More specifically, in its interpretation of Article 13 of the European Social Charter (right to social and medical assistance),[619] the ECSR consistently refers to the concept of human dignity. For instance, it has emphasized that individuals must be able to access sufficient resources "in order to live in

[617] *Lacatus v. Switzerland*, para. 56.

[618] Ibid, paras. 56, 107.

[619] Article 13 ESC: "Anyone without adequate resources has the right to social and medical assistance."

a manner compatible with human dignity,"[620] particularly in situations where "no other means of reaching a minimum income level consistent with human dignity are available to that person".[621] Similarly, the ECSR often stresses that "living in a situation of poverty [...] violates the dignity of human beings".[622] Regarding essential amenities, it frequently underlines the right to shelter as "crucial for the respect of every person's human dignity"[623] and holds that sheltering facilities must enable "living in keeping with human dignity".[624]

As regards the notion of a minimum level of subsistence in Inter-American dignity jurisprudence, it is important to note that case law on basic human needs in this sense typically falls under the doctrine of "dignified life" (vida digna) and is therefore not included in the set of Inter-American dignity jurisprudence examined in this dissertation. This exclusion follows the methodological approach adopted in this dissertation, whereby only those cases in which the concept of dignity is mentioned directly were included in the corpus of jurisprudence examined. As such, derivations of the word "dignity", as in "dignified" in English or "digna" in Spanish, did not satisfy the selection criteria. Within the Inter-American jurisprudence that did meet the selection filter, only one case—*Muelle Flores v. Peru*[625]—can be discussed in

[620] ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 48/2008, 18 February 2009, para. 37.

[621] *European Roma Rights Centre (ERRC) v. Bulgaria*, para. 38.

[622] ECSR, *International Movement ATD Fourth World v. France*, Complaint no. 33/2006, 5 December 2007, para. 163; *European Roma Rights Centre (ERRC) v. Bulgaria*, paras. 37-38; *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 82/2012, 19 March 2013, para. 56; *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012, 2 July 2014, para. 219; *European Roma Rights Centre (ERRC) v. Ireland*, Complaint No. 100/2013, 1 December 2015, para. 185.

[623] *Defence for Children International (DCI) v. the Netherlands*, para. 47; *Conference of European Churches (CEC) v. the Netherlands,* Complaint No. 90/2013, 1 July 2014, para. 137; *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, 26 January 2021, para. 117. Similar in *European Roma and Travellers Forum v. France*, Complaint No. 64/2011, 24 January 2012, para. 118; and *Conference of European Churches (CEC) v. the Netherlands*, para. 141.

[624] ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, 5 December 2007, para. 106; *Defence for Children International (DCI) v. the Netherlands*, para 62.

[625] IACtHR, *Muelle Flores v. Peru*, Series C No. 375, 6 March 2019.

relation to *dignity as personal autonomy* and the idea that a lack of basic subsistence may violate implicit protections of dignity.

In *Muelle Flores v. Peru*, the IACtHR examined a situation in which the applicant had not received pension for 28 years, apart from a brief two years in between of a partial payment, due to the suspension of a private pension scheme. The IACtHR initially held that when "a legally recognized pension is not paid, the rights to social security, personal integrity and human dignity are affected,"[626] thereby establishing a general link between pension payments and dignity. Then, it went on to state that:

> "the lack of financial resources resulting from the failure to pay pension allowances directly undermines the dignity of an older person, since at this stage of life the pension constitutes their main source of income to cover the basic and essential necessities of a human being."[627]

Here, the IACtHR draws a direct connection between an individual's dignity and their ability to meet essential needs, and concludes that:

> "the prolonged absence of the payments inevitably resulted in financial hardship that affected his ability to pay for his basic necessities and, consequently, affected his mental and moral integrity, as well as his dignity".[628]

Accordingly, in this case, the IACtHR underscored a reading of dignity that is closely tied to economic security, affirming that meaningful personal autonomy requires a baseline level of material support. By recognizing that dignity depends not just on formal rights but on the substantive ability to exercise them, the IACtHR affirmed that dignity includes access to the financial means necessary to maintain one's self-determination.

To sum up the two systems' jurisprudence on *dignity as personal autonomy* in relation to private life, it is evident that the links between dignity, personal autonomy, and private life

[626] *Muelle Flores v. Peru*, para. 197.

[627] Ibid, para. 205.

[628] Ibid, para. 207.

are most often expressed in general terms, though consistently and frequently. Both the European and Inter-American jurisprudence clearly establish *dignity as personal autonomy* as a lens for interpreting the scope and guarantees of the right to private life. Still, explicit references linking dignity and autonomy to specific aspects of private life remain rare. One could suggest that because dignity and autonomy are invoked as underlying both systems' interpretation of the concept of private as a whole, any and every aspect of that right, including the full body of case law under Article 8 ECHR and Article 11 ACHR, implicitly demonstrates *dignity as personal autonomy* at work. While this broader interpretation may be tempting, this study refrains from adopting such an ample interpretation of dignity. Still, several general conclusions can be drawn.

First, in both systems, *dignity as personal autonomy* in the context of self-determination in private life reflects a conception of human dignity that empowers individuals as the authors of their personal choices. It involves both internal and external dimensions of personal autonomy. Internally, it affirms the individual's right to build their identity according to their own values, beliefs, and life plans. Externally, it demands recognition and respect for the social expression of that identity in interactions with others. Second, the two systems' dignity jurisprudence illustrates that respect for human dignity is not a purely abstract commitment but requires the creation of legal and social conditions that allow for the free exercise of personal autonomy. This includes safeguards for the individual's freedom to define their identity. Finally, *dignity as personal autonomy* in the two regional expressions supports the idea that human beings are not interchangeable members of a collective but distinct persons whose rights to express and develop themselves must be protected. This emphasis on individual agency reaffirms the value of human dignity as a central concern in both the European and Inter-American regional systems.

5.2.3. Bodily Autonomy

As explained in Chapter 2, the label *dignity as personal autonomy* as an account of the substantive content of the concept of human dignity relates not only to questions of autonomy and self-determination in relation to life choices generally but also extends to decisions concerning one's own body. As such, this layer of *dignity as personal autonomy* is located in proximity to *dignity as bodily integrity*, as both engage with the body as a site of protection. That said, a key conceptual distinction arises in how the body is framed under each of these readings of the concept of human dignity.

Under *dignity as bodily integrity*, the body is treated as a boundary to be protected from harm, particularly from external physical or psychological transgressions. In contrast, *dignity as personal autonomy* conceptualizes the body as a domain for self-determined decision-making. Thus, while in relation to bodily integrity the very transgression of bodily boundaries is what deems a treatment incompatible with human dignity, in relation to bodily autonomy, central is the individual's right to make choices regarding their body. A breach of dignity under the former arises from external transgression, whereas under the latter it results from denying a person the agency to decide.

Accordingly, *dignity as personal autonomy* in relation to bodily autonomy is rooted in a tripartite conceptual relationship between dignity, autonomy, and bodily integrity. This triangular nexus is most evident in both regional systems' jurisprudence on patients' informed consent to medical treatment. In the European system, these issues arise under Article 3 ECHR (prohibition of torture) but also relate to Article 8 ECHR (respect for private life). The ECtHR has broadly established that:

> "even where the refusal to accept a particular treatment might lead to a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity".[629]

In the Inter-American system, this question is addressed under the right to health, protected under Article 26 ACHR. The IACtHR has generally affirmed that informed consent is "a condition *sine qua non* in medical practice"[630] and has characterized it as fundamental to ensuring respect for human dignity.[631]

In the European system, a prime illustration of *dignity as personal autonomy* in this sense appears in ECtHR's jurisprudence on involuntary sterilization. In *V.C. v. Slovakia*, the ECtHR observed that sterilization "bears on manifold aspects of the individual's personal integrity including his or her physical and mental well-being and emotional, spiritual and family life".[632] The ECtHR then acknowledged that sterilization may be legitimate when performed with the individual's request and informed consent, but that:

> "the position is different in the case of imposition of such medical treatment without the consent of a mentally competent adult patient. Such a way of proceeding is to be regarded as incompatible with the requirement of respect for human freedom and dignity, one of the fundamental principles on which the Convention is based."[633]

In this case, the applicant had technically given consent, but it was obtained while she was in an advanced stage of labor, under medication, and, most importantly, without fully understanding what the term "sterilization" meant. The ECtHR concluded that the applicant had not been "fully informed," that seeking her consent under such conditions "did not permit

[629] ECtHR, *V.C. v. Slovakia*, App. No. 18968/07, 8 February 2012, para. 105.

[630] *I.V. v. Bolivia*, para. 159.

[631] See *Poblete Vilches et al v. Chile*, para. 170, where the IACtHR observes informed consent as "fundamental mechanism to achieve the respect and guarantee of different human rights […] such as dignity".

[632] *V.C. v. Slovakia*, App. No. 18968/07, 8 February 2012, para. 106.

[633] Ibid, para. 107.

her to take a decision of her own free will" and was therefore "not compatible with the principles of respect for human dignity and human freedom embodied in the Convention".[634]

Although the ECtHR found a violation of the applicant's rights to bodily integrity under Article 3 ECHR in this case, it also emphasized the relevance of Article 8 ECHR by observing that the concept of private life comprises "the right to respect for both the decisions to have and not to have a child" and that the applicant's sterilization "had repercussions on various aspects of her private and family life".[635] As a clear example of *dignity as personal autonomy*, *V.C. v. Slovakia* shows that the concept of dignity entails not only protection from bodily harm but also respect for autonomous decision-making regarding one's body. This is reflected in the ECtHR's stance on informed consent as a safeguard against "disregard for the patient's right to autonomy and choice as a patient".[636]

Subsequently, in the cases of *N.B. v. Slovakia*[637] and *I.G. and Others v. Slovakia,* the ECtHR reaffirmed its reasoning in *V.C. v. Slovakia*, holding that sterilization procedures without the patient's informed consent were "incompatible with the requirement of respect for her human freedom and dignity"[638] and "grossly disrespectful of her human dignity".[639] Similarly, the ECSR defines free informed consent as "integral to autonomy and human dignity,"[640] reinforcing the view that medical interventions without informed consent violate both.

[634] *V.C. v. Slovakia*, para. 112.

[635] Ibid, paras. 138, 143.

[636] ECtHR, *I.G. and Others v. Slovakia*, App. No. 15966/04, 29 April 2014, para. 118.

[637] *N.B. v. Slovakia*, App. No. 29518/10, 12 September 2012.

[638] *I.G. and Others v. Slovakia*, para. 122. Similar in *N.B. v. Slovakia*, para. 74.

[639] *N.B. v. Slovakia*, para. 77.

[640] ECSR, *Transgender Europe and ILGA-Europe v. the Czech Republic*, Complaint No. 117/2015, 15 May 2018, para. 82.

In the Inter-American system, *dignity as personal autonomy* in relation to bodily autonomy and informed consent to medical procedures appears primarily in jurisprudence under Article 26 ACHR, which concerns the progressive development of economic, social, and cultural rights. Notably, this occurs in connection with the right to health, rather than under Article 11 ACHR (right to privacy) or Article 5 ACHR (right to human treatment), as is common in the analogous European jurisprudence. Although Article 26 ACHR does not mention the right to health, the IACtHR has confirmed that it is indeed protected under this provision in *Poblete Vilches et al v. Chile*.[641]

Unlike in the European context, where involuntary sterilization serves as a prominent subject matter linking informed consent and dignity, there is no single thematic anchor to this body of jurisprudence in the Inter-American jurisprudence. Instead, the relevant dignity jurisprudence spans a variety of medical treatments. That said, both systems converge on a similar understanding of the triangular relationship between dignity, autonomy, and bodily integrity through their elaborations on the principle of informed consent.

Importantly, the IACtHR has acknowledged:

> "the relationship that exists between obtaining informed consent before performing any medical act, and the autonomy and self-determination of the individual, as part of the respect and guarantee of the dignity of every human being".[642]

This statement affirms two core elements of *dignity as personal autonomy*. First, it emphasizes autonomy and self-determination as expressions of inherent human dignity and, second, it presents these concepts as the basis for the necessity to obtain informed consent prior to any medical intervention.

[641] IACtHR, *Poblete Vilches v. Chile*, Series C No. 349, 8 March 2018, para. 110.

[642] *Poblete Vilches v. Chile*, para. 170. Similar also in IACtHR, *Guachalá Chimbo et al. v. Ecuador*, Series C No. 423, 26 March 2021, para. 119.

Elsewhere in the Inter-American jurisprudence the IACtHR has described informed consent as indispensable for ensuring "the practical effects of the norm that recognizes autonomy as an essential element of the dignity of the person."[643] Similarly, it has characterized informed consent as "a fundamental mechanism to achieve the respect and guarantee of different human rights recognized by the American Convention, such as dignity,"[644] alongside rights to personal integrity (Art. 5 ACHR) and private and family life (Art. 11 and Art. 17 ACHR).[645] Taken together, these statements illustrate that informed consent is not only a procedural requirement but a substantive expression of the concept of human dignity in practice.

In conclusion, both the European and Inter-American systems invoke the concept of human dignity to underscore bodily autonomy as an expression of personal self-determination. Their dignity jurisprudence makes clear that informed consent is central to safeguarding dignity in medical contexts. As such, the tripartite conceptual link between dignity, bodily integrity, and bodily autonomy serves to affirm *dignity as personal autonomy* as a vital construction in both regional human rights frameworks.

5.3. *Dignity as Personal Autonomy* in African Jurisprudence

As disclosed in the introduction of this chapter, the African regional system currently does not reflect a jurisprudential construction of *dignity as personal autonomy*. In other words, there is no identifiable case in the jurisprudence of either the ACtHPR or the ACmHPR where the concepts of dignity and autonomy are explicitly linked in a manner comparable to the *dignity as personal autonomy* construction observed in the European and Inter-American systems.

[643] *I.V. v. Bolivia*, para. 159; *Guachalá Chimbo et al. v. Ecuador*, para. 118.

[644] *Poblete Vilches et al v. Chile*, para. 170.

[645] See, for instance, *Poblete Vilches et al. v. Chile*, paras. 168-173.

This absence presents a notable divergence from the other two regional systems, where dignity and autonomy are consistently invoked in proximity in jurisprudence on private life, identity, and patients' informed consent in medical matters. While this divergence may appear to challenge the idea of a transregional concept of human dignity—since it points to a lack of agreement on a core premise of its substantive content—it must be assessed with appropriate contextual and methodological care.

Firstly, the volume of jurisprudence within the African system, as a matter of fact, is significantly smaller than that of the other two regions. The ACtHPR delivered its first judgment only in 2009, several decades after the European and Inter-American systems began developing their jurisprudence in 1960 and 1981, respectively. Consequently, the lack of manifestations of *dignity as personal autonomy* in African regional dignity jurisprudence could be attributed to the still early stages of jurisprudence in the region more broadly.

Secondly, and more significantly, the ACHPR does not contain the same textual elements that facilitate the emergence of *dignity as personal autonomy* in the other two systems. Specifically, the examination of dignity jurisprudence in the European and the Inter-American systems showed that *dignity as personal autonomy,* primarily*,* is an element of both regions' interpretation of the right to private life. Unlike Article 8 ECHR in the European system or Article 11 ACHR in the Inter-American system, the ACHPR does not include a right to private life, which has served as the key textual foundation for constructing protections of personal autonomy as an element of human dignity in the other two regions.

As such, the ACHPR in the African system does not entrench a legal protection of the kinds of private life interests, such as self-determination, individual identity, relationship with

the outside world (apart from family life covered in Article 18 ACHPR)[646] that are foundational to the judicial expressions of *dignity as personal autonomy* in the other two systems. Furthermore, African dignity jurisprudence currently does not articulate the tripartite link between the concepts of human dignity, bodily integrity, and personal autonomy. That is, the principle of informed consent has not yet emerged as a dignity-based requirement in African regional jurisprudence.

It should be emphasized, however, that this absence in the jurisprudence does not imply that African philosophical or normative traditions lack robust accounts of personhood in relation to individual autonomy. These broader conceptual questions will be considered in Chapter 6.

5.4. Interim Conclusions

The survey of European and Inter-American regional dignity jurisprudence reveals three distinct layers that together comprise a shared construction of *dignity as personal autonomy* across both regional systems.

First, *dignity as personal autonomy* emerges in relation to the protection of one's reputation and honor, under Article 8 ECHR in the European system and Article 11 ACHR in the Inter-American system. In both systems, the protection of reputation and honor is rooted in the understanding that an individual's public image is intimately tied to their self-esteem and sense of self-worth. The jurisprudence suggests that how one sees oneself is deeply shaped by how one believes others see them. Accordingly, harm to one's public image is not only a social

[646] Article 18 ACHPR: "1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. 2. The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community. 3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. 4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."

injury but also an assault on one's dignity, reflecting an implicit recognition of personal autonomy over social identity.

Second, this construction appears in the two systems' jurisprudence on self-determination in matters of private life. Article 8 ECHR and Article 11 ACHR are both interpreted to guarantee a protected sphere of individual decision-making regarding personal matters. This sphere is grounded in a conceptual link between dignity and autonomy: the individual, as a bearer of dignity, is seen as the author of their own life, entitled to define their identity and shape personal relationships. This understanding encompasses both internal and external dimensions: internally, individuals must be free to construct a personal identity in accordance with their own values and life narrative, and externally, that identity must be recognized and respected by others.

Third, both systems demonstrate *dignity as personal autonomy* in relation to bodily autonomy. Here, the concept of human dignity is invoked to affirm the individual's right to make autonomous decisions about their body. This dimension, while related to *dignity as bodily integrity*, is conceptually distinct: rather than focusing on protecting the body from external transgressions, it emphasizes individual control over bodily decisions. This transpires clearly from the requirement of patients' informed consent in medical treatment, established in jurisprudence under Articles 3 and 8 of the ECHR and Article 26 ACHR.

These three distinct layers of *dignity as personal autonomy* reflect a broadly shared understanding of the relationship between the concepts of dignity and personal autonomy in the European and Inter-American dignity jurisprudence. However, since no comparable articulation is currently found in African regional dignity jurisprudence, *dignity as personal autonomy* cannot be said to reflect a shared understanding of the concept of human dignity across the three regional human rights systems of Europe, the Americas, and Africa.

This asymmetry in regional conceptions of *dignity as personal autonomy* raises important questions in the context of this dissertation's aim to delineate a transregional concept of human dignity spanning the conceptual dimensions of bodily integrity, equality, and personal autonomy. With that in mind, the following chapter synthesizes the findings across the three dimensions analyzed in Chapters 3 to 5 and assesses whether a transregional concept of human dignity can be said to exist. This is done by reflecting on both the noticeable transregional convergence around *dignity as bodily integrity* and *dignity as equality*, on the one hand, and the divergent trajectory of *dignity as personal autonomy*, on the other.

Chapter 6.
From Fragments to Form: The Contours of a Transregional Concept of Human Dignity

In this chapter, I return to the central question posed by the dissertation: to what extent can a transregional concept of human dignity be discerned through regional dignity jurisprudence on bodily integrity, equality, and personal autonomy? Chapters 3 to 5 explored how human dignity has been invoked in relation to these three dimensions in the European, Inter-American, and African regional human rights systems. Building on those findings, the task now is to illuminate the shared interpretative patterns in these regional uses of the concept across the three dimensions, and to assess what sort of concept emerges as shared based on those patterns.

Consistent with this dissertation's methodological commitment to *thin universalism*,[647] the idea of a transregional concept pursued here does not presume a full and uniform doctrinal, conceptual, normative, or functional expression of the concept across the three regional systems. Rather, it refers to the combined scope of the overlaps that can be discerned from the invocations of human dignity in relation to bodily integrity, equality, and personal autonomy in the three systems' dignity jurisprudence. In this sense, a transregional concept of dignity is understood to represent the interpretative common ground among the three systems—one that reflects convergences between the regional conceptions of the substantive content of the concept of human dignity—but does not exclude the existence of interpretative disagreement on other parts of the concept that may persist simultaneously.

This chapter begins with a synthesis of the findings from Chapters 3 to 5, highlighting recurring interpretative patterns in how the concept of dignity is read that cut across regional

[647] See above in Section 2.1.2., at 58-62.

boundaries. In doing so, the aim is not to summarize the earlier findings, but rather to identify the patterns that consistently emerge across the three systems and thus point toward a shared reading of the concept of dignity in relation to the three principal dimensions. These patterns are then measured against three types of convergence: doctrinal, conceptual, and normative. Finally, the chapter revisits the overarching research question of this study, assessing whether the observed patterns in regional dignity jurisprudence support the existence of a transregional concept of human dignity at play and what its contours look like, and also reflects on the limitations and implications of those findings.

6.1. Glaring Convergence: The Interdependence with Bodily Integrity

The mapping of regional dignity jurisprudence in relation to bodily integrity in Chapter 3 revealed the concept of human dignity as central to the protection of an individual's bodily integrity across the three regional systems, and thus supports the identification of doctrinal, conceptual, and normative convergence on the concept of human dignity in relation to this dimension.[648]

Doctrinally, convergence clearly emerges from all three systems' common invocation of human dignity in jurisprudence on the absolute prohibition of ill-treatment under Article 3 ECHR in the European system, Article 5 ACHR in the Inter-American system, and Article 5 ACHPR in the African system. This convergence in doctrinal reasoning is particularly notable given the varying textual foundations: in the Inter-American and African systems, the connection between dignity and ill-treatment can be inferred from the language of the relevant provisions because they mention dignity,[649] whereas in the European system such textual connection is absent. Still, European jurisprudence embeds the concept of dignity within the

[648] See above in Section 3.3., pp. 131-133.

[649] See above in Section 3.1., pp. 93-94.

rationale of the prohibition, leading to a shared framing of ill-treatment as incompatible with the inherent dignity of the person across the three systems.

This doctrinal convergence is especially remarkable in regional jurisprudence on detention conditions, specifically in evaluating whether those conditions meet minimum standards.[650] All three systems follow a general pattern of requiring that individuals deprived of liberty be held in detention conditions "compatible with her or his personal dignity".[651] As such, doctrinal convergence on the relationship between the concept of human dignity and the prohibition of ill-treatment is not only observable but indeed glaring throughout regional jurisprudence on *dignity as bodily integrity*.

Conceptually, strong convergence is found in how the three systems understand the protection of bodily integrity as closely bound to human dignity. While terminology varies, a shared interpretative pattern emerges in which dignity is invoked both as the object of protection (*the what*) and as the underlying rationale (*the why*) of the prohibition of ill-treatment. As *the what*, human dignity is what legal protections against transgressions of bodily integrity, ultimately, aim to safeguard: when bodily integrity is violated, it is understood as a violation of human dignity. As *the why*, it functions as the normative justification: such transgressions of bodily integrity are deemed unacceptable because they compromise the wholeness of the body, which derives from respect for the individual's inherent dignity.

Furthermore, dignity jurisprudence across all three regions converges conceptually in a holistic understanding of *the body* as the combined space for both physical and psychological experience of the human body. Especially illuminating in this regard is the transregional convergence in cases of ill-treatment that amounts to degrading treatment, where dignity is

[650] See above in Section 3.2.3., pp. 115-126.

[651] See, for instance, IACtHR, *López Sosa vs. Paraguay*, para. 93; and ACmHPR, *Gabriel Shumba v Zimbabwe*, para. 131. The phrasing in the European system is slightly different - "compatible with respect for his human dignity". For instance, in *Khlaifia v. Italy*, para. 160; *Sukachov v. Ukraine*, para. 85; *Ananyev and Others v. Russia*, para. 141.

consistently recognized as being violated even in the absence of significant physical harm. Here, subjective experiences—such as humiliation, fear, and sense of inferiority—are treated as symptomatic of degrading treatment. This illustrates not only a doctrinal alignment in connecting dignity with the protection of bodily integrity, but also a conceptual convergence in viewing the body as the site of integration between personal subjectivity and the external world. In other words, the body—whose integrity is protected in the name of dignity—is viewed as the locus of both physical and moral personhood across regional dignity jurisprudence.

Normatively, there is agreement across the regions on the importance of protecting bodily integrity out of respect for human dignity. This follows directly from the conceptual convergence described above: the inviolability of bodily integrity is read as an absolute, non-negotiable standard, and ill-treatment is framed as an affront to human dignity. As a result, a shared normative expectation emerges: all persons deserve treatment that respects their bodily integrity and is consistent with their inherent dignity.

Once again, jurisprudence on degrading treatment is particularly illustrative in this regard. All three systems appear to operate within a common normative framework, in which the concept of dignity sets the standard for identifying ill-treatment as degrading. In this context, respect for human dignity serves as a normative threshold: it rules out treatment that inflicts experiences such as humiliation, inferiority, or debasement. As a normative concept across regional dignity jurisprudence on degrading treatment, then, dignity demands that no person be subjected to treatment that evokes such states. This also suggests functional convergence: across the three systems, dignity functions as an anchor for determining the threshold at which ill-treatment becomes degrading.

A test case for assessing the strength of the transregional convergence around *dignity as bodily integrity* is offered by regional jurisprudence on the death penalty. The convergence

here is strongest at the normative level: across the three systems, the death penalty and its associated suffering are understood, whether explicitly or implicitly, as incompatible with the respect owed to human dignity.[652] Conceptually, however, convergence is more moderate: although the death penalty is broadly treated as undermining human worth or bodily integrity, only the African system and the IACmHR in the Inter-American system have explicitly framed this in terms of human dignity. Moreover, doctrinally, divergence is yet more pronounced: only in the African system, and to some extent the Inter-American, is dignity directly invoked in legal reasoning in relation to the death penalty.[653] While full alignment across all three axes of convergence is lacking in this area, the fact that dignity plays a decisive role even in the legally and morally charged context of the death penalty underscores the depth and resilience of the convergence around bodily integrity as a core element of the substantive content of the concept of human dignity.

The assessment of the convergence in regional renderings of *dignity as bodily integrity* thus elucidates doctrinal, conceptual, and normative overlaps alike. Accordingly, a case can be made for the existence of a transregional concept of human dignity, based on the shared understanding that the protection of bodily integrity—through the absolute prohibition of ill-treatment—derives from respect for the individual's inherent human dignity. As such, the identified patterns of convergence support this dissertation's broader claim that the notion of bodily integrity, as a core component of the substantive content of human dignity, is shared as such across the three regional systems.

[652] See above in Section 3.2.3., pp. 126-130.

[653] As laid out above in Section 3.2.3., pp. 126-130, African jurisprudence clearly grounds its reasoning in dignity, applying Articles 4 and 5 ACHPR in tandem. In the Inter-American system, the jurisprudence is split: the IACmHR invokes dignity under Article 5 ACHPR, whereas the IACtHR frames the issue in terms of the right to life under Article 4 ACHR, bypassing the concept of dignity altogether. In Europe, dignity appears in the abolitionist rationale of Protocol No. 13 to the ECHR but is not invoked in the ECtHR's jurisprudence on the death penalty itself.

6.2. Subtle Parallels: Dignity Through Equality

The examination of regional dignity jurisprudence in relation to *dignity as equality* in Chapter 4 revealed consistent, though variably articulated, interpretative readings of the concept of dignity across the three regional systems.[654] The relevant jurisprudence was analyzed through three layers of *dignity as equality*: the principle of non-discrimination, equal legal recognition, and the equal moral worth of individuals. Broadly speaking, across these three layers, strong normative and conceptual convergence is observed in the regional systems' invocation of dignity as underlying the notion of equality between human beings. That said, only partial overlap exists doctrinally in how these normative and conceptual framings are expressed within the respective legal frameworks. Most importantly, the Inter-American and African systems exhibit a strong bi-regional convergence across doctrinal, conceptual, and normative axes, while European jurisprudence is less refined in this respect and thus diverges noticeably from the patterns identified in the other two systems.

Doctrinally, only partial transregional alignment emerges in how the concept of human dignity is used in connection with the principles of non-discrimination and equality before the law. The Inter-American and African systems explicitly place dignity at the core of the rationale behind the prohibition of discrimination (Art. 1.1. ACHR and Art.2 ACHPR, respectively) and the right to equal protection before the law (Art. 24 ACHR and Art. 3 ACHPR, respectively).[655] In contrast, European dignity jurisprudence does not doctrinally link human dignity to Article 14 ECHR, which sets out the general prohibition of discrimination under the ECHR. As such, the ECtHR has so far invoked dignity in this context only in relation to racial discrimination under Article 3 ECHR, specifically where such discrimination constitutes

[654] See above in Section 4.3., pp. 170-174.

[655] See above in Section 4.2.1., pp. 143-152.

degrading treatment.[656] Consequently, transregional doctrinal convergence on this point cannot be established.

A similar pattern of only partial doctrinal convergence appears in relation to the second layer of *dignity as equality*—equal legal recognition. In both the Inter-American and African systems, strong bi-regional convergence can be identified in how the concept of dignity is invoked as closely tied to the right to juridical personality (Art. 3 ACHR and Art. 5 ACHPR, respectively).[657] Jurisprudence in both these systems repeatedly frames the failure to recognize an individual's juridical personality as a violation of human dignity, thus affirming the link between equal legal recognition of the individual's status as a bearer of rights and the concept of dignity.[658] By contrast, in European jurisprudence, no such doctrinal link between dignity and the notions of equality before the law or juridical personality emerges. The only notable exception where legal recognition is framed as a dignity-based requirement appears in the context of legal recognition of same-sex couples.[659] Accordingly, no clear transregional doctrinal convergence on this point can be identified.

Conceptually, however, substantial transregional convergence emerges in how the concept of human dignity is understood as foundational to the notion of equality between human beings. This holds true even in the face of the doctrinal differences in how this relationship is articulated. Although European jurisprudence applies this premise more narrowly—specifically, to racial discrimination and the legal recognition of same-sex couples—it need not be interpreted as indicating a deep conceptual divergence from the other two regions, because the same underlying logic is discernible across the three systems'

[656] See above in Section 4.2.1., pp. 153-156.

[657] See above in Section 4.2.1., pp. 157-159.

[658] For instance, in *Girls Yean and Bosico v. Dominican Republic*, para. 178; ACmHPR, *The Nubian Community in Kenya v. Kenya*, para, 139; and *Open Society Justice Initiative v. Côte d'Ivoire*, para. 140.

[659] See above in Section 4.2.1., pp. 159-161.

jurisprudence: the concept of human dignity supports and demands equality among human beings. This shared logic points to a transregional conceptual convergence—different doors, perhaps, but opening into the same room.

Clear evidence of this conceptual alignment arises from regional dignity jurisprudence on degrading treatment, where the invocations of the concept of dignity in identifying forms of ill-treatment as degrading show that the concept is understood to encompass the idea of equal moral worth of the human being.[660] This follows from the characterization of degrading treatment as a type of ill-treatment that leads the victim to question their self-worth as an equal member of the human family and, ultimately, reinforces the conceptual link between human dignity and the notion of equality of the inherent worth of every human being.

At the normative level, there is significant transregional convergence in the expectations that the regional conceptions of dignity carry in relation to the notion of equality. Regarding the principle of non-discrimination and equality before the law, all three systems establish that discriminatory treatment undermines human dignity, even though variations exist in the clarity and scope of this acknowledgment. The idea that individuals are owed respect through non-discrimination—by virtue of their dignity—emerges as a normative requirement across the three regions, whether in the context of the right to nationality, an individual's legal status in law, or respect for their equal moral worth through the prohibition of degrading treatment. There is therefore a clear normative convergence in reading human dignity as requiring respect for, and recognition of, the individual as a being with equal moral status.

Having identified these interpretative patterns, a shared conceptual and normative framework emerges across the three systems in their understanding of the substantive content of human dignity as encompassing a notion of equality. However, the doctrinal pathways for expressing this premise differ, thus indicating a clear bi-regional doctrinal convergence

[660] See above in Section 4.2.2., pp. 162-170.

between the Inter-American and African systems, while the European jurisprudence exhibits a less entrenched doctrinal linking between the concept of dignity and the notion of equality. Accordingly, there is a substantial, yet partial, transregional convergence on the reading of the concept of dignity as containing the dimension of *dignity as equality.*

6.3. Dignity-Based Self-Authorship as the Limits of Convergence

In its examination of regional jurisprudence on *dignity as personal autonomy*, Chapter 5 showed that, of the three dimensions of the concept explored in this dissertation, personal autonomy is the furthest from reflecting a shared conceptual component of a transregional concept of human dignity. The relevant jurisprudence was analyzed across three layers of *dignity as personal autonomy*: in relation to an individual's honor and reputation, as an expression of an individual's self-authorship in life decisions, and in relation to bodily autonomy. While the Inter-American and European dignity jurisprudence demonstrate strong doctrinal, conceptual, and normative convergence in reading the concept of human dignity as intertwined with the notion of personal autonomy throughout these three layers, African dignity jurisprudence lacks any articulation of this relationship. This section first addresses the convergence between the European and Inter-American systems and then turns to the divergence in African jurisprudence.

There is a striking bi-regional doctrinal convergence between the European and Inter-American systems in invoking the concept of human dignity as a basis for an individual's claim to personal autonomy. Both regions typically express this reading in relation to the right to private life, protected under Article 8 ECHR in the European system and Article 11 ACHR in the Inter-American system. This is particularly evident with regard to the first two layers of *dignity as personal autonomy*—in relation to honor and reputation, and self-authorship of one's life decisions. When it comes to the third layer—personal autonomy through bodily autonomy—the doctrinal expressions of this relationship differ. While European dignity

jurisprudence invokes the concept of dignity as the basis for one's right to bodily autonomy through patients' informed consent in medical decisions under Article 3 ECHR on the prohibition of ill-treatment, the Inter-American system grounds this relationship in Article 26 ACHR, in connection with the right to health.[661] There is thus only partial doctrinal convergence between the two systems in the invocation of *dignity as personal autonomy*.

Conceptually, a strong bi-regional convergence can be identified in how *dignity as personal autonomy* is interpreted in the European and Inter-American systems. With respect to reputation and honor, both systems highlight dignity as closely linked to one's self-worth and self-esteem, which are articulated as being shaped by an individual's reputation and by how the individual believes they are seen by others. In terms of personal autonomy through self-authorship in life decisions, a similarly strong bi-regional conceptual convergence emerges: both systems tie the concept of dignity to a notion of personal autonomy understood as an individual's capacity to author their own life narrative in alignment with their personal values. This reading reflects a naturalistic conception of autonomy, whereby it is understood to be a function of not only the individual's psychological and cognitive capacities for autonomy, but also of conditions that are extrinsic to those capacities—personal autonomy as a dispositional trait of the human being, a characteristic shaping the exercise of autonomy across the span of one's life. As such, dignity here supports a notion of personal autonomy as a long-term, defining feature of human life, rather than a trait concerned with isolated acts of autonomous decision-making.

This framing of personal autonomy reveals a bi-regional normative convergence, in which human dignity is understood to require more than abstract autonomy, and instead requires a real, lived ability to shape one's personal path within social structures. That is, the normative expectations that flow from this bi-regional conception of dignity entail that a person

[661] See above in Section 5.2.3., pp. 202-206.

must be treated as a self-governing agent throughout their life. As such, respect for personal autonomy, whether expressed through decisions pertaining to private life, personal identity, or bodily decisions more specifically, is not merely permitted but normatively required by the respect and recognition that human dignity entails.

In sum, the shared interpretative patterns in European and Inter-American jurisprudence on *dignity as personal autonomy* signal doctrinal, conceptual, and normative convergence between the two systems. By contrast, no evidence of this dimension of the concept of dignity can be identified in the currently available African dignity jurisprudence—a silence that speaks volumes. First and foremost, it signals doctrinal divergence by virtue of the fact that the African system lacks explicit protection of an individual's private life, identity, and self-development in the text of the ACHPR. However, this silence might reflect more than merely a gap in legal architecture. It may also reflect a deeper conceptual and normative divergence in the understanding of the relationship between the concepts of dignity and personal autonomy themselves.

To better estimate the extent of divergence on personal autonomy as a derived and defining component of the concept of human dignity between the European and Inter-American systems on the one hand, and the African system on the other, the next section offers a detour into African moral philosophies on personhood and dignity. Given the absence of African *dignity as personal autonomy* jurisprudence, consulting philosophical traditions may provide a complementary lens for examining the conceptualization of the relationship between the concepts of dignity and personal autonomy outside the formal legal framework. As such, it may clarify whether the silence on *dignity as personal autonomy* reflects a deeper conceptual divergence on the substantive content of the concept of dignity at play.

6.3.1. Dignity and Autonomy in African Accounts of Personhood

The absence of explicit guarantees of a right to private life in the ACHPR and its corresponding lack of protection for individual autonomy can be viewed in the context of the broader debate about differences between various conceptions of human rights. The *source thesis*, as the paradigmatic conception of human dignity in contemporary IHRL,[662] emphasizes dignity as a naturally inherent, *passive* source of rights entitlements: the inherent human dignity of a person, in and of itself, grounds individual human rights.

However, this *passive* role of human dignity can be challenged by other, more communitarian readings of the concepts of human rights, personhood, and human dignity, in which the generative function of human rights entitlements that human dignity entails is conditioned by the individual's role as a constitutive element of a community. For this reason, the relationship between the individual and their society, as implied by any given conception of human dignity, is critical. Ultimately, it can either define a human being as "an atomic, self-sufficient individual who does not depend on her relationships with others for the realization of her ends," or conceive of social structures as the "framework for both the realization of the goals, hopes, and potentials of the individual members of the society".[663]

The idea that communitarianism plays an important role in the conceptualization of human nature is supported by the text of the ACHPR. One only needs to consider the existence of Chapter II (Duties) of the ACHPR, where obligations toward one's family, social harmony, and the welfare of others are spelled out, to realize that the instrument frames one's community as an integral component of personhood.[664] It is beyond question, then, that communitarianism is, in either case, a significant aspect of the African conception of personhood and, by extension,

[662] See above in Section 1.2., pp. 21-25.

[663] Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press, 1997), 35.

[664] See, in particular, Articles 27-29 ACHPR.

human dignity. What remains an open question, however, is to what extent a conception of human dignity grounded in communitarianism is compatible with the notion of individual autonomy. In other words, does the idea of personal autonomy as a fundamental expression of human dignity fit within a concept of human rights in which an individual's claim to rights is implied as secondary to their duties owed to the community?

The absence of *dignity as personal autonomy* in African regional jurisprudence is not necessarily indicative of such incompatibility. In fact, the idea that communitarianism is incompatible with a concept of individual human rights has been broadly critiqued in scholarly literature.[665] From this perspective, the absence of expressions of *dignity as personal autonomy* rather suggests that this rendering of the concept of dignity has not (yet) been explicitly addressed in African jurisprudence. For that reason, a closer look at African conceptions of human dignity in African moral philosophies may help determine whether the emphasis on duties and communal interdependence precludes the inclusion of personal autonomy as a component of the substantive content of the concept of human dignity.

Scholarly literature on communitarianism as an expression of personhood in African moral philosophies is extensive and diverse. Naturally, it is not possible to speak of a single, unified conception of the relationship between the individual and the community as distinctively African. It is, however, possible to distinguish among various strands of thought on human nature, as they appear within the broader approaches to conceptualizing this relationship. At least six such accounts can be identified in African scholarly literature on the question of what constitutes individual human dignity: dignity has been argued to be grounded

[665] See, for example, Thaddeus Metz, "African Values and Human Rights as Two Sides of the Same Coin: A Reply to Oyowe," *African Human Rights Journal* Vol. 14 (2014), 306-321; Jonathan O. Chimakonam and Victor C. A. Nweke, "Afro-Communitarianism and the Question of Rights," *Theoria* Vol. 65, Issue 157, No. 4 (2018), 78-99; Munamato Chemhuru, "African Communitarianism and Human Rights: Towards a Compatabilist View," *Theoria* Vol. 65, Issue 157, No. 4 (2018), 37-56; Bernard Matolino, "Restating Rights in African Communitarianism," *Theoria* Vol. 56, Issue 157, No. 4 (2018), 57-77.

in the life-force that human individuals hold;[666] in being a member of the human species;[667] in being a member of a clan;[668] in having the capacity to relate communally with others;[669] in having the capacity to become a moral person;[670] and in having already become a moral person.[671] By extension, these various conceptions of the source of human dignity differ in their emphasis on communitarianism as a fundamental component for shaping the dignity and autonomy of a person in relation to the surrounding community.

On one end of the spectrum, a radical form of communitarianism is endorsed by the argument that an individual's human dignity is constituted by them having become a moral person—a view famously advocated by Ifeanyi Menkiti. Here, human dignity is to be achieved through the individual's exercise of their ability to be a valuable member of a community over the course of their life. At the other end of the spectrum, any distinctly African conception of human dignity is argued to be "potentially problematic"[672] precisely because of the rejection of the notion of human rights as inherent and inalienable individual entitlements that such a conception may be read to imply. Between these two ends of the spectrum, moderate forms of communitarianism are found, which seek to balance the individuality of the human being—as the source of their inherent dignity, individual autonomy and rights—with the value of community engagement as important for understanding the nature of personhood. Most notably,

[666] On this, see Bénézet Bujo, *The Ethical Dimension of Community*, trans., Cecilia Namulondo Nganda (Paulines Publications, 1997); Pantaleon Iroegbu, "Beginning, Purpose and End of Life," in *Kpim of Morality Ethics*, eds. Iroegbu and Echekwube (Heinemann Educational Books, 2005).

[667] See Kwame Gyekye, "African ethics," in *Stanford Encyclopedia of Philosophy* (2010) Accessed on July 29, 2025.

[668] On this, see Josiah Cobbah, "African values and the human rights debate: African perspective," *Human Rights Quarterly* Vol. 9, Issue 3 (1987).

[669] Thaddeus Metz, "African Conceptions of Human Dignity: Vitality and Community as the Ground of Human Rights," *Human Rights Review* Vol. 13 (2012), 19–37.

[670] Motsamai Molefe, *Human Dignity in African Philosophy: A Very Short Introduction* (Springer, 2022), 32-40.

[671] Ifeanyi Menkiti, "Person and Community in African Traditional Thought," in *African Philosophy: An Introduction*, ed. R. Wright (University Press of America, 1984).

[672] Oritsegbubemi Anthony Oyowe, "An African Conception of Human Rights? Comments on the Challenges of Relativism," *Human Rights* Review Vol. 15 (2014), 330.

this position has been advanced by Kwame Gyekye, but a related perspective comes from the comparatively recent but impactful proposal by Thaddeus Metz, who grounds dignity in the human capacities to relate communally, while emphasizing the communal dimensions of personhood as well.

In what follows, I briefly unpack two specific approaches to the concept of human dignity and the communitarian nuances they reflect. The first is the *personhood approach*, a radical communitarian idea that human dignity is constituted by the individual having become a moral and community-focused person, commonly associated with the work of Ifeanyi Menkiti and Polycarp Ikuenobe. The second is the *capacities approach*, which reflects a more moderate communitarian view of dignity as constituted not only by an individual's social inclinations and nature but also by certain uniquely human mental features, as frequently exemplified in the works of Gyekye and Metz.

Personhood Approach on Human Dignity

Menkiti, in essence, defended African communitarianism as a philosophy that prescribes the complete ontological primacy of the community over the individual. His argument can be distilled into three main premises. First, a human being is defined as a person only through their society, not based on any inherently human or individual traits:

> "[…] the African view of man denies that persons can be defined by focusing on this or that physical or psychological characteristic of the lone individual. Rather, man is defined by reference to the environing community [...] the reality of the communal world takes precedence over the reality of individual life histories".[673]

Second, in this radical communitarian view, personhood is not innate but must be acquired. Menkiti described this as "the *processual* nature of being"[674] where personhood "is not given

[673] Menkiti, *Person and Community in African Traditional Thought*, 171.

[674] Ibid, 172.

simply because one is born of human seed" but instead denotes "a long process of social and ritual transformation until it attains the full complement of excellencies seen as truly definitive of man".[675]

Third, personhood is conceived as a highly qualified status:

> "As far as African societies are concerned, personhood is something at which individuals could fail, at which they could be competent or ineffective, better or worse. Hence, the African emphasized the rituals of incorporation and the overarching necessity of learning the social rules by which the community lives, so that what was initially biologically given can come to attain social self-hood, *i.e., become a person with all the inbuilt excellencies implied by the term* [emphasis added]."[676]

Menkiti summarizes this model of the individual's placement within the broader community by distinguishing among three kinds of human groupings: "*collectivities* in the truest sense, [...] constituted human groups, [and] random collections of individuals".[677] According to Menkiti, the first category characterizes the African understanding of human society, while the second reflects the Western view. Under this framework of human collectivities, society is ontologically independent, whereas in the Western construction, the individual holds ontological primacy, and society is a derivative construct.

Consequently, the *personhood approach* entails not only that human dignity is dependent on social context, but also that this dependency is conceptually essential to the realization of the descriptive-metaphysical dimension of human dignity. In this rendering, dignity is a thick concept encompassing both descriptive and normative layers: individual dignity is neither isolated, nor abstract, nor independent from the community. Instead, the individual and their dignity are continuously "coming into existence in relation to the prescriptions of the

[675] Menkiti, *Person and Community in African Traditional Thought*, 172.

[676] Ibid, 173.

[677] Ibid, 179 -180.

community"[678] and this process requires individual conformity to the community's moral norms and virtues through the active exercise of their inherent capacities. In this process, individuals are understood to "self-actualise and perfect their true social-moral nature".[679]

The emphasis on the individual's duty toward the community and the ontological primacy of the community suggests that "self-regarding concerns and one's well-being cannot be achieved without communities (other-regarding concerns) that provide relevant goods and harmonious conditions".[680] As Ikuenobe writes,

> "it is the community that provides the material conditions by which humans actualize their potentialities, perfect their humanness, lead their lives, experience and maintain dignity and use their capacities to make choices and to achieve their interests of well-being."[681]

This construction is grounded in the recognition that the realization and practical enjoyment of human rights does not occur in a vacuum but is contingent on the social and communal dynamics that give context to individual existence. Accordingly, it can be concluded that rendering human rights as inherently belonging to the individual in the abstract, that is, independent of communal capacities—as per the *source thesis*—renders those rights vacuous, as it ignores the practical conditions necessary for their realization.

Ikuenobe comments on this stark difference between the Western liberal concept of human rights and the African *personhood approach* to human dignity by arguing that the overemphasis on individual rights and insufficient emphasis on individual duties in the Western construction diminishes "the principle of holding competent people accountable for how well

[678] Mary Nyangweso Wangila, "Religion, the African Concept of the Individual, and Human Rights Discourse: An Analysis," *Journal of Human Rights* Vol. 9 (2010), 332.

[679] Polycarp Ikuenobe, "Priority of duties, substantive human rights, and African communalism," *South African Journal of Philosophy* Vol. 40, Issue 4 (2021), 423.

[680] Polycarp Ikuenobe, "Human rights, personhood, dignity, and African communalism," *Journal of Human Rights* Vol 17, Issue 5 (2018), 594.

[681] Ikuenobe, "Priority of duties, substantive human rights, and African communalism," 423.

they use their capacities and social nature to promote their own and other's well-being".[682] Consequently, the priority of duty toward the community present in the *personhood approach* is, in fact, a duty to the self: by fulfilling one's duties, the individual paves the way for their self-actualization, which translates into the enjoyment of substantive human rights. Absent a strong emphasis on the correlation between duties and rights, individual rights risk remaining abstract. The correlativity between individual rights and duties is what "gives credence"[683] to individual rights in this account of the human person as a social and moral member of their community.

It is evident that the foundational premises of this account of human nature, dignity, and personhood exhibit a distinctly different conceptual relationship between human dignity and autonomy from the one characterizing *dignity as personal autonomy* in the European and Inter-American dignity jurisprudence. The descriptive layer of the concept of human dignity in the *personhood approach* frames the individual as a being with "the rational and cognitive capacities for agency and free choice".[684] However, these capacities are "normatively and materially relational to a community,"[685] because:

> "It is only when one chooses or acts as an organic part of a community that one can, morally and meaningfully make free choices".[686]

Thus, the human being is regarded not as an individually autonomous being, but rather as a "relationally autonomous"[687] one: autonomy is a function of how the individual exercises their metaphysical capacities to be autonomous. That is, the process of becoming a part of a

[682] Ikuenobe, "Priority of duties, substantive human rights, and African communalism," 429.

[683] Ibid, 430.

[684] Polycarp Ikuenobe, "The Communal Basis for Moral Dignity: An African Perspective," *Philosophical Papers* Vol. 45, Issue 3 (2016), 447.

[685] Ikuenobe, "The Communal Basis for Moral Dignity," 451.

[686] Ibid.

[687] Polycarp Ikuenobe, "Relational autonomy, personhood, and African traditions," *Philosophy East and West*, Vol. 65, No. 4 (2015), 1007.

community frames the individual human being as a "potentially" rational and autonomous being and only through such a process can this potential be actualized.

Capacities Approach on Human Dignity

Both the *personhood approach* and the *capacities approach*, as examples of distinctly African conceptions of the relationship between individual dignity and community, are characteristic of communitarian accounts of this relationship. However, they differ in the weight assigned to the inherent capacities for autonomy in grounding human dignity and personhood as intrinsic aspects of the human being.

While the *personhood approach* emphasizes the outcome of having exercised one's inherent capacities for autonomy as the basis for human dignity—in having become a moral person and a member of the community—the *capacities approach* holds that these same metaphysical capacities are themselves constitutive of dignity. In contrast to the *personhood approach*, where these capacities are valued merely instrumentally, the *capacities approach* regards them as intrinsically valuable. As such, it defines dignity as intrinsic to the very possession of these capacities, thereby removing the ontological primacy from the social structure of the community implied by the *personhood approach*.

The most prominent contribution to such a moderate view of communitarianism comes from Kwame Gyekye. Importantly, here too, the significance of social and cultural structures in defining the nature of a human being is highlighted. However, these structures are given equal importance to the individuality of the human being within that community:

> "There is no denying the community's role in the complex process involved in the individual's realization of her goals and aspirations, though; yet, even so, the communal definition or constitution can only be partial."[688]

[688] Gyekye, *Tradition and Modernity*, 53.

Here, it is not the communal or cultural structure that solely defines personhood. Since "besides being a social being by nature, the human individual is, also by nature, other things as well" — these other things including rationality, a moral sense, the capacity for virtue, and the ability to make moral judgments—Gyekye concludes that being "capable of choice" is an essential attribute of the human person.[689] This reflects the "autonomous nature of the person," which manifests in "a rational will of one's own, that enables one to determine at least some of one's own goals and to pursue them, and to control one's destiny".[690]

Importantly, this reading of the dual nature of the individual as a social being implies that "the recognition by communitarian political morality of individual rights is thus a conceptual requirement".[691] It is precisely because the individual possesses the mental features necessary for autonomy that social structures benefit from their participation. The community, then, is not ontologically independent from the human individual. More than that, individual rights emerge as a conceptual component of the structure of a community:

> "if communitarianism were to shrug off individual rights, not only would it show itself as an inconsistent moral and political theory, but also it would, in practical terms, saw off the branch on which it was sitting".[692]

In summary, the *capacities approach* constructs individual autonomy not as an abstract attribute to be realized through social structures, but rather as "a fundamental feature of personhood"[693] and inherent to the human being. At the same time, the community remains the structure that provides the context in which these capacities are expressed. The distinction from the *personhood approach* lies in the rejection of the view that personhood and, by extension, dignity, are fully contingent on communal relationships and settings. In this view, individual

[689] Gyekye, *Tradition and Modernity*, 53.

[690] Ibid, 54.

[691] Ibid, 64.

[692] Ibid, 54.

[693] Ibid.

autonomy is a value that strengthens the social fabric. Thus, a conceptual balance is achieved: the community remains fundamental to the flourishing of the individual, but it is also contingent upon the individual's capacities for autonomy.

Besides Gyekye's seminal account, another related conception of this reciprocal relationship, pertinent to the *capacities approach*, must be noted. Metz has proposed that human dignity is constituted by an individual's "ability to relate communally" as both a subject and an object of a communal and harmonious relationship, which he argues is a trait possessed uniquely by humans:

> "To be able to be a subject of a communal relationship means that one can, by one's nature, commune with others. That is, one in principle could enjoy a sense of togetherness with them, advance their ends, promote their good, and do so out of sympathy and other-regard. Being able to be an object of communal relationships means that others can commune with one by one's nature. So, one is the kind of being towards which human persons in principle could be friendly or loving."[694]

Evidently, Metz also emphasizes certain capacities of the human being as foundational for individual dignity, and thus his account falls within the *capacities approach*. Because he constructs dignity as something intrinsic to the human being due to their inherent capacities, his approach negates the instrumentalism present in the *personhood approach*, where dignity and individual rights are necessarily derived from communal structures. For Metz, the capacities to relate communally are not merely instrumental for dignity and personhood to arise. Rather, echoing Gyekye's account, they constitute the very ground of dignity and personhood themselves. This is evident from the emphasis on the capacities rather than the relationships that arise from them.

A point where Metz's account differs from Gyekye's construction of the *capacities approach* lies in the type of capacities that he underlines:

[694] Thaddeus Metz, "Defending a Communal Account of Human Dignity," in *Human Dignity in an African Context*, ed. Motsamai Molefe (Palgrave MacMillan, 2023), 25-26.

> "a human being has dignity in virtue of his capacity for community or friendship, conceived as the combination of identity and solidarity, where to identify with others is to share a way of life with them and to exhibit solidarity with others is to care about their quality of life."[695]

Under Metz's account, it is not the inherent capacity for autonomy that is highlighted, but instead the capacity for community.[696] This reflects a fundamentally different understanding of the type of capacities than Gyekye's proposal, which emphasizes the individual's rational will and capacity for moral judgment. Nevertheless, one can discern connections to the notion of autonomy in Metz's view as well, though they are not explicitly articulated. In his account, autonomy inherent in one's dignity is not about individual self-realization through the exercise of innate mental features of rationality and moral decision-making. Instead, it is reflected in one's innate capacity to meaningfully engage in and sustain harmonious relationships through one's own volition. As such, Metz's account contrasts with Gyekye's construction: here, autonomy is a capacity expressed through the human being's natural inclination toward communal relationships. Importantly, this view also resonates with some of the core premises of the *personhood approach* previously discussed.

On the one hand, Metz's account can be said to complement and expand the *capacities approach* proposed by Gyekye. On the other hand, by shifting the emphasis of autonomy from a value grounded in rationality and self-determination to one connected with self-regulation in communal relationships, Metz also echoes the *personhood approach* insofar as the social nature of a human being as a member of a community is perceived as a defining feature of personhood. This relational perspective on autonomy highlights communal belonging as an essential component of human nature and dignity. Thus, Metz's proposal broadens the scope

[695] Thaddeus Metz, "African Conceptions of Human Dignity," 32.

[696] For an analysis of how Metz's account can be seen to still endorse "capacities for autonomy" account, see Oyowe, "An African Conception of Human Rights? Comments on the Challenges of Relativism".

of the *capacities approach* by framing dignity as something that integrates the individual with the community in a deeply interdependent way.

With this philosophical context in mind, the following section returns to the question of convergence regarding *dignity as personal autonomy* across the three regional systems. Drawing on both the clear bi-regional convergence between the European and Inter-American systems and the insights from African communitarian accounts on personhood and dignity, I assess whether any agreement can be recovered across these differing readings on the relationship between the concepts of human dignity and personal autonomy.

6.3.2. An Impasse for a Transregional *Dignity as Personal Autonomy*?

Due to the absence of jurisprudence on *dignity as personal autonomy* in the African system, there is clearly no doctrinal convergence on dignity as intertwined with the notion of personal autonomy across the three systems. As regards conceptual and normative convergence, although these cannot be identified based on existing African dignity jurisprudence, a different picture emerges if African moral accounts of personhood and dignity are taken into account as relevant for such an assessment.

With respect to the conceptual reading of human dignity, African moral philosophies on dignity and personhood reveal that ideas of self-actualization and self-realization are indeed present in African conceptions of dignity. The two principal approaches to constructing the relationship between individual dignity, personhood, and the broader society—the *personhood approach* and the *capacities approach*—demonstrate a deep-seated concern with human beings' inherent capacities for autonomy. That is, neither of these accounts explicitly rejects the notion of personal autonomy. Rather, they articulate a distinct understanding of personal autonomy from the outset, one that is contingent on the individual's fulfillment of communal roles and moral responsibilities toward their community. This kind of autonomy is less about individual

choice and more about becoming, and being recognized as, a moral person within a social context.

In this sense, African accounts present a distinct conception of self-realization, which even in the more moderate models of individual-community relations translates into viewing the individual as relationally autonomous, not individually autonomous. This logic introduces a normative, socially contextual layer into the concept of personal autonomy and dictates that individual autonomy must be exercised in specific ways in order to achieve self-realization. Therefore, African moral conceptions of dignity and personhood do not align with the notion of personal autonomy that manifests in the jurisprudence of the other two systems through *dignity as personal autonomy*. Consequently, the bi-regional reading of personal autonomy in the European and Inter-American systems, which articulates personal autonomy as derived from the inherent dignity of the human person, does not form part of a transregional concept of human dignity.

In terms of normative convergence, the picture is even less clear. While both the bi-regional normative convergence and African moral accounts stress a link between dignity and personal autonomy, the ways through which autonomy is understood to be exercised differ significantly. In the European and Inter-American contexts, the protection of, and respect for, personal autonomy is framed as dignity-based requirements. In African accounts, however, this does not emerge as a normative expectation derived from the concept of human dignity. Coupled with the absence of African jurisprudence on *dignity as personal autonomy*, transregional normative convergence on this point not only fails to exist but also appears unlikely to develop in the foreseeable future.

Accordingly, based on currently available regional dignity jurisprudence, no transregional convergence can be identified with regard to *dignity as personal autonomy*. At most, only a partial convergence, limited to two out of three regions, is present. In this sense,

personal autonomy as a dimension of the substantive content of the concept of human dignity marks the limits of the transregional convergence identified in this dissertation.

6.4. Yes, It Exists: A Transregional Concept of Human Dignity

Probing whether a transregional concept of human dignity exists entails more than a purely empirical exercise of identifying the overlaps between regional dignity jurisprudence. It also involves a conceptual inquiry: defining what such a transregional space is and what kind of normativity can be said to exist within it.[697] Fundamentally, it is an investigation into whether different legal systems, each with unique contextual backgrounds, converge in their understanding of what the inherent human dignity of the human person demands. This dissertation has demonstrated that they not only can but indeed do, though not entirely, and not without qualification.

Dignity jurisprudence across the three regional systems reveals a transregional concept of human dignity that travels across continents. The shared language of human dignity as an expression of the protection of bodily integrity and of equality among human beings resonates in Europe, the Americas, and Africa. By contrast, personal autonomy remains regionally limited as a dignity-based requirement: present as a key expression of the concept in Europe and the Americas but entirely absent from African dignity jurisprudence. This uneven yet cohesive transregional concept of human dignity ultimately challenges the view that human dignity is an empty and indeterminate legal concept. On the contrary, it reveals a recognizable

[697] A similar move can be observed in discussions of transnational legal space, which emphasize that normative density can emerge not only from institutional harmonization, but also from repeated cross-referencing, shared concerns and interpretative convergence. See Peer Zumbansen, "Carving Out Typologies and Accounting for Differences Across Systems: Towards a Methodology of Transnational Constitutionalism," in *The Oxford Handbook of Comparative Constitutional Law*, eds. Michel Rosenfeld and András Sajó (Oxford University Press, 2012), 75-97.

interpretative practice, one that articulates human dignity in meaningfully similar ways across regional human rights systems.

It has been a foundational methodological commitment of this dissertation to treat *thin universalism* as the guiding premise in delineating a transregional concept of human dignity. Accordingly, neither uniform doctrinal, conceptual, nor normative expression of human dignity was required to establish the existence of such a concept. Instead, the aim was to identify an underlying convergence in the interpretative practices of human dignity as it relates to the notions of bodily integrity, equality, and personal autonomy—the three dimensions examined as likely components of the substantive content of a transregional concept of human dignity. Transregional convergence, though in varying degrees, has been found across the three dimensions. The conclusion that follows is: a transregional concept of human dignity is not a mirage, but a qualified reality—present in relation to some, but not all, of the three dimensions of bodily integrity, equality, and personal autonomy.

Most clearly, regional dignity jurisprudence shows undeniable doctrinal, conceptual, and normative convergence around the notion of bodily integrity as a component of the substantive content of human dignity. Dignity is consistently invoked as the basis for respecting and protecting bodily integrity and emerges as inseparable from the notion of bodily integrity itself. Another confirmed component of the transregional concept is the notion of equality: there is a clear convergence in reading dignity as requiring recognition of the equal moral worth of the individual, both conceptually and normatively. While doctrinal pathways vary, the core idea is consistent: to have human dignity is to have a claim to equality with other human beings.

This transregional concept of human dignity does not encompass personal autonomy as one of its substantive components. This is a straightforward conclusion, as African regional jurisprudence does not demonstrate such a reading. However, based on African moral philosophies of dignity and personhood, the exclusion of personal autonomy from the current

transregional concept need not be seen as necessarily permanent. It is an empirical observation drawn from current regional dignity jurisprudence, but it does not necessarily signal an irreconcilable conceptual incompatibility between the three regional conceptions of human dignity. The possibility of future convergence on this point remains open.

Consequently, the transregional concept of human dignity delineated in this dissertation is qualified, that is, its scope is incomplete. Only two of the three proposed dimensions of its substantive content—bodily integrity and equality—are confirmed across all three regions. This finding fully aligns with the methodological lens of *thin universalism*: the absence of complete overlap does not negate the presence of meaningful convergence. *Thin universalism* allows for such asymmetrical agreement to exist, even where separate regional conceptions of human dignity are broader than their shared core.

Although the findings in this dissertation fall short of confirming the initial hypothesis that bodily integrity, equality, and personal autonomy are all components of the substantive content of a transregional concept of human dignity, they are far from underwhelming.

First, this qualified transregional concept challenges the view that human dignity is an incurably vague concept. The dignity pragmatism adopted in this dissertation has revealed that, despite its undeniable conceptual plasticity, human dignity is invoked in regional human rights adjudication with identifiable and consistent meaning. It denotes, at a minimum, a commitment to bodily integrity and the equality of all persons. Denials of either are consistently read across regions as violations of human dignity.

Second, the findings affirm that while the concept of human dignity may not be universal, it is transregionally coherent. Regional differences, such as the inclusion of personal autonomy, persist but do not preclude meaningful convergence. There remains an open space for further jurisprudential dialogue and evolving interpretative practices toward a yet broader transregional alignment on the interpretation of the meaning of the concept of human dignity.

Third, and returning to the *source thesis* debate, the very existence of a transregional concept, even in its qualified form as delineated in this dissertation, undermines the claim that the concept of human dignity is too vague or indeterminate to serve as a foundation for human rights. This dissertation shows the opposite: human dignity, when examined pragmatically and contextually, is already serving as such a foundation across diverse legal systems.

6.5. From Doctrine to Discourse: What this Concept Means for the Field

In this chapter, I have delineated the contours of a qualified transregional concept of human dignity. This section now steps back to reflect on what this transregional concept means for the broader discourse on human dignity as a legal concept in IHRL. It situates the findings within existing theoretical debates on human dignity as a transnational concept, highlights the methodological contributions of this dissertation, and reconsiders prevailing assumptions about the universality of the concept of human dignity in IHRL.

6.5.1. Revisiting Theories of Human Dignity as a Transnational Concept

In grounding the bodily integrity, equality, and personal autonomy triad as the analytical framework for probing the existence of a transregional concept of human dignity, this dissertation drew on the work of McCrudden, Barroso, and Addis.[698] All three authors proposed theoretical constructions for a transnational concept of human dignity with bodily integrity, equality, and personal autonomy as elements relevant to the debate. Now that a qualified transregional concept of human dignity has been delineated, it is time to reflect on how that concept aligns with the three authors' proposals.

The qualified transregional concept of human dignity that I have identified fits within McCrudden's three-prong framework.[699] Both dimensions of the concept—bodily integrity and

[698] See above in Section 1.5.2., pp. 37-48.

[699] See above in Section 1.5.2.,, pp. 38-40.

equality—reflect the ontological claim that dignity denotes the intrinsic worth of the human being, especially *dignity as bodily integrity*, which supports an absolute prohibition of ill-treatment. They also embody the normative and protective prongs outlined by McCrudden.

Rather than challenging McCrudden's framework, the transregional concept presented here offers a concrete illustration of it. Moreover, the three-tiered convergence typology developed in this dissertation helps trace McCrudden's prongs in actual jurisprudence, providing a roadmap for what might otherwise remain theoretical. The concept identified here can therefore be seen as an example of McCrudden's broader transnational concept, one that he noted was lacking explicit judicial consensus. While other examples may exist, the convergence documented in this study demonstrates that his theoretical framework can be substantiated with the practical uses of the concept in regional human rights adjudication.

It should also be recalled that McCrudden acknowledged that his expectations for the depth and scope of consensus on the concept's meaning may have been overly demanding. In this dissertation, that concern was offset by adopting the approach of *thin universalism*, in which divergence in judicial reasoning or outcomes does not, by itself, preclude a shared normative foundation from emerging through the invocations of the concept in practice. Consequently, McCrudden's notion of a shared conceptual core, though broadly framed, finds empirical support in this dissertation. By applying a layered convergence typology and assessing individual dimensions of the concept, this study offers a granular tool for identifying where a transregional convergence ends, and divergence begins.

Next, the transregional concept of human dignity outlined in this dissertation partially aligns with Barroso's account of the "minimum content" of dignity as a transnational concept.[700] The component of *dignity as equality* clearly echoes Barroso's insistence on the centrality of the notion of equality to any transnational concept of dignity. Bodily integrity,

[700] See above in Section 1.5.2., pp. 40-44.

which this dissertation confirms as a transregionally endorsed dimension of human dignity, also fits within Barroso's formulation. However, Barroso's third core element—individual autonomy—does not emerge as such from a comparison between regional dignity jurisprudence. Still, his further claim—that personal autonomy may be limited by social values—finds some resonance in African philosophical accounts of human dignity, even though the regional jurisprudence has yet to reflect this.[701]

Barroso's claim that human dignity serves as a transnational anchor is thus affirmed in part, in terms of bodily integrity and individual equality as dignity-based protections. However, the lack of transregional convergence on personal autonomy as a dimension of the concept limits the strength of his broader argument.

The transregional concept outlined here also partially aligns with the account of Addis.[702] First and foremost, Addis positions personal integrity as the starting point for overlap among competing conceptions of human dignity, a claim that this dissertation confirms. *Dignity as bodily integrity* is indeed the most consistently expressed and most widespread dimension of the concept across the three regional systems. Thus, it can reasonably be labeled the common starting point for a transnational concept.

However, Addis dismissed the notion of equality as a viable component for a transnational concept of human dignity—an assessment this dissertation challenges. Regional dignity jurisprudence reveals a consistent logic linking the concepts of dignity and equality. At the same time, his skepticism regarding the inclusion of the notion of autonomy in a transnational concept of dignity proves well-founded. Moreover, the detour into African moral philosophies on dignity and personhood further supports his caution by revealing a relational, instead of an individualistic, conception of autonomy in that regional context.

[701] See above in Section 6.3.2., pp. 233-235.

[702] See above in Section 1.5.2., pp. 44-48.

Taken together, the three authors offer distinct accounts of what a transnational concept of human dignity entails, ranging from structural to normative to philosophical perspectives on the potentiality of a universal concept of human dignity. The empirical findings of this dissertation confirm some of their arguments, complicate others, and challenge a few. Most clearly, the transregional concept delineated in this dissertation aligns with McCrudden's structure, partially supports Barroso's normative vision, and both affirms and refutes aspects of Addis' philosophical caution.

Ultimately, by testing these theoretical accounts against regional dignity jurisprudence, this dissertation has moved the debate forward by demonstrating that a transregionally shared concept of human dignity is not just a theoretical aspiration. It already exists through doctrinal, conceptual, and normative convergence in reading the concept of human dignity as comprising commitments to the protection of individuals' bodily integrity and equality with other human beings.

6.5.2. A Step Forward in Dignity Discourse

The guiding intuition behind this dissertation was the belief that human dignity can be a coherent legal concept without necessarily being universally homogeneous. The comparative analysis of regional dignity jurisprudence undertaken here has shown that such a concept not only *can* exist but already *does* exist. Across the European, Inter-American, and African systems, two components of the substantive content of this concept emerge: bodily integrity and equality. This legal concept exhibits coherence through doctrinal, conceptual, and normative convergence around these two dimensions and across the three regional systems. By contrast, the third proposed dimension—personal autonomy—is not confirmed as one such element of the transregional concept of human dignity. Thus, this study illustrates how a concept can be meaningfully shared without being uniformly defined and as such offers several

substantive and methodological contributions to the study of human dignity as a legal concept whose meaning transcends individual conceptions.

The central substantive contribution of this dissertation lies in its delineation of two substantive components of a transregionally coherent concept of human dignity. This is significant given that both scholarship on human dignity as a legal concept and broader theoretical discussions in IHRL regularly highlight the malleable conceptual nature of this foundational term in human rights vocabulary. This dissertation provides empirical grounding for the claim that, despite its conceptual plasticity, it is possible to identify recurring components in the meaning of this concept that are shared across its various conceptions.

That said, while the analytical framework adopted in this study proposed three potential dimensions of the transregional concept of human dignity, the findings confirmed only two. This asymmetry is analytically productive and constitutes a substantive contribution in its own right. It demonstrates that conceptions of a concept may converge on some points of their meaning while diverging on others, thus underlining the continued influence of institutional context and normative traditions in shaping how dignity is concretely expressed in judicial practice. Moreover, it reinforces a central claim of this dissertation—that convergence can exist meaningfully without full uniformity. In this way, the findings both refine and support the original proposition of this dissertation.

Additionally, the delineation of a transregional, even qualified, concept of human dignity offers an important intervention in debates about the universality of human rights. In particular, it is relevant in the context of the role that human dignity serves as the conceptual basis of human rights, reflected in the *source thesis*.[703] Critics of this idea often argue that the concept of dignity is too culturally contingent or philosophically contested to serve such a role. However, the findings of this study challenge that claim: despite the absence of full uniformity,

[703] See above in Section 1.2., pp. 21-25.

regional human rights jurisprudence reveals a stable, normatively robust concept of human dignity that travels across jurisdictions and cultures.

Furthermore, the approach of dignity pragmatism,[704] which has been adopted in this dissertation, offers a bridge between the orthodox and political conceptions of human rights introduced in Chapter 1.[705] While political conceptions emphasize institutional function and legal codification, the orthodox view sees human dignity as the inherent moral source of human rights. Dignity pragmatism, as adopted here, focused on the meaning of the concept as it emerges from dignity jurisprudence. In this way, it bridges the two camps: it does not treat the concept as a static moral abstraction but rather as a normatively significant concept whose meaning emerges from judicial reasoning and legal practice. As a result, the *source thesis* gains support not from a metaphysical consensus or universal definition of human dignity, but from its consistent interpretation across different jurisdictions.

As such, the convergence in interpretation traced in this dissertation provides empirical support for the idea that human dignity can meaningfully ground human rights in IHRL, even in the presence of philosophical pluralism. In other words, it shows that irrespective of whether one regards the concept as having a single moral foundation or not, human dignity emerges as a shared legal concept in human rights practice across the three regional systems. Consequently, this dissertation reframes universality as a matter of shared interpretative direction rather than substantive sameness. Such a reconceptualization allows for coherence without requiring consensus on every dimension of the concept, thus making space for a pluralist, yet still grounded, foundation for dignity-based human rights protection.

In addition to these substantive contributions, this dissertation makes several methodological contributions to the study of human dignity as a legal concept. First, the

[704] See above in Section 2.1.1., pp. 55-57.

[705] See above in Section 1.2., pp. 22-25.

tripartite framework of *dignity as bodily integrity*, *dignity as equality*, and *dignity as personal autonomy* provided a focused yet flexible lens through which to test the presence and scope of a shared concept of human dignity across jurisdictions. This structured approach avoided the pitfalls of overly broad conceptual surveys and open-ended comparisons.

Second, the typology of convergence developed in this dissertation—encompassing doctrinal, conceptual, and normative convergence—proved effective in distinguishing between different layers of alignment and divergence. It enabled a more granular reading of the idea of convergence and was critical in unpacking how agreement may exist even when legal formulations or outcomes differ. This moved the analysis beyond a binary, all-or-nothing view of convergence, thus capturing the nuanced ways in which convergence and divergence coexist.

Finally, the consistent grounding of the dissertation throughout its research trajectory in the premises of *thin universalism* and dignity pragmatism fostered a bottom-up, practice-oriented approach that illuminated a transregional concept of dignity that is both empirically grounded and normatively coherent. The operationalization of these premises underlines the value of robust theoretical framing in comparative human rights research, especially when universality is approached as a layered, contextually anchored normative logic. This approach may be replicable for future inquiries into contested concepts in IHRL beyond human dignity.

6.5.3. Limitations of the Findings

The most important limitation of the findings in this dissertation is their attachment to the tripartite framework of bodily integrity, equality, and personal autonomy. The research design was developed with these three dimensions in mind, and as such, other prominent uses of the concept of human dignity within the separate regional systems were not included in the scope of analysis. Accordingly, the transregional concept delineated here should not be interpreted as meaning that its contents are necessarily limited to the two dimensions of bodily integrity and equality alone.

In other words, the concept of human dignity has rich and diverse meanings in its separate regional conceptions that possibly extend far beyond the two dimensions identified here. For instance, in both the African and Inter-American systems, human dignity is often invoked alongside the right to work.[706] Additionally, in the Inter-American system, it is a standard element in case law on enforced disappearances,[707] while the work of the ECSR, in particular, shows frequent references to dignity in relation to forced evictions,[708] and the idea of minimum sustenance.[709] Therefore, the identified convergence between the regional conceptions of dignity is not necessarily limited to bodily integrity and equality. By extension, divergence is likely not confined to personal autonomy alone.

Another notable limitation concerns the methods used to select the relevant jurisprudence under the umbrella term "dignity jurisprudence". As explained in Chapter 2, it includes only those judgments by the three regional courts and those decisions by the three regional quasi-judicial bodies that contain the terms "dignity" or "dignidad".[710] This certainly narrowed the scope of jurisprudence examined, which would have been significantly broader if, for instance, had derivatives like "dignified" also been included in the search criteria. Consequently, the

[706] In the African context, see ACmHPR, *Monim Elgak v. Sudan*, Communication 379/09, 14 March 2014, para. 129; ACtHPR, *Kennedy Gihana and Others v. Rwanda*, App. No. 017/2015, 28 November 2019, para. 131; *Kabunga and 1744 Others v. Tanzania*, App. No. 002/2017, 30 September 2021, para. 101; *Muwinda and Others v. Tanzania*, App. No. 030/2017, 24 March 2022, para. 54. In the Inter-American context, see IACtHR, *Miskito divers v. Honduras*, Series C No. 432, 31 August 2021, para. 68; *Guevara Díaz v. Costa Rica*, para. 58.

[707] For instance, in *Velásquez-Rodríguez v. Honduras,* para. 158; IACmHR, *Manuel Garcia Franco v. Ecuador*, Report No. 1/97, Case 10.258, 12 March 1997, para. 80; *Samuel De La Cruz Gomez v. Guatemala*, Report No. 11/98, Case 10.606, 7 April 1998, para. 59; *Ileana del Rosario Solares Castillo et al v. Guatemala*, Report No. 60/01, Case 9111, 4 April 2001, para. 44.

[708] For instance, in ECSR, *ERRC v. Italy*, Complaint No. 27/2004, 7 December 2005, para. 41; *ERRC v. Bulgaria*, Complaint No. 31/2005, 18 October 2006, para. 52; *EFNOH v. France*, Complaint No. 39/2006, 4 December 2007, para. 161; *International Movement ATD Fourth World v. France*, para. 77; *Médecins du Monde – International v* France, Complaint No. 67/2011, 11 September 2012, para. 75; *ERRC v. Ireland, Complaint No.* 100/2013, 1 December 2015, para. 137.

[709] For instance, in *International Movement ATD Fourth World v. France*, para. 163; *ERRC v. Bulgaria*, Complaint No. 48/2008, 18 February 2009, paras. 37-38; *EUROCEF v. France*, para. 56; *EFNOH v. the Netherlands*, Complaint No. 86/2012, 2 July 2014, para. 219; *ERRC v. Ireland*, para. 185.

[710] See above in Section 2.3.2., pp. 77-79.

findings here are necessarily shaped and constrained by the methodological choices made in designing the research trajectory of this dissertation.

A further limitation lies in the temporal contingency of the findings. The cut-off date for the selected jurisprudence was 30 April 2024. Judgments and decisions rendered after this date, as well as future developments in regional dignity jurisprudence are sure to alter the landscape of transregional convergence as presented in this dissertation. The transregional concept delineated here should therefore not be viewed as permanently fixed. In addition, the landscape of transregional convergence and divergence might have looked significantly different had alternative methodological tools been employed. Notably, if this dissertation had not adopted the framework of *thin universalism* as its guiding premise, the threshold for identifying convergence would have been different, and the conclusions regarding the existence and scope of the transregional concept would have varied accordingly.

Finally, since this dissertation focused on a transregional, not global, interpretation of the concept of human dignity, it does not claim to define a universal account of its meaning. The findings are firmly grounded in regional comparison, and their applicability to other settings remains an open question. In that sense, they should not be generalized but instead remain confined to the contexts of the concept's meaning within the regional systems of human rights protection.

6.5.4. Directions for Future Research

The directions for future scholarly work on the concept of human dignity as an internationally applicable concept—one that is grounded in interpretative consensus across the globe—go hand in hand with the limitations of the findings presented in this dissertation.

First, future research will have to address the divergence in the practice of invoking the concept of dignity alongside the notion of personal autonomy. The African jurisprudential silence on this relationship, combined with the relational framing of the notions of dignity and

autonomy in African moral philosophies, prompts a rethinking of what the concept of autonomy should mean in IHRL if it is to be meaningfully connected to the concept of human dignity. That is, if personal autonomy is to be part of an international concept of human dignity, its definition may need to move beyond an individualistic model toward more relational and pluralistic readings of the self and society. In such a broader sense, autonomy—understood as the individual's capacities for moral agency and for participating in shaping one's life and relationships, whether through individual choice or communal interaction—could arguably be part of a transregional concept of human dignity. After all, the bi-regional conception of *dignity as personal autonomy* in the European and Inter-American systems, and African philosophies on personhood alike, recognize individuals as agents situated within a social context in which their autonomy is expressed.

Second, the findings of this dissertation invite further exploration of the tripartite framework of bodily integrity, equality, and personal autonomy adopted here. For instance, deeper examination of the relationship between dignity and bodily integrity, particularly in the sense that it unfolds through subjective experiences of humiliation, debasement, and inferiority, would contribute to a more nuanced understanding of *dignity as bodily integrity*. The same applies to *dignity as equality*: as future regional dignity jurisprudence evolves, particularly in the European system, further research will be vital for delineating the contours of this dimension of the transregional concept with greater precision.

Third, future research on human dignity as an internationally relevant concept grounded in comparative jurisprudence should also explore any additional dimensions of the concept that may be shared transregionally. The tripartite framework of bodily integrity, equality, and personal autonomy adopted in this dissertation necessarily excluded other potential dimensions. Therefore, the limitations of the methodology of this dissertation leave open a clear space for future dignity scholarship.

Fourth, future research would benefit from examining the use of the term "dignified" in regional dignity jurisprudence, which could meaningfully expand the content of the transregional concept. Exploring regional interpretative patterns around what constitutes dignified—or undignified—treatment would add valuable insight into the normative expectations that flow from the concept of human dignity transregionally.

Finally, although the findings of this dissertation remain firmly grounded in the context of regional human rights systems, the insights drawn from this comparison, coupled with the methodological model used to reach them, may well be transferable to other transnational contexts. This opens the door not only for future research on consensus around the substantive content of the concept of human dignity but also for further comparative human rights scholarship on similarly contested concepts.

Conclusions

This dissertation confronted a central paradox in IHRL: the concept of human dignity is at once foundational and elusive, central yet lacking a clear definition. That something so vague occupies such a role in human rights discourse was both unsettling and fascinating, making the search for the shared meaning of human dignity in human rights jurisprudence a compelling goal. I approached this paradox not as a theoretical failure, but as a practical puzzle—one best assembled by examining what can be traced across regional human rights systems as shared through their invocations of the concept of dignity in human rights adjudication.

This puzzle has long captivated dignity scholarship, and certain recurring dimensions—bodily integrity, equality, and personal autonomy—have been identified by dignity scholars as relevant to the conversation on the substantive content of a transnational concept of human dignity. Yet no jurisprudence-grounded consensus had emerged on whether, or to what extent, these dimensions form part of a shared legal understanding of human dignity across regional human rights systems. This gap called for a focused, comparative inquiry with methodological and conceptual scaffolding that could capture the nuances of transregional convergence, even in the face of persistent doctrinal or normative disagreement.

With that in mind, I adopted the lens of dignity pragmatism, shifting attention away from abstract theorizing about what human dignity means and toward the concept's concrete use in legal reasoning. As the jurisdictional scope of this study, I focused on an often-overlooked site for exploring shared legal meaning: the European, Inter-American, and African regional human rights systems. To allow for a precise delineation of the outlines and limits of transregional convergence, my inquiry was anchored in an analytical distinction between the concept of human dignity and its various conceptions, as well as in the notion of *thin universalism*. The combination of these methodological approaches meant that, from the outset, identifying a

transregional concept of human dignity did not require full or uniform convergence on the substantive meaning of the concept across regional jurisprudence. A limited, qualified convergence would suffice. This methodological framework for the analysis of regional dignity jurisprudence and the comparison between regional expressions of *dignity as bodily integrity, dignity as equality*, and *dignity as personal autonomy* yielded the following results.

A key finding of this dissertation is that the concept of human dignity consistently appears across regional dignity jurisprudence in relation to the notions of bodily integrity and equality. Despite regional doctrinal particularities in how these relationships are expressed, human dignity performs a threshold function throughout: it marks certain forms of treatment of the person as incompatible with their inherent worth. This is evident in regional jurisprudence on ill-treatment that violates physical and psychological integrity, as well as in jurisprudence on the principle of non-discrimination. Taken together, these expressions of human dignity highlight treatment that strikes at the innermost worth of the individual human being. That premise—the inherent worth of the human person—may sound abstract in isolation, but this dissertation shows that it acquires concrete legal meaning through the prohibition of ill-treatment and discrimination. As such, *dignity as bodily integrity* and *dignity as equality* are demonstrated to form part of the substantive content of a transregional concept of human dignity.

By contrast, the dissertation also shows that *dignity as personal autonomy* appears unevenly across the three systems: while central to the European and Inter-American dignity jurisprudence, a conception of human dignity that foregrounds the individual as the author of their life course is entirely absent from African dignity jurisprudence. Thus, *dignity as personal autonomy* is not a component of the transregional concept. This missing piece of the puzzle is as telling as those that fit: it illustrates that convergence among conceptions of human dignity on some parts of their substantive content can coexist with a clear divergence on others.

Taken together, these findings show that the transregional concept of human dignity is qualified—not a full circle, but a meaningful arc. One might argue that the shared dimensions are too thin to constitute a robust legal concept. Indeed, this study focused on only three potential dimensions of the concept, leaving aside other possible expressions of human dignity that might contribute to a thicker account. Still, the two dimensions that do emerge as shared—bodily integrity and equality—exhibit convergence across normative, conceptual, and doctrinal axes alike. Therefore, yes, the transregional concept is thin, but it is not empty. At a minimum, it shows that shared content for human dignity does exist in the jurisprudence of regional human rights systems. And, importantly, this concept is not static: as regional dignity jurisprudence evolves, additional dimensions may be added to it.

The delineated transregional concept of human dignity has important implications for broader debates about the role of the concept of dignity in IHRL, particularly in relation to what I have referred to as the *source thesis.* The findings affirm that the concept of human dignity is a viable normative anchor for the concept of human rights: although the jurisprudence examined does not establish human dignity as the generative basis of *all* human rights, it shows that it marks the limits of acceptable treatment, indicating when state conduct can no longer be considered compatible with the foundational idea of human dignity.

This dissertation also offers a methodological intervention in the wider study of contested concepts in IHRL, providing a replicable approach to analyzing concepts that are normatively significant but conceptually unstable. Rather than seeking a top-down coherence, it shows that normative and conceptual stability can be uncovered through bottom-up analysis of the concept's use in judicial practice. In doing so, pluralism does not have to be flattened in pursuit of consensus. Rather, while conceptual disagreement is not resolved, it sits alongside practical convergence in a way that makes legal coherence visible.

At a wider level, this study also highlights the role of regional human rights systems as active norm articulators. As such, regional (quasi-) judicial human rights bodies should not be seen merely as fragmented or derivative institutions, but as sites where shared legal meaning is generated—as contributors to the broader coherence of IHRL. In illuminating this role, this dissertation contributes not only to the study of the concept of human dignity, but also to the understanding of how coherence in IHRL can emerge under conditions of pluralism. Future research could explore how such coherence manifests in relation to other contested concepts more broadly, and whether additional dimensions of the concept of human dignity might further develop the shared transregional concept outlined here.

Finally, returning to the central research question posed in the Introduction—to what extent can a transregional concept of human dignity be discerned through regional dignity jurisprudence on bodily integrity, equality, and personal autonomy—this dissertation finds that such a concept does indeed emerge, though in a qualified form. Specifically:

- On bodily integrity and equality, regional jurisprudence reveals consistent conceptual and functional uses, signaling a shared normative commitment to human dignity.
- On personal autonomy, divergence persists, thus this dimension is not regionally shared. Hence, the qualified nature of the delineated transregional concept of dignity.
- The transregional concept that emerges is thin but coherent, centered on the protection of bodily integrity and the equal moral worth of the individual human being.

What follows is a summary of the central theses and findings of this dissertation, which underlie and support the conclusions above.

Summary of Theses and Findings

Chapter 1:

1. The concept of human dignity functioned as a strategic placeholder in the drafting of the UDHR, enabling consensus across diverse cultural, ideological, and political perspectives (13-21).
2. The shared preamble of the ICCPR and ICESCR entrenches the *source thesis*: human dignity is positioned as the conceptual foundation for IHRL (21-25).
3. This foundational role is reaffirmed across subsequent UN instruments, where dignity appears—almost universally—either in declarative preambles or operative provisions, reinforcing its normative centrality (25-29).
4. The concept's legal and symbolic power is further underscored by its widespread incorporation into constitutional texts globally, where it frequently anchors conceptions of individual rights and state obligations (29-33).
5. Despite its ubiquity in international and domestic legal frameworks, IHRL lacks an authoritative or settled definition of the substantive meaning of the concept of human dignity (48-50).
6. Scholarly attempts to map the uses of the concept in law reveal conceptual diversity but no unified account, underscoring its status as a contested concept in both theory and practice (33-37).
7. Among existing accounts, three scholars—Christopher McCrudden, Luís Barroso, and Adeno Addis—have treated human dignity as a transnational legal concept, identifying bodily integrity, equality, and personal autonomy as recurring candidate dimensions across jurisdictions (37-48).
8. The existing gap in scholarly literature points to a need for a jurisprudence-grounded, transregional analysis of how the concept of human dignity is invoked in rights adjudication, framing the core inquiry of this dissertation (33-37, 48-50).

Chapter 2:

9. A tripartite analytical framework is adopted, consisting of three potential dimensions of human dignity—bodily integrity, equality, and personal autonomy—as a basis for identifying shared substantive content of the concept across the three regional human rights systems (51-52).
10. The lens of dignity pragmatism is adopted for the ensuing analysis, shifting focus from abstract theorization of the concept's meaning to its actual uses in regional human rights jurisprudence (55-57).
11. The analysis is grounded in the premise of *thin universalism*: a transregional concept of human dignity need not rest on full or uniform consensus, but may emerge through limited, qualified convergence (58-62).
12. The analytical distinction between the concept of human dignity and its conceptions enables the identification of convergence at the conceptual level, while accommodating divergence in interpretation or application (62-68).
13. The adopted comparative method includes functionalist elements, aimed at delineating shared functional uses of the concept in relation to bodily integrity, equality, and personal autonomy (70-72).
14. The comparison is also set to be normatively oriented: it seeks to uncover shared legal meaning despite the contested nature of the concept (72-73).
15. The study adopts regional dignity jurisprudence as the context of comparison, encompassing judgments by the ECtHR, IACtHR, and ACtHPR, as well as decisions by the ECSR, IACmHR, and ACmHPR (73-75, 77-79).
16. The unit of comparison is the concrete invocation of the concept of human dignity in relation to one of the three dimensions, labelled respectively as: *dignity as bodily integrity*, *dignity as equality*, and *dignity as personal autonomy* (75-76, 79-89).
17. The study is limited to the three selected dimensions of dignity and does not claim to exhaust all possible conceptions: the comparative framework is designed to capture some shared contents of the concept, but not to deliver a complete account on a transregional concept of human dignity (89-90).

Chapter 3:

18. *Dignity as bodily integrity* emerges most evidently in regional jurisprudence on the prohibition of ill-treatment under Article 3 ECHR, Article 5 ACHR and Article 5 ACHPR (92-98).
19. In jurisprudence on torture, references to dignity are overall rare (102-105).
20. References to dignity are most prominent in jurisprudence on degrading treatment, especially in European jurisprudence, which also informs the other two systems (107-110).
21. Degrading treatment is framed by emphasizing the victim's subjective experience—humiliation, debasement, fear, and feelings of inferiority—suggesting a violation of the person's self-worth and the basic treatment owed to them as beings with inherent dignity (110-115).
22. Across all three systems, detention conditions are a key site where dignity-based reasoning consistently underpins the standards applied under the prohibition of ill-treatment (115-126).
23. *Dignity as bodily integrity* is a shared dimension across the three systems: violations of physical or psychological integrity are uniformly framed as violations of human dignity, which acts as a threshold for identifying impermissible treatment (131-133).

Chapter 4:

24. Compared to jurisprudence on *dignity as bodily integrity*, explicit references to *dignity as equality* are relatively rare in regional jurisprudence (135).
25. The Inter-American and African jurisprudence shows use of *dignity as equality* in cases concerning the principle of non-discrimination (Art. 1.1. ACHR and Art. 2 ACHPR) and equal protection before the law (Art. 24 ACHR and Art. 3 ACHPR), while in the European system, this occurs only in relation to the prohibition of discrimination on the basis of race amounting to degrading treatment (Art. 3 ECHR). Still, all three systems reflect *dignity as equality* implicitly in relation to the principle of non-discrimination (141-156).

26. *Dignity as equality* is clearly invoked in the Inter-American and African systems in relation to the right to juridical personality (Art. 3 ACHR, Art. 5 ACHPR), emphasizing the status of the individual as a rights-holder as derivative to their inherent human dignity. In the European system, *dignity as equality* in relation to individual's recognition in law emerges only in cases concerning legal recognition of same-sex couples under the protection of private life in Article 8 ECHR (157-162).

27. Additionally, the logic of *dignity as equality* appears in regional jurisprudence on degrading treatment, where it is framed as undermining the individual's inherent worth (162-170).

28. Across all three systems, the concept of human dignity emerges as linked to the principle of non-discrimination and the equal legal recognition of individuals in law (170-174).

Chapter 5:

29. *Dignity as personal autonomy* is absent from African regional jurisprudence, making the African system an outlier. This absence stems from the framing of the ACHPR, which does not expressly address individual autonomy, unlike the ECHR and ACHR in the other two systems (175-176, 206-208).

30. In both the European and Inter-American systems, *dignity as personal autonomy* is most clearly articulated in relation to the protection of private life and privacy protections—under Article 8 ECHR and Article 11 ACHR (177-182).

31. Both systems link human dignity to autonomy in jurisprudence on reputation, honor, and private life, portraying the individual as an autonomous agent capable of self-authorship in life choices and personal matters (183-201).

32. *Dignity as personal autonomy* also appears in jurisprudence on bodily autonomy in both systems, where it underpins the right to patients' informed consent in medical treatment (202-206).

33. Due to its absence in the African system, *dignity as personal autonomy* cannot be considered part of a transregional concept of human dignity (208-210).

Chapter 6:

34. There is evidence of strong doctrinal convergence for *dignity as bodily integrity*, in invoking the concept of dignity in relation to the prohibition of ill-treatment, especially in the context of ill-treatment in detention (212-213).

35. The jurisprudence across the three systems reflects strong conceptual convergence: human dignity is understood as *the what* and *the why* of the absolute prohibition of ill-treatment, with bodily integrity encompassing both physical and psychological facets of the human experience of the body (213-214).

36. Normatively, there is a strong transregional convergence in underscoring the protection of bodily integrity out of respect for the individual's human dignity. This inviolability of the bodily integrity is read as an absolute, non-negotiable dignity-based standard (214).

37. Regional jurisprudence on the death penalty in relation to *dignity as bodily integrity* outlines the limits of an unequivocal convergence. Normatively, death penalty emerges as incompatible with human dignity across the board, but conceptually and doctrinally this connection is expressed divergently (214-215).

38. *Dignity as equality* shows partial doctrinal convergence across the three systems: the Inter-American and African systems invoke it in relation to the prohibition of discrimination, the right to equal protection before the law, and the right to juridical personality, while the European system does not show an explicit doctrinal link between the concept of human dignity and the general prohibition of discrimination or the notion of juridical personality (216-217).

39. Conceptual transregional convergence is substantial: although the European system links dignity and the notion of equality narrowly—only in race-based discrimination contexts and the legal recognition of same-sex couples—the logic of dignity as requiring equal treatment is evident across all three systems, including in jurisprudence on degrading treatment (217-218).

40. *Dignity as equality* jurisprudence demonstrates significant normative convergence between the three systems in reading the concept of human

dignity as requiring the respect for, and recognition of, the individual as a being with equal moral status (218).

41. Divergence along doctrinal, normative, and conceptual axes is evident in relation to *dignity as personal autonomy* across the three systems. While the European and Inter-American systems exhibit strong bi-regional convergence on all three axes, the African system's silence on this dimension of the concept stands out as an analytical point of interest in its own right (219-221).

42. The absence of *dignity as personal autonomy* in African regional jurisprudence may be explained not only by the lack of an autonomy-centered framing in the ACHPR, but also by a diverging conception of the relationship between the concepts of dignity and autonomy in African moral philosophies of personhood (222-225).

43. Two primary branches of African scholarship on dignity and personhood—the *personhood approach* and the *capacities approach*—underline the relational nature of the person and their membership in a community as relevant for exercising individual autonomy (225-233).

44. This relational view of personhood does not negate the idea of autonomy as an expression of human dignity, but it suggests a conceptually distinct understanding from the one identified in Inter-American and European dignity jurisprudence (233-235).

45. Ultimately, the identified transregional concept of human dignity consists of two dimensions—bodily integrity and equality. The third dimension—personal autonomy—is not part of a shared transregional concept of human dignity (235-238).

46. The transregional concept of human dignity is therefore qualified, but coherent, in line with the premise of *thin universalism* (237-238).

47. This transregional concept reflects Christopher McCrudden's "minimum content" of human dignity—ontological, relational, and limited state claim—through jurisprudential evidence. It aligns only partially with the accounts of Luís Barroso and Adeno Addis: it excludes personal autonomy (contra Barroso) and affirms equality (contra Addis) as shared dimensions (238-241).

48. The identification of a transregional concept of human dignity with a stable function and expression in regional human rights jurisprudence provides an important intervention in the debates about the universality of the concepts of human dignity and human rights (242-243).

49. The findings of this study show that regional human rights systems function as sites of shared norm articulation, demonstrating how coherence in IHRL can emerge through convergence in legal meaning, even amidst legal pluralism (243-244).

50. The three-tiered convergence typology applied in tracing the convergence between regional conceptions of human dignity and the operationalization of the premise of *thin universalism*, offer a replicable methodological approach for studying other contested concepts in IHRL (244).

51. The outlines of the transregional concept of human dignity identified in this study are limited by their reliance on the three-dimensional framework of bodily integrity, equality, and personal autonomy, as well as by their methodological scaffolding in selecting the relevant jurisprudence (244-246).

52. Future research on human dignity as a transnational concept will have to address the divergence of *dignity as personal autonomy* uncovered in this study and broaden the inquiry beyond the two dimensions that define the transregional concept identified here (246-248).

Answers to Research Questions

RQ1: To what extent can a transregional concept of human dignity be discerned through regional dignity jurisprudence on bodily integrity, equality, and personal autonomy?

A qualified transregional concept can be discerned, comprising two dimensions—*dignity as bodily integrity* and *dignity as equality*—that exhibit transregional convergence. The third dimension, *dignity as personal autonomy,* does not appear across all three systems and therefore does not form part of the shared transregional concept.

RQ2: What does the invocation of human dignity in relation to the three dimensions in regional dignity jurisprudence reveal about the concept's substantive legal meaning?

Regional dignity jurisprudence demonstrates that dignity entails both the protection of an individual's physical and psychological integrity and the recognition of each person's equal moral worth. This includes protection against ill-treatment and discrimination, as well as the affirmation of legal personhood as the basis for rights-holding.

RQ3: Does regional dignity jurisprudence reveal shared patterns in how dignity is invoked across the three dimensions—conceptually, normatively, and doctrinally?

Yes: regional dignity jurisprudence shows robust transregional convergence across all three axes in relation to *dignity as bodily integrity,* and substantial convergence on *dignity as equality*. In contrast, *dignity as personal autonomy* reveals only bi-regional convergence, with the African regional dignity jurisprudence not engaging this dimension.

RQ4: Can those shared patterns support the identification of a thin, transregional concept of human dignity?

They can. The evidence supports a thin but coherent transregional concept—functionally stable, conceptually meaningful, and comprising *dignity as bodily integrity* and *dignity as equality*.

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