

Dignity as a Traditional Value: International Legal Analysis

Elizaveta Borodina, Ekaterina V. Kiseleva and Nataliya S. Semenova*

Department of International Law, Law Institute, Peoples' Friendship University of Russia, Moscow, Russia;
semenovanataliya@mail.ru

Abstract

Background/Objectives: The term "dignity" is widely used in the texts of the international legal instruments, but international law has not developed its agreed definition. This concept of dignity is reflected in the first international human rights instruments. **Methods/Statistical analysis:** Analysis of international instruments on human rights shows that in the 20th century, the concept of dignity became the basis of human rights law. This is confirmed by the fact that, firstly, dignity is inherent to all members of the human family. Secondly, all human beings are free and equal in dignity and rights. And thirdly, these rights derive from the inherent dignity of the human person. That is why the better understanding of human dignity as a traditional value can boost promotion and fulfillment of human rights. **Findings:** The article deals with the concept of dignity from the standpoint of philosophy, Western Christianity and Russian Orthodoxy that contributed to the formulation of the concept of dignity, its definition and elements, and international law. **Applications/Improvements:** The centrality of human dignity in universal human rights texts can be explained by its core nature. It is fundamental and at the same time it seems uncontroversial enough to attract the entirety of the world community notwithstanding the diversity of morals, cultures, ethnicities, and religions that exist within the broad range of nations.

Keywords: Human Rights Council, International Legal Analysis, The Russian Orthodox Church

1. Introduction

Since 2011 the United Nations Human Rights Council has been addressing the important relationships between human dignity, human rights and traditional values¹. In its resolution 12/21, the Human Rights Council requested the United Nations High Commissioner for Human Rights to convene a workshop on how a better understanding of traditional values of humankind underpinning international human rights norms and standards could contribute to the promotion and protection of human rights and fundamental freedoms². In its resolution 16/3 the council affirmed that dignity is one of the traditional values shared by all humanity and recognized the importance of safeguarding the links between positive traditional values and human rights to

strengthen universal respect for and implementation of human rights³.

The problem of human dignity consists in finding out what it is, what is so special about it that it is so universally accepted and how this concept can be used as a legal category in international law, especially for the promotion and protection of human rights. Although the term "dignity" is widely used in the texts of the international legal instruments, the international law has not developed its agreed definition. It is in this context that the wider field for understanding the notion is to be taken, i.e. the philosophical and religious views.

2. Background of the Problem

Since ancient times, the understanding and definition

* Author for correspondence

of dignity has been a concern in many cultures, and has developed in several historical phases. Both Western and Russian traditions contributed to the formulation of the concept of dignity, its definition and elements.

The ancient vision of human dignity was quite different from our contemporary understanding. In Roman times it was not an inherent feature shared by all human beings but rather a virtue achieved by the most eminent. Later in religious contexts, human dignity became an inherent and inalienable feature of all people. However, it was not connected with the human condition but was derivative from the dignity of God and served primarily to distinguish “man” off from the rest of creation.

Generally, the Christian tradition emphasized that man was created “in the image of God” (*imago dei*) and given rule over the earth and its other creatures. The fact that a man is placed – below God but above the rest of His creation – gives him a certain dignity. The cause and effect relation is the following: “we are honored and loved by God not because we are worthy; we are worthy because we are loved and honored by God”⁴. Dignity, in this Christian understanding, is not merely inherent and inalienable but in some important sense universal since all human beings were created by God. It is something “that none of us has by merit, that none of us can receive from others, and that no one can take from us”⁵.

As human beings created in the image of God, people are ultimately good and equal. But in this temporal life they are sinful and inequality is necessary for keeping their corrupted nature under control.

Kant linked rights, freedom, equality and dignity. As he wrote, the dignity of humanity in each person demands respect. Because of this dignity, “every man has a legitimate claim to respect from his fellow men and is in turn bound to respect every other”⁶. “Humanity in his person is the object of the respect which he can demand from every other man”⁶. Kant’s use of the Latin reverential underscores the importance of the respect that this dignity demands. Kant developed his ideas at the same period of time that early human rights practices were being implemented through the American and French Revolutions. It was reflected in Kant’s desire to link between duty to respect the dignity of humanity and human rights. According to Kant human dignity implied a life of personal freedom and respect for human rights. For Kant human dignity is universal, therefore possessed by every human being. It is inherent to every human being irrespective of nature of his actions. This inherent

dignity provides a man with a special moral status. And the inherent dignity of humanity within each person lies at the foundation of both personal morality and political right, where it is expressed in the form of human rights. The Kantian conception is historically important for us because it contains the idea that the inherent dignity of the human person is the foundation of human rights. This implies that humanity which is present in even the worst men, gives each individual a dignity status that must be respected by all other individuals, society, and the state. And the features of that respect, especially in its political manifestations, are specified through human rights.

The concept of human dignity was also developed in the Russian civil and religious-philosophical traditions.

Taking into account the role of the Orthodox Christianity in formation of the Russian state historically and contemporarily, patristic tradition deserves as close attention, as the biblical tradition of the West.

The Russian Orthodox Church considers the issue of determining the true dignity of the person with the purpose of identifying human rights. The Patriarch Alexy II noted that the concept of human rights, the most important political idea of Europe arose not without the influence of the Christian doctrine of the human dignity, freedom and moral⁷. The Declaration on the Rights and Dignity, adopted on 6 April 2006 at the X World Russian People’s Council, was further developed in the document “Doctrine of the Russian orthodox church of the dignity, freedom and human rights” approved by the Bishops’ Council on 27 June 2008. The Patriarch Kirill stressed that, despite all the awareness of the importance of political freedoms, “The Church affirms the freedom from sin, which can only be gained in Christ, as well as the freedom of choice, which is possessed by each person and is a Divine gift”, so “without moral guidelines any political freedom is destructive for the people”⁸.

The Russian Orthodox Church defends the inalienability of human dignity. It states that dignity was not entirely lost as a result of the Fall, as evidenced by the acceptance of the human nature by God in the process of the Incarnation; this non-acceptance of the sin means that the sin is beyond dignity⁹. It is important, having an ontological dignity, to realize it in its empirical reality. Thus, in the east Christian tradition, the concept of “dignity” has, first of all, the moral sense¹⁰. The redemption, that is, awareness and evidence of one’s own unworthiness, in the Orthodox Church is the means of recovery and growth of dignity. The ability to self-determination, which lies

at the basis of ontological dignity of a human person, is a mechanism for release of a man from the power of sin, mechanism of realization of dignity in reality. The Russian Orthodox Church sees the “Weakness of the institute of human rights» in its defense of the freedom of choice and ignorance of the moral dimensions of life and freedom from sin⁹. In addition to identifying spirituality and disclosing the value of conscience, freedom and grace for acquiring dignity, in the orthodox concept, just like in the catholic traditions, the emphasis is made on the need to respect the eternal moral law imprinted in the holy scripture. While in the catholic traditions, dignity is an absolute feature, belonging to the human person because the human person is superior and his or her rights and duties are universal and inviolable, in the orthodox traditions the person’s individual rights may not be set against the values and interests of the motherland, community and family. In this respect the Russian orthodox church affirms that human rights can not be more important than values of the spiritual world, because a human person is not the supreme and self-defining value.

V.G. Ustyan argues that formation of the secular notion of human dignity is associated with the spread of Christianity, as the fundamental principle of human dignity - its ontologism, derivatives of which are legal constants: universality, absoluteness and inalienability, was shaped in the patristic traditions⁹.

V.S. Solovyov believed that unconditional human dignity is based on the following condition: the person is a “moral being” with “the inherent idea of good”: “Every person as such is a moral being, or a person possessing unconditional dignity and the unconditional right to existence and free development of one’s positive forces irrespective of one’s social utility”¹¹.

V.S. Solovyov also considered dignity within the framework of the social relations. He wrote: “Since a person is directly dependent on others, his dignity should be backed up by a decent society”; “The society is a supplemented, or extended personality, and a personality is a compressed or concentrated society”; “The degree of subordination of the person to the society shall correspond to the degree of the subordination of this society to moral goodness”¹¹. So, the scholar brought the category of dignity from the personal level to the social and political level.

According to N. A. Berdyaev,¹² the only religion

complying with the high idea of God-manhood dignity is Christianity. He wrote that only Christianity recognizes the dignity of immortal beings for all people, approves the dignity of each person, his divine sonship, the image of God in every person¹³.

Thus, in the Christian tradition, the concept of “dignity” is moral. The dignity of a person is based on the inherent idea of good. In the Christian understanding the ontological dignity has two main elements – humbling and freedom to self-determination. The first element includes readiness to make sacrifices, redemption and consent to go through pain because sufferings are caused by the struggle for dignity. The second element implies the person’s ability to make good choices. In order to do it, a person should be free from any fetter dependence and external determination – surrender all the world’s affections. Restraint as a result of understanding personal limitations is one of the conditions for dignity which is realized not in self-will, but in complicity to the Divine will.

Just like in the western theories, in the patristic traditions human dignity is universal, absolute and inalienable. However, the foundation for this understanding is different. In patristic traditions the fundamental principle of human dignity is its ontologism. Since the essence of man is supernatural, his dignity does not depend on external parameters but is connected with the person’s degree of freedom from sin. S. L. Frank and N. A. Berdyaev stressed the special role of the Christian tradition in shaping the concept of human dignity as an unconditional value. V.G. Ustyan argues that it was the Christian thinkers that created theoretical conditions for democratization and desocialization of the ancient understanding of human dignity that later took shape of unconditional and inherent dignity and was subsequently adopted in the European culture.

3. Results

Although the notion of human dignity has a very long history in social and political thought, it is only after the Second World War when it took shape as an international legal and political concept that aims to stress the need for unconditional respect for every human being in the most different areas of social life. It was response to the tragic period of history and the international community felt it necessary to emphasize the idea that every individual has

inherent worth and rights in order to prevent “Barbarous acts which have outraged the conscience of mankind”¹⁴.

Since the adoption of Preamble of the Universal Declaration of Human Rights¹⁴ (hereinafter UDHR) in 1948, the concept of dignity has played an important role in human rights jurisprudence. Today the notion of human dignity is in the heart of human rights discourse. It has been reflected in a number of international legal instruments that deal with promotion and protection of human rights. While debates arise around the true historical and philosophical origins of the concept, nowadays its use in human rights case law is commonplace. References to human dignity can be found in different resolutions and declarations of international bodies. Thus, the international legal documents are often considered as the modern source of the concept of dignity.

Many multilateral treaties, declarations, proclamations, and agreements were promulgated in the late 1940s and thereafter promote the centrality of human dignity as a paramount value shared by all societies in the world. The reason for this centrality is that “It became necessary to defend, not merely some rights, some truths, or some moral principles, but the very existence of human rights, truth, and of morality”¹⁵. The protection of human dignity, therefore, became something that could be promoted because it contained a common principle that was sufficiently vague for each country to accept and respect.

The first two fundamental international legal instruments that refer to the concept of human dignity are the UN Charter and UDHR. The Preamble of the Charter of the United Nations affirms: “We the peoples of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”¹⁶. Much of the inspiration for the subsequent use of dignity in international human rights texts derives from the use of dignity in UDHR. The Preamble mentions dignity twice: “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”, and a little later: “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”.

Article 1 of the UDHR takes up this theme and provides: “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”. There are also several more specific uses of dignity in the text.

Article 22, on the right to social security, provides: “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”.

Article 23(3), set in the context of right to work, provides that “Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”.

In combination, the U.N. Charter and the UDHR make a clear statement about the significance of establishing the right to dignity as the ultimate value to be enshrined in the foundational documents of a modern society. However, the contours of this right are left undefined. Nevertheless, the recognition of dignity makes these documents coherent and provides an internal tuning key to which all the other rights would have to be harmonized. These placements of human dignity within the UDHR are of great significance. Even though the UDHR was not a binding document at its inception, over time, its instructions led to a consensus of state practice and thus created a binding norm of customary international law. Moreover, the import of dignity within the UDHR is very broad and advises the creation of both negative rights based on the right to dignity (that would prohibit the state from violating this right) and positive rights (that would mandate state enforcement of these rights and also grant a private right of action).

There are other international agreements reflecting ideals present in both the U. N. Charter and the UDHR such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

We are told in the preamble to the International Covenant on Civil and Political Rights (hereinafter ICCPR) that the rights it contains “derive from the inherent dignity of the human person”¹⁷.

The International Covenant on Economic, Social and

Cultural Rights (hereinafter ICESCR) says something similar, adding in Article 13 that: “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms”¹⁸. Both conventions also proclaim that “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”.

Here it is possible to observe some differences between two formulations (UDHR, on the one hand, and the two Covenants, on the other). The two conventions claim that rights derive from dignity. It seems that the best way to find out what rights we have is to figure out what the inherent dignity of the human person involves and what is necessary for its protection and promotion. The UDHR states, by contrast, that rights and dignity are coordinate ideas, rather than deriving one from the other: this impression is reinforced in the first article of the UDHR: “All human beings are born free and equal in dignity and rights.”

This difference is extremely important because it puts in evidence that, regardless of numerous discussions on the proper role and value of human dignity, international law regards this notion as the source of human rights: People are recognized as having rights because their lives and their developing as persons are viewed as having inner worth. It would not make any sense to talk about persons having rights unless moral value is previously attached to the very core of human personhood¹⁹. But dignity does not only precede human rights as their source; it also follows them as it is the reason for their existence. The recognition of basic rights does not have ultimately any other aim than to secure the conditions of a minimally good life for all people. Therefore it can be concluded that dignity serves as a basis for human rights and is simultaneously promoted by them. So, legal norms do not create individuals’ rights from nothing; human rights are not just invented by lawmakers. Rather, both sovereign states and the international community are morally obliged to recognize that all people have basic rights because they derive from the dignity which is inherent in every human being²⁰. In this respect the use of the verb ‘to recognize’ in the UDHR, denotes the formal acknowledgment of something that already exists.

The notion of human dignity may also be found in the international humanitarian law texts. Apart from some references during the XIX century to dignity in national provisions related to the treatment of prisoners, and in a draft treaty provision prior to the Second World War related to the treatment of civilian populations, the major boost in international humanitarian law to the use of dignity came after the Second World War in the drafting of the Geneva Conventions relating to the protection of war victims. The importance of dignity as the basis for the approach adopted was high from the very beginning.

The International Committee of the Red Cross proposed to the Powers assembled in Geneva the text of a Preamble, which was to be identical in each of the four Conventions: “Respect for the personality and dignity of human beings constitutes a universal principle which is binding even in the absence of any contractual undertaking. Such a principle demands that, in time of war, all those not actively engaged in the hostilities and all those placed “hors de combat” by reason of sickness, wounds, capture, or any other circumstance, shall be given due respect and have protection from the effects of war, and that those among them who are suffering shall be succored and tended without distinction of race, nationality, religious belief, political opinion or any other quality”²¹. The text of the Conventions, as adopted, incorporated ‘dignity’ in Common Article 3 which prohibits inter alia “Outrages upon personal dignity, in particular humiliating and degrading treatment”²¹. Such acts thus were prohibited at any time and in any place with respect to persons protected by the conventions.

There is also the additional protocol I to the conventions related to the protection of victims of international armed conflicts prohibiting “Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”²² in Article 75 (relating to ‘fundamental guarantees’). Article 85 provided that certain acts “shall be regarded as grave breaches of this Protocol, when committed willfully and in violation of the Conventions or the Protocol’ including ‘(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination”²² Article 4 of the Second Additional Protocol (1977) prohibited “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”²³.

Since the 1940s, the term 'dignity' has become widespread in new international human rights and humanitarian law instruments. At the international level dignity is now routinely incorporated in general and specific human rights charters. Given the role that dignity played in abolitionist politics, the preamble to the Slavery Convention of 1956 refers to the UN Charter's reaffirmation of the Member's "faith in the dignity and worth of the human person".

Moreover given the importance attached to the 'dignity of labor' in the growth of the trade union movement, dignity is referred to in the Preambles to several International Labor Organization (ILO) Conventions, such as the Workers with Family responsibilities Convention of 1981, the Employment Policy Convention of 1964, and Discrimination (Employment and Occupation) Convention of 1958.

By 1986, dignity had become so central to United Nations' conceptions of human rights that the UN General Assembly provided, in its guidelines for new human rights instruments that they should be of fundamental character and derive from the inherent dignity and worth of the human person.²⁴

The major conventions – Convention on the Rights of the Child (CRC) of 1989, Convention on the Rights of Migrant Workers (CMW) of 1990, the International Convention regarding Discrimination against Women (CEDAW) of 1979, International Convention for the Protection of All Persons from Enforced Disappearance (CED), and the Rights of persons with disabilities (CRPD) of 2007 have all included references to dignity, asserting the centrality of dignity to human rights in general and its centrality to specific rights under that convention. Article 23 of CRC provides that "states Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community"²⁵.

Article 17 of the Convention on the Rights of Migrant Workers states that "migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity"²⁶.

Under Article 70 of the same Convention the states parties are obliged "to take measures not less favorable than those applied to nationals to ensure that working and living conditions of migrant workers and members

of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity"²⁶.

Article 24(5) of CED refers to the right "to obtain reparation that covers material and moral damages and, where appropriate, other forms of reparation such as restitution, rehabilitation, satisfaction, including restoration of dignity and reputation"²⁷. The Preamble of CRPD provides that "discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person"²⁸.

The text of CEDAW Convention also contains several references to human dignity. Its Preamble recalls that "discrimination against women violates the principles of equality of rights and respect for human dignity"²⁹.

The notion dignity continued to be used in the international sphere and in 1993 it was adopted as the central organizing principle of the Vienna World Conference on Human Rights. The Declaration and Programme of Action adopted dignity as foundational not just to human rights in general, but also adopted the concept of dignity in their provisions dealing with particular areas of human rights, such as the treatment of indigenous peoples (Article 20), the prohibition of torture (Article 55), the prohibition of gender-based violence and harassment (Article 18), the abolition of extreme poverty (Article 25), and the issue of biomedical ethics (Article 11)³⁰.

Increasingly, the role of dignity has expanded beyond the preambles to international human rights documents and appeared in the texts of their substantive articles. References to dignity have expanded to include not only rights relating to conditions of (and treatment during) detention and the right to education, but also other rights: rights in the criminal justice process, rights to be provided minimum conditions of welfare, the right to health³¹, the right of disabled persons to be treated as autonomous individuals, rights of indigenous cultures and rights to control access and use of personal data.

The notion of human dignity has also been considered by the UN Human Rights Council. In its resolution 12/21, the Human Rights Council requested the United Nations High Commissioner for Human Rights to convene a workshop on how a better understanding of traditional values of humankind underpinning international human rights norms and standards could contribute to the promotion and protection of human rights and fundamental freedoms^{32,33}. The preliminary study on

promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind was prepared by Professor V. A. Kartashkin, rapporteur of the drafting group of the Advisory Committee³⁴. In its resolution 16/3 the Council affirmed that dignity is one of the traditional values shared by all humanity. The study states that “Dignity is inherent to the human person, and is inextricably related to equality and non-discrimination”³⁵. Thus, the better understanding of human dignity as a traditional value can boost promotion and fulfillment of human rights³⁶.

4. Conclusion

The notion of human dignity is widely used in international legal instruments devoted to protection and promotion of human rights. However, the analysis of these texts has shown some significant differences in the use of dignity. The notion of human dignity can be incorporated in law in many different ways. In some of the instruments, dignity may be found in the preamble, while in others it is used to indicate particular rights. In some texts it is referred to as foundational in some sense; in others it is not. In some texts human dignity is a right in itself, whilst, in other jurisdictions, it is not a right but a general principle.

Although the notion of human dignity is at the heart of the major international human rights instruments, they do not give any definition to it. However, notwithstanding the lack of the definition, the “vague” concept of human dignity necessarily involves three ideas which clarify its meaning in international law. Firstly, dignity is “inherent to all members of the human family”. It means that dignity is an inalienable feature of all humans and can not be separated from them. All people have it just because they are humans. Secondly, all human beings are “free and equal in dignity and rights”. This idea highlights that since all people have inherent dignity, they all possess equal rights. It explains why discrimination is contrary to human dignity. Thirdly, “These rights derive from the inherent dignity of the human person”. This idea emphasizes that rights are not given by someone, they are acquired at birth and no one can take them away.

The centrality of human dignity in universal human rights texts can be explained by its core nature. It is fundamental and at the same time it seems uncontroversial enough to attract the entirety of the world community

notwithstanding the diversity of morals, cultures, ethnicities, and religions that exist within the broad range of nations.

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