Chapter 19

The Principle of Human Dignity in International Law

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1 Introduction

Human dignity performs a central role in the international legal discourse since the beginning of the nineteenth century. Thereafter, it has been explicitly or implicitly recognised in constitutional and international documents and has become the premier value underlying current moral and political debates. It undoubtedly constitutes the most pervasive concept in international human rights law and is the basis of different legal frameworks, being interwoven with various religious and moral traditions. However, human dignity finds no uniform application and generates contrasting reflections over its meaning and ultimate purpose. It has been defined a ‘vacuous concept’, a subjective idea that changes with time and beholder, masking ‘a great deal of disagreement and sheer confusion’, or a noble sentiment that ‘can have no place in an attempt at rational persuasion’, failing to provide a universalistic basis for judicial decision-making in the area of human rights’ protection. In the eyes of these critics, human dignity is then too hollow or ‘dangerous’ to be of any practical legal use.

Others, instead, have tried to assess the features of dignity, finding a core in which to establish roots and meaning. Where the philosopher William Parent has noted that dignity is ‘a negative moral right not to be regarded or treated with unjust personal disparagement’, McCrudden has instead suggested a...

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4 Vereinigung Bildender Künstler v Austria, Spielman and Jebens dissent, ECHR [2007] No. 68354/01, para 9.
“minimum core” according to which ‘every human being possesses an intrinsic worth [...] that this intrinsic worth should be recognised and respected by others, and [that] some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth’.6

Part of the difficulties lies in the fact that human dignity is, on one hand, a moral value and an ontological premise and, on the other, it also manifests itself through different legal instruments that are expressions of a fundamental general principle, and are able to collect widely shared ethical principles ‘under one portmanteau description’.7 This article examines the role of human dignity in international law through a threefold analysis: the first section presents a general overview of how the value of human dignity has become the object of primary normative protection; the second section examines the main features of the principle of human dignity, an actionable and operative norm permeating the whole body of international law; and the third section describes its core functions in the fabrique of international law.

2 Human Dignity in Legal History

Originally, human dignity made its first appearance in the legal framework related to the laws of war, a set of rules based on chivalry, religion and humanity,8 and a code of arms for protecting non-combatants and combatants (in matters such as quarter, perfidy and unnecessary suffering).9 Attitudes of humanity were however largely disregarded in religious wars in Europe, such as the Thirty Years Wars, as well as in the European colonial conquests that began in the 16th century.10 Nevertheless, it was during that particular century that the concept of human dignity started to be considered under a legal lens.11 It

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7 Ronald Dworkin, Justice for Hedgehogs (Harvard University Press 2011) 205; see also J. Waldron, ‘What do the Philosophers have against Dignity?’ (2014) NYU Public Law and Legal Theory Working Papers 496.
9 Meron, Henry’s Wars and Shakespeare’s Laws: Perspectives on the Law of War in the Later Middle Ages (OUP 1993); Meron, Bloody Constraint: War and Chivalry in Shakespeare (OUP 1998); see, more recently, Yoram Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict (CUP 2004).
11 J.A. Frowein, ‘Human Dignity as a Constitutional Value’ in David Kretzmer and Eckart Klein (eds), The Concept of Human Dignity in Human Rights Discourse (Kluwer