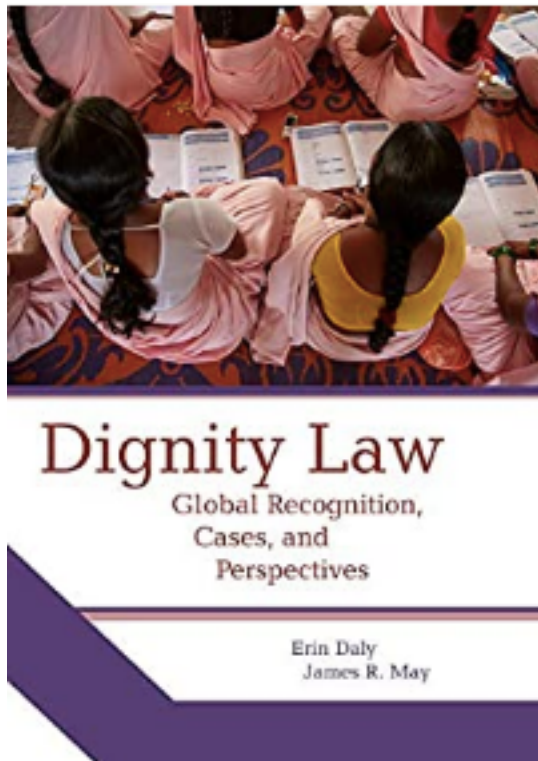


DIGNITY LAW:
GLOBAL RECOGNITION, CASES, AND PERSPECTIVES

A Teacher's Manual

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WHY TEACH DIGNITY LAW?

- Because it is **important**. The American Bar Association has said that dignity rights are the foundation of a just rule of law. The Charter of the United Nations reaffirms faith in “the dignity and worth of the human person,” and the Universal Declaration of Human Rights recognizes that “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 asserts in its first article that “All human beings are born free and equal in dignity and rights.”
- Because it is **fascinating**. It touches every aspect of the human experience, from freedom of speech, to human identity, to housing and health, to freedom from torture, to political participation. It is where law meets what is most important to human beings and to the experience of being human.
- Because it is **relevant** to (and helps us resolve) current problems. Most of the cases in this book were decided in the last 10 years; they touch on abortion and the death penalty, health and housing, poverty and wealth, social and racial injustice, environmental degradation and climate change, and democracy. At a time when many are wondering about the potential of law to promote justice, we believe that dignity is law’s best hope.
- Because it is an important **emerging** area of law. Most of the cases in the book are *cases of first impression* in which courts are considering the role that human dignity plays in framing claims, reasoning and remedies, and the overall development of the law. As a broader, geo-political matter, we note that at a time when democracy is precarious and demagoguery is on the rise, judicial attention to the dignity of every human being is more important than ever.
- Because it is **fun**. We have used the materials in this book over many semesters in different kinds of classroom settings: as a doctrinal semester-long course, as a practicum (a course in which students apply to real-world situations the dignity law doctrine they have learned), as a short-course in the middle of a semester or during a semester break, and as a summer international course. In all instances, students seem to enjoy the opportunity to think deeply about dignity and the meaning of law, the role of courts, the capacity of law to promote social justice and human well-being, and their own roles as emerging lawyers to hold to their values while pursuing professional goals. Great and interesting conversation ensues easily, and often students bring in their own experiences in ways that are moving and valuable.

And, perhaps most importantly, you'll enjoy learning more about this fascinating if heretofore overlooked field of law.

WHAT THIS CASEBOOK INCLUDES

This casebook introduces a new area of law. Some of its notable features include:

- A table of contents that includes countries, years and sometimes topics so that faculty (and students) can quickly scan the range of cases and their timeliness: about half the major cases were decided in the last 10 years and another 1/3 in the first decade of the 21st century;
- A round-the-world tour of selected constitutional texts;
- Substantial descriptive material both at the outset and throughout the book, enveloping the cases;
- Cases;
- Ample secondary sources to encourage further inquiry and investigation; and,
- Discussion points intended to encourage rigorous analysis of the cases, including illuminating insight from leading scholars, plus many practice-oriented questions that have students to consider the issues from the perspective of a practicing lawyer or of a judge.

Selected Constitutional Provisions

Compiled from constitutions worldwide, these excerpts illustrate how constitutions promote and protect human dignity. At last count, more than 160 nations (out of about 194) explicitly protect human dignity in their constitutions. And they do so in all kinds of ways.

- We have played a bingo-style game, asking students to identify constitutions where human dignity is described:
 - As a fundamental value
 - As an inviolable right
 - As a right associated with education, with health, or with income

- As a right associated with the environment
- As a right of defendants
- As a protective shield for especially vulnerable groups including
 - Indigenous people
 - Women
 - Children
 - People who are disabled
 - People who have been arrested
- As a guarantee of bodily integrity (prohibiting torture, humiliation, and medical experimentation)
- You could play a shorter game asking students to identify constitutions from various religious traditions, or various regions of the world, or various legal traditions (common law, civil, etc.).
- You could also ask students to choose 1-3 provisions to research and report back to the class.

Descriptive material

The Preface and the Overview provide a mapping of dignity law. These are designed primarily for educators because they provide the broad outlines of the jurisprudence, as well as insights into the nature of dignity caselaw.

- **Features of Dignity Law** describes the structure of the jurisprudence: its global reach, its relevance to all important parts of the human experience, and its emergence as a legal phenomenon. The cases collected here have nothing in common except that in each one, the judge or judges are trying to apply jurisprudential rules and principles in ways that recognize the inherent value of every human being. Collectively, the cases evince the principle that
 - *every person* (throughout the world and in present and future generations) has
 - *intrinsic* (not granted by law and inviolable) and
 - *equal* (regardless of race, sex, or any other social or legal differentiator)

- *worth* (value that can not be denied, diminished, or disregarded).

The shorthand for this is “human dignity.”

The 10 questions on pp. xxviii-xxix can be referred to throughout the course. These reflect themes that permeate the caselaw: almost all of the cases implicate almost all of these lines of inquiry.

- **Broad Outlines of Dignity Law.** Likewise, this section of the chapter raises themes that inform the rest of the book. As we note, a central question of this book is what does the general concept of human dignity mean when it is rendered in law? We know what human dignity means as a conceptual, philosophical or religious matter, but how is it used as a *legal* concept? Why do judges think it is important? And how can lawyers use the concept of human dignity to advance their clients’ interests?

Cases

This casebook gathers together judicial opinions from around the world in which judges have engaged the idea that human dignity is relevant to deciding a case. These cases are extraordinary in several ways.

- First, they span the globe and all legal traditions: among the most influential and prominent courts advancing the protection of human dignity are those in Colombia, Germany, India, Israel, Pakistan, Peru, Puerto Rico, and South Africa. We have tried to include a variety of cases from all over the world to showcase those countries whose courts have made emphatic commitments to human dignity, as well as countries whose jurisprudence is less well known in order to show the range of geographies and cultures that are making dignity law.
- Second, they touch on all types of legal rights and therefore all types of human needs and interests, straddling civil or political rights and social, economic, cultural, and environmental rights.

Despite the breadth of this body of law, the cases demonstrate a remarkable consensus of what dignity means as a legal concept. No two judicial traditions express dignity in exactly the same way, but (with one possible exception), they express similar conceptions of human dignity – because they are focusing not as much on the particularities of their legal regimes, but on the universality of the human experience.

Collectively, these cases create a body of jurisprudence that is emergent (most of the cases were decided in the last 10 years), global, and profoundly important as a matter of law and as matter of human experience. These cases tell us important things about the line between state power and individual authority and, indeed, about what it means to be human in the 21st century.

All that said, it should be noted that cases from common law countries are rarer than others in the global dignity jurisprudence. Canada has flirted with dignity as the touchstone of its equality jurisprudence and while it retains some affection for dignity rights, dignity is neither mentioned in the Canadian Charter of Rights nor has the Supreme Court fully committed to a jurisprudence of dignity as it has in India, Israel and South Africa – all of which have some common law roots. In the United States, dignity is invoked as the underlying value of the Eighth Amendment’s prohibition against cruel and unusual punishment and, more recently, it was the leitmotif of the plurality opinion in *Planned Parenthood v. Casey* (1992) (invoking dignity in upholding some fundamental right to choose to terminate a pregnancy) and of Justice Kennedy in cases including *Lawrence v. Texas* (2003) (invalidating criminalization of same-sex intimacy in part because of dignity) and *Obergefell v. Hodges* (2015) (invoking dignity at the confluence of equal protection and due process clauses to protect the right to same-sex marriage). In the coming years, it is possible that the Supreme Court could build on these precedents to strengthen the role of human dignity as an underlying constitutional value but, given the current make-up of the Court, it is more likely that these precedents will be diminished or overturned, making the United States even more of a pariah in global stage of dignity jurisprudence. American law students will want to grapple with their country’s reluctance to embrace human dignity as a legal principle. And they may want to explore the countervailing impact of the American Bar Association’s commitment to it.

Essential Reading

We recommend that instructors read the following cases whether or not they are assigned to students. Cases in *italics* seem to us especially instructive.

Germany: Air Transport Security Case 58

India: Puttaswamy 100

Israel: Adalah Legal Centre for Arab Minority Rights 140

South Africa: Minister of Home Affairs v Fourie 168

Canada: *R. v. Kapp* 194

India: *Francis Coralie Mullin* 241

Colombia: Recyclers' Case 261

Colombia: Rio Atrato 310

Czech Republic: *J v Bohice Psychiatric Hospital* 342

Europe: *Bouyid v Belgium* 367

South Africa: *Makwanyane* 430

South Africa: *Doctors for Life* 481

Israel: *Movement for Quality Government* 497

What is not included:

- Cases about non-human dignity: no robots, no rivers, no chimpanzees, and no corporations. Nor are there cases about the dignity of inchoate things like courts, states, sovereigns and the like.
- Cases about human values that don't engage human dignity under law.
- Cases about dignity in non-constitutional matters (except one text box about dignity torts).
- Cases from non-constitutional courts, though we do include cases from supra-national human rights tribunals, such as the European Court of Human Rights and the Inter-American Court of Human Rights.

Discussion Points.

We have chosen to designate the questions following the cases and secondary sources as "Discussion Points" rather than "Questions" because they are generally intended to provoke thoughtful discussion rather than to quiz students on their understanding of the cases. The discussion points follow the cases or sets of cases to highlight some of the most challenging aspects of the cases, to draw attention to the

difficult issues relating the development of the notion of dignity under law, and to encourage readers to draw connections (in contrast or comparison) to other cases in the book or other areas of law. At times, we explicitly encourage readers to put themselves in the position of lawyers having to make difficult strategic decisions about how best to protect their client's dignity or how to help shape the law to advance human dignity generally. At other times, we encourage readers to imagine being a judge in these difficult cases of first impression, with all the pressures relating to judicial legitimacy, separation of powers, the challenges of enforcement, and so on bearing on their decision as to whether to accept the new dignity based claim and how to characterize it for maximum effect. Although in most cases, the factual situations are not novel, judges and lawyers (and clients) are thinking about them in this new human-centered way and, in so doing, creating a new way of thinking about law.

Many of the discussion points include excerpts to relevant and recent secondary sources (books, chapters, articles and essays) that elucidate either the questions asked or how to consider answering them.

Responses to discussion points are provided below.

SAMPLE SYLLABI

Below are some sample syllabi for different courses. Each one of the assignments can be discussed in a 90-minute to 120-minute class period – though we have found that there is always more to say and if we have the time, we let the conversation go to wherever the students want to take it; it is invariably interesting and pertinent and never a waste of time.

- There are some portions that faculty may want to omit, *though faculty will want to read these materials even if they are not assigned.*
- Except in the 4-credit course, we like to start immediately with cases that consider the intrinsic worth of the human being (and then back into the history and traditions as needed). We sometimes ask students to skim or read Unit 1, and we draw on that in our class discussions, but we often don't go over them in class.
- We also can omit Chapter 9 as long as students have a general understanding of the jurisprudential nature of socio-economic rights and the positive/negative rights distinction and the remedial function of the principle of progressive realization.
- If you do not have enough time in the semester, you can skip one assignment from each Unit (depending on faculty and/or student interest). In some classes, we have skipped the sections on personal information, culture, protection against humiliation, and beyond electoral politics.
- We have chosen to begin with the individual and expand out to the social and then the political, though we recognize that for many, the socio-material aspects of dignity are more fundamental: how can a person develop their personality or have agency over their lives if they have no food or shelter? Some faculty may want to either skip Unit Two or reverse the order of Units Two and Three. Likewise, some faculty who want to focus on dignity as a value in the criminal justice system may want to start with Unit Four. Although there are some references in the later chapters to earlier chapters, the later ones do not assume knowledge of materials in the previous ones.
- If you do start later in the book, you might want to assign some of the materials in Unit One (e.g. pp. 3-10) just to provide an overview of the main themes.

One-Credit or short week-long course

1. Chapter 4: The Worth of the Human Person 47-67

2. Chapter 7: Gender and Sexual Identity 163-191
3. Chapter 10: Living with Dignity, Housing, Health & Education 241-261 (skim or omit 231-241)
4. Chapter 12: Detention and Conditions of Incarceration, 386-405
5. Chapter 13: Participatory dignity 459-491

Two-Credit course

1. Chapter 4: The Worth of the Human Person 47-67
2. Chapter 5: Identity and Personal Freedoms: Freedom of Conscience and Consent 67-99
3. Chapter 6: Agency: Family, Life and Death 129-163
4. Chapter 7: Gender and Sexual Identity 163-191 or Chapter 8: Dignity and Equality 191-231
5. Chapter 10: Living with Dignity, Housing, Health & Education 241-261 (skim or omit 231-241)
6. Chapter 10: Living with Dignity, Economic Security 261-277
7. Chapter 10: Living with Dignity, Environment 277-310
8. Chapter 12: Policing and Prosecution, 365-386 or Chapter 12: Sentencing 405-459
9. Chapter 12: Detention and Conditions of Incarceration, 386-405
10. Chapter 13: Participatory dignity 459-491 or Chapter 14: Beyond electoral politics, 491-511

Three-Credit course

1. Chapter 4: The Worth of the Human Person 47-67
2. Chapter 5: Identity and Personal Freedoms: Freedom of Conscience and Consent 67-99
3. Chapter 5: Identity and Personal Freedoms: Personal Information 99-129
4. Chapter 6: Agency: Family, Life and Death 129-163
5. Chapter 7: Gender and Sexual Identity 163-191

6. Chapter 8: Dignity and Equality 191-231
7. Chapter 10: Living with Dignity, Housing, Health & Education 241-261 (skim or omit 231-241)
8. Chapter 10: Living with Dignity, Economic Security 261-277
9. Chapter 10: Living with Dignity, Environment 277-310
10. Chapter 10: Living with Dignity, Culture 310-339
11. Chapter 11: Protection against humiliation and people in particularly vulnerable situations 339-365
12. Chapter 12: Policing and Prosecution, 365-386
13. Chapter 12: Detention and Conditions of Incarceration, 386-405
14. Chapter 12: Sentencing 405-459
15. Chapter 13: Participatory dignity 459-491

Four-Credit course

1. Unit 1: Definitions, History, and Background 1-47
2. Chapter 4: The Worth of the Human Person 47-67
3. Chapter 5: Identity and Personal Freedoms: Freedom of Conscience and Consent 67-99
4. Chapter 5: Identity and Personal Freedoms: Personal Information 99-129
5. Chapter 6: Agency: Family, Life and Death 129-163
6. Chapter 7: Gender and Sexual Identity 163-191
7. Chapter 8: Dignity and Equality 191-231
8. Chapter 10: Living with Dignity, Housing, Health & Education 241-261 (skim or omit 231-241)
9. Chapter 10: Living with Dignity, Economic Security 261-277
10. Chapter 10: Living with Dignity, Environment 277-310
11. Chapter 10: Living with Dignity, Culture 310-339
12. Chapter 11: Protection against humiliation and people in particularly vulnerable situations 339-365

13. Chapter 12: Policing and Prosecution, 365-386
14. Chapter 12: Detention and Conditions of Incarceration, 386-405
15. Chapter 12: Sentencing 405-459
16. Chapter 13: Participatory dignity 459-491
17. Chapter 14: Beyond electoral politics, 491-511

OVERVIEW OF THE BOOK AND ANSWERS TO QUESTIONS

Here we provide a synopsis of the law and, following each chapter, answers to each of the questions presented as discussion point in the book.

We have divided the book into 5 units: Unit One provides historical background and geographic overview of the concept of human dignity to the acceptance of dignity as a concept that is legally relevant; Units Two through Five provide the cases that form the jurisprudence of dignity law and accompanying materials.

We consider dignity jurisprudence to be like the facets of a diamond, and we showcase each side in Units Two through Five. Units Two and Three (individual and civil rights, and socio-economic rights respectively) cover the broadest areas while Units Four and Five consider dignity in more specific contexts (particular vulnerabilities and democratic participation). Covering the materials in this order also allows students to see the state first as a negative guarantor of rights to a positive provider of rights and to see the notion of dignity initially as an interior sensibility whose import spreads outward.

Each unit begins with a one-page overview of the materials within.

Overview: Mapping Dignity Law

This chapter is designed to give instructors (and students) a sense of the landscape of dignity law, since it is a new discipline but one that integrates diverse areas of law, cultures, and legal systems.

xxxiii

1. This is a conundrum because it both supports and challenges one of the book's central premises: that, as the jurisprudence shows, it is feasible for judges to invoke dignity in an objective, purposeful, principled and coherent manner. Yet it would elevate hope over experience to say that judicial outcomes operate objectively outside of subjective experience, considerations, and inclinations, which the references to Sourlas, Barak and Sachs demonstrate.
2. Courts interpreting the meaning of "dignity" draw from any number of sources, including those Grant lists. Rao, on the other hand, questions whether the concept of

dignity has juridical footholds, that is, whether it has sufficient limiting principles to serve as an effective tool under law.

3. This further explores the extent to which judges have applied dignity in law, in ways that suggest that dignity is not too subjective to serve as a legitimate constitutional right, as Steinmann suggests. In the least, the cases the book features suggest both that dignity can be a loose concept, and that it is no more a “loose cannon” or “jurisprudential Legoland” than many other bedrock constitutional principles, such as “due process,” “free speech,” the “right to life.”
4. This underscores dignity’s role both as a source of rights, and as a right that animates or interprets other rights, as Giannini concludes.
5. This suggests the dichotomous role that dignity plays in the courtroom, both slippery (Rao) and somewhat more solid (Daly). What role should dignity play in courtrooms?
6. Further reading.

Unit One: Introduction to Dignity Law

Human dignity has been a philosophic concept for far longer than it has been a legal one. For millennia, it has been recognized as the distinguishing feature of humanity, the thing that separates people from other animals and from non-sentient beings. In some religious contexts, this elevates humans above others while in others it does not necessarily. Unit 1 provides the historical and philosophic background of human dignity before it was a legal concept and as it made its way into law, namely through its recognition and reaffirmance first in the UN Charter and then in the American Declaration of the Rights and Duties of Man and then immediately following suit in the Universal Declaration of Human Rights. We recommend that instructor read *Unit One*, even if it is not assigned.

Chapter 1

We begin with a general overview of the meaning of dignity as a legal concept (which we have sometimes referred to “dignity under law” or “dignity law”).

Questions Page 6

1. This explores the modern conceptualization of dignity under the Universal Declaration of Human Rights as the excerpt by Grant addresses.
2. This invites an epistemic discussion about dignity. The concept of dignity is an alloy, flexible and firm, intellectual and emotional, yet resistant to exact definition. But that contributes to, rather than diminishes, its province under law. Movsesian's piece explores some of this further.

Page 9

1. The excerpt from Rao suggests that dignity's triad configurations are neutral in law but subjective in application.
2. The pieces by Grant, Giannini, and Smith explore what 'dignity' means in law.
3. The piece by Pin suggests dignity is decidedly progressive.

Chapter 2

Chapter 2 provides a geographic or anthropologic survey of dignity as it has been understood as a concept in various cultural traditions. The purpose of this chapter is to show 1) the idea that humans have worth is not a Western or a Christian construct; it can be found throughout the world in different traditions; 2) there is an overlapping consensus about the meaning of human dignity that highlights the special worth of people (whether or not more special than other elements of the world) and the fact that human dignity (i.e. human experience) is both individual and social/communitarian; and 3) to begin to provide a vocabulary for the discussion of dignity.

Questions Page 20

1. The piece by Riley suggests that the concept of dignity provides more direction than detail.
2. The excerpt by Franke speaks for itself, suggesting normative dignity embodies twin components of recognizability and recognition.
3. Likewise, the excerpt from Pin needs no elaboration.

Chapter 3

Chapter 3 provides a history of dignity in law beginning with the end of World War II. The UN Charter (and the declarations of rights that followed shortly thereafter) were the first articulations of the value of the human person as an essential norm of the protection of human rights. This is where the story of dignity law really begins. Chapter 3 then traces dignity as a legal concept to constitutions (providing a very brief overview, since that is the subject of the rest of the book), its incorporation in professional codes, and a survey of dignity law in the United States.

Questions Page 34

1. The pieces by Moyn and Movsesian explore Catholicism's role in the development of dignity in law, and speak for themselves.
2. Self-explanatory.
3. Dignity's role in the practice of law is under-explored. The pieces by Davis, Luban, Henkin, Sims, Dobrowalski support the idea that the purpose of the legal profession is to respect and reflect human dignity under law, and speak for themselves.
4. The prospects for dignity in countries that have historically found it to be inimical to rule of law, such the United States, remains to be seen, as the piece by Pin observes.

Page 41

1. This explores the meaning of "dignity" as a philosophic concept. The pieces by Dworkin and the others speak for themselves.
2. The pieces by Waldron, Kateb, Rosen and Dan-Cohen would seem to suggest that "dignity" is foundational to other human rights.
3. It's both. The pieces by Daly, Barak and Dupré speak for themselves about dignity's role in constitutionalism as a right and/or a value.
4. It's both. The pieces by Waldron, Rosen, Kateb and Fletcher speak for themselves about whether dignity a philosophical construct, a constitutional concept.
5. The excerpts by Henkin and Barroso speak for themselves..
6. The excerpt by Barroso about dignity's "twin" roles speaks for itself.

7. The principal argument against recognizing human dignity as a right or animating constitutional attribute is that it lacks philosophical or legal endpoints, as Barroso explains and Pinker and Beitz criticize.
8. Dignity serves multitudinous roles in law, to the frustration of both its supporters and detractors, as the pieces by McCrudden and Rao explore. The questions here are both practical and rhetorical, and something the casebook examines throughout.
9. Again, this point goes to dignity's amorphous role in the courtroom, something a positive-rights preoccupied judge might view as befuddling, as (future) Judge Rao posits in the excerpted piece.
10. Dignity can exist at any legal level. Comparative constitutionalism can provide road signs to ease cross applications, as Klug suggests for interpreting the right to dignity in Montana's constitution.
11. This goes to dignity as an animating feature. The answer is, it depends. In countries with legal culture grounded in recognizing only positive or negative enumerated rights, dignity can be relegated to a covert objective. Yet under systems that invite more flexibility, dignity's role is ascendant, as the pieces by Jackson, Goodman and Neuman explore.
12. For the most part, constitutions instantiate an express right to dignity (more than 160 of them), including in the ways detailed throughout the book and listed in the annex. The rest is interpretation, as this casebook examines, and the pieces by Shulztiner & Carmi, Barroso, and Nussbaum, explore further.
13. Again, it depends on constitutional culture. But it's clear that dignity has a role in upholding other rights, including freedom of speech, as the pieces by Wright and explore.
14. Not really. Dignity is a neutral concept. This can lead to conceptual conundrums of "playing both sides," as in debates about reproductive rights, as the pieces by McCrudden and Ergas explore further.
15. This gets to how words can mean different things. Sovereignty has been described as protecting the dignity of the state in the ways described by Dodson, Resnick, Chiehy, Sher, Smith and others. But that's not the dignity under law this book engages, which is as a means of promoting the equal worth of every person, everywhere, regardless of sovereignty. It is in dignity that humanity is united, not divided. States are inventions of human beings; they aren't human beings.

Unit Two: Dignity and Identity

We have put the materials on dignity and equality at the end of this Unit but some faculty may want to start with this material because dignity and equality are so intimately inter-connected (see e.g. UDHR Art 1: "All human beings are born equal in dignity and rights."). We like to get to this at the end of the chapter because it is more conceptual and we find students do better with it once they have immersed themselves in the application of dignity law.

Chapter 4

This chapter asks "why are human beings special?" We love beginning with these cases because they really get students thinking. As noted, the casebook does not address the extent to which non-humans have dignity, so the question isn't one of hierarchy but of quality: what is human worth? We approach this from two very different perspectives: biological (in the patents materials) and ethical (in the German case).

The patents cases compel students to investigate what distinguishes humans from, say, mice: other living, sentient, breathing, reproducing mammals. You can get to these questions through any of the cases included here, depending on which fact pattern you or the students find most inviting.

For many people, the German experience is the paragon of dignity law, so we introduce the next case with an excerpt from an article that discusses the history and meaning of dignity in German constitutional law. *even if you don't assign this article, it's worth reading as an instructor so that you understand the context of German dignity law, which has been very influential.* This excerpt describes how dignity started as a socio-economic right but has evolved into a Kantian principles that touch on the qualities of inherence and inviolability and evoke imperatives against humiliation and objectification. These themes are repeated throughout the casebook; this is a good opportunity to bring them out and to investigate the relationship between the two types of dignity (elaborated on in Units Two (individuality) and Three (socio-economic rights)).

In the *Air Transport Security* case, the Court protects innocent passengers from death not only because allowing the government to shoot down the plane would

violate their right to life, but because it would violate their right to dignity. This case poses a question that we ask throughout the casebook: what difference does dignity make? Why is the court going out of its way to invoke the value/right of human dignity. And while the German Court seems committed to the principle of dignity (perhaps even at the risk of national security), it nonetheless distinguishes between the innocent passengers, the crew, and those who were responsible (took agency) for their crime – which raises the question whether, in the pragmatic world of judicial review, it is possible to believe in the “inviolability” of human dignity (as the Basic Law of Germany proclaims).

Questions Page 51

1. This is a rhetorical reference based on the *Harvard* case. Yet, it asks the most profound question: if mice genes can be patented, why are we leery of patenting human genes.
2. Not necessarily. Commodification and objectification are related but not the same thing. Not only objects can be commodified. Likewise, not everything that is objectified can be commodified. People can also objectify other people, a root contributing cause of misogyny, racism and xenophobia. Objectification, in the sense it is used in the cases which itself is derived from Kant, can be defined as treating another as an object, to suit your own means. It is a principal violation of respect for human dignity – the inherent human value of every person. And yet, we do it all the time, whether by hiring a lawyer or asking someone to pass the salt, we are using another to serve our own ends. Where is the line at which dignity is crossed?
3. Who knows. Sentience is thought to be a defining characteristic of being human. But perhaps that proves too much, insofar as some humans lack sentience and some non-humans possess it. Same question regarding emotionality, rationality, intentionality, morality, and perhaps other features of (some) human experience.
4. Speaks for itself.
5. This question informs not only the result in the *Parillo* decision, but much of the discussion of the role of the role of dignity in the debate over reproductive rights. In the United States, for example, different states attribute personhood at different stages of embryonic and fetal development. The U.S. Supreme Court has ruled that government can't impose an undue burden on abortion, for example, yet found few burdens to be undue.

6. These questions are largely rhetorical. Commodification of human beings, parts, organs or tissue raises a host of moral, philosophical and ethical questions. But mostly commodification tends to exploit humans who are already vulnerable, and benefit the powerful who make the rules.
7. The Convention comes very close to recognizing human dignity as the basis for regulation of the commodification of human beings. The remainder of the note speaks for itself.
8. This question is one this casebook aims to help answer.

Page 64

1. Because the Basic Law of Germany requires it to do so.
2. Ironically, the Court clearly envisions a hierarchy of dignity, with the passengers possessing the most, and the hijackers the least. Indeed, the court justifies shooting down the plane if it has only hijackers, regardless of intent. The question here is whether this hierarchy violates the fundamental principle of *equal* dignity.
3. This question is designed to encourage discussion.
4. Enacting a law that permits the military to shoot down a crowded commercial aircraft that could be used for ill-intended purposes would seem to consider the aircraft as only an object, including its passengers, inconsistent with the constitutional right to dignity.
5. This question is designed to encourage discussion.

Chapter 5

The materials in this chapter consider these questions in more pragmatic contexts, all of which touch in some way on questions of choice, agency, free will, autonomy, freedom, or the full development of the personality. We prefer the term “agency” to autonomy and choice because it seems more neutral and less fraught by association with other things that students may already have preconceptions about, and it minimizes the sense that decisions are made in isolation. But we also often refer to the “full development of the personality” as the ultimate goal of dignity jurisprudence. This chapter showcases different aspects of the human personality by reference to cases that concern freedom of movement, freedom of action,

freedom of conscience, the right to work, and the right to control personal information.

First, we present 3 cases that relate dignity to **freedom of movement**. The cases are diverse but raise fundamental questions about dignity: why is the freedom to move an essential attribute of human dignity? These cases encourage students to talk about choice and autonomy and how they go not only to intellectual decision-making (reason and conscience as the UDHR says), but to identity and to control over one's life. We encourage students to explore these matters separately and in relation to one other: why is where you go related to who you are? Why are restrictions on where you can be violations of your human dignity, your humanity? There are no right or wrong answers to these questions; each student (and instructor) will have to make sense of it for themselves.

The case from Malawi is included in part because it shows a judicial willingness to protect the dignity of people who are destitute in the context of something that most of us take for granted. We use this case to encourage students to get out of their comfort zones by putting themselves in the place of the defendant – a key exercise in understanding dignity law. The case also illustrates the globally comparative nature of dignity jurisprudence, as it cites cases from South Africa and the United States and refers to international law and regional human rights law in Europe and Africa. The next case from India concerns someone at the opposite end of the socio-economic spectrum whose right to travel was also restricted. And, last, a case from Kenya about refugees and their rights to have their dignity respected. Again, the cases invoke global legal principles and universal themes of human dignity.

The section ends with a boxed note about the phrase: to be treated “as a person.” We love this phrase because it is at once empty and tautological (of course, how a person is treated is “as a person”) and profound – it seems to suggest (harkening back to the cases from Chapter 4) that “as a person” implies some standards. But what are they?

The case about **freedom of action** provides one illustration of a case where the dignity claim doesn't prevail. The right to smoke may seem a frivolous claim but it raises questions about the limits of agency, autonomy, identity. Questions could be raised about the right to not wear a motorcycle helmet or a mask during a pandemic. How do we draw the line between personal choices that go to one's identity and claims that seem frivolous?

The next section, about the **freedom to work** (and more specifically the freedom to choose certain work) pits two understandings of dignity against one another. On one side is the *subjective* dignity standard of autonomy and free choice: one should be able to choose one's work according to one's own priorities and sense of autonomy, even if that choice is to engage in prostitution or being thrown out of a canon. On the other side, the state seeks to establish *objective* standards – based in human dignity – below which a person should not go. The very phrase “that is beneath his dignity” assumes an objective standard that was violated by a person's action. We invite students to explore where these objective norms come from and how they are linked to other conceptions

The conflict between these two versions of dignity are highlighted in the question whether a person can consent to an indignity and we include in the note a particularly gruesome example of consent both because it raises difficult questions and because it raises good class discussion!

The last section in this chapter concerns the right to control **personal information**. The question here is how personal information is related to one's dignity and the extent to which *control* over such information (whether it's fingerprints or eye scans or information or speech) is an incident of the protection of human dignity. We like these cases because they come from different legal traditions (India, Taiwan, Europe); the *Puttaswamy* case, in particular, is a *tour de force* and if one were pressed for time, one could assign only this (although the Taiwan case is one of the few cases in the book from an East Asian country).

Questions Page 75

1. Because the court determined detention amounted to an objectification of the claimant, who was treated not as a person of intrinsic worth, but only a person worthy of avoidance of detention if he could demonstrate extrinsic worth.
2. As the “the inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote.”
3. This question is designed to encourage discussion.
4. This question is designed to encourage discussion.
5. This question is designed to encourage discussion.

6. Equality and dignity are not the same thing. A law that humiliates everyone can be applied equally but doesn't advance dignity generally. Conversely, a law can advance the dignity of some, such as affirmative action, but not be applied equally.
7. The court uses indignities suffered by women to make the point about the important role that dignity can play in society in promoting both equality and dignity (of women as well as men in a society that values both equally).

Page 79

1. The court concludes that the right to life (Article 21) includes a right to live with dignity. It also concludes that the right to travel and personal security (Article 19) also encompasses dignity.
2. The Court notes: "The long years of the freedom struggle inspired by the dynamic spiritualism of Mahatma Gandhi and in fact the entire cultural and spiritual history of India formed, the background against which these rights were enacted and consequently, these rights were, conceived by the constitution-makers not in a narrow limited sense but in their widest sweep, for the aim and objective were to build a new social order where man will not be a mere plaything in the hands of the State or a few privileged persons but there will be full scope and opportunity for him to achieve the maximum development of his personality and the dignity of the individual will be fully assured."
3. This question is designed to encourage discussion.

Page 82

1. Countries commonly deny "dignity rights" to refugees, including access to legal process, food, shelter, education, etc. This question underscores the difference between a right (which is granted) and the inherent entitlement of every person to dignity. The question largely answers itself.
2. While not necessary, it is clear that the right to dignity is important to an open and democratic society, including freedom of speech, assembly, voting, and access to information, participation and fair judicial process.
3. This question is designed to encourage discussion.

Page 87

1. This question is designed to encourage discussion.

2. The point here is that the court engages in dignity balancing, ultimately elevating the right of non-smokers to self-development in a healthy environment over the right of smokers to self-autonomy. The court notes: "Further, the creator of the Constitution in the part for exercising certain civic and political freedoms and rights determined by the Constitution (right to inviolability of the home, right to free movement and choice of residence (Articles 26 and 27 of the Constitution) and freedom of market and entrepreneurship (Article 55 of the Constitution), allows the limitation of these freedoms and rights if it is in the best interest for the protection of the environment or health of people, environment and nature."
3. In this case, like many others, we see the court turning to international law to inform how to interpret domestic law, a common approach to constitutional questions. We see this at work here, where the court observes: "In order to protect the environment and the health of people, with reference to Article 12 of the International Covenant on Economic, Social, and Cultural Rights adopted by the General Assembly of the United Nations on December 16, 1966, which determines everyone's right to achieving the highest attainable standard of physical and mental health, as well as to the preamble to the Constitution of the World Health Organization stating that exercising the highest attainable standard of health is one of the fundamental rights of every human regardless of race, religion, sex, persuasion, economic and social status, in May, 2003 the World Health Organization adopted the Framework Convention on Tobacco Control." We sometimes ask students why courts in this area of the law so frequently engage international law and foreign law. One answer might be that many of these cases are, especially from the standpoint of dignity, cases of first impression in which there is no clear precedent in the jurisdiction. One cause or effect of such extensive transnational borrowing is that the jurisprudence of dignity, though global in its roots, is converging in practice; there is less local variation than one might expect as constitutional courts around the world are seeking entry to the same party.

Page 88

1. While the outcome may not have been different if the court had done so, the significance would have been insofar as being forced to hew to another's belief system can diminish one's dignity without regard to one's own belief system.
2. See answer to prior question. The court observes: "This right, under the juridical-constitutional profile, represents an aspect of the dignity of the human person, recognized and declared inviolable by the art. 2. It belongs equally to believers and

non-believers alike, whether they are atheists or agnostics ... and entails the consequence, valid for both, that in no case the fulfillment of acts that belong, in their essence, to the sphere of religion may be the subject of mandatory prescriptions deriving from the legal system of the State."

Page 91

1. Much of this question is addressed by the "conundrums" mentioned in the note following the discussion point. The point of these cases is to emphasize how the concept of dignity as a right helps to frame the competing autonomic interests at stake.
2. This question is designed to encourage discussion.
3. This question is designed to encourage discussion.
4. This question is designed to encourage discussion.

Page 96

1. The court seems to be concerned about all three. You can ask students if they think the court should have been more clear in distinguishing among the different violations. These touch on different aspects of dignity such as the esteem in which one is held in the eyes of others and the right to be treated "as a person."
2. Article 11 establishes that the fundamental principles: that Bangladesh is a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. The gives the women the right to enforce their constitutional rights because they are citizens, as recognized in Article 11. It is their citizenship that gets them in the door.
3. For discussion.
4. For discussion, designed to encourage students to explore the limits of legal thinking and whether the extra-legal commitments of judges have a place in judicial reasoning or not.
5. For discussion, designed to encourage students to think about dignity-based remedies.

Page 99

1. It is a tough question to answer because the law does better with objective criteria while the right being upheld can be inherently subjective.
2. Relying on discretion in enforcement would seem to advance dignity less than clear, objective criteria under law. Here, the court observes: "In this view, the role of the public official in a democracy, like the role of the state itself, is to serve the interest of the public and its members. Exercise of discretion is not a casual affair driven by personal likes or dislikes. Structuring of discretion means that the authority (in this case CSB) must first apply its mind to tailor intelligent objective criteria that is best suited for the selection of the officers under consideration and then begin the process of selection. It must be based on relevant considerations required for selecting the best officer for the job."
3. The court clearly draws a connection between the two. The excerpt from the Seychelles reads: "Dignity in humans involves the earning or the expectation of personal respect or of esteem. Human Dignity is something that is inherently a person's God-given inalienable right that deserves to be protected and promoted by the Government and the community. Human dignity is in itself enshrined as the corner stone of society from the very beginning of civilization. Thus all social institutions, governments, states, laws, human rights and respect for persons originate in the dignity of man or his personhood. It is even said that dignity is the foundation, the cause and end of all social institutions. In this context any attempt to undermine the dignity of a human being would also undermine the very foundation and support upon which an orderly society is structured."
4. This is a rhetorical question.

Page 112

1. Privacy is a basic to self-actualization alone, and sometimes with others, and thus to dignity. The court in *Puttaswamy* puts it this way: "Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture. ... Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination."
2. This point speaks for itself. And as to the question that concludes it, dignity can be diminished by temporary incursions into it.

3. The right to life (Art. 21) and others mentioned in prior cases (e.g., right travel under Art. 19).
4. This question is largely rhetorical and emphasizes dignity balancing.
5. Many, including wearing masks, social distancing, mandatory vaccines, or requirements for essential workers to show up to work.
6. This is a rhetorical question.
7. Perambulatory provisions can guide interpretation, but are typically not enforceable. The reference to 'dignity' in the Preamble of the Constitution of India is one such example. While this constitution does not afford a specific right to dignity, the perambulatory mention influences judicial outcomes in interpreting other rights. The remaining questions here are for discussion purposes.
8. This note speaks for itself.
9. The court in *Puttaswamy* observes: "The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms."

The remaining questions are posed for discussion purposes.

10. Much of what is here is for discussion purposes.
 - a. The legacy of indignities contributes to the extent to which former colonial states commonly construct constitutions that promote and protect dignity.
 - b. Intent matters. But it is discerned differently. It can be rigid (as in, what the framers intended at the time), or flexible (as in, the framers intended a flexible interpretation).
 - c. This is a rhetorical question.

Page 120

1. Article 22 of the Constitution of Taiwan protects human dignity, which the court interprets to include privacy, including the fingerprint and other personal information

at issue here: "Fingerprints are biological features of an individual's person, which are characterized by personal uniqueness and lifetime unchangeability. As such, they will become a form of personal information that is highly capable of performing the function of identity verification once they are connected with one's identity. Because fingerprints possess such trait as leaving traces at touching an object, they will be in a key position to opening the complete file of a person by means of cross-checking the fingerprints stored in the database."

2. The court notes: "To preserve human dignity and to respect free development of personality is the core value of the constitutional structure of free democracy. Although the right of privacy is not among those rights specifically enumerated in the Constitution, it should nonetheless be considered as an indispensable fundamental right and thus protected under Article 22 of the Constitution for purposes of preserving human dignity, individuality and moral integrity, as well as preventing invasions of personal privacy and maintaining self-control of personal information."
3. The court reasons: "Although the right of privacy is fashioned on the basis of preserving human dignity and respecting free development of personality, the mere restriction imposed on the said right does not necessarily lead to infringement upon human dignity."

Page 125

1. The answers here are similar to those in the prior discussion points. The court here also note: "Listening in premises with technical equipment, whereby the entire events in a specific space is unselectively overheard, also in a dwelling or other private premises, of any individual who is momentary located there, of a confidential conversation and any kind of communication between those present, in a room, as well as all telephone calls and conversations which are carried from these places, in view of what has been stated is undoubtedly an encroachment which affects the private sphere of an individual. Above all, the listening to a confidential conversation affects one of the narrowest circles of general personal rights and at the same time, the right to privacy."
2. There are dignity dimensions both in having the authority to listen in on conversations among those unaware (which can inhibit private conversation), but also in carrying out that authority (which can subject it to ridicule, scandal or prosecution).

3. It's about both. But individuals have a greater expectation of privacy (and therefore dignity) within the confines of home. But why is that? And what are the socio-economic implications of constitutionalizing (or dignifying) those expectations

Page 124

1. The different forms of privacy include chromosomes, fingerprints, phone calls, and in this case, surveillance of private homes, remote searches of information technology systems, telecommunications surveillance, collection of telecommunications traffic data and surveillance outside of private homes using special means of data collection.
2. The questions here are meant for discussion purposes. For more, see the note and reading on dignitary torts, which raise additional elements about the relationship between privacy, identity and dignity.

Chapter 6

These materials track the American jurisprudence of substantive due process. The principal question here is whether dignity analysis produces better reasoning or better outcomes than the American approach about liberty (and privacy). We note that at least in the same-sex marriage context, American jurisprudential rhetoric has shifted from privacy to dignity.

The chapter starts with a couple of cases about forced **sterilization** both because this continues to be a problem worldwide and because these tend to be easy cases for students: of course, forced sterilization is a violation of dignity, students will say – but why? That is harder: does it have to do with autonomy, control, agency or something else?

The **abortion** cases are among the most difficult dignity cases because they pit two dignity interests against one another: the dignity of the fetus, tied to its life v. the dignity of the woman, tied to her autonomy and control over her life. The Croatian abortion case offers an overview of abortion law in other European countries. Does the dignity analysis help to unravel the strands of argument? We use these cases to illustrate that dignity analysis does not necessarily provide the answers, but it helps point the way to better questions. In other words, dignity analysis won't tell us

whether the interest of the fetus or of the woman should prevail but it forces us to ask the policy question in terms of which policy will further advance human dignity.

We follow these materials with cases about the meaning of **family** – in the Israeli case (immersed in the political-military context of Israel), where people *want* to be a family together and in the German case where they don't. Obviously, these interests are important to people – but the trick is to get the students to explore why courts refer to them as *dignity* interests? Does that designation help us make better law? Does it help us better understand the human experience?

Another question that can be brought out here is whether it is the dignity of the individual or the dignity of the family that is most relevant. We strive to reinforce that it is the former and not the latter. This has historic roots: the drafters of the UDHR were emphatic that dignity pertains to the person not the group in large part in reaction to Naziism's lifting of the ideology of the group over the human being. But it is just as relevant in more personal situations, as when a woman is told to stay in an abusive relationship "for the sake of the family." While there may be reasons to protect group interests, the principle of *human* dignity prioritizes the individual human being.

The **right to die** cases present another counterpart to the American substantive due process cases. We are happy to present a case from Puerto Rico, which, uniquely in the United States, has a very rich jurisprudence of dignity rights. The second case, a landmark from the European Court of Human Rights is prefaced by introductory materials about the European human rights system, which can be omitted for students for whom this is already familiar.

Questions Page 131

1. The Namibian court put it this way: "[T]he decision of whether or not to be sterilised is of great personal importance to women. It is a decision that must be made with informed consent, as opposed to merely written consent. Informed consent implies an understanding and appreciation of one's rights and the risks, consequences and available alternatives to the patient. An individual must also be able to make a decision regarding sterilisation freely and voluntarily."
2. For discussion purposes.
3. The European Court of Human Rights noted: "Sterilization can be done in a legitimate way, upon demand of the person concerned, for example as a means of contraception or for therapeutic purposes when a medical necessity has been

convincingly established. But the situation is different when such a treatment is imposed on an adult patient of sound mind without her consent. Such a manner of proceeding must be deemed incompatible with respect for the liberty and human dignity, which constitutes one of the fundamental principles of the Convention.” Otherwise, a rhetorical question.

Page 147

1. The court describes it this way: “[Family] is found in the heart of the right to human dignity. It also relies on the right to privacy). Indeed, the right to live together as a family unit is a part of the right to human dignity. It falls within the scope of the essence of the right to dignity. One of the most basic elements of human dignity is the ability of a person to shape his family life in accordance with the autonomy of his free will, and to raise his children within that framework, with the constituents of the family unit living together. The family unit is a clear expression of a person’s self-realization.”
2. The court notes: “The right to family reunification is also recognized as a component of the right to family life in international law and in the constitutional law of many countries. In summary, we have seen that the right to family life is not merely a basic right in common law, but a constitutional right enshrined in the right to human dignity. This is meant for discussion purposes.” Otherwise, this question is meant for discussion purposes.
3. The court also finds that the right to dignity supports the right to equality: “The right to equality as a part of human dignity. The right to equality was always an integral part of our common law. The Basic Law: Human Dignity and Liberty did not include an express provision with regard to equality. In the past the question arose whether it is possible to derive the right to equality from the general right to human dignity. It was held that the right to human dignity includes the right to equality, in so far as this right is closely and objectively connected with human dignity.” Yet the dissent writes: “The key question in dispute here is whether the Israeli spouse has a constitutional right, as a part of human dignity, to realize family life with a foreign spouse in Israel? On this question our opinions differ. In my opinion, the Israeli spouse does not have a constitutional right, as a part of human dignity, to realize family life with the foreign spouse particularly in Israel. We are concerned with the interpretation that should be given to human dignity as a constitutional right. Even according to my approach, the right to family life is a constitutional right derived from the constitutional right to human dignity. But it does not include the additional derived right—namely the right

to realize family life particularly in Israel. The right to family life is not an independent and express right in the Basic Law: Human Dignity and Liberty, and the additional derived right as aforesaid does not have a close objective connection to human dignity. The interpretation of 'human dignity' should not be stretched beyond endurance." Otherwise, these questions are meant for discussion purposes.

Page 149

1. Yes, because they are "born" a member of the human family, and dignity does not permit gradations (some people having more than others). However, it may be worth asking students how we can attribute dignity to children (infants or young children) if dignity is based on reason and conscience, which does not develop at the moment of birth.
2. The court does not dwell on the child's right.
3. For discussion; students are encouraged to put into their own words how paternity (or parenthood) relates to dignity.
4. Students may have different opinions about whether the dignity interests of the mother should be taken into account by the legislature. This question illustrates how a dignity analysis can expand the sphere of people whose interests should be considered.
5. For discussion, again, encouraging students to explore what dignity demands.

Page 152

1. Speaks for itself.
2. For role-playing and discussion purposes.

Page 160

1. Because the court elevates fealty to the criminal justice system over personal autonomy, reasoning: "Nonetheless, the Court finds ... that States are entitled to regulate through the operation of the general criminal law activities which are detrimental to the life and safety of other individuals. The more serious the harm involved the more heavily will weigh in the balance considerations of public health and safety against the countervailing principle of personal autonomy. The law in issue in this case, section 2 of the 1961 Act, was designed to safeguard life by protecting

the weak and vulnerable and especially those who are not in a condition to take informed decisions against acts intended to end life or to assist in ending life. Doubtless the condition of terminally ill individuals will vary. But many will be vulnerable and it is the vulnerability of the class which provides the rationale for the law in question. It is primarily for States to assess the risk and the likely incidence of abuse if the general prohibition on assisted suicides were relaxed or if exceptions were to be created. Clear risks of abuse do exist, notwithstanding arguments as to the possibility of safeguards and protective procedures.”

2. Contemplates consideration of the role of dignity from individual and societal perspectives. For discussion purposes.
3. There are no easy answers here. The takeaway is recognizing that dignity takes different shapes depending on who is asserting it. That can be frustrating. On the other hand, considering what advances human dignity provides a useful framework for civil conversation.
4. The court writes: “The final stages of the disease are exceedingly distressing and undignified. As she is frightened and distressed at the suffering and indignity that she will endure if the disease runs its course, she very strongly wishes to be able to control how and when she dies and thereby be spared that suffering and indignity.”
5. In a word, for the greater good. The Court concludes “that the interference in this case may be justified as ‘necessary in a democratic society’ for the protection of the rights of others and, accordingly, that there has been no violation of Article 8 of the Convention.”
6. For discussion purposes.
7. The excerpt from *Ilfigeneia* speaks for itself. Also see the note that follows, which provides further perspective on the role of dignity in engaging these tough questions.

Chapter 7

We have given cases about **gender and sexual identity** their own chapter because this is an area of law that is new and global, which countries from all cultural traditions confronting very similar claims of discrimination and courts addressing these issues have almost uniformly invoked principles of human dignity to find that discrimination on the basis of gender and sexual orientation violates human dignity.

These cases are also a good way to introduce themes of equality into the class discussion. The three cases about same sex marriage form a particularly good comparative cohort; the case from India is included because it is so recent and the case from Nepal is included because it addresses a less common application of these principles, but one that calls on students to confront their own sense of what is normal and what is acceptable. Again, we ask students why the courts are relying so much on dignity in these cases (when they could easily decide the cases on more textually grounded bases such as equality or perhaps liberty). Why do judges think that relying on dignity – whether textually based (South Africa) or not (United States, Nepal) or sort of (Mexico, India) – will make their opinions more effective? In the American case, Justice Thomas’s dissenting opinion is worth some discussion because it clearly points out the countervailing view.

Questions Page 168

1. Perhaps the question begs or proves the point, or makes it rhetorical.
2. Separately but all under the guise of dignity.
3. The court observes: “Dignity is that component of one’s being without which sustenance of his/her being to the fullest or completest is inconceivable. In the theatre of life, without possession of the attribute of identity with dignity, the entity may be allowed entry to the centre stage but would be characterized as a spineless entity or, for that matter, projected as a ruling king without the sceptre. The purpose of saying so is that the identity of every individual attains the quality of an individual being only if he/she has the dignity. Dignity while expressive of choice is averse to creation of any dent. When biological expression, be it an orientation or optional expression of choice, is faced with impediment, albeit through any imposition of law, the individual’s natural and constitutional right is dented. Such a situation urges the conscience of the final constitutional arbiter to demolish the obstruction and remove the impediment so as to allow the full blossoming of the natural and constitutional rights of individuals. This is the essence of dignity and we say, without any inhibition, that it is our constitutional duty to allow the individual to behave and conduct himself/ herself as he/she desires and allow him/her to express himself/herself, of course, with the consent of the other. That is the right to choose without fear. It has to be ingrained as a necessary pre-requisite that consent is the real fulcrum of any sexual relationship.”
4. Speaks for itself.

1. Perhaps and for discussion purposes.
2. Because dignity protects interests that equality doesn't. For example, banning abortion altogether would treat all women equally but not advance the mother's dignity interests.
3. Personhood is an aspect of dignity. Recognizing human dignity as a right allows one to recognize their personhood.
4. Mostly to the 'sanctity' of heterosexual marriage. The rest is for discussion purposes.
5. For discussion purposes. Writing for the Majority in *Obergefell*, Justice Kennedy notes: "There is dignity in the bond between two men or two women who seek to marry and, in their autonomy, to make such profound choices ... They ask for equal dignity in the eyes of the law. The Constitution grants them that right."
6. These questions emphasize both the import and limitations of judicial vindication of dignity rights.
7. Ordinarily, dignity rights are 'vertical,' meaning they are asserted in response to governmental action, and not 'horizontal' against another private party, except in the instance of dignity torts, as discussed. The rest of the question invites balancing and is for discussion purposes.
8. Justice Thomas writes in dissent: "The majority's musings are thus deeply misguided, but at least those musings can have no effect on the dignity of the persons the majority demeans. Its mischaracterization of the arguments presented by the States and their amici can have no effect on the dignity of those litigants. Its rejection of laws preserving the traditional definition of marriage can have no effect on the dignity of the people who voted for them. Its invalidation of those laws can have no effect on the dignity of the people who continue to adhere to the traditional definition of marriage. And its disdain for the understandings of liberty and dignity upon which this Nation was founded can have no effect on the dignity of Americans who continue to believe in them."
9. For discussion purposes.
10. It means everything this casebook conveys. This reinforces the notion that there is some substantive value to personhood, that every person has "eminent" dignity.

1. For discussion purposes. The court reasons: “Similarly, Article 12 of the Constitution has guaranteed the right to freedom. Article 12 [1] provides that every person shall have the right to live with dignity and Article 12 [2] provides that except as provided by law no person shall be deprived of his/her personal liberty. The terms ‘men’ and ‘women’ are not mentioned in this article. The freedom guaranteed in Article 12 is for every person. The word ‘person’ implies every natural person. Being the natural person LGBTI should be entitled to live in the society enjoying all the freedoms with dignity. The Article 12 [2] has guaranteed minimum freedoms to human beings. The freedoms guaranteed by this Article can be enjoyed with one’s own identity irrespective of sex. The freedoms guaranteed in sub-clauses [a] to [f] of Article 12 [3] can only be restricted by laws. And such laws should not be arbitrary, discriminatory and unreasonable. There are two significant expressions— ‘with dignity’ mentioned in the article 12 [1] and ‘except for the provision in law mentioned in the article 12 [2]. The interpretation of these two expressions should be made in such way that they do not frustrate but contribute to the furtherance of fundamental rights or human right of all people including women, men and LGBTI.”
2. Either because the drafters thought it better to include a specific reference to a right to human dignity rather than one that is inferred. This provision appears to be enforceable.
3. For discussion purposes.
4. The pieces referenced here by Grant, Antkowiak and Finck speak for themselves.

Chapter 8

The central insight of the UDHR was that every human being (“member of the human family”) has inherent and equal dignity. Without equality, dignity wouldn’t work: I could just assert my greater dignity over you (by humiliating you, objectifying you, expelling you from the community) and it wouldn’t matter if you have some dignity or none at all. Dignity must pertain to each person in equal measure, or not at all.

And yet, dignity and equality are not the same. Equality doesn’t care about autonomy or material comfort. Whereas equality can be formal (as in the United States) or substantive (as in most other countries), dignity is never a matter of

formality; it is a matter of lived experience. It's important for students to understand both the connections and the distinctions between equality and dignity.

Dignity and equality. Canada's experiment with dignity-based equality jurisprudence is recounted in *R. v. Kapp*, which departed from a previous case (*Law v Canada*). You may want to familiarize yourself with section 15 of the Canadian Charter as you delve into this case. The question left open here is what is the *jurisprudential* relationship between dignity and equality – that is, how should courts (and by extension lawyers) argue about the relevance of dignity in a discrimination claim?

Gender discrimination. The Kenyan case illustrates how dignity is relevant to women's rights more generally, not in the context of an individual instance of discrimination but against the backdrop of the political landscape. This invites discussion of the relationship between dignity and politics (either to presage the material at the end of the book, or to invite discussion if you do not have time to cover the later materials on participatory democracy). The Ugandan case provides insight into the difficult area where customary law – the backbone of many cultures throughout the world – is measured against international human rights norms based on human dignity. Encourage students to confront each side of the complicated claim here.

Religious discrimination and discrimination on the basis of disability. Again, the question arises why the courts invoke the principle of dignity in cases that could otherwise be decided based solely on constitutional equality principles. Note how the High Court of Lahore has been forging an extensive, holistic, and very progressive jurisprudence of dignity in a number of different areas.

Page 192

1. The referenced material speaks for itself. The questions invite discussion.
2. The referenced material speaks for itself.
3. The referenced material speaks for itself.

Page 198

1. Some distinctions are benign, such as affirmative action.

2. The court notes: "But as critics have pointed out, human dignity is an abstract and subjective notion that, even with the guidance of the four contextual factors, cannot only become confusing and difficult to apply; it has also proven to be an additional burden on equality claimants, rather than the philosophical enhancement it was intended to be. Criticism has also accrued for the way Law has allowed the formalism of some of the Court's post-Andrews jurisprudence to resurface in the form of an artificial comparator analysis focused on treating likes alike."
3. Here, the court elevated dignity of the tribe over that of the fishers.
4. For role-playing and discussion purposes.

Page 204

1. Arguably that of both men and women. It ensures that every person lives in a polity that is representative and gender-balanced.
2. Probably. Dignity rights are emerging and purposive, less suited to textualist or originalist approaches.
3. These are inextricably intertwined. Dignity reinforces democracy (think of majoritarianism expressed through, e.g., civil rights or environmental and food protection), and democracy, dignity (think participating in the process, speech, assembly, voting).

Page 210

1. For discussion. Consider this excerpt from the opinion: "I am in agreement with the view that the customary practice of the husband demanding a refund of the bride price in the event of dissolution of the marriage demeans and undermines the dignity of a woman."
2. There is. Consider this excerpt from the case: "Moreover, the demand of a refund violates a woman's entitlement to equal rights with the man in marriage, during marriage and at its dissolution. Further, a refund demand fails to honour the wife's unique and valuable contribution to a marriage. A woman's contribution in a marriage cannot be equated to any sum of money or property, and any refund violates a woman's constitutional right to be an equal co-partner to the man."
3. For discussion purposes. Consider this excerpt from the case: "In my considered view, the custom of refund of bride price devalues the worth, respect and dignity of a woman. I do not see any redeeming feature in it. The 2nd respondent stated in his submissions that it is intended to avoid unjust enrichment. With respect, I do not

accept this argument. If the term “bride price” is rejected because it wrongly depicts a woman as a chattel, how then can refund of bride price be accepted? Bride price constitutes gifts to the parents of the girl for nurturing and taking good care of her up to her marriage, and being gifts, it should not be refunded.”

Page 217

1. It's about all three of these.
2. Consider this excerpt: “Human dignity dictates that the state must create a system of laws that recognizes the right of every person to create a familial relationship as he desires. The right to family life thus includes the right of the individual to choose his partner and to establish a family with him. The basic human right to choose a spouse and to establish a family unit with that spouse is part of a person's dignity. Thus a statute requiring a person to enter into a familial relationship against his will limits the constitutional right to human dignity.” Human dignity is based on the individual's free will and his ability to develop his personality and fulfill his life. The dignity of a human being is his free will: the freedom to shape his life and fulfill himself. It is a person's freedom to write his life story. “Human dignity is therefore the freedom of the individual to shape an individual identity. It is the autonomy of the individual will. It is the freedom of choice. Human dignity regards a human being as an end, not as a means to achieve the ends of others.”
3. Speaks for itself. See excerpt just quoted.
4. For discussion purposes.
5. It's arguably a legal determination based on religion. The rest is for discussion.

Page 229

1. For discussion and role-playing.
2. Other grounds could include the right to equality or equal treatment, discussed.
3. These cases are textual and purposive. Constitutional incorporation serves the interest of providing positive footing in law. A starting point. But the courts must then put the provisions into action, even purposively.
4. International law informs outcomes in most of these cases, even if it isn't technically applicable. Global information is relevant to scoping the extent of the dignity deprivation. Consider this excerpt about the CRPD: “Dignity has its roots in the

simple idea that justice consists of the refusal to turn away from suffering. Most central of all human rights[,] [d]ignity unites the other human rights into a whole. The right to dignity reflects the recognition that a human being is a free agent, who develops his body and mind as he wishes, and the social framework to which he is connected and on which he depends. Human dignity is therefore the freedom of the individual to shape an individual identity. It is the autonomy of the individual will. It is the freedom of choice. Human dignity is infringed if a person's life or physical or mental welfare is harmed."

5. For role-playing and discussion purposes.
6. For discussion purposes.
7. For role-playing and discussion purposes about these twin obligations. The remainder speaks for itself.

Unit Three: *La Vida Digna* (Social and Economic Rights)

For many courts, the ability to control one's life and have autonomy or agency over one's identity is a function of having the means to live with dignity. This shifts the inquiry in several ways from the cases in the previous Unit. First, it brings in a social dimension – dignity is not just who one is, but how one relates with others. Second, it brings the state into a different relationship with the individual: in most of the cases in Unit Two, the state needed to simply not discriminate, not restrict movement, allow a person to choose when to die or when to become pregnant. The assumption was that the background is neutral and the state needs only to get out of the way. In these cases, the state must take positive steps to provide the wherewithal for a person to live with dignity, against a backdrop of inequality and deprivation. For most American students, this might be the first time they've seen the state in this role of providing positive remedies. This in turn puts the courts in a different relation to the individual claimant and to the state: instead of ordering the state to refrain from intrusion into the private realm of individual autonomy, the court in these cases is ordering the state to take positive measures. And this, in turn, raises significant challenges regarding separation of powers, enforcement, and line drawing between political and judicial responsibility.

One question to keep in mind throughout this Unit is the relationship between the cases in the previous unit and this one. Why are these two facets of the same dignity jewel? We encourage students to think about this throughout the casebook

because we believe the two aspects of dignity (like the aspects of dignity discussed in Units Four and Five) are all inter-related and mutually reinforcing.

Chapter 9

We therefore begin this Unit with an introduction to social, economic, and cultural rights. This chapter can be skipped, skimmed, or assigned, depending on the level of familiarity that students already have with this material. The principal insights of this section are 1) the historical roots of the division between civil and political rights on the one hand and social rights on the other and 2) the practical implications of judicial review of social rights and the development of the doctrine of progressive realization, which is used throughout much of the world in the vindication of social rights.

Chapter 10

This chapter contains the bulk of the cases concerning social, economic and cultural rights, arranged by primary claim. It opens with a brief recital of the *Francis Coralie Mullin* case which invites students to think about what needs are essential human dignity. The case lists some; we ask students whether the list is complete, or whether it is overinclusive. (Q3) We also like to bring out the connection between the individual orientation in Unit Two and the social dimension of these cases (Q4).

Shelter. The *Grootboom* case is a landmark of South African jurisprudence, although the result was not salutary. (Q5). Two key insights of this case are 1) the connection of housing to human dignity and 2) the fashioning of the remedy (Qs 2, 3, 4, and 6). The next case, from Kenya, concerns evictions and explains the relationship between dignity and shelter in a different way.

Health. While the Colombian Court (like the Court in Peru) has been very involved in assuring that the government health program provide sufficient medical benefits to ensure that people can live with dignity, the South African Court in *Soobramoney* was less generous. This case illustrates the limits of judicial willingness to order government to provide socio-economic benefits. Students should understand the legal, moral, and practical obstacles that impede judges from holding government to account. The Colombian case presents a different perspective and a different form of analysis. We find this case particularly interesting because it raises not only

the patient's dignity right to treatment, but the broader interests of a society that takes seriously all dignity claims -- even the dignity claims of a parrot. Thus, the case positions the individual right to dignity in a social context -- what are the benefits, and who are the beneficiaries, of socialized medicine? It is also the first case in the book that asks students to consider the dignity claims of non-humans.

Education. Education is also intimately tied to dignity because of dignity's protection of the full development of the personality. This is another case where the battle is lost but the war is won: the court does not rule in favor of the claimant although it makes a strong and impactful statement about the value of education to human dignity, extending its analysis beyond primary and secondary school.

Economic security. The basis of "living with dignity" is economic security; without it, people can not secure for themselves even the minimum of housing or education or health, and that not only impedes their quality of life but also their ability to have agency over the course of their lives and their ability to fully develop their personalities. The first case, from Colombia, considers the situation of some of the world's most impoverished people and illustrates how a judge can choose to act with compassion and concern for the lives of fellow human beings. The case is particularly interesting for its remedial order which is holistic, comprehensive and enforceable. It is a model of how dignity can form the *measure* of a remedial order. It can encourage discussion of the pros and cons of what some might see as judicial activism. The second case, from Germany, provides an illustration of a different judicial response, but one that still requires the legislative branch to regulate with dignity, leaving the Parliament to determine exactly what the level of benefits should be *so long as it is in line with human dignity* (and what, exactly, does that mean)? Again the judicial order contains deadlines. In comparison these cases invite discussion not only about how the dignity line is measured (what does it mean to live in line with human dignity?) but also about separation of powers and the proper role of the courts. Instructors may want to do a little research about the background of the *Hartz IV* case because it was part of a line of prominent cases in Germany.

Migration with dignity. This case concerns a similar issue as the *Hartz IV* case, as applied to asylum seekers. This invites the same kinds of discussion as we saw in the previous case but here with the added question of *who* is entitled to be treated with dignity. This case squarely confronts the distinction between dignity rights -- which are universally available to every human being in equal measure just by virtue

of being born -- and civil rights which are granted to some by legislative grace and on an unequal basis.

Healthy environment. These cases consider both environmental protection and protection from the impacts of climate change as dignity rights. We begin with a relatively old case -- from 2005! -- and continue with cases all decided within the last few years as more and more courts around the world -- from Africa, Asia, and Europe -- are recognizing that one can not live in dignity in a degraded environment and, moreover, that climate change threatens the ability of people to live in dignity. *A major environmental case from Latin America is included in the next section on Culture but could also be taught in the healthy environment unit.* The cases again show a judicial willingness to confront some of the most scientifically, economically, and politically challenging issues and to find, using the language of dignity, the judicial capacity to act. The principal questions here -- as in the rest of the chapter -- are 1) what is the relationship between dignity and the environment (e.g. how does a degraded environment threaten human dignity or, more happily, how does a healthy environment contribute to human dignity (in terms of identity, autonomy, material comfort or otherwise)? And 2) how does the commitment to human dignity assist judges in fashioning remedies for environmental harms to dignity. In other words, what is the role of dignity in identifying violations of human rights and what is its role (or roles) in remedying violations? A follow-up question might concern the ability of judges to *enforce* their orders: Pakistan's efforts were more effective than Nigeria's.

Culture. We have included a long excerpt from an exceedingly long case from Colombia in which the court recognized the juridical personhood of the River Atrato. The case is useful because it reflects the interdependence and the indivisibility of social and cultural rights and shapes the law around a different cosmology, one that sees humans as a part of but not superior to nature. To some students, this may seem activist and wrong but to others it may seem so right that it challenges the very notion of human dignity. At the very least, it calls on us to explore whether rivers, animals, and ecosystems may not be entitled to the same respect for their dignity as humans, and it challenges us to inquire about the basis and qualities of non-human dignity. The case also asks students to consider dignity from an indigenous perspective and to explore how different it is (or how it is different) from a non-indigenous perspective. The following case, from Botswana, also considers the rights of indigenous peoples, in their claims for land and for the water that is within it. In both cases, we might also encourage students to explore the dignity of the community and whether that has more salience in the context of

indigenous communities than it does otherwise; and where, in these contexts, is the line between the individual and the group? Through discussion, we explore why dignity resonates so much with indigenous communities and what non-indigenous people can learn from indigenous communities about human dignity?

Questions Page 242

1. For role-playing and discussion purposes.
2. Perhaps as two sides of the same (or similar) coin. The court provides: "The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. Now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world. ... But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings."
3. For discussion purposes.
4. These are hard questions, many of which are central to the idea of the role of advancing dignity in law, including with this casebook. For discussion purposes. The questions are designed to presage the themes of belonging in the cases to follow; often this theme is not pronounced but it is almost always implicit in the cases that a purpose of ensuring that people can live with dignity is to ensure that people can live in society with others. This theme is further elaborated on in Unit Five's materials on participatory dignity.

1. The simple answer is that s. 26 was more specifically on point than s. 10 (dignity) or s. 14 (privacy). A broader question could invite discussion about the indivisibility of human rights and how these three rights are interconnected; the point here is to get students to see that the dignity principle informs and strengthens the more specific rights.
2. It could be. The Supreme Court of the United States sometimes turns to dignity in determining how to remedy constitutional deprivations of due process, both as a matter of process due ("procedural due process") and the interest affected ("substantive due process").
3. For discussion purposes. The court concludes: "But section 26 is not the only provision relevant to a decision as to whether state action at any particular level of government is reasonable and consistent with the Constitution. The proposition that rights are interrelated and are all equally important is not merely a theoretical postulate. The concept has immense human and practical significance in a society founded on human dignity, equality and freedom. It is fundamental to an evaluation of the reasonableness of state action that account be taken of the inherent dignity of human beings. The Constitution will be worth infinitely less than its paper if the reasonableness of state action concerned with housing is determined without regard to the fundamental constitutional value of human dignity. Section 26, read in the context of the Bill of Rights as a whole, must mean that the respondents have a right to reasonable action by the state in all circumstances and with particular regard to human dignity. In short, I emphasise that human beings are required to be treated as human beings. This is the backdrop against which the conduct of the respondents towards the appellants must be seen."
4. Rhetorical, for the most part.
5. Rhetorical.
6. To "progressively realize" the right, meaning implement it over time, whatever that means, at the junction where rights recognition and real politick collide.

1. The quoted language speaks for itself. The questions that follow raise issues as to whether non-human entities, such as nations or a collective have dignity. In this context, recall that what this book isn't about: deployment of the term "dignity" to

impart status or sovereignty. So for us anyway, use of dignity in those instances is a shoe that doesn't fit.

2. For discussion purposes.
3. In a word, dignity. The court writes: "It does not matter that the Petitioners do not hold title to the suit premises and even if they had been occupying shanties, the 1st Respondent was duty bound to respect their right to adequate housing as well as their right to dignity. Wherever and whenever evictions occur, they are extremely traumatic. They cause physical, psychological and emotional distress and they entail losses of means of economic sustenance and increase impoverishment."
4. Dignity still involves a balancing of competing interests. Here, perhaps, considerations might include a legacy of colonialism and discrimination, displacement and basic need.

Page 254

1. For role-playing and discussion.
2. Rhetorical.

Page 256

1. For discussion. The court observes: "Moreover, it cannot be said that the relationship that arises between a person and an animal is not covered by the principle of human dignity. This is because animals are sentient beings and therefore the behavior of the human being towards them must be a dignified behavior, meaning that it is limited by the principle of not causing suffering or pain to non-human beings. Because there is no more primary interest for a sentient being than not to suffer harm or mistreatment. And this must be one of the primary values within a moral community that acts and builds its relationships within the parameters of the constitutional State."
2. For discussion purposes.
3. Speaks for itself.

Page 261

1. She loses. Students of India win. For discussion purposes.

2. A variety, including right to life, liberty, education, and ... dignity (39(f)): "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."
3. Mostly by interpreting Art. 21 (right to life) to include dignity, in what some might describe as "purposive" or "activist." The court also cites to the Preamble: "The preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The directive principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him."
4. Most likely something akin to professional fulfillment and happiness, ingredients of autonomy.
5. Arguably, all and each of those rights.

Page 265

1. Not the same, but related. Discussed previously.
2. Addressed previously.
3. As follows: "By reason of the considerations expressed in the major part of this ruling, the Court finds that the municipal authorities of Cali violated the fundamental rights of the waste recyclers to a dignified life in connection with the right to work. With the goal of guaranteeing the fundamental rights of the plaintiffs and their families, the City of Cali, through its secretaries of education, health, and social welfare (wellbeing), will adopt within 2 months the necessary means to assure the effective enjoyment of the constitutional rights to health, education, a dignified living, and food, ensuring in each concrete case access to social security, education for minors, and their inclusion in social programs for food and housing."

Page 270

1. For discussion purposes.
2. It does the best it can. The court notes: "As the Basic Law itself does not admit of exactly quantifying the claim, substantive review is restricted, as regards the result, to ascertaining whether the benefits are evidently insufficient. Within the material range which is left by the review of evident faultiness, the fundamental right to guaranteeing subsistence minimum that is in line with human dignity cannot provide any quantifiable guidelines. It requires, however, an examination of the bases and of the assessment method of the benefits to ascertain whether they do justice to the objective of the fundamental right."
3. For role-playing and discussion. The court concludes: "As it cannot be established that the standard benefit amounts which are fixed by statute are evidently insufficient, the legislature is not directly obliged under the constitution to fix higher benefits. Instead, it must, according to the instructions given, conduct a procedure to ascertain the benefits necessary for securing a subsistence minimum that is in line with human dignity which is realistic and takes account of the actual need, and it has to anchor the result of such procedure in the law as a claim to benefits."

Page 275

1. The court writes: "Article 1.1 of the Basic Law declares human dignity to be inviolable and obliges all state power to respect and protect it. If people do not have the material means necessary to guarantee a dignified existence because they are unable to acquire means from gainful employment, from their own assets or from payments by third parties, the state is obliged, within its mandate to protect human dignity and to maintain the social welfare state, to ensure that material means are available to those in need. Because it is a human right, both German and foreign nationals who reside in the Federal Republic of Germany are entitled to this fundamental right. This objective obligation derived from Article 1.1 of the Basic Law corresponds with an individual claim to benefits, because the fundamental right protects the dignity of each individual human being and may, in such situations of need, only be ensured by material support." The remainder is for discussion.
2. See answer to prior question.

3. The court observes: "Additionally, the United Nations Convention on the Rights of the Child. Article 3 of the CRC contains the obligation that the best interests of the child shall be a primary consideration in all legislation, whilst Article 22.1 of the CRC determines that particularly children who seek refugee status in accordance with applicable domestic or international asylum law may not be disadvantaged in exercising their rights, while, finally, Article 28 of the CRC states a human right of children to education."
4. For discussion.
5. The court observes: "The requirements emerging from the Constitution as to the methodologically proper determination of benefits guaranteed by fundamental rights do not refer to the legislative process but to its results. Articles 76 et seq. of the Basic Law sets requirements for the legislative process that also ensure the transparency of decisions taken by the legislature. The Basic Law however does not prescribe what, how and precisely when such reasoning and calculations are to be carried out in the legislative process. It allows for negotiations and for political compromise. It is decisive that the results do not miss the requirement of the Basic Law to actually guarantee a dignified existence. The fundamental right to the guarantee of a dignified minimum existence derived from Article 1.1 of the Basic Law in conjunction with Article 20.1 of the Basic Law does not entail specific obligations regarding the legislative process; the decisive point is whether the legal claim to existential benefits can be substantiated in a rationally differentiated way by realistic, plausible calculations.
6. The court notes: "If the legislature wishes to consider the particular characteristics of specific groups of individuals when determining the dignified minimum existence [], it may not, in specifying the details of existential benefits, differentiate across the board in light of the recipients' residence status. Such differentiation is only possible if their need for existential benefits significantly deviates from that of other persons in need, and if this can be substantiated consistently based on the actual needs of this specific group, in a procedure that is transparent in terms of its content."
7. For discussion.
8. For discussion.

Page 280

1. This again goes to the different forms that dignity can take, many of which are implicated in a clean environment: the way one feels about oneself, the control one

has over one's life, the right to equal respect, bodily integrity, and on the procedural right, the right to participate in public decision-making on matters relating to the environment. Excerpt by Donald & Linehan speaks for itself.

2. Cited works speak for themselves.

Page 285

1. For discussion. The court writes: "That the constitutionally guaranteed [fundamental rights to life and dignity of the human person, as guaranteed by section 33 and section 34 of the Constitution,] inevitably include the right to [a] clean, poison-free, pollution-free, healthy environment."
2. It's hard to know for sure, but the reason might be that the court was hedging. This was, after all, one of the first if not the first to apply a right to dignity to address environmental contamination (and climate change).
3. Either because they were indefensible or because the AG did not want to signal acceptance of the court's authority in the matter.
4. Speaks for itself.

Page 286

1. For role-playing and discussion purposes.
2. Dignity and discussion.
3. An important one. It finds that the right to dignity embeds an unenumerated right to a healthy environment.

Page 291

1. Not really. Perhaps the next question could be: how *does* climate change diminish human dignity?
2. The National Climate Change Policy, 2012 ("Policy") and the Framework for Implementation of Climate Change Policy (2014–2030) ("Framework"). Implementation and adaptation.
3. Reflected here: "Fundamental rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14)

read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change.”

4. For role-playing and discussion.
5. Likely reflected in this passage: “In view of Pakistan’s high vulnerability to adverse impacts of climate change, in particular extreme events, adaptation effort is the focus of the Policy and the Framework. The vulnerabilities of various sectors to climate change have been highlighted and appropriate adaptation actions spelled out. These cover actions to address issues in various sectors such as water, agriculture, forestry, coastal areas, biodiversity, health and other vulnerable ecosystems. Notwithstanding the fact that Pakistan’s contribution to global greenhouse gas emissions is very small, its role as a responsible member of the global community in combating climate change has been highlighted by giving due importance to mitigation efforts in sectors such as energy, forestry, transport, industries, urban planning, agriculture and livestock.”
6. The passage speaks for itself.
7. Cites to source of other interesting developments from the Lahore High Court, the source of some of the most expressly dignity-advancing decisions in the world.

Page 306

1. Open-ended. Cited excerpts inform discussion.
2. For discussion.
3. Rhetorical.

Page 330

1. As follows: “The banks of the Atrato are home to many Afro-Colombian and indigenous communities, including the plaintiffs, who have inhabited them ancestrally;

where there are also mestizo communities descended from migrants from different regions of the country. Among the traditional forms of life and sustenance characteristic of these communities are artisanal mining, agriculture, hunting and fishing, with which they ensured for centuries a total supply of their food needs.”

2. For discussion. Note the court observes: “[T]hey have established their traditional ways of life through agriculture, hunting, fishing and artisanal mining. Activities with which guarantee their total food supply, which now, in the opinion of the Court, is in danger due to the intensive development of illegal mining and logging activities in a region that has suffered the rigors of war and forced displacement within the framework of the intensification of the internal armed conflict. Additionally, social exclusion in Chocó has deep historical roots due to the fact that after independence, inclusive political-administrative institutions were not adopted, but rather purely extractive institutions, with very few controls, which has favored corruption since colonial times.”
3. The court notes: “In this context, it is pertinent to specify that, unlike the ROL [Rule of Law] model, which, as has been pointed out, exclusively deals with a formal concept of equality and freedom, in the SRL [Social Rule of Law], material equality is a fundamental principle that guides the tasks of the State in order to correct existing inequalities, promote inclusion and participation, and guarantee people or groups at a disadvantage the effective enjoyment of their fundamental rights. In this way, the SRL seeks to realize social justice and human dignity through the adherence of public authorities to the principles, rights and social duties of constitutional order.”
4. The court notes: “In this regard, it is necessary to remember that the plaintiffs, being ethnic communities, farmers, and subjects of special constitutional protection, are working with the objective that their fundamental rights to life, human dignity, health, water, to food security, a healthy environment, to culture, and to territory are protected.”

An extensive excerpt from the case is warranted: “In conjunction with the guarantee of the principle of ethnic and cultural diversity of the nation, this Court has also expressed that human dignity is a superior value and a founding principle of the SRL. A principle in which all people should receive the same treatment in accordance to their human nature, and that more than a right in itself, is the essential form of the consecration and effectiveness of the whole system of rights and guarantees contemplated in the Constitution. In this way, dignity stands as a fundamental right of direct effectiveness whose general recognition compromises the political foundation of the Colombian State. This means that the principle of human dignity

must be understood: (i) as a founding principle of the legal system; (ii) as a constitutional principle, and (iii) as an autonomous fundamental right.

Additionally, the Court has established that the 1991 Charter is essentially humanistic, insofar as the entire normative system has been constructed to protect dignity and personal autonomy, not in the abstract, but from a material and concrete dimension: that is why the respect for human dignity should inspire all actions of the State.

In this way, in our SRL, the person is the subject, the reason and the ultimate goal of political power and the entire constitutional order. The Charter not only tends to the person in a formal sense, but in his ontological materiality, adds an indispensable quality: dignity. It is then about defending life, but also a certain quality of life. In the term “dignity” predicated on “human,” there is a quality—or level—of life, which is a qualitative criterion. In that order of ideas, for our constitutionalism, it is not enough simply that the person exists; it is necessary that it exists within a framework of material, cultural and spiritual conditions that allow us to live with dignity.

In this sense, the Court has identified in its jurisprudence three clear and differentiable guidelines on the principle of human dignity as an axiological center of our constitutional order, namely: (i) human dignity understood as autonomy or as a possibility to design a plan of life and of self-determination according to one’s own preferences, that is, to live as one likes or as chosen; (ii) human dignity understood as certain concrete material conditions of existence, that is, living well or in welfare conditions; and (iii) human dignity understood as intangibility of non-property assets, such as physical, moral, and spiritual integrity, which means living free of any kind of harassment.”

5. Speaks for itself.
6. For role-playing and discussion.
7. For discussion, informed by another excerpt: “In synthesis, in constitutional jurisprudence, human dignity has been treated as an expression of individual autonomy, as a manifestation of certain material conditions of existence, or as a symbol of the intangibility of physical and moral integrity. In this context, the constitutional provision according to which the State is founded on respect for human dignity, imposes on public authorities the duty to adopt the indispensable measures of protection to safeguard the legal rights that define man as a person; and these include freedom, autonomy, physical, moral, spiritual and cultural integrity, the

exclusion of degrading treatment, personal and family privacy, as well as certain material conditions of existence that the SRL must guarantee.”

8. A remarkable remedy, in part: “Consequently, the Court will order the national government to exercise legal guardianship and representation of the rights of the river (through the institution designated by the President of the Republic, which could be the Ministry of the Environment) together with the ethnic communities that inhabit the basin of the Atrato River in Chocó; in this way, the Atrato River and its basin—henceforth—will be represented by a member of the plaintiff communities and a delegate of the Colombian Government, who will be the guardians of the river. For this purpose, the Government, headed by the President of the Republic, must make the appointment of its representative within the month following the notification of this ruling. In that same period of time, the plaintiff communities must choose their representative.”

Unit Four: Dignity and Vulnerability

The materials in this chapter ask whether all individuals are equally vulnerable to threats to their dignity. On one account, the answer is yes, because all people are born with equal dignity. But as a practical matter, we know that, for a slew of reasons, some people are more vulnerable than others. This raises a host of questions: does it matter whether they put themselves in situations of vulnerability (e.g. people who have committed crimes)? Does it matter whether the condition of vulnerability is permanent (e.g. people who have permanent disabilities, or people who are in non-dominant classes because of their sex or gender)? Does the constitutional commitment to dignity demand some form of affirmative action for those who are particularly vulnerable? Many constitutions, as we note in the prefatory passages, specifically protect the dignity of certain groups: women, the elderly, the disabled, prisoners, children, and so on. But perhaps these provisions are themselves insulting: what does it say that women or people with disabilities are especially in need of judicial or governmental protection? The courts have wrestled with all of these questions, as the cases in this section illustrate.

Chapter 11

Again, the cases in this section compel evaluation of several themes that through dignity law: is dignity intrinsic (how a person feels) or extrinsic (how a person appears to others)? Is dignity a standard objective measure or is it subjective, to be guided by each person's sense of how dignity matters? What is the role of the government in protecting human dignity? And what is the role of the courts in ensuring that the government protects human dignity?

People in the care of the state. The first case concerns a young person who was horribly mistreated until she died at the hands of her institutional caregivers. This may be one of those cases whose rationale depends fundamentally on dignity. The caregivers perhaps did the best they could, but it doesn't matter: you just can't treat a human being this way.

Children. The next case concerns the multiple indignities of extreme poverty and youth and presents a holistic take on dignity from the Inter-American Commission on Human Rights. These cases raise all the questions mentioned above *plus* questions about the relative dignity of youth; the central question for the Inter-American Commission is what is the obligation of the state to protect the dignity of the children.

Survivors of rape. The courts in these cases treat women as a particularly vulnerable population. For some students, it is entirely appropriate that the state should take special measures to protect women who are, statistically, highly likely to be victims of sexual violence. For others, it is offensive that women should be treated as if incapable of taking care of themselves. *This tension has given rise to interesting and sometimes very difficult class discussions.* Nonetheless, we find it interesting and instructive that in all of these cases the courts take the crime of rape very seriously and treat it not only as a crime of violence against the body of the victim but as a crime against her dignity. Again, difficult but interesting class discussions ensue when we ask our students how the survivor's *dignity* is impacted by the crime of rape.

Survivors of hate crimes. This section once again asks how the harm of being subjected to a hate crime threatens human dignity. In addition, the cases discussed here ask about the relationship between the individual and the group: why is an insult to a group -- in the *Ellwanger* case the denial of the holocaust, in the

Karaahmed case the interference with prayer and actions toward Muslims -- a harm to the individuals who are members of the group? Why do the courts reach different results?

Survivors of human rights abuses. This chapter closes with three cases that arise out of wartime atrocities: in Bangladesh, Sudan, and Cambodia, the first and third of which took place in the 1970s. The cases meld national and international law, criminal law and human rights law and they introduce students to the place of dignity in the foundations of international human rights law. The questions in each case turn -- for our purposes -- on what a dignity analysis contributes to the analysis. Would the cases have come out differently if the court had not alluded to human dignity? Why do the courts do so? The cases from Bangladesh and Cambodia tie dignity to the notion of "inhumanity." In the Sudanese case, the court imposes an affirmative obligation on the government to protect people from indignities, including but not limited to forced evictions and sexual violence.

Questions Page 344

1. Speaks for itself.
2. For role-playing and discussion.
3. For role-playing and discussion.
4. Good questions. It's hard to know the answer to any of them, but perhaps this excerpt helps: "The mere finding by the Court of Appeal that 'the treatment of the applicant's daughter was correct and applied to *lege artis*' or 'the expert found no non-*lege artis* treatment corresponded to the knowledge of current medical science, it cannot infer the unjustified principles into the personal rights of the applicant or her daughter, it is inadequate because the appellant sought not only protection against interference with life and health, but also protection against interference with human dignity, and also argued that she was not well informed. In the case of an assessment of interference with human dignity, it is not possible to merely refer to the fact that no *lege artis* was found to be in error; since the expert only expresses his opinion on technical matters and is not competent to express his opinion on legal matters, and therefore it is not possible to assess the interference with human dignity only in the light of medical expert opinion."

1. Speaks for itself.
2. Rhetorical.
3. For discussion. The court here notes: "The needs of protection of the weaker—such as the children in the streets, —require definitively an interpretation of the right to life so as to comprise the minimum conditions of life with dignity. Hence the inexorable link which we find, in the circumstances of the present case, between Articles 4 (right to life) and 19 (rights of the child) of the American Convention."

Page 350

1. For discussion.
2. For discussion.
3. For role-playing and discussion.
4. For role-playing and discussion.
5. Most of this note speaks for itself and is intended to inform discussion.
6. For discussion.
7. The excerpt from Giannini speaks for itself.

Page 353

1. For role-playing and discussion.
2. It would. The Court agreed that "intentions of the demonstrators went beyond simply protesting at the volume of the loudspeakers and that their intentions were to mock publicly and debase the worshippers and their religion." Nonetheless, the Court opined that "as premeditated and public as those actions were, and however much they succeeded in disrupting the prayers of the applicant and his fellow worshippers, they were not so severe as to cause the kind of fear, anguish or feelings of inferiority that are necessary for Article 3." Yet as we've seen – and borrowing from Dr. Martin Luther King Jr. – judicial cognizance under law of human dignity has tended to move the arc of the moral universe toward justice.
3. For role-playing and discussion.

Page 358

1. Rhetorical and speaks for itself.
2. The court observes: "The expression 'inhumane act' has nexus with cruelty, that is to say, there must be presence of mental violence or undermining the dignity of a person or an act which is inhumane in nature. Word 'inhumane,' according to Concise Oxford English Dictionary, is without compassion for misery or suffering. According to 'The Chambers Dictionary' New Edition, 'inhumane' means lacking humane feelings, cruel. In *Prosecutor v. Galic* (ICTY, IT-98-29), it was observed that the Crime of inhuman acts is a residual clause for serious acts, such as 'the act or omission caused serious mental or physical suffering or constituted a serious attack on human dignity.'"
 3. Borrows from answer to prior question. For discussion.
 4. The court concludes that coerced conversion violates dignity: "On a thorough analysis of the evidence, it is proved that during the period of War of Liberation, the accused Delwar Hossain Sayedee by means of coercion and threat compelled a good number of Hindu Community people ... to convert their religious belief, which is an inhuman act, mental torture, human dignity and persecution on racial grounds, which fall within the purview of Crimes against Humanity and that this act of forceful conversion does not recognize any religion of the globe."
 5. Speaks for itself.

Page 361

1. Article 3 guarantees equality. Article 4 protects the right to life and protects the integrity of the person. Article 5 protects the dignity of the person and prohibits cruel and degrading treatment. The latter two impose obligations on government to prevent and (failing that), to remedy violations of human rights.
2. Rhetorical, but also designed to encourage discussion: what are the limits of state obligation?
3. This question is designed to get students to think in practical terms about what respect for human dignity demands in this situation.

Page 363

1. This underscores the gap-filling nature of regional and international sources of law, which are incorporated as enforceable law under some domestic systems, obviating the need for express domestic recognition. Whether that is more or less compelling is in the eye of the (comparative constitutionalist) beholder.

2. For discussion.

Chapter 12

At the international level, dignity receives the most play in human rights abuse cases but at the national level, it is the criminal justice system where dignity makes its most prominent appearance. The introduction and some of the notes within the chapter invite discussion of these issues against the backdrop of the Black Lives Matter movement's call for racial justice particularly in the context of criminal law.

Policing. We begin, however, with a major case from the European Court of Human Rights that finds that even a slap across the face can constitute a violation of dignity in violation of the anti-torture provision of the European Convention on Human Rights. This is a particularly interesting case especially for those from the United States and other countries where police violence reaches much more intense levels. The next case, from Eswatini (formerly Swaziland) considers the indignity of other forms of punishment, while the case from Kenya considers the shooting of protesters -- all forms of punishment and violence outside of detention. All three cases offer opportunities to explore the range of action that those in power can take against those without and the kinds of abuse that indignity can take.

Prosecution. The materials here consider the issue of self-representation. The case from the United States is particularly noteworthy because it is a rare case in which both the majority and the dissent agree that dignity is relevant but they disagree on what dignity means, with the majority taking a more objective, external approach and the dissent taking a more individualist approach. The note case considers a similar issue in the context of a juvenile.

Detention and Incarceration. These cases seek to find the balance between the expected deprivations of detention and incarceration and the violations of human dignity, with the courts in India, Malawi, and the US State of Montana each trying to identify the bare minimum that must be provided to people to ensure that their human dignity is protected even while their liberty is limited.

Sentencing. We've divided these materials into three groups, focusing first on the dignity violation disproportionate sentencing. This is an important insight from dignity law: that to give a person an excessive sentence is to deny their human

dignity because it fails to treat the person as a *person* and treats them instead as a group, or as an object. The next case is the German Constitutional Court's response to the sentence of life imprisonment which it invalidates because it removes any possibility of hope -- an essential quality of human dignity. Finally, we consider the indignity of capital punishment with the case from the United States reinstating the death penalty, which includes a stinging dignity-laden dissent, the Bangladesh case previously discussed which contains a good overview of international law against the death penalty, and finally, the landmark case from the South African Constitutional Court invalidating the death penalty even though the new constitution it was interpreting seemed to permit it. In all these cases, one fundamental question that students may want to wrestle with is why the death penalty violates not only the right to life, but the right to dignity as well. The *Makwanyane* case is very long but very instructive; abundant questions follow to help guide the discussion.

Questions Page 366

1. This (again) underscores the balancing incumbent in human dignity analysis, for discussion. The excerpt by Heath speaks for itself.
2. For discussion. The quoted passage speaks for itself.
3. The cited sources are provided to inform discussion.

Page 375

1. Because it treats the subject of torture strictly as an object, that is, a means to an end. The rest is rhetorical.
2. Because even a little torture violates human dignity. It just isn't ok. As a legal matter, it is banned under the UDHR, Geneva Convention and the European Convention. The rest here is for discussion.
3. On law enforcement. Where does the Grand Chamber place the burden of proof? Why? Do you agree that the Grand Chamber's rule about the burden of proof should apply to "to all cases in which a person is under the control of the police or a similar authority"? How does the court reach the conclusion that a slap on the face is of such severity that it rises to the level of a violation of the prohibition against degrading treatment and torture? What factors does it consider?

4. Because, as the court observes, protecting and promoting human dignity is a central purpose of the European Convention.
5. The court observes: "A slap has a considerable impact on the person receiving it. A slap to the face affects the part of the person's body which expresses his individuality, manifests his social identity and constitutes the centre of his senses—sight, speech and hearing—which are used for communication with others. Indeed, the Court has already had occasion to note the role played by the face in social interaction [] concerning the ban on wearing clothing intended to conceal the face in public places). It has also had regard to the specificity of that part of the body in the context of Article 3 of the Convention, holding that 'particularly because of its location,' a blow to an individual's head during his arrest, which had caused a swelling and a 2 cm bruise on his forehead, was sufficiently serious to raise an issue under Article 3."
6. It presumes slapping diminishes dignity: "The Court reiterates that it may well suffice that the victim is humiliated in his own eyes for there to be degrading treatment within the meaning of Article 3 of the Convention. Indeed, it does not doubt that even one unpremeditated slap devoid of any serious or long-term effect on the person receiving it may be perceived as humiliating by that person. ... That is particularly true when the slap is inflicted by law-enforcement officers on persons under their control, because it highlights the superiority and inferiority which by definition characterise the relationship between the former and the latter in such circumstances. The fact that the victims know that such an act is unlawful, constituting a breach of moral and professional ethics by those officers and—as the Chamber rightly emphasised in its judgment—also being unacceptable, may furthermore arouse in them a feeling of arbitrary treatment, injustice and powerlessness (for consideration of this kind of feeling in the context of Article 3 of the Convention."
7. For discussion.
8. Because, as the court finds, minors are especially vulnerable: "The Court emphasises that it is vital for law-enforcement officers who are in contact with minors in the exercise of their duties to take due account of the vulnerability inherent in their young age. Police behaviour towards minors may be incompatible with the requirements of Article 3 of the Convention simply because they are minors, whereas it might be deemed acceptable in the case of adults. Therefore, law-enforcement officers must show greater vigilance and self-control when dealing with minors."

Page 380

1. For discussion.

Page 382

1. By turning to regional and international law. Kenya subsequently amended its constitution to include dignity.
2. Rhetorical.
3. For discussion. The remedy was a monetary award, an act of norm-shaping and restorative justice.

Page 385

1. They are reconcilable not so much in application but in recognizing that dignity matters under law, resulting in an unusual convergence over dignity at the Supreme Court of the United States, like a full lunar eclipse, or even Hailey's Comet.

Page 389

1. Note that this is one of the more influential decisions about the role of human dignity in law, in part because it draws a line between a right to life (Art. 21 under the Constitution of India) and human dignity. An extended excerpt is in order, as it has withstood the test of time. The court observes: "But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of

other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detenu obviously cannot move about freely by going outside the prison walls nor can he socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just."

2. For role-playing and discussion.
3. See answer to Q.1.
4. The quoted excerpts speak for themselves.

Page 396

1. Speaks for itself.
2. For role-playing and discussion.
3. It is important for both reasons. Dignity is at stake whenever the government subjects an individual to the criminal justice system. The court notes: "In this case we hold the view that packing inmates in an overcrowded cell with poor ventilation with little or no room to sit or lie down with dignity but to be arranged like sardines violates basic

human dignity and amounts to inhuman and degrading treatment and therefore unconstitutional.”

4. This is largely rhetorical due to overall lack of resources. In a word, plea, not promise.

Page 404

1. Likely because there is so little precedent for doing so in American jurisprudence. The lawyer had likely initially overlooked Montana’s provision protecting dignity, or misunderstood its application under these circumstances.
2. For role-playing and discussion.
3. For role-playing and discussion.
4. Rhetorical. Perhaps feel vindicated. Or surprised. Or both.
5. Speaks for itself.

Page 408

1. This raises complex considerations. The court cites to U.S. law that “Cruel ... implies inhuman and barbarous” and ... also said that “cruel” means “degrading to the dignity of human beings” and that cruel refers to “inhuman and uncivilized punishment.”
2. The contrast between choice and outcome here is stark. For discussion.
3. For role-playing and discussion.
4. For role-playing and discussion.

Page 412

1. Rhetorical.
2. For discussion.
3. The difference is that the former maintains hope while the latter does not. The court observes: “The assessment of the constitutionality of lifetime imprisonment especially with references to Article 1.1. of the Basic Law and the principle of the rule of law (*Rechtsstaatsprinzip*) revealed that a humane execution of the lifetime imprisonment can only be assured if the sentenced criminal has a concrete and principally attainable possibility to regain freedom at a later point in time; for the core of human

dignity is struck if the convicted criminal has to give up any hope of regaining his freedom no matter how his personality develops. In order to assure this perspective [to regain freedom at some point in the future], which is the prerequisite for rendering lifetime imprisonment bearable according to the [court's] understanding of human dignity, in a manner which meets constitutional requirements, the [current] legal rules of parole are not sufficient."

4. For discussion. As mentioned, human dignity demands the hope of freedom be realistic, not just theoretical.
5. Rhetorical.
6. Probably. All punishments would seem to have dignity dimensions.
7. Yes, again, because the latter here inculcates hope which the former dashes it.
8. For discussion.
9. For discussion.
10. For discussion.
11. For discussion.
12. For role-playing and discussion.

Page 419

1. Capital punishment is a sort of stress test for dignity. The readings here speak for themselves.
2. For discussion.
3. For discussion.
4. Rhetorical.
5. Speaks for itself.
6. This question also underscores the distinction between equality and dignity. Mandatory death penalty for certain crimes promotes a certain brand of equality, but not dignity.

Page 429

1. Probably. Every constitutional system is different. Yet looking outside can be instructive.
2. It's hard to see how any of these comports with the principles of human dignity under law as you have seen in the cases in this book. Yet there are arguments that the death penalty upholds the dignity of victims and protects that of others who may be have subjected to violence if the person executed remained in existence.

Page 455

1. There are no easy answers here. The passage by Grant speaks for itself.
2. The case explores this in detail. Suffice to say it is rooted in colonialism and white supremacy. The passage from Grant speaks for itself.
3. About the U.S. system, the court finds the following instructive: "It is common cause, however, that the legal system in South Africa, and the socio-political system within which it operated, has for decades traumatised the human spirit. In many ways, it trampled on the basic humanity of citizens. We cannot in all conscience declare, as did a United States Supreme Court justice in *Furman v. Georgia* with reference to the American context, that respect for and protection of human dignity has been a central value in South African jurisprudence. We cannot view the death penalty as fundamentally inconsistent with our harsh legal heritage. Indeed, it was an integral part of a system of law enforcement that imposed severe penalties on those who aspired to achieve the values enshrined in our Constitution today."
4. For role playing and discussion.
5. They are separate but related concepts. One can live without dignity.
6. The language quoted from Brennan derives from a different time and place when the U.S. Supreme Court banned capital punishment. It has since reversed course.
7. Rhetorical.
8. Very. The criminal justice system reflected colonialist stereotypes and was used to oppress non-whites and promote white supremacy.
9. For discussion. It's hard to think of how it doesn't.
10. This question invites discussion of what led to the development of the modern Constitution of South Africa.
11. Recall the discussion of ubuntu in Chapter 2.

12. For discussion. The court notes: "The state is representative of its people and in many ways sets the standard for moral values within society. If it sanctions by law punishment for killing by killing, it sanctions vengeance by law. If it does so with a view to deterring others, it dehumanises the person and objectifies him or her as a tool for crime control. This objectification through the calculated killing of a human being, to serve state objectives, strips the offender of his or her human dignity and dehumanises, such a person constituting a violation of Section 10 of the Constitution."
13. For discussion.
14. Rights are not inviolable, but involve balancing.
15. For discussion.
16. For discussion.
17. Likely all of these factors are in play.
18. This begs the question as to whether those that diminish the dignity of others forfeit their own.
19. Covered in the next unit.
20. For difficult discussion.
21. For discussion. As mentioned, Justice Sachs is melding substantive and procedural values.

Unit Five: Participatory Dignity

Participatory dignity is a term one of us has coined in our writing to describe the dignity basis of political participation or democratic decision-making. As noted in the book, the term derives from the notion explored in cases throughout the book that an essential aspect of human dignity is the ability of people to live in community with others and builds on the idea (to paraphrase Hannah Arendt) that dignity is the right to have and claim rights within those communities. As the Pakistan court says, "Human dignity includes the right to demand a political democratic structure of governance where rule of law is supreme and no one is above the law." (p. 469). Materials at the beginning of this chapter explain this idea further and, again, *we recommend that instructors read those materials even if they are not assigned to students.*

Chapter 13

The right to vote. The South African case, *August and Another*, provides the starting point for the idea that voting and dignity are intimately connected. The theory of democracy is then further elaborated in the case from the Lahore High Court in Pakistan about gerrymandering.

Political engagement. We consider here political engagement in three different contexts: the right to protest, the right to have a political party, and the right to participate in the political process. The case from Argentina considers the importance of protest not only as a means to a political end but as an act of dignity in and of itself, contrasted with a German case in which a political party was to be banned for professing anti-dignitarian ideals. Oddly perhaps the court disallows the banning not because banning of a political party runs counter to the idea of human dignity regardless of that party's views, but because the party seemed unlikely to be successful and therefore did not pose a threat to the dignity-based ideals of Germany. Query whether an anti-dignity party that had extensive support could be banned consistent with Germany's dignity-based ideals? The South African case, consistent with its commitment to what it calls "civic dignity" promotes the opportunity of people to participate in the political process not only at election time but throughout.

Questions Page 467

1. For discussion.
2. The next unit explores the relationship between participation (including voting) and democracy. But it is hard to see how a system that disenfranchises those who have paid their debt to society promotes individual or collective dignity.

Page 472

1. Dignity's role in democracy is deep and wide, and vice versa. The court notes: "Right to dignity under Article 14 carries perhaps the most vital of fundamental rights. Human dignity includes the right to demand a political democratic structure of governance where rule of law is supreme and no one is above the law. A political

system, which is not chosen by the people is repressive, autocratic and tyrannical besides being antithetical to self respect, freedom and human dignity.”

2. They are indivisible. The court notes: “In a constitutional democracy, a vote is a symbol of political dignity and freedom of a citizen. It embodies freedom of choice, expression, equality and the license to participate in the political life of a nation and the right to establish self-government. Life of a citizen in a representative democracy demands a life of equal participation in the establishment of a democratic state.”
3. For discussion.
4. For the same reason “Gerrymandering” is the norm in the United States: To protect extant power structures, often in favor of the ruling class.
5. For discussion.

Page 477

1. For role-playing and discussion.
2. This is part of it: “[I]n the face of the existence of a group of people who want to organize themselves in order to preserve their dignity in the face of possible affectations, the constitutional protection of that right legitimizes the association pursued. With this understanding, it was emphasized that the protection of a guiding value such as human dignity implies that the law recognizes, insofar as it does not offend public order and morality, or harm a third party, an intimate and insurmountable area of freedom, so such that it can lead to personal fulfillment, a possibility that is a requirement of a healthy society.”

Also, from the case that follows: “The free democratic order is rooted primarily in human dignity. Human dignity is not subject to disposition and the state must respect and protect it in all forms. In particular the safeguard of human dignity protects personal individuality, identity and integrity, and elementary equality before the law.”

3. Excerpted passage speaks for itself.
4. Excerpted passage speaks for itself.

Page 480

1. In context, as follows: "As far as the Basic Law is concerned with regards to human dignity and the free democratic order it is not decisive whether a parliamentary or two party system is chosen, so long as it protects the free democratic order based on human dignity. Thus, through the will of the people, one system can be rejected and replaced by another. However, one who seeks to undue a parliamentary system without a replacement that guarantees the free democratic order violates Article 21. A party is said to undermine the free democratic order when, according to its political concept, noticeably threatens the free democratic order. It is enough if the party is attacking the constituent elements of the order (human dignity, rule of law, and democracy). However, a prohibition can only occur if it is likely the party will achieve its aim without intervention based upon an overall assessment."
2. National Democratic Party, the platform of which the court says "certainly adheres to ideals that are inconsistent with the free democratic order. The central principle of separate ethnic states within German is clearly an affront to human dignity. They disrespect every core element of democracy in their professed ideals. And they certainly seek to undermine the free democratic order."
3. Ultimately because it isn't necessary to cancel a group that doesn't affect policy much if at all: "As such the pose no likely threat to the free democratic order and any attempt to prohibit them is inappropriate."
4. For discussion.

Page 489

1. In the court's words, "the NCOP and the provincial legislatures did not comply with their constitutional obligations to facilitate public involvement in their legislative processes ..."
2. Both (of course!).
3. For discussion. The court notes: "All these political rights stand subsumed in the most rudimentary yet foundational right—the right to vote. From this constitutional enfranchisement flows the right to express political choice in free and fair elections, right to elect a representative of one's choice, the right to an undiluted vote, the right to electoral equality, the right to have a vote equal in weight, value and strength as of another citizen, the right to have fair and equitable representation. The principle of one man one vote is therefore weaved deep into the political fabric of our Constitution and has to be guarded at every stage of the electoral process and more importantly at the time of delimitation."

4. For discussion. Perhaps democracy: "In a constitutional democracy, a vote is a symbol of political dignity and freedom of a citizen. It embodies freedom of choice, expression, equality and the license to participate in the political life of a nation and the right to establish self-government. Life of a citizen in a representative democracy demands a life of equal participation in the establishment of a democratic state."

Chapter 14

This chapter explores how the dignity of public and political participation is experienced not only through the electoral process but also in our interactions in society. The two cases here concern principal ways in which people occupy the public space: employment and military service. The context of the first case is the nature of public employment during communism and after. It raises interesting questions about the collectivity of dignity. The last case of the book is from Israel, a country whose dignity jurisprudence is particularly thoughtful. It brings together a number of the themes of the entire casebook -- the relationship between dignity and equality, the idea of dignity as a legal principle and as a norm of a democratic state, the intrinsic and extrinsic qualities of dignity, and so on. And, again, the perennial jurisprudential question: what work is dignity doing in this case? Why is the judge expounding dignity when the case could be decided on other grounds (here, religious rights, equality)? But courts can't stay away from dignity: As the Court says, dignity "places the autonomy of individual will, freedom of choice, physical and spiritual integrity and the entirety of one's humanity at its center." *We recommend a reading of this case even if it is not assigned.*

Page 496

1. It tells us that dignity can be protected at multiple levels.
2. For discussion.
3. For discussion.
4. The court notes: "Does the Polish citizen have the right to dignity? After all, despite positive verification and promise of the state, [the insured] was marked as a participant of lawlessness, without the state having to prove his individual guilt after 20 years of changing the system?"
5. For discussion.

6. Because values aren't enforceable; rights are.
7. For discussion.
8. For discussion.

Page 504

1. Because of dignity's legal basis in the German system.
2. For discussion.
3. Food for thought. The court concludes: "Consider this: a person did not receive a gas mask that fits him from the state because he has a beard. It was determined that his human dignity was violated (the Nof case); a person's dignity is violated if fitting words are not allowed to be carved onto the gravestone of his deceased relative; ... a person forced to retire at an age younger than that of his peers has had his dignity harmed ... Does it not lead from that, a fortiori, that the dignity of a person who has been obliged to perform long and demanding life-endangering military service is harmed when another person benefits from deferment of the service merely since he is a yeshiva student who studies full time? Is that not a blow to autonomy, to the physical and spiritual integrity of an individual and the entirety of his humanity? Note that the violation of human dignity is not in the draft into the army and service in it. These are both a right and a duty; and they are intensified with the growth of the burden and personal endangerment. Their realization is an individual's dignity. The violation of human dignity is in the deeply upsetting feeling that another person is not obliged to perform such service to the same extent."

SAMPLE EXAM QUESTIONS

We have often taught this as a paper course, offering students the opportunity to delve more deeply into aspects of dignity law that interest them most. Often, this evolves either into a comparative venture or an in-depth study of dignity in some aspect of American law.

- Examples of the first might be a comparative study of judicial recognition of same-sex marriage (comparing e.g. cases from South Africa, Mexico, Canada and the United States) or abortion (comparing cases from the United States and Germany and Croatia (the case in the casebook itself contains analysis of numerous countries' abortion jurisprudence) or the dignity jurisprudence of capital punishment (US and South Africa (again, the case in the book contains analysis of other countries) or euthanasia (US and Europe) or informational privacy (India, Taiwan, Slovenia)
- Examples of the second might be a consideration of dignity in 8th amendment jurisprudence, or a study of why the Supreme Court has not used dignity more in privacy cases under the Due Process Clause, or a study of dignity torts (e.g. especially privacy/false light/defamation claims).

Another broad approach that works well in a take-home format is the following: "Compare, contrast and critique how courts have applied dignity under law. Are you satisfied with these outcomes? Please support your answer with specific examples from each of Units 2-5 in the assigned readings from the casebook."

Any of these can be turned into a narrower exam questions (where students might have one hour to write their answer) by focusing on a single area. Areas that work well for this purpose include abortion, euthanasia, same sex relationships, the right to health or housing, conditions of detention, capital punishment, or democratic participation. And of course any of these can be asked in comparison with the country with students are most familiar. with students are most familiar.

Contact Information

We hope you enjoy teaching Dignity Law.

Please feel free to contact us at edaly@widener.edu or jrmay@widener.edu. We'd love to hear your comments and suggestions.

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