

PREFACE

This is the first casebook to address human dignity under law. Human dignity encapsulates the notion that every person has inherent equal worth. This simple but profound concept has three elements. First, each person—every member of the human family—has value; no one can be dismissed, ignored, mistreated, or abused as if their humanity means nothing. Dignity means that each person’s humanity means something and has worth. Each person has a right to live as if his or her life matters and to be treated “as a person.” Second, each person’s worth is equal to every other person’s. Despite our differences, in our humanity, we are all equal. It is in dignity that we are united. No one’s life is more important than any other person’s. If each person’s right to agency, to self-development, to choose one’s life course is the same as every other’s, then no one can determine another person’s choices, treat another as an object, or treat a person as if his or her life does not matter. And third, dignity inheres in the human person; it is not defined or granted by law and cannot be taken away by law. This casebook illustrates how law, as evidenced in treaties, constitutions, cases and otherwise, around the world has adapted to the recognition of human dignity.

Human dignity has existed since humans have existed. What has changed in the decades since the end of the Second World War is the ineluctable awareness that there is a legal right to have one’s dignity respected and protected and that violations of the right to dignity can be vindicated in court.

Dignity rights—the rights that flow from the recognition of human dignity—matter for many reasons. At the human level, dignity rights reflect that suffering is experienced not so much as violations of abstract rights such as those to due process, equal protection, liberty or property, but as denial of human dignity. Perhaps because of this, dignity rights have contemporary constitutional currency. Indeed, the constitutions of more than 160 countries acknowledge a right to dignity in some way. Dignity also inheres in international law and in private law. Thus, dignity rights fortify other rights. In addition to being a right in its own regard, dignity supports a full spectrum of human rights, including civil and political rights (*e.g.*, freedom of speech, religion, participation and assembly), as well as socioeconomic and cultural rights, (*e.g.*, rights to life, health and a clean environment). And as illustrated by the Covid-19 Pandemic, the Social Justice and Black Lives Matter movements, and Climate Crisis–induced global migration, and many more challenges of the human condition, this book underscores the thesis that dignity rights matter now more than ever.

This book is divided into five units that correspond with the development of the field of human dignity under law. Following the an extensive collection of dignity rights provisions in selected constitutional texts and an Overview of the book, Unit 1 provides an introduction to human dignity. It begins with the meaning of human

dignity by tracking its development in history, theory, philosophy, religion and law, before turning to its development under law. The next four units focus on dignity's development in jurisprudence across time, geographies, and cultures in four key contexts: identity, life, vulnerability, and participation. Accordingly, Unit 2 focuses on the choices one makes that are most central to one's identity and autonomy, addressing personal freedoms, information, gender and sexual identity, and dignity and equality. Unit 3 explores how courts ensure that people live with dignity, primarily through socioeconomic and cultural rights, such as the rights to health, education, economic security, mobility, and a healthy environment. Unit 4 examines how courts protect the dignity of the most vulnerable, including children, the poor and politically disenfranchised, migrants, and those who live in situations of dependence or who are subject to criminal justice systems. Lastly, Unit 5 turns to dignity and rights of democratic participation, including rights to free expression, assembly, and voting. A brief Conclusion, an Index, and a Table of Cases close the book.

Let us offer a quick note about editing convention. The cases come from widely diffuse domestic, regional and sometimes international tribunals, each of which follows a unique style convention. Some tribunals enumerate each paragraph, some don't. Some indent paragraphs, while others don't. Some emphasize in bold, others in underline or italics, others still not at all. Some use headings (and lots of them), while others go without. Some list the jurist-author first, while others denote the author at the end or not at all. Some begin with dissenting opinions, while most don't. You get the point. For the sake of readability and consistency, we have for the most part stripped each case of idiosyncratic markers, including citations and quotations, without notation. We have also edited the cases for content, excising most names of participating jurists, part numbers, and headings as well as content and notes; for the sake of readability, we have not indicated where the deletions were made by ellipses, brackets or otherwise. In a few instances, we have corrected grammatical missteps or changed syntax for clarity. Explanatory text that we have inserted into the opinions is indicated with [brackets]. Cases originally in Spanish have been translated by Erin Daly unless otherwise noted. All of this unquestionably involves subjective editorial license. We have provided sufficient identifying information for those seeking the original sources for further study.

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.



We would like to express our deep appreciation for all those who have helped this book come to life. First, we must thank our families and friends for tolerating us as we hopped, skipped and jumped our way from start to finish. We'd also like to thank students at Delaware Law School who helped with research, including Simone Berman-Pearlstein, Jackie Fox, Zachary Hurst, Innessa Komaretz, Kumbukeni Mjuweni, Temitayo Oyedotun, Madhuri Ray, and Harry Shenton, as well as all of the students who have participated in the Dignity Rights Practicum and summer courses, as well as students who took a Dignity Law course from us at Widener University Delaware Law School, the University of Kansas School of Law, the Pittsburgh School of Law, and Duquesne School of Law, from whom we have learned so much. We're also deeply appreciative for the contributions of Librarians Extraordinaires Janet Lindenmuth and Maggie Stewart Adams, and for Raquel Silano's review of an early version of the manuscript.

In addition to those many scholars whose work is excerpted in these pages, many others have helped and inspired our work, including Penny Andrews, Sigrid Boysen, Catherine Dupré, Steven Kass, Michael Pates, the Singh family of Jaipur, Dina Lupin Townsend, as well as certain notable jurists including President Judge Aharon Barak (Israel), Judge Bernice B. Donald (United States), Justice Albie Sachs (South Africa), and Justice Syed Mansoor Ali Shah (Pakistan).

We hope that you find this book helpful in understanding the emerging body of dignity law and the significant role that human dignity plays under law throughout the world. We welcome all comments and suggestions.

Erin Daly and James R. May
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