

EDITORIAL COMMENT

HUMAN DIGNITY AS A NORMATIVE CONCEPT

The "dignity of the human person" and "human dignity" are phrases that have come to be used as an expression of a basic value accepted in a broad sense by all peoples.

Human dignity appears in the Preamble of the Charter of the United Nations as an ideal that "we the peoples of the United Nations" are "determined" to achieve. The words are part of the second paragraph of the Preamble, which reads in full as follows: "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."

The term dignity is also included in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

In some subsequent instruments, we find the expression "respect for the inherent dignity of the human person." For example, the International Covenant on Civil and Political Rights provides in Article 10 that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." A similar provision is found in the American Convention on Human Rights (Article 5).

The International Covenant on Economic, Social and Cultural Rights states in Article 13 that "education shall be directed to the full development of the human personality and the sense of its dignity."

The Helsinki Accords in Principle VII affirm that the participating states will promote the effective exercise of human rights and freedoms, "all of which derive from the inherent dignity of the human person."

References to human dignity are to be found in various resolutions and declarations of international bodies.¹ National constitutions and proclamations, especially those recently adopted, include the ideal or goal of human dignity in their references to human rights.² Political leaders, jurists and philosophers have increasingly alluded to the dignity of the human person as a

¹ See, e.g., the ILO Declaration of Philadelphia (May 10, 1944) affirming the right of all persons to pursue their well-being and development "in conditions of freedom and dignity"; the UN Standard Minimum Rules for the Treatment of Prisoners (1955) (Rule 60); the UN Declaration on the Elimination of Discrimination against Women (1967); the UN Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975). The latter declaration notes that scientific and technological achievements can be used to the detriment of human dignity.

² Article 1 of the German Federal Constitution states: "Human dignity is inviolable. It is the duty of all governmental power to respect and protect it." There is a considerable legal literature in German on this article. For a recent commentary by the President of the German Constitutional Court, see Benda, *Die Menschenwürde*, in *HANDBUCH DES VERFASSUNGSRECHTS DER BUNDESREPUBLIK DEUTSCHLAND* 107 (1983).

basic ideal so generally recognized as to require no independent support. It has acquired a resonance that leads it to be invoked widely as a legal and moral ground for protest against degrading and abusive treatment. No other ideal seems so clearly accepted as a universal social good.

II. THE MEANING OF THE "INHERENT DIGNITY OF THE HUMAN PERSON"

We do not find an explicit definition of the expression "dignity of the human person" in international instruments or (as far as I know) in national law. Its intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors. When it has been invoked in concrete situations, it has been generally assumed that a violation of human dignity can be recognized even if the abstract term cannot be defined.³ "I know it when I see it even if I cannot tell you what it is."

In some situations an abstract definition is not needed; but it is not entirely satisfying to accept the idea that human dignity cannot be defined or analyzed in general terms. Without a reasonably clear general idea of its meaning, we cannot easily reject a specious use of the concept, nor can we without understanding its meaning draw specific implications for relevant conduct.

An analysis of dignity may begin with its etymological root, the Latin "dignitas" translated as worth (in French, "valeur"). One lexical meaning of dignity is "intrinsic worth." Thus, when the UN Charter refers to the "dignity and worth" of the human person, it uses two synonyms for the same concept. The other instruments speak of "inherent dignity," an expression that is close to "intrinsic worth."

What is meant by "respect" for "intrinsic worth" or "inherent dignity" of a person? "Respect" has several nuanced meanings: "esteem," "deference," "a proper regard for," "recognition of." These terms have both a subjective aspect (how one feels or thinks about another) and an objective aspect (how one treats another). Both are relevant to our question, but it seems more useful to focus on the latter aspect for purposes of practical measures.

One general answer to our question is suggested by the Kantian injunction to treat every human being as an end, not as a means. Respect for the intrinsic worth of every person should mean that individuals are not to be perceived or treated merely as instruments or objects of the will of others. This proposition will probably be generally acceptable as an ideal. There may be more question about its implications. I shall suggest such implications as corollaries of the general proposition.

The first is that a high priority should be accorded in political, social and legal arrangements to individual choices in such matters as beliefs, way of life, attitudes and the conduct of public affairs. Note that this is stated as a "high

³ Several judicial decisions have applied the concept of dignity without attempting to define the concept in general terms. See, e.g., the decision of the European Court of Human Rights in *Lawless v. Ireland* (Merits), 1 EHRR 15, 39 (Judgment of July 1, 1961) (individual op. Maridakis, J.). The courts of West Germany have also handed down several interesting decisions applying the constitutional provision on human dignity. See Benda, *supra* note 2.

priority," not an absolute rule. We may give it more specific content by applying it to political and psychological situations. In the political context, respect for the dignity and worth of all persons, and for their individual choices, leads, broadly speaking, to a strong emphasis on the will and consent of the governed. It means that the coercive rule of one or the few over the many is incompatible with a due respect for the dignity of the person. It also means that governments are not to use coercion to impose beliefs and attitudes on those subject to their rule or to extend their authority into areas of human life that are essentially personal and familial. The question of the proper boundaries between the public and the private, and between the sphere governed by the "general will" and that left to the individual remains to be answered in particular cases. But the idea that such boundaries need to be drawn and that an appropriate priority should be accorded to individual choices is not without significance. It clearly runs counter to many existing political ideologies and practices.

The conception of respect for dignity suggested above can also be given more specific meaning by applying it to actions of psychological significance. Indeed, nothing is so clearly violative of the dignity of persons as treatment that demeans or humiliates them. This includes not only attacks on personal beliefs and ways of life but also attacks on the groups and communities with which individuals are affiliated. Official statements that vilify groups or hold them up to ridicule and contempt are an especially dangerous form of psychological aggression resulting in a lack of respect by others for such groups and, perhaps even more insidious, destroying or reducing the sense of self-respect that is so important to the integrity of every human. We can also point to the widespread practice of using psychogenic drugs or other forms of psychological coercion to impose conformity and ideological obedience. These should clearly be seen as violations of the inherent dignity of the person. Put in positive terms, respect for the intrinsic worth of a person requires a recognition that the person is entitled to have his or her beliefs, attitudes, ideas and feelings. The use of coercion, physical or psychological, to change personal beliefs is as striking an affront to the dignity of the person as physical abuse or mental torture.

Our emphasis on respect for individuals and their choices also implies proper regard for the responsibility of individuals. The idea that people are generally responsible for their conduct is a recognition of their distinct identity and their capacity to make choices. Exceptions may have to be made for those incapable of such choices (minors or the insane) or in some cases for those under severe necessity. But the general recognition of individual responsibility, whether expressed in matters of criminal justice or civic duties, is an aspect of the respect that each person merits as a person. It is also worth noting as a counterpart that restraint is called for in imputing responsibility to individuals for acts of others such as groups of which they are members. In general, collective responsibility is a denigration of the dignity of the individual, a denial of a person's capacity to choose and act on his or her responsibility.

We do not by this last comment mean to separate individuals sharply from the collectivities of which they are a part. Indeed, we believe that the idea of

human dignity involves a complex notion of the individual. It includes recognition of a distinct personal identity, reflecting individual autonomy and responsibility. It also embraces a recognition that the individual self is a part of larger collectivities and that they, too, must be considered in the meaning of the inherent dignity of the person. We can readily see the practical import of this conception of personality by considering political orders that, on the one hand, arbitrarily override individual choice and, on the other, seek to dissolve group ties. There is also a "procedural" implication in that it indicates that every individual and each significant group should be recognized as having the capacity to assert claims to protect their essential dignity.

We are led more deeply into the analysis of human dignity when we consider its relation to the material needs of human beings and to the ideal of distributive justice. Few will dispute that a person in abject condition, deprived of adequate means of subsistence, or denied the opportunity to work, suffers a profound affront to his sense of dignity and intrinsic worth.⁴ Economic and social arrangements cannot therefore be excluded from a consideration of the demands of dignity. At the least, it requires recognition of a minimal concept of distributive justice that would require satisfaction of the essential needs of everyone.

Some would probably go beyond this and contend that substantial equality is a necessary condition of respect for the intrinsic worth of the human person. "Each person is as good as every other" may be inferred as a plausible maxim. In particular, relations of dominance and subordination would be viewed as antithetical to the basic ideal. If this is so, great discrepancies in wealth and power need to be eliminated to avoid such relations. However, the counter-argument can be made that such egalitarian objectives cannot be realized without excessive curtailment of individual liberty and the use of coercion. This familiar confrontation of conflicting political philosophies need not be pursued here, but it is worth noting that demands for the respect of human dignity will almost surely lead into the continuing debate between advocates of equality and advocates of freedom.

These observations on the meaning of respect for the inherent dignity of the human being suggest the far-reaching implications of an ideal that has not yet been given substantial specific content. At the same time, our analysis indicates that a determinate core of meaning may be elucidated that is in keeping with widely accepted (though not universally accepted) values. This core of meaning has not been formulated as an explicit definition. To do so would result in another highly abstract formula. What is important is the extent to which the analysis leads to more concrete acceptable norms of con-

⁴ Benda considers that the German constitutional provision on human dignity imposes a constitutional duty on the state to protect individuals against material want (*materieller Not*). See Benda, *supra* note 2, at 113, 115. The right to public assistance has been linked to Article 1 of the Constitution by the Supreme Administrative Court, No. 55, 1 BVerwGE 159 (1954). There is an old judgment of the Constitutional Court stating that Article 1 standing alone did not impose a duty of protection against material want (No. 22, 1 BVerfGE 97, 104 (1951)), but this opinion does not represent the views held generally today. I am indebted to Professor Stefan Riesenfeld for information on the German constitutional law concerning this point.

duct. I have sought to indicate this in my comments. As a further step in this direction, I shall next suggest some examples of conduct and ideas antithetical to or incompatible with respect for the inherent dignity of the human person.

II. CONDUCT AND IDEAS ANTITHETICAL OR INCOMPATIBLE WITH RESPECT FOR INHERENT DIGNITY

The following list embraces two categories: one relates to conduct and ideas that directly offend or denigrate the worth and dignity of individuals; the second, to conduct and ideas that are implicitly incompatible with the basic ideas of the inherent dignity and worth of human persons. The line between the two categories is not a sharp one, but the distinction is helpful to the task of identifying relevant factors and to considering how to respond to incompatible acts and attitudes. The examples given are not limited to official acts and statements. Affronts to dignity may come from nonofficial sources. They should not be excluded for that reason, although a different position might be taken if the question were whether such affronts should be grounds for legal action.

- (1) Statements that demean and humiliate individuals or groups because of their origins, status or beliefs.
- (2) Vilification or derision of beliefs that people hold in reverence. Teaching that particular races, ethnic groups or religions hold "ridiculous" or dangerous views, or otherwise belittling cherished beliefs.
- (3) Denial of the capacity of a person to assert claims to basic rights.
- (4) Punishment of detained persons by psychological or physical means that are meant to humiliate or ridicule their beliefs, origins or way of life.
- (5) Dissemination of negative stereotypes of groups (ethnic, religious, social) and implications that members of such groups are inferior.
- (6) Psychiatric treatment that involves coercive means to change beliefs or choices that are lawful.
- (7) Restrictions on opportunities and means to maintain family life as, for example, by denying access to family members or requiring members of families to inform authorities of the acts or beliefs of others.
- (8) Denial of educational or employment opportunities to persons on ground of their membership in groups or their beliefs.
- (9) Restrictions on equal participation in political processes because of beliefs, status or origin.
- (10) Degrading living conditions and deprivation of basic needs.
- (11) Abuse and insolence by officials, especially to persons suffering from infirmities or social opprobrium.
- (12) Medical treatment or hospital care insensitive to individual choice or the requirements of human personality.

III. HUMAN DIGNITY AND HUMAN RIGHTS

The relation of human dignity to human rights is of particular interest to our thesis.

The Helsinki Final Act declares in Principle VII that all human rights and fundamental freedoms "derive from the inherent dignity of the human person." This statement should be understood in a philosophical rather than historical sense. As history, it would probably be more correct to say the opposite: namely, that the idea of dignity reflects sociohistorical conceptions of basic rights and freedoms, not that it generated them. However, as a philosophical statement, the proposition that rights derive from the inherent dignity of the person is significant. It clearly implies that rights are not derived from the state or any other external authority.

One may ask whether a philosophical statement of this broad character has any practical consequence. The answer lies in the degree to which general ideas influence perceptions and attitudes affecting conduct. The general idea that human rights are derived from the dignity of the person is neither truistic nor neutral. It has two corollaries that challenge conceptions prevalent in some societies and ideologies. The first corollary is the idea that basic rights are not given by authority and therefore may not be taken away; the second is that they are rights of the person, every person. It is not unrealistic to assume that ideas of this kind will have a role in challenging existing attitudes. When they are found in official declarations, they become part of the instruments of change, sometimes loudly proclaimed, at other times almost imperceptibly affecting ideas of legitimacy.

There is a further implication to be drawn from the recognition of human dignity as a "source" of human rights. Drawing upon the conception of human dignity and the intrinsic worth of every person, we can extend and strengthen human rights by formulating new rights or construing existing rights to apply to new situations. The analysis of human dignity given earlier is suggestive of such possibilities. As an example, one might suggest that aliens now commonly deprived of rights to take part in civic and political life should as a matter of respect for their worth be given such rights. Other examples might perhaps be inferred from the recognition that vilification and demeaning of group beliefs and aspirations are affronts to dignity and that official behavior involving such vilification or demeaning should be considered as a violation of the rights of the person.

This latter example raises another general question: namely, whether violations of dignity should as a rule be dealt with through legal action and the assertion of rights. I would suggest the contrary. Respect for human dignity may be realized in other ways than by asserting claims of right. In many cases, the application of a "rights approach" to affronts to dignity would raise questions involving existing basic rights such as free speech. In other cases, respect for dignity may be more appropriately and effectively attained through social processes such as education, material benefits, political leadership and the like. Various situations involving apparent violations of dignity may be alleviated by a code of conduct or of good manners such as those followed in some

parliamentary bodies or educational institutions. Simply making people aware of language and acts that would be considered disrespectful of the worth of others could have a beneficial effect. Steps may be taken to foster better understanding by those in power and in the information media of the sensitivities of persons and groups to slurs and belittling comment. Informal channels for dealing with alleged affronts to dignity might be more suitable and effective than litigation in many cases. In such areas of public administration as social welfare, health care and prison administration, there is ample room for the elimination of actions that impinge on the self-respect of those in need of aid.

These observations indicate that the central idea of human dignity has a wide range of applications outside of the sphere of human rights. It is therefore of some importance to treat it as a distinct subject and to consider ways that respect for dignity can be fostered through public and private agencies.

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