

РОЗДІЛ 1

ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА, ФІЛОСОФІЯ ПРАВА

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HUMAN DIGNITY AS A FUNDAMENTAL HUMAN RIGHT

Our modern world is full of challenges and changes. At the same time, human rights protection has been always a trend for scientific discussion and legal suggestions. Due to the pandemic conditions of modernity that are associated with the military nature of reality, a human right on dignity is quite an important issue to be analysed.

The word “dignity” now has a legal meaning, and is used by lawmakers as a transcended undefined idea. The lack of a universal definition of “dignity” causes problems in the wide cross cultural use of the term. However, by the wide acceptance of two major international legal acts, the idea of dignity was also adopted by the international society [1, p. 89].

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” [2].

When dignity is articulated as something like an elemental status that can be suppressed by humiliation, etc., the conceptualization of a basic dignity that tends to be aligned with the prohibition of torture gains more layers. This approach sets up the next level of enquiry that is needed and at the same time limits the sources that are appropriate to inform it. Situating the dignity idea in this way draws lines around the things that can be and, importantly, need to be said about the relevant substance of the idea of dignity. This moves towards a richer understanding of the dignity idea’s part in shaping the critical and evolving interpretation of a fundamental right [3, p. 387].

However, human dignity cannot offer a general response to all threats

without losing its meaning. Instead, many different and more precisely formulated concepts and principles are needed to uphold predictable and efficient legal argumentation. Therefore, conditions such as the severity of situations, the particular sort of badness involved, and a narrow scope of interpretation are present in the case law. Dignity nonetheless offers the ability to take a nuanced perspective on individuals varying rights or needs in different contexts and includes a perception of human vulnerability and the multifaceted nature of human experience [4, p. 299].

The most basic and most general meaning of human dignity as in every understanding dignity is connected with respect for another person and the universal value of a human, independent from his personal situation [5, p. 137].

Despite the empirical approach to the case law referring to the concept of human dignity, this study has also exposed different types of theoretical issues in need of elaboration. It is reassuring to notice that the theory and legal praxis reflect each other at least to some extent. Analyzing the case law showed for example that the same substantive ideas, such as vulnerability and autonomy, occur in both. On the other hand, considering the predominant theoretical accounts on human dignity, it was somewhat surprising to discover how advanced the case law was especially in its handling of injuries concerning human dignity. These findings could be useful also for the theoretical accounts of human dignity. In addition, the theoretical study still seems to be needed to elaborate conceptual issues such as is there one or many concepts of dignity at play in the adjudication. Similarly, while the way in which the concept of human dignity is used in the case law seems to reflect the general doctrine of human rights about core obligations, more research is needed about the correspondence between theory and legal praxis from this perspective. In view of the peculiar role of human dignity in the system of human rights, the theory would benefit from elaborating not only the core requirements concerning human dignity but also the relationship between human dignity and the essential core areas of other human rights [4, p. 299].

Many people feel that autonomy is so fundamental to the human condition that it is, essentially, a facet of our human dignity. Many people also feel that the idea of human dignity is so fundamental that we should have a right to dignity. While superficially appealing, both of these viewpoints are essentially inconsistent with the concept of inherent human dignity as an underlying foundation and basis of international human rights law. Consequently, when they feature in domestic constitutional provisions and adjudication, they create confusion and uncertainty and lead to logically unsatisfactory statements of what human dignity as a constitutional principle entails. This creates disharmony between international and domestic rights protection; limits the scope for comparative constitutional analysis; and ultimately, serves to discredit human dignity as a constitutional principle and undermine its importance and

centrality in human rights law. The logical conclusion to draw, therefore, is that domestic constitutional provisions and adjudication should distinguish between the right to personal autonomy and self-determination and the underlying principle of human dignity from which it derives. Moreover, it should be accepted that if dignity is an inherent characteristic of every human being which calls for that human being to be afforded equal treatment and respect, then there can be no such thing as a right to dignity [6, p. 574].

In conclusion, we would like to admit that the right to human dignity is always relevant and significant in any conditions being fundamental and essentially important for every human as the highest value for every country of the world.

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ОСОБЛИВОСТІ ФОРМУВАННЯ ТА РОЗВИТОК МУСУЛЬМАНСЬКОЇ ПРАВОВОЇ ДУМКИ

Інтерес до дослідження ісламу в цілому та ісламського права, зокрема,