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25. Human dignity in constitutional adjudication

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Since the mid-twentieth century, the idea of human dignity has emerged as the single most widely recognized and invoked basis for grounding the idea of human rights generally, and simultaneously as an exceptionally widespread tool in judicial discourse concerning the content and scope of specific rights. It has become a pervasive part of the fabric of constitutional law worldwide.² From South Africa, where judges concluded that dignity requires the government to implement ‘a comprehensive and coordinated programme progressively to realize the right of access to adequate housing’ (*South Africa v Grootboom* 2001, para. 23); to Israel, where the Supreme Court banned corporal punishment for violating the dignity of children (*Plonit v Israel* 2000; see Ezer 2003), to the decision of the Supreme Court of the United States finding criminal sodomy laws to be unconstitutional (*Lawrence v Texas* 2003), courts have assumed responsibility for identifying and guaranteeing the basic requirements of human dignity. Their decisions not only discuss human dignity but rely on the concept to explain, justify and determine case outcomes. As the South African Constitutional Court has put it, ‘dignity is not only a value fundamental to our constitution, it is a justiciable and enforceable right that must be respected and protected’ (Khosa 2004, para. 41). The same can be said of a number of other constitutional systems. For these reasons human dignity has been appropriately described as the ‘ur-principle’ of the protection of the human person in the contemporary era (Henkin et al. 1999, 80).

While many scholars have applauded judicial reliance on human dignity, even to the extent of urging their own national courts to regularly employ the value (Bracey 2005, 719; Moon 2006), other commentators have been less enthusiastic. Critics see it as a vacuous term that has no stable meaning and that can be given any content (Bagaric and Allan 2006; Bates 2005). The alleged absence of meaning in turn raises concerns about the degree of discretion that invocation of human dignity provides to judges and about the degree of ideological manipulation to which the concept is subject (Bates 2005, 165; cf. Harris 1998, 31; Carozza 2007). Some judges of the European Court of Human Rights have even suggested that human dignity is therefore a ‘dangerous concept’ (*Vereinigung Bildender Künstler v Austria* 2007, Spielman, J. and Jebens, J., dissenting §9).³

Two broad questions thus arise out of a comparative analysis of the widespread constitutional tendency to appeal to human dignity in adjudication. First, does the concept itself have any sufficiently common or determinable meaning across different constitutional systems? A second question, not unrelated to the first problem of substantive content, is a more functional one: for what purposes do courts deploy the idea and the rhetoric of human dignity in constitutional adjudication?

1 THE MULTIPLE MEANINGS OF HUMAN DIGNITY

At its broadest level, the invocation of human dignity denotes two interrelated ideas: (a) an ontological claim that all human beings have an equal and intrinsic moral worth; and (b) a normative principle that all human beings are entitled to have this status of equal worth respected by others and also have a duty to respect it in all others. The latter responsibility includes within it the obligations of the state to respect human dignity in its law and policy as well (McCrudden 2008; Carozza 2008; Lee and George 2008). Based on this core common meaning of human dignity, there is broad consensus across legal systems that certain ways of treating other human beings ought always to be prohibited by law. The prohibitions on genocide, slavery, torture, disappearance, and systematic racial discrimination, for instance, represent some important (but not exclusive) examples of universal acceptance of the implications of the status and basic principle of human dignity. It is not surprising that many of these clearest instantiations of the requirements of human dignity also coincide with the strongest and exceptionless norms of international law, found for example in the definitions of crimes against humanity or *jus cogens*.

The difficulties and controversies that arise in constitutional adjudication rarely if ever go to that hard minimal core of the meaning of human dignity. Rather, they arise where the requirements of human dignity are more contested and uncertain, and where the broad universal principle needs to be specified concretely in a given social, political, and cultural context. In those cases, the commonality of understanding across jurisdictions quickly dissipates and the meaning of dignity becomes 'elusive' and 'amorphous' (Rao 2008), even to the point of being arguably just an 'empty shell' (McCrudden 2008).

For example, while dignity is frequently used to support autonomy, as in a German Constitutional Court decision which held that human dignity required a Muslim schoolteacher to be allowed to observe her religion by wearing a headscarf in the classroom (Bundesverfassungsgericht 1436/02, 2003),⁴ in other cases, however, dignity is invoked instead to limit free choice in order to protect some independent value considered essential to the respect for persons' equal moral worth. In a well-known French decision, dwarf-tossing was prohibited as demeaning to human dignity (against the protests of the dwarves who made their living from the sport) (Conseil D'Etat, 27 October 1995, Commune de Morsang-sur-Orge).⁵ In Canada, in contrast to both the autonomy-limiting and autonomy-protecting strands of human dignity analysis, the principle is almost exclusively mentioned in the context of equality jurisprudence (Fyfe 2007, 18; Moon 2006, 697–705; *Law v Canada* 1999). Even within the same national court, varying usage can make it difficult to determine consistently what judges mean by dignity. Notwithstanding the headscarf case, 'dignity' in other cases in Germany often appears to mean little more than 'privacy' (Bundesverfassungsgericht 2378/98, 2004) (although arguably this represents a very distinct sense of privacy when compared with that which dominates US law (Whitman 2004)).⁶ The Hungarian Constitutional Court upheld a law preventing citizens from displaying swastikas, explaining that dignity required a tempering of free expression (Alkotmánybíróság 14/2000, V. 12); months later, the same court explained in a welfare case that all living people have the same amount of human dignity regardless of their lives' circumstances, so nothing could harm dignity, save death (Alkotmánybíróság 42/2000, XI. 8). Shortly thereafter, the court shifted perspectives once again, striking down legislation that limited citizens' ability to change their names, in order to ensure human dignity through self-determination (Alkotmánybíróság 58/2001, XII. 7).⁷

Even when dealing with strongly similar situations, different courts, and indeed different judges within the same court, can rely on human dignity to come to two entirely different conclusions. In France, the Conseil Constitutionnel in 2001 advised the legislature that a proposed law which would change the legal period for abortion from the first 10 weeks of gestation to the first 12 was unconstitutional because of the importance of safeguarding the dignity of the fetus after 10 weeks. In addition to the general dignity in the right to develop into a human being, the decision also notes that because the gender and basic features of a child can usually be determined starting in the tenth week, there might also be dignity concerns arising from the increased use of abortion for eugenic reasons or sex selection. In Germany, similarly, the Constitutional Court first held that a law permitting abortion is unconstitutional under certain circumstances because of the need to protect the dignity (and the life) of the unborn fetus (Bundesverfassungsgericht 39, 1, 1975; McAllister 2004, 511). Later, however, the same court permitted a substantially more liberalized abortion law and recognized that dignity concerns also exist not only on behalf of the unborn fetus but also on the side of the pregnant woman, whose autonomy and personal development are strongly implicated in the decision to terminate the pregnancy. In Hungary, where the constitution is largely modeled on German law and centered on human dignity, courts determined that there is no bar on abortion (Dupré 2003, 116). In the United States, dignity is also mentioned in abortion cases, but it is typically the dignity and autonomy of the mother that is stressed in justifying why abortion must remain legal (*Planned Parenthood v Casey* 1992). Scholarly literature on abortion and human dignity, even when arguing that the weight of the principle should favor one side in the dispute, acknowledges the presence of potentially valid dignity-based arguments on both (Dixon and Nussbaum 2010).

Similarly, human dignity has been invoked by those on both sides of the assisted suicide debate (*Pretty v United Kingdom* 2002; Bates 2005, 167). Not only is dignity implicated in the right (or absence of a right) to live, but also in the right to die. In one of the few British cases to address human dignity, the High Court ruled that a dying man's right to dignity meant he should be guaranteed the medical treatment that would keep him alive for as long as possible (*R (Burke) v General Medical Council* 2004). On appeal, the House of Lords focused instead on the negative impact on the dignity of an incompetent patient who might be kept alive for an extended period of time, despite great pain, because of an advanced directive (*R (Burke) v General Medical Council* 2005). Multiple perspectives on the relationship between dignity and assisted suicide can be found even in a single decision, such as the Hungarian Constitutional Court's treatment of the issue. After surveying the laws of several European countries and the several states of the United States as well as Australia, the Hungarian Court determined that laws forbidding assisted suicide were not in violation of patients' right to dignity (Alkotmánybíróság 22/2003, IV. 28). Although the Court asserted that all people, whether terminally ill or not, have the right to die when they choose because of the right to self-determination implied in the right to dignity, the majority of the Court concluded that the importance of the right to life justifies limiting the right to die to instances where the individual is terminally ill and competently refuses life-saving treatments. Each of the multiple dissents in the case adds different perspectives on the right to die with dignity, turning on whether dignity is best understood as a conglomeration of lesser rights, another name for the right to life itself, or a supreme right that trumps all others.

In significant part, the multiple and sometimes mutually contradictory uses of human dignity in constitutional adjudication stem from the multivalent sources of the idea.⁸ The

word's roots are Latin, but ancient Romans primarily used it in a context that referred to the respect due to those who were of elevated social status – for example, senators had *dignitas* but women, slaves and common men did not. It was a term that drew status distinctions between people, rather than suggesting universal moral equality. In contrast, the Judeo-Christian notion of human dignity, deriving from the traditional belief that man is made in the image of God, identifies an inherent worth in every individual. Kantian philosophy is often closely associated with discussions of human dignity as well, particularly those contemporary understandings of dignity that place a heavy emphasis on individual autonomy, and on not treating anyone merely as a means to other ends.⁹ Still other Enlightenment philosophers, such as Rousseau, have bequeathed a slightly different emphasis to the idea of dignity, associating it with more communitarian and republican ideals. Outside of European traditions, human dignity has been linked to other concepts, like *ubuntu* or *dharma*, that belong to distinctive philosophical, religious and cultural traditions and yet that may arguably serve in their particular contexts as functional analogues to the idea of human dignity. The point here is not to catalogue all the possible sources of the idea of dignity, and even less to enter into their details or merits. Rather, it is simply to highlight that dignity's roots are not just highly diverse but emerge from traditions of thought that represent deeply divergent ideas about why human persons have any inherent value that demands the respect of others (the status of dignity), and what it entails to respect the moral worth of another (the principle of dignity).¹⁰ One should therefore expect to find very significant variations in the use of human dignity across different constitutional courts, especially as the very broad and abstract principle of dignity is given concrete application and more determinate meaning in specific cases.

Despite its indeterminacy and the variations in its application, the idea of human dignity as applied in the jurisprudence of different constitutional systems does allow a certain degree of categorization or at least groupings of cases to be made, even if the groups are not necessarily conceptually tightly knit and even if there is often substantial overlap between one group and others.

The most widespread and evident use of dignity in adjudication can be found in cases dealing with the protection of life itself and the integrity (physical or mental) of human persons. Cases are legion where inhuman and degrading treatment is found to violate the inherent dignity of the victims. Prison conditions, the treatment of detainees, and the administration of criminal punishments are obvious contexts giving rise to discussion and judicial protection of human dignity.¹¹ References to the requirements of human dignity pervade the case law of the European Court of Human Rights under Article 3 of the European Convention on Human Rights, for example (*Yankov v Bulgaria* 2003; *Price v the United Kingdom* 2001). Even in the United States, where the language of human dignity typically plays a less prominent role in constitutional discourse than it does in many other jurisdictions,¹² the Supreme Court has emphasized that it is the basic principle undergirding the Eighth Amendment's prohibition of cruel and unusual punishments. For instance, in *Hope v Pelzer* (2002), involving a prison inmate who was tied to a hitching post in the sun for seven hours with little water, Justice Stevens explained that the treatment was antithetical to human dignity and thus cruel and unusual within the meaning of the Eighth Amendment (730).¹³ Dignity-based limitations on punishment across different systems range from prohibitions on corporal punishment in nations like Israel and South Africa (*Christian Education South Africa v Minister of Education* 2000; *Plonit v Israel* 2000; see Ezer 2003), to the impermissibility of a sentence of life in prison without parole, in Germany (Bundesverfassungsgericht 45, 187, 1977).

Similarly, in many different constitutional courts, dignity features prominently in judicial discussions of the legitimacy of the death penalty (Carozza 2003). In short, in the constitutional protection of human life and physical and mental integrity, one finds the most widely accepted recognition and application of the status and principle of human dignity.

In a second and entirely different set of decisions, courts discuss dignity as a value central to the definition and protection of individuals' social status and social roles. This formulation is especially prominent in several Hungarian cases, for instance, which focus on individuals' dignity and self-determination in shaping their identities (Alkotmánybíróság 45/2005, XII. 14; 58/2001, XII. 7). Similarly, the German and South African Constitutional Courts have fined or even banned books because, though presented as works of fiction, they shared too many details about a particular individual's private life (Bundesverfassungsgericht 1783/05, 2007; *NM v State* 2007). French courts frequently require newspapers to pay damages after they publish stories or photographs about individuals without respect for their dignity.¹⁴ One case decided by the European Court of Human Rights concerned an obscene painting, which included a depiction of an Austrian political figure (*Vereinigung Bildender Künstler v Austria* 2007). The Austrian courts, as well as several judges in the ECHR, found in favor of the politician and his harmed dignity, even at the expense of the artist's freedom of expression.¹⁵ This conception of dignity is primarily employed within European courts, and seems to be closely related to European conceptions of privacy. Furthermore, many of these cases almost convey a sense of the privileged social status of the victim of the indignity, whether they feature the Austrian party leaders included in the shocking painting, princesses who wish to keep photographs of their private lives out of the tabloids (*Von Hannover v Germany* 2004), or supermodels who are unhappy about published stories about their involvement in drug rehabilitation (*Campbell v Mirror Group Newspapers* 2004). In these cases, the Roman conception of senatorial *dignitas* does not seem so far removed (cf. Whitman 2004), even if it is sometimes extended to 'common' people.¹⁶

In contrast, a third distinct group of cases shows that dignity can go far beyond the private details of a person's life, and can be employed to address the sweeping conditions that shape the lives of entire communities living in poverty and extreme vulnerability. In South Africa, the Constitutional Court heard a case brought by hundreds of impoverished families living in tents pitched on a crowded field, while they waited for more government subsidized housing to be built (*South Africa v Grootboom* 2001). The court concluded that these citizens' dignity required that the government devote substantial resources to developing and carrying out a plan to progressively realize the right to adequate housing. In India, the Supreme Court came to a similar conclusion when it reviewed the conditions of young children living with their convicted mothers in state jails (*R.D. Upadhyay v State of A.P.* 2006). The dignity of these infants and toddlers, the court declared, required that they be provided with appropriate food, clothing and educational opportunities, as well as frequent outings to experience the world outside the prison walls. The Indian court has also required that laws be instituted to limit noise pollution, because a life of dignity is one where the right to quiet and peaceful enjoyment is respected (*In Re: Noise Pollution* 2005). In a comparable vein, the Israeli Supreme Court has also held that the protection of human dignity by the government means that laws must not deprive people of money that is necessary for minimal subsistence and that a man living on the streets, starving, deprived of access to basic medical treatment, or compelled to live in humiliating material conditions is a man whose human dignity has been impaired.¹⁷

Such situations involving the dignity of excluded groups are closely related to the use of human dignity in a fourth set of cases: those invoking equality as necessary to the respect for human dignity. Based on the proposition that all people are inherently and equally entitled to human dignity, this view is especially developed in Canadian jurisprudence,¹⁸ has become common in South Africa (Grant 2007), and can be found in other jurisdictions as well.¹⁹ This is in an important sense the antithesis of the Roman idea of *dignitas*; rather than drawing distinctions between the privileged and everyone else, dignity in the equality context demands that such differentiations be set aside. While the use of dignity in the realm of equality has been criticized (O'Connell 2008), it would appear to be a growing category. In this vein, for example, many jurisdictions, including Canada, the United States and South Africa, have invoked human dignity in a central way in judicial discussions of the rights of gays and lesbians.²⁰ Similarly, in several jurisdictions, including Canada, India and Israel, judges rely on dignity as justification for enforcing laws against sexual harassment in the workplace.²¹ The connection between dignity as requiring guarantees of equality and dignity as leading to the protection of the social and economic conditions of vulnerable populations can be seen very clearly in a South African case requiring the extension of state-funded educational benefits to certain non-citizens (Khosa 2004). Justice Mokgoro of the South African Constitutional Court noted pointedly that 'the exclusion of permanent residents from the scheme is likely to have a severe impact on the dignity of the persons concerned, who, unable to sustain themselves, have to turn to others to enable them to meet the necessities of life and are thus cast in the role of supplicants' (para. 80).

The distinction between the dignity of prominent individuals and the broader human dignity invoked to guarantee the material needs and the equality of marginalized populations is not the only dichotomy at work in the judicial interpretation and application of the concept. As mentioned above, and as explored in much of the scholarly literature on dignity, cases on human dignity are also split between understandings of dignity as liberty-reinforcing and dignity as requiring constraints on unfettered individual choice (Capps 2009, 108; Fyfe 2007, 2). From one perspective, human dignity clearly demands autonomy. A government that does not respect people's choices to shape their identities violates their dignity, at least in the eyes of the Hungarian Constitutional Court (Alkotmánybíróság 58/2001, XII. 7). In discussing laws restricting legal names, the court held that dignity includes an inalienable right to bear a name reflecting one's self-identity. Similarly, in affirming the right of transsexuals to present themselves to society as they choose (*I v the United Kingdom* 2002), the European Court of Human Rights observed in that decision that 'society may be reasonably expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance to the sexual identity chosen by them at great personal cost' (para. 71). Dignity's role in guaranteeing personal autonomy can also extend beyond central questions of shaping one's identity. For instance, the Indian Supreme Court struck down a law limiting donations of land to charitable organizations, on the grounds that treating people with dignity requires allowing them to will their land to whomever they choose (*John Vallamattom and Anr. v Union of India* 2003). Many jurisdictions, including France, ground the autonomy of patients to make free and informed choices about their medical care in human dignity.²²

In contrast to this use of dignity, which empowers people to make free choices, dignity also plays a role in empowering government to limit the freedom of their citizens. Probably the most famous example of this case was decided by a French court when it determined that

the sport of dwarf-throwing was an affront to human dignity, even when it was done with the full consent of all parties involved (Conseil D'Etat, 27 October, 1995, Commune de Morsang-sur-Orge). More recent examples confirm that the sentiment this case expresses is not obsolete.²³ Furthermore, dignity-as-constraint is not limited to French law. The Hungarian Constitutional Court, for example, rejected a petitioner's argument that the right of self-determination, implicit in dignity, should give people the right to use narcotic substances, citing the importance of protecting people, especially children, from the indignity of substance addiction (Alkotmánybíróság 54/2004, XII. 13).²⁴ The same court upheld mandatory vaccination requirements as consistent with the requirements of dignity (Alkotmánybíróság 39/2007, VI. 20). In Germany, a prohibition on peep shows has been found to be a valid protection of the human dignity of the (consenting) women being exhibited (1981 BVerwGE 64, 274), while the South African Constitutional Court upheld a ban on prostitution because the commodification of one's body necessarily diminished the human dignity of the prostitutes (*Jordan v State* 2002).

At times, the dualistic nature of the relationship between dignity and autonomy manifests itself dramatically. In the Hungarian case dealing with name restrictions, for instance, the court did not invalidate all of the naming laws, even though it found an inalienable right to shape one's self-identity (Alkotmánybíróság 58/2001, XII. 7). Obscene names and puns could not be used, the court said, because allowing them would violate the dignity of children who might be saddled with such names. Furthermore, the dignity of other living individuals made it necessary to prevent people from assuming different family names if there was potential for confusion or deception. The dignity of having free choices is always tempered by restrictions placed on those choices, necessary to safeguard the dignity of others. As these examples imply, in most instances when the conflict between dignity-as-liberty and dignity-as-constraint appears, the issue is not actually two competing definitions of dignity, but rather the competing dignities of two different people whose interests may collide. This explains cases like the Hungarian naming decision, and helps unravel the otherwise puzzling ability of courts to rely on dignity in support of either side of the abortion divide. Similarly, in Canada women have been prohibited from arbitrarily denying men parental rights, because of the need to protect the dignity of the fathers (*Trocuik v British Columbia* 2003) – another example of competing claims of dignity within the context of a single dispute over rights.

Sometimes, however, a court must actually prioritize irreconcilable values, rather than merely choose between the dignity of two people. A vivid illustration of such a case is *Indiana v Edwards*, decided by the United States Supreme Court in 2007 (*Indiana v Edwards* 2007). The decision features a heated debate between the majority and the dissent on whether the real affront to human dignity was to deny a mentally challenged defendant the right to be 'master of his own fate' and represent himself in court (J. Scalia and Thomas dissenting, 2393), or to allow him to embarrass himself and the legal system by giving him the opportunity to do so (majority opinion, 2387).²⁵

In sum, this array of different approaches to human dignity reflects not only the variety of intellectual and moral traditions in which the concept has its roots, but also differences in the specific political, social and cultural contexts in which the very broad principle needs to be instantiated. The process of specifying the meaning and application of the general and abstract concept in concrete circumstances is a classic example of the *determinatio* of moral principles through the positive law (Carozza 2003; Carozza 2008, 933).

2 THE MULTIPLE USES OF HUMAN DIGNITY

The highly variable and context-specific substantive content of the principle of human dignity in constitutional adjudication provokes a further set of questions about the way that the principle functions in practice. If the meaning of dignity is so amorphous, especially as one moves farther away from the (relatively) non-disputed use of the idea to protect the central core of an individual's physical and psychological integrity, why is it so frequently invoked, for what uses and to what effect? Christopher McCrudden has argued for shifting the discussion of human dignity in constitutional adjudication away from the substantive content of the principle and instead for examining the functional and institutional uses of the principle (McCrudden 2008).

One important role that human dignity plays is to provide an overarching and integrating constitutional value. In that pre-eminent position, the language of dignity is the currency for mediating between other more specific and distinct rights and principles, even ones that may otherwise be incommensurable. For example, the abortion cases discussed earlier present particularly vexing clashes of fundamental values. In its attempt to justify a balancing between the right to life of the unborn child and the right to autonomy and the development of personality of the woman, the German Constitutional Court has framed both in terms of dignity as the overarching constitutional value (Mahlmann 2010). Similar appeals to dignity serve as the framework for judicial resolution of the conflicts between (certain forms of) privacy and freedom of expression described above.

Yet dignity does more than merely mediate between and unify the existing pieces of the constitutional protection of rights. In many cases, courts appeal to the idea of human dignity to expand the scope of fundamental rights, either by finding that human dignity requires a substantially extended understanding of a recognized right or by justifying the recognition of a new constitutional right by reference to the requirements of dignity. Such uses of dignity range across a broad spectrum of constitutional rights. They include, for example, finding that dignity inherently includes the protection of the family in South Africa (*Dawood v Minister of Home Affairs* 2000), the right to education in India (*Islamic Academy of Education v State of Karnataka* 2003), minority language rights in Israel (*Adalah v The Municipality of Tel-Aviv-Jaffa* 2002),²⁶ and the freedom to seek sterilization for contraceptive purposes in Hungary (Alkotmánybíróság 43/2005, XI. 14). In many instances, the rhetorical grounding of such new or expanded rights in human dignity appears even more prominent and pronounced when the subject is one of sharp social controversy. In such cases, human dignity seems to be offered as a way of justifying the court's intervention and resolution of the question in ways that may not reflect prevailing popular sentiment, such as in the several court decisions mandating same-sex marriage, for example.

The rights-expanding role that human dignity plays is all the more notable insofar as it is used by courts even in the absence of an explicit constitutional text referring to dignity.²⁷ This practice leads to the identification of a third broad category of functions that human dignity plays: it is invoked by courts to justify their reliance on legal sources that do not have an authoritative pedigree in the positive law. Appealing to human dignity indirectly authorizes constitutional courts to reach beyond the strictures of the formal hierarchy of sources. Some of the clearest examples can be found in decisions relying on or otherwise incorporating foreign court decisions. Most constitutional courts typically lack an explicit textual warrant for their use of foreign or comparative law.²⁸ By linking the relevant foreign law to a common

commitment to the protection of human dignity, however, courts can seek to overcome the risk to interpretive legitimacy that foreign law represents. Numerous examples of this practice can be found across a range of rights, but in no area is the transnational link forged by reference to human dignity more clear than with regard to the rights to life and physical integrity, including in particular the death penalty (Carozza 2003).

It is notable that this link of the constitutional order of fundamental values to the transnational is sometimes especially strong in constitutional systems that have recently emerged from periods of totalitarian rule, like Hungary, or criminally systematic oppression, like South Africa. It has been argued persuasively that this reflects the ability of dignity to signal and symbolize the transition to a new constitutional order that respects the human person, and to mark the definitive rejection of former regimes (Dupré 2003).

Whether in conveying a new set of fundamental constitutional values, authorizing new sources of law or constructing expanded understandings of rights, the problem of the institutional legitimacy of the judiciary often lies very close to the surface in such cases. What makes the exercise of judicial authority justified, relative to the political lawmaking branches (or the constitutive assembly through the constitutional text itself) is exactly the courts' reliance on a higher principle, human dignity. That claims for itself an objective status not reducible merely to judicial preference or arbitrariness. Where the basic human rights claim in question can result in enormous public expenditures and the mobilization of broad public policies, or where it brings the courts into especially sharp conflict with elected bodies, the reliance on dignity as an institutional legitimation technique can be especially important. It can be seen in this sense as one important method for mitigating the bite of constitutional courts' countermajoritarian roles (McCrudden 2008).

Those cases of institutional competence that implicate the allocation of responsibilities for guaranteeing rights and the common good in a constitutional system illustrate particularly clearly the structural function that human dignity plays in adjudication. Nevertheless one can observe that in fact all of the typical uses of the idea of dignity in constitutional adjudication depend at least implicitly on the premise that dignity provides some sort of supra-positive value to which the details of constitutional law ought to be held accountable (Carozza 2008).²⁹

3 CONCLUSION

There is at least a certain paradox, and sometimes outright contradiction, between the substantive meaning of human dignity across the constitutional jurisprudence of different systems, on the one hand, and the functional role that human dignity plays in fortifying judicial legitimacy, on the other. To the extent that the content of dignity is vacuous, or at least significantly indeterminate and accordingly subject to the discretionary interpretation of judges, it is likely to be less capable of serving as a justification for the strong judicial roles that it is called upon to sustain. It is for this reason that even scholars who have commented positively in general terms on the use of dignity in constitutional adjudication also have identified the risk of over-use or abuse of the idea (Carozza 2008; Rao 2008; Feldman 2000). Others warn of at least the potential for the invocation of human dignity by courts to be no more than an insincere 'sham' or a 'cover' for decisions based on other ideological grounds (McCrudden 2008). It would therefore appear that the legitimating functions of human

dignity in constitutional adjudication are strongest in those domains where there is a clear core consensus about its meaning – for instance, in cases involving unambiguous violations of the physical and mental integrity of persons – and more tenuous as the content and requirements of human dignity become more sharply contested. Much more development both of the law across a widely diverse set of traditions and of the scholarly literature on dignity will be needed before the substantive and the functional dimensions of human dignity will be able to reinforce each other more fully.

NOTES

1. I am grateful to LaShel Shaw for her excellent research assistance.
2. Much of this development is related to the growth and influence of international human rights law as well, which consistently incorporates references to human dignity as a foundational value throughout its network of treaties, declarations and other instruments. Although this chapter will focus on the comparative constitutional aspects of the idea of human dignity rather than on its role in international law, these two dimensions are often difficult to separate and inevitably bleed into each other, as will be apparent in the subsequent discussion. The European Court of Human Rights (ECHR), as an international tribunal that plays a significant constitutional function within the states of the Council of Europe, lies at the crossroads of that relationship, and accordingly this discussion will also include various references to the ECHR.
3. Cf. The Supreme Court of India in *Rameshwar Prasad and Ors. v Union of India and Anr.* – 24/01/2006 – which questions moral realism’s presumption that there are discoverable standards to judge whether public policies infringe on human dignity.
4. Available in English at http://www.bverfg.de/entscheidungen/rs20030924_2bvr143602en.html.
5. Available in French at http://www.rajf.org/article.php3?id_article=245.
6. Available in English at http://www.utexas.edu/law/academics/centers/transnational/work_new/german/case.php?id=658.
7. Many of the Hungarian Constitutional Court decisions cited in this essay can be found in English translation in Holló and Erdei 2005.
8. The varied historical roots of the idea are amply elaborated in Kretzmer and Klein 2002, which also represents the single most broad-ranging and useful survey of the use and development of the idea of human dignity in comparative and international law.
9. One of the most interesting illustrations of the dignity-based imperative to treat persons as ends and not means can be found in the German Constitutional Court’s decision to strike down anti-terrorism laws that allowed the air force to shoot down aircraft that had been hijacked, because the importance of the dignity of other passengers and crew members required that they not be objectified and have their lives sacrificed for the greater good. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 357/05, 2 February 2006. http://www.bundesverfassungsgericht.de/entscheidungen/rs20060215_1bvr035705.html. Matthias Mahlmann contends that this Kantian version of human dignity is the most representative of the German constitutional tradition (Mahlmann 2010).
10. See the very interesting discussion by the Supreme Court of India in *M. Nagaraj & Others v Union of India & Others* – 9/10/2006, philosophizing at length about the relationship between Indian conceptions of human dignity and the German understanding of dignity, and the extent to which German ideals thus inform their decision.
11. See e.g. HC 5100/94 *Public Committee against Torture v Government of Israel* [1999], available in English at elyon1.court.gov.il/files_eng/94/000/051/a09/94051000.a09.pdf [6I]; *Napier v The Scottish Ministers* [2004] SLT 555 (UK) [3A].
12. Some scholars have nevertheless argued that human dignity plays an important role as a background value in US constitutional jurisprudence despite the limited explicit invocations of the term (Goodman 2005).
13. See also *Atkins v Virginia*, 536 US 304 (2002) (explaining that human dignity undergirds Eighth Amendment, in finding the application of the death penalty to a mentally retarded defendant to be unconstitutional).
14. See e.g. *F P+B, F. c/ Sté Hachette Filipacchi associés*, Cour de Cassation première chambre civile [Cass. 1re. civ.] 7 March 2006; *SNC Hachette Filipacchi associés c/ Épx G.*, Cour de Cassation deuxième chambre civile [Cass. 2e civ.] 4 November 2004; *SNC Prisma Presse et a. c/ Saada, dit Sarde*, Cour de Cassation première chambre civile [Cass. 1re. civ.] 12 July 2001.
15. *Id.*, see especially (Spielman, J. and Jebens, J., dissenting). The case was decided 4:3, with the majority finding a violation of Article 10’s Freedom of Expression in the Austrian court’s decision.

16. Cf. the French Cour de Cassation in Cass. crim., 12 November 2008, no. 07-83.398, *F PF, v c/ Assoc. Act Up Paris et al.* The decision upholds limits on freedom of expression in the form of fines imposed on a man for publishing an article contending that homosexuals are morally inferior and dangerous to humanity. The Court determined that the punishment was justified because his words were offensive and contrary to human dignity.
17. *Gamzu v Yeshaiahu (alternatively, Yesayahu)*. RCA 4905/98 [2001] 55(3) PD 360. Good descriptions of the case can be found in Rabin and Shaney (2003–2004) and in Barak-Erez and Gross (2007). The case itself can be found online, in Hebrew, at <http://elyon1.court.gov.il/files/98/050/049/A11/98049050.a11.pdf>.
18. The judicial test for equality established by the Canadian Supreme Court in *Law v Canada* ([1999] 1 SCR 497) has two parts. First, the court must determine if the law or government policy distinguishes between different classes of people, whether facially or through its effects. If the law does have such a distinction, and the resulting discrimination harms human dignity, then the law is unconstitutional under section 15 of the Canadian Charter.
19. In Israel, for instance, Justice Barak's dissent in *Adalah v Minister of the Interior* HCJ 7052/03 [2006] (upholding temporary Israeli laws that limited Arab family reunification for security reasons) explains that equality is a fundamental part of dignity and offers an explanation of the importance of family to human dignity, complete with an extensive look at jurisprudence from countries around the world.
The case has been translated into English by the Israeli court, and can be found at http://elyon1.court.gov.il/files_eng/03/520/070/a47/03070520.a47.pdf.
20. See e.g. *M v H* [1999] 2 SCR 3 (Can.) (giving same-sex couples the same legal rights as opposite-sex couples in common law marriages); *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (S. Afr.) (banning laws against sodomy as unconstitutional); *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 (2) SA 1 (S. Afr.) (removing legal distinctions between same-sex couples and opposite-sex couples in the context of immigration laws) [4I]; *Du Toit v Minister of Welfare and Population Development* 2003 (2) SA 198 (CC) (S. Afr.) (mandating that otherwise qualified same-sex couples be permitted to adopt children); *Minister of Home Affairs v Fourie* 2006 (1) SA 524 (CC) (S. Afr.) (finding that same-sex couples had the constitutional right to marry); *Lawrence v Texas*, 539 US 588 (2003) (striking down state laws prohibiting consensual sodomy).
21. See e.g. *Vriend v Alberta* [1998] 1 SCR 493; *Apparel Export Promotion Council v A.K. Chopra* 1999(1)SCR 117 (Ind.); HCJ 1284/99 *Jane Doe [Plonit] v IDF Commander [Galili/Brigadier General]* [1999] (Isr.). Note, however, that the Israeli use of dignity rather than equality to address sexual harassment cases has been sharply criticized (Rimalt 2008).
22. E.g. Cass Ire. civ., 9 October 2001; *A. C. c/ C. et a* [arrêt no. 1511 P+B+R] [Juris-Data no. 011237]. for commentary on the case see Cachard (2002).
23. A recent French article, for instance, urged that weight requirements and physical inspections be imposed on all fashion models, in order to ensure that fashion shows do not remain spectacles exploiting those suffering from anorexia. See le Roy (2008).
24. Note that the Hungarian Court did nevertheless invalidate the majority of the narcotic drug law because the language was unclear and contradictory, which could lead to arbitrary enforcement, and which would therefore offend human dignity. The court also stresses the importance of allowing rehabilitation programs instead of/alongside punishment, for the sake of dignity. Cf. also *Jordan v State* 2002 (6) SA 642 (CC); (11) BCLR 1117 (CC). Though principally about the gender inequality of a law that punished prostitutes but not their consumers, the South African court explains that prostitution, unlike sodomy, can be regulated because there is not the same kind of dignity in buying and selling sex as there is in expressing love as part of a relationship.
25. Cf. *Quebec v Syndicat national des employés de l'hôpital St-Ferdinand* [1996] 3 SCR 211, which lays out the philosophical origins of dignity in Canadian jurisprudence and grapples with the question of whether nudity is an affront to dignity if the person is so severely handicapped that they are not aware of their naked condition.
26. Discussed in Saban (2004).
27. In some systems, of course, the constitution itself refers to the foundational value of dignity, as in Germany and South Africa. Grundgesetz für die Bundesrepublik Deutschland [Constitution], Article 1; Constitution of the Republic of South Africa, chapter 2, § 10. Similarly, in Israel, the Basic Law on Human Dignity and Liberty has since the mid-1990s codified the fundamental value of dignity.
28. Again, the South African system provides an exception, including in its constitutional text an explicit requirement to take foreign and international law into account in its interpretation of the constitution. Constitution of the Republic of South Africa, chapter 2, § 39 (When interpreting the Bill of Rights, a court, tribunal or forum (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law').
29. On the idea of human rights as supra-positive values more generally, see Neuman (2003).

REFERENCES

- Bagaric, Mirko, and Allan, James (2006), 'The Vacuous Concept of Dignity', *Journal of Human Rights*, 5: 257–70.
- Barak-Erez, Daphne and Aeyal M. Gross (2007), 'Social Citizenship: The Neglected Aspect of Israeli Constitutional Law', in Daphne Barak-Erez and Aeyal M. Gross (eds), *Exploring Social Rights*, Oxford: Hart Publishing, 243–61.
- Bates, Justin (2005), 'Human Dignity – An Empty Phrase in Search of Meaning?', *Judicial Review*, 10: 165–68.
- Bracey, Christopher A. (2005), 'Dignity in Race Jurisprudence', *University of Pennsylvania Journal of Constitutional Law*, 7: 669–720.
- Cachard, Olivier (2002), 'La Contagion Rétroactive de l'Obligation Médicale d'Information [The Retroactive Application of the Medical Duty to Inform]', *La semaine juridique*, édition générale, 12, 551–4.
- Capps, Patrick (2009), *Human Dignity and the Foundations of International Law*, Oxford: Hart Publishing.
- Carozza, Paolo G. (2003), 'My Friend is a Stranger: The Death Penalty and the Global *Ius Commune* of Human Rights', *Texas Law Review*, 81: 1032–89.
- Carozza, Paolo G. (2007), 'Il Traffico dei Diritti Umani nell'Età Post-Moderna [Trafficking in Human Rights in the Post-Modern Age]', in Luca Antonini (ed.), *Il Traffico dei Diritti Insaziabili [Trafficking in Insatiable Rights]*, 81–105. Soveria Manelli, Italy: Rubbettino.
- Carozza, Paolo G. (2008), 'Human Dignity and Judicial Interpretation of Human Rights: A Reply', *European Journal of International Law*, 19: 931–44.
- Dupré, Catherine (2003), *Importing the Law in Post-Communist Transitions*, Oxford: Hart Publishing.
- Ezer, Tamar (2003), 'Children's Rights in Israel: An End to Corporal Punishment?', *Oregon Review of International Law*, 5: 139–214.
- Feldman, David (2000), 'Human Dignity as a Legal Value – Part II', *Public Law*, 2000: 61–76.
- Fyfe, R. James (2007), 'Dignity as Theory: Competing Conceptions of Human Dignity at the Supreme Court of Canada', *Saskatchewan Law Review*, 70: 1–26.
- Gimeno-Cabrera, Véronique (2004), *Le Traitement Jurisprudentiel du Principe de Dignité de la Personne Humaine*, Paris: Librairie Générale de Droit et de Jurisprudence.
- Goodman, Maxine D. (2005), 'Human Dignity in Supreme Court Constitutional Jurisprudence', *Nebraska Law Review*, 84: 740–94.
- Grant, Evadné (2007), 'Dignity and Equality', *Human Rights Law Review*, 7: 299–329.
- Harris, John (1998), *Clones, Genes, and Immorality*, Oxford: Oxford University Press.
- Henkin, Louis, Gerald L. Neuman, Diane F. Orentlicher and David W. Leebron (1999), *Human Rights*, New York: Foundation Press.
- Holló, András and Árpád Erdei (eds) (2005), *Selected Decisions of the Constitutional Court of Hungary (1998–2001)*, Budapest: Akadémiai Kiadó.
- Lee, Patrick and Robert P. George (2008), 'The Nature and Basis of Human Dignity', *Ratio Juris*, 21: 173–93.
- Le Roy, Mark (2008), 'Le Maire, le Mannequin, et la Protection de la Dignité de la Personne Humaine [The Mayor, the Mannequin, and the Protection of the Dignity of the Human Person]', *Actualité Juridique Edition Droit Administratif*, 80, <http://www.psychanalyse-en-mouvement.net/anorexie:voix.off/index.php>.
- Kretzmer, David and Eckart Klein (eds) (2002), *The Concept of Human Dignity in Human Rights Discourse*, The Hague: Kluwer Law International.
- Mahlmann, Matthias (2010), 'The Basic Law at 60 – Human Dignity and the Culture of Republicanism', *German Law Journal*, 11: 9–32.
- McAllister, Marc Chase (2004), 'Human Dignity and Individual Liberty in Germany and the United States as Examined Through Each Country's Abortion Jurisprudence', *Tulsa Journal of Comparative and International Law*, 11: 491–520.
- McCrudden, Christopher (2008), 'Human Dignity and Judicial Interpretation of Human Rights', *European Journal of International Law*, 19: 655–724.
- Moon, Gay (2006), 'From Equal Treatment to Appropriate Treatment: What Lessons from Canadian Equality Law on Dignity and on Reasonable Accommodation Teach the United Kingdom?', *European Human Rights Law Review*, 6: 695–921.
- Neuman, Gerald (2003), 'Human Rights and Constitutional Rights: Harmony and Dissonance', *Stanford Law Review*, 55: 1863–900.
- Nussbaum, Martha (2011), 'Abortion, Dignity and a Capabilities Approach', in Beverly Baines, Daphne Barak-Erez and Tsvi Kahana (eds), *Feminist Constitutionalism*, Cambridge: Cambridge University Press.
- O'Connell, Rory (2008), 'The Role of Dignity in Equality Law: Lessons from Canada and South Africa', *International Journal of Constitutional Law*, 6: 267–86.
- Rabin, Yoram and Yuval Shaney (2003–2004), 'The Israeli Unfinished Constitutional Revolution: Has the Time Come for Protecting Economic and Social Rights?', *Israel Law Review*, 37: 299–345.
- Rao, Neomi (2008), 'On the Use and Abuse of Dignity in Constitutional Law', *Columbia Journal of European Law*, 14: 201–56.

- Rimalt, Noya (2008), 'Stereotyping Women, Individualizing Harassment: The Dignitary Paradigm of Sexual Harassment Law between the Limits of Law and the Limits of Feminism', *Yale Journal of Law and Feminism*, 19: 391–447.
- Saban, Ilan (2004), 'Minority Rights in Deeply Divided Societies: A Framework Analysis and the Case of the Arab-Palestinian Minority in Israel', available at <http://elyon1.court.gov.il/files/99/120/041/A10/99041120.a10.pdf>.
- Whitman, James Q. (2004), 'The Two Western Cultures of Privacy: Dignity Versus Liberty', *Yale Law Journal*, 113: 1151–221.

Cases

- Adalah Legal Centre for Arab Minority Rights in Israel v Minister of Interior*, HCJ [Israeli High Court of Justice] 7052/03 [2006] (1) IsrLR 443.
- Adalah Legal Centre for Arab Minority Rights in Israel v Tel-Aviv-Jaffa Municipality*, HCJ [Israeli High Court of Justice] 4112/99, PD 56(5) 393 (2002).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 14/2000 (V. 12).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 42/2000 (XI. 8).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 58/2001 (XII. 7).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 22/2003 (IV. 28).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 54/2004 (XII. 13).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 43/2005 (XI. 14).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 45/2005 (XII. 14).
- Alkotmánybíróság [AB] [Hungarian Constitutional Court] 39/2007 (VI. 20).
- Atkins v Virginia*, 536 US 304 (2002).
- Apparel Export Promotion Council v A.K. Chopra*, 1999 (1) SCR [Supreme Court of India] 117.
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 39, 1, 1975.
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 45, 187, 1977.
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 1436/02, 24 September 2003, available in English at http://www.bverfg.de/entscheidungen/rs20030924_2bvr143602en.html.
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 2378/98, 3 March 2004, available in English at http://www.utexas.edu/law/academics/centers/transnational/work_new/german/case.php?id=658.
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 357/05, 2 February 2006.
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 1783/05, 13 June 2007.
- 1981 BVerwGE 64, 274 (Federal Administrative Court).
- Campbell v Mirror Group Newspapers* [2004] 2 AC (House of Lords) 457.
- Christian Education South Africa v Minister of Education* 2000 (10) BCLR [Constitutional Court of South Africa] 1051 (CC).
- Conseil D'Etat [CE] [Highest Administrative Court, France], 27 October 1995, Commune de Morsang-sur-Orge.
- Cour de Cassation [Appellate Court, France] in Cass. crim. [Criminal Appeal], 12 November 2008, no. 07-83.398, F PF, v c/ Assoc. Act Up Paris et al.
- Cour de Cassation [Appellate Court, France] première chambre civile [Cass. 1re. civ.], 12 July 2001, SNC Prisma Presse et al. c/ Saada, dit Sarde.
- Cour de Cassation [Appellate Court, France] première chambre civile [Cass. 1re. civ.], 9 October 2001; A. C. c/ C. et al. [arrêt no. 1511 P+B+R] [Juris-Data no. 011237].
- Cour de Cassation [Appellate Court, France] deuxième chambre civile [Cass. 2e civ.], 4 November 2004, SNC Hachette Filipacchi associés c/ Épx G.
- Cour de Cassation [Appellate Court, France] première chambre civile [Cass. 1re. civ.], 7 March 2006, F P+B, F. c/ Sté Hachette Filipacchi associés.
- Dawood, Shalabi and Thomas v Minister of Home Affairs* 2000 (3) SA [Constitutional Court of South Africa] 936 (CC).
- Du Toit v Minister of Welfare and Population Development* 2003 (2) SA [Constitutional Court of South Africa] 198 (CC) (S. Afr.).
- Gamzu v Yeshaiahu (alternatively, Yesayahu)*, RCA 4905/98 (2001) 55 (3) PD 360.
- Hope v Pelzer*, 536 US 730 (2002).
- I v The United Kingdom*, no. 25680/94, ECHR [European Court of Human Rights] 2002.
- In Re: Noise Pollution*, 2005 (1) Supp. SCR [Supreme Court of India] 624.
- Indiana v. Edwards*, 554 US 208 (2008).
- Islamic Academy of Education v State of Karnataka*, 2003 (6) SCC [Supreme Court of India] 697.
- Jane Doe [Plonit] v IDF Commander [Galili/Brigadier General]* (1999), HCJ [Israeli High Court of Justice] 1284/99.
- John Vallamattom and Anr. v Union of India*, 2003 (1) Supp. SCR [Supreme Court of India] 638.

- Jordan v State* 2002 (6) SA [Constitutional Court of South Africa] 642 (CC); (11) BCLR 1117 (CC).
Khosa v Minister of Social Development, 2004 (6) SA [Constitutional Court of South Africa] 505 (CC).
Law v Canada (Minister of Employment and Immigration), [1999] 1 SCR [Canadian Supreme Court] 497.
Lawrence v Texas, 539 US 558, 574 (2003).
M v H [1999] 2 SCR [Canadian Supreme Court] 3.
M. Nagraj v Union of India, 2006 (8) SCC [Supreme Court of India] 212.
Minister of Home Affairs v Fourie 2006 (1) SA [Constitutional Court of South Africa] 524 (CC) (S. Afr).
Napier v The Scottish Ministers [2004] SLT 555 (UK) [3A].
National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000 (2) SA [Constitutional Court of South Africa] 1.
National Coalition for Gay and Lesbian Equality v Minister of Justice 1999 (1) SA [Constitutional Court of South Africa] 6.
NM v State 2007 (5) SA [Constitutional Court of South Africa] 250 (CC) (S. Afr.).
Planned Parenthood v Casey, 505 US 833, 916 (1992).
Plonit v Israel, CrimA [Israeli Criminal Appeals Court] 4596/98 (2000), IsrSC 54(1) 145.
Pretty v United Kingdom, no. 2346/02, ECHR [European Court of Human Rights] 2002-III.
Price v the United Kingdom, no. 33394/96, ECHR [European Court of Human Rights] 2001-VII.
Public Committee against Torture v Government of Israel, HCJ [Israeli High Court of Justice] 5100/94 (1999).
 Available in English at http://elyon1.court.gov.il/files_eng/94/000/051/a09/94051000.a09.pdf.
Quebec v Syndicat national des employes de l'hopital St-Ferdinand [1996] 3 SCR [Canadian Supreme Court] 211.
R (Burke) v General Medical Council, [2004] EWHC Admin (UK) 1897.
R (Burke) v General Medical Council [2005] EWCA Civ (UK) 1003.
R.D. Upadhyay v State of A.P. 2006 (3) SCR [Supreme Court of India] 1132.
Rameshwar Prasad (VI) v Union of India, 2006 (2) SCC [Supreme Court of India] 1.
South Africa v Grootboom 2001 SA [Constitutional Court of South Africa] 46 (CC).
Trocuik v British Columbia [2003] 1 SCR [Canadian Supreme Court] 835.
Vereinigung Bildender Künstler v Austria, no. 68354/01, ECHR [European Court of Human Rights] 2007-II.
Von Hannover v Germany, no. 59320/00, ECHR [European Court of Human Rights] 2004-VI.
Vriend v Alberta [1998] 1 SCR [Canadian Supreme Court] 493.
Yankov v Bulgaria, no. 39084/97, ECHR [European Court of Human Rights] 2003-XII.