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Dignity as humanness: a pathway to understand the place of dignity as a constitutional end

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Abstract

The work presents an approach to the meaning(s) of dignity in the constitutional field that focuses, first and foremost, on answering the question: *what is dignity?* Four ways of characterising the notion are described, relying, where relevant, on the input obtained beyond the legal field – especially in that of philosophy. Although each of them accounts for a different kind of human property, an important commonality among them is stressed, which provides a pathway to understand the place of dignity as a constitutional end within a material approach to constitutions.

Keywords: dignity; constitution; status; worth; virtue; dignified

1 Dignity in constitutional law and beyond

Although the notion of dignity is usually linked to constitutional law, it is a relatively young idea in the field. The concept arrived mid-party, so to speak, as its incorporation into constitutional documents only precipitated in the twentieth century. During the first half of the century, it started making its way into some constitutional texts.¹ But the boom of dignity as a constitutional concept only took place after the Second World War, thus igniting right about the time it made its way into international human rights law.²

At the constitutional level, dignity was put to work as a founding principle in the constitutions enacted in the years following the end of the war – perhaps most notably by the defeated states.³ Thereafter, the concept was incorporated into an ever-growing number of constitutional texts, thus appearing as part of the template of contemporary constitutionalism.⁴

The present work is framed in the context of research on the place of dignity as a constitutional end. It proceeds from the plain observation of the concept's appearance as a fundamental principle in most of the written constitutions that make use of the term,⁵ and what is more, its appearance as

¹Namely, the 1917 Mexican Constitution; the 1919 German Constitution; the 1919 Finnish Constitution; the 1937 Irish Constitution; and the 1940 Cuban Constitution.

²Iglesias 2001 and McCrudden 2008, pp. 665–67.

³Friedrich 1950, p. 157. Dignity was given a central place in both the 1948 Italian Constitution and the 1949 German Basic Law, although it is the latter that appears to be more influential among post-war constitutions (Dupré 2015, pp. 54–56; Kommers 2019, pp. 559–60).

⁴Whereas before 1945 only the five constitutions mentioned above included the term, by 2012, 162 constitutions did so. Furthermore, a strong relationship can be observed between the number of the concept's use and the year of a constitution's enactment, as it appears more frequently in more recent constitutions (Shulztiner and Carmi 2014, pp. 465–66).

⁵According to Shulztiner and Carmi's study, out of the 162 constitutions that had included the term by 2012, 97 (60 per cent) of them made use of it as a fundamental principle, either in the preamble to the constitutional text or within it (Shulztiner

a key concept in constitutional systems even beyond its enshrinement in constitutional documents.⁶

That the appearance of dignity can be read as foregrounding a constitutional end is something that notably emerges with regards to the constitution which is seen as decisively influencing the boom of dignity in the field: in the German Basic Law, dignity appeared as an essential notion for the refoundation of the community that was torn apart due to the degeneration of state power (Bendor and Sachs 2011, p. 30). Thus, what was at stake was the affirmation of the *telos* of the political unity, as is well illustrated by the wording contained in the first draft of Article 1.1: 'The state exists for the sake of human beings, not human beings for the sake of the state. The dignity of the human personality is inviolable.'⁷

In Germany, dignity has been associated with the liberal tradition by pointing to its connection to Kantian moral philosophy. In this sense, it is understood to prohibit the instrumentalisation of human beings and require that everyone is treated as a person, and not as an object (Schlink 2013, p. 632). This perspective seems appropriate to the context in which this constitution was enacted. Yet, its meaning is not as clear as it seems when detached from the post-war narrative. Moreover, this is not the only possible Kantian reading of dignity, and the formula of its enshrinement certainly does not preclude other, distinct readings.

This points to a problem that is not limited to Germany but has been described as a general issue concerning the meaning of dignity as a constitutional concept: despite its professed centrality in most constitutional systems, dignity appears to be an elusive notion (Rao 2008, pp. 207–08). Furthermore, this elusiveness not only characterises the concept within the legal field but also beyond it, most notably in that of philosophy (McCrudden 2013; Réaume, 2013, pp. 33–43).

In constitutional law, most of the works concerned with grasping the meaning of dignity take place within the field of fundamental rights and focus primarily on its use in constitutional adjudication – although sometimes supplemented by some reference to philosophical views. Moreover, they focus on two types of enquiry.⁸ The first type of enquiry examines the normative nature of the concept (is it a right, a value or a principle?).⁹ The second type studies the normative content of the concept (i.e. the substantive normative consequences that may be derived from it). In this context, a negative definition – serving to reject flagrant violations of dignity – is sometimes identified as its minimum core.¹⁰ Beyond that, however, a univocal normative content is difficult to sustain, and many authors have embraced an approach wherein distinct contents are seen as arising from the same notion.

A good example of the latter can be found in Neomi Rao's work, which tracks down conceptions of dignity across jurisdictions. She identifies three approaches: (i) inherent dignity,

and Carmi 2014, p. 475) – a number that has been on the rise since then, as has been attested by the constitutions of Fiji (2013), Zimbabwe (2013), Tunisia (2014), Egypt (2014), Nepal (2015), Central African Republic (2016), Ivory Coast (2016), Thailand (2017) and Cuba (2019).

⁶Thus, in France, no constitutional text or preamble has enshrined the term, yet it is nevertheless upheld as a fundamental constitutional principle (Hennette-Vauchez 2014, p. 369; Bioy 2015, p. 177).

⁷The first draft of the German Basic Law was proposed by the Herrenchieser Convention. Although this formulation was not accepted for the final version, Article 1.1 is seen as having retained the same idea, in the sense of asserting that 'the State's respect for and protection of human dignity constitute its purpose' (Klein 2002, p. 146).

⁸I refer to two types of enquiries because they are analytically distinct, although they very often appear as intertwined. For example: Daly 2013; Ackerman 2012; Rolla 2002.

⁹A good example of this approach may be found in Aharon Barak's work, which examines the physiognomy of dignity when understood, on the one hand, as a value, and on the other, as a right. (Barak 2015).

¹⁰Thus, a consensus can be seen to exist that certain particularly vicious ways of treating human beings ought always to be prohibited. For example, prohibitions on genocide, slavery and torture can be seen as pointing to this core negative understanding of the notion (Carozza 2013, p. 616). However, beyond this minimum core, approaching dignity by pinpointing the circumstances in which it is violated will often lead to contradictory depictions. In this sense, both the performance and the prohibition of assisted death, prostitution and dwarf-tossing, to name a few examples, can be construed as violations of dignity (Muders 2017; Cunningham 2016; Davis 2006).

which furthers the notion of personhood as requiring a certain level of respect, traditionally linked to reason and self-awareness – a liberal approach, connected to ‘human agency or the ability to choose a good life’ (Rao 2013, pp. 197–201); (ii) dignity as a substantive concept, entailing the assertion of judgments about what is valuable for individuals and society, and deployed to maintain community standards of what it means to live a good life (that may trump individual choices), or, to emphasise the material conditions necessary to live with dignity (ibid.pp. 221–36); and (iii) dignity as recognition, which requires esteem and respect for each individual, and entails a demand for recognition both in the sense of interpersonal respect between the members of a community and in the sense of a claim for equality among them regarding state action (ibid.pp. 249–59).

This work tries to move on a different plane. To the extent that my research focused on the meaning of dignity as a constitutional end, its reach was not limited to fundamental rights, nor was it primarily interested in the deployment of the notion in constitutional adjudication: the scope of the assertion of dignity as a constitutional end extends beyond these realms.

That said, since this work is part of a larger project, it is important to briefly explain how it fits into that project. First, I focused on studying the meaning of dignity to the extent that I saw the pervasiveness of this idea in the constitutional field as indicia of a teleology that exists beyond the cases in which the concept is invoked by its name and thus deployed in constitutional discourse. Thus, the work presented here is a first piece of research through which I was able to put together an explanatory scheme by which to show how this might be the case.

Second, it should be noted that I see this research focusing on dignity as a first approach to the study of the place of constitutional ends in the context of a material understanding of constitutions, the main aim of which is to describe their physiognomy and role as elements of such an understanding of the constitutional phenomenon.¹¹

To the extent that material approaches to constitutions account for them in terms of a reality whose nature is not (only) normative in formal terms – and particularly since they study the constitution as grounded in existing power relations and the structures through which they take place – the notion of constitutional ends may seem out of place within them. In this sense, the idea of ends appears to have a lightness to it that is rather dissonant with the material – and in this sense, heavy – outlook proper to these approaches.¹² I observed this dissonance between the lightness of ends and the heaviness proper to the material study of constitutions as an invitation to examine and review their understanding, and, perhaps more importantly within this type of approach, their actual nomic occurrence.

Against this backdrop, looking to clarify what is meant by dignity was a necessary first step in order to elucidate whether its persistent appearance as a fundamental constitutional concept – and furthermore, its affirmation in terms of a constitutional end – could be seen to have a correlate within a material approach to constitutions.

Thus, I saw the study of dignity in this context as requiring, first and foremost, an answer to the question: *what is dignity?* Studies normally conducted by constitutional scholars such as Rao’s do not focus on the meaning of dignity *per se* – that is, they do not concentrate on answering the question *what is dignity?* but rather, on answering the question: *what ought to be because of dignity?* This is not to say that this sort of approach is not able to delineate a basic description of

¹¹The approach to the material constitution I am working on developing moves within the lines of the synthesis proposed by Goldoni and Wilkinson: ‘the material constitution is the set of concrete ordering forces, namely political unity, bearing institutions, social relations and fundamental political objectives, which make up the constitutional order. In other words, it is the material that constitutes, and is constituted by, the formal process of constitutional law and the relation between them’ (Goldoni and Wilkinson 2023, p. 1).

¹²This way of explaining the paradox (or apparent paradox) that I am trying to make sense of is based on a remark made by Emiliós Christodoulidis when discussing my work. I am very grateful for this and for other insights he shared with me, which were helpful in delineating and explicating the larger project I have set out to develop.

what dignity is, but rather, that the emphasis is placed elsewhere: on the normative consequences of the concept.

Consequently, the research presented here went beyond the legal field to look for relevant information to answer the question: *what is dignity*? Besides the limitations perceived in the field of constitutional law, such a decision was also grounded in the observation that the advent of dignity as a constitutional concept during the twentieth century was accompanied by a certain baggage: this was an old concept that was made into a new *constitutional* concept.¹³ Moreover, the boom of dignity ignited a renewed interest in the notion beyond the legal field – most notably in philosophy.

Having examined the input obtained in the field of constitutional law and beyond, I decided to renounce the possibility of fitting the whole range of ideas associated with dignity into a single drawer.¹⁴ The hypothesis was that the multiple answers that may be given to the question *what is dignity*? could be categorised in a scheme comprising various approaches. The basic assumption was that dignity refers to a property attributed to human beings, and that it would be possible to arrange these meanings as regarding distinct types of properties that may be ascribed to humans.

The hypothesis checked out, as I was indeed able to formulate a scheme comprising six approaches, that can be summarised as follows:

- (i) Dignity as status: Rank or position that carries some expectation of respect on account of the sort of person we are – a human person.
- (ii) Dignity as inherent worth: Universal property of all human beings, normally a human capacity (most often, reason or moral agency).
- (iii) Dignity as virtue: Trait of moral character, disposition to act with moderation, to overcome instincts or to assert oneself as a person.
- (iv) Dignity as dignified quality: Appropriate behaviour, respectable appearance, and what is experienced and considered as ‘civilised’.
- (v) Dignity as self-worth: Psychological sense of one’s own worth, associated with the construction of identity and self-esteem.
- (vi) Dignity as singularity: Unique, non-qualitative mode of existence of each human being, incommunicable subjectivity.

In the following four sections, I concentrate on the first four categories. My main objective is to arrange and delineate the descriptive claims that may be associated with the notion, as distinct ways of answering the question: *what is dignity*? Nevertheless, as I go about accounting for them, I also refer to the normative claims they might entail – that is, answers to the question: *what ought to be because of dignity*?

Subsequently, I work with the emotional aspect associated with dignity as dignified quality in order to illuminate an element that is proper to dignity not only in that approach – although it is more easily pinpointed with regards to it – but in the four approaches to dignity identified and examined in this work. Thus, a commonality is detected which runs through these understandings of dignity.

¹³It is well known that the notion of dignity can be traced back further than the Christian era, and its presence in philosophical works in particular runs at least from Cicero to present day thought. Moreover, dignity’s ‘baggage’ was particularly heavy on account of modern philosophy. This appears clearly in the connection that many scholars see between constitutional dignity and the use of the concept in Kantian moral philosophy (see, for example, Ruiz Miguel 1996, p. 167; Steinmann 2016, pp. 8–9; Sourlas 2016, p. 43).

¹⁴For these purposes, Rosen’s work on the history and meaning of dignity, as well as Doris Schroeder’s account of dignity in the twenty-first century, both of which propose to renounce the idea of dignity as a single concept, putting forward categorisations of the distinct concepts which the term might refer to, were particularly relevant (Rosen 2012; Schroeder and Bani-Sadr 2017).

In the final section, I stress the extent to which this commonality sheds light on the shortcomings present in characterisations of dignity across the four approaches presented here. Yet, as I will be suggesting, those very shortcomings provide relevant information on how the basic idea entailed in the various notions of dignity can be understood as a constitutional end – beyond the more discrete uses that each of the approaches here presented may be given in the constitutional field – as they can be seen to betray a constitutional teleology within a material approach to constitutions.

2 Dignity as status

2.1 What is dignity as status?

When dignity is understood as a status, it refers to the permanent position a person occupies in society: the status or rank ascribed to someone, that reflects the sort of person he or she is (Waldron 2012a, p. 58). Moreover, it functions at once as a description of the person bearing the status – a constitutive idea, telling us something about the person's identity – and a description of the way the person should be treated and/or behave.

A tradition dating back to ancient Greece and Rome understands dignity as entailing a high social status and the respectful treatment that is owed to those who bear it (Rosen 2012, p. 11). Dignity has thus existed within hierarchical social orders and referred to a person's belonging to a group enjoying a high social position (vertical dimension), among whose members a certain solidarity is owed (horizontal dimension). This allowed the members of the group to define their identity as opposed to those not belonging to the group. Today, this dignity is associated with the term *honour*, to distinguish it from other less aristocratic ways of understanding the concept.

In this context, dignity appears as an idea rooted in the European tradition, and connected to a noble rank or high office, and the reputation, privileges and deference owed to those who bear it. For this reason, it might be seen as far removed from the dignity that burst into the legal field in the twentieth century. However, some have emphasised the aristocratic lineage of the contemporary notion of dignity. Thus, for Waldron, the latter may be thought of not as saying something about the rank of some humans over others but about the rank of all human beings: 'the modern notion of human dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly accorded to nobility' (Waldron 2012b, p. 33).¹⁵

Therefore, although in its aristocratic version only certain human beings may possess dignity within a hierarchical and quite inflexible ordering of social identities, the equalised version of dignity as status applies to every human being. This approach departs from the vertical elements of the traditional conception of dignity as status, while keeping and emphasising the horizontal elements. Hence, it may be suggested that contemporary societies do not appear as non-aristocratic, but as aristocratic societies with only one (high) rank for all (Waldron 2012b, p. 34).

The scheme put forward by Stéphanie Hennette-Vauchez, stemming from medieval political theology, builds on perspectives which – like Waldron's – connect the contemporary notion of dignity to traditional notions of status and rank, to trace two apparently distinct approaches to the legal interpretation of dignity. Drawing on the work of Ernst H. Kantorowicz's, she argues that dignity may be understood as the status conferred to humanity 'as deposited within each and every one of us' (Hennette-Vauchez 2011, p. 51).

To resort directly to Kantorowicz: in mediaeval kingship, a distinction was made between what was connected to the Crown and what corresponded to the Dignity. The former denoted 'the

¹⁵In a similar sense, James Whitman has suggested that the understanding of human dignity 'as contemporary Europeans embrace it has been shaped by a rich and complex collective memory of the obnoxious past of the old regime. [...] "Human dignity", as we find it on the Continent today, has been formed by a pattern of levelling up, by an extension of formerly high-status treatment to all sectors of the population' (Whitman 2004, p. 110).

sovereignty of the whole collective body of the realm, so that the preservation of the integrity of the Crown became a matter “that touches all”, while the latter mainly referred to ‘the singularity of the royal office, to the sovereignty vested in the king by the people, and resting individually in the king alone.’ Thus, the nature of such Dignity was not merely private but public as well, since the king’s Dignity and prerogative rights were to be kept and respected in the interest of the whole realm (Kantorowicz 2016, p. 384).

In making sense of two seemingly contradictory ways of understanding the notion in legal discourse, Hennette-Vauchez pinpoints the dual nature of dignity, as it refers at once to the individual and equal dignity of every person, and to the dignity of humanity. So, although *equal dignity* can be seen as the result of a ‘levelling-up process’ applied to old norms of honour and rank, there is a different (although, historically speaking, complementary) way of approaching the concept: a *dignitarian* approach insists on its human dimension. Thus, humanity is seen as being found within every human being, remaining ‘unchallenged by individual disappearances’: eternal and atemporal. In this sense, dignity is more connected to humankind than it is to human individuals (Hennette-Vauchez 2011, pp. 51–52).

I think this emphasis on the human dimension of dignity is key to gaining a full picture of dignity as status. Dignitarian dignity highlights the belonging of each person to a group – humankind – which defines their identity. Moreover, dignitarian dignity is not separable from equal dignity. The former appears as grounding the latter: equal dignity refers to the social (and legal, for that matter) standing of each person, on account of their belonging to humankind. A sense of common identity among human beings thus appears as central to the contemporary, non-aristocratic idea of dignity as status.

Furthermore, the concept of *humanity* is central to many of the philosophical explanations of dignity that have been put forward in our time. I will briefly look into the works of Avishai Margalit and George Kateb to illustrate this point.

The point of departure in Margalit’s reconstruction of dignity is the similarity between the idea of respecting humans and the notion of aristocratic honour. The latter requires that we respect persons for who they are, not for what they have done, as who they are depends on their ‘family tree.’ And when it comes to respecting humans, the family is ‘the family of Man’ (Margalit 2011, p. 108). But unlike aristocratic honour (that has a vertical and a horizontal dimension), the honour concerned in human dignity (in Margalit’s jargon, *moral honour*) has only one dimension: the horizontal honour owed to one’s equals.

What justifies this respect is that each human being ‘is capable of standing in an iconic relation to all humans’ (ibid. p. 118). Moreover, the author suggests that it is our body – the body of a human – that avails us with the ability to stand in iconic relations to other human beings. In this sense, such a relation is described as ‘a mixture of natural history and normative exercise’ that plays a pivotal role in the construction of morality (ibid. p. 119).¹⁶

Kateb also highlights the connection between dignity and the idea of a common humanity. He claims that the high status ascribed to human beings results not from an equalisation of social status, but from the attribution of a position of superiority to humankind, as distinct from the rest of nature. Moreover, the author contends that both the dignity attributed to individuals and that attributed to the species are grounded in ‘the same unique and non-natural traits and attributes, characteristics, and capacities’ (Kateb 2011, p. 6). Thus, the assertion of what he calls *human stature* (the dignity attributed to humankind) precedes individual status: Kateb explains that, for a long time, human dignity referred only to humanity’s superiority to all other earthly beings

¹⁶ ‘Racists [...] try to create canonical icons of humans, be it with the right colour or the right nose or the right shape (not crippled), so as to stigmatise and exclude other humans and render them sub-human. But the idea of horizontal respect is that each human being, no matter of what shape or colour or age, can stand in an iconic relation to the rest of humanity’ (ibid. p. 119).

(*stature*), which was ‘a superiority that only the few high and great ones proved or at least made vivid’ (ibid.p. 8).¹⁷

Moreover, he suggests that thinking about humanity in relation to other beings came before thinking about persons as individuals: dignity as an individual status (in Kateb’s jargon, *existential status*) is the result of translating the rank of humankind to every member of humankind. This individual status entails that no role or function may essentially or extensively define any person; likewise, that no one can stand for humanity: ‘No one can represent [. . .] the human species in some imaginary congress of intellectual species in the universe. Equal status means that the question of which individuals in the human species are “best of breed,” let alone “best in show,” is out of order’ (ibid. p. 9).

Therefore, dignity comprises both status and stature. Nonetheless, whereas status is a negative concept – made visible in what assaults or effaces it – stature is a positive concept: it regards what is humanly achieved. Although dignity comprises both elements, it is only prescriptive on the individual level, as it requires that we be treated as human beings, thus acknowledging what we are in relation to all other persons – and therefore, when it is assaulted, our human identity is at stake (ibid. pp. 9–10).

That said, it must be noted that status-based accounts characteristically understand dignity in positional terms. Position is, moreover, external to the individual: your place in society – or even in creation – is something that is given to you, and this is what your status stands for. Thus, although we might say that nowadays we are all born with the equal status of human dignity, it is more like we are born into it. Dignity as status does not depend on individual action, but on the place assigned to you by the hierarchical – or egalitarian – order of society. Furthermore, although dignity might impose a code of conduct upon those who bear it (i.e. dignitarian dignity) it does not need to be displayed to exist, nor to be maintained.

Moreover, dignity as status does not allow for variation or degrees; it is rather a fixed thing. Thus, in its aristocratic versions, although different dignity statuses could be identified, and thus, the dignity of a monarch would rank higher than that of a nobleman, neither that of the former nor that of the latter changed, in the sense of being able to say, for instance, that the dignity of a king increased as he grew old, or that his successor’s was less than his. Likewise, in contemporary versions, all human beings possess the same dignity, which remains the same throughout their life. It can neither increase nor decrease depending on who bears it, which means you and everyone else possess the same exact dignity as status.

2.2 Normative consequences

When regarded as a status ascribed to all human beings, dignity produces the kind of consequences that a status produces: it provides its bearers with a social and legal standing, delineating a number of rights and duties proper to it. And to the extent that it is a universal sortal status, it would encompass all the institutions established by the legal order that do not refer to our specific roles in society, but rather to the sort of person we are – a human person.

To follow Waldron, this status would guard us against degrading treatment, insult, and discrimination (Waldron 2012a, pp. 47–48). But it would also entail an institutional guarantee or a commitment of the legal system with dignity. This means that the legal order must conform to certain rules and standards – and thus, if it does not, we may say that the system ‘has fallen short of its own standards’; and that an implicit normative commitment to dignity is embodied ‘in the procedures and traditions of a system of governance’ (ibid.pp. 65–66). Furthermore, given that

¹⁷In this sense, the author notes that ‘starting with Homer, Western literature dwells on individuals, but they are mostly of the upper rank, and they tend to matter, except to Socrates, not as individuals but as members of a class, or as defined by role or function. What counts is that the few at the top demonstrate what humanity at its best is capable of’ (ibid. p. 7).

dignity as status entails a positional element by which humanity is elevated, the transgression of the rights entailed in the status appears as a sort of sacrilege (Waldron 2012b, pp. 34–35).

Beyond specific rights, it may be said that the human status also includes a less specific right, to be treated in a manner appropriate to it. Hence, what appears as key is the requirement to show respect for the dignity of all human beings – to treat them respectfully.¹⁸ This has much to do with the positional nature of dignity, as it is the rank that commands the expression of respect. That is, it is not the person herself who must be treated in a respectful way, but her status: we must show respect for every person because every person stands for humanity.¹⁹

But in the same way that we owe respectful treatment to everyone who bears dignity as status, we can also be said to owe such respectful treatment to ourselves. This is where the dignitarian dimension of dignity is most noticeable, as (liberal) contemporary discourses tend to give a central place to a kind of freedom that rejects interference with a special impetus when it comes to establishing duties owed to oneself.

3 Dignity as inherent worth

3.1 What is dignity as inherent worth?

A broadly disseminated approach understands dignity as the inherent worth of human beings, found in a distinctive trait that identifies them as such – most often a human capacity. Moreover, when such capacity is also portrayed as an essential human trait, some sort of metaphysical claim will be entailed in its depiction.

A distinction can be drawn between these accounts and the understandings of dignity as status which are grounded in the capacities that set humans apart from other beings – such as Kateb's. Whereas the latter understand dignity in terms of position, the former view it first and foremost as a human trait, and most often, as a capacity. In a status approach to dignity, capacity may function as a premise that grounds the attribution of the status, but it does not constitute dignity. In an inherent worth approach, *capacity constitutes dignity*. Dignity as status entails the ascription of an institutionalised (human) identity to its possessor: having dignity means being subject to a set of social forms that determine the permanent position of the individual (Waldron 2012b, p. 18). Dignity as inherent worth is modelled on an operation that abstracts the individual from social forms and identity, focusing on one or more abilities which are seen as having intrinsic worth.²⁰

In Western tradition, the capacity that accounts for the inherent worth of human beings is associated with reason, often specifically with moral reason. The understandings of Immanuel Kant's notion of dignity which are commonly used in legal discourses focus precisely on this association, normally premised on Kant's famous assertion that 'morality and humanity, in so far as it is capable of morality, is that which alone has dignity' (Kant 2011, p. 99).²¹

Moreover, whether directly resorting to Kant or not, a prevalent way of understanding dignity in constitutional law – namely, what Rao terms inherent dignity – appears to mirror a way of approaching Kantian dignity that may be illustrated by resorting to Christine Korsgaard's depiction: 'when Kant says rational nature or humanity is an end in itself, it is the power of rational choice that he is referring to, and in particular, the power to set an end (to make

¹⁸This is the normative claim associated with dignity that Michael Rosen calls 'respect as respectfulness' (Rosen 2012, p. 114).

¹⁹This is the sense in which Margalit understands the concept of human dignity (as opposed to social honor) at the basis of what he calls a 'decent society': a society 'whose institutions accord all people their due respect' (Margalit 1998, p. 41). Their due respect is the respect that must be accorded to every person as a member of humankind (as a bearer of the human status), and thus, treating people 'as if they were objects' or 'as if they were beasts' fails to recognise their belonging to the community of humankind (ibid. p. 108).

²⁰Berger 1984.

²¹For example, Henry 2011, pp. 206–08.

something an end by conferring the status of goodness to it) and pursue it by rational means' (Korsgaard 1996, p. 124).

To have dignity would thus mean to possess a rational nature which is capable of morality. In this sense, dignity refers to (i) the capacity to discern the morally good; and (ii) the capacity to choose and act accordingly. However, whether we choose to do so or not would not impinge on our dignity (Herman 1993, p. 238). Furthermore, although we are subject to the law, to the extent that such law is imposed by our own rational will, the idea of autonomy is central to this way of depicting dignity (Paton 1947, pp. 188–89).

This approach resonates well beyond Kantian scholarship, throughout many philosophical accounts that have characterised dignity as inherent worth, with an emphasis on reason or rational capacities. Consequently, what might be termed as an *enlightened image* of what it means to be human appears to emerge in this way of approaching dignity.²² I think this is what resonates in a great deal of our intuitions regarding the idea of dignity, as we commonly associate dignity with self-mastery and self-possession.

Thus, for example, Michael Meyer conveys these intuitions when he claims that dignity depends on human choices: 'the man without the capacity for self-control is not in possession of his human dignity' (Meyer 1989, p. 532). The author distinguishes between *possessing* and *expressing* dignity: the ability to exert self-control is required to possess dignity; exerting self-control is required to express dignity. Thus, what is emphasised is not so much the capacity to discern the good, but the second element involved in the aforementioned version of Kantian dignity: the capacity to choose how to act – to control oneself (ibid. pp. 533–34).

An account that considerably departs from the reason-centred understanding present in most descriptions of dignity as inherent worth is Martha Nussbaum's. In her view, human beings have dignity 'because of their capacities for various forms of activity and striving' (Nussbaum 2008, p. 357). This account does not 'exalt rationality as *the* single good thing', nor does it 'denigrate forms of need and striving that are parts of our animality' (ibid. p. 363). Nussbaum contends that beyond rationality, there is dignity in human need and in the many forms of striving that arise from it.

Thus, all children of human parents who possess 'any of an open-ended disjunction of basic capabilities for major human life-activities' have full and equal human dignity (ibid.). In this sense, Nussbaum has suggested that – at least – the following basic capabilities should be taken into account: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; relation with other species; play; and control over one's environment (Nussbaum 2007, pp. 76–78).

Since this approach to dignity is based on capacity, one might wonder whether other living beings that possess the same capacity also have dignity. Such an idea is at odds with the fact that dignity as inherent worth is normally characterised as an essential property of human beings: that which makes us human. On the one hand, one might consider identifying different sets of capacities that characterise non-human beings, which could account for non-human dignities (Nussbaum 2008, p. 356).

On the other hand, one should note that the exclusive attribution of dignity to human beings has been accused of fallacy – most prominently by Peter Singer, who contends that attempts to draw a moral line on the basis of cognitive ability would require either that some human beings be excluded (those suffering from severe cognitive disabilities), or that some non-human animals be included (those whose cognitive level is equal to or higher than the lowest cognitive level detected in humans) (Singer 2009, pp. 572–74).

²²That is, one that regards – as Kant put it at the outset of *An Answer to the Question: What is Enlightenment?* – 'man's emergence from his self-imposed immaturity', in terms of 'the inability to use one's understanding without guidance from another' (Kant 2009, 1).

The distinction between what constitutes a universally shared trait and what happens to be a generally shared trait might come in handy here. If dignity is a universally shared human trait, this enables the contention that not all humans have dignity, but only those who possess the capacity. If, however, it is a generally shared human trait, its attribution to every person would be grounded on a generalisation – which by definition allows for exceptions. Yet, if dignity is thus conceived, it might be said that it becomes more of a fiction than an actual human attribute.

Moreover, if the capacity that accounts for dignity as inherent worth is not universally shared, which is the case with reason-centred characterisations, then it does not make sense to conceive of it as an essential property. Human beings exist that do not possess such capacities, and we still recognise them as such. Nussbaum's account responds better to this issue, as it claims dignity is not only, nor necessarily, found in rationality but in several human traits, and insists on dismissing the exaltation of rationality, emphasising the need to consider the parts of ourselves which are often dismissed as animal-like as equally constitutive of our dignity (Nussbaum 2008, p. 363).

In sum, although dignity as inherent worth can be said to pertain to humanity, it is not attributed to humanity as such. Rather, dignity is conceived as a property that is possessed potentially, if not actually, by every human; and by virtue of it being possessed by all, humanity is said to have dignity.²³ Moreover, this dignity is a universal property, in that the same property is said to be instantiated in every human being.

3.2 Normative consequences

I suggest that three distinct kinds of normative claims can be identified with regard to dignity as inherent worth. First, dignity may be understood as an *intangible property*, which means that what primarily threatens it is the destruction of the life that sustains the existence of this property, as well as actions that could entail the loss of said property. The discussion regarding dignity in these terms is commonly addressed as concerning the *dignity of human life*. This idea is prominently used in bioethics to oppose abortion, euthanasia and physician assisted suicide (Schroeder 2010, p. 122).²⁴

Second, dignity may entail a *claim for respect*, in the specific sense that the exercise of the capacity that accounts for dignity should not be restricted, or that any restrictions placed upon it should be limited. This is the case with a reading of Kantian dignity that resonates with prevalent legal approaches, which associate the concept with autonomy and individual freedom.²⁵ In this sense, when dignity amounts to rational choice, and particularly, to the ability to set ends and pursue them by rational means, it would entail a negative normative claim: our ability to set and pursue ends ought not to be hindered.

From the perspective of constitutional thought, this approach fits squarely with the idea of rights upon which the liberal state was constructed: individuals, as inherently endowed with reason, are equally free, and such freedom justifies the existence of a political community in which individuals are able to exercise their freedom, which may only be restricted by law, and for good reasons.²⁶ So, the claim for respect entailed in reason-centred conceptions of dignity as inherent worth does not seem to add anything new to the canon of constitutionalism. In this regard, the rise of dignity talk in constitutional law can be seen as merely providing a different name for something that used to be addressed solely in terms of freedom.

²³I think this synecdochical logic explains Kant's frequent reference to the *dignity of humanity*: since morality is said to characterise human beings, it is said that our humanity (the fact that we are human) is determined by our possession of moral reason, and thus, our humanity (what accounts for us being human: humanity in our persons) has dignity.

²⁴Modern Catholic interpretations of the notion of *imago Dei* appear to draw similar normative consequences from dignity, as concerning a God-given property invested in every person as a consequence of them being created in the image and likeness of God, which is understood to account for the sanctity of every human life (John Paul II 1995, p. 89).

²⁵Resta 2020, pp. 86–87.

²⁶Articles 4 and 5 of the 1789 French Declaration of the Rights of Man and of the Citizen perfectly illustrate this conception.

Finally, dignity can entail an aspiration or objective. This is especially the case when the capacity or capacities that account for dignity are conceived with an emphasis on the functioning or achievement that can be brought about through their exercise.²⁷ This type of normative claim appears external to dignity itself: the capacities are seen as the starting point, and the goal is their actual exercise. Our inherent worth is thus a potential that needs to be developed or realised.

Often, when the ability that accounts for dignity as inherent worth has a moral nature, the notion is understood as a guided capacity. Since the capacity at play enables moral agency in some way, it is said to involve a purpose; it is not there for us to exercise in whichever way we want, because an objective is laid down – that we follow the guidance entailed in our moral capacity.

Although sometimes overlooked, Kantian dignity can be seen as entailing both the capacity to follow the moral law and the aspiration that we follow it (Kant 2011, pp. 107–109). Thus, we could be said to have dignity both on account of our capacity to act morally and on account of exercising that capacity through morally good actions (Dillon 1995, p. 15).²⁸ In this context, Margalit questions the idea of respecting the potential of a capacity that can easily be misused. If the ability to set ends accounts for persons being ends in themselves, what are we to say about those whose ends are despicable? He refers to this tension in Kantian dignity as illustrative of the tension between potential and actual that puzzles liberal thought, which concerns the notions of individual and of autonomy: although being an autonomous individual is seen as the greatest moral achievement, all individuals are presumed to be autonomous and deserve respect as such (Margalit 2011, p. 116).

That said, another normative claim can be derived from dignity as inherent worth when understood in terms of an aspiration or purpose: when the development of dignity is seen as a goal, it may be said that dignity requires that individuals be provided with favourable conditions – or the means necessary – for pursuing such development.²⁹

Nussbaum's account exemplifies this type of normative consequence associated with dignity, as it contends that, although already worthy of respect on their own, basic human capacities should also be understood as preparations for something further demanding space within which to unfold: they depend on the world 'for their full development and conversion into actual functioning' (Nussbaum 2008, p. 357). Thus, a life that does not contain opportunities for the development and exercise of major human capacities would not be a life worthy of human dignity (*ibid.* p. 359).

It should be noted that Nussbaum's concept of dignity entails both a moral claim for respect and a goal. While persons should be granted the respect needed to exercise their basic human capabilities, these are also a purpose: dignity can and should be something to be sought as well as promoted, since such capabilities require suitable circumstances for their exercise. Thus, she provides an account of the 'minimum core social entitlements' that derive from the capabilities she sees as central to human striving. The claim is that for a baseline of political justice to be achieved, a community must address such core entitlements (Nussbaum 2007, p. 75).

²⁷Accounts of dignity in this sense do not tend to exist on their own, but usually coexist in accounts of dignity as inherent worth that likewise incorporate claims for respect, though of course the weight attributed to the aspirational claim will be different in each case. Moreover, in some cases, the two normative claims seem to merge (see, for example, Christiano 2008, pp. 123–25; Griffin 2008, pp. 151–52 and 179–80).

²⁸Against this view, for instance, Sullivan explicitly distinguishes the possession of dignity from the possession of *virtue* in Kant's work: 'the dignity of each person rests on the capacity to formulate and adopt such laws, whereas each person's virtue depends on obedience to those same laws' (Sullivan 1994, p. 85).

²⁹For an account of this kind of normative claim as derived from an autonomy-centred account of dignity as intrinsic worth, see Réaume, 2013.

4 Dignity as virtue

4.1 What is dignity as virtue?

Dignity can be understood in terms of virtue, as a trait or traits of moral character. In this context, dignity will be deployed to describe someone who displays an inclination to act morally— a *disposition* to ‘notice, expect, value, feel, desire, choose, act and react in certain characteristic ways’ (Hursthouse and Pettigrove 2018). Thus, on the one hand, the bearers of this dignity will be only those whose convictions and actions qualify as morally good; and on the other, the attribution of dignity will necessarily entail the employment of a moral standard by which our disposition and behaviour are evaluated.

In this sense, one’s merit determines whether, and to what extent, one can be said to possess dignity: dignity needs to be earned (Schroeder and Bani-Sadr 2017, p. 10). Accordingly, dignity as virtue appears as a universal yet accidental property, in that it can be instantiated in every individual capable of moral agency, but this is only the case when it is earned. Moreover, dignity as virtue comes in degrees: one’s virtue can increase or decrease according to one’s merit; and can be compared to that of others, so as to say that one’s dignity is higher or lower than the dignity of one’s neighbour.

Thus, dignity as virtue is not inherent. However, it might be said that some versions of dignity as inherent worth could appear to ground dignity in terms of virtue, if the (moral) capacity that accounts for the former is understood to give rise to virtue when a disposition to exercise it and act upon it is observed. This would be the case when dignity as inherent worth is made tantamount to the ability to discern and choose the morally good – if I am not only able but also inclined to discern and choose the morally good, not only do I possess dignity as inherent worth but also dignity as virtue.

One of the most common modern approaches to dignity as virtue characterises it in terms of self-restraint: the ability to overcome natural inclinations, to act with moderation, and to maintain composure in the face of hardship – an ability that allows its bearer to successfully engage in morally good actions. Thus, a prominent way of thinking of dignity in these terms can be found in Friedrich Schiller’s *On Grace and Dignity*. While grace is used to describe persons who act morally in a natural way, without inner struggle or suffering, dignity describes those with the strength of will necessary to overcome their inclinations to act morally (Schiller 1992, p. 377).³⁰ Thus, Schiller depicts dignity as ‘an expression of resistance, which the independent mind exerts against natural impulse’ (ibid.).

It is also common in modern usage to treat dignity as virtue in a broader sense, referring to moral character in general. Such usage appears in various passages of Mary Wollstonecraft’s *A Vindication of the Rights of Woman*, but two will suffice to illustrate the point. When discussing the prevailing opinion of a sexual character in her time, she asks: ‘Can they [women] supinely dream life away in the lap of pleasure, or the languor of weariness, rather than assert their claim to pursue reasonable pleasures, and render themselves conspicuous by practising the virtues which dignify mankind?’ (Wollstonecraft 2008, p. 25). And in one of the most famous excerpts of this work, she asserts: ‘It is time to effect a revolution in female manners – time to restore to them their lost dignity— and make them, as a part of the human species, labour by reforming themselves to reform the world’ (ibid. p. 48).

Wollstonecraft’s use of the idea of dignity is important, as it is a discourse that was formulated from outside the frontiers of individuality: women in Wollstonecraft’s time were not allowed to strive for dignity. The feminist stance of the author consisted in demanding that women be included in the group of people whose actions counted as morally relevant in their own right – and not as an accessory to someone else’s actions. The ‘virtues which dignify mankind’ were tantamount to the best moral traits of the persons capable of dignity as inherent worth at the time.

³⁰Rosen 2012, pp. 35–36.

That is to say: not all human beings, but only those considered as individuals – for the most part, European *patres familias*, in no need to alienate their work (Clavero 2007, p. 42).

Notwithstanding the influence of such modern characterisations of dignity as virtue, some contemporary moral philosophers have provided less restrictive conceptions of dignity. Refusing to ascribe dignity in accordance with a particular moral standard, they put forward an individualised approach: dignity is ascribed to those who exhibit a disposition to regard their moral character and actions as important and worthy of attention and effort. Hence, dignity is closely connected to the idea of self-respect.

The notion of dignity depicted in Ronald Dworkin's *Justice for Hedgehogs* is a good example: someone lives well, he says, 'when he senses and pursues a good life for himself and does so with dignity: with respect for the importance of other people's lives and for their ethical responsibility as well as his own' (Dworkin 2011, p. 419). In this sense, dignity requires self-respect – persons are required to take their own life seriously – and authenticity: they are responsible for identifying what counts as success in their own life and create that life in accordance with a coherent narrative or style that they themselves endorse (ibid. pp. 203–204).

4.2 Normative consequences

The normative claims emerging from dignity as virtue can be characterised as aspirations or goals. On the one hand, this might be so in the sense that virtue is a morally valuable quality that one must strive for. It is thus connected to what was termed above as guided capacity. However, from a moral theory perspective, the approach to the morally good involved in the idea of a guided capacity seems to align with deontological ethics: it is about the moral rules that we should follow (as identified through the capacity that accounts for our inherent dignity). Dignity as virtue is not about a set of rules, but about *moral character*: our disposition to act morally. Such an approach is proper to virtue ethics.

Furthermore, when understood as inherent worth, the purpose comes after the existence of dignity: it must not be strived for in order to be possessed. Rather, because one bears dignity as inherent worth, one is presented with the purpose *inscribed in it*, so to speak. Conversely, with dignity as virtue, dignity *is* the goal, and thus, it must be strived for in order to be possessed.

On the other hand, dignity as virtue may be seen as setting the objective of providing persons with the conditions in which striving for virtue is more likely to occur. That is, the achievement of dignity appears as a goal, which requires that the conditions that allow its existence, maintenance or increase be provided.

5 Dignity as dignified quality

5.1 What is dignity as dignified quality?

Dignity often denotes a way of being or behaving that can be described as 'dignified,' referring to something or someone that exhibits a certain elevated quality. Dignity in this sense entails an assessment that is both descriptive and evaluative, which incorporates aesthetic elements that nevertheless seem grounded in a phenomenological account: dignity is found in our experience of things and people we perceive as exhibiting it.

Michael Rosen's work traces this usage of the term back to the ancient Western tradition in which the Latin word *dignitas* was part of a vocabulary used to characterise art and in particular, rhetoric. The terms *dignitas* and *gravitas* were deployed to describe 'speech that was weighty and majestic, in contrast to discourse that was light and charming (which was referred to by the words *gratias* and *venustus*)' (Rosen 2012, pp. 12–13). Moreover, as the author explains, the connection between dignity and what is seen as dignified emerges in this context, as the term was used to describe not only the manner of a speech, but also the speaker himself.

Aurel Kolnai has notably characterised the dignity which accounts for what is dignified, claiming that it refers to an observable quality that gives rise to an experience of 'height': a dignified attitude, presence or bearing that commands 'emphatic respect, a reverential mode of response, an "upward-looking" type of the *pro* attitude: a "bowing" gesture"' (Kolnai 1995, p. 252). Thus, the concept denotes a kind of excellence that can vary in degree and can be ascribed to a wide variety of objects and beings, according to their observable characteristics or behaviour. Kolnai considers it to be a mainly descriptive concept that connotes a specific trait of ontological value, while integrating moral and aesthetic elements. Nonetheless, the description necessarily carries an evaluative note (ibid. p. 257).

The standard by which the dignity assessment takes place, however, seems particularly elusive, although Kolnai provides an illuminating negative account of its mechanics when applied to human beings. The undignified, he claims, can be characterised as 'an attitude of refusal to recognise, experience and bear with, the tension between Value and Reality'; the undignified is antithetical to 'distance, discretion, boundaries, articulation, individuation and autonomy'; it can be described as 'brutish and noisy, or even naively unreserved and of-a-piece self-assertion, self-assurance and self-complacency; self-pity, emotionalism, exhibitionism, demonstrativeness, etc.'. It is also opposed to weight or gravity: '[...] all that is levity, frivolity, irrelevance, shallowness, needless triviality' (ibid. pp. 262–66).

In the field of bioethics, Nick Bostrom's discussion of dignity and human enhancement follows Kolnai's account, regarding dignity as a quality. He argues that enhancement could enable us to better appreciate and secure forms of dignity that are currently overlooked or missing, and suggests that in a posthuman world, this notion of dignity could be deployed as an organising moral–aesthetic concept (Bostrom 2009, p. 84). Thus, the features associated with what appears as dignified could be promoted by enhancements, and even the act of enhancement itself might increase dignity, if we come to associate the acquirement of this quality with the choice to use technology for these purposes (ibid. pp. 89–91).

Although Bostrom concedes that some could choose to 'enhance' themselves simply to be content with reality – which could result in a dispossession of dignity – he claims the risk may be worth taking. In his view, our contemporary way of living shows that 'there is more distance to rise than to fall' (ibid. p. 99). In this sense, he asks how much dignity someone would have who 'spends four or five hours every day watching television,' or whose passions 'are limited to a subset of eating, drinking, shopping, gratifying their sexual needs, watching sport and sleeping'; who has not had original ideas, who never willingly departed from 'the path of least resistance', and who never seriously dedicated themselves to any pursuit or occupation that 'was not handed him on the platter of cultural expectations' (ibid. pp. 110–111).

Both Kolnai and Bostrom are primarily concerned with the dignity as dignified quality possessed by human beings that appear as excellent. Nevertheless, they both stress the fact that dignity in this sense may also be used to describe other living beings and even inanimate things. This is telling of the extent to which this approach to dignity is about the kind of presence someone projects, and not so much about their intentions. This does not necessarily mean that intentions are irrelevant, but rather, that they may be relevant to the extent that they are visible. Thus, it is the observer who judges whether dignity is exhibited: the source is outside, and the quality must be outwardly displayed in order to exist.

That said, it is important to stress that dignity as dignified quality functions as a characteriser – a property used to describe those who are perceived as dignified. In this sense, barring the internal conviction element that is proper to dignity as virtue, these two conceptions seem to operate in overlapping ways. On the one hand, one does not come to possess these dignities by the mere fact of being a human being, but rather, one has to earn them; on the other hand, both dignities come in degrees: one's virtue and one's dignified quality can increase or decrease according to one's merit. Furthermore, both can be compared with those of others.

5.2 Normative consequences

The normative claims involved in the conception of dignity as dignified quality appear as aspirations or goals. A dignified presence is something one should aim to attain, maintain or increase. Moreover, achieving dignity in this sense may be seen as a goal which requires that conditions be provided to allow for it to exist, be maintained or increase – for example, sanitary conditions, housing, work, etc.

In this sense, it is important to consider the influence of the idea of a common humanity at work in this approach regarding social rights as in this field, the idea of dignity is used to denote the importance of providing human beings with the essential goods necessary for their lives to be understood as having dignity (living with dignity).

In this context, a number of basic needs must be met for it to be possible to say that we are living a life that is *truly* human. A minimum standard is implied in these discourses, by which those who live in conditions below the bar set by dignity may appear as not entirely human. An emotional aspect of what is characterised as undignified can be observed here, which appears to infuse our experience of dignity.

6 From disgust and shame to the image of humanity

The emotional aspect of what is seen as undignified is telling of an element that appears with particular clarity with regard to the meaning of dignity described in the previous section, but – as I will suggest – can be pinpointed as a relevant commonality running through the four approaches to dignity discussed in this work.

Let me begin by expanding on the said emotional aspect by drawing on Martha Nussbaum's description of disgust and shame as developed in her work *Hiding from Humanity*. With regard to disgust, the author claims that human beings tend to feel the need to separate themselves from the emission of substances and smells that are necessarily present in their lives, to the extent that they are perceived as disgusting. Thus, an essential mark of dignity is identified in the ability to wash and to dispose of wastes (Nussbaum 2004, p. 90).

In this sense, we find the conditions under which people are not able to clean themselves or use a toilet subhuman. We might say that these persons have a right to basic sanitary conditions, but there is a tendency to think of the 'filthy' and the 'smelly' as animal-like – regardless of whether their filth or smell is their fault or not. This is because disgust is triggered by us being reminded of our own animality. This emotion pivots on a 'belief that if we take in the animalness of animal secretions we will ourselves be reduced to the status of animals,' and likewise, 'if we absorb or are mingled with the decaying, we will ourselves be mortal and decaying.' Thus, disgust 'wards off both animality in general and the mortality that is so prominent in our loathing of our animality' (ibid. p. 89).

Consequently, what is seen as dignified is often the antonym of what is seen as disgusting – the former a form of elevation, and the latter one of debasement. In this sense, lives characterised by dignity achieve to keep reminders of our vulnerability as animal and mortal beings in line; and those that lack dignity fail to do so. But as Nussbaum shows, secretions and odours are not the only reminders of our vulnerable, animal-like condition: whole groups of people that are somehow associated with them have also been thought of as disgusting. Thus, the author highlights the extent to which women have been thought of as disgusting because they have been seen to dispute the idea that humanness is somehow an elevated, invulnerable, almost sacred state of being – an idea underpinned by a 'sense that our mere mortality is something shameful, something we need to hide or, better yet, to transcend altogether' (ibid. p. 109).

The sort of shame associated with narcissism and infantile omnipotence, in which one feels inadequate, lacking completeness or perfection comes from a similar place as disgust. Nussbaum points out that this shame, which originates in 'a primitive desire to be complete and completely in

control,' appears to give way 'to denigration of others and to a type of aggression that lashes out at any obstacle to the self's narcissistic projects' (ibid. p. 207). An image of humanity that rejects human vulnerability is at work here too, especially as shame-driven rage constructs its own object, targeting 'whatever the most plausible surrogate in the surrounding environment might be for the original source of frustration' (ibid. p. 210).

The shame and disgust Nussbaum describes seem to be at play when someone describes another's presence as undignified. They are emotions that arise from a refusal to deal with our human animality, vulnerability, mortality, weakness, which is projected upon others who are used as buffers that delineate from without the identities of those who wish to see themselves as elevated, civilised, rational, autonomous, strong and self-restrained. Those who appear as dignified are those whose presence embodies such qualities, which account for an image of invulnerability, immortality and human 'perfection'.

A particular image of humanity is thus at play with regard to dignity as dignified quality. However, it may also be seen to emerge with regard to the other three approaches to dignity that were discussed above. Thus, with regard to dignity as status, its aristocratic lineage, its positional character and its connection to a common human identity seem to touch upon a similar depiction of humanity. In the case of dignity as inherent worth, such depiction emerges with regards to the approaches which describe the capacity that accounts for inherent worth with an emphasis on rationality – thus overlooking other, 'less elevated' human capacities. Moreover, to the extent that dignity as virtue is associated with self-restraint, and more generally, with the 'virtues which dignify mankind,' the standard used to evaluate dignity points in a similar direction.

I would suggest that, in the case of dignity as dignified quality, the aforesaid image of humanity appears more clearly, as it entails a phenomenological account: dignity is grasped as an object of experience; it is found in our *experience* of people we perceive as dignified. In this sense, there is less space for the deployment of the tools that safeguard the other conceptions of dignity on account of their (modern, liberal, Western) rationality.

7 Dignity as a constitutional end

Although the four approaches to dignity that I discussed refer to different kinds of properties that may be attributed to human beings, a commonality surfaces, which enables a re-interpretation of their coexistence: whether dignity refers to a status, an inherent worth, a virtue or an elevated quality, it may be understood as an expression of human identity – of that which is seen as characteristically, authentically and/or desirably human: of *humanness*.

The meanings of dignity described in this work refer to universal properties that are instantiated (status, inherent worth) or may be instantiated (virtue, dignified quality) in every human being. Nonetheless, they appear to be founded on a particular image of humanity, to the extent that the depictions that are most recurring within each approach to dignity, seem to point to a fairly consistent archetype of humanity.

Thus, first, this scheme illuminates the contradiction whereby even though dignity is characterised as a property that all humans possess – or may possess – the mould which delineates its content appears as quite exclusionary. Dignity is said to be something we equally share or may equally access. Yet, if an equalisation is involved in this context, it appears to be taking place without equally considering all human experiences, but rather by taking a narrow sample, whose image is universalised and made to stand for all human beings.

And, second, given that distinct meanings of dignity can be seen as distinct manifestations of a certain idea about what it means to be human, a pathway opens up to understand how dignity might function as a constitutional end. In this sense, it may be argued that a constitutional end is entailed in the notion of dignity to the extent that a given political unity concerns itself with

securing the respect, protection, development and/or well-being of certain human beings – those who do better at fitting into the mould of *humanness*.

With regard to the first point, since in this work I was only able to draw a silhouette of the aforesaid image of humanity, in following works, I will be further examining the four categories outlined here, in order to better grasp and describe that image. Moreover, as I explained at the outset, my research identified six approaches to the meaning of dignity. In this sense, the study of the two approaches that I only enunciated but did not expand upon in this work – dignity as self-worth and dignity as singularity – will provide additional insights not only regarding the aforementioned depiction of humanity, but also the ways in which such image might be broadened.

With regard to the second point, in this work I can only put succinctly what I plan to elucidate in subsequent works: the said idea of humanness can be read as regarding a constitutional teleology within a material approach to constitutions which explains the formation of political unity by means of (i) distinguishing constitutional elements as primarily located in its power component – encompassing the agents and their relations, institutions and ends, which interact within the field of power through which the governing activity that fixes the trajectory of the political unity takes place (no unitary rule is identified)³¹; and (ii) emphasising the potentially constitutional nature of the agents, institutions and ends found at the level of the community. In this sense, a teleology may be observed, which is primarily concerned with securing the respect, protection, development and/or well-being of a prototypical human who displays the traits and needs of the agents who govern and have governed, when looked at from the perspective of the sedimented image found in institutions.

Moreover, within such a scheme, the question concerning the ways in which such an image might be broadened does not merely concern the *ideas* that might be relevant for widening our understanding of what I have called *humanness*, as it most critically concerns the *material elements* whose modification or change might avail the emergence of an archetype which is wide enough to actually make room for those who have been excluded, in terms of a sustained rudder turn in the trajectory of the political unity. It is at this juncture that the radicality that might be entailed in the notion of dignity appears most clearly.

I cannot expand on this further in the present work, but in order to set the tone for the works that will follow on this matter, I will conclude by citing Enrique Dussel's outlook on dignity. The author states that dignity 'is discovered from negativity', as it presupposes its prior negation. In this sense, those whose identities, values and experiences are closest to the archetype of humanity conveyed by the notion of dignity, do not need to affirm their dignity; it is presupposed, questioned by no one – 'an obvious dimension, "given" as a starting point.' Thus, Dussel notes that 'one only cries out for "dignity" when it has been previously "denied"; when the subject screams for a "dignity" that has been taken from them, that has never been assigned or attributed to them.' In this context, fighting for the recognition of dignity appears as a 'process of liberation', through which, in the subjectivation of the object, it gradually discovers itself as an actor in the affirmation of its dignity: 'in the negation of its negation' (Dussel 2007, p. 137).

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³¹Capella 2008, pp. 304–305.

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