

Emotions and the Judicial Use of the Concept of Human Dignity

'Dignity is the heart of human rights.'

*Kindler v. Canada (Minister of Justice)*¹

I. Project Overview

Since the adoption of the Universal Declaration of Human Rights² in 1948, the concept of dignity has assumed an important place in human rights jurisprudence.³⁴ While debates abound concerning the true historical and philosophical origins of the concept,⁵ the fact remains that its use in human rights case law is now commonplace. Indeed, "references to human dignity are to be found in various resolutions and declarations of international bodies. National constitutions and proclamations, especially those recently adopted, include the ideal or goal of human dignity in their references to human rights."⁶ Yet it remains unclear what the language of human dignity brings to the law over and above the language of human rights.

My J.S.D. thesis would aim to take up this question. It would do so by asking, *what, if anything, is distinctive about the concept of human dignity in human rights case law?* The hypothesis that I wish to examine is whether the concept of human dignity invokes emotions in ways that human rights does not. The grounds for this hypothesis are that an initial reading of leading human rights cases indicates that there is a strong correlation in judgments between the concept

¹ [1991] 2 S.C.R. 779.

² The Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71, adopted by the United Nations General Assembly in 1948 illustrates the centrality of human dignity. Preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,"; Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood."

³ Kretzmer, David, and Eckart Klein. *The Concept of Human Dignity in Human Rights Discourse*. London: Kluwer Law International, 2002 ("Kretzmer and Klein").

⁴ In this research proposal, I shall use the terms case law and jurisprudence interchangeably.

⁵ Baker, Herschel. *The Dignity of Man: Studies in the Persistence of an Idea*. Cambridge, MA: Harvard University Press, 1947; *Catechism of the Catholic Church*, ¶1691. London: Geoffrey Chapman, 1999; Cicero, *De Officiis*, tr. W. Miller (1913). Cambridge, MA: Harvard University Press, 1913; Sensen, Oliver "Human dignity in historical perspective: The contemporary and traditional paradigms" *European Journal of Political Theory* 2011 10: 71.

⁶ Schachter, Oscar. "Human Dignity as a Normative Conception" (1983) 77 A.J.I.L. 848 at 848-840 ("Schachter").

of human dignity and narrative passages, imagery, and diction seemingly designed to invoke emotions in the audience, including anger, pity and compassion.⁷ More importantly, such passages appear to stand in contrast to the language employed elsewhere in the judgments, which tends towards more formal legal analysis. In order to test this hypothesis, I will draw on the work of a number of scholars including prominent theorists such as Martha C. Nussbaum and William Ian Miller to develop a theory of emotion. This will enable me to develop a set of research questions capable of analyzing my case set for any potential relationship between emotion and dignity considerations in human rights cases.

There are two broad reasons for pursuing this hypothesis. First, existing approaches focus on the content of the concept of human dignity and largely overlook the question of whether it fulfills any unique juridical functions. Scholars exploring the meaning of human dignity in the case law generally arrive at one of three sets of conclusions. The first, generally proffered by comparative law scholars, center on the current lack of consensus on the substance of human dignity considerations. Scholars in this camp typically warn that the concept's inherent flexibility makes it particularly resistant to consistent definition and thus prone to abuse. The second set of conclusions cluster around the idea that the juridical use of human dignity reflects a normative commitment to Kantian ethics. Such positions vary in degree of complexity, with many taking very straightforward moral imperatives as their foundation i.e., Men should be treated as ends; Man, as bearer of certain high faculties, deserves respect. The third set of conclusions revisits the connection between dignity and rank, emphasizing that 'human dignity' requires that all human beings be afforded a high and equal status.⁸

All three of these approaches are useful for thinking about the substance of human dignity. What has not been studied, however, is whether the judicial function of the concept of human dignity is exhausted by the content of the concept. Put another way, are judges using

⁷ Also significant is the text of the United Nations Charter, which provides that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Even at first blush, the phrase conjures up images of solidarity, compassion, and perhaps even love.

⁸ The renewal of this view is well attributed to Jeremy Waldron. Waldron's definition is as follows: "dignity is a term used to indicate a high-ranking legal, political and social status, and that the idea of *human dignity* is the idea of the assignment of such a high-ranking status to everyone." Waldron, Jeremy. "Lecture I: Dignity and Rank" *Dignity, Rank, and Rights*. The Tanner Lectures at UC Berkeley. (April, 2009) ("Waldron, *Tanner Lecture 1*"); "Lecture II: Dignity, and Self-Control" The Tanner Lectures at UC Berkeley. (April, 2009) ("Waldron, *Tanner Lecture 2*"); "Dignity and Rank." *European Journal of Sociology* 48, no. 2 (2007): 201-37; "How Law Protects Dignity" (Draft) Lecture at the European University Institute, Florence, 1/27/2009.

the concept of human dignity for reasons separate from its definition because it allows them to communicate something that the language of human rights cannot. This is the focus of my proposed approach. My hypothesis suggests that the emotion-affecting nature of dignity provides it with a function over and above its particular definition. It questions whether judges are using the concept of human dignity because of its ability to invite emotional considerations into their deliberations. On this view, the substance and the function of human dignity considerations are related, though not directly overlapping. My project therefore seeks to extend the existing academic literature on human dignity by examining the previously overlooked question of how the concept functions in the jurisprudence.

The second reason for pursuing this hypothesis is timing. As Christopher McCrudden writes, the 60th Anniversary of the UDHR provides “a suitable opportunity to reflect on one of the key concepts which underpins and informs the human rights enterprise.”⁹ This research agenda has been taken up enthusiastically as evidenced by the many articles and books recently published on human dignity.¹⁰ Significantly, a review of the current scholarship on this issue highlights rising opposition to the concept’s use in human rights case law, with scholars increasingly calling into question the concept’s distinctiveness and utility. This trend is also evident in practice, as certain courts following such debates have also signaled similar skepticism. For instance, the Supreme Court of Canada in 2008¹¹ stated that it intends to stop using dignity considerations to reason through equality claims under the Canadian *Charter of Rights and Freedoms*.¹²

The central purpose of my J.S.D. project will be hypothesis testing. To answer its research question, this project turns to the study of emotion to build a framework for a thorough case analysis. Understanding emotions and offering a more explicit analysis of their thought-content, structure and role in human life will help us in deciding whether judges use human dignity considerations, in part, because of their emotional appeal. My research will be divided into two parts. Part I requires a theoretical inquiry into the theories of emotion developed by a number of prominent law and emotions scholars such as Martha C. Nussbaum,

⁹ McCrudden, Christopher. “Human Dignity and Judicial Interpretation of Human Rights.” *European Journal of International Law* 19, no. 4 (2008) (“McCrudden”) 655 at 656.

¹⁰ *Ibid.* See also, for example, Kretzmer and Klein, *supra* note 3; Kraynak, Robert P., and Glenn E. Tinder. *In Defense of Human Dignity: Essays for Our Times*. Notre Dame: University of Notre Dame Press, 2003.

¹¹ *R. v. Kapp*, [2008] 2 S.C.R. 483, 2008 SCC 41.

¹² The Supreme Court of Canada, traditionally a path-breaking court in terms of dignity considerations, found *in obiter* that the concept of dignity was seemingly too ambiguous to provide meaningful direction. This case was recently cited by the Federal Court in *Vilven v. Air Canada*, 2009 FC 367, [2010] 2 F.C.R. 189.

William Ian Miller, Dan M. Kahan and Bernard Williams.¹³ The goal for Part I will be to develop a series of research questions that would assist in analyzing any potential relationship between the concept of dignity and emotion in human rights case law.

Part II of my research will review a number of human rights cases where the concept of human dignity is invoked in a significant way. I will limit my case research to four judicial fora, selected for their commitment to human dignity and rights protection (the Canadian Supreme Court, the South African Constitutional Court, the European Court of Human Rights and the Inter-American Court of Human Rights).¹⁴ I also propose to limit my case research by subject matter (Torture and Cruel and Unusual Punishment, the Death Penalty, and Social and Economic Rights). This potential case set contains a good mix of international and domestic judicial fora, positive and negative rights, and both contentious and uncontroversial rights. My research in Part II would be designed to balance detailed investigations into particular human rights cases with cross case comparative analysis.

This research proposal proceeds in three broad steps. Part II of this proposal considers existing approaches to the judicial use of human dignity. This section begins with a review of the three dominant approaches to human dignity in the literature. It then makes two arguments why there is a gap in the literature regarding the function of human dignity considerations at law. Significantly, this review of the literature finds that Jeremy Waldron's theory of dignity-as-rank holds the most promise for analyzing the judicial use of human dignity considerations. My own project will deepen Waldron's work through the introduction of a theory of emotion. Part III of this proposal outlines my methodological approach. My methodological section illustrates how my research will proceed in two parts. The first part consists of a theoretical inquiry into law and emotions scholarship, with a view to developing a series of research questions. The second part requires a review of my case set using the theory and research questions developed in part one. The final section of this proposal, Part IV, outlines the limitations and contributions of my project.

¹³ Martha Nussbaum and Dan Kahan, "Two Conceptions of Emotion in Criminal Law," *Columbia Law Review* 96 (1996): 269-374; Barbara Koziak, *Retrieving Political Emotion: Thumos, Aristotle, and Gender* (University Park, Pa.: The Pennsylvania State University Press, 2000); Martha C. Nussbaum *Upheavals of Thought: The Intelligence of the Emotions*. New Jersey: Princeton University Press, 2001 (Nussbaum, *Upheavals*); Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993); William Ian Miller, *The Anatomy of Disgust* (Cambridge, Mass.: Harvard University Press, 1997) ("Miller"); Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988); David Konstan, *Pity Transformed* (London: Duckworth, 2001).

¹⁴ O'Connell, Rory O. "The role of dignity in equality law: Lessons from Canada and South Africa" *I.CON*, Volume 6, Number 2, 2008 ("O'Connell")

II. Existing Approaches to the Judicial Use of Human Dignity

Three interpretations of how the concept of dignity operates in human rights case law dominate the discourse.¹⁵ Broadly I term these approaches: *Dignity as Rhetoric*, *Dignity as Kantian Ethics*, and *Dignity as Rank*. The latter two interpretations attribute both a particular substance and value to the concept of dignity in human rights jurisprudence. The first denies both such claims. For the most part, all share the assumption that the jurisprudential utility of the concept of human dignity resides exclusively in its substantive definition. This section proceeds in two broad steps. It will first provide an overview of each of the above positions. It will then highlight where there is room to examine the actual function of the concept of human dignity in judicial settings.

Overview of Existing Approaches

A number of scholars object to the presence of dignity considerations in human rights jurisprudence. They consider the concept of human dignity to be largely rhetorical. For example, Steven Pinker argues, “The problem is that ‘dignity’ is a squishy, subjective notion, hardly up to the heavyweight moral demands assigned to it.”¹⁶ For such scholars, the fundamental question is whether the concept exhibits a fixed content in its juridical application. In the absence of such fixed content it follows that the concept of human dignity can be of little use in guiding a court towards the correct reading of a human rights case.

For some, the fluctuations in the concept’s juridical use render it inherently ambiguous,¹⁷ invoked only for the purpose of lending weight to one’s political or ethical ideals.¹⁸ For instance,

¹⁵ My views on the judicial use of human dignity benefited greatly from my participation in Professor Waldron’s inaugural ‘Dignity Seminar’ in the fall of 2009 at New York University School of Law.

¹⁶ Steven Pinker, “The Stupidity of Dignity”, *Richard Dawkins Institute for Reason and Science* (Sunday, 1 May 2008)

¹⁷ The Supreme Court of Canada citing the work of James Fyfe (Fyfe, R. James. “Dignity as Theory: Competing Conceptions of Human Dignity at the Supreme Court of Canada” (2007), 70 *Sask. L. Rev.* 1.) signaled that it would consider abandoning the concept of human dignity altogether. While the piece by Fyfe contains some unconscionable errors, it was cited nonetheless for the proposition that the concept of human dignity is too ambiguous a term to effectively guide court action. More specifically, at paragraph 22 of *Kapp*, the Supreme Court of Canada states: “human dignity is an abstract and subjective notion that, even with the guidance of the four contextual factors, cannot only become confusing and difficult to apply; it has also proven to be an *additional* burden on equality claimants, rather than the philosophical enhancement it was intended to be.”

in the deeply contested terrain of abortion rights, dignity considerations are routinely invoked on behalf of both the pregnant woman and the fetus.¹⁹ The same is true regarding debates on the death penalty and hate speech, where dignity considerations are invoked on behalf of the victim, the accused and also the state.²⁰ Unsettled by the fact that dignity considerations often appear on both sides of a contentious legal debate, some scholars dismiss the term's utility, claiming it only to reflect the speaker's individual values.²¹ A less critical interpretation is that dignity is simply a synonym for other moral principles such as equality or goodness²² and that the term itself adds no value beyond these concepts.

In a leading article, Christopher McCrudden dismisses the use of dignity considerations in human rights jurisprudence, finding the concept to house too many intractable political debates.²³ After a wide investigation into the concept's juridical use, McCrudden concludes that there are no coherent national interpretations of the concept of human dignity, let alone a transnational one.²⁴

Scholars wishing to ferret out the use of human dignity considerations in the law tend to make two general points. First, the concept of dignity often serves as a rhetorical device in what are best described as political arguments.²⁵ Second, the concept of dignity is at times used as a synonym for other significant values. Both of these points can be used to suggest that the concept of dignity is particularly susceptible to political manipulation. Neither of these findings, however, seems sufficient to warrant the conclusion that all or even most dignity considerations lack a distinctive function in human rights discourse.

In contrast to this approach, some legal scholars argue that dignity considerations reflect Kantian moral imperatives. Proponents of this approach often turn to Immanuel Kant's

¹⁸ McCrudden, *supra* note 9.

¹⁹ Waldron, *Tanner Lecture I*, *supra* note 8.

²⁰ Jeremy Waldron, "Hate Speech" *Holmes Lectures at Harvard Law School* (October, 2009) Lectures available online at http://www.law.harvard.edu/news/spotlight/constitutional-law/28_waldron.holmes.html.

²¹ McCrudden, *supra* note 9 at 698. See also, Ruth Macklin, 2003 editorial, "Dignity Is a Useless Concept."

²² Kolnai, Aurel. "Dignity." *Philosophy* 51, no. 197 (1976): 251-71 ("Kolnai") at 252. See also: Macklin, Ruth. "Dignity is a Useless Concept: It Means No More Than Respect for Persons Or Their Autonomy." *British Medical Journal* 327, no. 7429 (2003): 1419-20.

²³ McCrudden, *supra* note 9.

²⁴ *Ibid.* at 727.

²⁵ Here, however, it is prudent to note that it might be the case that dignity considerations properly exist on both sides of certain contentious political debates. (This point was gleaned from Waldron's Dignity seminar at New York University in the fall of 2009).

Groundwork to the Metaphysics of Morals.²⁶ In the literature, Kant is routinely invoked to imbue a certain deontological ethic into dignity discourse – that human beings should be treated as ends not means.²⁷ Central to this is the value placed on the relationship between human dignity and man’s rational capacities.²⁸ For Kant, the goods of freedom and moral action spring from the faculty of reason. Certain scholars have criticized this approach for this reason, believing that individuals lacking, or seen to be lacking, certain rational capacities would be deemed less worthy of respect or protection.²⁹ This is a normative objection. Grounding the value or sanctity of human life in the faculty of reason leaves some of the most vulnerable members of society without rights protection. It also has the effect of devaluing legal protections to the body. This consequence seems anathema to the function we would like dignity to play in human rights discourse.³⁰

Over the past few years, a third approach seeking to re-establish the connection between dignity and rank in legal theory has emerged.³¹ Jeremy Waldron, the leading proponent of this view, suggests that the judicial concept of human dignity affords an equal and high-ranking status to all human beings.³² He writes, “we may say of ‘dignity’ that the term is used to convey something about the status of human beings and that it is also and concomitantly used to convey the demand that the status should actually be respected.”³³ Seen in this light, dignity as rank is a normative classification. Accordingly to Waldron, we have “adopted the idea of a single status system, evolving a more or less universal status – a more or less universal legal dignity – that entitles everyone to something like the treatment before the law that was

²⁶ Kant, Immanuel. *Groundwork for the Metaphysics of Morals*. Indianapolis: Hackett, 1981 (“*Kant, Groundwork*”).

²⁷ *Ibid.* at 4:435. See, for example, Oscar Schacter in “Human Dignity as a Normative Concept”. See also, Stephen Darwall, *The Second-Person Standpoint: Morality, Respect and Accountability* (Harvard University Press, 2006). Rosen, Michael. “*The Shibboleth of All Empty-Headed Moralists*”: *The Place of Dignity in Ethics and Politics*, (2007 Boston Univ. Benedict Lectures).

²⁸ A variant of this argument is found in “*The Shibboleth of All Empty-Headed Moralists*”. In this work Rosen suggests that it is the source of man’s dignity is his capacity for moral reason. See also, Stephen Darwall, *The Second-Person Standpoint: Morality, Respect and Accountability* (Harvard University Press, 2006).

²⁹ Waldron, *Tanner Lecture I*, *supra* note 8.

³⁰ See, for example, Waldron, Jeremy. “Cruel, Inhuman, and Degrading Treatment: The Words Themselves.”

³¹ Waldron, *Tanner Lecture I*, *supra* note 8

³² Stephen Darwall in *The Second-Person Standpoint: Morality, Respect and Accountability* (Harvard University Press, 2006) at 243 also uses the notion of status to explain dignity considerations.

³³ Waldron, *Tanner Lecture I*, *supra* note 8 at 3.

previously confined to high-status individuals.”³⁴ Put simply, the concept of human dignity represents the assignment of a noble status to the common man.³⁵

Gap in the Literature

All three of above positions tell us something about how judges are attributing substance to the concept of human dignity. My review of the literature suggests, however, that existing approaches fail to examine whether the concept of human dignity fulfills any jurisprudential functions beyond the provision of a rational definition. Significantly, McCrudden’s own work concludes by finding a particular value in the function that human dignity considerations play in the jurisprudence regardless of their substantive inconsistencies. As McCrudden finds, “the concept of human dignity, in virtue of its purchase on universality, serves as a common currency of transnational judicial dialogue and borrowing in matters of human rights.”³⁶ Even in the absence of a “shared substantive basis for judicial decision-making,”³⁷ the concept of human dignity fulfills a certain legal-institutional function. There is a good reason then to reject the assumption, common in the discipline, that dignity must have a universal, principled and agreed-upon meaning to provide value to human rights jurisprudence. This is a critical point. While scholars in this area have been reviewing the jurisprudence for substantive similarities, questions concerning the unique function of the concept of human dignity have been largely overlooked.

Beyond this explicit focus on function, my literature review reveals a different type of lacuna in scholarly investigations into the concept of human dignity. The approaches outlined above all allude to the emotional appeal of dignity. None, however, directly confront the relationship between dignity and emotion. For dignity-as-rhetoric scholars, much of the concept’s danger lies in its emotional appeal. This itself is worthy of investigation. Significantly, the other two approaches also appear to routinely invoke emotion in their descriptions of dignity.

For instance, scholars wishing to ground the juridical conception of human dignity in Kantian metaphysics employ language that tends to be both vivid and emotional, often

³⁴ Waldron, *Dignity and Self Control* at 15.

³⁵ Waldron, *Tanner Lecture I*, *supra* note 8 at 10.

³⁶ Carozza, Paolo G. *Human Dignity and Judicial Interpretation of Human Rights: A Reply*, 19 EJIL 931 (2008).

³⁷ McCrudden, *supra* note 9 at 713.

invoking terms such as trepidation, reverence and awe.³⁸ Yet, such positions depend on ethical and methodological schemas that reject the importance of emotions.³⁹ This apparent disjunction presents a puzzle that can be explored by examining the emotion-invoking functions of human dignity considerations.

Two examples are illuminating. George P. Fletcher in "Human Dignity as a Constitutional Value" describes a case under Article 1 of the 1949 German constitution (West German Basic Law) as a good example of Kant's influence on the judicial concept of human dignity. In 1958, the Supreme Court for criminal charges decided that lie detector tests violate the dignity of the accused. Fletcher records this case as an example of Kant's influence on the judicial conception of dignity, noting the court's finding that the "lie detector treats a potential witness as a psychological organism to be tested rather than a person to be heard."⁴⁰ He concludes that "the case (thus) responds to the problem of converting the suspect into an object of the criminal proceeding rather than treating him as a subject in his own trial." Fletcher seems right to invoke Kant here with respect to the proposition that individuals should be treated as ends. However, how the accused is 'presented' to the court also seems to be an important feature of this judgment. This is different type of consideration and one that is not completely captured by Fletcher's use of Kant. A theory of emotion should permit us to investigate this court's use of human dignity in order to better understand its concern over how the accused is being 'seen'.

Another case emphasizes this point.⁴¹ In 2006, the German Constitutional court considered the constitutionality of a law that provided the German Defense Minister with the power to shoot down a hijacked commercial aircraft in order to prevent a larger loss of life. The court found that such a power infringed on the dignity of the aircraft passengers, dismissing all of the consequentialist arguments presented on behalf of the Minister. The court stated, "Whoever denies this or calls this into question denies those who, such as the victims of a hijacking, are in a desperate situation that offers no alternative to them, precisely the respect which is due to

³⁸ Sossin, Lorne. "The Supremacy of God and Human Dignity in the Charter of Rights and Freedoms" 228 *UNBLJ* 52.

³⁹ One exception to this trend is the work of Elizabeth Anderson at the University of Michigan Law School. Parsing through his later work, Anderson finds that Kant appreciated the facilitative functions of emotion in man's assessment of right action. She writes that while emotions for Kant could never ground moral action, they can assist man's appreciation of it. Anderson's research illustrates one way of thinking about Kantian ethics, which could be useful in analyzing the judicial use of human dignity and emotion. Anderson, Elizabeth. "Emotions in Kant's Later Moral Philosophy: Honor and the Phenomenology of Moral Value," in Monika Betzler, ed., *Kant's Virtue Ethics* (New York and Berlin: de Gruyter).

⁴⁰ Fletcher, George. "Human Dignity as a Constitutional Value." *University of Western Ontario Law Review* 22 (1984) at 178.

⁴¹ *Bundesverfassungsgericht* Feb. 15, 2006, 115 BVerfGE 118.

them for the sake of their human dignity.” The case has been said to emphasize precisely the often-cited Kantian adage that man should be treated as an end not a means. This seems like one compelling explanation for the decision. Yet, the emphasis the court places on the feelings of the victims is curious. The above passage or surrounding paragraphs in the judgment do not focus on the rationality or nobility of the passengers but rather their plight and vulnerability. Indeed, the term ‘desperate’ seems designed to elicit sympathy and compassion. In this critical passage of the judgment, the court appears to be communicating a particular sensibility through the concept of human dignity. My project would use a theory of emotion to study this more completely.

Waldron’s work also uses emotional language to describe human dignity. The image of a noble class of all men appears to do important work in his theoretical framework. An initial review of the case law, however, tends toward the conclusion that courts are emphasizing the vulnerability of man at least as much as his nobility. This seems especially true in cases that use human dignity considerations to describe in painful detail the suffering of the victim of human rights abuse. The relationship between the concept of human dignity and human vulnerability is underdeveloped in Waldron’s work. Focused more on the noble status of man, Waldron says little about how judges describe violations of that status through human dignity considerations. Waldron’s theory would benefit from an analysis into the expressive component of dignity-as-rank. This analysis also has the potential to account for the appeal that Waldron attributes to the concept. As described in greater detail below, the theory of emotion that I will employ draws deeply on the relationship between human vulnerability, status and emotion. This makes it particularly useful for building on Waldron’s theory of dignity as rank.

This section has suggested that existing approaches leave open the question of whether the concept of human dignity fulfills any distinctive functions in the case law. Supplemented by a theory of law and emotion, my project critically engages with the assumption that the concept’s jurisprudential utility resides exclusively in its substance. As outlined in my methodology section below, my aim is to develop a new set of questions that have the potential to deepen the above approaches, most notably Waldron’s, and tell us something new about how judges are using the concept of human dignity in the case law.

III. Methodological Approach

Part I: A Theory of Emotion

Without an image thinking is impossible

– Aristotle, *On Memory*.⁴²

Existing theoretical and methodological approaches are not well structured to capture the relationship between the judicial use of human dignity and emotion.⁴³ In a foundational article on the subject Aurel Kolnai states that our experience of dignity is “obscure and insufficiently analyzed”⁴⁴ and yet something that is also very familiar or intimately felt. Part I will have to begin by analyzing the view that emotion is anathema to law, namely the idea that law as reason protects us from our wild nature and uncontrollable, vengeful or indulgent passions. While common, this view is easily overturned.⁴⁵ Emotions are embedded in the law in generally uncontroversial ways. For instance, the grounds of illegality are often intimately related to the imagined emotional response of the body politic. As argued by Martha C. Nussbaum, “any good account of why offences against person and property are universally subject to legal regulation is likely to invoke the reasonable fear that citizens have of these offences, the anger with which a reasonable person views them, and/or the sympathy with which they view such violations when they happen to others.”⁴⁶ In philosophical terms, this view is articulated in Mill’s sentiments of justice.⁴⁷ In human rights law, this view is expressed when the court employs the “shocks the conscience of humanity” standard to determine illegality.⁴⁸ Going further, Nussbaum suggests that, “(w)ithout appeal to a roughly shared conception of what violations are outrageous, what losses give rise to a profound grief, what

⁴² *On Mercy* at 450a1.

⁴³ My views on law and emotions have been developed by my participation in an excellent reading group on the subject held at Cardoza Law School, led by Suzanne Last Stone.

⁴⁴ Kolnai, *supra* note 22.

⁴⁵ For a convincing rebuttle, see Nussbaum, Martha C., *Hiding from Humanity: Disgust, Shame and the Law* (Princeton University Press, Princeton, 2004) (“Nussbaum, *Hiding from Humanity*”) at 5-6.

⁴⁶ *Ibid.* at 8. See also Nussbaum, *Upheavals*, *supra* note 13.

⁴⁷ John Stuart Mill, *Utilitarianism* Chapter 5.

⁴⁸ Notably, this phrase was used by the Chief Prosecutor for the UK at Nuremburg who claimed that “the individual “is not disentitled to the protection of mankind when the state tramples upon his rights in a manner which outrages the conscience of mankind.” (M. C. Bassiouni *Crimes Against Humanity in International Criminal Law* (1999) 184). It has also been used in extradition cases heard by the Supreme Court of Canada (*Kindler v. Canada (Minister of Justice)*, 1991 CanLII 78 (S.C.C.), [1991] 2 S.C.R. 779.).

vulnerable human beings have reason to fear – it is very hard to understand why we devote the attention we do, in law, to certain types of harm and damage.”⁴⁹

There is also the fundamental question of whether emotions are instinctive reactions or cognitive judgments. Those who argue that emotion is anathema to law tend towards the first view. It will be important, however, to distinguish emotions from appetites and objectless moods (irritation, malaise).⁵⁰ As cognitive judgments, “emotions are connected closely with thoughts about important benefits and harms – and with prevailing social norms concerning what benefits and harms are rightly thought important.”⁵¹ Put simply emotions are connected to those persons, objects or states that we conceive as important to us as individuals, community members and human beings.⁵² The bulk of Part I will therefore consist of a description and fine-tuning of the theory of emotion-as-cognitive-judgment. It will then turn to the construction of research questions designed to flesh out any existing relationship between human dignity considerations and emotion in the case law.

The emotion-as-cognitive judgment theory is the prevailing view of emotion in the Anglo-American legal tradition.⁵³ The roots of this theory are to be found in ancient Greek scholarship with many of its foundational tenants attributable to Aristotle.⁵⁴ Martha Nussbaum, a leading proponent of this view, provides the following definition: “(e)motions...involve judgment about important things, judgments in which, appraising an external object as salient for our own well-being, we acknowledge our own neediness and incompleteness before parts of the world that we do not fully control”⁵⁵ Emotions have “heat and urgency”⁵⁶ but above all they are about seeing an object.⁵⁷ Understanding this theory of emotion has the potential to tell us something new about how human dignity considerations are functioning in the law. In particular, they help us understand whether and how judges are using human dignity considerations to communicate how human beings should be ‘seen’ in the context of human rights abuses. From my initial review of the literature, two features of this theory of emotion emerge as potentially useful for an analysis of the judicial use of human dignity: 1) emotions

⁴⁹ Nussbaum, *Hiding from Humanity*, supra note 48 at 6.

⁵⁰ *Ibid.* at 22.

⁵¹ *Ibid.*

⁵² Nussbaum, *Upheavals*, supra note 13; Miller, supra note 13.

⁵³ Nussbaum, *Hiding from Humanity*, supra note 48 at 22.

⁵⁴ This view is also described in the literature as Neo-Stoic.

⁵⁵ Nussbaum, *Upheavals*, supra note 13 at 19.

⁵⁶ *Ibid.* at 22.

⁵⁷ *Ibid.*

reflect and reinforce social and political norms, and 2) emotions have particular ontological and phenomenological ties with the recognition of human vulnerability.

Both Aristotle and the Hellenistic schools understood the passions to be socially constructed.⁵⁸ This renders them suitable subjects for examination and criticism. “Individuals and institutions are mutually supporting”⁵⁹ and, as such, both are proper targets of investigation for a theory of emotion. As “just institutions require support from the psychology of citizens”⁶⁰ philosophy’s task was “not only to deal with one’s invalid references and false premises, but to grapple as well with her irrational fears and anxieties, her excessive loves and crippling angers.”⁶¹ Seen in this light, certain emotions reflect social orientations. For instance, compassion can encourage fellow feeling, emphasizing commonality amongst members of the human family.⁶² Disgust, on the other hand, has been found to reaffirm social hierarchies. For instance, touch across individuals of different castes has been documented as eliciting disgust.⁶³

William Ian Miller, Dan M. Kahan and Martha C. Nussbaum employ a similar theory of emotion, although they have come to different conclusions regarding the social utility of particular emotions. For Miller, emotions as cognitive judgments are intimately bound with conceptions of rank. His book, *The Anatomy of Disgust* in striking and discomfoting detail uncovers the social and political mores driving many of our emotions.⁶⁴ Focusing on the relationship between emotion and rank, Miller’s work is obviously relevant to Waldron’s conception of human dignity. If emotion and rank are phenomenologically and ontologically related, this should provide a useful resource for analyzing the dignity-as-rank theory. My J.S.D. thesis aims to study the relationship between emotion and dignity-as-rank in great detail.

One natural aim of human rights law is to protect human life and promote well-being. The conceptual link between rights protection and human vulnerability thus seems important, although this will require working out. For Nussbaum, the “idea of vulnerability is closely connected to the idea of emotion.”⁶⁵ She writes, our “insecurity is inseparable from our

⁵⁸ Martha Nussbaum, *The Therapy of Desire: Theory and Practice in Hellenistic Ethics*, (“Nussbaum, *Therapy of Desire*”) at 39.

⁵⁹ Nussbaum, *Hiding from Humanity*, *supra* note 48 at 16.

⁶⁰ *Ibid.* at 16.

⁶¹ Nussbaum, *Therapy of Desire*, *supra* note 61 at 39.

⁶² Martha Nussbaum (1996). Compassion: The Basic Social Emotion. *Social Philosophy and Policy*, 13, pp 27-58. See also Part II, “Compassion” in Nussbaum, *Upheavals*, *supra* note 13.

⁶³ Nussbaum and Kahan; Miller, *supra* note 53.

⁶⁴ *Ibid*; See also Miller, *supra* note 13.

⁶⁵ Nussbaum, *Hiding from Humanity*, *supra* note 48 at 6.

sociability; and both from our propensity to emotional attachment.”⁶⁶ Failing to capture this vulnerability is, for Nussbaum, an ontological mistake. Conceptualizing dignity as a noble rank conjures up the image of a powerful, imposing unassailable class of persons. In this way, it seems to undermine both the social nature of man and his inherent vulnerability.⁶⁷ As Nussbaum writes, Gods and Kings, being invulnerable, have no need for laws. On this picture, the status of nobility, even when afforded to all men, seems to undercut the social nature of man in ways similar to the status of Kings. The danger in this is that such an assumption “engenders a harmful perversion of the social, as people who believe themselves above the vicissitudes of life treat other people in ways that inflict, through hierarchy, miseries that they culpably fail to comprehend.” Seen in this light, emotions like compassion, pity, grief and anger are “in that sense essential and valuable reminders of our common humanity.”⁶⁸ If a theory of emotion can help us better understand human vulnerability, then it has the potential to strengthen Waldron’s theory on the judicial use human dignity.

Last, an important note about the scope of this project. In the *Gorgias*, Aristotle argues that *logoi* (discourse, speech acts) have the power to “stop fear and take away grief and engender joy and increase fellow feeling.”⁶⁹ Discourse, then, can inspire emotions that lead us towards right thinking or, at times, wrong thinking. Nussbaum builds on this conclusion, finding that some emotions guide us well while others – like shame and disgust – guide us poorly. While Nussbaum’s task is both analytical and normative,⁷⁰ my use of emotions theory will be for the purposes of edification, not prescription. It is beyond the scope of this paper to make a normative assessment of the relationship between human dignity considerations and the emotions they inspire, if they inspire emotions at all. Rather, Part I will analyze, refining where prudent, the existing literature on emotion in order to frame questions that could determine whether the role of human dignity in the case law is indeed related to the concept’s distinctive relationship with emotion.

Part II: Case Research and the Application of Theory to Cases

Part II of my research will apply the questions developed through the theoretical analysis in Part I to a set of cases. This set will be limited according to judicial fora (Canadian Supreme

⁶⁶ *Ibid.* at 7.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Nussbaum, *Therapy of Desire*, *supra* note 61 at 49; *Gorgias* at 14.

⁷⁰ Nussbaum, *Hiding from Humanity*, *supra* note 48.

Court, South African Supreme Court, European Court of Human Rights and Inter-American Court of Human Rights) and subject matter (Torture and Cruel and Unusual Punishment, the Death Penalty, and Social and Economic Rights). Drawing on my theory of emotion, my review of the case law will determine whether the concept of dignity has a unique expressive function. My analysis will focus on how judges are using and describing human dignity considerations and how such considerations present against others in the judgment.

An example of the type of case I intend to review may help to illustrate my research approach. *Kinder v. Canada (Minister of Justice)*⁷¹ is a case heard by the Supreme Court of Canada regarding an extradition request from the United States for an accused who would face the death penalty, then considered an infringement of the *Canadian Charter of Rights and Freedoms*. Domestic and international courts charged with determining whether human rights are infringed by capital punishment have cited this case extensively.⁷² Like many human rights cases, this judgment includes a separate section on the relationship between the law under review and the concept of human dignity. As with a number of other cases I have reviewed there appears to be a marked difference between the language and imagery used to analyze human dignity and the language used to analyze human rights. In *Kindler*, for instance, the dissenting Supreme Court Justice employs the following terms when discussing human dignity: desecration,⁷³ outrages of dignity,⁷⁴ demeaning⁷⁵ and repugnant.⁷⁶ At paragraph 87, the phrase “semblance of dignity” is employed, meaning the sense or perception of dignity. The use of such emotionally powerful terms is striking, as is the characterization of dignity as a sense. Also interesting is the fact that the court uses this section of the judgment to paint vivid descriptions of the victim’s potential suffering, describing the painful and horrifying aspects of various execution techniques. While the other sections of the judgment dryly consider the rights and obligations of the state vis-à-vis the accused, the court described a particularly poignant account of an execution when weighing whether an electrocution violated human dignity:

⁷¹ [1991] 2 S.C.R. 779 (“*Kindler*”). Factual overview of the case: A jury in the United States sentenced the accused to death for murder. The accused escaped to Canada, where he was subsequently caught. At the extradition hearing, the judge permitted the extradition request from the United States. Pursuant to the Extradition Act, the Minister of Justice ordered the return of the accused to the United States without seeking assurances that he would not face the death penalty, a punishment considered to be in violation of the Canadian Charter of Rights and Freedoms. The issue before the SCC was: *Whether the failure of the Minister to seek assurances from the US that the death penalty would not be imposed or executed (which could be done under s.6 of the Extradition Act) violated the appellant’s rights under s.7 or s.12 of the Charter.*

⁷² *Pratt v. Attorney-General for Jamaica* [1993] J.C.J No. 38

⁷³ *Kindler*, *supra* note 74 at paras. 51, 81 and 94.

⁷⁴ *Ibid.* at para. 82.

⁷⁵ *Ibid.* at 83.

⁷⁶ *Ibid.* at 85.

In the chamber now, he was strapped to the chair. The cyanide had been prepared, and was placed beneath his chair, over a pan of acid that would later react with the cyanide to form the deadly gas. Electrocardiographic wires were attached to Daniels' forearms and legs, and connected to a monitor in the observation area. This lets the doctor know when the heart stops beating.

This done, the prison guards left the room, shutting the thick door, and sealing it to prevent the gas from leaking. I took my place at one of the windows, and looked at Eddie, and he looked at me. We said the prayer together, over and over...

In an instant, puffs of light white smoke began to rise. Daniels saw the smoke, and moved his head to try to avoid breathing it in. As the gas continued to rise he moved his head this way and that way, thrashing as much as his straps would allow still in an attempt to avoid breathing. He was like an animal in a trap, with no escape, all the time being watched by his fellow humans in the windows that lined the chamber. He could steal only glimpses of me in his panic, but I continued to repeat "My Jesus I Love You", and he too would try to mouth it.

Then the convulsions began. His body strained as much as the straps would allow. He had inhaled the deadly gas, and it seemed as if every muscle in his body was straining in reaction. His eyes looked as if they were bulging, much as a choking man with a rope cutting off his windpipe. But he could get no air in the chamber...⁷⁷

The next paragraph in the judgment concludes: "The death penalty not only deprives the prisoner of all vestiges of human dignity, it is the ultimate desecration of the individual as a human being. It is the annihilation of the very essence of human dignity."⁷⁸ I quote a large portion of this passage to illustrate the idiosyncratic tone and sensibility that sometimes appears when human dignity is considered in the context of a human rights case. In this judgment, it invites a long, horrifying and yet somehow tender description of the experience of an individual subject to a state death penalty. One line in this case succinctly describes the grounds for studying the relationship between the concept of human dignity and emotion in human rights case law. Justice LaForest writes, "Dignity is the heart of human rights." This case is only one example of the kind my J.S.D. thesis will pursue in order to examine the juridical use of the concept of human dignity. The theory of emotion that I will advance has the potential to tell us a great deal about how and why judges are using dignity considerations in human rights cases.

IV. Contributions to the Field

Given that the concept of human dignity is invoked in human rights cases around the globe involving torture, poverty, cruel and degrading treatment and the right to life, the stakes are

⁷⁷ *Ibid.* at para.88.

⁷⁸ *Ibid.* at para 89.

high. This research project has potential significance for human rights law and legal theory more generally. First, this research will assist us in better understanding the concept of human dignity and its role in the judicial protection of human life. Second, this research will shed light on rights-based approaches in general by specifically investigating the boundaries between the languages of rights and dignity. Third, this project is path-breaking in its willingness to investigate the relationship between law and emotion, a unique approach given law's long association with reason. Fourth and finally, this project has important implications for the practices of judicial institutions in human rights cases. Given that the language employed by leading human rights courts reverberates around the world, it is not hyperbole to say that the world is watching.

One particular challenge posed by my project will be to ensure that it remains sensitive to cultural and linguistic differences for it might be the case that the concept of human dignity means different things to different political communities. It also might be the case that expressions of emotion too vary across context. Regarding limitations, this project does not aim to provide a substantive definition of dignity in human rights jurisprudence. In a similar vein, this project will not adjudicate between various historical or ontological conceptions of dignity. Rather it aims to tell us whether human dignity considerations have a unique expressive component or function in the case law.

My goal has been to design a project that would develop my legal research skills, build upon my understanding of international and domestic constitutional and human rights law and advance my legal theory skills. Researching the concept of dignity within the framework of human rights law satisfies both my thirst for legal theory and also my commitment to human flourishing. I believe that my project will provide me with a firm background to teach international law, human rights, constitutional law and legal theory.

Given his expertise in the subject matter, I would relish the opportunity to have Professor Jeremy Waldron act as my supervisor. It is my sincere hope that either he, Liam Murphy, Samuel Scheffler or Joseph H. H. Weiler might be interested in this project. I welcome the opportunity to work on this project with other faculty members that this esteemed committee finds appropriate. Thank you kindly for your consideration.

Bibliography

Adkins, A. W. H. *Moral Values and Political Behaviour in Ancient Greece: From Homer to the End of the Fifth Century*. London: Chatto & Windus, 1972.

Anderson, Elizabeth. "Practical Reason and Incommensurable Goods." In *Incommensurability, Incomparability, and Practical Reason*, edited by Ruth Chang, London: Harvard University Press, 1997.

Anscombe, G. E. M. "Modern Moral Philosophy." *Philosophy* 33, no. 124 (1958): 1-19.

Aristotle *Nicomachean Ethics*, 1105B32-06A1, translation by T. Irwin (Hackett Publishing Company, 1985).

Bloch, Ernst. *Natural Law and Human Dignity. Studies in Contemporary German Social Thought*. London: MIT Press, 1986.

Capps, Patrick. *Human Dignity and the Foundations of International Law*. Oxford: Hart Publishing, 2009.

Carozza, Paolo G. *Human Dignity and Judicial Interpretation of Human Rights: A Reply*, 19 EJIL 931 (2008).

Crisp, Roger, and Michael A. Slote. *Virtue Ethics*. Oxford: Oxford University Press, 1997.

Darwall, Stephen L. *The Second-Person Standpoint: Morality, Respect, and Accountability*. London: Harvard University Press, 2006.

Dworkin, Ronald. *Justice in Robes* (Harvard University Press, 2007).

Dworkin, Ronald. *Taking Rights Seriously* (Harvard University Press, 1977).

Dworkin, Ronald. *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*. New York: Vintage, 1994.

Eric Gregory, "Love as a Political Vice" and "Love as a Political Virtue: Stoics" and the Problem of Passion," in *Politics and the Order of Love: An Augustinian Ethic of Democratic Citizenship* (Chicago: Chicago University Press, 2008)

Feinberg, Joel, and Narveson, Jan. "The Nature and Value of Rights." *The Journal of Value Inquiry* 4, no. 4 (1970): 243-60.

Feinberg, Joel. "Duties, Rights, and Claims." *American Philosophical Quarterly* 3, no. 2 (1966): 137-44.

- Feinberg, Joel. *Social Philosophy*. Englewood Cliffs: Prentice-Hall, 1973.
- Feldman, David. "Human Dignity as a Legal Value-Part II." *Public Law* (2000): 61-76.
- Fletcher, George. "Human Dignity as a Constitutional Value." *University of Western Ontario Law Review* 22 (1984): 178.
- Foot, Philippa. *Natural Goodness*. Oxford: Clarendon Press, 2001.
- Foot, Philippa. *Virtues and Vices and Other Essays in Moral Philosophy*. Oxford: Basil Blackwell, 1978.
- Fuller, Lon L. *The Morality of Law*. London: Yale University Press, 1969.
- Fyfe, R. James. "Dignity as Theory: Competing Conceptions of Human Dignity At the Supreme Court of Canada." *Saskatchewan Law Review* 70 (2007): 1.
- Goodin, Robert E. "The Political Theories of Choice and Dignity." *American Philosophical Quarterly* 18, no. 2 (1981): 91-100.
- Griffin, James. *On Human Rights*. Oxford: Oxford University Press, 2008.
- Harry G. Frankfurt, "On Love and Its Reasons," in *The Reasons of Love*, 35-68 .
- Heinaman, Robert. *Aristotle and Moral Realism*. London: UCL Press, 1995.
- Heyman, Steven J. *Free Speech and Human Dignity*. London: Yale University Press, 2008.
- Howard, Rhoda. "Dignity, Community, and Human Rights." In *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, edited by Ahmed Abdullahi An-Na'im, Philadelphia: University of Pennsylvania Press, 1995.
- Hursthouse, Rosalind. "Virtue Theory and Abortion." *Philosophy and Public Affairs* 20, no. 3 (1991): 223-46.
- Hursthouse, Rosalind. *On Virtue Ethics*. Oxford: Oxford University Press, 1999.
- Ignatieff, Michael, Anthony Appiah, and Amy Gutmann. *Human Rights as Politics and Idolatry*. Princeton: Princeton University Press, 2001.
- Kahan, Dan M. "The Progressive Appropriation of Disgust," in *Passions of Law*, 63-79
- Kant, Immanuel. *Critique of Practical Reason*. New York: Liberal Arts Press, 1956.
- Kant, Immanuel. *Grounding for the Metaphysics of Morals*. Indianapolis: Hackett, 1981.
- Kant, Immanuel. *Lectures on Ethics*. Indianapolis: Hackett, 1980.

Knoppers, Bartha-Maria. "Human Dignity: In Danger of Banality-(the Case of Cloning)." *Case Western Reserve Journal of International Law* 35 (2003): 385.

Kolnai, Aurel. "Dignity." *Philosophy* 51, no. 197 (1976): 251-71.

Konstan, David. *Pity Transformed* (London: Duckworth, 2001).

Korsgaard, Christine M., and Onora O'Neill. *The Sources of Normativity*. Cambridge: Cambridge University Press, 1996.

Koziak, Barbara. *Retrieving Political Emotion: Thumos, Aristotle, and Gender* (University Park, Pa.: The Pennsylvania State University Press, 2000).

Kraynak, Robert P., and Glenn E. Tinder. *In Defense of Human Dignity: Essays for Our Times*. Notre Dame: University of Notre Dame Press, 2003.

Kretzmer, David, and Eckart Klein. *The Concept of Human Dignity in Human Rights Discourse*. London: Kluwer Law International, 2002.

Lee, Patrick, and George, Robert. "The Nature and Basis of Human Dignity." *Ratio Juris* 21, no. 2 (2008): 173-93.

Leighton, Stephen. "Modern Theories of Emotion," *Journal of Speculative Philosophy*, Vol. II, No. 3, 1988, pp. 206-224).

Leighton, Stephen. "The Mean Relative to Us", in *Aristotle, Virtue and the Mean, Apeiron* Volume XXV no.4, December 1995, pp. 67-78.

Leighton, Stephen. "Aristotle and the Emotions," *Phronesis*, 1982, pp. 144-173. (reprinted in *Aristotle's Ethics*, edited by T. Irwin, Garland Press, 1995; revised in *Essays on Aristotle's Rhetoric*, edited by A. Rorty, University of California Press, 1996).

Leighton, Stephen. "Passion and Persuasion," in *Blackwell's Companion to Aristotle* (edited by G. Anagnostopoulos, 2009).

Leighton, Stephen. *Philosophy and the Emotions*, Broadview Press, 2003.

MacIntyre, Alasdair C. *After Virtue: A Study in Moral Theory*. London: Duckworth, 2007.

Macklin, Ruth. "Dignity is a Useless Concept: It Means No More Than Respect for Persons Or Their Autonomy." *British Medical Journal* 327, no. 7429 (2003): 1419-20.

Maritain, Jacques. *The Rights of Man and Natural Law*. London: Bles, 1944.

McCrudden, Christopher. "Human Dignity and Judicial Interpretation of Human Rights." *European Journal of International Law* 19, no. 4 (2008): 655.

- McDowell, John. "Incontinence and Practical Wisdom in Aristotle." In *Essays for David Wiggins: Identity, Truth and Value*, edited by Sabina Lovibond, S. G. Williams, and David Wiggins, Oxford: Blackwell, 1996.
- Meyer, Michael J. "Dignity, Death and Modern Virtue." *American Philosophical Quarterly* 32, no. 1 (1995): 45-55.
- Meyer, Michael J. "Dignity, Rights, and Self-Control." *Ethics* 99, no. 3 (1989): 520-34.
- Meyer, Michael J. "Kant's Concept of Dignity and Modern Political Thought in Political and Religious Millenarianism." *History of European Ideas* 8, no. 3 (1987): 319-32.
- Meyer, Michael J., and William A. Parent. *The Constitution of Rights: Human Dignity and American Values*. London: Cornell University Press, 1992.
- Miller, William Ian. *The Anatomy of Disgust* (Cambridge, Mass.: Harvard University Press, 1997).
- Moon, Gay, and Allen, Robin. "Dignity Discourse in Discrimination Law: A Better Route to Equality?" *European Human Rights Law Review* 6 (2006): 610.
- Moore, G. E. *Principia Ethica*. Cambridge: Cambridge University Press, 1993.
- Morris, Bertram. "The Dignity of Man." *Ethics* 57, no. 1 (1946): 57-64.
- Murdoch, Iris. *The Sovereignty of Good. Routledge Classics*. London: Routledge, 1991.
- Murphy, Jeffrie G. & Hampton, Jean. *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988)
- Nelson, Hilde L. "Death With Kantian Dignity." *The Journal of Clinical Ethics* 7, no. 3 (1996): 215.
- Nilsen, Eva S. "Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Discourse." *UC Davis Law Review* 41 (2007): 111.
- Nussbaum, Martha Craven and Kahan, Dan M. "Two Conceptions of Emotion in Criminal Law," *Columbia Law Review* 96 (1996): 269-374
- Nussbaum, Martha Craven. *Upheavals of Thought: The Intelligence of the Emotions*. New Jersey: Princeton University Press, 2001 (Nussbaum, *Upheavals*); Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993).
- Nussbaum, Martha Craven. "Secret Sewers of Vice": Disgust, Bodies, and the Law," in *The Passions of Law* (ed. Susan Bandes; New York: New York University Press, 1999), 19-62

Nussbaum, Martha Craven, *Hiding from Humanity: Disgust, Shame and the Law*. Princeton: Princeton University Press, 2004.

Nussbaum, Martha Craven. *Frontiers of Justice: Disability, Nationality, Species Membership. Tanner Lectures on Human Values (Cambridge, Mass.)*. Cambridge, Mass.: Harvard University Press, 2006.

Nussbaum, Martha Craven. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press, 2000.

O'Connell, Rory O. "The role of dignity in equality law: Lessons from Canada and South Africa" *I.CON*, Volume 6, Number 2, 2008.

Pinker, Steven. "The Stupidity of Dignity." *The New Republic* 28 (2008): 28–31.

Post, Robert C. "Racist Speech, Democracy, and the First Amendment." *William & Mary Law Review* 32 (1990): 267.

Réaume, Denise G. "Discrimination and Dignity." *Louisiana Law Review* 63 (2002): 645.

Rosen, Michael. "*The Shibboleth of All Empty-Headed Moralists*": *The Place of Dignity in Ethics and Politics*, (2007 Boston Univ. Benedict Lectures).

Scanlon, Thomas. *What We Owe to Each Other*. Cambridge, Mass.: Harvard University Press, 1998.

Sensen, Oliver. "Human dignity in historical perspective: The contemporary and traditional paradigms" *European Journal of Political Theory* 2011 10: 71.

Schachter, Oscar. "Human Dignity as a Normative Concept." *The American Journal of International Law* 77, no. 4 (1983): 848-54.

Shepherd, Lois. "Dignity and Autonomy After Washington V. Glucksberg: An Essay About Abortion, Death, and Crime." *Cornell Journal of Law and Public Policy* 7 (1997): 431.

Sossin, Lorne. "The Supremacy of God and Human Dignity in the Charter of Rights and Freedoms" 228 *UNBLJ* 52.

Slote, Michael A. *From Morality to Virtue*. Oxford: Oxford University Press, 1992.

Slote, Michael A. *Morals From Motives*. Oxford: Oxford University Press, 2001.

Swanton, Christine. *Virtue Ethics: A Pluralistic View*. Oxford: Oxford University Press, 2003.

Waldron, Jeremy (ed). *Theories of Rights* (Oxford: OUP, 1984)

Waldron, Jeremy. "Cruel, Inhuman, and Degrading Treatment: The Words Themselves."

Waldron, Jeremy. "Dignity and Rank." *European Journal of Sociology* 48, no. 2 (2007): 201-37.

Waldron, Jeremy. "How Law Protects Dignity" (Draft) Lecture at the European University Institute, Florence, 1/27/2009.

Waldron, Jeremy. "Lecture I: Dignity and Rank" *Dignity, Rank, and Rights*. The Tanner Lectures at UC Berkeley. (April, 2009).

Waldron, Jeremy. "Lecture II: Dignity, and Self-Control" The Tanner Lectures at UC Berkeley. (April, 2009).

Williams, Bernard Arthur Owen. *Morality: An Introduction to Ethics*. Vol. Harper essays in philosophy, New York: Harper & Row, 1972.

Williams, Bernard Arthur Owen. *Problems of the Self*. Cambridge: Cambridge University Press, 1973.

Williams, Bernard Arthur Owen., and A. W. Moore. *Ethics and the Limits of Philosophy*. London: Routledge, 2006.

Williams, Bernard. *Shame and Necessity* (Berkeley: University of California Press, 1993).

Indicative Cases:

Andronicou and Constantinou v. Cyprus, 25 EHRR 491.

Bundesverfassungsgericht, (The German Airliner Case) Feb. 15, 2006, 115 BVerfGE 118.

Case of the "Juvenile Reeducation Institute" v. Paraguay, IACHR, Judgment of September 2, 2004.

Chahal v. United Kingdom, (1997) 23 EHRR 413 and 108 ILR 385.

Goodwin v. United Kingdom (2002) 35 EHRR 447.

Guerra v. Italy, (1998) 26 EHRR 357.

Hatton v. United Kingdom, (2002) 34 EHRR 1.

Jordan v. S. 2002 (6) SA 642 (CC) at para. 74, (O'Regan and Sachs, JJ.).

Judge v. Canada, Communication No. 829/1998, UN Doc. CCPR/C/78/D/829/1998, Views of the UN Human Rights Committee, 13 August 2003. Reprinted in (2003) 45 ILM 1214. Also available from the UN Treaty Body Database.

Kindler v. Canada 1991, [1991] 2 SCR 779, 67 CCC (3d) 1, 84 DLR (4th) 438 (SCC).

Kindler v. Canada, Communication No. 470/1991, UN Doc. CCPR/C/48/D/470/1991, views of the UN Human Rights Committee, dated 18 November 1993. Reprinted in 98 ILR 426. Also available from the UN Treaty Body Database.

Law v. Canada (Minister of Employment and Immigration) [1999] 1 S.C.R.

Lopez Ostra v. Spain, (1994) 20 EHRR 277 and 111 ILR 210.

McCann v. United Kingdom, (1995) 21 EHRR 97.

Minister of Finance v Van Heerden 2004 (11) BCLR 1125.

Netherlands v. European Parliament and Council, 2001 ECR I-7079.

Nova Scotia (Workers Compensation Board) v. Martin, [2003] 2 S.C.R. 504;

P v. S and Cornwall County Council, Case 13/94, 1996 ECR I-2143.

Powell and Rayner v. UK, (1990) 12 EHRR 355.

President of the Republic of South Africa v. Hugo 1997 (4) SA 1 (CC).

R. v Kapp 2008 SCC 41.

Republic of South Africa v. Grootboom, (2000) 11 BCLR 1169, 2000 SACCR.

Ribitsch v. Austria (1996) 21 EHRR 573.

Selmouni v. France, 29 EHRR 403.

Soering v. United Kingdom, (1989) 11 EHRR 439, 28 ILM 1063 and 98 ILR 270.

Suresh v. Canada (Minister of Citizenship and Immigration), 2002 SCC 1.

SW v. UK (1995) 21 EHRR 363, para 44.

Tyrer v. United Kingdom, 2 EHRR 1.

United States v. Burns, [2001] 1 SCR 283, 2001 SCC 7, (2001) 195 DLR (4th) 1, (2001) 40.