Is the Juridical Establishment of the Principle of the Respect of Human Dignity Effective ?

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Chapter 4

Is the Juridical Establishment of the Principle of the Respect of Human Dignity Effective?

Jacques Fierens

À quoi servent mes poèmes
Si mon père ne sait me lire?
Mon père a cent ans
Il n'a pas vu la mer
Ce soir il viendra
Épeler mes lettres
Et demain il saura
Lire
Dignité

Rachid Boudjedra,
Pour ne plus rêver, Alger, Sned, 1965.

People in sometimes extreme situations of vulnerability, have always struggled and striven to change their living conditions and especially their relationship to others. When social structures did not seem very open to change (from Greek and Roman Antiquity up until the end of the Ancien Regime), their efforts were often perceived as being aimed at improving their material situation, later (especially since the Socialist and Marxist movements), as the staking of a claim to a place in political and economic life, coming to be seen more recently (since the Second World War), as clearly having a legal perspective. In fact, beyond approaching poverty in terms of material hardship, after the concept, developed in the 1960s of the idea of a lack of security being a form of 'social exclusion', present-day analysis often favours the theme of rights and, of course, primarily that of so-called fundamental rights, human rights.[1] The possibility of acquiring material goods, a decent income, participation in government, the possibility of living as a family, access to knowledge and culture are all essentially based on legal relationships.

Behind the assertion of rights, one often finds more and more, both in the claims of those grieved and at the heart of legal discourse itself, the assertion of the *dignity* of every human being. Contrary to what one might think, this insistence is relatively recent.

This is probably what led the organisers of this meeting to set down, among the main lines of thought, the study of 'the concern for being treated with respect and

dignity'. It is to this that we propose to make a contribution from a particular perspective: let us start from the hypothesis that this concern is real and with the observation that the notion of human dignity has permeated law. What is the origin of this reference? Does it have a content? Should its vagueness be combatted? Should its assertion be encouraged? In short, is the legal assertion of human dignity effective or is it more a kind of incantation? Are there conditions attached to its effectiveness?

The Appearance of the Notion of Human Dignity in Philosophy

Dignity

The word 'dignité', in French, is attested around 1155 (Rey, 1992, 604). It is derived from the Latin *dignitas*, itself a translation from the Greek *axia*, which is usually translated by worth, or *axiôma*, used by Aristotle for 'axiom', 'first principle of reason', 'that which is accepted upon being stated'.[2] From the same root *axios*, which can be translated as 'worthy', means still more fundamentally 'that which carries weight in itself', 'that which influences by its own weight', or 'that which has worth in itself'.[3]

Greek and Latin also had a meaning that we still find today: dignity is also a responsibility, a function, a distinguished title or even an attitude stamped with nobility and solemnity.[4] Thus we can differentiate between 'a' dignity and 'the' dignity. In the first sense, the idea is characterised by the fact that it marks a difference between people, but once this becomes 'human dignity', it is, on the contrary, used to describe an essential sameness.

Human Dignity

When dignity is the dignity of every person, a new concept appears which takes us back to that which is supposed in every general representation of the human condition, to an attribute of the human race, of which the origin was first thought of as being divine, then as 'natural'. This expression of a fundamental human attribute in terms of dignity finds its source in Renaissance thought. The Middle Age had the tendency to emphasise a pessimistic conception of the nature of man, insisting on his sinfulness and his decay. However, from the thirteenth century, Lotario de Conti, who was to become Pope Innocent III, after having written a tract on human wretchedness in 1195 (*De miseriae humanae conditionis*), resolved to write another on the dignity of man, without, however, actually having been able to do so. The subject was taken up again two hundred years later, in 1447, by Bartolomeo Fazio (*De excellentia et praestantia hominis*), and in 1452 by Giannozzo Manetti (*De dignitate et excellentia hominis*). In 1486 and 1487, at the age of 24, Jean Pic de la Mirandole wrote his *Discours sur la dignité de l'homme*,[5]

which is probably the first great assertion of human dignity. The *Discours* took a new, radically optimistic, direction, intending to exalt the greatness of man.[6]

In the seventeenth century, Pascal, who was also seeking the greatness of man through his own wretchedness, asserted a universal principle in the sense that it is valid for all men, and a particular principle in the sense that it differentiates man from all other creatures:

> Man is obviously made to think. It is his whole dignity and his whole merit. (1940, 45)[7] All the dignity of man consists in thought (...). But what is this thought? How foolish it is. (1940, 100) It is not from space that I must seek my dignity, but from the government of my thought. (1940, 97)

Thus Pascal took up the old Greek theme of rationality and self-consciousness as a specific difference between man and other creatures – *anthrôpos zôon logon échon* – but expressing it this time through the notion of dignity.

A century later, it was Immanuel Kant who best prepared the way for the legal notion (was he not, according to Jean Lacroix (1969, 66), 'the man of the Law'?). At the same time as he mobilised the concept to establish the primacy of morality, he also returned to the most original meaning, the Greek sense of 'worth in itself', having no equivalent.

> In the kingdom of ends everything has either a price or a dignity. Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits of no equivalent, has a dignity (...) but that which constitutes the condition under which alone something can be an end in itself has not merely a relative worth, i.e., a price, but has an intrinsic worth, i.e., dignity. (Kant, 1983a, 40)

Dignity belongs to humanity alone because only humanity is capable of morality, that is to say, of acting through pure duty. Morality is a law and that is why Immanuel Kant's thinking is of a legal type. The capability of being a moral being and of acknowledging others as being capable of morality is the ultimate foundation of human dignity:

> Now morality is the condition under which alone a rational being can be an end in himself, for only thereby can he be a legislating member in the kingdom of ends. Hence morality and humanity, insofar as it is capable of morality, alone has dignity (Kant, 1983a, 40-41). Humanity itself is a dignity; for a man cannot be used merely as a means by any man (either by others or even by himself) but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not men and yet can be used, and so over all *things*. (Kant, 1983b, 255)

Thus, the assertion of human dignity enabled, as we have seen, the reaffirmation of 'humanity' as a whole, which had already been an insistence of the stoics.[8] In time, that is to say from the status of the Nuremberg Tribunal in 1945, 'humanity' also became a legal notion, enigmatic subject of a collective right, as seen in the reinforcement of notions such as that of 'crimes against humanity' (Fierens, 2000).

Respect

Besides the connection with humanity, the emergence of the concept of the dignity of man is inseparable from that of respect (Audard, 1993). Dignity commands respect and the latter is the measure of an equality between men. Immanuel Kant again:

> In the system of nature, man (*homo phaenomenon, animal rationale*) is a being of slight importance and shares with the rest of the animals, as offspring of the earth, an ordinary value (*pretium vulgare*)... But man regarded as a person, that is, as the subject of morally practical reason, is exalted above any price; for as a person (*homo noumenon*) he is not be valued merely as a means to the ends of others or even to his own ends, but as an end in himself, that is, he possesses a *dignity* (an absolute inner worth) by which he *exacts* respect for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them. (Kant, 1983b, 230)

Respect is the relationship of esteem to dignity, it is the relation of one reasonable subject to another. It is by nature fundamentally lawful, legal, even if, as we know, for Immanuel Kant law is moral before being political:[9]

> For nothing can have any worth other than what the law determines. But the legislation itself which determines all worth must for that very reason have dignity, i.e., unconditional and incomparable worth; and the word 'respect' alone provides a suitable expression for the esteem which a rational being must have for it. (Kant, 1983a, 41)

Human Dignity in Law

Appearance in Texts

The first allusion to human dignity in a normative text seems to be that of Article 151 of the German constitution, known as the 'Weimar' constitution, adopted on 11 August 1919, which mentions 'life in dignity'.[10] The context here is that of the constitutional emergence of economic, social and cultural rights which this text is also one of the first to sanction.[11] We shall see that the invocation of dignity in order to obtain debtors' rights is criticised, but it is however in this context that the notion is asserted for the first time in law. It is also perhaps not purely by chance

that this assertion was made after one of the humanitarian cataclysms of the twentieth century, the First World War.

'Human dignity' then appears in international public law in the Preamble to the United Nations Charter of 26 June 1945,[12] before being mentioned twice in that of the Universal Declaration of Human Rights of 10 December 1948, as well as in Articles 1, 22 and 23, § 3.[13] On the subject of the first Article, we know that René Cassin, who wrote the first draft, was inspired by the French Declaration of 1789. The latter declared: 'All human beings are born free and equal and rights.' René Cassin wrote: 'All human beings are born free and equal *in dignity* and rights' (Verdoodt, 1964, 59-60).[14]

Since 1945, the notion of dignity has run the entire gamut of the hierarchy of the normative texts of many countries. It has been included in treaties,[15] constitutions,[16] laws[17] and regulations, and it is becoming very difficult to note all of the occurrences.

In Jurisprudence

Today, the courts, for their part, often turn more and more to human dignity to justify their decisions.[18] The fact that it is no longer always a question of interpreting a legal text mentioning it is noteworthy. The idea is often used in the absence of any legal reference, or rather *because* no adequate legal reference exists, to justify the solution (Martens, 2000). Human dignity is thus raised to the rank of a general principle of law, of a 'matrix principle' (Mathieu, 1995, 211), even of a 'suprapositive' rule.

In chronological order, we can first quote the European Court of Human Rights, which evokes the safeguarding of dignity as one of the main aims of Article 3 of the Convention, together with the protection of physical integrity.[19]

On 9 July 1990, in the case of *John Moore*, a patient from whom doctors had taken tissues without his consent, the Californian Supreme Court mentions dignity.[20]

In the context of electricity being cut off because of a failure to pay bills, the Appeal Court in Brussels found that 'every person must be protected if his right to lead a life worthy of human dignity is compromised'.[21] In the same context, The President of the County Court of Charleroi was to find that the use of the plea of non-fulfilment 'contradicted the notion of human dignity' when it resulted in making 'a person with two children live without gas and electricity, in the middle of winter'.[22] So, we see again that reference to human dignity is also used to guarantee a debtor's right, here that of being supplied with electricity.

The French Constitutional Council decided in 1994 that 'the protection of human dignity against all forms of oppression and degradation' is a 'principle of constitutional value'.[23] The same Council then declared that the principle of the protection of human rights is an 'objective of constitutional value'.[24]

In the same sense, on 16 October 1997, the Constitutional Court of Rumania, asserted that human dignity is a supreme value of the Rumanian constitutional state.[25]

The French Council of State, in the famous 'tossing the dwarf' case, said that respect for human dignity is one of the constituents of public order.[26] One of the interests of the case, which received extensive commentary from a variety of angles, was to show to what extent the notion of human dignity could be solicited to conflicting ends. The person being thrown, and thus directly concerned by the case, asserted, in the name of his own dignity, that the show, which was being criticised had enabled him, for the first time, to earn a reasonable living and to become a star. The banning of the show would result in his 'exclusion'. The Doctrine, therefore, wondered whether an offence against human dignity must be assessed on the 'subjective' level of the person who is subjected to the treatment, or on the 'objective' level of the facts considered for themselves. This is largely an incorrect question. As always in law, it is a question of the relationship between human beings, and not the situation of a single individual, to the extent moreover, that such an approach is possible. Law is not only concerned with relations. The spectators, or even just the people acquainted with the organisation of the game, in their relationship to the participants, and to the dwarf himself, are also subject to a treatment. It is this reciprocal relationship that has to be assessed. The fact remains that the violation of the principle of human dignity in the case in point did not obviously appear to all of the commentators and, in this respect, the ruling was globally disapproved of by doctrine. On the theoretical level, the decision of the French Council of State shows the link that can be established with another idea of variable content, but which is less criticised, that of public order.[27]

With its decision of 28 May 1996, the Court of Appeal of Paris, ruled that a Benetton advertisement evoking the HIV virus used 'a degrading stigmatising of the dignity of people implacably suffering in their bodies and in their being, thus abusing the freedom of expression'.[28] The plaintiffs encountered a special difficulty because they were obviously not personally targeted by the contested advertisement and could cite neither a direct personal wrong, nor a breach of an individual right. 'Classic' human rights were of no use here. As an annotator of the ruling pointed out, human dignity was, in a way, taking over from human rights (Edelman, 1989).

Criticism of the Notion of Human Dignity

Human dignity has thus permeated law and jurisprudence. It is on the way to becoming considered as an anterior principle, superior even to human rights which illustrate the various aspects of it. Its establishment is not, however, above criticism from philosophers or jurists, indeed, far from it.

The Criticism of Hannah Arendt

Hannah Arendt's criticism of reference to human dignity seems particularly forceful, notably because it is based on experience of the Holocaust. In short, she says that the invoking of dignity risks being tragically useless if certain conditions are not fulfilled. A man cannot have rights, and cannot therefore see his dignity respected, unless he is part of a political and legal community (Arendt, 1967).

Thus, human rights were not able to prevent the horror of the Nazi extermination camps because the human beings who perished there no longer had any legal status. Moreover, Hannah Arendt maintains that the victims themselves never invoked their fundamental rights. Human rights and dignity cannot content themselves with concerning an 'abstract' man (here we have an echo of Karl Marx[29]), who does not exist anywhere, but must necessarily refer to the man included in a political community, to man as citizen. Deprived of citizenship, man can only assert his dignity. At the same time, Hannah Arendt reminds us of the lesson of Aristotle, for whom man is fundamentally both he who has speech (*zôon logon échon*) and he who is a citizen (*zôon politikon*), both things being intimately related.[30] Without the power of speech and without citizenship, the establishment of the respect of human dignity is in vain. Immanuel Kant also established the link between citizenship and dignity, going so far as to reconcile, up to a certain point, 'a' dignity and 'the' dignity, by asserting:

> Certainly no man in a state can be without any dignity, since he at least has the dignity of a citizen. The exception is someone who has lost it by his own *crime* because of which, though he is kept alive, he is made mere tool of another's choice (either of the state or of another citizen)... (Kant, 1991, 139)

But, Hannah Arendt observes that a person can be deprived of citizenship because of what that person *is*, and not because of what that person has *done* as Immanuel Kant suggests:

> Before this, what we must call a 'human right' today would have been thought of as a general characteristic of the human condition which no tyrant could take away. Its loss entails the loss of relevance of speech (and man, since Aristotle, has been defined as a being commanding the power of speech and thought), and the loss of all human relationship (and man, again since Aristotle, has been thought of as the 'political animal', that is one who by definition lives in a community), the loss, in other words, of some of the most essential characteristics of human life. (...) Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity. (Arendt, 1967, 297)

The genocide committed by the Nazis, just like the Rwandan genocide or other crimes against humanity, are the tragic reductio ad absurdum of the pertinence of Hannah Arendt's reflection. The Third Reich, or the government that was in power in Rwanda until 1994, each within its own cultural sphere, progressively denied Jews or *Tutsis* respectively, the quality of 'subjects of dignity', systematically preventing them from speaking out, and leading to the possibility of the ultimate negation of this dignity.[31] The scandalous poverty of millions of human beings,

unprotected by human dignity, is a result of the same absence of conditions necessary to the respect of it: rather than being able to be explained by economic mechanisms, it is due to the absence of citizenship and the lack of a voice for the people who suffer from it. The same can be said of the fate reserved for people seeking refugee status in many countries: their legal status, or rather the lack of acknowledgement of their fundamental rights, whether in theory or in practice, is the cause of their terrible vulnerability. The assertion of dignity is not enough. Citizenship, national or international, and access to the language that is listened to are indispensable.

The Criticism of the Jurists

Few commentators who are jurists do not criticise the notion of human dignity. The reproaches are many: the notion is 'vague' (Saint-James, 1997, 67), it is 'by definition a-legal' (Théron, 1998, 296),[32] capable of being manipulated to the extreme. The courts, and especially constitutional judges, find in it the basis of a power and of responsibilities abandoned by constituents (Martens, 2000) and reference to dignity is a threat to freedoms. It allows the imposition of subjective moral ideas.[33] The attempt to assert a 'matrix principle' of human rights introduces confusion in terms of their value. More particularly, on the subject of the ruling of the French Council of State relative to the tossing of the dwarf, dignity is 'an alibi for the extension of the components of public order' (Saint-James, 1997, 67). The hidden concept of human dignity is that of public morality 'flying the flag of convenience'.[34]

However, none of these objections seems diriment.

For the Notion of Human Dignity

An Aspiration of the Holders of Rights

The notion of human dignity must be maintained and strengthened in law. The first reason for this is that it expresses much better than others the aspirations of those whose fundamental rights are the most obviously flouted. A Frenchman who had been kept prisoner for nearly twenty years in the Gulag was interviewed on a French television channel by Jean-Marie Cavada who asked him what had caused him the most suffering during his imprisonment. Without mentioning the hunger, the cold, the brutality, the prisoners who died in front of his eyes, he replied, 'the humiliation'. The testimony of Nazi camp survivors is in a similar vein (Levi, 1995; Antelme, 1957). The same type of assertion is also found when speaking to people living in great poverty, whether they live in the south or the north of the world: 'The hardest thing to bear is the shame'. Pride and dignity are the first things that people aspire to, before, or beyond, all material claims. This constant in the words

of those whose most basic rights are compromised must be taken very seriously by law.

The Indispensable Role of Law

To the criticism according to which there is cause for resisting a more general phenomenon of 'juridicalisation at all costs' (Théron, 1998, 303-304) having the erroneous premise 'the nature of law is only to protect individual prerogatives', the response could be given that, in fact, law does not have the monopoly of this protection, but that within its sphere of competence, only it can establish citizenship and speech, that is to say the democratic debate which is the result, and only it is able to mobilise civil authorities and the constraint over which it has the monopoly, to guarantee the conditions of dignity and to prevent its violation. Many other ways, as well as law, need to be explored in order to allow or to protect dignity (education, access to the arts, to spirituality), but they always *also* have legal implications (the examples taken obviously correspond to 'classic' fundamental rights, such as the right to education, to freedom of expression, freedom of thought and religion). It would be better to say that, in order to guarantee dignity, law is indispensable, but insufficient.

Law, Ethics and Morality

Criticism of the moralisation of the notion has the shortcoming of lacking depth. Of course human dignity is firstly a moral assertion. How can we not admit this when we see that the most obvious origin of its introduction into modern law is the insistence of Immanuel Kant, for whom the requirement for morality constitutes the real human condition? Without going as far as he does (the weakness of Immanuel Kant lies precisely in the fact that he could not imagine a morality which would transcend law and rights to become a real ethics of freedom), it should be remembered that the discussion is as old as law thought: is law separable from ethics? It was already the question Socrates and Plato asked of the sophists. The split between justice and power, initiated by Machiavelli, the positivist illusion which still so well feeds our attitudes and our universities, the splitting of law and ethics all proved to be not only impossible, but also dangerous. Besides the responsibility of a Kelsen in the tolerance of odious legal orders, did we not see, under the occupation, the most renowned French jurists discussing the (real) problems posed by 'the Jewish label', without the ethical question being asked? (Lochak, 1989, 252) Law as an organiser of human actions, ethics as a way of reflecting on the meaning of those actions, and morality as a rule of behaviour not sanctioned by any authority outside of our innermost selves, are all inevitably and eternally closely linked, especially when the most fundamental rights are at stake. Their influence is reciprocal and circular.

It is not a question of knowing whether law concerns morality or ethics – it is obvious that the answer is yes – but of knowing which instance is the origin of the

legal norm and according to which procedure it will exercise its authority. What counts today in our secularised democracies, is the preponderance of civil authority over moral or religious authority in the elaboration of the norm and of judgements. This does neither mean that law has nothing to do with morality, nor that a moral notion does not have its place in law.

Notions of Variable Content

The notion of human dignity is admittedly unspecified. It leaves the way open to differing interpretations and excesses which have, in fact, occurred in jurisprudence. The Belgian Council of State succeeded in qualifying it as a 'principe limitatif' (restrictive principle) regarding the organic law of 8 July 1976 for public welfare centres, which declares welfare as being commensurate with what is necessary to the respect of human dignity.[35] The notion, according to the high administrative court, refers to a sort of maximum rather than to a minimum of legal guarantees, which is absurd. As Paul Martens humorously remarked, the invoking of dignity can serve the cause of all tendencies: 'lymphatic positivists, lively positivists, beatific jus naturalists, shifty jus naturalists, touchy materialists, edifying constructivists or Foucaldian moaners...' (Martens, 2000, 574-575). But in this respect, jurisprudence can also play the unifying and regulating role which is classically expected of it, by progressively and flexibly identifying 'in the light of present-day conditions' as the European Court of Human Rights would put it, the legal content of dignity. The utility of the notion lies precisely in the fact of its not having any exact content. In law, human dignity is a functional, evolutional, operating principle. It is far from being the only one (Perelman and Vander Elst, 1984), but nevertheless, today, it could be said that it is focused upon by critics who could well target other notions. The foundations of law can only be expressed through these notions of variable content, such as 'public order', 'democratic society', 'accepted standards of good behaviour', 'offence', 'inhuman treatment', and so many others, up to and including the fundamental concept of 'reasonable'. These notions are the means available to the judge to achieve a balance of interests, rather than applying a supposed judicial syllogism which would, in fact, imply a prior and precise content. Human dignity indicates a sense and a measure to the legislator and to the judge, and that is enough for the drawing up of laws and the passing of judgements. Maybe it is its relative newness, or the fact that is ever more frequently used, that makes human dignity the object of more criticism.

The Example of the Right to Social Security in Belgium

In Belgium, when the right to social security was established as being that which enables someone to live in a way that is 'worthy of human dignity', the legislation department of the Council of State gave its opinion that this single reference could not establish a subjective right, moreover, as it happens, a debtor's right. However, the legislator deliberately refused to be more specific about the notion that would

be specified by the courts and that would evolve with time.[36] We have seen that excesses have occurred, such as that of the administration department of the Belgian Council of State, which asserted the existence of a restrictive principle. But the risk could be taken. In spite of some slips, after a quarter of a century of the implementation of the law on social security and thousands of administrative and legal decisions, no-one defends the idea anymore that the notion of dignity is inopportune, illegitimate or ineffective, and social security performs its function very concretely to the benefit of thousands of people, whose situation would be different if the law establishing human dignity did not exist.

The Need for a Democratic Debate

Should we complain about the power thus given to judges by the legislator, explicitly if a text mentions human dignity or implicitly if the principle is a matrix notion, a general principle of law, an unwritten constitutional principle? Admittedly, the power of the judge is considerable, but the court is one of the places par excellence for the exercise of citizenship and speech. The invoking of dignity is legitimate if it is the result of a debate: an informal and prior debate in the relationship between the holders of rights, a formalised debate in the elaboration of democratic law, a debate which is regulated in form and in content before democratic courts.

> This then is how the procedural function of law is carried out: it no longer imposes, it proposes, it no longer excludes, it integrates, it does not close the discussion, it opens it. We do not really know anymore where to place human dignity, or how to foresee what it has in store for us since it has become juridical. But we have at our disposal all of the elements necessary for participation in the debate and henceforth the solution cannot be imposed upon us by those who are supposed to know. (Martens, 2000, 576)

Speech and Equality

But let us go further and conclude: it is not enough for the debate to exist, it is also necessary that everyone participates, especially including those whose dignity is the most compromised: the humiliated, the tortured, the poor, foreigners, those who are socially excluded for whatever reason. Dignity only protects those who are able to speak out, which also means to speak out publicly. In order to be able to participate in the debate, it is necessary to be a citizen, in the sense explained to us by Hannah Arendt, otherwise, effectively, the establishment of the respect of human dignity, as a principle of law is useless. The gaining of access to the language does not just mean having learned to speak, but also the means of having the possibility of being listened to. Aristotle already understood this twenty-four centuries ago, when he linked citizenship and *logos*, though he did not then think that this language should be that of all human beings, fully equal by right, that citizenship should be that of everybody. This principle – this *axia*, this 'axiom', this dignity through the right to equality – was

only established on the theoretical level in a much more recent age, with the Enlightenment for philosophy[37] and with the American and French Revolutions for law.[38] This acquisition is certainly not a definitive one. Nazism needed only a decade to take a hold in a Europe which had had two centuries of egalitarian tradition behind it. It also remains for us to make the legal principle of the respect of human dignity effective.

Such is, when all is said and done, the condition of the legitimacy and the effectiveness of the notion of human dignity in law: may everyone be able to contribute as equals in the public debate to define its content.

Notes

1 We are familiar with the definition of the French Economic and Social Council, proposed by the ATD Fourth World Movement and now current within the instances of the UN: 'The lack of basic security connotes the absence of one or more factors enabling individuals and families to assume basic responsibilities and to enjoy fundamental rights. The situations may become widespread and result in more serious and permanent consequences. The lack of basic security leads to chronic poverty when it simultaneously affects several aspects of people's lives, when it is prolonged and when it severely compromises people's chances of regaining their rights and of reassuming their responsibilities in the near future' (*Journal Officiel*, 1987). This definition must be qualified. The lack of security targeted, the accumulation of which may lead to chronic poverty, no longer always has the consequence of depriving people and families of the *enjoyment* of fundamental rights, but of exercising them. Today the range of rights destined to protect people from poverty, from a lack of security, from exclusion, is, in fact, very complete. The problem is to create the conditions necessary for them to be effective.

2 Aristote, *Métaphysique*, B, 2, 997a and ff; *Arist. lat.*, XXV/2, 45, 21 s., IV, c 3, 1005a20 and b33 (64, 26s); c. 3, 1090 a36 (265, 5) – Boetius, *De hebdom.* PL 64, 1311B; *De differentiis topicis* I, PL 64, 1176 – D. Albertus Magnus, *Metaph.*, I tr. 1 c.8, Cologne 16/1, 12, 43s.; III tr.2 c.2, 114, 29s; IV tr.2 c.1, 173, 9s – Thomas Aquinus, *Post. anal.*, I lect. 18, § 3; lect. 43, § 13. 'A demonstration principle is an immediate proposition. A proposition is immediate to which no other is anterior' (*Analytiques seconds*, I, 2, 72a, 7). A first principle immediately recognised is an *axiôma* which should not be confused with a thesis which is just as indemonstrable. The thesis, 'though not being susceptible to demonstration, is not indispensable to anyone wishing to learn something' (*Analytiques seconds*, 72a, 15). On the contrary, if 'its possession is indispensable to anyone who wishes to learn anything, it is an axiom. There are effectively some truths of this type'.

3 Cf. the quotations collected by Bailly, A. (1950), *Dictionnaire grec-français*, Éditions Hachette, Paris, 195.

4 Thus, for example, Jean Chrysostome refers to the *dignitas* of the priest (*Du sacerdoce*, III, 4). Pascal, quoted further on, evokes the 'royal dignity' (fr. 1132). The French Declaration of the Rights of Man and the Citizen of 17 August 1789 again evokes the eligibility of citizens 'to all dignities and to all public positions and occupations' (Art. VI). Immanuel Kant, who is also discussed further on, evokes 'political dignities' (Kant, 1983b, e.g. II, 1st section, § 47; II, 1st section, note D).

5 At this time, Jean Pic de la Mirandole was battling with the Roman censors. The text is an element in his defence. In short, for him, the dignity of man stems from his freedom. There is not first a human nature, but a movement, a sort of native power, through which man decides and realises his essence. That is to say that man is not born a man but becomes one, as if he were his own creator: hence he resembles God.

6 See also Erasmus (1466-1536) and his *Praise of Folly*, Thomas More (1478-1535) and his *Utopia*.

7 See also the critique of Zivia Klein (1968) and Thomas De Koninck (1995).

8 Simone Goyard-Fabre (1996, 87 and 171) indicates the probable influence of the Swiss Isaac Iselin (1784) on Immanuel Kant's reflection on humanity.

9 Law is only a place of practical reason. It is not the same as morality. Respect of the law is compliance with one's duty under the threat of constraint. Morality is duty because it is one's duty.

10 'The economy has to be organised on the principles of justice, with the goal of achieving life in dignity for everyone. Within these limits the economic liberty of the individual is to be secured.'

11 Economic, social and cultural rights appear in the French Constitutions of 1791 and of 1793 and are then forgotten for more than a century.

12 'We, the Peoples of the United Nations Determined (...) to reaffirm faith in fundamental human rights, in the dignity and worth of the human person...'

13 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. (...) Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and the worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.' Art. 1: '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.' Art. 22: 'Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.' Art. 23, § 3: 'Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.'

14 The preparatory works do not say anything about the insertion and the intention of the word. The author of the present paper has had access to the initial manuscript of René Cassin, a sheet of paper on which the very first draft of the Declaration was written. This object was given by Madame Cassin to Father Joseph Wrésinski, founder of the international movement A.T.D. Fourth World. The page contains many deletions, but the sentence mentioned was written uninterruptedly, without any alterations.

15 Cf. among others, the International Pact on Civil and Political Rights of 16 December 1966, Preamble 1st and 2nd, and Art. 10, § 1 – International Pact of Economic, Social and Cultural Rights of 16 December 1966, Preamble 1st and 2nd, and Art. 13, § 1 – American Convention on Human Rights of 22 November 1969, Art. 5, § 2, Art. 6, § 2, Art. 11, § 1 – African Charter on Human and Peoples' Rights, Preamble 2nd, and Art. 5 – Arusha Agreement, Protocole relatif à l'État de droit, Art. 1 – New York Convention of 1 March 1980, concerning the dignity of woman – New York Convention of 26 January 1990, concerning dignity of the child. The recent Charter of Fundamental Rights of the European Union of 7 December 2000 states in Article 1: 'Human dignity is inviolable. It must be respected and protected.' The title given to the whole of Chapter 1 is 'Dignity'. Cf. also the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine of 4 April 1994 (Council of Europe).

16 Basic Law of the German Constitution 23 May 1949: '*Die Würde des Menschen ist unantastbar*' ('The dignity of man shall be inviolable'). The last revision of the Belgian Constitution introduced the word in Article 23, § 1: 'Everyone has the right to lead a life in conformity with human dignity.' – Rwandan Constitution of 30 May 1991, Preamble; Cf.

also Art. 12: 'The human being shall be sacred' and the title of this article, 'Human Dignity' – Federal Constitution of the Swiss Confederation of 18 April 1999, Article 7: 'Human dignity shall be respected and protected.' – Constitution of Cambodia of 21 September 1993, Art. 38, § 2: 'The law shall protect the life, honour and dignity of the citizens' and Art. 46, § 1: 'The commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited.'

17 Cf. among others the Belgian organic law of 8 July 1976 on public welfare centres, Art. 1 – Belgian Judicial Code, Art. 1675/3, last paragraph, regarding the collective settling of debts; decree of 4 March 1991 relative to the assistance of young people, Art. 3 – New French Penal Code, Art. 225-14, 227-24, 433-5 and 434-24 – Cf. the very Kantian Art. 1 of the Act n°98-657 of 29 July 1998. Concerning the Campaign Against Exclusion: 'The struggle against exclusion is a national requirement based on the respect of equal dignity of all human beings and a priority of the whole public policies of the nation' – Art. L651-10 of the French 'code de la construction et de l'habitation' – for other references to French legislation, see Saint-James (1997, 62).

18 To date, the Belgian juridical data bank JUDIT has compiled a register of 231 decisions containing the word 'dignity' and 105 containing the words 'human dignity'. In Canadian law, see Huppe (1988, 724).

19 *Tyrer* ruling of 25 April 1978, series A, n°26. In the corroborating opinion that he adds to the *Tomasi* ruling of 27 August 1992, Judge De Meyer explicitly links Article 3 of the Convention, which forbids torture and inhumane or degrading treatment, to human dignity: 'With regard to a person deprived of his liberty, all use of physical force which is not made necessary by his own behaviour is a breach of human dignity and must, consequently be considered as a violation of the right guaranteed by Article 3 of the Convention.'

20 'The ramifications of recognizing and enforcing a property interest in body tissues are not know, but greatly feared – the effect of human dignity of a marketplace in human body parts, the impact on research and development of competitive bidding for such materials, and the exposure of researchers to potentially limitless and uncharted tort liability.' To recap, Mr John Moore was hospitalised in 1976 in the Medical Centre of the University of California for the treatment of his leukaemia. Doctors discovered that his blood contained unique substances enabling the treatment of certain diseases. Over a period of seven years and without the patient's consent they took skin, sperm and blood cells from his body. In 1984, a stem cell line was patented by the pharmaceutical company Sandoz who went on to make three billion dollars from it. Cf. also Court of Appeal of California: Moore v. The Regents of the University of California, 249 Cal. Reptr. 494 (Cal. App.2 Dist. 1988) (249 Cal. Rptr. 503). See also Hermitte (1988, 20-21) and Edelman (1989, 225-230).

21 Brussels, 24 December 1992, Iuvis, January 1994, 203, note P. Bouwens.

22 Civ. Charleroi (réf.), 19 January 2000, *Journal des juges de paix et de police*, 590 and note Fierens, J., 'La dignité humaine, limite à l'application de l'exception d'une exécution'.

23 Constitutional Council, n°94-343-344 DC, 27 July 1994, *JCP*, 1994, III, n°66974bis – *D., Jur.*, 1996, 237 and Mathieu (1995).

24 Decision n°94-359 of 19 January 1995. It should be pointed out that this time it was a question of the right to decent housing, which again indicates that the principle can function to set limits to the autonomy of wills as well as by way of debts of the person with regard to authority. Cf. however the reservations expressed by certain writers, which we do not share, as regards the joining of 'social' rights to the principle of human dignity: Jorion, B., *A.J.D.A.*, 1995, 457 and Saint-James (1997, 62-63).

25 *Bull. jur. Const.*, 1997, 3, 108. This concerned the examination of a press law which did not make any provision for the taking of legal action against abuse or libel in the press.

26 C.E. fr., ass., 27 October 1995, *RFD admin.*, 1995, 1204, concl. Frydman; *D.*, 1996, *Jur.*, 177 and note G. Lebreton – *JCP*, 1996, II, n°22630 and note Hamon, 657 – R.T.D.H.,

1996 and obs. N. Deffains, 'Les autorités locales responsables du respect de la dignité humaine. Sur une jurisprudence contestable du Conseil d'État'. Imported from Australia and North America 'tossing the dwarf' consisted of throwing a human being, a dwarf, the highest or the furthest possible. The person thrown was adequately protected and landed on an inflated mattress.

27 See note Hamon.

28 Paris, 28 May 1996, *D.*, 1996, *Jur.*, 617 and Edelman (1989).

29 Cf. also the conclusions of the study by Klein (1968).

30 Aristotle, *Politics*, Book I, II, 9, 10.

31 Cf. note Fierens, J., 'La non-définition du crime contre l'humanité' – Fierens, J, 'La qualification de génocide devant le Tribunal pénal international pour le Rwanda et devant les juridictions rwandaises', to be published in *Revue de droit pénal et de criminologie.*

32 The author also criticises the relating of public morality and dignity. See also page 302: 'The dignity can't be, as such, a juridical norm.' Along the same lines, Le Pourhiet (1991, 213).

33 In particular this is an insistence of French doctrine following the 'tossing the dwarf' ruling, as this jurisprudence breaks with a definition of public order by Maurice Hauriou (1927) which has become a classic, summarising it as a material and external order.

34 G. Lebreton note under C.E. fr., ass., 27 October 1995, *D.*, 1996, *Jur*, 179.

35 C.E., 21 May 1981, n°21.190, Rec., 731. Article 1, § 1 of the Belgian Law of 8 July 1976, previously mentioned, reads: 'Each person has the right to welfare. This one has the aim to allow everybody to live in accordance with human dignity.'

36 Parl. doc., Ch., session, 1975-1976, Report n°923, 8.

37 Immanuel Kant linked dignity and equality. See above.

38 See also Janos Kis (1989, 123), where the writer insists on 'equal dignity' as an ethical concept which 'attributes human rights to each individual' and places the founding instance of rights in a 'consensual debate' inspired by John Rawls (1972).

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