

Oration: Respect for Human Dignity and the Law

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1. Introduction

When I came to choose the topic of this oration I was advised to select a theme which would be relevant to an audience of law and theology graduands. Of course, there are diverse aspects where law and theology converge. I still remember those days where as a law student I studied Philosophy of Law and came across the great contribution which theologians such as St. Augustine of Hippo and St. Thomas Aquinas gave to the development of law. So the topic of this oration contains both theological and legal elements: it concerns respect for human dignity and law. There is no doubt that the Catholic Church's teachings on human dignity have been a catalyst for the development of law in this area. In this Oration, I will reflect upon two main points: the contribution of the Catholic Church's myriad teachings on human dignity and how the latter concept has been adopted as an essential feature of law – whether national, regional or international.

2. The Catholic Church's Teachings on Human Dignity

The starting point in Church doctrine - *The Holy Bible* – makes reference, albeit scarce, to respect for human dignity. Multiple other Catholic Church documents refer also to this notion. The concept of human dignity is also referred to, even if more explicitly and extensively, in the Church's magisterium be it in the Conciliar Documents of the Second Vatican Council, the encyclicals which preceded or followed that Council such as *Rerum Novarum*, *Pacem in Terris* and *Evangelium Vitae*, the Instructions issued by the Congregation for the Doctrine of the Faith such as *Dignitas Personae* and *Donum Vitae* and the Catechism of the Catholic Church not to mention the writings of eminent theologians who have expanded on this theme. I will thus briefly attempt to set out here the main points made in this vast literature.

2.1. *The Holy Bible: The Old and The New Testaments*

2.1.1. *The Old Testament*

The Holy Bible, in the Old Testament, contains only a handful of references to human dignity (e.g. Habakkuk, chapter 1, verse 7; Ester, chapter 6, verse 3; and Proverbs chapter 31, line 25). The most quoted passages in the *Holy Bible* ascribing dignity to a human being are a few verses in the book of *Genesis* which – although not expressly using the term ‘dignity’ – make implicit reference thereto. These are:

- Chapter 5, line 1: ‘This is the book of the generations of Adam. When God created man, he made him in the likeness of God.’
- Chapter 1, verses 26-27: ‘Then God said, “Let us make man in our image, after our likeness”... So God created man in his own image, in the image of God he created him; male and female he created them.’
- Chapter 9, line 6: ‘Whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image.’ These words are echoed in Christ’s words in Matthew, chapter 26, verse 52: ‘Put your sword back into its place; for all who take the sword will perish by the sword.’

2.1.2. *The New Testament*

Contrary to the *Old Testament*, the term ‘dignity’ is not used at all in the New Testament. However we do find two references to man being in the likeness of God in the second letter to the Corinthians (Chapter 4, verse 2) and in the letter to the Ephesians (Chapter 4, verse 24).

In essence, man’s and woman’s dignity in the Holy Bible derives from humankind’s likeness to the image of the Creator. Men and women are a being superior to all the other creatures which God created. It is this characteristic of humankind – that all human beings are made in the image of God – that gives them their dignity and makes their relationship with God a special one. Furthermore, God’s Son, Jesus Christ, chose to take a human form in order to redeem humanity from sin. As John puts it (Jn 1: 1-2): ‘Before the world was, the Word was. The Word was sharing in God, and the Word was God. He then was with God at the beginning.’ The Word Incarnate is Jesus Christ. As the

theologian Bernard Häring opines: ‘The person created in the Word is gifted by the Word. He remains in the Word who shares with the Father and he cannot exist one moment without that Word. It is in and through him that man comes to selfhood and comes also to the consciousness that others, too, have a selfhood, have the same dignity, and are called to share in the same freedom. It is thus that man is an image of God, *imago Dei*.’ (Bernard Häring, *Free and Faithful In Christ: Moral Theology for Priests and Laity*, Volume I: ‘General Moral Theology, Middlegreen: St Paul Publications, 1978, p. 107). In the Dogmatic Constitution on Devine Revelation (*Dei Verbum*), paragraph 4, we read that: ‘For he sent his Son, the eternal Word who enlightens all men, to dwell among men and to tell them about the inner life of God. Hence, Jesus Christ, sent as a “man among men,” “speaks the words of God” (Jn 3, 34)...’.

2.2. *The Catholic Church’s Magisterium*

All the Catholic Church’s magisterium which follows in time the Holy Bible articulates upon the notion of human dignity. For instance, The Pastoral Constitution on the Church in the Modern World (*Gaudium et Spes*), is one of the Second Vatican Council’s documents which contains various references to the notion of respect for human dignity. In Part One, Chapter 1, entitled ‘The Dignity of the Human Person’, the Pastoral Constitution observes that man’s ‘very dignity therefore requires that he should glorify God in his body, and not allow it to serve the evil inclinations of his heart.’ As humanity shares in the light of the divine mind, humankind’s intellect distinguishes him and enables humanity to surpass other worldly beings. Such ‘intellectual nature of man finds at last its perfection, as it should be, in wisdom, which gently draws the human mind to look for and to love what is true and good.’ Humanity, in its conscience, discovers a law which must be obeyed even if not enacted by it because human dignity lies in its observance and it is by this law that human actions will be judged. However, ‘it often happens that conscience goes astray through ignorance which it is unable to avoid, without thereby losing its dignity.’ It is in freedom that humanity can turn itself towards what is good. So ‘Man’s dignity therefore requires him to act out of conscious and free choice, as moved and drawn in a personal way from within, and not by blind impulses in himself or by mere external constraint. Man gains such dignity when, ridding himself of all slavery to the passions, he presses forward towards his goals by freely choosing what is good, and, by his diligence and skill, effectively secures for himself the means suited to this end.’ This is because humanity bears in itself the seal of eternity.

Gadium et Spes further provides that ‘The dignity of man rests above all on the fact that he is called to communion with God. The invitation to converse with God is addressed to man as soon as he comes into being. For if man exists it is because God has created him through love, and through love continues to hold him in existence. He cannot live fully according to truth unless he freely acknowledges that love and entrusts himself to his Creator.’ In a nutshell, therefore, the right for respect of human dignity flows from the creation of humankind and precedes society: the latter must indeed recognise such right.

Finally, reference has to be made to Pope John XXIII’s encyclical *Pacem in Terris*. According to one admirer of the saintly Pope who reshaped Catholicism not only through calling the Second Vatican Council but also by appointing a Commission to reform the Code of Canon Law, notwithstanding his short papacy, Archbishop Paul Cremona O.P., (*The Concept of Peace in Pope John XXIII*, Dominican Publications, 1988, p. 59) states that ‘The price which Christ has paid to redeem mankind – His own Blood – has a most important place in Pope John’s exposition of Truth and Man. By Our Lord’s Blood, man has not only regained the dignity lost in sin, but this dignity has been enormously increased in Christ. The dignity of humanity is now valued by the Blood of Christ. And this same dignity does not appertain only to mankind as a collectivity, but also to each man taken singly, irrespective of the particular situations he may find himself in.’

3. *Human Dignity and the Law*

Whilst the Catholic teaching provides a compelling background upon which to base the notion of respect for human dignity, it is not necessarily the case that this teaching is always applicable throughout law. For when one compares the various extant legal systems, one observes that there is no unanimity amongst legislators and jurists as how to define or understand ‘human dignity’ even if this term has primarily gained currency in legal jargon with the advent of human rights and fundamental freedom’s instruments. Indeed, although the term is used in various national, regional and international laws, ‘human dignity’ remains largely undefined in these national laws and international instruments and, probably, should an attempt be made to define it, it might not necessarily muster universal acceptance. It seems that the first person who attempted to articulate the meaning of human dignity was Pico Della Mirandola who wrote in the 15th century an *Oration on the Dignity of Man*, in which he discussed

the relationship of God to man and the strong ties that bind them together. He emphasised that man is given freedom of choice and dignity by God to behave in whatever ways man chooses. But it is only through imitating the angels that man attains his glory and dignity. However, although he mentions dignity only twice in his Oration, he did not eventually explicitly define it.

3.1. Legal Definition of Human Dignity

Time does not permit a detailed engagement with the etymology of ‘dignity’ but suffice to say that some attempts have been made to define this term. For instance, Black’s *Law Dictionary* gives ‘dignity’ four meaningful attributes:

- 1 the state of being noble; the state of being dignified.
- 2 an elevated title or position.
- 3 a person holding an elevated title; a dignitary.
- 4 a right to hold a title of nobility, which may be hereditary or for life.

Noticeable in this definition is an expansion of the meaning of the term beyond dignity and nobility of humankind as understood in the religious teaching of the Catholic Church.

I define ‘human dignity’ as ‘respect owed to a human being by virtue of being human’. This is a short definition, but clear and straight to the point, and one which hopefully might attract consensus as to its formulation. I do nevertheless understand that this definition undoubtedly raises various difficulties in its interpretation. For instance, in applying this definition the immediate question which arises is: who should be worthy to deserve such respect? Should all categories of human beings be included, whether they are slaves or coloured people, persons holding different religions, sane or mentally ill, able bodied persons or persons with a disability, debtors or creditors, criminals or autocrats, etc.? I want to argue that this definition should be all inclusive even if the annals of history are replete with diverse instances where human dignity has been trampled upon. Humanity still recalls apartheid in South Africa, the holocaust perpetrated by the Nazis, the crimes of slavery, genocide, war crimes, crimes against humanity, crimes against peace, trafficking in persons, trafficking in bodily organs, engaging children soldiers, etc. Another difficulty with applying this definition derives from the most pressing contemporary issues of biolaw. Should embryos and fetuses from the very first moment of conception enjoy

such respect? Are they entitled to respect for human dignity? The above-cited documents of the Catholic Church would answer these questions in the affirmative, but one must acknowledge that there are diverse views on these points from a philosophical, theological and legal viewpoint. Take the case of those laws which admit of euthanasia, assisted suicide, abortion and inequality in all its various forms. To which philosophical aspect of the notion of respect for human dignity are the latter laws appealing to? Surely this is not the Catholic understanding of human dignity. So although a definition may be attempted of the term 'human dignity' it cannot be said that it will be devoid of controversy and that it will end up mustering universal recognition and acceptance.

3.2. *National Law*

States make continuous reference to human dignity in their legislation. Malta is no exception. This is because the notion of human dignity has been acclaimed in regional and international law and hence these laws are in turn transposed or incorporated into municipal law. But there are also other instances where national law is not influenced by regional or international law when legislating the notion of respect for human dignity in state law.

The Maltese Constitution does neither refer explicitly to, nor define human dignity. There are nevertheless several laws obtaining in Malta which refer to human dignity explicitly without however defining it. Such is the case of the following:

- The Malta Communications Authority Act whereby the Malta Communications Authority's functions comprise 'the protection of morals and respect for the dignity of the human person' (Malta Communications Authority Act, article 4(1)(a)(v)).
- The Press Act which grants a right of reply to any person whose dignity has been attacked in the media (Press Act, article 21(1)).
- The Code of Organization and Civil Procedure refers to the need to treat persons, including debtors, with dignity (Code of Organization and Civil Procedure, article 289(1)).
- The Criminal Code prohibits attacks on the dignity of state officials or agents of international organisations. It is an offence against children's dignity to ill-treat them (Criminal Code, articles 5(3)(b) and 247A(2)).
- The Commissioner for Children Act which directs the Commissioner for

Children to be guided by the principle that ‘all children are to be treated with dignity, respect and fairness’ (Commissioner for Children Act, article 10(b)).

On a comparative basis, at the national level, Article 1 (1) of the German Basic Law – the German Federal Constitution – contains an explicit reference to the concept of dignity wherein it is provided as follows: ‘Human dignity is inviolable. All public authorities have a duty to respect and protect it...’

3.3. Regional Law

At the European level, I refer you to the European Union and the Council of Europe.

3.3.1. European Union

The very first article of the Charter of Fundamental Rights of the European Union is entitled ‘Human Dignity’ and reads as follows: ‘Human dignity is inviolable. It must be respected and protected.’ Human dignity is also referred to in the Charter’s Preamble. The Note from the Praesidium explains this article as follows: ‘The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights... it results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even when a right is restricted.’

The defunct Draft Treaty Establishing a Constitution for Europe 2003 provides in Article 2 the EU’s values as follows: ‘The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.’ It incorporated the aforesaid Charter of Fundamental Rights within its text and contained a further reference in Article III-193 to the EU’s external relations which ‘on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality

and solidarity, and for international law in accordance with the principles of the United Nations Charter.'

The Treaty of Lisbon 2007 recognises this right of human dignity enunciated in Article 2 of the Draft EU Constitution in Article 1a thereof whilst Article 10A of the Lisbon Treaty incorporates the text of Article III-193 of the Draft Constitution. Once the Lisbon Treaty is in force, the Charter of Fundamental Rights will achieve a legally binding status. So not only will human dignity be elevated into a legally enforceable fundamental right but, within the Lisbon Treaty's hierarchy of rights, it is superior to human rights and fundamental freedoms which owe their origin and existence to the dignity of the human person.

These EU instruments are also supplemented by directives and recommendations which refer to human dignity as well such as:

- Article 12(a) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (the Television Without Frontiers Directive – TWDF) which from 19 December 2009 will be substituted by the Audiovisual Media Services Directive, Directive 2007/65/EC (AVMSD). The TWDF prohibits television advertising and teleshopping which prejudices 'respect for human dignity' whilst the AVMSD prohibits 'violations of human dignity concerning individual persons' in the case of 'on-demand audiovisual services' and 'audiovisual commercial communications' are also prohibited if they 'prejudice respect for human dignity'.
- Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers. This latter directive promotes in its Preamble the application of the EU Charter of Fundamental Rights and requires Member States to 'ensure full respect for human dignity'.
- Recommendation 2006/952/EC of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry (and its predecessor Recommendation 98/560/EC). This Recommendation encourages EU Member States to protect human dignity in audiovisual and on-line media.

The Case Law of the European Court of Justice also needs to be borne in mind.

For instance in Case C-36/02, the Court stated that ‘Community law does not preclude an economic activity consisting of the commercial exploitation of games simulating acts of homicide from being made subject to a national prohibition measure adopted on grounds of protecting public policy by reason of the fact that that activity is an affront to human dignity.’ In Case C-377/98, the Court held that: ‘It is for the Court of Justice, in its review of the compatibility of acts of the institutions with the general principles of Community law, to ensure that the fundamental right to human dignity and integrity is observed.’

3.3.2. *Council of Europe*

The notion of human dignity has been fundamental in justifying a number of important judgments of the European Court of Human Rights. Consider for instance the following cases: *Pretty v the United Kingdom*, *Christine Goodwin v the United Kingdom*, *Valasinas v Lithuania*, *Yankov v Bulgaria*, *Kokkinakis v. Greece*, *Saunders v the United Kingdom* and *Keenan v the United Kingdom*, and the dissenting opinion of Judges Spielmann and Jebens in the *Case of Vereinigung Bildender Künstler v Austria*, the latter decided by the European Court of Human Rights on 25 January 2007. The common denominator of the latter judgment is that: ‘...the concept of dignity prevails throughout the European Convention on Human Rights, even if it is not expressly mentioned in the text of the Convention... [t]he very essence of the Convention is respect for human dignity and human freedom.’

As E. Decaux (‘Dignité et universalité’, in S. Marcus Helmons (ed.), *Dignité humaine et hiérarchie des valeurs. Les limites irréductibles*, Brussels, Academia-Bruylant, Bruylant 1999, p. 164) has stated, dignity and universality are indissociable because the foundation of human rights cannot be anything other than the ‘equal dignity’ of all human beings.

Moreover, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, 1997, provides in Article 1 that: ‘Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine. Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention.’

3.4. *International Law*

In addition to regional and national law, international law is replete with references to human dignity. Such is the case of the Universal Declaration of Human Rights, 1948, which contains references to dignity in the first recital of its Preamble and in Articles 1, 22 and 23. How can we ever forget the very first paragraph of the Universal Declaration of Human Rights, that soft law document which is considered to be the harbinger of our human rights law? It reads as follows: '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.' Words which undoubtedly echo the Church's teachings on the subject referred to above.

The concept is also referred to in the Preamble to the Charter of the United Nations, 1945 and in both the Preambles of the United Nations Covenants, 1966 as well as in Article 10 of the International Covenant on Civil and Political Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights.

4. Conclusion

I hope I have illustrated well that the concept of human dignity is central to both theological and legal canons and that the currency of the term is bound to increase. Yet, there is no passage in the Bible or in the Church's Magisterium which explicitly defines the expression 'human dignity' notwithstanding its use or allusions thereto. Indeed, the Church does not define 'human dignity' except in an indirect manner. The same can be said with regard to law. Our Constitution does not use this concept let alone define it. Whilst the notion of respect for human dignity is used, as seen above, in various laws – national, regional and international – the concept nevertheless remains largely undefined. This is perhaps because human dignity has been in time considered more of a theological and philosophical term and it appears that it is only after the Second World War that it has begun to gain legal recognition and status. However, given that today the term has made its way successfully into legal instruments and case law and even in the Church's Magisterium, the time has come to develop a clear and comprehensive definition of the term that would attract consensus at a national, regional and international level. Such a concept and definition should be included in our fundamental law, the Constitution of Malta,

as the Germans have already done quite some time ago; and the EU will soon be including this concept in the Lisbon Treaty when it enters into force even if, though binding, it will not be defined in the Treaty. In my opinion, the key to succeeding in doing this is to ground our inclusive understanding of human dignity on a synergy of teachings of the Catholic Church and the evolution of human rights standards and norms. Let a concerted effort of vesting human dignity with a generally agreed meaning begin, so that respect for it can be fully achieved in the fullness of time.

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