Human Dignity

Human dignity as a social value has a long and varied history drawing from various religious sources, political histories, and philosophical ideals.[1] As a constitutional value and right, however, human dignity is a relatively new concept, only coming to the fore in light of the atrocities that took place during World War II.[2] While its precise legal meaning is uncertain and elusive, it can generally be said to represent the idea that "every human being possesses an intrinsic worth" that precludes their subjection to certain forms of degrading treatment by the state.[3]

Human Dignity in Canadian Constitutional Law

Although human dignity is mentioned in the *Canadian Bill of Rights* (1960), it was only with the advent of the *Charter of Rights and Freedoms* (1982) that it came to play a meaningful role in judicial decision-making (despite not being explicitly mentioned in the *Charter*). In *R v Oakes*, for example, the Supreme Court stated that "respect for the inherent dignity of the human person" must be a guiding principle for Canadian courts when they interpret the *Charter*.[4] However, the Supreme Court has also explicitly stated (in *Blencoe v British Columbia*[5]) that human dignity is not a constitutional right in Canada.

What, though, is the difference between a constitutional right (which dignity is not) and a constitutional value (which it is)?

In short, a constitutional right is something that has direct legal consequences. If the state violates an individual's constitutional right, the individual can take legal action to compel the state to justify the violation (if a violation exists) and to remedy the violation if it can't be justified. A constitutional value, on the other hand, lacks such direct legal consequences, and can't ground a legal claim. Rather, a constitutional value is something that courts use to aid their interpretations of the Constitution. For example, a constitutional value can be used to help evaluate the scope of a constitutional right, and it can play an important role in determining the degree to which an infringement of a right can be justified.[6]

Specific Sections of the *Charter*

Since dignity is one of the *Charter*'s foundational and orienting values, it can potentially be invoked to aid the interpretation of any *Charter* right. However, dignity has played a *particularly* prominent role in judicial interpretations of three *Charter* sections: sections 7, 12, and 15.

Section 7

Human dignity has featured prominently in cases involving Section 7 of the *Charter*, which guarantees the individual's "right to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice."[7]

Most famously, Justice Wilson's concurring judgment in *R v Morgentaler* held that the state's criminal restrictions on abortion were unconstitutional because they restricted the liberty of women in a way that was, in essence, contrary to their human dignity.[8] Similarly, in *Carter v Canada*, the Supreme Court found that a criminal ban on assisted suicide was unconstitutional because it deprived individuals of control over "a matter critical to their dignity and autonomy."[9]

Section 12

Section 12 of the *Charter* prohibits cruel and unusual punishment or treatment, and the Supreme Court has stated that the purpose of this prohibition is to protect human dignity.[10] Building off of that, in *R v Bissonnette*, the Court found that consecutive sentences of life without parole were unconstitutional because leaving the door open for an offender's rehabilitation is necessary to ensure respect for human dignity.[11]

Section 15

Section 15 deals with equality rights and prohibits certain types of discrimination.[12] In *Law v Canada*, the Supreme Court held that the purpose of section 15 was to protect human dignity,[13] and incorporated human dignity into the legal test for a section 15 violation[14] (this test was later abandoned, however, in *R v Kapp*[15]). In the process, the Court also opined on the meaning of human dignity:

"Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment … [and] is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits."[16]

[1] See generally, Christopher McCrudden, ed, *Understanding Human Dignity* (Oxford: Oxford University press, 2013).

[2] Aharon Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge: Cambridge University Press, 2015) at 3-4 [*Barak*].

[3] Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" (2008) 19:4 The European Journal of International Law 655 at 679.

[4] *R v Oakes*, [1986] 1 SCR 103 at para 136.

[5] *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at para 77.

[6] *Barak*, *supra* note 2 at 103-104.

[7] *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[8] *R v Morgentaler*, [1988] 1 SCR 30 at para 173.

[9] *Carter v Canada (Attorney General)*, 2015 SCC 5 at paras 65, 68, 81.

[10] *Charter*, *supra* note 7, s 12.

[11] *R v Bissonnette*, 2022 SCC 23 at para 85.

[12] *Charter*, *supra* note 7, s 15.

[13] *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 6 [*Law*].

[14] *Ibid* at para 7-9.

[15] *R v Kapp*, 2008 SCC 41 at paras 19-21.

[16] *Law*, *supra* note 13 at para 53.