

Human Dignity in European Constitutional Culture

Lesson II

Human Dignity as a Constitutional Concept

Human Dignity in Constitutional Discourse

- Human Dignity as a Legal Concept
 - A “central organizing principle in the Idea of Human Rights” (Mc Crudden)
- Human Dignity as a Constitutional Value
 - A concept that “ensures the normative unity of human Rights” (Barak)
- Human Dignity as a Constitutional Right
 - A “Right to have Rights” (Barak, Rodotà)
 - The right to be oneself (Bellini, Ridola)

Human Dignity as a Legal Concept

- Human Dignity as Humanity in a Legal Perspective
 - *Relation between the individual and the Constitution*
 - *Constitution as a tool for social integration*
 - *Legitimizing Constitutions: linking Constitution to human experience.*
- Methodological and Historical Remarks
 - *Constitutionalism and the “image of mankind” (Häberle) – Influence on FR catalogues*
 - In liberal Constitutionalism
 - Human being as Bourgeois
 - In social Constitutionalism
 - In social and democratic Constitutionalism

Human Dignity as a Legal Concept

- Consequences on Constitutional Texts (I)
 - **Art. 151 WRV (1919)**
 - *“The organization of economic life must conform to the principles of justice to the end that all may be guaranteed a **decent standard of living**”*
 - **Art. 3, IC (1947)**
 - *“All citizens have **equal social dignity** and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.*
*It is the duty of the Republic to remove **those obstacles of an economic or social nature** which constrain the freedom and equality of citizens, thereby impeding the **full development of the human person** and the effective participation of all workers in the political, economic and social organisation of the country”*
 - **Art. 36, par. 1, IC (1947)**
 - *“Workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure **them and their families a free and dignified existence**”*
 - **Art. 41, par. 1-2, IC (1947)**
 - *“Private economic enterprise is free. It may not be carried out against the common good or in such a manner that could damage safety, liberty and **human dignity**”.*

Human Dignity as a Legal Concept

- Consequences on Constitutional Texts (II)

- **Art. 1 GBL (GG, 1949)**

- **“Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.**

The German people **therefore** acknowledge inviolable and inalienable human rights as the **basis of every community, of peace and of justice in the world.**

The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.”

Human Dignity as a Constitutional Value

- “Dignity as a Constitutional Concept defines humanity and promotes it by acknowledging the diversity of human identities and activities” (Dupré)
 - *It gives normative basis for constitutional rights*
 - *It serves as an interpretative principle for determining the scope of constitutional rights*
 - *It has an important role in determining the proportionality of a statute limiting constitutional rights (Barak)*

Human Dignity as a Constitutional Right

- Human Dignity and Fundamental Rights (I)
 - Human Dignity as a Constitutional Right
 - Absolute Dimension
 - Objektformel (Dürig)
 - Problems: Absolute Meaning and Constitutional Neutrality
 - » Constitutional conflicts (i.e.: Bioethics)
 - Relative Dimension
 - Right to have Rights
 - Dignity and Self Determination
 - Balancing test - Limits

Human Dignity as a Constitutional Right

- Human Dignity and Fundamental Rights (II)
 - Human Dignity and Limitation of Fundamental Rights
 - A tool for testing proportionality
 - Human Dignity as an interpretative principle
 - Both in an objective (limit) and subjective (opportunity) dimension

Human Dignity as a Constitutional Right

- Human Dignity and Equality
 - Bringing Equality back to Subjective Issues (Pezzini)
 - Dignity and Self determination – Equal Social Dignity
 - Humiliation and Degradation
 - *“Differentiation between people becomes discrimination if it violates human dignity, and additional type of differentiation are discriminatory if they violate human dignity”* (Barak)
 - Critics to dignitary approach to Equality Judgment
 - Political against individualistic view (Niccolai)

Human Dignity as a Constitutional Right

- Constitutional Functions of Human Dignity
 - 1) Foundational Function
 - *Constitutional image of Mankind*
 - *Self representation of the historical community*
 - 2) Interpretative Function
 - *Checking the effectiveness of Fundamental Rights (control on limitations)*
 - *Granting constitutional neutrality as dealing with cultural and political pluralism*
 - 3) Tool for social integration
 - *Equality Judgment*